



New York State  
Public Employer Labor Relations Association Inc.

**FALL (November) 2023 Newsletter**

[www.nyspelra.org](http://www.nyspelra.org)

**NYSPELRA Annual Training Conference Roundup**

Thank you to our attendees – for their participation and solid/honest feedback through completion of the evaluations. The Board is already working on the 2024 Conference and your input is invaluable.

While at the Saratoga Conference, the 2023-2024 Board was elected:

- President: Carin Perkins
- President Elect: Mary Scarpine
- Immediate Past President: Chris Putrino
- Secretary Treasurer: Jack Kalinkewicz
  
- Regional VP - Region 1: Terry O'Neil
- Regional VP – Region 2: Elayne G. Gold
- Regional VP – Region 3: John Corcoran
- Regional VP – Region 4: Matt VanVessem
  
- Board Members At-Large: Mike Volforte  
John Mancini  
Amanda Cortese-Kolasz  
Lori Alesio

Congratulations to all!

## **Holcomb Award:**

Since 2003, NYSPELRA has awarded the William C. Holcomb Award for Public Service in Labor Relations. The recipient of the Holcomb Award is a labor relations and/or a human resources professional whose principal and substantive responsibilities are in the field of public sector labor relations.

The Holcomb Award recipient has a record of leadership and an accomplished skill set with long term dedication to public service.

This year's recipient worked in the field of labor relations as a practicing attorney – focusing a career on municipal liability, police and fire disability and retirement claims and engaged in labor negotiations. Currently, this year's recipient serves as an arbitrator, mediator, and hearing officer.

Congratulations to the 2023 Holcomb Award recipient **Mary Lou Conrow**.

## **Notice of Eligibility for Unemployment Benefits**

On September 14, 2023 Governor Hochul signed into law Senate Bill # 4875A/Assembly Bill # A00398-A (Chapter 366, L. 2023). This law requires an employer “to provide a written notice of the right to file for unemployment benefits to any employee whose employment has been terminated or whose scheduled working hours have been reduced.” Appearing in NYS Labor Law Article 18, § 590, the written notice must be provided “at the time of each permanent or indefinite separation from employment, reduction in hours, temporary separation, and any other interruption of continued employment that results in total or partial unemployment.” Article 18, § 512 includes in its definitions of covered employers for purposes of notice of unemployment rights, “The State of New York and other governmental entities.”

## **Negotiations Around Our State**

*City of Rensselaer:* The City of Rensselaer and its police unit recently entered into a successor agreement for a term covering August 1, 2022 through July 31, 2025. Besides having a unique fiscal year, the City of Rensselaer is struggling with its finances, while facing difficult retention and recruitment challenges. With the assistance of a Mediator, the City was able to hold the line on most every economic fringe benefit but agreed to:

- Line up pay: reporting 15 minutes prior to the shift's start time, payment of overtime (not only did the employees embrace the additional compensation here but both the Union and the Chief saw line-up as an important operational tool). The City held the amounts of longevity at current levels while affording wage adjustments of:
  - Retroactive to 8/1/2022: 2.0%
  - Retroactive to 8/1/2023: 2.5%
  - Effective 8/1/2024: 2.5%

Note, this unit also includes police dispatchers and some clerical personnel. All received the same wage adjustment, while dispatchers were also afforded line up pay.

Town of Rotterdam: The Town and its CSEA unit (including highway workers, water and sewer employees, and the Town's clerical staff) had been without a current collective bargaining agreement since the end of 2021. Changes in administration and the time necessary to evaluate economic conditions both within and without the Town contributed to the delay. Ultimately, the parties successfully negotiated a two (2) year collective bargaining agreement, getting the employees up to date with wages and other benefits.

Besides several operational modifications such as paying employees for clothing allowances and health insurance buyouts quarterly instead of yearly, the agreement includes:

- Increase to health insurance buyout and institutions of three levels of payout:
  - Individual at \$3,000.00/year
  - 2 Person at \$4,000.00/year
  - Family at \$5,000.00/year
- Effective 1/1/2024, all current and new hires will contribute 25% toward the cost of the health insurance premium (those now paying less than 25%, including retirees, are grandfathered at their current level)
- Discipline: modify the CBA language so that once a Notice of Discipline is served, the penalty may be imposed subject to arbitrable review.
- Wages: Retro to 1/1/2022: 3.0%  
Retro to 1/1/2023: 3.0%.

Steuben County Interest Arbitration

The County of Steuben and its Sheriff and the Deputies Association had a collective bargaining agreement (CBA) which expired on December 31, 2020. Due to the Covid-19 Pandemic the parties did not begin negotiations for a successor CBA until February of 2022. The parties were able to reach an agreement on many matters. Key economic subjects included an agreed upon (not on base) \$1,500.00 EMT stipend and a \$3,000.00 stipend for those certified as a Paramedic. These stipends are awarded to 55% of the bargaining unit. The parties also agreed to an increase of the employee’s share of contribution toward the health insurance premium (from 15% to 16%).

The only issue brought before the Mediator, and ultimately an Interest Arbitration Panel, was the amount of wages for years 2021 and 2022.

