

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of two appeals pursuant to Section 112 of the

Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

City of Surrey
("Surrey" or the "employer")

- and -

Surrey Firefighters' Association, Local 1271,
on behalf of 24 bargaining unit members
(the "employees")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

PANEL: Kenneth Wm. Thornicroft
Norma Edelman
Geoffrey Crampton

FILE No.: 97/251

DATES OF HEARING: June 30th & August 5th, 1997

DATE OF DECISION: September 25th, 1997

DECISION

APPEARANCES

Adam Albright for the City of Surrey

Allan E. Black &
Elena Miller for the employees

Adele Adamic for the Director of Employment Standards

OVERVIEW

There are two appeals before us, both brought pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on March 26th, 1997 under file number 59916 (the “Determination”). The Director determined that the City of Surrey (“Surrey” or the “employer”) contravened sections 16, 17(1), 21(2), 58(1) and 58(2) of the *Act* and, accordingly, owed 24 named individuals a total sum of \$186,505.68. This amount includes unpaid hourly wages at a rate of \$7.00 per hour, vacation pay, reimbursement for course fees paid to the Fire Academy of the Justice Institute of British Columbia, and interest payable under Section 88 of the *Act*.

The Director determined that 24 Surrey firefighters were “person[s] being trained by an employer for the employer’s business” (see the definition of “employee” in section 1 of the *Act*) when they were students at the Fire Academy of the Justice Institute of B.C. (the “Fire Academy”) and, as such, were entitled to be paid at the minimum wage rate set out in the *Employment Standards Regulation* (\$7.00) for all of the hours they spent at the Fire Academy. Additionally, the Director held that the employees were entitled to be reimbursed for the \$4,500 tuition they paid directly to the Fire Academy.

Both Surrey and the Surrey Firefighters’ Association, Local 1271 (as the authorized representative of 24 complainant employees, the “employees”) have appealed the Determination. Surrey’s submission on appeal is, simply, that the Director erred in finding that the employees were “being trained by Surrey for Surrey’s business” while they were students enrolled at the Fire Academy and, thus, seeks cancellation of the Determination. The employees do not challenge the substantive finding that they were Surrey employees while they were Fire Academy students. The Surrey Firefighters’ Association says that the Director erred by limiting the claim to the 24 employees named in the Determination and made certain other calculation errors such as understating, in some cases, the tuition paid by some employees.

The Panel did not hear any evidence or submissions on the employees' appeal; the parties agreed that Surrey's appeal should proceed first and, depending on the outcome of that appeal, the parties would either attempt to resolve the matter between themselves and, only if necessary, would the employees' appeal come back before the Panel for hearing.

Surrey's appeal was heard over two days, June 30th and August 5th, 1997. The Panel heard one main witness, Deputy Fire Chief Wayne Bernard, and one rebuttal witness, a former Human Resources officer Shannon Clements, on behalf of Surrey. The Panel heard four witnesses, Lorne West, Dan Kehler, Mike McNamara and Colin Snyder, on behalf of the employees. Counsel for the Director did not present any evidence but did make a final submission as did counsel for both Surrey and the employees. In addition to the *viva voce* evidence and submissions of the parties, the Panel has also considered the various written submissions and documents that were filed prior to the commencement of the hearing.

ISSUE TO BE DECIDED

The only issue that the Panel is called on to decide at this time is whether or not the Director erred in concluding that there was an employment relationship between Surrey and the employees while they were enrolled as students at the Fire Academy. To put the matter another way, were these 24 individuals being "trained" by Surrey to work as Surrey firefighters while they were attending the Fire Academy?

FACTS

The Training of Surrey Firefighters Prior to 1994

As noted in Surrey's written submission of April 18th, 1997, "prior to 1994, [Surrey] hired and then trained their own firefighters...[Surrey] does not dispute...that those firefighters were 'employees' as defined by the *Act*".

In 1993, Surrey's internal firefighter training program was accredited by the International Fire Service Accreditation Congress (the "Congress"), based at Oklahoma State University in Stillwater, Oklahoma, to offer the National Fire Protection Association ("NFPA") firefighter certification at a level known as the "NFPA 1001" standard. The NFPA, an American-based organization, sets standards for various aspects of firefighter training such as Hazardous Materials Awareness, Administration Officer, Training Officer, and, of particular relevance here, Recruit Firefighter Levels 1 and II, whereas the Congress is the accreditation body.

