New York State
Public Employer Labor Relations Association Inc.

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On January 24, 2011, this Association, along with many others around the State, and most especially NYCOM, lost one of its longtime leaders and visionaries. John H. Galligan passed away, leaving behind a legacy built on civil service and a passion for the issues affecting local government. There was no finer authority on municipal labor relations matters. Among his many dedicated interests, John was a devoted NYSPELRA and NPELRA member. John also served as the first and only "Editor-in-Chief" of our Newsletter. Thus, after a brief hiatus, we now resume this Newsletter with the hope of carrying on John's zeal for recognizing, debating and addressing the critical issues that affect all public employers across our State.

2011 ANNUAL CONFERENCE.

Our 2011 Annual Conference proved to be a great success. The topics and presenters received extremely positive reviews from those in attendance. The NYSPELRA Board is in the process of planning the 2012 Conference and welcomes your input. If you have any suggestions for topics or speakers, or would yourself like to be a presenter, please let us know. You can send an email to our President, Lou Giardina, at Louis_Giardina@nfta.com.

Each year at the Annual Conference the Association presents the **William L. Holcomb Award** for Public Service in Labor Relations, which recognizes a labor relations and/or human resources official responsible for his/her jurisdiction's labor relations/human resources function(s), and who has demonstrated exceptional achievement or singular public service in advocating on behalf of public employers and the citizens of New York. This year's recipient of NYSPELRA's annual William L. Holcomb Award for Public Service in Labor Relations was **Maureen Sullivan,** the now "retired" Personnel Director for Oswego County.

2011-2012 OFFICERS/BOARD OF DIRECTORS.

At our Annual Conference the following were elected:

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RECENT INTEREST ARBITRATION AWARDS.

- The **City of Oswego** and its Fire Fighters union went to Interest Arbitration for the 2010-2011 contract term. In PERB Case No. IA2010-019; M2010-021 Arbitration Panel Chair Ira Lobel, led a unanimous Panel to award a wage freeze for 2010. In the 2011 year, the Panel awarded a two (2%) percent wage adjustment; however, the Panel also awarded an increase in the health insurance contribution. The Panel made this contribution retroactive to January 1, 2011, and instructed the City to deduct from any retroactive pay, the value to the City of the increased insurance contribution. Other items awarded included, binding disciplinary arbitration and a cap on compensatory time usage and payments.

- **Greene County** and its Deputies went to Interest Arbitration in PERB Case No. IA2009-038; M2008-301. The Panel, led by Arbitrator Jay Siegel issued a 2-1 Award – that is, the County issued a Dissent. For the 2009 contract year the Panel awarded the Deputies a fully retroactive three (3%) percent wage adjustment; in the 2010 year the Award was a two and one-half (2.5%) percent wage adjustment effective July 1, 2010. It was the position of the Panel's majority that "if the County was in a stronger financial position [it] would award this unit higher wage adjustments – due to the unique work [the Deputies] perform and the hazards of the profession." The County member of the Panel issued a Dissent, finding the Award irresponsible in light of the fact that fifteen (15) people were laid off in 2010, thirty (30) other positions were vacated by attrition, three (3) other bargaining units received or accepted a wage freeze in 2010, the two (2%) percent State Legislature imposed property tax cap and the recent devastation the County suffered from Tropical Storms Irene and Lee.

RETROACTIVITY OF NEGOTIATION PROPOSALS.

In this economic climate where layoffs are being discussed and imposed, the issue of wage and benefit retroactivity is becoming a more regular item at the negotiation table.

"Retroactivity is an attribute of terms and conditions of employment and itself is a proper subject of negotiations." Merrick Union Free Sch. Dist. 16 PERB 4626 (1983) (citing City of Mount Vernon, 11 PERB 3095 (1978)); Hermon-De Calb

Cent. Sch. Dist., 12 PERB 4537 (1979) (holding that retroactivity is a mandatory subject of negotiation). The New York State Civil Service Law § 204(3), which relates to negotiations, obligates a "public employer and an employee organization to meet at reasonable times and confer in *good faith* with respect to wages, hours, and other terms and conditions of employment." However, the law "does not compel either party to agree to a proposal or require the making of a concession."

