New York State
Public Employer Labor Relations Association Inc.

SPRING (APRIL) 2025

www.nyspelra.org

Welcome Spring

Spring is here in the great Northeast. Besides a change in the weather, we have the NYSPELRA 50th Anniversary Annual Training Conference ("ATC") to look forward to. Dates to remember:

July 8 – July 10, 2025.

Be on the lookout for registration and hotel reservation information.

ATC

The NYSPELRA Board is putting the finishing touches on what will prove to be another informative, thought provoking Conference. Our Keynote speaker is Elizabeth McCormick. Ms. McCormick is not only a motivational and inspirational presenter but she has been an Army Black Hawk pilot and a Chief Warrant Officer 2 (Ret). We anticipate that Ms. McCormick will set the tone for an energized ATC. Look to presentations on

- Speech in the workplace
- Artificial Intelligence
- DEI Recruitment/Retention
- And so much more

We look forward to seeing you in July to help celebrate 50 years of networking, sharing of experiences, and friendships.

Disclosure of Law - Enforcement Officer Record: Court of Appeals Opines

As we may recall, in 2020 the NYS Legislature repealed Civil Rights Law § 50-a (CRL § 50-a). CRL § 50-a had prohibited/protected from disclosure the personnel files and related materials of, among others, law enforcement officers. Once repealed, a Freedom of Information ("FOIL") request properly responded to would allow for disclosure. The question making its way up to the Court of Appeals stemmed from a 2020 FOIL request made by the NYCLU seeking "records of all civilian complaints against Rochester police officers dating back to [the year] 2000, whether those complaints were ultimately deemed substantiated or resulted in disciplinary action against the officer." When the City of Rochester failed to readily respond to the FOIL request, the NYCLU went to court to compel disclosure. Although the Supreme Court (a first level court in NYS) ordered production of most of the requested records, it maintained that the City was "entitled to withhold all records relating to complaints that were not substantiated." The court relied on FOIL's personal privacy exemption (Public Officers Law § 87(2)(b)) in rendering its ruling. When the case made its way to the Appellate Division (AD), the AD modified the Supreme Court determination and directed the City of Rochester to "determine whether there is a particularized and specific justification to redact or withhold each [requested] record on personal privacy grounds" (210 A.D.3d 1400, (4th Dept. 2022)). The Court Appeals agreed and affirmed the AD's decision:

> There is no categorical or blanket personal privacy exemption for records relating to complaints against law enforcement officers that are not deemed substantiated.

(citing, 210 A.D.3d at 1401). When the NYS Legislature repealed CRL § 50-a it simultaneously amended the FOIL to add a definition of "law enforcement disciplinary records" that expressly includes

> Complaint… in furtherance of a law enforcement disciplinary proceeding.

(POL § 86(6)(a)) The law goes on to define "law enforcement disciplinary proceeding" as "the commencement of any investigation and any subsequent hearing or disciplinary action…" (POL § 86(7)) (emphasis added) The Court gave

no recognition or weight to the wording, "and any" and maintained that "by the statute's plain meaning a complaint qualifies… as long as it was created 'in furtherance of' the disciplinary process." In the Matter of New York Civil Liberties, Union v. City of Rochester, et al. (2025 NY Slip Op 01010, February 20, 2025).

Disability Retirement

In Matter of Stefanik v. Gardner, the Appellate Division reviewed a determination of the State Comptroller pertaining to disability retirement for a police officer – both Performance of Duty (POD) as well as Accidental Disability Retirement (ADR). On September 16, 2011, Police Officer Stefanik was exiting his patrol vehicle to assist when he slipped and fell. Officer Stefanik dislocated his right shoulder but was able to get it to "pop back into place" as he got back on his feet. However, while assisting in breaking up a fight, the right shoulder again dislocated, requiring surgery to repair it. Although Officer Stefanik returned to duty, it remained a light duty assignment through 2014 when he claimed to be permanently incapacitated from the performance of any duty due to the right shoulder injury of 2011.

The NYS Comptroller denied the POD application holding that due to a preexisting right shoulder incapacity (Officer Stefanik had dislocated his right shoulder in 2008 well before he became a police officer), the injury was not incurred "as a natural and proximate result… of a disability that was sustained in" the service as a police officer (NYSRSSL § 363(a)). The Comptroller relied on its own independent medical examiner who concluded that the shoulder incapacity was "an acute exacerbation of a preexisting condition."

The Court noted that Officer Stefanik had passed his physical agility examination to become a police officer, he completed strenuous training exercises while at the police academy, and had no problems doing so. Although the preexisting shoulder incapacity may have been dormant since its repair back in 2008, "there is no requirement that a preexisting condition be fully resolved to be considered dormant… an accident which produces injury… by aggravating a preexisting condition is a cause of that injury (citing, Matter of Tobin v. Steisel, 64 N.Y.2d 254, 259 (1985)).

ADR is another story. Here the Court reminded us that in order to receive an ADR, it must be established that the cause producing incident arose from a "sudden,

fortuitous mischance, unexpected, out of the ordinary, and injurious in impact" (citations omitted).