In about 1990 the Fire Academy was established at the Justice Institute of B.C. The Fire Academy offered training for firefighters and was utilized by many fire departments, including Surrey, as a supplementary training facility. The Fire Academy was itself accredited to offer certification at the NFPA 1001 standard sometime in 1993.

Both prior and subsequent to 1994, Surrey has utilized a combination of “regular” and “volunteer” firefighters. “Regular” firefighters are full-time Surrey employees and members of the bargaining unit represented by the Surrey Firefighters’ Association, Local 1271. “Volunteer” firefighters are not part of the bargaining unit, attend one evening training session each week, respond to calls (they are supplied with a pager) on an “as-needed” basis and are paid three times each year; although some volunteers earn as much as \$15,000 per year, the average per annum range is about \$7,000 to \$10,000. Currently, Surrey has a complement of about 265 regular firefighters and another 275 volunteers.

Prior to 1994, most regular firefighters were recruited from the ranks of the volunteers. Typically, a call for regular firefighters would be posted in the various fire halls and volunteers would be encouraged to apply although other individuals, who were not volunteers could, and frequently did, also apply. The recruitment process, whether for a volunteer or an “off-the-street” candidate was very much the same. The prospective regular firefighters wrote a four-hour examination that tested their mechanical ability, general knowledge and aptitude. Successful candidates went on to a series of physical tests, a medical examination and finally to an interview process (consisting of one or two panel interviews). At each stage of the process, the candidate field was reduced to, ultimately, the relatively few individuals who were offered a position as a probationary (for one year) firefighter. Typically, from an original applicant pool of, say, 125 to 150 individuals, only about 10 would receive offers of employment. Upon hire, the recruit was then trained through a combination of “on-the-job” training, an internal training program and, in later years, supplementary training at the Fire Academy. Once employed by Surrey, the recruits were required to join the Surrey Firefighters’ Association and were paid in accordance with the terms and conditions of the collective bargaining agreement between Surrey and the association.

The Training of Surrey Firefighters Since 1994

Surrey still utilizes a combination of regular and volunteer firefighters. For the most part, volunteers are trained and recruited in much the same way as was the case prior to 1994. However, regular firefighters are now recruited by Surrey but trained at the Fire Academy. As noted earlier, the Fire Academy was accredited by the Congress in 1993 and now is the only body in the province authorized to train firefighters to the “NFPA 1001” standard.

It should be noted that there is no provincial legislative requirement that municipal fire departments train their members to the NFPA 1001 standard. The evidence before us is that many

B.C. municipal fire departments train their recruits internally and that some individual fire departments' training programs do not meet the NFPA 1001 standard. It is possible, however, for a municipal fire department to apply to the Fire Academy for what is known as "accreditation through delegation" and, in that manner, offer NFPA 1001 certification.

Surrey recruits regular firefighters from both its pool of volunteers and from "off-the-street". The volunteers may be characterized as "internal" candidates; whereas the "off-the-street" recruits may be characterized as "external" candidates. The internal candidates usually respond to a job posting in the fire halls and, in turn, submit their names to the Surrey Human Resources Department or directly to the Fire Chief or his designate. The internals then write and must achieve a 75% score on a general knowledge/mechanical aptitude test, pass a series of physical tests, pass a medical examination and then undergo a panel interview process. Successful applicants are advised during the interview process that, if selected, they will be required to undertake, at their own expense, a (currently twelve-week) training program at the Fire Academy. Surrey formerly reimbursed internal applicants for their tuition costs at the Fire Academy, but, as of this year, no longer does so.

External candidates apply directly to the Fire Academy. The Fire Academy screens all applicants to its program based on aptitude tests, physical tests and a medical examination. At the end of the screening process, the Fire Academy develops a "master eligibility list" (with test results) which is circulated to various fire departments, including the Surrey Fire Department. Surrey then reviews the list and interviews a number of applicants, some of whom may be offered a job as a firefighter upon completion of their training at the Fire Academy. It is important to note that in the case of both internal and external candidates, the Fire Academy will only admit applicants to its program on the recommendation of the Surrey (or some other municipal) Fire Department. The Fire Academy usually offers three training programs each calendar year with class sizes ranging from 16 to 24 students.

Regardless of whether a particular Surrey recruit was selected via the internal or external process, the following letter was sent to the recruit under the signature of the Deputy Fire Chief:

"Congratulations, you have been recommended to attend the [nine or twelve] weeks recruit training program at the Justice Institute's Fire Academy. This program will begin [date].