The duty to negotiate in good faith requires parties to "conduct negotiations with a sincere desire to reach agreement, which is exemplified by a willingness to listen, consider, explain, and justify positions taken in negotiations. It does not require that a party concedes to demands it opposes or yields on demands it proposes." Merrick Union Free Sch. Distr. *supra.*

In Hermon-De Calb Central School District, cited above, the ALJ held that the school district violated its bargaining obligation to negotiate in good faith by having a "closed mind" concerning retroactivity. The district declared at the beginning of negotiations that retroactivity would not be discussed if the parties did not reach an agreement by a "certain date." When an agreement was not reached by that date, the district then refused to change its mind with respect to retroactivity. The ALJ recognized that the school district did not need to make a concession on a mandatory subject, but held that the school district, at least on the issue of retroactivity, was negotiating with a "closed mind." As such, it was held that the school district was negotiating in bad faith.

However, in the case of East Ramapo Cent. Sch. Dist., 31 PERB 4521 (1998), an ALJ concluded that a school district's failure to change its original position, in and of itself, does not establish a lack of good faith bargaining. In the case of East Ramapo, the parties engaged in extensive discussions on the issues and the school district fully detailed an economic rationale on all monetary issues. By the district explaining the rationale of its negotiation proposals, the ALJ found that the district did not act in bad faith.

We advise that should you choose to make retroactivity of economic matters part of your negotiation package proposal, be prepared to provide an economic basis for your position. Have an "open mind" and accommodate the idea of compromise. For strategic purposes, we suggest language as follows:

> Retroactivity will only be to the date of final ratification of a successor agreement.

GROUND RULES: ARE THEY SUBJECT TO THE CONTRACTUAL GRIEVANCE PROCEDURE?

Ground rules are not required but set the tone, the "rules of the game", for negotiations. "The...ground rules for the conduct of negotiations are nonmandatory subjects of bargaining. They are preliminary and subordinate to substantive negotiations and should not interfere with the start or progress of negotiations." Town of Huntington, 26 PERB 4658 (1993). Because ground rules are nonmandatory subjects of bargaining and subordinate to substantive negotiations, it cannot generally be said that such rules effect the "terms and conditions" of employment. Further, "it repeatedly has been held that absent evidence of an intention to frustrate the negotiation process, the mere breach of a negotiation ground rule is not a violation of the duty to negotiate in good faith." City of White Plains, 27 PERB 4525 (1994).

In City of New York, 35 PERB 6603 (2002) a Police Officer's Union filed a petition with PERB to determine whether certain proposals were properly included by the City in its submission to the interest arbitration panel. Prior to reaching impasse the City had withdrawn a number of it proposals. However, the City maintained that it was entitled nevertheless to submit these prior withdrawn proposals to the interest arbitration panel pursuant to the parties' ground rules. The ground rules expressly stipulated that no agreement could be reached by the parties until there was an overall agreement on the entire CBA. Furthermore, the City had reserved its right to add, modify, delete or reinstate demands if a final agreement was not reached. The PERB ALJ found that the City may revert to its original proposals and submit these to an interest arbitration panel as the City was clear in its ground rules that if an overall agreement has not been reached, all proposals are back on the table.

In another case, a City and a Union stipulated to ground rules indicating that "no new items shall be placed on the table after the 3rd session." However, in its substantive negotiation proposals, the City "reserved its right to submit" formal proposals relating to Health Insurance and Code Enforcement. The City maintained that it is implicit that although no new proposals be placed on the table, proposals for which it reserved certain rights can certainly be expanded upon. In fact, the Union was in possession of the City's proposals reserving its rights when the ground rules were signed. The City argued therefore that the Union and the City had a meeting of the minds on the ground rules and relevant proposals. At the 4th session the City provided the Union with substantive language for each "reserved" proposal. The Union argued that despite the clear express reservation of rights by

the City, the ground rules would trump that reservation. Furthermore, to complicate the matter, the CBA between the parties defines a grievance as "a claimed violation, misinterpretation, or an inequitable application of an existing rule, procedure, law or regulation covering any items mentioned in this contract or covering any other item which effects the "terms and conditions" of employment...." (emphasis added) Are negotiation proposals covered by this definition? The Union filed a grievance and alleged that it would also file a court action for breach of contract; however, all actions were recently discontinued.

