



New York State
Public Employer Labor Relations Association Inc.

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Summer (July) 2024

The 49th Annual Training Conference

The Conference is about to begin: Monday July 8, 2024 – Wednesday, July 10, 2024. The Agenda is chock-full of informative, practical and up-to-date presentations. Our speakers/presenters are, as always, experts in their field and willing to provide guidance for use in our day-to-day work.

Be sure to Network – everyone here is engaged in public sector labor relations and can be a great resource.

Enjoy and learn all you can.

PTSD may not be enough to receive Disability Retirement

School Principal Rawlins suffered numerous incidents over a three month period in which a disgruntled food service worker “threatened and harassed” her making her feel “she was being stalked.” Even after being transferred to another school location the worker returned to Rawlins school facility, demanding to see her making remarks that were taken by Rawlins to have “sexual overtones.” Rawlins was ultimately diagnosed with post traumatic stress, leading to an inability to continue to perform her school principal duties. Rawlins, as a member of the Teachers Retirement System (“TRS”) of the City of New York applied for accidental disability retirement.

The TRS Medical Board denied the application for accidental disability retirement holding that Rawlins “did not sustain an accident in the work setting” and that “purposeful conduct by co-workers giving rise to a disabling injury is not an accident within the meaning of the pension statute.” Upon a re-application to the Medical Board, the denial of benefits was upheld.

In a commenced Article 78 proceeding, the Supreme Court and ultimately the Appellate Division (1st Department) upheld the denial, with the Appellate court maintaining that the Medical Board rationally found that [Rawlins] injury resulted not from an accident in the work setting but from “purposeful conduct” by a former coworker, which “is not an accident within the meaning of the pension statute.” (205A.D.3d 629,630[1st Dept., 2022]).

The NYS Court of Appeals granted leave, noting that to receive accidental disability retirement, a TRS member needs to establish that the disability was the result of “an accident sustained within the performance of their duties” (citing NYS RSSL §605.f). As the term “accident” is not defined in this section of the statute the courts need to give it some meaning (the Court “adopted a commonsense definition of a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact.” (Cite Omitted)).

With that in mind, the Court disagreed with the “Appellate Division that the [Medical] Board’s determination can be upheld simply because the accident alleged ...was caused by the purposeful acts of a coworker.” The court explains:

We have so far left open the possibility that injuries caused by the intentional acts of a third party might in some cases satisfy the requirements for ADR [accidental disability retirement], and continue to do so today (see, Matter of Walsh v Scoppetta, 18 NY3d 850, 852 [2011]; see also, McCambridge v McGuire, 62 NY2d 563, 567[1984] [the focus of the inquiry is on “the precipitating cause of injury”]; Arthur A. Johnson Corp., 6 AD2d at 100 [observing that “an act, deliberate from the point of view of its initiator, may be considered an accident if seen through the eyes of its victim”]). Indeed, respondents do not urge us to hold that ADR is unavailable as a matter of law when an injury is caused by a coworker’s purposeful acts; they instead posit that the Medical Board is permitted to evaluate the underlying facts and circumstances in such a case and “find that the event was unpredictable, sudden and fortuitous, and also clearly beyond the scope of the duties of the member’s job.” That measured

approach parallels our analysis in Kowal, in which we sustained the denial of ADR to a court security officer who was injured when an assailant armed with 40 shotgun shells began to fire indiscriminately into a crowded courthouse lobby. Rather than rely on the assailant’s obvious intent to kill or grievously injure, we reasoned that the officer “failed to establish that his injuries were caused by a sudden, unexpected event that was not a risk inherent in the work performed.” (30 NY3d at 1125).

Nevertheless, under the facts of the Rawlins case (apparently due to the extended 3 month time period in which the events leading up to the day Rawlins was no longer able to work), the Court finds substantial evidence to uphold the Medical Boards’ denial of benefits:

The Board rejected petition’s initial ADR application on the grounds that “based on the description of the events in question that occurred in the work setting on April 18, 2019, as well as the previous events in the work setting in February and March of 2019, [petitioner] has failed to demonstrate that an accident occurred in the work setting.” Because that reasoning is supported by the evidentiary record, the Board’s determination to deny ADR will not be disturbed on this appeal.

Matter of Rawlins v Teacher’s Retirement System of the City of N.Y., 2024 NY Lexis 688, decided May 23, 2024.