Upon successful graduation from the Justice Institute's Fire Academy you will be offered employment as a probationary firefighter with the City of Surrey provided that: your driving record is maintained; you do not acquire a criminal record and your current level of physical fitness is sustained.

An orientation meeting will be held on [date/time] at the Justice Institute..for those attending the [commencement date] training program...

Good luck in your training at the Fire Academy.”

Shortly (usually 1 to 2 weeks) before graduation from the Fire Academy, the Surrey recruits are notified in writing as to their Fire Hall assignment and shift schedule. On the day that the Surrey recruits graduate from the Fire Academy, they typically receive, by hand, the following letter, also under the signature of Deputy Chief Bernard:

“I am pleased to confirm your appointment to the position of Probationary Firefighter with the Surrey Fire Department effective [date]. Your salary will commence at [annual and monthly salary].

As a condition of employment, you will be subject to a one year probationary period and will be required to join the Surrey Firefighters’ Association, Local 1271.

You are instructed to report for duty on [date/time] to Fire Hall No. [1, 2, 3 etc.]...

Congratulations on this appointment, and welcome to the Surrey Fire Department. I wish you a long, safe and rewarding career as a professional firefighter.”

The Fire Academy Training Program

The current Fire Academy training program spans a 12-week period; the recruits receive both theoretical and practical instruction 5 days each week, 8 hours each day. In addition to the time spent at the Fire Academy there are supplementary exercises and assignments that must be completed on the recruits’ own time--the Fire Academy training program clearly calls for a “full-time” commitment. The evidence of the individual recruits who testified before us was that they were expected to, and in fact did, resign whatever other full-time employment they may have held prior to their acceptance into the Fire Academy. For example, prior to enrolling at the Fire Academy, Dan Kehler resigned his position as a sales supervisor with a local soft drink bottling company--an apparently secure position that paid him an annual salary of approximately \$60,000. While Ms. Clements, a former personnel officer with Surrey, could not recall ever telling an individual recruit to quit his job, she agreed that admission to Fire Academy was cause for “celebration” and that it would be highly unlikely for a recruit to continue full-time employment while studying at the Fire Academy. The recruits received instruction from Fire Academy personnel, many of whom were (and apparently continue to be) otherwise employed by other local fire departments, including the Surrey Fire Department. The recruits wear a Fire Academy uniform.

The recruits pay their own tuition, presently set at about \$5,200, and are eligible (now that the program has been expanded from 9 to 12 weeks) to apply for Canada Student Loans. As noted above, at one time Surrey reimbursed “volunteer” recruits for the costs of the course but no longer does so. Similarly, in the past Surrey paid for the recruits’ safety boots but this practice has now also been abandoned.

The Fire Academy primarily uses two training centres, the Justice Institute classroom complex at the New Westminster campus and a “field” facility in Maple Ridge. In addition, the Fire Academy regularly utilizes other facilities and equipment maintained by fire departments in the Lower Mainland. There appears to be reciprocal arrangements in place between the Fire Academy and various Lower Mainland fire departments. For example, the Surrey Fire Department, in exchange for the use of its facilities and equipment often has access to the Fire Academy’s “burn building” for its own internal training purposes.

The Relationship Between Surrey and the Fire Academy

Surrey's principal position is that the Fire Academy is an entirely independent body. The Fire Academy sets the course curriculum (although, presumably, much of the curriculum is pre-determined by the NFPA 1001 standard), the teaching schedule, and it alone sets and marks the examinations. There is apparently no contractual agreement of any kind between the Fire Academy and Surrey.

However, the evidence shows that some sort of ongoing mutually beneficial relationship does exist between the Fire Academy and Surrey. According to the evidence of Deputy Chief Bernard, the Fire Academy program is taught by Fire Academy instructors although some Surrey Fire Department members have been engaged as "adjunct instructors" from time to time. Indeed, Deputy Chief Bernard has himself taught at the Fire Academy on occasion. In such circumstances, the Surrey fire department members are not supposed to wear their Surrey uniform although this policy has not been rigidly enforced.

It should be noted that an individual cannot undertake firefighter training at the Fire Academy unless he or she has been, in effect, "sponsored" by a local fire department. Deputy Chief Bernard testified that the Fire Academy "won't take anyone unless they are recommended by us or another municipal fire department". The number of "seats" available in any given Fire Academy class is dictated by the local fire departments' needs, not by the demand from would-be students.

