



## DEFIBRILLATOR LAW MAY JUMP-START UNIONS NEGOTIATIONS

### Schools must train some employees to perform life-saving procedure

By **JASON R. STANEVICH**

No reasonable person would dispute the good intentions behind the recent legislative mandate that requires school districts to purchase defibrillators. When seeking to comply with the new legislation, there are, however, important labor relations and collective bargaining issues that boards of education must consider to avoid prohibited practice complaints with the Connecticut State Board of Labor Relations.

Before addressing potential labor concerns, it is helpful to quickly review background information regarding defibrillators and recent legislative initiatives. Each year more than 250,000 people die from sudden cardiac arrest. According to the American Heart Association, 20,000 lives could be saved annually through the use of a portable medical device known as an automatic external defibrillator, or AED. An AED is used to restore normal heart rhythm to people who are experiencing heart attacks. The device consists of a small computer, electrodes, and electrical circuitry. If a person's heart is in ventricular fibrillation, the microprocessor recommends a defibrillating shock to restore regular rhythm; the shock is delivered through adhesive electrode pads placed on a person's chest.

AEDs are designed for use by trained non-medical personnel. Notably, an AED requires no medical judgment; it simply guides the user through the process by audio or visual prompts without requiring any discretion on behalf of the user.

#### School Use

Over the past decade or so, all 50 states, have enacted some type of a public access AED program that requires municipalities, and even some private entities, to provide AED's in certain locations, such as public buildings, commercial offices, health clubs, beaches, swimming pools and transportation centers.

A dozen states mandate that some elementary and secondary schools purchase AEDs and provide defibrillator and cardiopulmonary resuscitation (CPR) training to school personnel. Connecticut, with the recent passage of Public Act 94 of 2009, became the 13th state to require defibrillator placement and trained personnel in schools. Effective July 1, 2010, the law requires that each local and regional board of education have at each school: 1) an automatic external defibrillator (provided that federal, state or private funds are available); and 2) school personnel trained in the operation of such automatic external defibrillator and in CPR.

The new Connecticut law requires that the AED and trained personnel be accessible during a school's normal operational hours, athletic practices, athletic events on school grounds, and during school-sponsored events that occur outside of normal school hours. In addition, effective July 1, 2010, each school must develop an emergency action plan that identifies the appropriate school personnel that will respond to incidents that involve sudden cardiac arrest or a similar life-threatening emergency.

Unfortunately, the new law does not address which school personnel should receive AED and CPR training; nor does the legislation exclude implementation of the mandate from collective bargaining. In



Jason R. Stanevich

Connecticut, the Teacher Negotiation Act and the Municipal Employees Relations Act forbid unilateral changes in terms and conditions of employment for employees represented by a labor organization. Terms and conditions of employment are considered mandatory subjects of bargaining, which means generally they cannot be changed except through collective bargaining regardless of the employer's need or intent. On the other hand, municipal employers may implement changes to non-mandatory subjects of bargaining without violating either act.

In determining whether a subject constitutes a mandatory subject of bargaining, the state labor board considers whether the subject necessarily and intimately concerns conditions of employment or whether it more deeply impinges upon managerial discretion in "areas of discretion and policy as the mission of the agency, its budget, its organization and the assignment of personnel, or the technology of performing its work." *West Hartford Education Association v. DeCourcy*, 162 Conn. 566, 582 (1972). In making this determination, the Labor Board balances "the directness and

---

*Jason R. Stanevich is an associate at Berchem, Moses & Devlin, P.C., where his practice focuses on management-side labor and employment law. He primarily represents public sector employers, including boards of education, in traditional labor law matters.*

depth of the item's impingement on conditions of employment" with the "extent of the employer's need for unilateral action ... in order to serve or preserve an important policy decision." *Town of East Haven*, Labor Board Decision No. 1279 (1975).

When a unilateral change concerns a matter fundamental to the operation of a public agency, the state labor board relieves an employer from the duty to bargain over the decision to make the change. *Town of Guilford*, Labor Board Decision No. 1829 (1979). For example, in the school setting, the court in *DeCourcy* held that schools can determine education policy and unilaterally implement policy decisions.

However, even where a public employer has the prerogative to take unilateral action, it may be obligated to bargain the impact or secondary effects of any decision that affects mandatory subjects of bargaining.

The labor board will not assume impact; a union bears the burden of proving that the impact or secondary effects of a managerial decision are substantial enough to warrant bargaining. Schools can unilaterally determine educational policy and implement policy decisions, but where implementation impinges upon terms and conditions of employment, the matter becomes a mandatory subject of bargaining and requires impact bargaining.

Applying these principles, it is apparent that the new state defibrillator law creates a number of potential labor relations concerns. The placement of AEDs in schools does not require bargaining because that is a policy decision that rests with the board of education. Likewise, a school can select which personnel to train because an employer retains the managerial prerogative to decide the type and amount of employee training. However, whether a school district can assign defibrillator duties to a teacher or to another represented school employee without collectively bargaining with the employee's union is a thornier question.

The issue would likely turn on the employee's existing job responsibilities. As a

# Municipal & Educational Law



general rule, additional duties are mandatorily negotiable if the additional duty is not inherently part of the employee's job responsibility. Alternatively, state labor board precedent allows employers to assign additional duties to employees where the duties are included in the employee's job description, regardless of whether the employee has performed those duties in the past. In that situation, the public employer has no statutory obligation to negotiate the decision to assign additional responsibilities.

Thus, employees who are already required, as part of their regular duties, to provide first aid, CPR or other emergency care response can likely be assigned AED responsibilities without negotiation. School nurses, coaches and physical education teachers, therefore, could probably be assigned to AED duties without collective bargaining. However, if a board of education unilaterally assigns defibrillator duty to a teacher or another represented school employee whose responsibilities do not include first aid or emergency response, the board risks a charge that it violated collective bargaining laws by changing conditions of employment without bargaining.

In either situation, a board of education has a duty to bargain impact if a union demands impact bargaining. In fact, even if the school can unilaterally and lawfully assign school personnel to defibrillator responsibilities without bargaining, there are a number of matters that may be appropriate for impact bargaining. A union may seek payment for training time if outside of normal working hours. A union may seek contractual reinforcement of state statutes that provide immunity for

ordinary negligence in AED use.

In regard to compensation, a union may request to bargain over assignment differentials or stipends for employees who are identified in the school's response plan. A union could also seek to bargain over responsibility for AED maintenance and security. Importantly, a union could seek protection for those members who do not wish to be designated as trained personnel responsible for being present during school events that require the presence of personnel trained in AED use and in CPR.

Boards of education need to remain cognizant that a failure to bargain impact upon request will result in a prohibited practice finding against the employer. For example, in *Town of Somerset v. International Brotherhood of Police Officers, Local 518*, the Labor Relations Commission for the Commonwealth of Massachusetts determined that a police department violated state labor statutes when it failed to bargain on demand over the impacts of the use of defibrillators on the terms and conditions of employment of the police officer bargaining unit.

With implementation of Public Act 94 less than 10 months away, school districts would be well advised to begin identifying school personnel who will be trained in AED and CPR and who will be required to respond in emergency situations. Boards of education should expect to receive impact bargaining demands and should be ready to negotiate with their unions upon request. It may even be advisable for school districts to open a dialogue with bargaining representatives of employees affected by implementation of a school's emergency action response plan. ■