The County had proposed a wage freeze for the 2021 contract year “because of the [economic] uncertainty caused by the Covid-19 Pandemic;” the County also noted that it has and generally engages in pattern bargaining with all of its unions and that the non-union workforce received a wage freeze in 2021 and the CSEA Unit received no wage adjustment but for step movement; and although the Corrections Unit received a 3.0% wage adjustment in 2021 that was only because they were already in the midst of a negotiated contract term. The County sought a “market rate change in 2022.” The Union also sought an adjustment but argued that “unit members had more responsibilities during the Covid-19 Pandemic. They handled complaints and violations about the state-mandated shutdown and masking requirements. Unit members also performed services for the Public Health Department ---” Note, that the County gave all of the unit members three (3) extra weeks of leave for their Covid work. Both the Union and the County proposed salary grids which were presented and discussed at bargaining. The County during bargaining, had initially proposed:

		2022	Grid						
	Trainin g	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
Grade 11	\$45,814	\$47,998	\$49,918	\$51,915	\$53,991	\$58,344	\$63,838	\$66,392	\$69,048
Grage 12		\$71,199							
Grade 13		\$73,350							
Grade 14		\$76,789							

In response to the Union seeking and the County agreeing to EMT/Paramedic stipends, the County during negotiations and prior to an impasse, modified its grid as follows:

		2022	Current Grid					
	Training	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Grade 11	\$45,000	\$46,500	\$48,000	\$49,737	\$52,790	\$56,962	\$61,430	\$67,214
Grade 12		\$70,875						
Grade 13		\$74,369						
Grade 14		\$77,856						

The Union’s Proposal for the wage grid in 2022 was:

		2022	Grid					
	Training	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Deputies	\$40,497.60	\$46,500	\$48,107	\$50,612	\$53,657	\$58,100	\$62,439	\$68,320
Corporal		\$73,000						
Sergeant		\$75,500						
Lieutenant		\$80,000						

[Note: Grade 11: Deputies; Grade 12: Corporal; Grade 13: Sergeant; Grade 14: Lieutenant]

After hearing testimony and reviewing the comparable data (which the panel majority narrowed to only Cattaraugus and Livingston Counties) and meeting in Executive Session, the Panel agreed that the County has an ability to pay; The Panel could not/did not unanimously agree on how far reaching that “ability to pay” was. It should be noted that in 2022, the median salary for a Deputy including the proposed County market rate adjustment would be \$52,790.00 (Step 4); the same year’s median rate for a deputy in Cattaraugus County would be \$56,722.00 and for Livingston County, \$70,123.00. Looking at the above wage grid’s, the Union sought a Deputy median wage to be (in 2022) \$53,657.00.

The Panel majority (consisting of the Panel Chair and Union representative) determined that the Union would receive:

2021: 3.0% of the wages reported on there 2020 Federal W-2 (not to base).

2022: adopted the County’s initial (prior to the EMT stipend proposal) grid for the Deputy/Grade 11 position and the Union’s Grid for the ranks of Corporal, Sergeant and Lieutenant, effective and retroactive to January 1, 2022.

The County’s Panel member issued a Dissenting Opinion noting that the proof on market rate analysis was disregarded, the pattern bargaining that the County had

maintained was put by the wayside and, the Panel awarded a wage package that disregarded the County's inclusion of the EMT (\$1,500.00) and Paramedic (\$3,000.00) stipend.

[PERB Case No. IA2022-005; M2021-0150. Timothy S. Taylor, Esq., Panel Chair, 10/16/23]

## **Disability Retirement**

In Bodenmiller v. DiNapoli, the 3<sup>rd</sup> Judicial Department of the Appellate Division was charged with reviewing a determination of the NYS Comptroller which denied an accidental disability retirement.

A police officer injured his neck, right shoulder, right hand and wrist when the chair he was sitting on rolled backwards, got stuck in ruts in the flooring and started to tip over. As he braced himself, the officer incurred the aforementioned injuries. The accidental disability retirement application was denied as not constituting an accident within the performance of duty.

An "accident" is held to be a "sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact." It is the burden of the applicant to establish that the injuries incurred were due to some event that was sudden, unexpected, and not a risk inherent in a police officer's work.

Officer Bodenmiller testified at his disability retirement hearing that "he was aware that the flooring was in poor condition --- [that] he had observed that there were two ruts in the flooring --- estimation of three feet across." The officer further acknowledged that "he was aware that the chair he was utilizing that day had wheels and that when sitting at the desk, those wheels would be in the general area" of the three feet across ruts in the floor. The Court held that given this honest testimony, the determination of the Comptroller "was reasonable and supported by substantial evidence." [2023 NY Slip Op 01930, decided April 13, 2023].

In the Application of Mark A. Nazi, the NYS Retirement System was presented with both an application for Performance of Duty Disability Retirement and one for Accidental Disability retirement. By way of background, an arrestee in the Catskill Police Department, while in the station, being spoken to by several Catskill Police Officers, began to strip his clothes and then poured hand sanitizer over himself. The officers tried to verbally control him; unable to do so, he was

tazed. The act of tazing caused the individual to catch on fire. The individual ultimately died from his injuries.

