NYSPELRA Newsletter: October 2005

LEGISLATIVE UPDATE

The Governor has vetoed these bills recently delivered to him. Details regarding a bill and voting records can be obtained by using a search engine for either "nys assembly" or "nys senate" and entering the bill number. All of the bills reported here were probably unanimously passed, as have been several others that were vetoed. The Governor, to his credit, has vetoed several, including these. The question to your State legislators is: what were you thinking?

• S. 4737-B, which would have permitted any municipal employee who repairs vehicles or who works with vehicular equipment to reside in the county next to the county in which he or she is employed. Another example of an attempt to micromanage municipalities. Should municipalities be having a problem hiring vehicle repairers or vehicle equipment workers as the result of a locally adopted residency requirement, the fix is simple: amend what was adopted to create an exception. Veto 106;

• S. 4949, which would have required municipalities with fire departments to provide firefighters with safety ropes and harnesses and also provide training. Although both a federal and a State agency have the authority to adopt safety standards for municipal workers, your legislators know better. Veto 111; and

• S. 5410, which would have required those companies that are awarded a contract to fabricate materials to be used on a public works project to pay their employees prevailing wages. Would arguably include the workers in Idaho and, should the arrangement be that out-of-state workers are not included. would have created an incentive to contract with out-of-state companies for fabrication work. Veto 113.

ACCOUNTING FOR TERMINATION BENEFITS IS ABOUT TO VISIT YOU

The Governmental Accounting Standards Board has issued a new accounting standard which will require public employers to value termination benefits provided to departing employees. Any annual financial statement prepared after June 15, 2005 must comply with Statement No. 47. Termination benefits include early retirement incentives and any benefits provided as the result of a separation from service, whether voluntary or involuntary. Included would be any severance payments to be made or promised to be made. The Statement can be obtained at www.gasb.org which is the Board's web site.

PERB DECISIONS

The following are summaries of decisions which 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. E-mail your editor, John Galligan, at galli14@earthlink.net for a copy of any decision summarized. 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.

• in its attempt to defend bargaining unit members in a disciplinary proceeding, a union making a demand for documents forming the basis of the charge is entitled to receive a copy of any internal investigative report which may have led to disciplinary charges. Once an investigative report is handed over to employee relations personnel for use in pursuing disciplinary charges, the investigative file ceased to be such and it became a disciplinary investigation file subject to disclosure upon demand. March 17 ALJ decision in NYS Office of Mental Retardation and Developmental Disabilities and May 4 Assistant Counsel decision in Town of Orangetown;

• an assertion of a likely adverse impact upon a bargaining unit, should a public discussion of an employer's work assignment occur, is an improper practice. March 22 ALJ decision in Uniondale UFSD;

• absent proof of a compelling need, an employer may not unilaterally change the length of the workday. March 22 ALJ decision in Uniondale UFSD;

• an employee's use of a contractual grievance procedure is an activity that is protected under the Taylor Law. When an adverse action is taken against a bargaining unit member who has used the grievance procedure and the union representing the individual files an improper practice charge contesting the employer's conduct, the only question to be resolved by the Public Employment Relations Board or its staff is whether the employer conduct would not have occurred but for the employee's grievance. March 22 ALJ decision in NYS Dormitory Authority;

• a demand addressing health insurance for employees who have already retired is a nonmandatory subject. March 29 Director of Public Employment Practices and Representation decision in Regional Transit Service;

• that an employee may have access to personnel records will not lead to a PERB designation that the individual is a confidential employee. Such an employee must assist and act in a confidential capacity to an employee determined to be managerial. April 18 ALJ decision in Village of Suffern;

• for years, the Board has held that changes in employment conditions after a bona fide representation question has been raised is a per se violation of the Taylor Law. Such a question for unrepresented employees arises when a demand for recognition is received. That changes in employment conditions may have been under consideration before a representation question arose does not permit a municipality to implement the changes after receiving a demand for recognition. April 18 ALJ decision in Village of Suffern;

• a unit clarification petition raises only a factual question as to whether the at-issue employees are already included in a bargaining unit. Where the language of the recognition clause is not title specific, the inquiry extends beyond the language to determine whether any other contractual language either covers or specifically excludes an at-issue title. Should there be no other relevant language, the practice of the parties with respect to the title or similar titles will be reviewed to determine the intent of the parties. April 27 Board decision in City of Jamestown;

• a unit placement petition is a mini-representation proceeding, leading to a nonadversarial investigation and the application of the statutory uniting criteria of §207(1) of the Taylor Law to the facts which are found through the investigation. April 27 Board decision in City of Jamestown;

• direct dealing involves an employer's impermissible circumvention of the exclusive bargaining agent. Proof of such improper activity focuses on whether the employer discussed some issue(s)

with an employee or a group of employees with the intention of reaching an agreement on the matter discussed. Direct dealing is inherently destructive of both a union's representation rights and the rights of employees represented. A per se violation. April 27 Board decision in City University of New York;

• an employer's duty to bargain lies with the union or unions representing its employees. Consequently, an improper practice charge alleging a failure to negotiate in good faith, filed by an employee, will not be adjudicated. Also, an individual lacks standing to allege that an employer failed to continue all the terms and conditions of an expired agreement until a new agreement was negotiated. April 27 Board decision in NYC Board of Education;

• with respect to a petition seeking to have the Board seek injunctive relief in court regarding an improper practice charge, the petitioner must demonstrate that there is both reasonable cause to believe an improper practice occurred and that immediate and irreparable injury, loss, or damage will result, such that a return to the status quo is required in order to provide meaningful relief. The Board has delegated this responsibility to its Counsel to make these determinations on its behalf. May 2 decision of the Deputy Chair and Counsel in City of Norwich;

• for more than 30 years, the Board has required an employer to provide a union with information necessary for its investigation of a grievance. The same obligation applies to its representation of a unit member in a disciplinary proceeding. The obligation is limited by a rule of reasonableness, including the burden on the employer to provide the information, the availability of information elsewhere, its necessity, and its relevance. The information need not be supplied in the form requested, as long as it satisfies a demonstrated need. May 4 Assistant Counsel decision in Town of Orangetown; and

• when an improper practice charge has been filed alleging a refusal to provide needed information to investigate an employee's grievance or disciplinary charges, its timeliness is judged not by when the first request was made, but instead by when the last request was made. May 4 Assistant Counsel decision in Town of Orangetown.