Minimum Staffing: Law Enforcement and Corrections

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Staffing can be established by ordinance, budget appropriations, a bargaining agreement, or imposed by an arbitrator who resolves an impasse between management and a certified bargaining unit. For example, one city has a law that reads “It shall be the duty of the Chief of Police to assign two policemen to each patrol car used by the Police Department while patrolling.” [1]

Minimum staffing disputes involving firefighters may occur more frequently than in law enforcement and corrections. The risks are markedly different. Police and correctional officers are often subjected to violent resistance and sometimes to deadly assaults. Firefighters are exposed to injury and death while suppressing dangerous fires and while responding to other hazards. Part Two of this article will address the fire service. [2]

It is important to remember that management’s duty to bargain on a topic depends on state law. Although state public employment bargaining laws may parrot federal laws, each state labor board or commission has the ability to adopt a unique policy. Because
board members are political appointees, some boards or commissions have reversed prior decisions pertaining to staffing issues.

Currently, 33 states and the District of Columbia have a public sector labor board or commission. In the 17 states that do not, collectively bargaining rights often exist for select occupations. Typically, units of local governments have an option to create or enlarge bargaining rights. [3]

❖ Duty to bargain over safety issues

A popular reference book states, “Management generally prefers not to have staffing levels in a negotiated contract because their absence allows discretion in setting such levels.” [4] In the abstract, employee safety is a mandatory subject of collective bargaining. In practice, a union proposal that impacts on employee safety is not necessarily a mandatory bargaining issue.

There are multiple staffing considerations. One is the location and number of officers who are available to respond to an emergency or backup request. Another is the number of officers assigned to a patrol car, a surveillance, or other duty.

Unions often assume that cars staffed with two officers are safer than a solo patrol vehicle. In 1977 however, a Police Foundation study of the San Diego Police Dept. concluded that it “is more efficient and safe, and just as effective for the police to staff patrol cars with one officer as with two.”[5] Courts and labor boards have cited the study when rejecting a claim that staffing a patrol car is a mandatory subject of bargaining.

A Michigan appellate court reversed a state labor commission ruling that had concluded that a minimum-staffing clause is premised on officer safety and therefore constitutes a mandatory subject of bargaining. The appellate panel wrote:

“The record before us reveals that no evidence was before MERC showing or tending to show that the number of police officers on duty affects the workload of each officer. Further, other than a San Diego study finding that officers assigned to two-man patrols perceive them to be safer than one-man patrols, no evidence was before MERC showing that two-man patrols enhance officer safety.

Indeed, the evidence (including the San Diego study, state data on frequency of assault on officers, and local data on injuries sustained by Sault Ste. Marie police
officers) strongly suggests that officers assigned to two-man units are in greater
danger of suffering an assault while on duty.”


In Boston, the Patrolmen’s Association and management submitted the two-officer car
issue to arbitration. When the arbitrator sided with the union, management sought judicial
review. The Massachusetts Supreme Court reversed:

“The police commissioner’s decision to assign one officer, as opposed to two, to a
marked patrol vehicle is one of those subjects which constitutes management
prerogative and is nondelegable and, therefore, beyond an arbitrator’s authority.”

City of Boston v. Boston Police Patrolmen’s Assn., #4795, 403 Mass. 680, 532 N.E.2d

The staffing of a fixed post has been decided similarly. A proposal to requiring a county
to assign at least two sheriff’s officers to the county hospital’s secure ward was not
mandatorily negotiable. County of Bergen and P.B.A. L-134, Docket #SN-82-89,

**No duty to perpetuate a staffing agreement**

A bargaining agreement in New Jersey required that “each shift shall be manned by a
minimum of two (2) full-time Police Officers on duty at all times.” It was the duty of
management to recall officers to duty at overtime rates “in order to properly man the
shift” in compliance with the contract.

The state’s Public Employment Relations Commission concluded that because staffing
was not mandatorily bargainable, there was no duty to perpetuate the provision in
successive agreements. Twp. of Readington, and P.B.A. L-273, Docket #SN-83-135,

Pennsylvania’s courts have reached the same conclusion. Police Bargaining Unit v. Bor
Circumventing the bargaining issue with a premium pay demand

In Franklin, NJ, the union proposed that “when a uniformed patrol officer is required to work alone on the road, that officer will receive overtime compensation for the first four hours of the shift and double-time pay for all work thereafter.”

