

# MAINE STATE LEGISLATURE

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26 M.R.S.A. § 663-7



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August 11, 1977

Honorable James Wilfong  
Route 113  
North Fryeburg, Maine 04058

Dear Representative Wilfong:

On April 4, 1977, we provided you with an opinion on the question whether the collective bargaining provisions of Title 26 M.R.S.A. c. 9-A extend to volunteer firefighters. We concluded that volunteer firefighters were not covered by that law. You have since posed further related questions, which we have stated below, and to which we herein respond.

1. Does the minimum wage law apply to call and volunteer firemen?

ANSWER:

No.

Maine's minimum wage law is found at 26 M.R.S.A. c. 7, sub-c. 3. In Sec. 663, the definition section, paragraph 7 provides that

Members of municipal firefighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter.

Notwithstanding its inapt wording, it is our opinion that paragraph 7 in terms excludes volunteer and call firefighters from the minimum wage coverage. That is, though the paragraph reads ". . . other than volunteer or call-departments. . .," it must be read to mean "other than volunteer or call firefighters." Otherwise, volunteer or call firefighters working in an all-volunteer or all-call department would not be covered by the minimum wage provisions, while volunteer or call firefighters who supplemented the staff of a regular municipal firefighting department would be covered. There would seem to be no basis for such a distinction between otherwise similarly situated workers.

Second, only those firefighters "who are paid salaries or regular wages" have minimum wage coverage. Payments to a volunteer firefighter may be regular, in a sense that every time he or she works, he or she is paid, but such payments do not have their origin in a more or less formally constituted employment relationship nor do they have the consistent recurrence connoted by the terms "salary" or "regular wages."

Thirdly, it is evident from the legislative debate preceding the enactment of paragraph 7<sup>1/</sup> that the Legislators were operating from a basic assumption that the bill did not extend coverage to volunteer firefighters.

Lastly, volunteer workers in general fall outside the scope of and purpose behind the minimum wage law, as stated in section 661:

§ 661. Declaration of Policy. It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.

Volunteer work is not generally understood to be an "occupation;" frequently there are no wages at all attached; where there are wages, they are not expected to be the source of maintenance or health protection, nor commensurate with the value of services rendered.

2. 2/ Is there any conflict between the minimum wage law and 30 M.R.S.A. c. 228?<sup>2/</sup>

ANSWER:

No.

Title 30 M.R.S.A. c. 228 permits municipalities to provide for their own fire protection by means of a "municipal fire department or a volunteer fire association," both of which terms are defined for the purposes of the chapter in which they are contained. It is entirely possible that members of a department falling within the Chapter 228 definition of a municipal fire department would nonetheless not be covered by the minimum wage law, because they were volunteer or call firefighters and thus outside the scope of paragraph 7 of Sec. 663. Similarly, "an appropriation of money (made) by (a) municipality toward the support of a volunteer firefighting association" [Chapter 228, Sec. 3771 (3)]<sup>7</sup> might include money for payments to volunteer firefighters, but these payments would not constitute salary or wages, as discussed above.

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1/ L.D. 656; Legislative Record, 1965, Vol. 1, pp. 1160, 1312, 1343, 1345.

2/ 30 M.R.S.A. c. 228 was enacted as Chapter 680 of the Public Laws of 1973.

In short, though these two statutes have certain areas of common ground, they operate to different ends and do so without an irreconcilable conflict.

3. If volunteer and call firefighters are part of a municipal fire department, do they have the right of organization and collective bargaining?

ANSWER:

No.

For the reasons discussed in our opinion of April 4, 1977, volunteer and call firefighters are not covered by the municipal public employees labor relations law, 26 M.R.S.A. c. 9-A. Nor do employees have collective bargaining rights simply because they work beside other employees who have them. Particularly in the public sector, such rights attach to particular employments and positions and not to others, and it is not at all unusual that of two employees working side by side in identical work, one may have collective bargaining rights and the other may not. The distinction may be based on such things as the length of time employed, or, as here, on the nature of the service relationship.

4. May volunteer and call firefighters organize and collectively bargain if they desire to do so?

ANSWER:

Qualified yes.

Possession of the right to organize and bargain collectively really means that the employer can be compelled by law to bargain with its employees. Any group of employees may organize and put pressure on the employer, who may then negotiate. It should be understood, however, that, in terms of the law, the employer who negotiates with employees who are not covered by a collective bargaining law does so voluntarily, whether pressured into negotiations or not. That is, employees who are not covered by a collective bargaining law have no access to legal sanctions to force negotiations, nor to punish a refusal to negotiate.

We hope the above provides a full response to your questions.

Yours truly,



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Assistant Attorney General

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