



REPORT CO-AUTHORED BY BOARD MEMBER TERRY O'NEIL CASTS THE TAYLOR LAW AS KEY FACTOR IN NEW YORK'S NATIONAL LEAD IN STATE AND LOCAL TAXES

A report released in mid-October by the Empire Center for New York State Policy found that New York's taxpayers have paid a steep price for labor peace under the Taylor Law. Taylor Made: The Cost and Consequences of New York's Public-Sector Labor Laws, co-authored by Center Director E. J. McMahon and NYSPELRA Board member Terry O'Neil, noted that personnel costs account for more than 70% of public employer operating expenses, that New York's government workforce is 14% larger than the national average, and that union density among New York's public employees is practically double the national average. The report noted that the State Legislature has been receptive to union proposals in recent years and recommended that the public interest instead be prioritized. Among the reports recommendations were that 1) "ability to pay" be a priority in law enforcement/firefighter compulsory arbitration proceedings; 2) the Triborough Amendment be modified or repealed; and 3) treatment of scope of bargaining cases by the Public Employment Relations Board should be modified and that past practices should not be binding unless authorized by the public employer's CEO. Use empirecenter.org/html/2007/10/TaylorPortal.cfm for more details.

DEPARTMENT OF LABOR TO REVISE DRAFT WORKPLACE VIOLENCE RULES

As a result of a meeting in November between certain employer representatives and staff from the NYS Department of Labor, chaired by an assistant counsel to the Governor, the Department agreed to revisit its draft rules issued earlier this year to implement the State's workplace violence prevention law. The contention from the employer representatives was that the draft rules were overly broad, incorporating concepts, which extended far beyond the law. One concern was the fact that employer requirements under the regs would involve parties that would have to be made aware of violence prevention plans in advance of an incident, something which would arguably compromise security. Another concern of employer representatives was the proposed definition of workplace violence, which included verbal abuse. The statute repeatedly mentions occupational assaults and homicides. Stay tuned!

PERB DECISIONS

These decisions have been issued by 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 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 followed. Email your editor at galli14@earthlink.net for a copy of any decision summarized. Use the PERB web site (www.perb.state.ny.us) where summaries of recent decisions appear and the agency's forms can be downloaded.

- a generalized demand seeking to continue any generalized benefit previously enjoyed by members of a bargaining unit is a nonmandatory subject of negotiations. Over the objection of a public employer, it is an improper practice for a union to attempt to pursue such a demand before a compulsory arbitration panel. April 5 ALJ decision in Town of New Castle, 40 PERB ¶4517;

- in the past, the Board has held that a party to negotiations has the authority to amend an existing demand 1) after the filing of an improper practice charge challenging the negotiability of the demand, 2) during a pre-hearing conference, or 3) in the submission of a brief subsequent to the close of the record regarding the negotiability of the demand. Consequently, changing a demand prior to the close of the record with respect to a scope of negotiations case is not unkindly. There is a distinction between a new demand and one which seeks to clarify an existing demand, but does not substantially alter a pre-existing demand. A demand can be amended to convert a nonmandatory subject into a mandatory subject if the demand as amended clarifies the original proposal and does not change its substance so as to constitute a new demand. April 5 ALJ decision in Town of New Castle, 40 PERB ¶4517;
- health insurance is a mandatory subject of negotiation. April 5 ALJ decision in Town of New Castle, 40 PERB ¶4517;
- splitting full-time positions into part-time ones affects wages and hours of work and is consequently a mandatory subject of negotiation. However, the negotiability of such an action depends on whether the full-time and part-time duties are the same or substantially similar. Otherwise, the action by the employer is simply the elimination of one position and the creation of another, both of which constitute nonmandatory managerial prerogatives. April 5 ALJ decision in Columbia County, 40 PERB ¶4518;
- certain law enforcement bargaining units are subject to Taylor Law limitations on the types of demands that may be pursued before a compulsory arbitration panel. A demand must be directly related to compensation in order to be considered by a compulsory arbitration panel. In a prior decision, the Board held that a demand has compensation as its sole, predominant, or primary characteristic only when it seeks to effect some change in the amount or level of compensation by either a payment from the employer to or on behalf of an employee or a modification of an employee's financial obligation arising from employment, such as a change in an insurance co-pay. A demand relating to potential compensation, such as one calling for the payment of unused paid leave at a future date, is not directly related to compensation and cannot be pursued before an arbitration panel where a bargaining unit is restricted with respect to the nature of demands which are subject to arbitration. A similar result occurs with respect to a demand for payment for unused holiday leave and a demand seeking to convert unused paid leave to cash or to be banked in a health insurance retirement account. The main characteristic of these demands is an increase in time accrued. December 14 Board decision in Sullivan County, 39 PERB ¶3034;
- In a discussion with a union representative over the possible discontinuation of a past practice, during which an employer representative provided no definitive response, will not serve as a timeliness defense in an improper practice charge alleging a failure to bargain over an actual change in the practice. August 29 Board decision in City of Kingston, 40 PERB ¶3015;
- where a contract defines the term "continuous period of employment" as an employee on the payroll of the employer as a provisional, probationary, or permanent employee throughout the period covered, the fact that an employee was receiving monetary disability benefits under General Municipal Law, §207-c does not affect the individual's status as an employee on the payroll of the employer. April 5 ALJ decision in Sullivan County, 40 PERB ¶4519;
- an improper practice charge will not be deferred to arbitration when the underlying labor contract is silent with respect to the issue. April 9 ALJ decision in City of Kingston, 40 PERB ¶4520;
- payment for veterinary care and food for out-of-service police dogs living with a police officer is a mandatory subject of negotiation, since the assumption of those costs by an

employer represents an economic benefit to the officer. August 29 Board decision in City of Kingston, 40 PERB ¶3015;

- a past practice is established where the practice was unequivocal and was continued on uninterrupted basis for an extended period of time so as to create a reasonable expectation among affected bargaining unit members so as to create a reasonable expectation that the practice would continue. No additional proof is necessary on the part of a union. August 29 Board decision in City of Kingston, 40 PERB ¶3015; and
- the method by which unit employees repay money and/or benefits owed to the employer is a mandatory subject of negotiation. April 5 ALJ decision in Sullivan County, 40 PERB ¶4519. Editor's note: an appellate court case involving Westchester County upheld a unilateral employer adjustment of an overpayment of General Municipal Law, §207-c disability benefits.