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NEWS

On August 5, 2015, **Melissa Murray** spoke on an Education Panel at Milton Academy for Interns and Teaching Assistants working with The Steppingstone Foundation for the summer.

CLP UPDATE

You can now access CLP's Civil Service Commission Reporter and Mass Labor Relations Reporter Commentary on our website. In our role as commentators for these Reporters, we review and analyze every civil service and DLR decision and discuss the impact they will have in these fields. Current commentaries are available now and we will be uploading past editions throughout the summer.

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Teachers Challenging Dismissal Limited to Statutory Arbitration, Including Limited Arbitrator Review

A teacher does not have the right to challenge his dismissal under the grievance and arbitration procedure, and just cause standard, in a Teachers collective bargaining agreement ("CBA"). Rather, the appeal is limited to arbitration pursuant to M.G.L. c. 71, section 42, which limits an arbitrator's ability to overturn a dismissal if the Employer proves one of the statutory criteria for dismissal. That was the Appeals Court's holding in its July 20, 2015 decision in Groton-Dunstable Regional School Committee vs. Groton Dunstable Educators Association, 33 N.E.3d 1253 (Mass. App. Ct. 2015). The case involved the 2013 dismissal of a professional status teacher. When the Union filed a demand for arbitration under the Teachers' CBA, the Committee filed a successful court action to block the arbitration. (The Union also petitioned for arbitration under section 42 but requested that it be held in abeyance while it pursued the grievance under the CBA.) The Groton-Dunstable CBA contained disciplinary language typically found in Teacher CBAs: A teacher could not be disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage without just cause. In comparison, section 42 provides that a teacher "shall not be dismissed except for inefficiency, incompetence, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards developed pursuant to section thirty-eight of this chapter or other just cause." If one of the statutory grounds for dismissal is proven, an arbitrator cannot second guess the dismissal.

The Court noted that the language in section 42 was part of the Education Reform Act of 1993 that made "sweeping changes to the arbitration procedures available to terminated teachers, as well as to the scope and authority of arbitrators, and the standards those arbitrators are to apply" and that there have been a series of appellate decisions since then that stood for the proposition that the scope of arbitration for fired teachers came from section 42, not from a CBA. For example, in School Committee of Lexington v. Zagaeski, 469 Mass. 104 (2014), the Court rejected an arbitrator's reinstatement of a teacher fired for making inappropriate sexual comments to students. The Court ruled that the language of section 42 did not allow an arbitrator to draw on a teacher's past performance to override a dismissal decision based on a teacher's conduct which threatened the safety and welfare of students and which the arbitrator found constituted conduct unbecoming, a valid basis for dismissal under the statute.

Sorry Seems to Be the Hardest Word

In City of Woburn, a Department of Labor Relations (DLR) arbitration decision, a DLR arbitrator upheld the four month suspension of a police officer for deliberate violation of an order to stay away from his girlfriend, who was facing trial for distribution of oxycodone. But, the Mayor's order that the officer apologize to the Mayor and all his fellow officers was not found to be supported by just cause.

It seems that requiring employees who engage in egregious misconduct to be contrite is not part of progressive discipline. Discipline is corrective, not punitive, the arbitrator opined. The four month non-punitive suspension was sustained, but a demand for an apology was deemed "superfluous" and "not corrective."