NYSPELRA Newsletter: August 2006

NYSPELRA OFFICERS ELECTED FOR 2006-2007

At the 32nd Annual Conference held in Saratoga Springs July 24-26, attended by 144 individuals, members in attendance elected these individuals as your officers for the coming year:

President: Louis R. Giardina; Labor Relations Manager; Niagara Frontier Transportation Authority

President Elect: John Corcoran, Esq.; Hancock & Estabrook; Syracuse

Past President: Walter J. Pellegrini; Counsel, Governor's Office of Employee Relations; Albany

Secretary/Treasurer: Jack Kalinkewicz; Deputy Personnel Officer for Saratoga County

Vice-President, Region 1: Terence O'Neil, Esq.; Bond, Schoeneck & King; Garden City

Vice-President, Region 2: Elayne G. Gold, Esq.; partner, Roemer, Wallens & Mineaux; Albany

Vice-President, Region 3: Patricia Dunn, Esq.; Assistant City Attorney for the City of Ithaca

Vice-President, Region 4: Marilyn Fiore-Nieves, Esq.; Corporation Counsel; City of Jamestown

Board members at large:

Jenifer Barr; Director of Employee Relations; Roswell Park Cancer Institute; Buffalo

William L. Holcomb; labor consultant; Tonawanda

Joseph Suarez, Esq.; labor consultant; Chestnut Ridge

Joyce Tarantino, Esq.; Human Resource Director; Town of Colonie

Board member Ex-officio: Paul Hutchins; Senior Director, Labor Productivities; NYC Transit Authority; NPELRA Board member

The recipient of the William L. Holcomb award for Public Service in Labor Relations was Matt Iarocci. Every year at the Annual Conference, the Association recognizes one or more labor relations or human resources official(s) having a responsibility for their jurisdiction's labor relations or human resources who have demonstrated exceptional achievement or singular public service in advocating on behalf of public employers and the citizens of New York.

LEGISLATIVE UPDATE

A correction: A summary of a bill, S. 6476, signed into law as Chapter 83, appeared in the June 2006 issue of the Newsletter, indicating that PERB had been authorized to issue punitive damages against perpetrators of improper practices. The summary was in error. Your editor was viewing the text of the bill using a legislative web site where a bill's deletion of statutory text is

surrounded by brackets. The current statutory language which prohibits PERB from issuing exemplary damages is surrounded by parentheses which, on the web site, appeared as bracketed text (at least to your editor). The Chapter instead was an amendment to Chapter 761 of the Laws of 2005, which authorized PERB to issue "make whole" relief to employees in the event it were to find that a public employer had failed to bargain in good faith. Chapter 83 prohibits the Board from ordering such relief if a union were also found to have bargained in bad faith.

On these dates, the Governor vetoed these bills:

- S. 6784, which would have prohibited municipalities from entering into a contract with a private provider of fire protection. August 16, Veto No. 300;
- S. 7503-A, which would have made discipline and disciplinary procedures, including alternatives to any statutory disciplinary process, a mandatory subject of negotiation and would have made the terms of any current or expired labor agreement or compulsory arbitration award relating to discipline valid and enforceable. Would have overturned a March 2006 decision of the Court of Appeals, holding that a demand to modify discipline provisions for certain public employees, mostly police officers, that might be found in a municipal charter or a special State statute was a prohibited subject of bargaining and if an alternative had been negotiated, it was null and void. August 16, Veto No. 309;
- A. 5397 which would have eliminated the immediate and irreparable injury standard needed to be proved by a union petitioning PERB to have it seek injunctive relief in court in conjunction with an alleged improper practice and for a court to decide whether to issue an injunction and instead substitute a need for the petitioning union to demonstrate that the maintenance of, or return to, the status quo is necessary, a change which would trivialize the extraordinary judicial remedy of injunctive relief. There is probably no state in the country which utilizes the injunctive relief standard contained in this bill. July 26, Veto No. 252;
- A. 8074, which would have amended §75 of the Civil Service Law to entitle any employee in the labor class to the statutory discipline procedure, provided the employee completed at least 5 years of service in the labor title. Since practically all of these employees are represented by unions, the bill is a total circumvention of the collective negotiation process imposed by the Taylor Law. July 26, Veto No. 258;
- A. 10694-A, which would have required municipalities having paid firefighters to purchase safety ropes and train the users. Another example of the State Legislature knowing better than the federal and State agencies having the authority to adopt worker safety standards. July 5, Veto No. 224;
- S. 8244, which would have eliminated the restrictions on the types of demands that a union representing deputy sheriffs involved in criminal law enforcement activities could pursue before a compulsory arbitration panel and allowed almost all mandatory subjects of negotiation to be pursued before such a panel, similar to what exists for municipal police officers. Among the reasons cited in support of the legislation by the bill sponsors is that "it is only fair". August 16, Veto No. 316;
- A. 11674, which would have provided that in the event a successor labor agreement is not reached prior to the expiration of a current agreement, and in the event there are no petitions for certification or decertification filed within 30 days following the expiration of the agreement, the period of unchallenged representation status for the incumbent union would have been extended for 1 year from the date the agreement expired. In the event no petition for certification or decertification were to be filed within 30 days after that 1 year extension, PERB would be barred from accepting any such petition until a new agreement is reached. August 16, Veto No. 354;