Although recruit discipline is a matter for the Fire Academy, the Surrey Fire Department is apprised if there is some sort of disciplinary problem. The Fire Academy keeps the Surrey Fire Department informed about the progress of the Surrey recruits. Sometime after the first 8 weeks of each recruit training program, senior officials from the Surrey Fire Department meet the "Surrey recruits" (as they are known and referred to at the Fire Academy) for an orientation session and to obtain feedback about the Fire Academy training program-feedback which, in turn, is passed on to the Fire Academy (according to Deputy Chief Bernard, "we try and address problems that come to our attention"). During the orientation session the "Surrey recruits" (and only the Surrey recruits) are given information about the expectations, policies and procedures of the Surrey Fire Department.

As noted above, from time to time the Fire Academy and the Surrey Fire Department make use of each other's equipment and facilities.

ANALYSIS

Surrey's position is that the Fire Academy is an entirely independent organization and that the "Surrey recruits", while enrolled at the Fire Academy, are not Surrey employees. The employees'

position is that prior to 1994 Surrey hired and trained its own recruits and that since 1994 there has only been a change in the method of training--in effect, Surrey has "contracted out" the training function to the Fire Academy but the essence of the training received has not changed.

The Director's view was that the "Surrey recruits", while enrolled at the Fire Academy, were Surrey "employees" and, therefore, entitled to the minimum hourly wage and other benefits set out in the *Act*.

Unlike the *B.C. Labour Relations Code*, in the *Act* the term "employee" is defined (in section 1 of the *Act*) in rather wide, and more fully particularized, terms. Indeed, it is quite possible for an individual to be an "employee" under the *Act*, but not an employee for purposes of the *Labour Relations Code*.

"Employee" is defined in the *Act* as follows:

"employee" includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*
- (c) a person being trained by an employer for the employer's business,*
- (d) a person on leave from an employer, and*
- (e) a person who has a right of recall;*

(emphasis added)

For the purposes of this appeal, the relevant subparagraph is (c)--"a person being trained by an employer for the employer's business".

In our view, the evidence clearly shows that the "Surrey recruits" were being trained by the Fire Academy to work as Surrey firefighters. It is important to note that the level of training offered by the Fire Academy is the NFPA 1001 standard, a standard that is not uniformly demanded by fire departments in the Lower Mainland and elsewhere in the province. The Surrey Fire Department played a significant role in the process that led, in 1993, to the Fire Academy being certified to offer the NFPA 1001 certificate. The evidence before us is that Surrey took the initiative, and provided much of early curriculum guidance (and teaching faculty), which resulted in the establishment of the current Fire Academy training program--a program modeled on that previously offered "in-house" by the Surrey Fire Department.

In our view, the employer's argument that the training provided by the Fire Academy is akin to the sort of generic (or even skill-specific) post-secondary educational programs offered by the province's institutions of higher learning cannot be accepted.

First, Surrey (and the other sponsoring fire departments) effectively control access to the Fire Academy training program. This situation stands in marked contrast to other post-secondary educational programs where the student's admission to the program is not controlled by an employer. Indeed, the various employers' (*i.e.*, the participating municipal fire departments) control is of such a degree that a particular Fire Academy training program will only be offered if there is a sufficient number of "sponsored recruits".

Second, the substance of the Fire Academy program is carefully monitored by Surrey to ensure that it meets their needs. Initially, the Fire Academy training program was set up to offer NFPA 1001 training (*i.e.*, the level of training demanded by Surrey) simply because Surrey was unable--for "political reasons" according to Lorne West, a Surrey Fire Department captain and president of the Surrey Firefighters' Association--to continue to hold certification in its own right for its in-house program.

While we are satisfied that the Fire Academy was training recruits "for the employer's [*i.e.*, Surrey's] business", can it be said that the employees in question were "being trained by an employer"? In other words, was the training being undertaken by Surrey or by the Fire Academy? On a strict literal interpretation one could conclude that there was no employment relationship between the recruits and Surrey simply because the training was undertaken by the Fire Academy rather than by Surrey. However, we are of the view that a strict literal interpretation of the *Act* ought not to guide our decision--indeed, this is the view espoused by both our Court of Appeal [*cf. Helping Hands v. Director of Employment Standards* (1995) 131 D.L.R. (4th) 336] and the Supreme Court of Canada [*cf. Machtinger v. HOJ Industries Ltd.* (1992) 91 D.L.R. (4th) 491].

