



**LEGISLATIVE UPDATE**

The Governor has acted on these bills that were recently delivered to him:

- S. 6476, Chapter 83, to allow the Public Employment Relations Board to impose punitive damages as part of its remedial authority over improper practices. The law has a retroactive effective date of December 20, 2005.
- S. 6441, Chapter 82, adding §27-b to the Labor Law to require all public employers to evaluate all workplaces to determine the presence of factors or situations which might place employees at risk for occupational assaults and homicides. Upon assignment, employees must be informed of what the law requires, of the existence of workplace risk factors, and the location and availability of your written workplace violence prevention program, something which is required if the employer has 20 or more full-time permanent employees. Training must be provided on the risks of workplace violence on an annual basis. An employee or a union representative who believes that a serious violation of a workplace violence protection program exists or that an imminent danger exists must bring the matter to the attention of a supervisor in writing and afford the employer a reasonable opportunity to correct the activity, policy, or practice; provided, however, such notice need not be given if the employee reasonably believes that corrective action would not be taken. An employee or union representative may request an inspection by the NYS Department of Labor and can walk around with the inspector. Employers are prohibited from retaliating against an employee who either notifies a supervisor or who requests an inspection. Retaliation includes discrimination against any employee, meaning that any walk around will eventually be determined to be a paid one. The law requires public employers with at least 20 permanent full-time employees to develop and implement a written workplace violence protection program. The law will take effect in March 2007, if a Chapter amendment is signed into law.

The new law is a colossal administrative mandate upon public employers and ignores the fact that whether a workplace violence standard should exist is a matter which should have been left to the expertise of either a federal or a State agency having the authority to issue such a standard, namely OSHA and the NYS Department of Labor. The enactment further ignores the fact that, given the overwhelming percentage of unionization among public sector workers in this State, worker safety is a mandatory subject of negotiation. It is difficult to imagine supervisors or elected officials ignoring a notice from workers or the union representing them that a workplace offered a significant threat for violence. The short answer is that if such a notice was provided, it was not ignored. The most likely occurrence was silence.

Vetoed was S. 6397, which would have prohibited municipalities from reducing retiree health insurance benefits or increasing their share of the premium paid unless the same changes were to be imposed upon the corresponding group of active employees. Veto No. 218.

The following bills have passed both houses of the Legislature and are awaiting delivery to the Governor:

- A. 5397, which would eliminate the immediate and irreparable injury standard needed to be proved by a union that is petitioning PERB to have the agency seek injunctive relief in court in conjunction with an alleged improper practice and instead substitute a need for the petitioning union to demonstrate that the maintenance of, or return to, the status quo is necessary, a change which would trivialize the extraordinary judicial remedy of injunctive relief;
- A. 8074, which would amend §75 of the Civil Service Law to entitle any employee in the labor class to the statutory discipline procedure, provided the employee has completed at least 5 years of service in the labor title;
- A. 11674, which would provide that in the event a successor labor agreement is not reached prior to the expiration of the current agreement, and in the event there are no petitions for certification or decertification filed within 30 days following the expiration of the agreement, the period of unchallenged representation status for the incumbent union shall be extended for 1 year from the date the agreement expired and in the event no petition for certification or decertification is filed within 30 days after that 1 year extension, PERB would be barred from accepting any such petition until a new agreement is reached;
- A. 10694-A, which would require municipalities having paid firefighters to purchase safety ropes and train the users. Another example of the State Legislature knowing better than the federal and State agencies having the authority to adopt worker safety standards. This bill is currently before the Governor and will be acted upon by July 8;
- S. 3043-A, which would permit a member of the Employees' Retirement System (employer cost estimated at \$ 9.1 million) or the Police and Fire Retirement System (employer cost estimated at \$8.5 million) to retire without a penalty provided the individual was at least age 55 and had completed 30 or more years of service;
- S. 3177, which would impose upon a public employer, found guilty of a refusal to negotiate in good faith, a penalty of having the last offer made by the union becoming the agreement between the parties, until changed or modified through negotiations;
- S. 3178, which would permit a union filing an improper practice charge alleging a refusal to negotiate in good faith with a right to obtain a determination by the Public Employment Relations Board within 10 days of the filing and, 1) if the Board finds that an improper practice has occurred and the negotiated agreement between the parties has expired, the Board must order that the employer immediately increase the salaries of all unit members by 1%, to begin within 30 days of the Board's finding and 2) if the employer attempts to use the cost of the 1% penalty as an offset in its efforts to negotiate a successor agreement, an additional failure to bargain in good faith is mandated along with an additional 1% penalty;
- S. 4295, which would prohibit the appointment of any individual to serve on the Public Employment Relations Board unless the individual had been employed in a neutral capacity for at least 3 years prior to the appointment;
- S. 6567, which would increase the maximum service retirement benefit for all Tier 2 police and firefighters from 30 years to 32 years at a cost of \$2.4 million to the State and \$13 million to municipalities;
- S. 7903 which would amend §75 of the Civil Service Law to prohibit the termination of any employee whose discipline is subject to the procedure set forth in §75 unless the disciplinary hearing were to be conducted by an independent hearing officer;
- S. 6854, which would expand the leave of absence allowed under §71 of the Civil Service Law for occupational injuries from 12 months to 18 months;