Judicial and PERB precedent is sparse on this controversy. In the City of Batavia, 16 PERB 4611 (1983), an ALJ determined that an employer's improper practice charge, alleging that the Union violated the parties' ground rules, was insufficient to establish a violation under the Taylor Law. The ALJ provided that the allegation was at best a contractual dispute, beyond PERB's jurisdiction. See also, County of St. Lawrence, 18 PERB 4558 (1985).

We advise that ground rules be carefully drafted. The above detailed controversy remains unresolved.

PROPERTY TAX CAP COMES TO NEW YORK STATE.

On June 24, 2011, the Property Tax Cap, a cornerstone of Governor Cuomo's legislative agenda, was signed into law (Chapter 97 of the NYS Laws of 2011). The Tax Cap sets a limit or "ceiling" on the annual growth of property taxes levied by municipal governments and school districts. The limit is 2% or the rate of inflation, whichever is less, and will go into effect with the 2012 fiscal year. The Tax Cap can be overridden (i.e., the annual tax levy may exceed 2%) if it is approved by at least 60% of the budget voters in school districts, or 60% of the total voting power of the governing body in local governments. This means, for example, that in a local government (such as a village) that has a Mayor and 4 Trustees, all that is now required to override and exceed the 2% Tax Cap is the same simple majority that was necessary to pass the annual budget and tax levy increases in the pre-Tax Cap era. It should be noted that there are certain categories that are excluded from the Tax Cap, including pension costs associated with the annual growth in contribution rate for the public employer above 2 percentage points. Exempted from the constraints of the Tax Cap altogether are New York City and certain large city school districts.

STATE OF NEW YORK SETTLES CSEA CONTRACT.

In July 2011, the 66,000 members of the CSEA ratified a new 5-year contract with the State. The deal with the State's largest public employee union will reportedly save New York $73 million in the first year alone. The pact contained significant economic concessions by the CSEA, including a wage freeze (0%) for the first 3 years and immediate increases in active employee contributions towards the cost of health insurance. These increases, for example, include a 2% (of the cost of premiums) contribution increase for Grade 9 employees and below, and a 6% contribution increase for Grade 10 employees and above. As this is applied, a Grade 10 (or higher) employee with a Family plan will see his/her annual contribution increase from 25% to 31% of the cost of the premiums. The deal also contained 5 unpaid furlough days and 4 paid furlough days.

In return, the CSEA received 2% wage increases in each of the last 2 years of the deal, a health insurance "opt-out" payment, and a "no-layoff" pledge from Governor Cuomo for the first two years. The "no-layoff" provision, however, does contain exemptions for, among other things, "[w]orkforce reductions due to management decisions to close or restructure facilities authorized by legislation."

STATE OF NEW YORK SETTLES WITH PEF.

On October 16, 2011, the State and the Public Employees Federation ("PEF") reached a tentative 4-year deal (2011 – 2014). PEF is the State's second-largest union (after the CSEA) with 55,000 members. The new pact came on the heels of the September 27, 2011 rejection of a 5-year agreement by PEF's membership and will avoid the pending layoff of approximately 3,500 employees. The 5-year deal initially rejected by PEF was modeled on the contract ratified by the CSEA in July 2011. The pact contains no salary increases for the first three years and a 2% increase in the last year (2014). It also includes reimbursement for 9 furlough days at the end of the contract – the rejected deal had 4 such reimbursed furlough days at the end of the contract (as does the CSEA deal). Additionally, a $1,000 cash payment that was to be made over the third and fourth years of the deal has been removed. The agreement's "no-layoff" protections extend through the 2012-13 fiscal year, but it does contain exemptions that would permit certain "workforce reductions" along the same lines as the CSEA deal. This new contract has been approved by PEF's full membership for a ratification vote.

LEGISLATIVE UPDATE.

Bill No.	Description	Action Taken by Governor
A.1428-B	Relates to abolishing positions occupied by public employees absent on military duty; mandates compliance with the Federal Uniformed Services Employment and Reemployment Rights Act of 1994; prohibits abolition of positions based solely upon the fact that the positions were filled by individuals engaged in military duty.	Approved. Chapter 152.
A.6068	Increases certain special accidental death benefits paid to widows, widowers or the deceased members' children.	Approved. Chapter 161.
A.75610-B	Authorizes members of the New York state and local police and fire system in active service to borrow against contributions.	Approved. Chapter 171.
A.8301	Enacts the Public Integrity Reform Act of 2011.	Approved. Chapter 339.

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