



New York State
Public Employer Labor Relations Association Inc.

April 2014

www.nyspelra.org

By the time you read this edition of the NYSPELRA Newsletter we trust we can truly say “Happy Spring!” It has been a long Winter, but with Spring comes the final stages of our planning for the NYSPELRA Annual Training Conference. This year it is a special one – **NYSPELRA’S 40th Anniversary**. We will celebrate with a Conference chock full of important and relevant issues. We will soon be sending out our Conference Agenda for you to share and use to recruit your co-workers and colleagues to attend (attendance information will be forwarded to members quite soon; non-members can contact Jack Kalinkewicz at jjkpersassoc@yahoo.com).

We will also celebrate by hosting a reception at the lovely Saratoga National Golf Course, located only 3 miles from our Saratoga Holiday Inn Conference location. We are planning transportation options for ease of attendance. We know that you are looking forward to our Conference just as much as your Board is! Be sure to hold the dates: **July 16, 2014 – July 18, 2014.**

UNION ORGANIZATION OR SUBTERFUGE?

The Town of Palmyra has faced two recent union organizing efforts involving the Town’s Highway Department employees. In the first, the Teamsters Local 118, of Rochester (the “Teamsters”) failed in their attempt to gain either recognition by the Town, or certification by PERB. In the second attempt to form a union, a PERB Administrative Law Judge (“ALJ”) issued a Decision on February 24, 2014, in PERB Case No. C-6192 following an evidentiary hearing, dismissing a petition for union certification purportedly filed with PERB by the Town of Palmyra Highway Department Employees’ Association (the “Association”). The Town, with our own John Corcoran representing it, argued successfully that the petition by this Association was a sham and that, in reality, the Teamsters, which had previously been unsuccessful in achieving bargaining agent status for this group of employees, was the real party in interest.

Some key facts emerged during the evidentiary hearing, including that the only organizational meeting of the Association was called for by the Teamsters and conducted by a Teamsters business agent shortly after the Teamsters had withdrawn its petition for certification in the face of a defense raised by the Town alleging that the Teamsters Local 118 was not an “employee organization” under the Taylor Law. At this organizational meeting, the Teamster Business Agent presented a Constitution for the Association which had been drafted by the Teamsters. The Highway employees then elected officers and memorialized those selections on a form prepared by the Teamsters. The Association also voted to approve minutes of the meeting, which were also drafted by the Teamsters.

Further, the Teamsters drafted a letter to be signed by the Association’s president for the purpose of requesting the Town’s voluntary recognition of the Association, a request that was not granted. The Association’s “showing of interest” in support of its petition for certification was also prepared by the Teamsters. The Association’s president testified at the PERB hearing that it was his understanding that the Teamsters Business Agent would function as the representative for the Highway Department employees.

At a prehearing telephone Conference conducted by the assigned PERB ALJ, the Association’s president stated that if the Association was certified, it would become part of Teamsters Local 118, and that the Teamsters would conduct the bargaining with the Town. The president also testified that he believed that statement to be true at the time and that the other employees were also of the same belief.

During a second prehearing telephone Conference with PERB, the Association’s president admitted, upon questioning by the Town’s attorney, that the Teamsters Business Agent was present with him on the call, a fact that the president admitted he would not have volunteered unless asked. The president again stated, in sum or substance, that if the Association were certified by PERB it could do anything it wanted and would become part of Teamsters Local 118 and would have the Teamsters function as its bargaining agent.

After consideration of the above facts and others developed at the hearing, the ALJ observed in her decision that:

In this case, the Association was formed with the understanding that following certification its members would vote to become Teamsters. The Association, therefore, did not intend, at the time it was formed, at the point when the showing of interest was obtained, and when it filed for certification, to represent the highway department employees. It must be found, therefore, to have abandoned the petitioned for negotiating unit and as a result, the petition is dismissed. On this record it is clear that the business agents for [Teamsters] Local 118 who orchestrated the formation of the Association and the filing of the instant petition, were seeking to obtain representation rights which Local 118 had previously abandoned when faced with a challenge as to its status as an employee organization under the Act. This strategy to circumvent PERB's certification of the real party in interest, the Teamsters, cannot be countenanced.

The ALJ would have also invalidated the Association's showing of interest accompanying its petition because even though the showing of interest contained signatures below an unambiguous statement designating the Association as the bargaining representative, the hearing testimony established that the employees believed that they were seeking representation by the Teamsters, and not the Association.

CONTRACTS ARE SETTling...

