



NYSPELRA Newsletter: March 2005

BILLS TO LIMIT SCOPE OF §207-c BENEFITS INTRODUCED

Those employed by a municipality with law enforcement personnel are fully aware of the lucrative benefits available under §207-c of the General Municipal Law, should an injury or illness occur as the result of performing law enforcement duties and should the individual be unable to work as a result. In such a situation, the statute requires a continuation of the full amount of regular salary or wages and coverage for all necessary medical treatment of the disability. For both federal and State purposes, the monetary indemnity payment is not subject to income tax withholding. In 2003, the Court of Appeals relaxed the standard by which eligibility determinations are to be made by requiring that benefits be granted whenever a disabling injury might occur while performing any law enforcement duties.

To their credit, State legislators have introduced bills to limit the scope of entitlement to benefits under this law to injuries incurred while performing hazardous law enforcement duties. A. 2120 has been introduced by Assembly members Kevin Cahill and Barbara Lifton and referred to the Governmental Employees Committee. The companion bill is S. 2987 which has been introduced by Senator Patricia McGee and referred to the Senate Local Government Committee.

Those who are affected by these bills should encourage their elected officials to contact, preferably in writing or by e-mail, the bill sponsors in each house, your 2 legislators, the committee chairs, and the leaders in each house to support and encourage passage of these bills. Use a search engine for "nys assembly" or "nys senate" to obtain mailing or e-mail addresses for the appropriate individuals.

In addition, on behalf of unions representing law enforcement personnel employed by either State agencies or public authorities, several bills have been introduced that would either extend §207-c benefits to those individuals by amending the law or creating a new section of law which amounts to the substantive equivalent. Those employed by these employers should review whether bills have been introduced with respect to this issue. Such a bill is totally inappropriate since the question of what benefits should be available to an individual who might be disabled in the performance of work duties is a mandatory subject of negotiation.

RECENT COURT DECISIONS IMPACT PUBLIC EMPLOYERS

Depending upon labor relations responsibilities, these decisions may well lead to a change in your operating procedures:

- a bargaining demand which provides that a firefighter who is dissatisfied with his or her employer's determination as to eligibility for §207-a benefits may file for binding arbitration as to whether he or she is entitled to benefits is a nonmandatory subject of negotiation. *Poughkeepsie Firefighters v. PERB*, 2004 WL 3222887 (3rd Dept. 2005);
- should a public employee fail to maintain a bona fide employment qualification, he or she lacks a mandatory prerequisite to maintain employment and can be terminated. The loss of the qualification is not misconduct and a pre-termination disciplinary proceeding is not

- required. However, the employee is entitled to an opportunity to be heard to refute the conclusion that an employment qualification is no longer satisfied. *Felix v. New York City Department of Citywide Administrative Services*, 3 NY3d 498, 788 NYS2d 631 (2004);
- the fact that it might be necessary to pay a replacement overtime when an employee seeks to use compensatory time is not an "undue disruption" under the federal Fair Labor Standards Act so as to allow the employer to deny comp time use. *Beck v. City of Cleveland*, 390 F3d 912 (CA 6 2004)
 - for a public employer with a policy which provides that 1) employees have no personal right of privacy with respect to usage of work computers and 2) the employer has the right to access its computers to audit usage, its employees have no legitimate expectation of privacy as to the use and contents of an office computer. The 4th Amendment prohibition against unreasonable searches by government does not arise. A search by a public employer of an employee's office space is justified at inception when there are reasonable grounds for suspecting that the search will turn up evidence that the employee he is guilty of work-related misconduct. *United States v. Thorn*, 375 F3d 679 (CA 8 2004);
 - the individual or body having the power to appoint for a particular position also has the exclusive authority to initiate disciplinary charges. In villages other than charter villages, it is the mayor who has the power of appointment for practically all employees and non-elected officers. As a result, the mayor has the exclusive authority to designate a hearing officer and bring disciplinary charges. Such decisions are not subject to approval by the village board. *Correia v. Village of Northport*, 12 AD3d 599, 785 NYS2d 483 (2nd Dept. 2004); and
 - the individual or body having the authority to bring disciplinary charges against a public employee and who does so cannot also testify in the disciplinary proceeding and then also review the recommendations of the disciplinary hearing officer to determine the individual's guilt or innocence and, if guilty, the appropriate penalty. Instead, the appointing authority must designate an unbiased individual to review the recommendation of the hearing officer and render a final determination. *Correia*, cited above;

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. Check the PERB web site www.perb.state.ny.us where summaries of decisions issued since 1986 can be obtained and forms can be downloaded.

- a demand that seeks to modify existing law is a mandatory subject of negotiation. November 9 Board decision in City of New York;
- the purpose of PERB's declaratory ruling proceeding is to provide a less adversarial means than an improper practice proceeding for resolving an existing justiciable issue between parties in 2 areas: whether an employee, an employer, or a union is covered by the Taylor Law or whether a matter is a mandatory subject of negotiations. As to the latter subject, a petition must be filed in accordance with §205.6 of the Board's rules. November 9 Board decision in City of New York;
- a demand that interest be paid at what may seem to be an exorbitant rate from the effective date of any monetary benefit until payment is made is a mandatory subject. November 9 Board decision in City of New York;

- a change in employee tours of duty which do not interfere with an employer's right to determine its staffing needs is a mandatory subject of negotiation. A demand calling for the establishment of a joint labor-management committee to resolve the details of a change in tours is also a mandatory subject. A demand that savings that might be realized from a change in tours be shared equally by bargaining unit members in effect involves compensation and is a mandatory subject of negotiation. November 9 Board decision in City of New York; and
- if each subject of a compulsory arbitration award constitutes a term and condition of employment, a union's demand to include those subjects in a successor labor agreement is a mandatory subject of negotiation. November 9 Board decision in City of New York.

IT'S NOT TOO LATE FOR THE ANNUAL CONFERENCE

It is still possible to register for the NPELRA Annual Conference in Fort Lauderdale, April 10-14 at the Hyatt Regency Pier Sixty-Six. Once again, an excellent program is being offered. Register on line at www.npelra.org or call 800/296-2230. The hotel has extended the room reservation deadline.