



New York State  
Public Employer Labor Relations Association Inc.

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

The NYSPELRA 40<sup>th</sup> Anniversary Annual Training Conference is here! After a year of planning we are proud to bring you what we know will be an informative, collaborative, and memorable event. Saratoga Springs is at its most beautiful this time of year; for those readers of the Newsletter who are in attendance, we know you will enjoy your time here with old friends and new colleagues. Now, on to the news ...

**Contract Settlements**

**Fulton County**

Fulton County, like many municipalities throughout New York, has faced financial challenges over the past several years. The County developed a five-year plan to get itself back on solid (or at best, non-quicksand) ground. As part of that strategy was the goal of reaching contract resolution with its four (4) Unions that included wage freezes. Well, after protracted negotiations with its CSEA units and its Corrections Officers, the County is on its way to achieving this goal.

In June of 2014, the independently represented Corrections Unit, for a contract that dates back to January 1, 2012 as a start date, agreed as follows:

<u>Wages</u>	<u>2012:</u> Wage Freeze
	<u>2013:</u> \$500.00 per employee, on base ( <u>Editor's Note:</u> Amounts to 1.4%, on average)
	<u>2014:</u> 2.25%
	<u>2015:</u> 2.25%

Health Insurance: Those hired after the June 2014 ratification date will contribute 50% to the cost of their selected insurance coverage for the first year of service; thereafter, the employee contributes 20% toward individual coverage or 50% of the difference between the dependent and individual coverage.

Payroll: The County achieved consensus to move from a one-week (current) lagging of pay to a two-week lag.

The County and the CSEA went through a host of layoffs (with the County undertaking a divestment of provision of nursing home services); The CSEA General Unit that was over 300 employees dropped below 250; the CSEA Nurses unit went from the mid-30 level of staff down to seven (7) nurses. The County first settled with the CSEA Nurses. In keeping with the County's negotiation goals agreement was reached as follows:

Wages:      2010: Wages frozen at 2009 rates  
                    2011: Wages frozen at 2009 rates  
                    2012: Wages frozen at 2009 rates  
                    2013: 1.5% across the Board  
                    2014: 2.0% across the Board

Lag pay extension and Health Insurance modifications match those ultimately obtained with the Correction Unit (as detailed above).

Negotiations with the CSEA General Unit took the parties just shy of three (3) years. The parties engaged in Fact Finding and were headed to Legislative imposition. On the eve (literally) of the Legislative hearing (as required by New York State Taylor Law), the parties reached a settlement:

Wages:      2010: wages frozen at 2009 level  
                    2011: 1/1: 1%, 7/1: 1%  
                    2012: 1/1: 1%, 7/1: 1%  
                    2013: wage freeze  
                    2014: wage freeze

Health Insurance and extension of the lag payroll mirrors that achieved with the CSEA Nurses and the Corrections Unit.

The County remains, at the time of this writing, in negotiations with its Road Patrol unit.

**Town of Newburgh**

The Town of Newburgh, located in Orange County, reached negotiation settlement with its CSEA unit. This contract had expired at the end of 2012. Through mediation, with the assistance of mutually selected mediator Dennis Campagna, the parties agreed as follows:

Wages: 1/1/13: 2.0%  
1/1/14: 2.5%  
1/1/15: 2.5%

Longevity: 1/1/14: an additional \$50.00 per longevity step  
1/1/15: an additional \$50.00 per longevity step

Drug and Alcohol Testing: The CSEA unit agreed to such testing, which is already in operation Town-wide (including with the Town’s Police Department).

Pay Period: Switch from a weekly to bi-weekly payroll and Direct Deposit (where the Direct Deposit is optional to the employee).

Time and Attendance: To receive holiday pay or vacation pay, the employee must work the day before and the day after; taking of even a partial “sick” day before the holiday or scheduled vacation will require medical certification or Department Head approval.

**Village of Catskill**

The Village of Catskill, located in Greene County, after only two (2) negotiation sessions, reached agreement with its highway employees, represented by AFSCME. The Village’s goal was to maintain wage adjustments at the levels granted to the Village Police Unit while obtaining some health insurance cost sharing. Those goals were achieved:

Wages:      6/1/14: (Editor’s Note: A Village fiscal year commences June 1<sup>st</sup> and ends May 31<sup>st</sup>) 2.0%  
                  6/1/15: 2.0%  
                  6/1/16: 2.5%  
                  6/1/17: 2.5%

Longevity: \$25.00 additional per step in each of 2015 and 2017.

Health Insurance:

- Those hired after June 2014 will contribute 15% toward the cost of the premium (individual, 2-person or family);
- Those hired on or after 6/1/15: 20%
- Those hired on or after 6/1/16: 25%

**When is Picketing Protected “Free Speech?”**

In the case of Santer v. Board of Education of East Meadow Union Free School District, \_\_\_N.Y.3d \_\_\_ (May 2014), the NYS Court of Appeals found no violation of protected 1<sup>st</sup> Amendment “speech” where the picketing directly impacted safety and school operations.

The School District and its teachers had been unsuccessfully negotiating for over two (2) years. During this entire time, the teachers engaged in protests, including picketing. The School District found these protests to be the right of its employees. All that changed on a rainy day in March of 2007. Specifically, on March 2, 2007 the weather was poor. The teachers, who had traditionally held signs and marched along the school’s sidewalks, instead parked their respective vehicles in the middle of the 2-way street directly in front of the school with their protest signs placed in the vehicles’ windows. Due to the hap-hazard way in which the vehicles were parked, any parent dropping a child off for school had to drop the child in the middle of the traffic-filled street, in the rain, instead of directly in front of school.