In the facts of this case, we are of the view that insofar as the training of firefighters is concerned, the Fire Academy is simply a surrogate for the Surrey Fire Department. Thus, in effect, for the employees in question, their firefighter training was undertaken by the Fire Academy on behalf of Surrey.

"Employer" is defined in section 1 of the *Act* in the following terms:

"employer" includes a person

- (a) who has or had control or direction of an employee, or*
- (b) who is or was responsible, directly or indirectly, for the employment of an employee;*

Even though the recruits were enrolled as students of the Fire Academy, Surrey nonetheless exercised residual *control* over the recruits' activities. This control was exercised in a variety of ways such as:

- Surrey (and other sponsoring fire departments) control the Fire Academy admissions process;
- the Fire Academy consulted Surrey as to disciplinary matters and generally reported to Surrey regarding the recruits' progress; and
- Surrey Fire Department officials, during the course of the training program, sought feedback from their recruits which, in turn, was passed on to the Fire Academy for necessary action.

In our view, Deputy Chief Bernard's testimony clearly demonstrates that the Fire Academy did not, unlike virtually any other post-secondary educational institution in the province, play any role in determining who was enrolled as a Fire Academy student:

“We control who gets selected into the Fire Academy program...we make the decision on who we hire...the J.I. plays no role in who we select or recruit; the J.I. accepts our decisions...Surrey's class size [at the Fire Academy] is determined by Surrey.”

The factual situation here is markedly different from that in *H.E.U., Local 180 and Cranbrook and District Hospital and Selkirk College* [1974] C.L.R.B.R. 42, a decision of the B.C. Labour Relations Board cited to us by counsel for Surrey. Leaving aside the point that this decision addressed whether or not certain student practical nurses were “employees” under the B.C. *Labour Code* (an enactment that did not then, and does not now, define “employee” as someone who is, *inter alia*, “being trained by an employer for the employer's business”), the decision nonetheless clearly shows that the College, rather than the hospital, exercised the vastly greater measure of control over the student nurses' lives while enrolled in the practical nurse training program. Accordingly, given that the hospital had very little (or none at all) control over the student nurses' admission to the training program, their evaluation while in the program, their daily supervision and discipline, their hours of work and the fact that the hospital had made no offer of post-training employment, the Board concluded that the student nurses were not employees of the hospital while engaged in the “practicum” portion of their nursing training program.

As for the matter of recruit discipline, Deputy Chief Bernard's evidence was that the Fire Academy “kept us informed” about the recruits' progress and that any disciplinary action would only be undertaken in consultation with Surrey officials. Deputy Chief Bernard also testified that the “Academy chooses to involve us because they feel an obligation and a need to do so”.

We are of the view that Surrey has not merely “contracted out” the initial training of firefighters to the Fire Academy. In effect, the Fire Academy has been engaged as an agent for Surrey to undertake the initial training of Surrey firefighters. In any agency relationship, the agent is obliged

to keep its principal informed and carry out duties on behalf of the principal as instructed by the principal. In the present case, the evidence discloses that the Fire Academy is not an autonomous training agency; rather, Surrey is intimately involved, insofar as its own recruits are concerned, at every stage of the Fire Academy training process--from admission to graduation.

Surrey, and Surrey alone, made the offer of employment that was the condition precedent to the recruits' admission into the Fire Academy. In other words, an employment relationship between Surrey and the recruits was established prior to the recruits entering the Fire Academy. Thus, Surrey (and only Surrey) was the party who "was responsible...for the employment of the employee" (see the definition of "employer" in section 1 of the *Act*).

The Surrey recruits who were recommended to attend the Fire Academy already had in hand, at the time of their enrollment, an offer of employment as a Surrey firefighter which they, in turn, had accepted by enrolling as a student in the Fire Academy. While it is true that subsequent service as a firefighter was subject to a number of conditions precedent--such as graduation from the Fire Academy and maintenance of a good driving record and physical fitness--the fact remains that a contract of employment was already in place when the recruits commenced their training at the Fire Academy.

Counsel for Surrey readily concedes that Surrey "may be liable for future lost wages and other costs of a person who attends the...Fire Academy in the event that person completes the program and is not offered a position as promised..." (submission of Surrey's solicitors dated April 18th, 1997). However, counsel then asserts that Surrey's liability would flow from a breach of contract but not from breach of an *existing employment contract*. We disagree.

