

MANAGEMENT RIGHTS

A Labor Relations newsletter for clients of ROEMER WALLENS GOLD & MINEAUX LLP designed to provide relevant information to public sector managers on matters relating to the labor relations environment in government.

SPRING 2018

REPORTING OF CHANGE IN DRIVER'S LICENSE STATUS

When the job description requires an employee to have and maintain a valid driver's license, the Employer does not violate a bargaining obligation when it unilaterally requires employees to report any tickets or accidents. PERB, after conducting a balancing test of interests, found that where such a job requirement exists, there are limited privacy interests because the information is either public record or disclosable under the federal Driver Privacy Protection Act ("DPPA"). In the Matter of CSEA - County of Nassau, 36 PERB ¶ 4537 (2003) the DPPA states, in pertinent part

Personal information ... shall be disclosed for use in connection with matters of motor vehicle or driver safety ... and may be disclosed ... (1) for use by any government agency ... in carrying out its functions.

(18 USC § 2721). The Employer interest asserted in the CSEA - County of Nassau case was to ensure that employees who are required to maintain a valid driver's license do not have that license suspended or revoked. The PERB found this interest outweighed the limited privacy concerns the employee may claim. Note, however, that if the job description is silent as to holding/maintaining a valid driver's license, the Employer's assertions for need to verify current status of that license may require negotiations before implementation.

GRIEVANCES AND OPEN MEETING LAWS

Should the discussion of a pending grievance take place in Executive (non-public) session? The NYS Committee on Open Government is of the opinion that the grievance (prior to arbitration) does not constitute "litigation" and, therefore, cannot be deemed, without further review, "Executive Session" material (see OML-AO-4928, dated June 18, 2010). If the grievance pertains to policy

or duties impacting all employees, or group of employees, there is no basis for Executive Session. However, if the grievance pertains to a certain individual, Executive Session discussion is appropriate to address "the medical, financial, credit, employment history of a particular person ... or matters leading to the appointment, employment, promotion, demotion, suspension dismissal or removal of a particular person." (Public Officers Law § 105.1.f; see also, OML-AO-4562, dated February 13, 2008)

SEXUAL HARASSMENT IN THE WORKPLACE

As part of this year's Budget Bill, Governor Cuomo signed into law the Sexual Harassment in the Workplace Prevention Policy. This Policy amends several sections of existing New York State law, impacting private as well as all public entities. RWGM is sending out a comprehensive memorandum on the changes to law, effective dates and necessary action for Employers.

UNION RIGHTS EXTENDED

As part of the recent enactment of the NYS 2018-2019 Budget, the Taylor Law was amended. Among the changes taking effect immediately, the amendment to § 208 of the Civil Service Law (a/k/a The Taylor Law), creates new sections as follows:

- The Employer must begin to deduct Union dues from a newly hired employee "no later than thirty (30) days after receiving proof of a signed dues deduction authorization card."
- These dues must then be remitted to the authorized Union within thirty (30) days.
- The Employer must, within thirty (30) days of initial hire, re-employment, promotion or transfer, notify the authorized/representative Union, and

provide that Union with the employee's: name; address; job title; employing agency/department; and work location.

- Thereafter, and within thirty (30) days of providing this data, the Employer "shall allow a duly appointed representative to meet with the employee for a reasonable amount of time during ... work time without charge to leave credits, unless otherwise specified within a negotiated Collective Bargaining Agreement. Note, the meeting must be schedule through the Employer.

The new law also amends § 209-a.2 of the Civil Service Law, which details those matters that would constitute an Improper Practice by the Union. The Union, by statute, has a duty to fairly represent all employees who are covered by the relevant Collective Bargaining Agreement, even if the employee is not a willing Union dues-paying member (sometimes referred to as an "Agency Fee" member). The new law amends this "Duty of Fair Representation" by placing limits on this duty, as follows:

An employee organization's duty of fair representation to a public employee it represents but who is not a member of the employee organization shall be limited to the negotiations or enforcement of the terms of an agreement with the public employer. No provision of [this law] shall be construed to require the employee organization to provide representation to a non-member under these circumstances:

1. During questioning by the employer;
2. In statutory or administrative proceedings or to enforce statutory or regulatory rights; or
3. In any stage of a grievance arbitration or other contractual process concerning the evaluation or discipline of a public employee where the non-member is permitted to proceed without the employee organization and obtain their own representative. And further, the law relieves the Union

from provision of "legal, economic or job-related services or benefits beyond those provided" in the negotiated Collective Bargaining Agreement.

If the Union wishes to address any of these matters at bargaining, the law makes it permissible to do so.

WE ARE SPEAKING

- National Center for Collective Bargaining: April 15, 2018, Earl T. Redding: "Collective Bargaining in Higher Education"
- Taylor Law Turns 50: May 11, 2018, James W. Roemer, Jr.: "Strategies for Adapting to a Post-Janus World"; Elayne G. Gold: "Interest Arbitration and the Taylor Law"
- County Attorney Association, State of New York: May 21, 2018, Earl T. Redding: "Diversity and Inclusion"
- Cornell Local Roads Program Highway School: June 5, 2018, Elena P. Pablo: "Employees and Drug Use"
- NYS Sheriff's Association Institute: June 6, 2018, Elayne G. Gold: "Employee Corrective Action, GML § 207c, and FMLA"
- NYS Public Employer Labor Relations Association: July 19, 2018, Elayne G. Gold: "Employee Handbooks"