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Police Legal News

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Commonwealth Police Service, Inc.

[Attorney Patrick M. Rogers](#)

Post Office Box 58

Assonet, MA 02702

Phone: 508-644-2116

Fax: 508-644-2670

www.commonwealthpolice.net

[Attorney Brian E. Simoneau](#)

161 Worcester Road, Suite 200

Framingham, MA 01701

Phone: 508-881-1119

Fax: 508-302-0212

www.policelaborlaw.com

Police Legal News is a free monthly newsletter designed to provide police officials with the latest news and information regarding court and administrative agency decisions affecting the Massachusetts law enforcement community.

Topic areas will include: summaries of SJC & Appeals Court decisions, search & seizure, motor vehicle, and criminal law, labor relations law & highlights of recent decisions of the Mass. Labor Relations Commission, Civil Service Commission cases, police civil liability, etc...

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- Lawman Pocket Reference
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- 2007 Internal Affairs
- Juvenile Issues & Procedure Textbook
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- Criminal Law
- Criminal Procedure

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Eramo v. City of Haverhill – Civil Service Commission Upholds Bypass for Permanent Reserve Officer Position Upheld

The Civil Service Commission agreed with the City of Haverhill's determination that the candidate Steven Aramo, "had several disciplinary issues which rendered him unsuitable for hiring as a Permanent Reserve Police Officer." "Specifically, while employed at UML, Appellant had recently been disciplined for disobeying a lawful order in April 2003 and suspended for insubordination in September 2003."

In the context of reviewing a bypass decision by an Appointing Authority, the role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria, 16 Mass. App. Ct. 331

(1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). The Police Chief testified that the Appellant was bypassed because of his "poor performance evaluation, his disciplinary record and his tardiness in submitting reports."

[Click Here](#) to download the full text of the case.



From the Courts...

Decisions of Interest to Massachusetts Police Officers

In [Commonwealth v. Congdon](#), 68 Mass. App. Ct. 782 (2007), the Appeals Court held that there was sufficient evidence to convict the defendant of OUI 2nd offense.

Police officers were called to a stretch of road on Route 27 in Medfield where the first responding officer found at the roadside an automobile still running but disabled by two flat tires on the passenger side. No one was in the car, but, as the officer investigated, the defendant, well dressed but very disheveled, emerged unsteadily from the woods walking toward the car. Two other responding officers then arrived at the scene. One of the other officers asked the defendant if everything was all right, whether there had been an accident, and where she was coming from. The defendant responded only that she was coming from a friend's house in Sherborn and was going to her home in Canton or Milton -- the officer couldn't remember which. The officer noticed a strong odor of alcohol. The defendant had to grab the car for support when she walked and was then escorted by the police so she would not fall. She acknowledged having one glass of wine at her friend's house. She was glassy eyed and slurred her speech. The officers concluded that she was

very intoxicated and took her into custody. They were at the scene for one-half hour in all; there was some wait for a tow truck to remove the disabled car. No other person was in the vicinity or emerged from the woods. On her way to the station house, the defendant asked if there were "something I could [do] to make this all go away."

The Appeals Court held that there was sufficient evidence to permit an inference that Congdon was the operator.

"The ignition was on. There was no other person in the vicinity. She was headed to the car when she came out of the woods -- a distance of less than ten feet. One could fairly infer that the car was brought to a halt by running off the road and going over some obstacle that punctured the two right tires. The defendant was, manifestly, not in any condition to drive safely or competently. Her behavior was entirely consistent with her having been the operator, and, again, there was no evidence that anyone but her was in the vicinity"

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"The ignition was on. There was no other person in the vicinity. She was headed to the car when she came out of the woods -- a distance of less than ten feet. One could fairly infer that the car was brought to a halt by running off the road and going over some obstacle that punctured the two right tires."

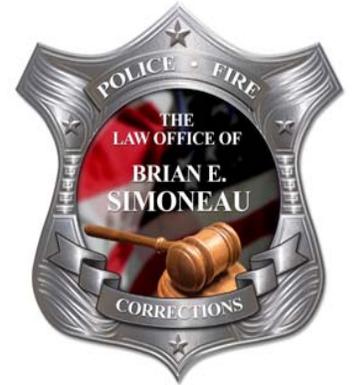
THE LRC HAS RELOCATED.

