COLLINS, LOUGHRAN & PELOQUIN, P.C.
Legal Counsel to Employers and Schools

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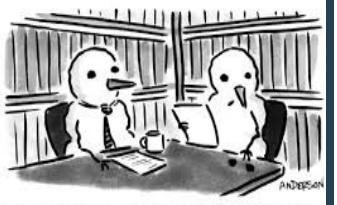
CLP News

Did you miss the presentations made by **Phil Collins** and **Leo Peloquin** last month at the Massachusetts Municipal Association's (MMA) Annual Meeting and Trade Show? If you did, you can still review the materials.

Email Stephanie Smith at ssmith@collinslabor.com to obtain a copy. Indicate whether you are interested in receiving a copy of Phil's "Labor Law Update," Leo's "Employer Rights In A New Era Of Workplace Monitoring," or both.



"There's a lot of fine print; let me get my reading coals."

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Strong Management Rights Language Carries the Day at DLR

Union Waived Right to Bargain Over Changes To Position Hours

When the defense is that the Union waived the right to bargain over a matter, it almost always proves futile because an Employer carries the difficult burden of proving that the Collective Bargaining Agreement (CBA) "clearly, unequivocally and specifically authorizes its actions." *City of Springfield*, 41 MLC 342. It doesn't happen often, but an Employer can win a failure to bargain case with a contract waiver defense. It happened in *City of Springfield*, a case involving the reduction of work hours and benefits where the Commonwealth Employee Relations Board ("CERB") reversed a contrary decision by the DLR Hearing Officer.

CERB's decision provides a lesson in the type of language that has to be negotiated into a CBA to claim contract waiver. CERB ruled that the City had negotiated the right under the parties' CBA to convert a fully benefitted position into a position without health or retirement benefits by reducing the hours of work below the minimum necessary to qualify for benefits and therefore, was not obligated to bargain further, either about the decision to do so, or the impact of that decision. The case involved vacant 20-hour benefitted Senior Clerk positions that the City decided to fill at 18.5-hours. The contract stated that the City could hire employees in part-time positions of less than 20-hours a week and not provide those employees with health and retirement benefits. The Management Rights clause provided that the City "…had the right to determine, control and change…hours of work…the work-week and the work day, the size and organization of the staff; …to upgrade, downgrade, change, transfer, leave unfilled or abolish particular job positions or classifications…." In addition, there was a separate article that expressly authorized the City to hire part-time employees and deny health insurance or group insurance benefits to employees who worked less than 20-hours a week and provide other benefits on a pro-rata basis. CERB noted, "the CBA now before us shows that the parties fully negotiated for: 1) the City's right to upgrade, downgrade, change, transfer, leave unfilled or abolish particular positions or classifications; 2) the hiring of part-time employees; 3) the benefits available to part-time employees; 4) the hiring of part-time employees for fewer than 20-hours per week; and 5) reduced benefits for part-time employees working fewer than 20-hours per week. In other words, these provisions not only establish that the [parties] did bargain over the City's right not to fill the 20-hour Senior Clerk positions and to create the 18.5-hour positions, they bargained over the impact of the creation of these positions, i.e., the compensation and benefits the 18.5 hour Senior Clerks should receive."

Experienced labor counsel at the bargaining table helping to fashion proposals can increase management's flexibility to make changes when changes are needed.

U.S. Supreme Court Considers Abolishing Agency Fee

The U.S. Supreme Court recently heard arguments in a California case that could have implications for all public sector unions. The case, *Friedrichs v. California Teachers Association* (Case No. 14-915), is a challenge to a California law permitting public sector unions to collect a portion of union dues (the agency fee) to cover the cost of contract administration and collective bargaining. The opponents of the agency fee law claim that the First Amendment rights of employees forced to pay the fee are infringed by the fact that the governmental employer is requiring them to support the union financially. They argue that even though the fee relates only to collective bargaining, all matters including those that are bargained are within the public sphere with a public employer. They seek to overturn a 40-year old precedent. Other states including Massachusetts have similar laws permitting an agency fee.