NEGOTIATION UPDATES

City of Buffalo: In November of 2023, the City and its International Union of Operating Engineers entered into a successor collective bargaining agreement for the term July 1, 2020 through June 30, 2026. Included in the terms:

- Telephone Stipend: \$15.00/month to be issued in the City’s “sole discretion” when the City believes the personal cell “phone usage is not de minimus... and that a City issued cellular telephone should not be used instead.”

- Essential Worker: The agreement added language to classify this workforce as “essential workers” who must report to work in all circumstances or be required to use their own leave accruals for a failure to report.
- Juneteenth: added as an additional Holiday.

There was also a modest increase to longevity, shift differential, and life insurance; a grant of additional personal leave and sick leave; an increase in daily auto allowance, perfect attendance incentive, and wage adjustments:

- Effective and retro to 7/1/2020: 2.0%
- Effective and retro to 7/1/2021: 2.0%
- Effective and retro to 7/1/2022: 2.5%
- Effective and retro to 7/1/2023: 3.0%
- Effective and retro to 7/1/2024: 3.0%
- Effective and retro to 7/1/2025: 3.0%

City of Albany: The City and the CSEA Supervisor Unit (Supervisors in the Department of General Services, Water and Water Supply, Engineering) entered into a successor collective bargaining agreement for the term of January 1, 2024-December 31, 2027. The City was successful in obtaining the right to fill an open position by seeking both outside as well as internal applicants who meet the job qualifications.

The agreement also included a codification of the on-call procedures and requirements, an increase in shift-differential, a stipend for being assigned to on-call (per week), the addition of Juneteenth as a Holiday, a fine tuning of vacation leave scheduling and a requirement that

- An employee must work the scheduled work shift before and the scheduled work shift after the holiday to be entitled to holiday pay, unless vacation time or personal time has been granted.

As for wage adjustments:

- Effective and retro to January 1, 2024: various/equitable flat dollar wage adjustments
- Effective January 1, 2025: 3.0%
- Effective January 1, 2026: 3.0%
- Effective January 1, 2027: 3.0%

Rescinding of Promotion for Non-Discriminatory Reasons

Jeremy Clawson was a member of the Albany Fire Department (AFD), serving as a Lieutenant. In 2019, Lt. Clawson was offered a provisional appointment (pending appropriate civil service examination and placement on the certified civil service list) for promotion to Battalion Chief. A short time before the promotion was to take effect, Lt. Clawson was found quite intoxicated (while off duty), incoherent, with his “pants down around his ankles and with feces on himself.” The AFD rescinded the offer of promotion. In response, Lt. Clawson filed a claim for discrimination. In making his prima facie case in support of discrimination, Lt. Clawson alleged (and in the Court’s opinion, established):

1. He was a member of a protected class: Lt. Clawson is an African American employee and a member of a protected class.
2. He was qualified to be a Battalion Chief: Lt. Clawson possessed the basic skills and minimum job requirements to hold a Battalion Chief position:
3. He suffered an adverse employment action: Lt. Clawson’s base pay and other benefits would be enhanced with a promotion to Battalion Chief.

Once Lt. Clawson established a prima facie case of discrimination, the burden shifts to the AFD/the City of Albany to rebut this claim by detailing “a legitimate, non-discriminatory reason for the employment action.” (citation omitted). The Albany Fire Department was able to meet its burden by the mere facts of the case:

Before he was slated to become Battalion Chief, Lt. Clawson consumed at least seven pints of beer, and proceeded to “expos[e] himself” outside of a Dunkin’ Donuts, prompting first responders to call an ambulance for “a very old male who [was] highly intoxicated and pooped on himself,” and who was “incoherent with his pants down around his ankles.” Following that incident, the AFD determined that Lt. Clawson’s promotion to Battalion Chief would undermine the AFD’s internal

morale and its public perception, as well as Lt. Clawson's effectiveness as a leader. In these circumstances, the AFD has stated a sufficient, non-discriminatory rational for the adverse employment action.

Lt. Clawson, on the other hand, failed to produce sufficient evidence showing either that the AFD's proffered reason was false, or more generally, that discrimination was a real reason for the rescission. See, St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515-16(1993).

Clawson v. The City of Albany Department of Fire and Emergency, case 23-482, Document 77-1, 03/11/2024, 3614261.

Contact NYSPELRA

NYSPELRA

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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] 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.

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