Effective **June 19, 2007**, the Labor Relations Commission will be relocating its office and changing its telephone numbers. The new address and telephone numbers are listed below:

Labor Relations Comm.
Charles F. Hurley Building
19 Staniford Street, 1st Flr.
Boston, MA 02114

(617) 626-7132

Fax: (617) 626-7157



UPCOMING CPS SEMINARS

- [5 Day Summer Jam 2007](#)
- [6 Day Criminal Procedure 2007](#)
- [3 Day Crim. Law '07](#)
- [6 Day Promotional Seminar 2007](#)

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RECENT CASES & CIVIL SERVICE COMMISSION DECISIONS

Middlesex Sheriff's Office & International Brotherhood of Corrections Officers. Case No. MUP-05-4504

The IBCO filed prohibited practice complaint with the Labor Relations Commission, alleging that the Middlesex Sheriff's Office violated [G.L. c. 10\(a\)\(5\)](#) and [10\(a\)\(1\)](#) when it unilaterally assigned captains to perform work traditionally performed by sergeants.

A public employer must give the union prior notice and an opportunity to bargain before transferring bargaining unit work to non-bargaining unit personnel. **To establish a unilateral transfer occurred, a union must demonstrate that: 1) the employer transferred bargaining unit work to non-unit personnel; 2) the transfer of work had an adverse impact on either individual employees or on the bargaining unit itself; and 3) the employer did not provide the exclusive bargaining representative with prior notice or an opportunity to bargain over the decision to transfer the work.** [Town of Marion](#), 30 MLC 11 (2003); [Town of Bridgewater](#), 25 MLC 103 (1998).

In the instant case, the Commission determined that the Union failed to prove that the alleged transfer occurred. Also, the Commission determined that no unilateral change in working conditions occurred because the Union failed to rebut the employer's assertion that it had previously assigned captains to perform supervisory functions in the areas of the Middlesex House of Correction which were the subject of the union's complaint.

Police Polygraph Examinations: [Kevin J. Furtado v. the Town of Plymouth](#)



Plymouth Police Officer Kevin J. Furtado, alleged that the Police Department violated his rights under [G. L. c. 149, § 19B](#), the so-called Massachusetts Polygraph Statute, when the Chief ordered him to submit to a lie detector test in the course of an investigation to determine if he should be disciplined or terminated.

Polygraphs are generally prohibited in Massachusetts in connection with employment decisions. See [G. L. c. 149, § 19B](#). However, this general prohibition does not apply to polygraph (lie detector) exams administered by law enforcement agencies in criminal investigations.

Note: Before a police officer "may be compelled to make any statement he must be granted State transactional immunity as to any such statements." *Baglioni v. Chief of Police of Salem*, 421

Mass. 229, 230 (1995).

Furtado complained that criminal prosecution was not possible for the crime alleged because he had been given an effective grant of transactional immunity. Consequently, since there was no viable criminal prosecution, Furtado claimed that he could not lawfully have been ordered to submit to a polygraph examination.

The Appeals Court rejected Furtado's theory and held that even when transactional immunity is granted an officer can be ordered to submit to a polygraph examination so long as the investigation concerns "allegations of criminal conduct as distinguished from violations of terms of employment or rules associated therewith."

Attorney Patrick M. Rogers of Commonwealth Police Service, Inc. periodically offers a seminar on the legal aspects of Police Polygraph Examinations. Visit the [CPS Website](#) for more information.

[Mia Facella v. City of Newton](#)

"The specific question raised in this appeal is whether a civil service disability retiree, separated from her position for more than five years, may be reinstated to her previous position after resuming some of her former duties, but prior to completing a statutorily required retraining program pursuant to [G. L. c. 31, § 39](#). We hold that **such individuals may be temporarily conditionally reinstated, subject to the successful completion of a retraining program; if the program is not successfully completed, however, termination of employment is not improper and the municipality is not required to navigate the civil service laws to dismiss [the employee].**" *Facella v. Newton*, quoting *Sullivan v. Brookline*, 435 Mass. 353, 362 (2001).

