



**SAVE
THE DATE**

**The 38th Annual
Massachusetts Municipal
Association Annual
Meeting and Trade Show**
January 20 & 21, 2017
Hynes Convention Center

Phil Collins
will present the annual
“Labor Law Update” on
January 20, 2017.



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Failing A Drug Test May Not Be Enough To Discharge A Police Officer

Employers with random drug testing policies, that rely on a positive hair test result alone to meet the Civil Service “just cause” standard for disciplining an employee, need to take particular note of a recent Appeals Court decision upholding the Civil Service Commission’s decision to overturn the dismissal of six Boston police officers, and sustain the dismissal of four others. Thompson et als v. Civil Service Commission and Boston Police Department, 90 Mass. App. Ct. 462 (2016). The Supreme Judicial Court declined the City’s request for further review.

All of the plaintiffs failed random drug tests (for cocaine) required in the City’s Union contract with the Boston Police Patrolmen’s Association (B.P.P.A.). But the Commission found, and the Court agreed, that there was not just cause to dismiss the officers on the basis of failing the drug test alone, because the hair testing was not proved to be conclusive on the issue of voluntary ingestion and could have reflected “sample contamination by environmental exposure.”

The six officers who prevailed had initial cocaine levels barely above the cutoff limit, offered evidence of negative independent tests, and provided a “credible denial of drug use,” including their testimony and additional supporting evidence. The successful plaintiffs will get 10-15 years’ worth of back pay and benefits. In contrast, the officers who did not prevail had higher levels in the initial and confirmatory test, two did not do an independent test, and their testimony denying usage was not deemed credible.

The Court’s rationale -- that the Union contract could not dictate dismissal because it cannot supersede the Civil Service “just cause” requirement -- is troubling: It limits employers’ ability to negotiate and enforce policies with specific disciplinary consequences agreed to by our unions.

Photo of Police Applicant Provides Smoking Gun for Decision Not To Hire

In Starr v. Town of Medfield (December 22, 2016), the Civil Service Commission upheld the bypass of a police officer based on evidence that he smoked tobacco products during the application process. The decision rejected the appellant's reliance on HRD's Personnel Administration Rule (PAR) that no one be denied appointment for smoking tobacco products "prior to appointment". Essentially, the Commission’s decision is that "Smokers need not apply" and that claims of "I just quit smoking" will be scrutinized closely.

This case also affirms the discretion of the appointing authority--when appointing a candidate with a spotty employment record and/or 'youthful indiscretions'--to credit a candidate for truthfully admitting those mistakes and for demonstrating that he or she has learned from them. Exercising such discretion is not required.

Happy Holidays From Your Friends At CLP!