



THE GOVERNOR'S BUDGET PROPOSALS OFFER FINANCIAL RELIEF TO LOCAL GOVERNMENTS

The State budget released by the Governor for the State fiscal year beginning April 1, 2004 and ending March 31, 2005 contained numerous employee relations initiatives which, if enacted into law, would provide local governments with significant current and future financial relief. The proposals are in a budget bill, A. 9556/S. 6056, and include the following:

- a Taylor Law amendment to require that a compulsory interest arbitration panel, when making an award having any financial impact, prioritize among the factors the panel is required to consider, the financial ability of a public employer to pay what is awarded without resorting to new or increased local taxes, including but not limited to the level of taxes in the municipality compared to other municipalities, the tax base, any evidence of economic decline, and any other evidence of economic decline and any other measures of fiscal distress or reductions in expenditures. The panel would be required to consider the employer's competing financial obligations that might be affected by an award and specifically, the award's impact upon current and future negotiations with other unions representing employees. The bill would also allow an arbitration panel that is addressing an impasse in negotiations involving the City of New York to issue an award having a 4-year duration. This proposal is similar to ones offered by the Governor in several previous budgets and is one which should be strongly supported by any municipality with a police or fire department and any county with a sheriff's department.
- a PERB user fee assessment of \$75 to be imposed upon the filer of an impasse declaration, a factfinding request, a compulsory arbitration petition, or an improper practice charge. For any party bold enough to answer any such filing, there would be an equal assessment.
- allowing police officers to present testimony to a grand jury by affidavit, instead of by a personal appearance; and
- permitting counties and the City of New York to assess a \$5 fee on auto insurance policies to be applied to their public safety efforts.

The budget also included numerous proposals designed to effect pension reforms for the 2 systems administered by the State Comptroller. These were:

- requiring the Comptroller to consider several alternatives to possibly modifying the actuarial methods used to determine employer pension contributions;
- creating a dedicated reserve fund with minimum employer contributions to offset future employer contributions;
- billing public employers based on actual payrolls, not anticipated ones as is currently done;
- allowing local governments to establish a reserve fund to pay future pension bills;

- allowing local governments to refinance payments due to the Police and Fire Retirement System at a “street” rate and not the 8% rate assessed by the System;
- rolling the December 15 pension payment due date to January 15. (Editor’s note: this would assist any municipality with a calendar fiscal year and would not impair the integrity of either Retirement System.);
- prohibiting the cost of any future benefit enhancements from being supported by pension system assets until more than a decade after the benefit enhancement has been enacted;
- requiring the Comptroller to disclose the funded status of the Systems on a basis comparable to other states and to report a 5 year projection of employer contribution rates; and
- capping the amount that the employer pension contribution rate as a percentage of payroll can increase in any year.

The Comptroller reacted with a press release, asserting that many of the Governor’s pension reform proposals, if enacted, would be unconstitutional. The basis for that claim is that the State Constitution provides that the Comptroller has the exclusive fiduciary responsibility to administer the 2 Systems. Where some of the proposals direct the Comptroller to peg employer pension contributions or impose an asset valuation method, the contention is that such directives amount to an unconstitutional interference with the exclusive authority of the Comptroller to exercise his fiduciary responsibilities to administer the 2 Systems. In late January, the Comptroller suggested several statutory changes which would aid those employers who participate in either system which he administers. Primary were:

- changing the December payment date to February 1;
- allowing the 2004 pension bill to be amortized over 5 years, with the first payment to be due in 2005;
- allowing municipalities to establish a pension reserve fund to which funds could be allocated for future bills; and
- requiring a projection of several years of future pension bills.

The Comptroller’s proposals have not yet been introduced as a bill in the Legislature, but will likely soon be. Those supporting or objecting about any of the items summarized above should contact their 2 State legislators to express a reaction with reasons. The budget bill can be read or downloaded from either the Senate or Assembly web sites. Use a search engine for either “NYS Assembly” or “NYS Senate”.

PERB DECISIONS

The following are summaries of decisions which have been issued by either the Public Employment Relations Board (PERB) or its staff. Any summary that might be of interest should be reviewed as to the facts and circumstances of the case, in the event your editor may have not correctly summarized it. In addition, any decision reported below that can be appealed to the Board should be researched to ascertain its subsequent disposition, if in fact an appeal was actually made, and further researched to determine if a court appeal occurred. E-mail your editor, John Galligan, at galli14@earthlink.net for a copy of any decision summarized.

- a public employer has a right to object to what it may deem to be an attempt to submit a nonmandatory bargaining demand to a compulsory arbitration panel through the filing of an improper practice charge alleging a failure to negotiate in good faith. While safety demands in general are a mandatory subject of negotiation, not all demands that might have some link to safety are mandatory subjects. A union demand that asserts a safety concern, but fails to offer specifics that address the concern yields a nonmandatory subject of negotiation. July 3 ALJ decision in City of Niagara Falls;
- a union demand that encompasses staffing is a nonmandatory subject of negotiation. July 3 ALJ decision in City of Niagara Falls;
- while a demand for compensation is a mandatory subject of negotiation, should a nonmandatory subject be included in the demand, such that the latter aspect cannot be separated from the demand, the entire demand is nonmandatory. July 3 ALJ decision in City of Niagara Falls; and
- elements of an intellectual property policy regarding copyrights that affects an employee's compensation are a mandatory subject of negotiation since wages an employee may receive while working amount to a mandatory subject of negotiation. July 1 ALJ decision in City University of New York. Editor's note: Nada! Any copyrightable material that an employee might produce for an employer is only copyrightable by the employer.