



Labor Board Recognizes “New” Working Condition

The Department of Labor Relations (DLR) recently issued a ruling that the City of Springfield could not install GPS devices in city owned trucks without bargaining with the union [City of Springfield, 41 MLC 383 (2015)]. The GPS trackers record location, idle time, distance driven, stops and speeding events, and give the employer access to this information in real time. The installation of the devices was not accompanied by any new job requirements – employees were still expected to do their jobs, obey traffic laws, and refrain from using their city vehicle for unauthorized, non-work related trips. Before the installation of the devices, employees could be required to report their whereabouts and activities by radio, and supervisors could visually observe employee compliance with work rules and requirements.

CERB upheld the ruling of a DLR hearing officer, that even though there were no new requirements or standards, the employer’s access to better information about employee performance constituted a change in working conditions. As an example, the DLR cited the city’s notification to the union president that he had used his vehicle for two unauthorized trips during work time. This detour would not have been known to the city without the use of the GPS – the employee would have gotten away with his misconduct. That secret misconduct was apparently a protected working condition worthy of preserving, according to the DLR. The DLR was particularly focused on the surreptitious installation of the GPS devices and the employer’s refusal to meet in response to demands by the union, although it is unclear what those facts had to do with the underlying legal issue.

This case represents a sad departure from the previous state of the law. Under Duxbury School Committee, a 1998 case, a technologically more efficient way of enforcing existing work rules was not viewed as a change in working conditions. This was in line with earlier rulings with reference to punching time clocks as a means of verifying employee punctuality.

This ruling does not mean employers cannot install GPS devices; it simply means more care and preparation will be required. GPS devices in police cruisers, to facilitate emergency response by the nearest cruiser, predominantly affect public’s safety and therefore may well not constitute a mandatory subject.



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Civil Service Assessment Centers – When Are They Negotiable?

In a Town of Arlington case (41 MLC 272 (2015)) recently decided by a hearing officer at the Department of Labor Relations (DLR), the Town was deemed to have an obligation to bargain with the Arlington Police Patrolmen’s Association about its decision to use an assessment center as the tool for ranking candidates for promotion from the rank of police officer to police sergeant. The fact that the sergeants’ position was in a different bargaining unit of police supervisors did not matter. (Arlington appealed the hearing officer’s decision, but subsequently withdrew the appeal after successfully negotiating the underlying issue.)

What about promotion from a supervisory position to a non-union managerial position like deputy chief? We think the LRC weighed in on this issue way back in the 1977 Town of Danvers case, expressing with approval the view of the N.L.R.B. that promotions into non-union positions are not a mandatory subject of bargaining. More recent N.L.R.B. decisions have continued that view. There is no reason to think the current DLR will view the matter differently, especially since the number of non-union managerial positions under c. 150E are so few.