On March 16, 2007, the School District commenced discipline against all of the teachers who had engaged in the March 2 picketing on charges that the teachers created a health and safety risk to the students when they purposefully parked their

vehicles in the manner which precluded students from being dropped off at the school curb. The discipline led to the findings of guilt with the penalty being a fine.

The teachers filed an Article 78 Petition in Supreme Court to overturn the imposition of punishment for their alleged right to protected “speech.” The Court upheld the discipline. But the Appellate Division reversed as in the Appellate Court’s view, “the discipline imposed on the teachers would have a chilling effect on the teachers’ speech regarding an important public matter.” The School District took the case to the NYS Court of Appeals, which reversed the Appellate Court. The Court of Appeals recognized the teachers’ picketing was a form of protected speech that related to a matter of public concern, but found that the school district had satisfied its burden of showing that the teachers’ conduct posed a significant risk to the health and safety of students. The Court of Appeals noted that the school district was not required to prove that a student was actually injured as a result of teachers’ picketing activity in order to justify its discipline of the teachers. The potential risk to student safety was sufficient to justify the discipline. The Court of Appeals also found it significant that the teachers engaged in picketing activity prior to March 2, 2007 and after March 2, 2007, without being subjected to any discipline. The Court of Appeals determined that this demonstrated that the school district’s disciplinary actions were not motivated by the content of the teachers’ protected speech.

### **Reasonable Accommodation**

An employee does not necessarily need to be given an “accommodation” to perform work required of a position. Many factors come into play, first of which is that the employee him or herself, must request the accommodation; that is, the employer should not, based upon belief or perception, offer one. To do so may be viewed as an act of discrimination. However, the NYS Court of Appeals teaches us a lesson. In the recently decided case of Jacobsen v. New York City Health and Hospital Corp., \_\_\_\_ N.Y.3d \_\_\_\_ (March 2014), [A case dealing with a technical aspect of law and not specifically with accommodation issues], the take away lesson for the employer is that employers should always at least consider a disabled employee’s accommodation request, engage in dialogue with the employee regarding the feasibility of the accommodation request and suggest potential alternatives if the initial request is not feasible. [Editor’s note: Under an “accommodation” analysis under the federal Americans with Disabilities Act and/or under the NYS Human Rights law, accommodations are evaluated for those who are “disabled” within the meaning of the law. Note that any conclusions are to be made on a case-by-case basis and in consultation with your municipal, school district, or labor relations counsel.] Employers should also document their interactions with a disabled

employee and the resolution of the employee's accommodation request. The importance of documentation cannot be overstated.

### **Criminal Convictions**

Section 752 of the NYS Correction Law (Article 23-A) prohibits an employer from discriminating against certain applicants for employment based upon a prior criminal conviction (see also, NYS Executive Law, (a/k/a Human Rights Law) at Section 296.15: "It shall be an unlawful discriminatory practice ... to deny employment ... by reason of ... [having] been convicted of one or more criminal offenses, when such denial is in violation of ... 23-A of the Corrections Law ...." The law protects an applicant unless:

- there is a "direct relationship" between the criminal offense and the position sought;
- granting employment would pose an "unreasonable risk" to property or to the safety or welfare of specific individuals or the general public;
- Section 753 requires the analysis to consider further, all of the following eight factors:
  1. The public policy of the state to encourage the employment of persons previously convicted of one or more criminal offenses.
  2. The specific duties and responsibilities necessarily related to the employment sought or held by the person.
  3. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities of the position.
  4. The time which has elapsed since the occurrence of the criminal offense or offenses.
  5. The age of the person at the time of the occurrence of the criminal offense or offenses.
  6. The seriousness of the offense or offenses.
  7. Any information produced by the person, or produced on his behalf, regarding his rehabilitation and good conduct.
  8. The legitimate interest of the public agency or private employer in protecting property and the safety and welfare of specific individuals or the general public.

The analysis needs to be undertaken at time of hire. There should be no hard-and-fast policy prohibiting employment of one with a prior conviction; note in addition,

that the NYS Human Rights Law, at Section 296.16, protects from discrimination in employment those with prior arrest(s). Finally, the state law makes clear that employment can be denied to those in law enforcement who have “any arrest or criminal accusation.”

### **Legislation to Watch**

S7801/A9853 - This fast-moving bill would amend the Civil Service Law Section 76 to make clear that the provisions of Sections 75 and 76 can be modified through collective bargaining and resurrect any provisions in any current or expired collective bargaining agreements that were invalidated or otherwise found to be a non-mandatory/prohibited subject of bargaining. This law would reverse any decision that found discipline to be a prohibited subject of bargaining and repeal any general, special or local law, or charter provision relating to the removal or suspension of officers or employees in the competitive class of civil service of the state or any civil division.

### **Dues Updated**

In the Fall 2013 edition of our Newsletter we address the matter of a dues increase at the National level. In 2014 NPELRA increased dues by \$15.00; your NYSPELRA Board determined that, as our members 2014 budgets were likely already set, the costs were absorbed by a reduction for 2014 in New York State dues. Please note that for 2015 the combined NPELRA/NYSPELRA dues will be \$215.00.

### **Downtime in Saratoga**

If time permits while you are visiting lovely and historic Saratoga Springs, you may want to check out these websites for things to see and do:

- [www.saratoga.org](http://www.saratoga.org) [Saratoga County Chamber of Commerce]
- [www.saratoga.com](http://www.saratoga.com) [“Everything Saratoga”]
- [www.saratogahistory.org](http://www.saratogahistory.org)
- [www.saratogaspringsvisitorcenter.com](http://www.saratogaspringsvisitorcenter.com)

### **Contact 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)**