



Labor & Employment Issues In Focus

Pitta LLP
For Clients and Friends
January 13, 2021 Edition



“All that serves labor serves the Nation. All that harms labor is treason to America. No line can be drawn between these two. If any man tells you he loves America, yet hates labor, he is a liar. If any man tells you he trusts America, yet fears labor, he is a fool. There is no America without labor, and to fleece the one is to rob the other.”

Abraham Lincoln

CHALLENGE TO NEW NASSAU COUNTY SUPERIOR OFFICERS’ LABOR CONTRACT DISMISSED

On December 28, 2020, Nassau County Supreme Court Justice James P. McCormack vacated a temporary restraining order issued December 17, 2020, and dismissed a lawsuit seeking to block an eight and a half year collective bargaining agreement (“CBA”) between Nassau County and the Nassau County Superior Officers Association (“NCSOA”) from taking effect. The NCSOA, representing over 350 Sergeants, Lieutenants, and Captains, had negotiated a contract providing 15% wage increases, and a \$3,000 stipend for wearing body cameras. The case is *Sharpe v. County of Nassau et al.*, 614567/2020 (Sup. Ct., Nassau Co. December 28, 2020).

Plaintiff claimed that the Nassau County legislature improperly approved the contract at a November 23, 2020 “emergency” meeting. The Court held that sufficient cause existed to find that an emergency existed. The Plaintiff claimed that the County was obstructing police reform by fast tracking the approval of the contract before a state appointed task force completed its review of the department’s practices by April 1, 2021. However, the concern that the findings of the task force could result in the contract being inadequate to address its report, were, according to the Court, purely speculative, as it was an exercise in predicting the future.

In addition, the Court held that the Plaintiff’s belief that the County gave improper notice, thus invalidating the entire process, was incorrect, as, in reality, proper notice existed, if only based on the large attendance at the legislature’s meeting. The Court also held that the Plaintiff was, in effect, making herself a party to the contract by seeking its annulment in order to create standing. As she was not a party, she had no standing. Finally, the Court did not believe it had the authority to annul the votes of the legislature.

The contract was agreed upon in principle in September, but County Executive Laura Curran waited until November to present it to the legislature. Moreover, Curran requested that the legislature ignore the debate and committee review process for the contract and move immediately to a vote. The legislature ultimately voted 16-to-3 in favor of the contract. Police reform advocates believe the County rushed the process to avoid scrutiny and is not taking police reform seriously. County officials, on the other hand, said that the perceived rush to approve the contract was due to health insurance rate increases set to take effect and a need to save money.

In contrast, the Nassau County Police Benevolent Association (“NCPBA”) rejected a new contract with similar terms in mid-December. On January 5, 2021, Executive Curran withdrew the contract proposal rejected by the NCPBA.

NEW YORK CITY ADDS JUST CAUSE PROTECTION FOR FAST FOOD WORKERS

At the end of December, the New York City Council passed legislation granting fast food workers union-like protections, doing away with traditional “at-will” employment rules. The law, signed by Mayor de Blasio in the first week of January and taking effect in July, 2021, mandates that all discharges must be for “just cause” or “*bona fide*” economic reasons. Moreover, the new law requires fast food employers to engage in progressive discipline, which will sunset from the employee’s record after a year. Finally, the new law allows discharged employees to take their case to arbitration through a City created panel, or permit the City to bring the claims to a trial at New York City’s Office of Administrative Trials (“OATH”). Employers with a minimum of thirty locations are covered by the law.

“Just cause” may include “egregious misconduct” or “egregious” performance issues. The law details several factors to consider when determining just cause: did the employee know the policy violated, was there adequate training, whether progressive discipline was used reasonably, was there a fair, objective investigation, and did the employee actually violate a policy.

