NYPELRA Newsletter: June 2005

THE 2005 REGULAR SESSION HAS ENDED, BUT…

These bills have been passed by both houses of the State Legislature in the final days of the 2005 Regular Session. All would have an adverse impact upon those public employers affected by them and all were most likely voted for by your elected representatives, as negative votes are few on bills brought to the floor. Those concerned with any particular bill should ask your local representatives to direct a letter in opposition to: Richard Platkin, Counsel to the Governor, State Capitol - Room 225; Albany 12224. Use either the Assembly's web site www.assembly.state.ny.us or the Senate's at www.senate.state.ny.us to secure a bill's text, the introductory memo that was submitted by its sponsor(s), if it has in fact been posted on line, and the voting record for either house. All bills listed below have been opposed by one or more public employer associations in Albany.

- S. 1711, which extends until May 15, 2006 the prohibition on school districts altering retiree health insurance benefits or costs unless the same condition is imposed upon the corresponding group of active employees. Chapter 16.
- A. 748, which would prohibit local governments from securing fire protection from a private sector provider.
- A. 1351, which would direct the Department of State to establish fire department response times for those departments which contract with cities to have fire and emergency calls relayed. A precursor of State-set response times for all departments;
- A. 6343, which would require any discipline case under §75 which might result in a termination to be heard by an arbitrator. Vetoed in the past by the Governor;
- A. 7827-A, which would increase the maximum service credit for Tier 2 police and firefighters from 30 to 32 years. If signed, an estimated $16.8 million cost to employers; step one in an effort to bump the Tier 2 service credit to that of Tier 1, 37.5 years. Vetoed in the past by the Governor;
- A. 8052, which would create a presumption for Retirement System purposes that any heart disability incurred by a police officer or firefighter is the result of an accident. The practical effect of doing so is to establish a condition which the State Comptroller, as administrator for the System, will be unable to rebut;
- S. 3013, which would require public works contractors to have their employees complete a 10-hour OSHA-provided or OSHA-approved construction safety course. Not readily available throughout the State. Not imposed on any other construction contractors;
- S. 3184-A, which would extend recall and layoff rights to public employees in the noncompetitive and labor classes of civil service. Why bargain with you?
- S. 3185, which would allow a leave of absence for an employee who is promoted to a position which has a probationary period with you or any other public employer and would grant the promoted employee a right to return to the former position;
- S. 3214, which would extend the amount of leave available under §71 of the Civil Service Law from 12 to 18 months for occupational injuries and from 2 years to 3 years for an injury which is the result of a workplace assault. A similar bill was vetoed in the past by the Governor;
- S. 3339, which would provide New York City correction officers retirement service credit for time absent from work because of child care leave;
- S. 3676, which would create a presumption for Retirement System purposes that any lung disability of a paid firefighter is the result of an accident. As noted above, such a presumption is for all intents and purposes irrebutable;

- S. 5410, which would require those who are retained to fabricate materials to be used on a public works project to pay their employees prevailing wages. Someone forgot to remember that it just could happen that these companies could be located out-of-State;
- S. 4737-B, which would permit any municipal employee who repairs vehicles or vehicular equipment to reside as far away as the county next to the county in which the individual is employed. Micromanagement hits a new high;
- S. 5464, which would require the public employer entering into a public works contract to do a daily head count of the contractor's employees. A similar bill was vetoed a few years ago;
- S. 5758, which would prohibit municipalities from changing retiree health insurance benefits or contributions unless the same change were to be imposed on the corresponding group of active employees. Retroactive to May 1, expiring May 15, 2006. Would limit employer options on retiree drug coverage as a result of the Medicare Part D prescription drug plan taking effect in 2006. A similar bill has been vetoed in the past; and
- S. 5773, which would require public employers to adopt a plan for the prevention of workplace violence. Apparently, there is no need for such in the private sector.

  News to report of public sector employment relations bills favoring employers and passing either house: none. Bills introduced to reduce public employer pension costs: none. Bills introduced which would increase public employer pension costs: several hundred.

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 to assure the decision might be applicable to circumstances in which you may have an interest. In addition, any decision by an ALJ should be researched to ascertain its subsequent disposition, if in fact an appeal to the Board was made, and, if it was, 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. Use the PERB web site, www.perb.state.ny.us where summaries of decisions issued since 1986 can be obtained and the agency's forms can be downloaded.

- a demand to permit employees to elect to work overtime without regard to staffing needs is not a mandatory subject of negotiation. February 16 ALJ decision in Wayne County;
- there is an obligation under the Taylor Law to negotiate a change involving a past practice that addresses a mandatory subject of negotiation, even if the practice is not addressed in the underlying labor agreement between the parties, where the practice has been unequivocal and in effect for a sufficient time so as to create a reasonable expectation among unit employees that the practice would be continued. However, a unilateral reduction in the length of a workday, regardless of the existence of a contrary past practice, is privileged since a public employer has the right to determine the level of services it shall provide to the public. That is a subject which is not a mandatory subject of negotiation. February 16 ALJ decision in Wayne County;
- although an employer may have long engaged in a practice contrary to language contained in a negotiated agreement, it has a unilateral right to revert to the contractual language at any time. February 16 ALJ decision in Wayne County; and
- just as an employer may unilaterally determine a minimum staffing level, it also has the unilateral right to change that to coincide with a perceived number of personnel needed or wanted for the delivery of public services. February 16 ALJ decision in Wayne County.