



New York State  
Public Employer Labor Relations Association Inc.

Fall 2013

[www.nyspelra.org](http://www.nyspelra.org)

**2013 TRAINING CONFERENCE**

The 2013 Annual Training Conference was a great success. We had 128 attendees, among them 22 first timers. The presenters received rave reviews and were commended for their individual and collective abilities to deliver informative, comprehensive, understandable and practical labor relations lessons. Jill Leka, NPELRA Counsel and attorney at Clark Baird and Smith, LLP, was a wonderful addition to and perfect start to the 2013 Program. Her discussion of “Emerging and Continuing National Labor Issues” was insightful. Another of the most well received and powerful topics was Workplace Violence, as presented by the Board’s own Kurt Gustafson. Overall, our members rated the 2013 Conference as “one of the best” with “knowledgeable, engaging and [truly] enjoyable speakers.”

Another highlight of our Conference was the awarding of the 2013 Holcomb Award to Lou Giardina. As you know, Lou is the Manager of Labor Relations for the Niagara Frontier Transit Authority and has been NYSPELRA President on two (2) occasions: 2007-08 and in 2011-12. Congratulations Lou!

The 2013-14 Board of Directors for NYSPELRA, as elected at our Conference are as follows:

<b>President</b>	<b>John P. Talerico</b>
<b>President-Elect</b>	<b>Peter Troiano</b>
<b>Past-President</b>	<b>Kelly Gale-Eisenried, Esq.</b>
<b>Secretary/Treasurer</b>	<b>John J. Kalinkewicz</b>
<b>Vice President, Region I</b>	<b>Lisa M. Baisley</b>
<b>Vice President, Region II</b>	<b>Elayne G. Gold, Esq</b>
<b>Vice-President, Region III</b>	<b>John F. Corcoran, Esq.</b>
<b>Vice-President, Region IV</b>	<b>Jenifer S. Barr, Esq.</b>

**Board Members – At-Large**

**Michael Volforte, Esq.  
Terry O’Neil, Esq.  
Louis R. Giardina  
Kurt D. Gustafson, Esq.**

**Ex-Officio**

**William L. Holcomb**

**SPECIAL ACKNOWLEDGEMENTS**

Walt Pellegrini has retired from the NYSPELRA Board (and from his position with NYS). We ask that you join in congratulating Walt and thanking him for his years of dedication and service to both NYSPELRA and NPELRA. Walt promises that he will continue as a NYSPELRA member “as a bona fide retiree.” We look forward to seeing Walt at our next Annual Conference in July of 2014!

Lisa Baisley has been appointed to the NPELRA Board of Directors. Lisa’s appointment is effective immediately as she will proudly represent our State PELRA. Congratulations Lisa!

**VIOLENCE IN THE WORKPLACE**

At our 2013 Training Conference, Kurt Gustafson, Assistant County Attorney for Chautauqua County, gave a powerful and real life presentation of the NYS Workplace Violence Prevention Act; in particular, Kurt detailed a pending case that was awaiting an Arbitrator Decision. The Arbitration Award is in.

Arbitrator Selchick upheld the termination of a twenty-four year Chautauqua County employee who pointed a .22 caliber pistol at a co-worker in a County parking lot at the end of the workday in October 2012. The Arbitrator soundly rejected the employee’s arguments that the conduct was a joke or horseplay. In making his decision, Arbitrator Selchick did not consider the employee’s considerable disciplinary history (over 10 years old) that included what the County presented as a last chance agreement. Arbitrator Selchick wrote “[i]n assessing the question of penalty, the Arbitrator finds that Grievant’s past disciplinary record does not advance the County’s arguments in support of termination. In arriving at this conclusion, the Arbitrator notes that there was no true “last chance” provision ever imposed on Grievant that all future disciplinary violations (as opposed to violation of the substance abuse policy) would necessarily result in his termination . . . . The Arbitrator finds that the question of whether termination should stand is one that should be based solely on the misconduct established in this record.”

During its case, the County presented the elements of the crime of Menacing (Penal Law Section 120.14) to support the charge of the employee's conduct being in violation of the County's Violence in the Workplace Policy. The Arbitrator ruled that "... the County had substantial evidence that Grievant, in essence, committed the crime of Menacing." In upholding the termination, Arbitrator Selchick wrote "Grievant's reckless and dangerous act of pointing a pistol at another individual at the worksite under circumstances where the individual was placed in reasonable fear of serious injury is the type of misconduct that does not require the application of progressive discipline."

The County was concerned that no criminal charge was filed against the accused by the victim. The Arbitrator wrote "[p]arenthetically, the Arbitrator does not find that (victim) took Grievant's conduct lightly. Out of a sense of decency that motivated him not to cause Grievant's family harm, (victim) elected not to press criminal charges. (Victim) did, however, note in his testimony that he would have large issues of trust were he required to work with Grievant again, and the County ... was reasonable in believing that such issues of trust would be shared by many others in the workplace were Grievant to return."

The Arbitrator acknowledged the workplace conduct training that the accused received and discussed the handling of weapons in general in his decision. He rightly noted that "[u]nloaded guns have killed any number of people." An important aspect of this case was the statement "Freeze Mother F\*\*\*\*\*" that accompanied the pointing of the pistol. The Arbitrator also made a distinction between the pointing of the gun at someone and a mere display or brandishing of the weapon.