In addition, the law limits when an employer may layoff or reduce hours to only when “*bona fide*” economic circumstances exist. “*Bona fide*” circumstances are defined as “the full or partial closing of operations” or other changes in response to a reduction in business. Layoffs must be done in reverse order of seniority. Moreover, recently laid off workers must be offered hours to work before currently working employees. The employer must also give any discharged employee within five days of discharge a written explanation with “precise reasons” for the discharge. A discharged employee who loses a shift because they were already scheduled to work is also entitled to a schedule change premium. All new employees are subject to a 30-day probationary period during which an employee may be discharged for any nondiscriminatory reason.

Employers must have written policies addressing the requirements of the law and distribute the policies. The new law was heavily supported by unions, including Local 32B-J of SEIU. The text of the new laws can be found here:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860317&GUID=F97F44AA-CCC8-470B-998E-C3C35A5C0717&Options=&Search=>

IN BIG WIN FOR BUILDING TRADES, BIDEN NOMINATES MARTY WALSH FOR LABOR SECRETARY

In a major victory for organized labor and particularly the building trades, on January 8, 2020, President-Elect Biden nominated Boston Mayor Marty Walsh as Labor Secretary to replace staunchly anti-labor Eugene Scalia. Walsh, Mayor of Boston since 2014, was seeking a third term in the November 2021 election.

Walsh joined Boston Laborers Local 223 as a 21 year old, eventually becoming President of the Local. In 2010, he was elected President of the Boston Metropolitan District Building Trades Council, and in 2011, Walsh became head of the Boston Building Trades. He resigned from the Building Trades post when he announced his run for mayor in 2013. In addition to his union roles, Walsh was a member of the Massachusetts state Assembly from 1997 through 2013. If confirmed, Walsh would be the first union member to serve as Labor secretary since the 1970s.

As mayor, Walsh has pushed proposals not only favoring union labor but all Boston residents, for example convincing the city council to approve his proposal requiring construction companies working on public projects or private projects exceeding 50,000 square feet to have 51 percent of their workers' hours go to city residents, 40 percent to minorities, and 12 percent to women. Walsh was also a strong supporter of Massachusetts' recent implementation of paid family and medical leave benefits and of its beginning a transition to a statewide \$15 per hour minimum wage.

As Secretary of Labor, Walsh will likely take a leading role in many proposed Biden administration policies including increasing the minimum wage, increased pay equity, expanded paid leave, empowering OSHA's enforcement capabilities for workplace safety, and supporting the response to the COVID-19 pandemic. Walsh is also the current Chair of Climate Mayors and has shown interest in developing good jobs through the clean energy sector.

Following President-Elect Biden's announcement, Walsh tweeted: "Working people, labor unions, and those fighting every day for their shot at the middle class are the backbone of our economy and of this country. As Secretary of Labor, I'll work just as hard for you as you do for your families and livelihoods."

Randi Weingarten, president of the American Federation of Teachers said, "workers need a champion in Washington—and Marty Walsh would be a crucial addition to an administration dedicated to fighting for the forgotten and rebuilding an enduring middle class."

Legal Advice Disclaimer: The materials in this **In Focus** report are provided for informational purposes only and are not intended to be a comprehensive review of legal developments, to create a client-attorney relationship, to provide legal advice, or to render a legal opinion. Readers are cautioned not to attempt to solve specific legal problems on the basis of information contained in this **In Focus**. If legal advice is required, please consult an attorney. The information contained herein, does not necessarily reflect the opinions of Pitta LLP, or any of its attorneys or clients. Neither Pitta LLP, nor its employees make any warranty, expressed or implied, and assume no legal liability with respect to the information in this report, and do not guarantee that the information is accurate, complete, useful or current. Accordingly, Pitta LLP is not responsible for any claimed damages resulting from any alleged error, inaccuracy, or omission. This communication may be considered an advertisement or solicitation.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

To Our Clients and Friends: To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Aseneth Wheeler-Russell at arussell@pittalaw.com or (212) 652-3797.