From a fiscal perspective, management would have to pay a solo officer 175% of his/her regular pay and double the costs of vehicle operations. If fully adopted by an arbitrator under impasse procedures, a municipality is more likely to opt for two-officer patrol cars.

Management contended that the proposal “would interfere with its ability to make staffing decisions.” The union countered that the proposal “bears a reasonable relationship to, and is designed to compensate for, the safety hazards of working alone.”

The Commission sided with the union, writing:

“This proposal would not, on its face, nullify the decision to deploy only one patrol officer during certain periods. Given the rule that premium pay proposals are mandatorily negotiable, we cannot say on this record that this premium pay proposal would significantly interfere with the Borough’s staffing decisions.”

The Commission stressed that an impasse arbitrator “must weigh … evidence concerning the financial impact of the proposal and the safety risks or other considerations for which it is designed to compensate.” Bor. of Franklin and FOP Lodge 57, Docket SN-98-60, P.E.R.C. #98-138, 24 NJPER 273, 1998 NJPER (LRP) Lexis 75 (NJ PERC 1998).

Implementation of existing agreements

A bargaining agreement can mandate that management will summon off-duty officers to maintain prescribed staffing levels. Using a seniority system, on-duty officers are requested or required to hold over until their replacements report for duty. One such clause reads: [6]

“In the event that employees who have been called back to work have not yet reported to work, in order to satisfy the minimum manning requirements set forth herein, then employees holding the rank of Patrolman shall be held over until such time that the employee that has been called back to work actually reports to work.”
Premium pay for callbacks and overtime provisions may apply.

**Public safety considerations**

A local government can reduce the size of its police force, or even abolish it. The Kentucky Supreme Court noted, “As much as we may agree with the decision to have a county police force, and or as much as we may disagree with the rendered appropriation which effectively eliminated the police force as a viable entity, we cannot substitute our judicial fiat for that of the clear legislative purpose and the traditional role of fiscal [authorities] in setting legislative and fiscal policy.” Fiscal Court v. Taylor County Police, 805 S.W.2d 113 (Ky. 1991).

A federal appeals court in Chicago held that a transit authority could abolish its police force, and rejected various claims of due process violations. O’Mahony v. Chicago Transit Authority, 779 F.2d 54 (Unpub. 7th Cir.), cert. den. 106 S.Ct. 1516 (1986).

A three-judge appellate court in Michigan upheld a county’s decision to substantially reduce funding for the sheriff’s road patrol. A sheriff, said the panel, is not required to “regularly patrol” unincorporated areas. Brownstone Twp. v. County of Wayne, 242 N.W.2d 538 (Mich. App. 1976).

An appellate court in New York upheld a decision by the City of Yonkers to close its jail as an economy measure, with the resultant furlough of personnel. Christiansen v. Casey, 428 N.Y.S.2d 317 (A.D. 1980).

In Tennessee, a sheriff unsuccessfully sued the county commissioners to force them to fund additional personnel. A state statute authorized sheriffs to seek judicial relief in funding disputes.

An appellate panel wrote that “it would be necessary to prove in numerical quantity the number of times per day, week, month or year the Sheriff is called upon to perform the statutory duties of his office, that he and his previously authorized employees have devoted their full working time to the performance of such duties and that their combined efforts have not been sufficient to perform all such duties, some of which have not been performed for this reason.” Cunningham v. Moore County, 604 S.W.2d 866, 1980 Tenn. App. Lexis 336 (1980).
Summary

1. Staffing is related to safety, but is only one factor.
2. Generally, management is under no duty to bargain one- vs. two-officer patrol units or other assignments.
3. Although it is likely to promote rancor, management is under no obligation to perpetuate a contractual staffing position in successive agreements.
4. Staffing mandates are still enforceable after a contract expires, and continue until a new agreement is reached. [7]
5. Management is required to bargain over a union proposal to provide a premium supplement to officers who work in solo patrol units. In the event of an impasse, an arbitrator is not required to agree to premium pay.

Notes:

2. Part Two will not appear until later in the year. Next month the employment law article is on Military Leave.
3. AFSCME has a web page that lists state agencies.
5. See reference (below), Patrol Staffing in San Diego (1977). Forty years later, San Diego would create a 21-person commission to respond to gang violence.
7. Oak Park and P.O.A., 110 LA (BNA) 689 (McDonald, 1998). However, a contract can provide that specified rights do not continue after the agreement expires.

References: (chronological)


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