

# CLIENT ADVISOR

July, 2014



## California Teacher Tenure Statute Ruled Unconstitutional

**A** California Superior Court has invalidated the state's teacher tenure, dismissal and layoff statutes in *Vergara v. California* (June 10, 2014). The Court held these statutes had a disproportionate effect on low-income and minority students, depriving them of their fundamental constitutional right to equality in education, by subjecting them to a disproportionately large share of ineffective teachers.

The California teacher tenure statute provides for tenure after less than two years (notification of non-renewal by March 15th of year 2), even before a new teacher completes the two year induction program. Most states provide for a longer review period before tenure is granted. The Court gave significant weight to the detrimental effect a grossly ineffective teacher can have on a student's income potential and educational growth - loss of lifetime earnings of \$1.4 million and loss of 9 months of educational development in one school year.

The Court ruled the tenure statute unconstitutional because it provided insufficient time to evaluate a teacher's performance, and invalidated the dismissal statute because it set out a "tortuous process" (costing \$50,000 to \$450,000 during a 2-10 year process) to dismiss a tenured grossly ineffective teacher. The Court also threw out the layoff statute which provided for the last hired teacher to be the first fired when layoffs occur irrespective of qualifications. The Court stayed its decision pending appeal, which means the statutes challenged shall remain in effect for now.

This California decision has no direct impact upon Massachusetts statutes. However, the case may encourage similar challenges to the constitutionality of teacher tenure and dismissal statutes outside of California. Of course Massachusetts laws lack many of the features found intolerable by the *Vergara* Court, but many school districts have complained about the difficulties encountered when attempting to part ways with low performing teachers.

### A Police Officer Not Entitled to Italy Assignment

**A** police officer serving as School Resource Officer sought paid leave to chaperone a 6th grade trip to Italy. When his request was denied, the Union took the grievance to arbitration. The Arbitrator denied the grievance for three reasons: (1) the "educational program" language of the contract referred to education of police officers, not 6th graders; (2) the past practice claim (one trip by one SRO 10 years earlier) was weak; and (3) the allegedly "retaliating" official was directed by his supervisor to deny the request. The arbitrator emphasized that the department's right to decide that this SRO should perform other duties that week weighed against his claim that he could "bond" with the students.

One way to avoid having to litigate such cases is to add language to the Management Rights provision that the matter of whether and how a management right is exercised is not subject to the grievance arbitration provision.

### Appeals Court Denies Unemployment Compensation to Unlicensed Teacher

**T**he Massachusetts Court of Appeals recently denied unemployment benefits to a teacher who failed to maintain her educator's license in *Borroni v. D.U.A.* (No 13-P-442) (Rule 1:28). On June 25, 2014, the Court affirmed the DUA decision that the Superintendent had no obligation to apply for a waiver or transfer the teacher to another position for which she was licensed. The Court held that in allowing her provisional certificate to lapse, the teacher brought unemployment upon herself. As a result her termination was deemed voluntary under the statute.

CL&P Attorneys Leo Peloquin and Joshua Coleman represented the School District.

## Welcome Tina!

Collins, Loughran & Peloquin is excited to welcome Tina McCormick as the newest member of our team. Tina, who started at CL&P in the beginning of June, will be providing legal assistance to Attorneys Leo Peloquin and Josh Coleman. Tina has a lot of experience and will be a great asset to our firm. Tina can be reached via email at :

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