## **INTEREST ARBITRATION**

In the Summer 2013 (July) Newsletter, we reported on Saratoga County's settlement with its Corrections Unit. At that time, negotiations with the County's CSEA Unit had gone to Impasse. They continue with mediation at this time.

Further, the Deputy Sheriffs Unit in the County was in the midst of Interest Arbitration ("I.A."). The I.A. Award was rendered in September 2013 (IA 2012-009: M2011-377); the neutral Arbitrator and Panel Chair was Jay Siegel.

The County's Deputy Sheriffs Unit consists of 107 employees including Road Patrol Deputies, Sergeants, Investigators and Lieutenants. The Panel rejected comparing the County's Deputy Sheriffs to the New York State Police and found that although

“Saratoga County is wealthier, less populated and more rural than Albany County,” Albany County is the most comparable “outside” municipality; that is, “The main universe of comparables is Albany County and other bargaining units in Saratoga County.”

Finding that “the County’s budget has been strained by increases to health insurance and pensions [and] at the same time, lower sales tax growth and a limited ability to increase revenue attributable in part to the 2% tax cap, mandates a much more moderate economic settlement than the one being proposed by the union.” The Union, it should be noted, sought:

- \$600 one time (not on base) payment in 2010
- 2% effective January 1, 2011
- \$1,500 per employee, added to base salary for hazardous duty pay for all members at Step 2 or above
- Various longevity increases at various steps

The Panel’s majority determination rejected the above and awarded:

- WAGES:
- effective and retroactive to 1/1/10: 1.0%
  - effective and retroactive to 1/1/11: 1.5%

(“This will allow Unit members to maintain their relative standing vis-à-vis...comparables with a limited impact on the County’s overall budget.”)

- Freeze of base step and step 1 of the salary schedule for both years of the Award.

(“This will provide some economic relief to the County and should not have an adverse effect on hiring...”)

The Panel rejected outright the need for any hazardous duty pay.

## HEALTH INSURANCE

The Panel rejected the health insurance contribution increases sought by the County and made no change whatsoever. In so doing, the Panel majority explained:

The County's approach regarding health insurance with the other 2 bargaining units is noteworthy and foretells what is coming down the road for the deputy sheriffs.

\* \* \*

However, the Panel Chair is persuaded that it is not just and reasonable to impose the premium contributions that are proposed by the County at this time...the Panel Chair is convinced that if this Award covered the years of 2013 and 2014, that he and virtually any other arbitrator would determine that the health insurance contributions made by correction employees would be appropriate to impose on deputies.

Note that currently, this Deputy Sheriff Unit contributes 15% toward premiums for those hired on or after 7/1/98; pre-July 1998 have no contribution.

The Panel did not address any other issues pending before it. Significantly, however, the Panel did address the applicability of the Award to employees who may have left County service prior to its issuance, holding that

The County shall pay retroactively to each individual who worked during any period on or after January 1, 2010...

## **FMLA AND DOMA**

At our 2012 Annual Training Conference, our Board's John Corcoran gave us a well-received presentation on the federal Defense of Marriage Act ("DOMA") and its interplay with our New York State statutes.

On June 26, 2013, the U.S. Supreme Court ruled that DOMA's definition of marriage is unconstitutional (*United States v. Windsor*, 133 S. Ct. 2675 (2013)). Specifically, the Court found that the definition of "marriage" under DOMA violated the constitutional principles of equal protection. DOMA had maintained that marriage was to be defined as only those legal unions had between a man and a woman. That definition impacted the interpretation of many federal benefits, including those of the Family and Medical Leave Act ("FMLA") which afford leave to a "spouse" of one who is sick or otherwise incapacitated. The FMLA regulations specifically define "spouse" as "a husband or wife as defined or recognized under State Law for purposes of marriage in the State where the employee resides." 29 CFR §825.122 (a); however, with DOMA in place and with the FMLA being a federal law, only opposite sex spouses were afforded FMLA coverage. All that is now changed with the finding of DOMA's unconstitutionality with respect to the "marriage" definition. As such, if a state – like our state – legally recognizes same sex marriages, the federal law cannot negate that.

What that means for us here in New York is that FMLA is to be afforded to otherwise FMLA eligible legally married employees of the same sex. Note, there are other items impacted by the Windsor ruling such as: income tax, payroll deductions, COBRA, health care and pension benefits. Please consult your municipal or labor counsel on these and all related topics.

## **2014 DUES/RENEWAL**

It is time to renew your NPELRA/NYSPELRA annual membership and pay your dues for 2014. As you know, your joint membership in these two organizations will expire on December 31, 2013.

The Board encourages all to rejoin our organizations. Membership connects you with colleagues both within New York State and across the United States and can be a valuable tool to enhance your professional career. You will find that the more you

participate and become involved on the state and national levels, the greater the benefit your membership will be.

Your combined renewal invoice will be mailed to you shortly. NPELRA has advised us that a dues increase of \$15 is scheduled for 2014 for the NPELRA component of the joint membership. Since many NYSPELRA members have already submitted their agency's proposed 2014 operating budget for review at the local level, your NYSPELRA Board of Directors felt that the NPELRA dues increase should not be passed on to our NYSPELRA members for 2014. Therefore, the NYSPELRA Board has decided to reduce your 2014 NYSPELRA membership dues by \$15 to offset the increase. Your annual combined membership dues for 2014 will remain at \$200.

Absent further dues increases, please keep in mind that the combined NPELRA/NYSPELRA dues will be at least \$215 for 2015.

### **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/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](http://www.nyspelra.org)**