



## **NYSPELRA Newsletter: August 2008**

### **NYSPELRA OFFICERS ELECTED FOR 2008-2009**

At the 34th Annual Training Conference held in Saratoga Springs July 23-25, attended by approximately 140 individuals, members in attendance elected these individuals as your officers for the coming year:

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

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

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

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

Vice-President, Region 1: Lisa Baisley; Personnel Officer, Town of Huntington

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

Vice-President, Region 3: John Talerico; Director of Labor Relations for Oneida County

Vice-President, Region 4: Kelly Gale Eisenried; Asst. Legal Counsel; Buffalo City School District

Board members at large:

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

William L. Holcomb; labor consultant; Tonawanda

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

Victor Pacheco; Civil Service Commission Secretary; Yonkers

The recipient of the William L. Holcomb award for Public Service in Labor Relations was Paul Hutchins. 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.

### **PERB DECISIONS**

The following 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 John Galligan at [galli14@earthlink.net](mailto:galli14@earthlink.net) for a copy of any

decision summarized. Use the PERB web site ([www.perb.state.ny.us](http://www.perb.state.ny.us)) where summaries of recent decisions appear and the agency's forms can be downloaded.

- contractual language permitting an employer to contract with independent contractors for any work for which it had inadequate labor to perform amounted to a clear and unmistakable waiver of a union's right to bargain the decision. September 25, 2007 ALJ decision in Mattituck-Cutchogue UFSD, 40 PERB ¶4577;
- a unilateral reduction in wages to adjust for time when work duties were not performed with is an improper practice where the employer has had a 26-year uninterrupted practice of not making such an adjustment. May 20 Board decision in Fashion Institute of Technology, 41 PERB ¶3010;
- a union's wage demand which might lack a dollar value is still a mandatory subject of negotiation. September 25, 2007 ALJ decision in City of Hudson, 40 PERB ¶4579;
- a public employer has no right to discovery in an improper practice proceeding. September 28, 2007 ALJ decision in Nassau County, 40 PERB ¶4581;
- when a union seeks information to investigate the merits of a contractual grievance, a public employer is guilty of a failure to bargain charge when it refuses to provide the requested information and documents in connection with the termination of a probationer. May 20 Board decision in Hampton Bays UFSD, 41 PERB ¶3008;
- an employer has no duty to bargain over the assignment of an employee to perform his or her work duties at another employer work location. Such an action does not alter the employer-employee relationship. November 5 Board decision in Manhattan and Bronx Surface Transit Operating Authority, 40 PERB ¶3023;
- where evidence indicates that unrepresented titles shared a community of interest with bargaining unit members in terms of wages and benefits, a unit placement petition to add the titles to the bargaining unit will be granted, provided the titles are not managerial or confidential. November 26 ALJ decision in Batavia CSD, 40 PERB ¶4014;
- a bargaining unit member cannot file an improper practice charge alleging that a public employer failed to continue the terms of an expired labor agreement. November 5 ALJ decision in Staten Island Rapid Transit Operating Authority, 40 PERB ¶4593;
- a public employer is guilty of an improper practice in refusing to provide the union representing its workers with requested information to allow it to defend a bargaining unit member involved in a disciplinary proceeding, regardless of whether the proceeding was initiated by the filing of charges or by the filing of a grievance. May 20 Board decision in NYS Unified Court System, 41 PERB ¶3009;
- a unilaterally adopted policy prohibiting outside employment for bargaining unit employees is an improper practice. November 8 ALJ decision in NYS Unified Court System, 40 PERB ¶4597;
- the fact that a former employee might appear on the bargaining team to negotiate against his former employer does not on its face constitute an improper practice. November 7 ALJ decision in Finger Lakes Community College, 40 PERB ¶4596;

- where a statute commits police discipline to municipal officials, a union proposal to establish guidelines for conducting interrogations during official investigations that may lead to disciplinary charges constitutes a prohibited subject of bargaining, in light of a 2006 Court of Appeals decision in *City of New York v. PERB*, 6 NY3d 563. December 14 Board decision in Village of Tarrytown;
- there is no violation of the obligation to bargain by submitting a proposal involving a mandatory subject of negotiation in mediation, despite the fact that the proposal may not have been discussed during pre-impasse negotiations. December 18 ALJ decision in *City of Albany*, 40 PERB ¶4605;
- a public employer has the unilateral right to determine the number of employees that are required to be available at any time. Consequently, an employer proposal which would set conditions on when accrued leave could be used constitutes a nonmandatory subject of negotiation. December 18 ALJ decision in *City of Albany*, 40 PERB ¶4605;