



New York State  
Public Employer Labor Relations Association Inc.

January 2019

**SAVE THE DATE**

The NYSPELRA 45<sup>th</sup> Annual Training Conference is set for July 17-19, 2019, in lovely Saratoga Springs, NY. The NYSPELRA Board is putting the finishing touches on what will prove to be, yet again, an enlightening, educational, and interactive experience. Please mark your calendars.

**AGE DISCRIMINATION IN EMPLOYMENT ACT**

On October 1, 2018, the U.S. Supreme Court heard arguments on a question concerning the application of the federal Age Discrimination in Employment Act (“ADEA”) to state and local governments. The case, *Mount Lemmon Fire District v. Guido, et al.*, No. 17-587, involved the Mount Lemmon Fire District in Arizona, a subdivision of the State of Arizona, in which two firefighters argued that the ADEA applied to the Fire District. In response, the Fire District stated it had too few employees to qualify as an “employer” under the parameters and definitions of the ADEA.

The ADEA defines a covered employer as a person or entity with “twenty (20) or more employees,” and further states that the term employer “also means” a “state or political subdivision of a state.” (Emphasis added)

This statutory language has resulted in conflicting rulings, with some U.S. Courts of Appeals holding that the 20-employee minimum applies to state and local governments, effectively exempting smaller municipal entities from coverage under the ADEA. The U.S. Court of Appeals for the Ninth Circuit, which issued the opinion on appeal before the Supreme Court, held that the ADEA applies to all municipal subdivisions of a state, regardless of size. *Mount Lemmon Fire District v. Guido, et al.*, No. 17-587

On November 6, 2018, the U.S. Supreme Court issued its first ruling of the new term, unanimously finding that the ADEA applies to all state and municipal employers. The Court found that the 20-employee threshold in the ADEA only applies to private employers, and that state governments and their subdivisions do not require a minimum number of employees to be subject to the ADEA.

Justice Ruth Bader Ginsburg, writing for the unanimous court, observed, “[f]irst and foremost, the ordinary meaning of ‘also means’ is additive rather than clarifying.” Given

this interpretation, the court affirmed the decision of the U.S. Court of Appeals for the Ninth Circuit and held that all political subdivisions of a state, no matter the number of employees, are subject to the ADEA.

As a result of this decision, local and other political subdivisions of a state will need to evaluate their employment practices and policies – including those involving compensation, discipline, layoff, and more – to ensure that those practices are compliant with the ADEA when effecting employment-related determinations.

[MATTHEW C. VAN VESSON, ESQ. – GOLDBERG SEGALLA]

### **MILITARY LEAVE AND USERRA**

When an employee is actively serving in the military and that service requires that he/she take a leave of absence from their employment, some questions may arise surrounding the federal Uniformed Services Employment and Reemployment Rights Act (“USERRA”) and the benefits to which the employee is entitled to while on leave. The following is an example of how one municipality was advised regarding a firefighter on leave of absence for military service.

#### **How long does the employer have to hold the employee’s position?**

An employee is considered to be on furlough or a leave of absence while actively serving in the military. Generally, the employee is entitled to be absent for military service for up to five (5) years while still reserving the right to return to their job. The employee is eligible to return as long as the following conditions are met:

1. Leave is for uniformed military service;
2. The employer receives advanced notice (when possible) of the service, either orally or in writing, including the specific period of service. This notice may come from the employee or a military officer;
3. The employee timely returns to employment after their military service is complete. For example, an employee who serves more than 181 days has 90 days after completion of the military service to apply for re-employment, either orally or in writing;
4. The employee is not dishonorably discharged from service; and
5. The cumulative length of the employee’s military service and leave of absence from employment does not exceed five (5) years. Note: there are some types of military service that may be exempt from this requirement. The 5-year period applies only to the actual time spent in active military service.

While the employer is not required to hold the employee’s specific position open until their return, the employer will need to ensure that it is able to re-hire the employee in the

same capacity. If the employee was employed as a firefighter then the employee is entitled to return as a firefighter with the same status and pay as when he/she went out on leave. [ELENA P. PABLO, ESQ., ROEMER WALLENS GOLD & MINEAUX LLP]

### **What happens to the employee's seniority?**

While an employer is not required to offer all rights and benefits to an employee while on military leave, USERRA provides that employees returning from active military service are reemployed in their job with the same seniority, as well as other rights and benefits determined by seniority.

For example, a collective bargaining agreement provides for vacation leave in accordance with the following schedule:

0-2 years of service = 2 tours of duty  
3-7 years of service = 3 tours of duty  
8 + years of service = 4 tours of duty

A 6-year employee takes a 3-year leave of absence for military service. Upon commencement of the leave the employee is entitled to 3 tours of duty. While on military leave the employee would not accrue time. However, when the employee returns to their position, they would be credited as a 9-year employee (adding in the three years they were on military leave), entitling them to 4 tours of duty. The same would be true for any other seniority-based benefit, such as longevity.

### **Does the firefighter and his/her children transfer to military health coverage?**

This occurs only if the employee asks for the transfer to military health coverage. Otherwise, the employee can remain on the municipality's health care insurance plan for up to 2 years, provided the employee makes the required premium payments. Employers are required to offer an employee the option to continue health insurance coverage when they take a leave of absence for military service. If the employee elects to continue coverage, it must continue for at least 24 months from the start of the leave, or until the period of time the employee has to come back to work after the leave has expired, whichever comes first.