Officer Nazi applied for disability retirement for a claim of post-traumatic stress disorder (PTSD). The NYS Retirement System denied the Accidental Disability Retirement application but found that the resulting PTSD was a performance of duty disability and awarded retirement.

## **Military Leave Update**

Through both federal and state law, certain protections and entitlements must be provided to individuals who are ordered into military service during the term of their employment. In New York, some applicable benefits associated with military leave involving a public officer include payment for a “total of thirty days or twenty-two working days, whichever is greater, in any one calendar year and not exceeding thirty days or twenty-two working days, whichever is greater, in any one continuous period of such absence” and the right to reinstatement upon request made within ninety days of return from military leave. *NY Military Law* §§ 242, 243. Although a public officer who is absent due to military leave is entitled to reinstatement, the public entity is entitled to “substitute” an employee in the position of the individual on military leave if the need exists. *NY Military Law* § 243. During said leave, the public officer shall not be subject “directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence, or be prejudiced, by reason of such absence.” *NY Military Law* § 242. This is not construed to require the accrual of additional leave time while on **unpaid** military leave. Instead, it has been interpreted to mean the individual is entitled to the accruals they had at the time of the initiation of their military orders and the accruals they earn while they continue in paid status. *1967 NY Comp. Op.* 908.

In addition to the right of reinstatement after the military leave ends, under federal requirements, additional benefits must also be provided. Specifically, the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) requires employers to extend the right to receive health insurance benefits that are otherwise offered during employment to those employees on military leave. 38 U.S.C. § 4317. USERRA requires notification of this right to the employee as the entitlement may be based on notification by the military leave employee that they wish to receive health benefits during military leave for themselves or dependents. 20 C.F.R. § 1002.167. Upon notification from the employee that they wish to

receive those benefits, they may be required to pay up to 102% of the premium cost, similar to COBRA.

As an additional note, any military leave benefits that are otherwise conferred based on a contractual agreement must be provided. Furthermore, while the employee remains in paid status, they should be provided the same entitlements as other employees.

- A. Is the employer required to pay twenty-two days in 2023, and twenty-two days in 2024 for one continuous deployment?

No. Pursuant to NY *Military Law* § 242, an employer must pay twenty-two workdays or thirty calendar days, whichever is greater, for the period of military service occurring during a calendar year. However, this benefit is only applied once in any continuous period. Therefore, the employee would be entitled to the greater of twenty-two working days or thirty calendar days during the entirety of the deployment that would span into a subsequent calendar year.

- B. When is payment of military leave made?

Payment should be made running from the beginning of the deployment. In essence, the employee would be given a type of leave credit that would be charged on a day-by-day basis. This would require paying the employee in the pay period the dates occurred.

- C. In the subsequent year, when would payment occur?

The answer would be the same as “B” above.

- D. Does the employee accrue time while on military leave?

Not for the entirety. Based on interpretive opinions and applicable case law, an employee who remains on paid status should accrue benefits the same as any other employee. *See, Matter of Andrews v. State of NY*, 138 A.D.3d 1297 (3d Dep’t 2016); 1967 NY *Comp. Op.* 908. Once that employee goes into unpaid status, they would not continue to accrue leave credits unless a contractual provision says otherwise.

- E. Does the employer pay for the benefits the employee is entitled to?

- No. The employee, while on paid status, should be conferred the benefits at the cost they are otherwise entitled to under the normal cost sharing agreement. However, once the employee is on unpaid status, the regular cost sharing arrangements are modified. In relation to health insurance, the employer may charge 102% of the premium to continue said benefit during the time the individual is on military leave. This would be after an election by the employee to receive said benefit. An individual on military leave may also elect to make contributions to the State and Local (applicable) Retirement System during the time they are on military leave. Such payments are made by the employee directly to the Retirement System.
- F. In addition to these rights, the returning employee is to, in essence, be treated as if they had not gone on military leave. This would include deeming this time as satisfactory performance in terms of any probationary status that might apply.

[Prepared by Nathaniel J. Nichols, Sr. Associate, Roemer Wallens Gold & Mineaux, LLP]

### **National PELRA News**

Congratulations to our own **John Mancini** for his appointment to the National Foundation's Board of Directors!

### **Contact NYSPELRA**

NYSPELRA

Attn: Jack Kalinkewicz

[jjkpersassoc@yahoo.com](mailto:jjkpersassoc@yahoo.com)

Please let us know your thoughts and opinions of the NYSPELRA Newsletter.

In addition, you are encouraged to forward to Jack or to Elayne Gold [[egold@rwgmlaw.com](mailto:egold@rwgmlaw.com)] any article, information from your municipality, agency, or school district relating to arbitration awards (grievance arbitration, discipline, etc.), fact findings, contract settlements, etc. for inclusion in future editions of our Newsletter.

**Check our website for the latest NYSPELRA information: [www.nyspelra.org](http://www.nyspelra.org)**