- A. 11805, which would have provided any member of the Employees' Retirement System. other than a Tier 1 member, with a right to retire without a penalty if the member was at least 55 years old and had at least 25 full years of service. A $20 to 25 million dollar hit to the System, to be paid by the State and municipal employers. July 19. Veto No. 226;
- S. 3178, which would have permitted a union filing an improper practice charge alleging a refusal to negotiate in good faith to obtain a determination by the Public Employment Relations Board within 10 days of the filing and, 1) if the Board were to find that an improper practice occurred and the negotiated agreement between the parties has expired, it would have been required to order that the employer immediately increase the salaries of all unit members by 1%, to begin within 30 days of the Board's finding and 2) if the employer were to attempt to use the cost of the 1% penalty as an offset in its efforts to negotiate a successor agreement, an additional failure to bargain in good faith would have been required to have been found and another 0.5% pay increase imposed as a penalty. August 16, Veto No. 292;
- S. 4508, which would have made it an improper practice for a public employer to refuse or to fail to allow any public employee upon his or her demand representation by an attorney or by a union rep when. during questioning by supervisors, it might appear to the employee that he or she may be the subject of a potential disciplinary action. July 26, Veto No. 278;
- S. 7842, which would have changed the standard of proof for a union seeking to have PERB petition a court for injunctive relief to halt an alleged improper practice from the current requirement that immediate and irreparable injury be shown to exist, to a giveaway whereby a union need only demonstrate that injunctive relief is necessary. August 16, Veto No. 313; and
- S. 7903, which would have amended §75 of the Civil Service Law to prohibit the termination of any employee whose discipline is subject to the procedure set forth in §75 unless the disciplinary hearing were to be conducted by an independent hearing officer. July 26, Veto No. 285.

Voting records in either house on any bill and a bill's text can be obtained from either the NYS Senate or the NYS Assembly web site. Most of the bills remaining to be sent to the Governor will be transmitted in early September.

PERB DECISIONS

These decisions have been issued by either the Public Employment Relations Board 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. 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. Email your editor, John Galligan, at galli14@earthlink.net for a copy of any decision summarized.

- in the adjudication of a charge alleging a unilateral transfer of exclusive bargaining unit work, the initial essential questions of whether the work had been performed by unit employees exclusively and whether the work transferred was substantially the same as that previously performed by unit employees. If both questions are answered affirmatively, there has been a violation of the duty to negotiate in good faith, unless job qualifications have changed significantly. Absent such a change, the loss of unit work is sufficient to find a good faith violation. February 3 Board decision in Honeoye CSD;

- time off from work is a mandatory subject of negotiation, unlike a decision regarding the number of employees who could be off from work at any given time. November 1 ALJ decision in NYS Department of Correctional Services;
- a unilateral transfer of exclusive bargaining unit work is a mandatory subject of negotiations unless the qualifications for the job have substantially changed. December 13 ALJ decision in Erie County;
- the Board has repeatedly found that a community college, either a regionally sponsored one or a county sponsored one is a public employer. The Board has held that a county sponsored community college is a separate legal entity and a joint employer with the sponsoring county of the employees who worked for the college because control over the terms and conditions of employment of those employees they shared. December 19 Board decision in Erie County;
- in charges alleging a unilateral transfer of exclusive bargaining unit work, there is often a focus on the occasional performance of unit work by non unit individuals. For the purpose of defining the performance of bargaining unit work which would not destroy exclusivity, occasional has come to mean limited in time and scope when compared to the manner in which unit employees perform unit work. Where a supervisor who is not a unit member has a job description which contains many of the same duties as the employees in the bargaining unit and who performs those duties on a regular basis, maybe with less regularity than unit employees, there is no exclusivity. February 3 Board decision in Honeoye CSD; and
- when a benefit is granted under a stated condition or under an express reservation of rights, a modification or elimination of the benefit in accordance with the stated condition or the retained right is not an improper practice. December 19 Board decision in Nassau County.