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Client Advisor, Volume 3, Issue 5 **May, 2015**

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Appeals Court: PD Can Reassign Officer from Dispatch to Street

A recent Massachusetts Appeals Court decision overturned a Department of Labor Relations ruling in a case where the Police Department replaced a sworn officer with a civilian dispatcher on the desk. The court specifically rejected the argument that a position was eliminated in dispatch for a police officer, observing that "the assignment to dispatch/ desk duties is just that - an assignment - and not a position." Significantly, the number of police officers on the shift was not reduced as the officer freed from the desk was used to respond to police calls. According to the court, the "decision to reassign a patrol officer from dispatch to street duty is a core managerial decision implicating public safety that does not require bargaining." The case was also bolstered by the fact that contract language and bargaining history made dispatching shared work and explicitly supported the use of civilian dispatchers.

The court relied on a previous SJC case, Worcester v. Labor Relations Commission, 438 Mass. 177 (2002), in which the city assigned police officers responsibilities as "supervisors of attendance" resulting in a challenge from the union over the increase in the workload this might entail for police officers. In the Worcester case, the SJC rejected the union's claims, ruling instead that the setting of law enforcement priorities is purely a matter of policy, and not delegable to the collective bargaining process. However, the SJC did uphold a duty to bargain over the impacts of the decision – a concern that was not addressed in the dispatching case reported above.

The courts have shown a willingness to overturn the Department of Labor Relations when it usurps the town's authority to make core managerial and policy decisions, like assigning law enforcement priorities. Officials should exercise caution, however, since even when the decision is not a proper subject of bargaining the impacts of the decision may require bargaining. A well-constructed strategy with the advice of labor counsel can help these types of decisions withstand challenge.

SJC Rules All Retirees Entitled To The Same Retiree Health Benefits

The Supreme Judicial Court has ruled that a municipality cannot require an employee to work for it a minimum number of years prior to retirement as a condition of that municipality contributing toward the cost of the employee's retiree health insurance. As long as the employee is eligible for retirement benefits under c. 32, the employer must pay the same percentage of the premium cost that it pays for any other retiree. In Galenski v. Town of Erving, 471 Mass. 305 (2015), decided April 17, the Plaintiff was employed by the Town as a school principal for just the last six years of her 30-year career. She challenged a policy under which the Town only contributed toward the health insurance of those employees who worked the 10 prior years for the Town. She was allowed to participate in the retiree health insurance as long as she paid the entire premium.

The Galenski Court rejected the Town's argument that the SJC's 2007 decision in Cioch v. Town of Ludlow, 449 Mass. 690 (2007), allowed the eligibility limitation, noting that that the Ludlow regulation conditioned eligibility on the employee being enrolled in the Town health insurance program while an active employee and that was not prohibited by the plain language of sections 9 and 16 of c. 32B. The Court found the Erving policy was inconsistent with c. 32B in two significant ways. It established different premium contributions for different retirees in direct conflict with language under section 9E of c. 32B that mandates, "[n]o governmental unit…shall provide different subsidiary or additional rates to any group or class within that unit." And, the policy exempted the Town from contributing to any portion of the insurance premiums for one group of retirees even though the Town had adopted section 9E which obligated the Town to contribute more than 50 percent of the premium cost. The Town also argued that the policy was akin to calculating pension benefits based on years of service and was a reasonable cost containment effort because it should not be held responsible for paying a significant portion of an employee's retiree health insurance when the employee had worked for other municipalities. The Court responded that the Legislature had addressed that potential inequity by enacting section 9A ½ , which sets forth a reimbursement process between multiple employing municipalities under which the last employer can recover its proportional share of contributions from the prior employers. The Court wrote that, if that cost containment provision is inadequate, that issue should be addressed to the Legislature.