Oneida County:

With our own John Talerico at the helm, the County of Oneida achieved some solid settlements with its various unions.

In late 2013, the County and its 200 member Blue Collar unit (represented by UPSEU) entered into a 2-year agreement. In both 2014 and 2015, for employees "on schedule," the raise amounted to 1.25%; "off the schedule" employees received a 2.75% wage adjustment. It is key to note that these employees had, in 2013, agreed to a wage freeze, as well as a freeze to any step adjustments. On the heels of this agreement, the County's 700 employee "White Collar" unit (represented by UPSEU) agreed to the same 2-year contract modification as the UPSEU Unit ... followed by the CSEA Nurses' Unit (15 public health nurses), which for 2014 held percentage wage adjustments for "on schedule" nurses to the 2013 levels while granting a 2.25% adjustment to "off schedule" unit members; the "on schedule" folks advanced one step on the wage schedule despite no percentage increase in this year. In 2015, both the "on schedule" and "off schedule" employees receive a 2.25% wage adjustment.

EDITOR'S NOTE: "Off Schedule" occurs when an employee reaches the top step of the wage scale; that employee becomes considered "off the salary schedule" and has no further step movement.

Oneida County and its Council 82 PBA (85 Road Patrol and 45 Public Safety Dispatchers) were several years behind in reaching agreement. In an agreement going back to 2011, the parties reached consensus as follows:

<u>Wages:</u>	1/1/11:	2.2% across the board
	1/1/12:	2.2% across the board
	1/1/13:	2.2% across the board
	1/1/14:	0%, no annual step movement
	1/1/15:	2.2% across the board with restoration of step movement

In addition, the Union (which has the right to proceed to Interest Arbitration for its Road Patrol members) also agreed to increase doctor visit co-payments from \$10.00 to \$20.00.

Finally, the Corrections Unit (made up of 275 Corrections Officers, 16 Civil Deputies, 35 Court Attendant, and Security Officers – all represented by Council 82), also having an expired contract back to December 31, 2010, agreed to a contract running through 2013 – wage adjustments varied, dependent upon:

<u>Wages:</u>	<u>2011 & 2012</u>	(retro in full)
	J-Schedule:	1.25%
	C-Schedule:	1.75%
	Off Schedule (both J&C):	2.75%

2013:

- No increase (0% J&C schedules)
- No annual step movement until July 1, 2014
- No increase for "off schedule" employees

EDITOR'S NOTE: The "J" schedule is for Corrections Officers and Civil Deputies; the "C" schedule covers the civilian employees in the Sheriff's Office (i.e., cooks, clerks, etc.).

In addition, and like the PBA, the Corrections' Unit agreed to a doctor visit co-payment increase from \$10.00 to \$20.00.

Chautauqua County

The County of Chautauqua and its Deputy Sheriffs’ Association recently reached agreement for a contract term January 1, 2012 to December 31, 2016. With our own Kurt Gustafson representing the County, the approximately 60 member Deputy Unit agreed, in part, as follows:

Wages:

- 2012: Wage Freeze; \$600 “Retroactive wellness payment” for all employees employed during the subject contract Period*;
- 2013: 2% ... paid to all employees employed during the subject contract period;
- 2014: 2% ... paid to all employees employed during the subject contract period;
- 2015: 2%
- 2016: 2%

***EDITOR’S NOTE:** Without including such contract language concerning who is to be paid, there remains an argument as to whether employees who have left County service (i.e., transferred out, retired), are eligible or entitled to any retro monies.

Health Insurance: The County was also able to achieve health insurance cost containment by encouraging the use of the high deductible plan. The employee is also entitled to a “wellness payment,” but in order to receive this bonus, is required to have periodic blood drawn; depending upon the result of that blood draw, an employee with a high risk factor for certain diseases will then be required to attend six wellness classes related to the condition.

Chautauqua County also settled with their CSEA-represented Correction Officers for a contract term of January 1, 2012 to December 31, 2017. The highlights of this negotiated agreement include:

Wages:

- 2012: Wage Freeze
- 2013: Wage Freeze; however, a “wellness bonus” of \$500, not added to base, will be paid in full to all full-time members, and \$250.00 to part-time members;

<u>1/1/14:</u>	(retroactive) 2%
<u>1/1/15:</u>	2%
<u>1/1/16:</u>	2%
<u>1/1/17:</u>	2%

As with the Road Patrol Unit, the CSEA Correction Officers agreed to modification in the County’s Health Insurance (see above).