In our view, counsel's latter submission attempts to fuse the notion of contractual *performance* with the issue of whether or not there is, in fact, a contract. In virtually every contract of employment that might be negotiated, the parties first fix their contractual obligations *inter se* and then, subsequently, the parties begin to perform their respective contractual obligations. In the present case, while the employee's obligation to render services as a Surrey firefighter may be deferred pending certain other events (including the successful completion of the Fire Academy program), this deferral does not change the *character* of the contract itself--it is, and remains, a contract of employment from the moment the bargain is struck. When the Surrey recruits enrolled at the Fire Academy they already had in hand a contract of employment with the Surrey Fire Department; the only issue was whether or not the recruits would meet the contractual conditions precedent and, thereby, crystallize Surrey's performance obligation to place them on the payroll as a probationary firefighter.

The letter given to Surrey recruits upon graduation "confirms" the recruit's appointment as a probationary firefighter. In other words, by this letter Surrey is simply acknowledging that all of

the the conditions precedent contained in the previously negotiated employment contract have now been satisfied.

Counsel for Surrey also submits that inasmuch as Surrey did not derive any “real economic benefit” when the recruits were Fire Academy students, the recruits cannot be characterized as Surrey “employees” while they were enrolled at the Fire Academy. Accordingly, and consistent with our Court of Appeal’s decision in *Fenton v. Forensic Psychiatric Services Commission* (1991) 56 B.C.L.R. (2d) 170, the Determination ought to be cancelled. We are unable to accede to this submission for two reasons.

First, the issue in *Fenton* was whether or not the complainant was an employee under the *Act* by reason of his having “performed work” while he was a patient in a psychiatric rehabilitation program operated by the Commission. Thus, the Court of Appeal espoused the “real economic benefit” test in a very different factual context than is raised by the present appeal.

While the “real economic benefit” test is undoubtedly the correct test to determine if someone is an employee under subparagraphs (a) [person receiving wages for work] and (b) [person performing work normally performed by an employee] of the definition of “employee” set out in section 1 of the *Act*, it is our view that this test is not relevant when subparagraphs (c) [trainee], (d) [person on leave] and (e) [person on a recall list] are in issue. Indeed, in most, if not all cases, one would be hardpressed to argue that an employer derives a “real economic benefit” from a person who is on leave or on a recall list. Insofar as the economic benefits of training are concerned, in the usual scenario the employer does not expect to derive a “net” economic benefit during the course of training; rather, the net economic benefits of the training are usually recouped after the training has been completed.

Second, even if the proper test in this case *is* one of “real economic benefit”, Deputy Chief Bernard’s evidence was that “the fact that they [the Surrey recruits] are being trained at the J.I. is a benefit to Surrey”. Surrey clearly has enjoyed a real economic benefit by engaging the Fire Academy to undertake its recruit training and has, in effect, “off-loaded” its training costs onto the recruits themselves. Indeed, we are satisfied that it was this financial consideration (particularly given that the Fire Academy training program is not materially different from that formerly undertaken by Surrey “in-house), above all else, that led to Surrey abandoning its in-house firefighter training program in 1993.

For all of the foregoing reasons, we are satisfied that the Director did not err in determining that the complainant employees were “person[s] being trained by an employer for the employer’s business” while they were enrolled at the Fire Academy.

As noted at the outset of these Reasons, we have not heard the employees’ appeal with respect to the Director’s calculation of the employer’s total liability. In the event the parties cannot resolve that matter among themselves, the employees’ appeal will be set down for hearing in due course. In order to ensure a timely resolution of that appeal, and consistent with the Tribunal’s statutory mandate to ensure that disputes under the *Act* are resolved in a “fair and efficient” manner, the employees are directed to advise the Tribunal, on or before 4:00 P.M. on October 31st, 1997, if they wish to pursue their appeal.

ORDER

Pursuant to section 115 of the *Act*, we order that the Determination in this matter, dated March 26th, 1997 and filed under number 59916, be confirmed as to the finding that the complainants were employees of the City of Surrey while enrolled as students at the Fire Academy.

The employees are hereby put on notice that unless they advise the Tribunal in writing, on or before October 31st, 1997, that they wish the hearing of their appeal to go forward, those appeals will be dismissed as abandoned.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal

Geoffrey Crampton, *Chair and Adjudicator*
Employment Standards Tribunal

Norma Edelman, *Registrar and Adjudicator*
Employment Standards Tribunal