

CLIENT ALERT: Massachusetts State Labor Board Finds Duty To Bargain Over Installation of GPS Devices in City Vehicles

Does a Massachusetts public employer have a duty to bargain with a union prior to installing Global Positioning System (GPS) tracking devices on its vehicles? The answer is yes, according to the Commonwealth Employment Relations Board (CERB) in *City of Springfield and AFSCME, Council 93, MUP-12-2466* (June 30, 2015).

In 2012, the City of Springfield installed GPS tracking devices in the City's Department of Public Works (DPW) trucks driven by bargaining unit members represented by AFSCME. Shortly after the installation of the GPS devices, the City notified a DPW foreman, who was also the union president, that he had made two unauthorized trips in his truck to conduct union business during work hours. Although the DPW foreman/union president was not disciplined for this conduct, the union filed a prohibited practice charge at the Massachusetts Department of Labor Relations (DLR) claiming that the installation of GPS devices was an unlawful unilateral change in working conditions.

The City maintained there was no unilateral change in working conditions because the GPS devices were only a more efficient and accurate way for the employer to enforce existing work rules and therefore did not alter the terms and conditions of employment of bargaining unit members. In support of its position, the City cited to an unpublished CERB decision, *City of Worcester, MUP-05-4409* (2007), in which CERB dismissed a charge challenging a requirement that bargaining unit employees carry GPS-equipped cellular telephones while they were on duty. The City also cited *Duxbury School Committee, 25 MLC 22* (1998), which found it lawful for an employer to install a surveillance camera to monitor the arrival and departure times of employees.

However, the DLR held that the installation of the GPS devices in the City's DPW vehicles constituted an unlawful unilateral change in the terms and conditions of employment. The DLR found that the City had not previously required employees to electronically report their whereabouts while traveling in DPW vehicles. Such reporting had only occurred upon request by radio communications or an in-person observation. The DLR also found significant that the City had surreptitiously installed the GPS devices, and contrasted that with the installation of a camera in *Duxbury School Committee*, which was in a fixed, visible location. The GPS devices allowed the City to monitor real-time data of idle time, speed, distance, and number of stops, which impacted standards of performance and productivity, a mandatory subject of bargaining. The DLR held that the City had an obligation to first provide notice and an opportunity to bargain with the union to resolution or impasse before installing the GPS devices.

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The City appealed to CERB, which by statute has authority to review decisions of the DLR. CERB affirmed the DLR's decision in its entirety. CERB noted that even if no new work rules or standards had been formally implemented, "the installation of the devices vastly increased the amount of data the employer had to evaluate performance and productivity." According to CERB, the GPS devices

constituted a significant change in the employer's monitoring practices, which resulted in a greater potential for employee discipline.

As this case reflects, a bargaining obligation may attach to technological upgrades and other modernization of work practices that impact terms and conditions of employment in a unionized setting.

James M. Pender is an attorney with Morgan, Brown & Joy, LLP, and may be reached at (617)-523-6666 or at jpender@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have. Does a Massachusetts public employer have a duty to bargain with a union prior to installing Global Positioning System (GPS) tracking devices on its vehicles? The answer is yes, according to the Commonwealth Employment Relations Board (CERB) in *City of Springfield and AFSCME, Council 93, MUP-12-2466* (June 30, 2015).

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