



NYSPELRA Newsletter: September 2007

LEGISLATIVE UPDATE

The Governor has acted on these bills which were recently sent to him. The text of any bill signed into law, approval and veto messages are available on the NYS Senate web site. Click on "Bills and Laws" and then click on either "Chapters" or "Vetoes".

- S. 2776, which would have created a presumption that a member of the Employees' Retirement System who became disabled by HIV would have been presumed to have incurred the disease in the course of employment and be eligible for a special disability pension benefit estimated to be approximately quadruple the member's salary. Veto No. 108;
- A. 5963-A, which increases from 30 to 32 the maximum years of service allowable for all Tier 2 members of the Police and Fire Retirement System and all Tier 2 investigators in the New York City Employees' Retirement System. The estimated increase in pension costs for municipalities is approximately \$13 million. Chapter 625, effective August 8, 2007. Editor's note: So much for the Governor's publicly professed opposition to new mandates on local governments. These workers in the Police and Fire Retirement System account for nearly 98% of the System's membership. Earlier versions of this bill had been vetoed several times in recent years. According to the bill's sponsors, this bill is justified by the fact that New York City Tier 2 police and firefighters have no maximum service credit, a result of a 2001 law. A bill to match the City's no service credit cap would cost well in excess of \$100 million, so this pension benefit is being addressed by legislative incrementalism. Watch for another gradual extender to be introduced and likely signed next year. Unfortunately, the Governor failed to recognize that prior mandates should not be extended and that the jobs of police and firefighters in the City of New York are arguably unlike those of their counterparts anywhere else in the State.
- S. 2307-A, which requires municipalities to provide firefighters with specialized safety ropes and training. While the law states that this must be done for all firefighters, it would seem that a municipality would be in compliance if the ropes and training were provided for all interior structural firefighters. The law does not apply to the City of New York. Chapter 433, effective September 30, 2007.

PERB RULE CHANGES RECOMMENDED BY BOARD MEMBERS

In an August 28 meeting with Jerome Lefkowitz, the Chair of the Public Employment Relations Board, NYSPELRA President John Corcoran, President-Elect Terry O'Neil, and Board member Elayne Gold offered several recommendations on behalf of the Association for changes to the rules of the agency. These were included:

Section 200.10 – Filing; service. Add language to permit electronic filing. Add language to require a party, or PERB where applicable, to also make service of papers on another party's attorney or representative, when known.

Section 201.6 – Publication. Streamline publication requirements. Add a requirement that a union requesting voluntary recognition must make at least a demonstrable showing of majority support to the employer as a condition for voluntary recognition.

Section 201.9(g)(1) – Investigation and elections. Certification without an election should either be unavailable or at least require that a super majority (e.g., 75%) of those in a bargaining unit determined to be appropriate must demonstrate support for the petitioning union.

Section 204.15 – Application for injunctive relief. The standard for injunctive relief, i.e., immediate, irreparable harm, should not be changed.

Section 204.16(a) – Response to an application for injunctive relief. Change the response time from 5 days to 7 days.

Sections 205.4, 205.5 – Compulsory interest arbitration; response. Require PERB to additionally serve a copy of a petition for compulsory arbitration upon the other party to the impasse, along with a statement of the date upon which the response to the petition must be filed.

Sections 205.4(b), 205.7(a) – Compulsory interest arbitration; petition and selection of panel. Add a requirement that petitioner identify in its petition its appointee to the arbitration panel.

Section 205.7(b) – Selection of the compulsory interest arbitration panel. Change “. . . a representative of the Board will be present during the name striking process” to “ a representative of the Board will be available either in-person or telephonically” during the name striking process.

Section 205.9 – Determination and award. Add a requirement that the determination and award must be issued within 60 days of the close of the interest arbitration hearing. Preclude the issuance of “executive summaries” of the determination and award.

Section 205.13 – Assignment of mediator. Either increase the State-paid mediator’s per diem or clarify that the parties may mutually agree to supplement same.

Section 207.2 – Panel of arbitrators. Add a requirement that the arbitrators must be members in good standing of the panels maintained by either the American Arbitration Association or the Federal Mediation and Conciliation Service.

Section 207.7(a) - Selection process. Amend to permit the striking of all but one name on the panel list. Retain the right to request one additional list if no names are acceptable.

Section 211.3(c) - Request for subpoena. Add a requirement that a party applying for a subpoena duces tecum must first have sought voluntary production of the books, papers, documents or other objects to be produced.

Sections 213.2, 213.3 – Exceptions and cross-exceptions. Amend such that the time period for filing exceptions shall be 20 working days, rather than 15 working days, and that the time period for filing cross-exceptions shall be 10 working days, rather than 7 working days.

Other suggestions offered included: 1) amend the rules to permit the filing of countercharges or cross-charges to improper practice charges; 2) maintain the current standard such that there shall no be interlocutory appeals to the Board except when expressly authorized by the Board; 3) if the Board decides to permit it to raise issues sua sponte, such shall only be done upon notice to the parties, combined with an opportunity by the parties to brief the issues; and 4) consider amending the rules to expand upon motion practice or to bifurcate hearings when timeliness is at issue.

DRAFT FIREFIGHTER SAFETY ROPE REGULATIONS ISSUED

The NYS Department of Labor has issued draft regulations for the law which takes effect September 30. The draft proposes rules to be codified at 12 NYCRR Part 800.17, accessible on the Department's website. Search for "nys dol". The draft requires municipalities to 1) develop a written hazard assessment of workplaces; 2) provide instruction and annual training to all firefighters; 3) certify the training of each firefighter; and 4) develop a written schedule for inspections.

The rules repeat the wording of the statute and require that safety ropes be purchased for each firefighter and that all be trained. Obviously, there are individuals in any fire department who are not interior structural firefighters and who never perform such work. Purchasing safety ropes for them and providing training would serve no purpose.