- S. 7176, which would increase mandatory retirement age from 62 to 65 for practically all municipal police officers and firefighters, an expansion of an unfunded mandate for those municipalities that may have been unable to secure a disability retirement for an individual receiving the full amount of regular salary or wages under §207-a or §207-c;
- S. 4458-D, which would expand a statutory presumption for municipal police officers and firefighters that any impairment of health caused by heart disease is presumed to have been incurred in the performance of work duties if the individual successfully passed the entry level physical exam which did not reveal heart disease, to include a stroke. Since the statute amended is not part of the Retirement and Social Security Law, no fiscal note from the actuary for the Police and Fire Retirement System is required by law and there is no indication of the cost of this amendment to municipal employers;
- S. 6784, which would prohibit municipalities from entering into a contract with a private provider of fire protection;
- S. 6961, which would presume any heart disability incurred by a municipal employee not employed by the City of New York to be a job-related accident (in addition to its currently being presumed to be work-related), in essence making it impossible for the State Comptroller, as administrator of the ERS and the PFRS, to rebut the presumption of an accident. The cost to the State is \$7.6 million, \$8.2 million for municipalities, 0.4% of salary for those counties that have elected the provisions of Article 14-B, and 0.3% of salary for those counties that have elected §607-d provisions for deputies and correction officers;
- S. 7387, which would provide Civil Service Law, §80 bumping rights to those holding positions in the noncompetitive or labor class when positions are abolished or activities are curtailed. An end run around bargaining;
- A. 11805, which would establish a window during 2006 and another one in 2007 when any Tier 2, 3, or 4 member of the Employees' Retirement System who is at least age 55 and has at least 25 years of service could retire without a pension penalty. Estimated to cost employers in the System would be between \$20 and \$25 million. No targeting, just wholesale retirements;
- S. 7503-A, which would make discipline and disciplinary procedures, including alternatives to any statutory disciplinary process, a mandatory subject of negotiation and make any current or expired labor agreement or compulsory arbitration award relating to discipline valid and enforceable. Would overturn a March 2006 decision of the Court of Appeals, holding that discipline provisions for certain public employees, mostly police officers, found in a municipal charter or special State statute are not negotiable and if an alternative has been negotiated, it is null and void;
- S. 7515, which would establish for any member of the Employees' Retirement System who develops HIV and who, prior to being diagnosed with HIV sustained an exposure in the performance of work duties which constituted a significant risk of transmitting or contracting HIV, a presumption that the disability was incurred in the performance of work duties and would provide a pension of 75% of final average salary, less any workers' compensation payments. It is estimated that there could be a per-person one-time cost of as much as four times salary, to be imposed on ERS employers;
- S. 7589, which would permit any Tier 2, 3, or 4 member of the Teachers' Retirement System to retire without benefit reduction, provided the individual had at least 35 years of service;
- S. 1696-B, which would increase the maximum benefit limit for eligible veterans who purchased at a fraction of the true cost military service credit as retirement service credit. It is estimated that the per member cost of this bill would be up to 60% of a member's final average salary;
- S. 7175-B, which would allow up to 10 days of unpaid leave to an employee who works at least 20 or more hours per week and who is the spouse of a member of either the armed

- forces, National Guard, or reserves who has been deployed during a period of war declared by Congress, such time to be available when military leave is granted; and
- S. 7842, which would change the standard of proof for a union seeking to have PERB petition a court for injunctive relief to halt an alleged improper practice from the current requirement that immediate and irreparable injury be shown to exist to a giveaway whereby a union need only demonstrate that injunctive relief is necessary. Similar to another bill which passed both houses which would do the same thing, A. 5397, summarized above.

Should a bill summarized above be of particular concern, those who would be affected by it should assist your chief elected officer in drafting a letter to the Counsel to the Governor, stating the reason(s) for opposition and recommending that the bill be vetoed. Address any such letter to Richard Platkin; Counsel to the Governor; State Capital - Room 225; Albany, NY 12224. To the right of the inside address, identify which bill is being written on and describe the action which is being recommended.

Although the Legislature has adjourned, numerous bills adverse to the interests of public employers have been moved to committees where they could be acted upon, should either house return later in the year, a likely occurrence. Those employed by a municipality or a school district can contact their association in Albany to obtain a copy of the memo that was written in opposition to a bill summarized above. Those who may have the occasion to meet with the perpetrators of the above summarized deeds should pose the question of what were you thinking. Although your editor has not checked voting records on all the above summarized bills, all passed unanimously or with only singular votes in opposition.

Voting records in either house on any bill and the text of any bill can be obtained from either the NYS Senate or the NYS Assembly the web site.