



New York State
Public Employer Labor Relations Association Inc.

FALL 2018

44TH ANNUAL CONFERENCE

NYSPELRA's 44th Annual Conference was, by all accounts, a rousing success. We had over 113 participant's including 27 first-time attendees. The speakers were knowledgeable, engaging, and really good! Thank you all for completing your course evaluations which assist the Board in our own evaluation of the Conference and help us plan for 2019. A special thank you to the National, especially Krista Lempe who, together with our own Jack Kalinkewicz, kept us all compliant with CLE and SHRM, and overall prepared.

We are pleased with how NYSPELRA's move to "going green" worked out. Thank you all for your patience and feedback.

NYSPELRA'S 2018-19 BOARD OF DIRECTORS

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HOLCOMB AWARD 2018

The Holcomb Award recognizes a Labor Relations and/or Human Resources professional whose principal or subordinate responsibility is to their jurisdiction's employee relations. The recipient of the Holcomb Award has demonstrated exceptional achievement and/or singular public service advocating on behalf of public employers in the field of labor relations.

The 2018 William J. Holcomb Award recipient is John Talerico. John started his career with Oneida County, which employs approximately 1500 employees, in 1988 as an Auditor. In 1998 he was appointed Director of Labor Relations and attended his first NYSPELRA Conference. In 2009 John became the Commissioner of Personnel, a position he currently holds. John has served under 5 county executives.

John was first elected to the NYSPELRA Board as Regional Vice President at the 2007 conference and was elected Board President in 2013.

Congratulations John on your well-deserved Award!

FOLLOW-UP ON PENDING LEGISLATION

On August 24, 2018, Governor Cuomo signed into law Chapter 207. This amendment to the Vehicle and Traffic Law (§§ 509-g and l), as well as to the Education Law (§ 3623-a), mandated that all school bus drivers be subject to random drug and alcohol testing. This is the case for both pre and post-employment.

School bus drivers must maintain a Commercial Driver's License ("CDL") in accordance with the Federal CDL Law (and likely your Civil Service job requirements); however, under the federal statute, only 10% of drivers need be subject, at any time, to testing. Further, if the driver transports less than sixteen (16) passengers, the federal law does not require testing at all. The State amendments require that

All motor carriers shall be required to conduct pre-employment and random drug and alcohol testing...on all drivers of a school bus...regardless of [CDL] endorsement. Every school bus driver shall be included in the random testing pool from which drivers are

randomly selected for testing, and every such driver shall submit to such testing when selected.

The testing procedure is to be that employed for CDL testing. For purposes of the law, “motor carrier” is defined to include “a school or municipality that transports children to and from school or any person, corporation or entity in contract with a municipality or school district for the purpose of transporting children to and from school.”

The current law prohibits consumption of alcohol for six (6) hours pre-work shift. The new law increases that to eight (8) hours.

Finally, the law, in its amendment to the Education Law, will, according to the Bill Memo, “ensure that the cost of random drug and alcohol tests are eligible for school transportation aide.” The law becomes effective December 24, 2018.

GRIEVANCE DENIED FOR UNTIMELINESS

Before addressing the merits of a matter, it is key to raise any procedural matters, for example, arbitrability or timeliness. If the union fails to establish either, the merits need not be addressed. In a decision rendered by Arbitrator Nancy Hoffman, the Arbitrator found that the record failed to support the [union's] claim that the parties had mutually agreed to hold the Step Three grievance processing in abeyance, or to otherwise deviate from the procedural time limit requirements, as contained in the Collective Bargaining Agreement. Accordingly, it was the opinion of the Arbitrator that the Step Three appeal was untimely:

...given this Arbitrator’s finding... the merits of the... grievance... cannot be reached and decided herein.

(NYS Law Enforcement Officers Union - (Marie Lucas) and Greene County and Greene County Sheriff, PERB Case No. A-2017-295. Matthew Ryan, Esq., Roemer Wallens Gold & Mineaux LLP, of Counsel, for Employer)

CAN A NEGOTIATION PROPOSAL BE AMENDED FOR INTEREST ARBITRATION?

In *Town of Cicero* (PERB U-35369) the full PERB Board held that:

We discern no reason why the town should be obligated to submit demands to interest arbitration after it agrees

with the PBA that such demands are new, regressive, and/or vague and therefore nonmandatory. Rather, we affirm the Board's longstanding holdings that 'a party may correct observed deficiencies in a demand and seek negotiations on the amended demand, including submission of the amended demand to an interest arbitration panel, during the period of time that the interest arbitration proceeding is pending.'

(Decision by two panel Board - April 25, 2018, John Corcoran, Esq. of Hancock Estabrook LLP for the Town of Cicero)

STAY OF ARBITRATION - STANDARD

In the Matter of County of Long Beach v. Long Beach Professional Firefighters Assn., Local 287, the NYS Appellate Division, Second Department, had the opportunity to revisit when a demand for arbitration should be permanently stayed.

The relevant fact in this matter is that the City decided to lay off several firefighters who were members of the Union and covered by the party's CBA. The CBA, however, did not address the matter of a layoff.

The Court maintained that as the New York State Civil Service Law § 80(1) gives an employer the "non-delegable discretion to determine... what its staffing and budgetary needs are," the matter is statutorily pre-empted and, thus, not arbitrable. In so ruling, the Court reminded the parties of the long-standing precedent as to arbitrability:

The threshold determination of whether a dispute is arbitrable is well settled. Proceeding with a two-part test, the court must first ask whether the parties may arbitrate the dispute by inquiring if there is any statutory, constitutional or public policy prohibition against arbitration of the grievance. (citation omitted)

In the instant case, as noted, there is statutory pre-emption of the issue. If there had been none, it is key to know that the Court would have continued its inquiry with the second part of the two-pronged test; that is, "whether the parties in fact agreed to arbitrate the particular dispute by examining their collective bargaining agreement." (citation omitted) In the instant case, the Union would have failed even under the second part of the test, as the CBA was silent as to layoffs.

(161A.D.3d 855 (2nd Dept. 2018), Terry O’Neil, Esq. of Bond Schoeneck & King, PLLC, for the City of Long Beach)

**“LABOR CLASS” EMPLOYEES TO RECEIVE CIVIL SERVICE
LAW DISCIPLINARY PROTECTIONS**

On September 7, 2018, an amendment to the NYS Civil Service Law, Section 75 (“CSL § 75”) was enacted and became effective immediately. (Chap. 271, L. 2018; S.08973) CSL § 75 provides public sector employees, in delineated classifications, with due process rights in a disciplinary setting. Prior to this amendment, the “labor class” employee had no such statutory protections. CSL § 75 now provides labor class employees, with five or more years of service, all disciplinary protections. It is important to note that many collective bargaining agreements already provide the “labor classified” employee the same disciplinary due process protections afforded to all other employees. Key here is that if your CBA does not provide such rights, those labor classified employees have no such protections until they have worked for you for 5 or more years.

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