



New York State
Public Employer Labor Relations Association Inc.

SPRING (May) 2023

www.nyspelra.org

The 48th Annual Training Conference

The NYSPELRA Summer Conference is fast approaching. Registration for the conference and reservations for the Saratoga Holiday Inn are being accepted. To see the full Conference details, please visit the [NYSPELRA State Website](#).

The Conference will be held from July 10 - July 12, 2023 in lovely Saratoga Springs. Our topics are timely and interesting; they will surely invoke discussion and interaction among our attendees. Here is a sampling:

- FMLA – updates and case examples
- NYS Civil Service Law, §§ 71, 72, 73: understanding, navigating, implementing
- Cost analysis for bargaining with new and different ideas
- Staff/Employee Recruitment and Retention strategies
- Cyber Security: How to protect your municipality, agency, school district
- Arbitrator Review – with a Panel of practitioners sharing experience and guidance

We hope to see you in Saratoga.

New York State Issues Updated Model Sexual Harassment Prevention Policy

In 2018 all NYS public and private employers were required to create and adopt a Sexual Harassment Prevention Policy. The State Department of Labor gave an assist and created a “model” which many employers followed. The enacting legislation required an update every four years -- that mark has arrived.

We advise a review: <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>).

Negotiations

Town of Catskill – The Town and its CSEA Highway Unit entered into a three (3) year collective bargaining agreement. The Town’s key proposal was to have all employees transfer from the very costly NYSHIP health insurance plan to a more cost-effective model, in this instance CDPHP. With some clever negotiating and economic incentive, the Town achieved its goal:

1. Term: January 1, 2023 – December 31, 2025.
2. Sick Leave: Must call in at least one (1) hour before scheduled reporting time or be docked (FMLA/other exceptions).
3. CDL Renewal: The Town will reimburse cost of license renewal upon proof of same.
4. Holiday: Add Juneteenth.
5. Health Insurance: Health Insurance options for CSEA Unit Members will be the same as afforded to the non-unionized workforce.
 - Effective and retro to 1/1/23: 3.5%
 - Effective 1/1/24: 3.5%
 - Effective 1/1/25: 3.5%

In addition, for any employee who enrolls in the Town CDPHP Health Insurance Plan (and forever waives the NYSHIP Health Insurance Plan), the Town will in 2023* only, increase the employee’s base wage by \$1.50/hour (upon ratification by all necessary parties) before applying the wage percentage adjustment. (NOTE: The sole employee currently enrolled in the CDPHP will also receive, in 2023, the one time \$1.50 added to his base). *[Contingent upon CDPHP opening enrollment to all new enrollees and NYSHIP allowing employee to change plans mid-term due to a “qualifying event” and within one month from that “qualifying event.”]

THE BENEFIT WILL ALSO BE AVAILABLE IN 2024 [OPEN ENROLLMENT – A ONE TIME \$1.50 ADDED TO BASE.]

ANYONE HIRED ON OR AFTER RATIFICATION BY ALL NECESSARY PARTIES WILL NOT HAVE NYSHIP AS A HEALTH INSURANCE OPTION.

Greene County

The County of Greene and its UPSEU Nurses Unit entered a three (3) year collective bargaining agreement. This is the County's smallest unit with only five (5) employees. The goal of the County was to recruit more nurses while retaining those who have served the County for the long term. The highlights:

1. Term: January 1, 2023 – December 31, 2025.
2. Holiday/Vacation Pay: In order to be paid for the holiday or for vacation, an employee must work the scheduled work day before and the scheduled work day after the holiday/vacation leave day.
3. Bereavement Leave: For purposes of a memorial service or burial, bereavement leave may be used even when the burial or memorial service is not within five (5) days of the death of the relative. Documentation to substantiate the memorial service or burial is to be presented upon the County's request.
4. Health Insurance Premium: The current (pre-negotiation) premium contribution rates were 0%, 10%, 15%, 20% all dependent upon year of hire. Effective May 2023: Effective one full month after ratification by the County Legislature [actual date to be stated in final successor], current employees and newly hired employees shall contribute twelve and one-half (12.5%) percent toward the cost of individual, 2-person or family health insurance coverage. Any employee currently contributing zero (0%) shall be grandmothersed at the 0% contribution level.
5. Double Dipping Prevention:
 - If a parent and child are both employees of the County and the parent is receiving health insurance benefits from the County which includes coverage of the child/employee, the child/employee shall not be entitled to the buy-out option.
 - If a parent and a child are both employees of the County, the child is under age 26, and the parent is receiving the family buy-out that includes this child, the child is not entitled to also receive a buy-out.
6. Wages:
 - 1/1/23: increase base by \$2,500.00 then a 4% adjustment
 - 1/1/24: 4% wage adjustment
 - 1/1/25: 3% wage adjustment

Civil Service Law § 75 Determination

Civil Service Law § 75 (“CSL § 75”) provides the process for discipline of public sector employees who do not have a negotiated disciplinary procedure. The state statute sets out the definition of what constitutes discipline; who has the statutory protections; and the specific process for representation; service of disciplinary charges; selection of the Hearing Officer; due process hearing parameters; and appeal rights.

When holding a CSL § 75 proceeding, the Employer appoints the Hearing Officer who is to issue a recommendation – not a final and binding determination. The law leaves the final determination to the “appointing authority” who can adopt the Hearing Officer’s recommendation, modify, or ignore it. The employee is given the statutory right to appeal the final determination. Courts are generally reluctant to overturn the determination, even where that determination totally rejects the Hearing Officer’s recommendation. Such was the case in Walker v. City of Plattsburgh, 212 AD3d 936 (3d Dept 2023).

