GRUENDEL, J., concurring. The majority accurately frames the issue in the present appeal as whether the participation by the plaintiff volunteer firefighters Douglas Evanuska and Paul Williams in the work night constitutes a duty "ordered to be performed by a superior or commanding officer in the fire department . . . ." General Statutes § 7-314 (a). Because the conclusion of the workers' compensation commissioner (commissioner) that no superior or commanding officer of the plaintiffs ordered their participation in the work night finds support in the record, I agree with the majority.

I write separately, however, to emphasize that the commissioner's factual findings are inconsistent. The commissioner first found that "[n]o one was *ordered* to be at the work [night]." (Emphasis in original.) To order is, as the majority notes, to require or direct something to be done. The plaintiffs steadfastly have maintained that their participation in the work night was required. That contention is supported by the commissioner's factual findings. Specifically, the commissioner found that (1) "[t]he application for membership in the Germantown Hose Company . . . listed participation in company 'work nights' as a duty expected of a volunteer firefighter," (2) "active members were obligated to attend work [nights] unless the member's primary job or some family obligation prevented their attending,"[1] (3) "disciplinary action could be taken against active members for their failure to appear at work [nights]," (4) superior or commanding officers were "in charge of work [nights] in order to reinforce the chain of command in place when fighting fires," and (5) consistent with that protocol, Karl Leach, chief of the Germantown hose company, "gave direction or orders to the members of the work [night] as to just what he wanted them to do . . . ."

The majority reconciles the incongruity between those findings and the commissioner's conclusion that "[n]o member of the work [night] was ever ordered to be at the work site" by stating that there is "a distinction between an expectation and a command." Footnote 5 of the majority opinion. To my mind, the commissioner's factual findings indicate that, although the chief of the hose company never expressly commanded their participation, the plaintiffs and other members nevertheless were required to take part in work nights if they wanted to remain with the hose company. In the face of that reality, the argument that the participation merely was expected fails.

At the same time, the record includes the written statement of the chief of the hose company, in which he avowed that participation in the work night was

voluntary and not ordered. Although the commissioner did not reference that statement in his findings, he did find that "[n]o one was ordered to be at the work [night]." In defining the term "fire duties," § 7-314 (a) includes any "duty ordered to be performed by a superior or commanding officer in the fire department . . . ." As the sole arbiter of the weight of the evidence and the credibility of witnesses, the commissioner was free to credit the chief's representation, and, thus, the ultimate conclusion that the plaintiffs were not ordered by a superior or commanding officer to participate in the work night plainly is supported by the record before us. We therefore are bound by that finding. See *Dixon* v. *United Illuminating Co.*, 57 Conn. App. 51, 63, 748 A.2d 300, cert. denied, 253 Conn. 908, 753 A.2d 940 (2000).

The commissioner's factual findings nevertheless indicate that plaintiffs' participation was required as a condition of their employment with the hose company. The record suggests that members who refused to participate in the work nights did so at their own peril.[2]

As our Supreme Court has observed, "this state has an interest in compensating injured employees to the fullest extent possible . . . ." (Internal quotation marks omitted.) *Burse* v. *American International Airways, Inc.*, 262 Conn. 31, 37, 808 A.2d 672 (2002). This jurist certainly appreciates the argument of the plaintiffs in the present case. It is not for this court, however, to determine whether the scope of § 7-314 should be expanded to encompass requirements of employment placed on members of volunteer fire departments, such as participation in work nights. That task belongs to the General Assembly alone. For the protections of General Statutes § 7-314a to apply to the present situation, Connecticut law requires an order by a superior or commanding officer. The record in this case reveals no such order. For that reason, I respectfully concur with the majority opinion.

[1] The majority opinion discounts that finding, stating that the commissioner "merely noted that James LaClair, vice chairman of the board of managers of the Germantown Hose Company," made such a statement. "It is the power and the duty of the commissioner, as the trier of fact, to determine the facts. . . . [T]he commissioner is the sole arbiter of the weight of the evidence and the credibility of witnesses . . . ." (Internal quotation marks omitted.) *Brinson* v. *Finlay Bros. Printing Co.*, 77 Conn. App. 319, 323, 823 A.2d 1223 (2003). On page two of his memorandum of decision, the commissioner included the aforementioned statement as his ninth factual finding.

[2] In addition to the commissioner's finding that members of the hose company were obligated to participate and faced possible disciplinary action for their refusal to do so, the decision of the workers' compensation review board states that "the membership of a volunteer might be reevaluated if said person continued to miss work parties."