

NORRIS, MURRAY & PELOQUIN, LLC

Legal Counsel to Employers and Schools

Volume 7, Issue 10

Client Advisor

November, 2019

SPEAKING ENGAGEMENTS

Tim Norris will present at the Massachusetts Association of School Personnel Administrators' December 6, 2019 meeting in Shrewsbury. The topic is implementation of the Collective Bargaining Dues Act (St.2019, c.73) passed by the Legislature in September, 2019 and effective December, 2019.



CONTACT US

Leo Peloquin

lpeloquin@nmplabor.com

Tim Norris

tnorris@nmplabor.com

Melissa Murray

mmurray@nmplabor.com

Philip Collins

pcollins@nmplabor.com

Antoine Fares

afares@nmplabor.com



nmplabor.com

CERB Rules Dedham Teacher Strike Illegal

On October 25, 2019, Dedham teachers went on a one-day strike—the first strike in Massachusetts in over a decade—in violation of state law which prohibits public employees from striking. M.G.L. c. 150E § 9(a). The unlawful strike, which forced Dedham public schools to cancel classes, was a tactic by the union to pressure the Dedham School Committee to agree on a successor contract after two years of negotiations. The DLR had already instituted fact-finding and the parties had selected a fact-finder and picked hearing dates (October 3 and November 19, 2019), but the union cancelled the first fact-finding hearing.

On October 23, 2019, the Dedham School Committee filed a Petition for Strike Investigation with the Commonwealth Employment Relations Board (CERB) claiming that an illegal strike was about to occur. On October 24, 2019, the CERB found ample evidence that the union violated the law by encouraging a strike and issued an order directing it to cease and desist from engaging or threatening to engage in a strike. Nonetheless, the teachers went on strike the next day. The DLR filed a civil complaint asking a judge to enforce its order, and on Friday a Norfolk Superior Court judge ordered the union to “cease and desist any and all unlawful striking activity.” The parties reached a tentative new contract that weekend. A copy of the CERB’s Decision is available on our website.

SJC Affirms CSC Holding Regarding An Unreliable Hair Drug Test

In Boston Police Department v. Civil Service Commission, 483 Mass. 461 (2019), the Boston Police Department (BPD) bypassed Michael Gannon for the position of police officer based on a positive drug test associated with his 2010 application. The BPD requires applicants to be screened for drug use via a hair sample test. In 2010, Gannon’s hair sample detected 12.2 ng of cocaine which is more than double the amount required for a positive result and indicates a presumption of ingestion. Gannon did not appeal his 2010 bypass. He reapplied for the position in 2013 and was bypassed for his 2010 positive result. He appealed.

Following a battle of the experts, the Commission sided with Gannon’s expert and scientific studies questioning the reliability of the testing and also credited Gannon’s testimony that he did not use drugs. The BPD appealed to the Superior Court and managed to overturn the decision. However, the Supreme Judicial Court (SJC), in transferring the case on its own motion, found there was substantial evidence in the record documenting the concerns raised in the scientific community regarding the reliability of the test. Accordingly, it remanded the matter to Superior Court for entry of an order affirming the Commission’s decision.