For the first 30 days of military leave, the employee contributes the same amount they are required to pay while employed. After 30 days, the employee may be required to pay the full premium (actually 102% of the premium). If the employee becomes eligible for health insurance offered by the military (provided for in 10 USC 1074), the employee may choose military health insurance in place of coverage offered by the employer. The employee should be offered the option to continue coverage with the employer and

advised of the premium payment so that he/she can make an informed decision about which coverage to choose. If the employee chooses military health insurance coverage for the period of active duty, the employer cannot impose fees or waiting periods when the employee returns to employment with the municipality and seeks to re-enroll in the employer sponsored health insurance plan.

## **NEGOTIATION ROUNDUP**

### **ONEIDA COUNTY**

Oneida County recently completed negotiations with two of its UPSEU units: Blue Collar, comprised of approximately 150 employees of the County Department of Public Works, Water Treatment Plant and Airport, and the so-called White Collar Unit, consisting of 750 employees. Some of the highlights include:

#### **Blue Collar**

##### **Wages:**

(for “on-schedule” employees)

1.5% for each year of the Agreement (2018-2021)

(for “off-schedule” employees)

2.75% for each year of the Agreement (2018-2021)

##### **Retroactivity:**

Where applicable, an employee who is still on the active payroll as of the beginning of the payroll period immediately following ratification of this Agreement by both parties shall receive a retroactive payment based upon his/her 2018 base salary after ratification for those hours or periods actually compensated, including overtime where appropriate, between January 1, 2018 and said payroll period.

##### **Unscheduled Call-out Incentive:**

In recognition that certain employees of the Department of Public Works (including the Highways and Bridges Division, Building Maintenance Division, and the Oneida County Airport) and certain employees of the Wastewater Pollution Control Department and MVCC’s Maintenance Division are engaged in winter snow and ice removal activities and must be responsive to unscheduled call-outs, and to ensure an acceptable level of service by such employees, the following call-out incentive response plan will be in operation:

In the instances where an employee is called out ten (10) or more times during the season and:

<u>Responds To:</u>	<u>Receives:</u>	
75% calls	\$200	<i>\$300 Effective January 1, 2019</i>
85% calls	\$250	<i>\$350 effective January 1, 2019</i>
95% calls	\$300	<i>\$400 effective January 1, 2019</i>

One-Person Plow Bonus:

Any employee assigned to the one-person plow shall receive a bonus of \$4.00/hour for each hour actually engaged in such work.

Agency Fee Payers:

“If and only if permitted by law, the County shall deduct ... from the wages of all bargaining unit employees who are not members of UPSEU, the amount equivalent to the dues levied by UPSEU ... [emphasis added by Editor]

White Collar

Wages: (for “on-schedule” employees)  
1.5% for each year of the Agreement (2018-2021)

(for “off-schedule” employees)  
2.75% for each year of the Agreement (2018-2021)

Longevity: Increased by \$500 at each step (5, 10, 15, 20 & 25 years of service)

Retroactivity:

Where applicable, an employee who is still on the active payroll as of the beginning of the payroll period immediately following ratification of this Agreement by both parties shall receive a retroactive payment based upon his/her 2018 base salary after ratification for those hours or periods actually compensated, including overtime where appropriate, between January 1, 2018 and said payroll period.

Education Credits: (amounts added to base)

- \$400/year for achievement of 30 graduate credit hours

- \$500/year for achievement of 60 Master’s Degree credit hours

Agency Fee Payers:

“If and only if permitted by law, the County shall deduct ... from the wages of all bargaining unit employees who are not members of UPSEU, the amount equivalent to the dues levied by UPSEU ... [emphasis added by Editor]

CITY OF ALBANY

The **non-sworn** unit of the Albany Police Department, consisting of 38 employees, negotiated a Successor agreement for the term January 1, 2019 – December 31, 2019. The Albany Police Department has a newly appointed Police Chief and new command staff. Both the Union and City agreed that under these circumstances, a one-year Agreement was appropriate.

Wages: Effective January 1, 2019: 2.0%

Longevity: An additional \$200 at each of the current steps so that effective 1/1/19, as follows:

<u>Years of Service</u>	<u>Dollar Amount</u>
3-4	\$500
5-9	\$650
10-14	\$1100
15-19	\$1250
20 +	\$1450, plus \$150 for each year of service after 20

On-Call Pay: \$25 → \$35/day, paid one time per day only  
(Matrons, Animal Control, Software Tech)

TOWN OF CAIRO

After a bit of a hiatus in bargaining and after only two sessions, the Town and the **Police** Union (Council 82) successfully negotiated a Successor Agreement. Highlights included:

Term: January 1, 2017 – December 31, 2020

Wages: retroactive to 1/1/17: 3.0% [Note: the value of this wage adjustment will not be effective until October 1, 2018; that is, there is no retroactive impact until and after October 1, 2018.]

retroactive to 1/1/18: 3.0% [See above note.]

Effective 1/1/19: 2.0%

Effective 1/1/20: 2.0%

Lieutenant Differential:

Lieutenant pay will be ten percent (10%) above Sergeant base rate of pay.

Filling vacancies:

Any decision to fill a vacant position shall be made in the sole discretion of the Town Board.

Agency Fee:

All CBA language relating to “Agency Fee” shall be deleted.

Health Insurance:

A full-time police officer will receive health insurance benefits in accordance with the terms of the Town’s Employee Handbook.

**Contact NYSPELRA**

NYSPELRA

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Please let us know your thoughts and opinions of the NYSPELRA Newsletter.

In addition, you are encouraged to forward to Jack or to Elayne Gold [egold@rwgmlaw.com] any article, information from your municipality, agency, or school district relating to Arbitration Awards (grievance arbitration, discipline, etc.), Fact Findings, contract settlements, etc. for inclusion in future editions of our Newsletter.

**Check our website for the latest NYSPELRA information: [www.nyspelra.org](http://www.nyspelra.org)**