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**COMMONWEALTH
POLICE SERVICE, INC.**

Post Office Box 58
Assonet, MA 02702

PHONE:
(508) 644-2116

FAX:
(708) 555-0102

E-MAIL:
ROGERS.PATRICK@VERIZON.NET

WEBSITE:
COMMONWEALTHPOLICE.NET

**ATTORNEY
BRIAN E. SIMONEAU**

The Meadows
161 Worcester Road
Framingham, MA 01701

PHONE:
(508) 881-1119

FAX:
(508) 302-0212

E-MAIL:
BRIAN@POLICELABORLAW.COM

WEBSITE:
WWW.POLICELABORLAW.COM

[Attorney Patrick M. Rogers](#), has lectured to thousands of police officers on various legal topics. He has over twenty years of police law enforcement experience and has authored a number of textbooks that are used state-wide by thousands of police officers everyday.

[Attorney Brian E. Simoneau](#) is an experienced police labor law practitioner with particular expertise in Massachusetts Civil Service matters.

MASSACHUSETTS LABOR RELATIONS LAW: DIRECT DEALING

Along with an employer's duty to bargain in good faith with the employee's exclusive representative comes the duty to refrain from dealing directly with individual union members regarding terms and conditions of employment. *Town of Ludlow*, 28 MLC 365, 367 (2002), citing, [Service Employees International Union, AFL-CIO, Local 509 v. Labor Relations Commission, 431 Mass. 710 \(2000\)](#); *Trustees of the University of Massachusetts Medical Center*, 26 MLC 149, 160 (2000); *Millis School Committee*, 23 MLC 99, 100 (1996). G.L. c. 150E prohibits direct dealing because it violates the union's status as the exclusive voice for the employees who have elected it to serve as their sole representative. *Suffolk County Sheriff's Department*, 28 MLC 253 (2002), citing, [Service Employees International Union, AFL-CIO, Local 509 v. Labor Relations Commission, supra](#). Also, direct dealing undermines the employees' belief that the union actually possesses the power of exclusive representation to which the statute entitles it. Additionally, the LRC has determined that direct dealing compromises the overall effectiveness of the union and creates the possibility of conflict between individually negotiated benefits and those contained in the contract. See *Lawrence School Committee*, 3 MLC 1312 (1976). The following are examples of situations where Allegations of direct dealing have arisen:

- Employer discusses "light duty" assignments with injured employees. *Town of Harwich*, 32 MLC 27 (2005); *City of Lowell*, 38 MLC 157 (2001);
- Work Schedules & Hours; *City of Lowell*, 39 MLC 100 (2002); *City of Lowell*, 28 MLC 157 (2001);
- Involuntary Payroll Deductions; *Suffolk County Sheriff's Department*, 28 MLC 253;
- Paid Parking; *Commonwealth of Massachusetts*, 27 MLC 11 (2000);
- Implementing new assignments ("Post Orders"); *Comm. of Mass., Department of Correction*, 26 MLC 209 (2000);
- Resolution of Grievances; *CJAM*, 26 MLC 175 (2000);
- Surveying Union Members about Sick Leave Use, *Comm. of Mass.* 25 MLC 48 (1998).

Both Unions and Employers should be cognizant of the dangers of "direct dealing."

● **Upcoming CPS Promotional Seminars** ●

- **Roundtable for Sgt., Lt., Capt.** - (in Medford, MA) (seats still available)
(A comprehensive & intensive 20 week dedicated study group, started June 3rd & meeting until the October 20, 2007 Sgt., Lt., Capt. Exam.)
- **6 Day Criminal Procedure** (September 11, 12, 14, 18, 19, 21, 2007 in Medford)
- **3 Day Criminal Law** (September 25, 26, 28, 2007 in Medford)
- **5 Day Summer Jam 2007** (July 16,17,18, 19, & 20 – 2007) Natick PD Training Center
- **6 Day Criminal Procedure 2007** (Sept. 11,12,14,18,19 & 21 2007) Medford PD
- **3 Day Criminal Law for 2007** (Sept. 25, 26, & 28, 2007) Medford PD
- **6 Day Promotional Seminar 2007** (October, 1, 2, 8, 9, 10, & 11) Taunton Holiday Inn

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