City of Plattsburgh employs Firefighter/EMTs (FF/EMT) in its Fire Department. In November of 2018, FF/EMT Walker was part of a team who responded to a call for assistance. The patient was placed on a stretcher, securing his legs and waist (with straps) but not his shoulders (which is generally the full protocol). When FF/EMT Walker and his partner were transferring, the “patient’s upper body slipped off the stretcher and [the patient’s] head hit the back of the ambulance” causing the patient to fall to the ground. The patient now had a head wound, was unresponsive, and ultimately passed away due to “blunt force trauma to the head when he fell off the stretcher, killing him in a matter of minutes.”

FF/EMT Walker completed all required incident reports and patient care forms. He was interviewed by the City’s Police investigators and gave a sworn statement to detectives. FF/EMT Walker continued his work as such for the following two (2) years.

However, in January of 2021, the City filed a Notice of Discipline upon FF/EMT Walker in accordance with CSL § 75. FF/EMT Walker was charged with seven allegations of misconduct including that he “knowingly made false statements in the incident report, patient care form and [5 sworn] statements to the police [detective].” Despite video evidence of the step by step occurrences leading to the patient’s death, together with an admission by FF/Walker that he provided false information and made false statements, the CSL § 75 Hearing Officer still

dismissed all of the charges apparently swayed by FF/EMT Walker's testimony that "at the time he made false statements, he was experiencing stress due to the trauma of losing a patient as well as a lack of sleep ... [and that he] believed his statements were true when he made them."

The Mayor (who is the "appointing authority" for the City), after reviewing the record, disregarded the recommendation of the Hearing Officer and found FF/EMT Walker guilty as charged. FF/EMT Walker was then terminated, leading to the appeal to court.

The issue for court review is whether the Mayor's ruling "was supported by substantial evidence" which the court explains as

a minimal standard that requires less than a preponderance of the evidence and demands only the existence of a rational basis in the record as a whole to support the finding upon which the determination is based.

[citation omitted]

The court goes on to explain that the "credibility determinations of a Hearing Officer are not binding upon the official charged with making a final determination." The Court did give credence to FF/EMT Walker's testimony as to false statements – that he was sleep deprived and under stress. The Court even characterized the testimony "as a plausible, innocent explanation" ... but the Court found that, "a different conclusion can be reached when contemplating the statements in their totality."

Given that the interpretation of the evidence and inference drawn by the Mayor [that the statements now by FF/EMT Walker were in an effort to mitigate against culpability] are reasonable and plausible, we are bound to conclude that the determination that [FF/EMT Walker] knowingly made false statements is rationally based and supported by substantial evidence.

Interest Arbitration: CSL § 71 Procedure

In the Interest Arbitration between the City of Yonkers (the “City”) and the Yonkers Fire Fighters, Local 628 (the “Union”), the Panel had before it only one issue: “A procedure to address the separation of an employee... under CSL § 71.” By way of history, the City and Union have a negotiated collective bargaining agreement (“CBA”) which contains a procedure for administration of GML § 207-a (which relates to claims of injury or illness incurred in the performance of firematic duties). The CBA did not contain a procedure to utilize CSL § 71 (a state statute allowing for separation from service after one year of cumulative leave/absence due to a job-related injury/illness). The Union demanded that the City bargain over procedures for the utilization of CSL § 71. The City refused and the Union filed an Improper Practice Charge for a failure to bargain in good faith. PERB agreed with the Union that the City has a duty to negotiate a procedure for use of CSL § 71. The “negotiations” that followed were unsuccessful, as was mediation. The City filed a Petition for Compulsory Interest Arbitration (PERB Case No. IA 2019-013: M2018-131). The Interest Arbitration, before neutral Arbitrator Tim Taylor, convened in 2020 with the Award issuing in May of 2021.

The Panel (with the Union’s Panel representative agreeing with Arbitrator Taylor and the City’s representative dissenting) found that CSL § 71 procedures should be negotiated and took the steps to draft the procedure to be followed by the City of Yonkers and its firefighters. The Panel’s rationale:

Where there is any legitimate uncertainty that a statute covers the same ground as a demand, we will not determine the demand to be non-mandatory on the ground of statutory preemption.

(Citing Village of Old Brookville, 16, PERB 4571 (1983)); the Panel also cited in support Greenburgh No. 11 UFSD, 25 PERB 518(1991), Allen v. Howe, 84 N.Y. 2d 665 (1994), and Town of Cortlandt, 30 PERB 3031 (1997), aff’d 30 PERB 7012(1997).

As a side note, while the Interest Arbitration was underway, the City of Long Beach was in Court to challenge a PERB ruling requiring it to negotiate parameters and procedures of CSL § 71. The Court of Appeals had before it the following issue:

Does the Taylor Law require a municipality to engage in collective bargaining over the procedures for terminating municipal employees after they have been absent from work for more than a year due to an injury sustained in the line of duty.

The Court held “that collective bargaining is required.” See, Matter of City of Long Beach v. New York State Public Employment Relations Board, 39 N.Y 3d 17 (2022). [For further information on this case please contact Terry O’Neil: toneil@bsk.com]

Monthly “Chats”

For several months now your Board has hosted the “NYSPELRA CHAT” --- sessions where we gather via Zoom to discuss topics impacting our day-to-day public sector labor-relations lives. At times the discussions are informal and cover several issues, while at other times we have been more formal in discussion and presentation. We are seeking input into subjects for discussion and hoping our members will want to lead an upcoming monthly chat! Please email NYSPELRA President, Carin Perkins with your ideas... Carin.Perkins@suny.edu.

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