> An event which is a risk inherent in the work performed is not an accident for purposes of [accidental disability retirement] benefits.

(citations omitted) (See also Bodenmiller v. DiNapoli, 43 NY3d 43, (3rd Dept. 2024)

Negotiations Around the State

Town of North Greenbush UPSEU: The Town of North Greenbush (the "Town") and its UPSEU Unit (the "Union") entered into a three (3) year agreement for the term January 1, 2025 – December 31, 2027. This unit is the Town's "general unit" comprised of both full and part time employees. The parties clarified certain health insurance language (without any substantive changes) and were able to maintain an economic package workable within the budget of a small Town.

> Longevity: payable on an employee's anniversary date and added into the regular rate of pay…
> After 5 years of service: $1,200.00
> 10 years of service: $1,500.00
> 15 years of service: $1,860.00
> 20 years of service: $2,100.00
> 25 years of service: $2,400.00
>
> Wages: retro and effective 1/1/2025: 4.0%
> effective 1/1/2026: 3.0%
> effective 1/1/2027: 3.0%

Village of Coxsackie: The Village of Coxsackie (the "Village") and its Teamster Unit representing employees in the Village Highway Department (the "Union") entered into a three (3) year agreement for the term June 1, 2025 – May 31, 2028. In addition to minor language revisions and updates the parties agreed:

- Add Juneteenth to the list of holidays

- Significantly boost base wages for the Foreman, MEO/CDL Drive and Laborer/Non CDL in the 1st year of the Agreement:
  Foreman from $21.99 + $0.50 to $26.00 (+ $1.50/hr)
  MEO from $21.99 to $26.00/hr
  Laborer from $17.97 to $21.00/hr
- Effective 6/1/2026: 3.0%
  Effective 6/1/2027: 3.0%

Part-time Employee: GML § 207-c

A County has a part-time employee who has been granted disability status under General Municipal Law § 207-c. The employee has been cleared for light duty and has been performing light duty work for a period of time. The employee's light duty assignments are piecemeal assignments; there is not an open consistent position with duties that would satisfy the employee's medical restrictions. There is no expectation that the employee will ever be cleared to return to full duty. Given the above, the County has asked whether it has any options for separating the employee from service, or if it is bound to maintain the current status quo.

Light duty assignments can be a reasonable accommodation, but not necessarily on a permanent basis: As an initial matter, reassignment of a disabled employee to a vacant light duty position can be a reasonable accommodation under the Americans with Disabilities Act, even if there is no expectation that the employee will return to full duty. However, "[a]n employer is not ... obligated to create a new light-duty position for a disabled employee or make permanent previously temporary light-duty positions." (King v. Town of Wallkill, 302 F.Supp.2d 279, 291 (S.D.N.Y. 2004) Even if an employer has been permissive in the past in allowing employees to remain on temporary light assignments, that "lax enforcement" does not "transform such assignments into permanent positions." (Id.) In other words, if a disabled employee requires a permanent light duty position, an employer need not create one out of whole cloth in order to accommodate. If, on the other hand, a long-term light duty position exists and is available, it must be considered as a possible accommodation, even if there is no hope that an employee will be able to return to the full-duty position to which they were originally hired.

Considerations for light duty accommodations: An evaluation of the reasonableness of a light duty accommodation requires more than a legalistic look at the black letter of the job description. Consideration must be given to whether

the requested accommodation will pose an actual hardship for an employer. Even if, for example, a job description calls for the performance of duties that would exceed the employee's medical restrictions, there may be particular assignments or posts that would allow the employee to perform under their title. In the event of litigation, this will necessarily involve a comparison to other employees. Are there able-bodied employees performing clerical or non-physical assignments that would comply with the employee's restrictions? Have other employees been granted indefinite light duty accommodations? (See, Kronstein v. Albany County, 2023 US Dist. Lexis 168893 (N.D.N.Y. 2024))

The ultimate question will be: does the accommodation pose an actual undue hardship, e.g., does it require permanently excusing the employee from their job duties; or is it a mere administrative hardship that may be frustrating, but ultimately workable? If a light duty accommodation is feasible, even if inconvenient, a court or human rights investigator may find that it was not reasonable to deny it. This determination likely involves an internal evaluation of the extent to which a light duty assignment creates a hardship for the County, as well as an interactive discussion with the employee to determine the expected duration of their restrictions and potential alternative accommodations.

Options for further handling: If the County determines that: 1) there is no long-term light duty assignment available; 2) temporary light duty assignments are no longer feasible; and 3) there is no other reasonable accommodation available, the County may opt to separate the employee from service under Civil Service Law § 71. The employee will be allowed a cumulative 365 days of absence before separation.

With that said, however, the County must continue to pay GML § 207-c benefits unless the employee's disability ceases or they are eligible for disability retirement. Once GML § 207-c benefits are granted, the employee acquires a protected property interest in the payments, so that these payments cannot be discontinued without appropriate procedural due process. (By: Benjamin Heffley, Esq., Partner, Roemer Wallens Gold & Mineaux, LLP)

Contact NYSPELRA

NYSPELRA
Attn: Jack Kalinkewicz
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] 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