



**SPEAKING  
ENGAGEMENT**

The 36th MMA Annual Meeting and Trade Show will be held on January 23 and 24, 2015 at the Hynes Convention Center and Sheraton Boston Hotel.

**Phil Collins** will give his annual Labor Law Update on Friday, January 23rd at 2:00 p.m. on the second floor of the Convention Center.

This workshop will update local officials about developments in labor and employment law over the past year. Significant court cases, legislative changes, and administrative decisions that affect municipal rights and obligations will be discussed.

If you are unable to make Phil's workshop and would like a copy of his materials, contact the office after the Annual Meeting.

**NLRB Grants Employees Right To Use Employer Email**

**F**or the last seven years, employers have had the right to control the use of their email system by banning employee communication regarding union-related activities, so long as the ban applied to all non-work-related communications and did not discriminate against union activity.

In a recent decision, *Purple Communications, Inc. v. Communications Workers of America*, 361 NLRB 126 (2014), the NLRB reversed course and concluded that if employers grant employees access to their email system for work purposes, "employee use of email for statutorily protected communications on non-working time must presumptively be permitted."

The *Purple Communications* decision expressly overrules *Register Guard*, 351 NLRB 1110 (2007), in which the Board ruled that employees have no statutory right to use work email for communicating with other employees regarding union-related activities. The NLRB explained that *Register Guard* was "clearly incorrect" because it struck the wrong balance between the rights of employees and employers and focused "too much on employers' property rights and too little on the importance of email as a means of workplace communication." Also, by likening email to company-related equipment such as bulletin boards and copy machines, *Register Guard* "inexplicably failed to perceive the importance of email as a means by which employees engage in protected communications."

While the *Purple Communications* decision still permits employers to ban all non-work-related use of email, including union activity on non-working time, if the ban is necessary to maintain "production or discipline," the employer must demonstrate that special circumstances make the ban necessary, and only "rare" circumstances would justify a ban.

While the Massachusetts Department of Labor Relations (DLR) has not yet expressly followed *Register Guard* or the recent *Purple Communications*, the DLR generally looks to NLRB case law when deciding issues of first impression. Where a strict ban on non-work-related email use may now be considered an unfair labor practice, employers should review their email policies. For more information, contact us.

**Court Upholds Firing of Police Officer Who Obstructed Justice**

**T**he Appeals Court in *Town of Swansea v. Swansea Coalition of Police Local 220, MCOP*, affirmed a Superior Court decision vacating an arbitrator's award which had reduced a police officer's dismissal to a 90-day suspension. Arbitrator Arnold Marrow's award violated public policy because the officer's conduct as found by the arbitrator constituted a felony.

The Town of Swansea discharged the officer, Marc Soares for his involvement in two hit and run accidents which he subsequently tried to conceal. When Soares was stopped by Rhode Island Police who observed him weaving side to side on the highway, they determined that he was "unfit to operate a motor vehicle." The police also found drugs in Soares's vehicle. Although Soares denied taking any drugs, after being arrested, he later admitted to lying about using drugs.

The arbitrator determined that Soares' conduct that

night violated the law. Yet, he reduced the penalty and ordered the officer reinstated.

The Appeals Court determined the officer committed a felony, by obstructing justice, when he lied to the police regarding his use of drugs and concealed a motor vehicle accident. See M.G.L. c.268 §13B. While the officer's conduct constituted a felony, the court noted that the public policy exception is broader and does not "hinge exclusively on the commission of a felony." The court held that "felonious misconduct" satisfies the standard.

Finally, the Appeals Court noted the public policy underlying the dismissal is to "safeguard the performance of law enforcement" and "preserve public confidence in the integrity of the police department." The holding of this case provides some hope to employers seeking to challenge bad arbitration awards after a series of appellate cases siding with arbitrators.

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