



Labor and Employment Law Update

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Non-Union Members of Bargaining Units Have Constitutional Right to Privacy in Personal Information Requests

In a number of central California school districts, unions have been seeking the personal contact information of non-members – in some cases on a yearly basis – demanding that districts unilaterally provide employee information upon request. However, in February 2011 the California Court of Appeal issued an opinion that dramatically changes a union’s right to access the personal contact information of non-union members. In *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2011) 192 Cal. App.4th 1409, the court held that non-union members of union-represented bargaining units are entitled to a right of privacy in their personal information under the California Constitution. The court held that non-member employees should receive notice that the union has made a request to their employer for disclosure of their personal contact information and the non-member should receive an opportunity to object to the disclosure.

The Public Employment Relations Board (“PERB”) has long held that public employers are required to provide certified labor representatives, upon demand, with the personal information of even non-union members of bargaining units represented by the union because the union has a duty of fair representation for these individuals, and the need to communicate with them about union fees they are paying and for solicitation purposes. However, the court in *County of Los Angeles* analyzed the disclosure issue in terms of the individuals’ rights and expectations of privacy in the personal information that employees have provided to their employer. Enforcing employees’ right of privacy under the explicit language of the California Constitution, the court held that a public employee who is not a union member has a reasonable expectation that their personal information will not be unilaterally disclosed by their employer. The court held that non-member employees should be provided procedural safeguards with respect to the disclosure of their information, including notice of a request made by the union for disclosure of their information and an opportunity to object before

the public employer makes any disclosure to the union. Public employers now face a potential claim for invasion of privacy from non-union members if their personal information is given to labor organizations without the individuals first having been afforded this procedural protection.

This case is significant for school districts because it prioritizes employees' constitutional rights of privacy over traditional standards of relevance in examining public sector union requests for information about employees. Therefore, districts should be cautious when responding to any such requests for information. Additionally, certain employees may fall into exempted categories.

UPDATE: The California Supreme Court has agreed to review the appellate court holding to determine whether under the California Constitution the interests of non-union employees privacy in their personal information outweighs the interests of the representative union in accessing that information in order to provide fair and equal representation of members and non-union members within the bargaining unit. *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2011) 122 Cal.Rptr.3d 464 (review granted, previously published at 192 Cal.App.4th 1409, petition for review granted (2011) ___P.3d ___ [2011 WL 2684899]).

We will provide you with more information from the California Supreme Court when it is received.

If you need further information on this topic, do not hesitate to contact our office.

– Tanielle E. Cooper

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