Wayne County

The County’s Corrections Unit has a contract for January 1, 2012 – December 31, 2014. The wage adjustments were modest, at 1.75% increase for each year of the contract term; the Wayne County Road Patrol (Deputy Sheriff) Unit has a January 1, 2013 to December 31, 2015 contract in place. In 2013 the base wage increase was 2.0%; however, added to that was a new salary step amounting to an additional 1% adjustment (total +1 – 3% for 2013). The 2014 percentage increase was 2.0%, while 2015 granted a 2.5% across the board increase.

DISABILITY/GML CLAIMS: FRAUD

Many of our Municipalities have employees on leave due to a claim of work-related disability --- injury at work either under the Workers’ Compensation (applicable to all employees), or the General Municipal Laws (applicable to law enforcement personnel including police officers, deputy sheriffs, correction officers, and firefighters). These next stories illustrate the importance of monitoring those who are afforded the statutory (and sometimes, in part, contractual) benefit.

Back in the Spring of 2013, a member of the punk rock band, Cousin Sleeze, was arrested and charged with fraud. The rock-and-roller was employed (for his “day job”) as a NY-NJ Port Authority Police Officer. He claimed an on-the-job injury to his arm. His arrest was based on mail fraud, for collecting over \$30,000.00 in disability payments. The problem was that Cousin Sleeze was, essentially, on tour while this police officer simultaneously claimed an inability to work due to his arm injury. Rock band video showed the police officer actively engaged in moving his “injured” arm with arm “pumps” in the air to get the crowd rocking, and dancing about the stage with actively engaged arms (even the “injured” one).

The New York Times recently reported on an indictment of retired New York City firefighters and police officers, among others. Apparently, the Manhattan District Attorney, following up on leads and Facebook postings, discovered that the claims of disability were questionable at best, and constituted grand larceny, at worst. In fact, upon arrest, the charges for the 106 arrested (!) were grand larceny for

collecting amounts ranging from \$30,000.00 to \$50,000.00 per year, while on disability retirement (as most were at time of indictment).

The disability claims of the majority of those arrested were for emotional or psychiatric afflictions that each had attributed to the “September 11th” attacks on New York City. The claims were for post-traumatic stress, anxiety, severe depression, failing memory, panic attacks, etc. In applying for and receiving disability monies, those arrested had indicated a fear of leaving home, and an inability to be working at any task. Nevertheless, internet postings on social media and secretly recorded telephone chats revealed quite the scheme. These individuals were, in some instances, coached as to how to behave “disabled” as they underwent medical review to obtain disability benefits - - - including looking unkempt, disoriented, and distracted.

In the case of the those too emotionally frightened to leave home, Facebook revealed an astonishing ability to go fishing, motorcycling, playing sports, and flying helicopters (all outside their respective homes, by the way). Many have full-time employment in private security or construction; one former officer claimed an on-the-job neck injury and was awarded disability. Thereafter, he not only opened a Martial Arts studio, but was one of the instructors.

Among those arrested in this matter and charged with grand larceny (social security disability fraud) are former police personnel from Nassau, Orange, and Westchester Counties, in the Mid-Hudson Valley.

As pointed out by prosecutors, to receive Social Security Disability benefits there is a higher bar – complete inability to work – then qualifying for a [municipal] worker disability pension. With that in mind, the initial grant by municipal governments for work-related disability benefits should be carefully scrutinized, and, once granted, judiciously followed to ensure legitimacy.

FOND FAREWELL

NYSPELRA bids a fond farewell to Jenifer Barr. As you know, Jenifer has been a longtime NYSPELRA member, serving on the Board and as our NYSPELRA President for the 2009-2010 term. Jenifer has taken a position as Director, Regulatory Compliance/HR Business Partner at Independent Health and has resigned her NYSPELRA Board position. We all wish Jenifer all the best and know she will serve her new position with talent, drive, and achievements to come.

WELCOME ON BOARD

The NYSPELRA Board of Directors, upon the resignation of Jenifer Barr, had the opportunity to appoint a long-term NYSPELRA member to fill Jenifer's term. The Board welcomes to its ranks Kathleen O'Hare. Kathy is currently the Vice-President of HR for the Erie County Medical Corporation. The Board is grateful for Kathy's acceptance of this appointment, and looks forward to Kathy's insights and experiences as a good addition to the Board's decision-making on behalf of our membership.

Contact NYSPELRA

NYSPELRA

Attn: Jack Kalinkewicz

15 Rum Cherry Road

Malta, N.Y. 12020

jjkpersassoc@yahoo.com

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/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 latest NYSPELRA information: www.nyspelra.org