



New York State  
Public Employer Labor Relations Association Inc.

**WINTER (January) 2024**

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

Happy New Year! We wish you health and peace for 2024. As we begin the New Year, the NYSPELRA Board is busy planning and organizing the 2024 Annual Training Conference. The ATC will be held Monday July 8 – Wednesday July 10, 2024 at the Holiday Inn, Saratoga Springs. Please save the dates! More details to follow.

**PAID (NYS) LEAVE FOR COVID RELATED SICK LEAVE**

NYS law still requires that public employees receive paid leave time to be used for Covid illness. The law mandates that an employee who tests Covid-positive be allowed “at least 14 paid Covid sick days” without charge to the employee’s sick leave (or any other existing) accruals. “In no event shall an employee qualify for sick leave” under NYS Covid paid leave provision “for more than three (3)” occurrences. These are cumulative occurrences (and not to be read as 3x/year)! Note that the state law initially (back in 2020) applied in situations where there existed an “order of quarantine or isolation.” It is rare (if even practiced at all) that such orders are given today, in 2024. If an employee claims to have “tested Covid positive” the state law allows an employer to ask the employee to “attest” that they have in fact tested positive. Those State guidelines seem to imply that the employer may even require the employee to submit documentation from a “licensed medical provider or testing facility” as to positive test results.

**NEGOTIATION HAPPENINGS:**

*Fulton County:* Fulton County and its Correction/Dispatch personnel, after protracted negotiations, entered into a four year contract for the term January 1, 2022 to December 31, 2025. The parties had reached an impasse in negotiations and proceeded through the fact finding process. Following the Fact Finder’s Report and Recommendation, and the County reaching a deal with its Deputy Sheriff’s

unit, the County and the Correction/Dispatchers went back to bargaining days before a hearing for legislative imposition was to take place.

One of the points of contention between the Correction/Dispatch folks and the County was the higher level of longevity received by the deputies. The Union argued that longevity needed to be increased to retain current personnel. Another key sticking point for both sides was the need to fill the ranks of correction officers to help alleviate mandates for open shifts (a condition necessitated by NYS requirements for minimum staffing levels based upon inmate population in the facility) by recruiting more individuals to take on the role of a Correction Officer. To assist with these recruitment and retention realities, the successor agreement will include:

- Deletion of language which required new hires to pay 50% of the health insurance premium for the first year of service.
- Increase to a flat yearly amount for opting-out of County health insurance.
- Doubling of the current longevity at each step of the longevity schedule.
- Limiting the length of time which can be used for compensatory and/or vacation leave on any one day.
- Wages:       retro to 1/1/2022: 3.0%  
                  retro to 1/1/2023: 4.0%  
                  effective 1/1/2024: 4.0%  
                  effective 1/1/2025: 4.0%

*Greene County:* The County and its Teamster Unit (workers in the County’s Department of Solid Waste) entered into a three year Agreement for the term January 1, 2024 – December 31, 2026. The County had tried, through bargaining, over many years, to obtain a definition of what “qualifications” should mean when it came to contractual language that required promotions and the filling of vacancies to be based upon “qualifications and seniority.” The County had been on the losing end of a grievance where the Arbitrator had concluded that if those who applied where all qualified, then seniority is the only factor; however, the Arbitrator concluded that the current job description alone set out the qualifications – the base line for promotion or filling of vacancy – so that if everyone who applied (for example) for the promotion from Laborer to MEO, “a laborer is a laborer and they are all equal” so seniority controls. The successor agreement more fully defines what is expected in order to meet “qualifications.”

The following “qualification” factors shall be considered in determining which employee shall be selected: (i) period of continuous service; (ii) ability to perform

work; (iii) experience in the position and/or with the job duties of the position; (iv) attendance record going back for three (3) years; (v) review of Official Personnel File; and where the Employer determines that factors (ii), (iii), (iv), and (v) are relatively equal, factor (i) shall govern.

The County added a mandatory (overtime paid, as necessary) training component; agreed that all of the employee will contribute 12.5% toward the applicable health insurance premium (down from 15% and/or 20%); and a wage package as follows:

- Effective 1/1/2024: \$2,500.00 to be added to the base pay, followed by a 4.0% wage adjustment:
- Effective 1/1/2025: 3.0%
- Effective 1/1/2026: 3.0%

### **Making A Lateral Transfer “Whole”**

The Town has hired lateral transfers over the recent years. Lateral transfers are police officers (in this scenario) who come from other police agencies and are traditionally hired at a level (wage level) commensurate with their particular years of service in the prior job. Benefit levels are as a new hire but wages are not.

The Town is about to appoint three laterals. The Union believes that several who have been previously appointed were not afforded the same level of wage consideration and has asked the Town to provide back monies to foster equal treatment and a level of consistency (and of course, to quell any “bad feelings”). Is the payment of any back monies to be considered “an unconstitutional gift of taxpayer monies” in violation of Article VIII, §1 of the NYS constitution?

Although some NYS Comptroller opinions from the late 1980’s opined as such, the specific facts addressed retroactive payments to town justices and members of a board of assessment review. Case law interpreting retroactive payments to public employees who are covered by a collective bargaining agreement tells us otherwise:

benefits provided under a collective bargaining agreement are generally held not to be unconstitutional gifts but, rather, legally enforceable contractual rights supported by consideration under contract.

Antonopoulou v. Beame, 32NY2d 126(1973); AFSCME v. City of Plattsburgh, 72 Misc 2d 744, 340NYS2d18(1971).

### **Newly Enacted Labor Legislation**

Chapter 305 - This law amends NYS Executive Law (aka: Human Rights Law) at Section 296-c, to add gender identity or expression as a protected class to the intern provisions of the law. This bill was signed into law on August 23, 2023 and was effective immediately.

Chapter 351 - This laws amends Labor Law section 27-b to include public schools within the provisions of current law designed to require public employers to develop and implement programs to prevent workplace violence. This law is effective 120 days from when signed into law. The bill was signed into law on September 6, 2023.

Chapter 354 - This law amends Labor Law Section 201-d to protect employee freedom of speech by ensuring an employee's right to refuse to attend an employer sponsored meeting, listen to employer speech, or view any other employer communication that has the primary purpose of expressing the employer's opinion concerning religious or political matters. This law was effective when signed on September 6, 2023.

Chapter 356 - This law amends NYS Civil Service Law at Section 63 to require that any time spent as a provisional employee be counted toward an employees' probationary term upon receiving a permanent appointment in the same title. This law was effective when signed on September 7, 2023 but required technical changes which are pending before the NYS Legislature, in the current session.

Chapter 358 - This law amends NYS Civil Service Law at Section 50 to require the State Department of Civil Service and municipal civil service commissions to announce competitive civil service examinations to BOCES, high schools, colleges, universities, local social services districts, and job training programs that are located within the same geographic area as the civil service commission. This law was effective when signed on September 7, 2023 but required technical changes which are pending before the NYS Legislature, in the current session.

Chapter 366 - This law amends NYS Labor Law at Section 509 to mandate that employers provide employees with notification of eligibility for unemployment insurance benefits at the time of separation from employment, reduction in hours,

and/or interruption in employment resulting in total or partial unemployment. This bill was signed on September 14, 2023 and became effective 60 days after it was signed into law.

Chapter 367 - This law amends the Labor Law, Section 201- i to prohibit employers from requesting or requiring user name and login information including passwords as a condition of hiring, employment status, and/or for use in disciplinary actions. This bill was signed on September 14, 2023 and became effective 180 days thereafter.

Chapter 656 - This law amends the Executive Law Section 297 to extend the statute of limitations for filing complaints of alleged unlawful discriminatory practices from one year to three years. This law was signed on November 17, 2023 and became effective 90 days after it was signed.

Chapter 675 - This law amends the opening paragraph of Civil Service Law, section 165-A to allow an unremarried spouse and dependents of a, former state or political subdivision employee who retired with less than 10 years of service on an accidental disability pension or a performance of duty disability pension to continue to carry such insurance upon the death of the former employee. This became law on November 21, 2023 and was effective immediately.

Chapter 677 - This law amends Civil Service Law, paragraph (d) of subdivision 1 of Section 208 to clarify home address as the information to be provided with other information to public sector unions. Failure to provide the required information will be deemed an improper employer practice. This law was signed on November 21, 2023 and was effective immediately.

Chapter 679 - This law amends the CPLR to provide that a court shall confirm an arbitration award upon the application of a party within one year after its delivery to the party unless an application to vacate or modify the arbitration award is made within 90 days after the delivery of the award. If an application to vacate or modify is not filed within 90 days, the right to file is lost. This law was signed on November 21, 2023 and was effective immediately.

**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)**