



The Siren

Important News and Updates for NYSPFFA Members

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GOVERNOR'S BINDING ARBITRATION PROPOSAL NOT INCLUDED IN 2013-14 ENACTED BUDGET

As a direct result of the efforts of the NYSPFFA, its dedicated members, our brothers across the country and members of our public safety coalition, the SFY 2013-14 Enacted Budget does not include the Governor's original proposal which threatened our long standing right to binding arbitration.

The Governor's proposal, if enacted, would have established a detrimentally restrictive ability to pay standard within the binding arbitration process which would have effectively revoked our existing rights.

Given the significant power allotted to the Governor during the budget process, the removal of his binding arbitration proposal was no small victory.

However, the fight is not over and we will again be calling on our membership in the coming months to ensure that our binding arbitration rights remain unchanged and are not allowed to expire on July 1st. Get more information on the [NYSPFFA web site](http://nyspffa.org).

CALENDAR

April 15, 2013 — [1st District Training](#)

April 16, 2013 — [4th District Training](#)

April 24, 2013 — [Training Dunkirk, NY](#)

If you have any questions or concerns regarding the information in this newsletter, please contact Joseph Dougherty or John Black at (518) 436-0751. For other NYSPFF matters, please contact Mike McManus or Sam Fresina at (518) 436-8827.

ALBANY UPDATE SFY 2013-14 ENACTED BUDGET

On March 29th Governor Cuomo, Senate Majority Coalition Co-Leaders Skelos and Klein, and Assembly Speaker Silver announced early passage of the 2013-14 Budget.

According to the announcement the Enacted Budget continues the state's focus on economic growth through a series of initiatives to create jobs and grow the economy including new tax cuts for small businesses, tax cuts for middle class families, major education reforms and investments, and an increase in the minimum wage to \$9 per hour. The Budget passed both houses of the Legislature days before the April 1 deadline, marking the first time New York has had three consecutive, on-time budgets since 1984, and the earliest budget since 1983.

The Budget closes a \$1.3 billion gap with no new taxes or fees.

- Total State Operating Budget: \$90.2 billion
- Total All Funds Budget, excluding Sandy and the Affordable Care Act: \$135.1 billion

Budget items of interest included:

Cutting Taxes for Middle Class Families: the Budget includes \$1.23 billion in new tax cuts to middle class families over three years. Families with incomes between \$40,000 and \$300,000 will be eligible to receive a new child tax credit of \$350 per year, beginning in 2014.

Reducing Costs and Red Tape for Businesses: the Budget modernizes and simplifies both

Raises the Minimum Wage: the Budget raises the minimum wage from \$7.25/hour to \$9.00/hour over three years, beginning with \$8.00 by the end of 2013, \$8.75 by the end of 2014, and \$9.00 by the end of 2015.

Tier VI Savings Pension Financing Option. Working with the pension systems, the Budget includes a plan that accomplishes the Governor's twin goals of greater predictability and immediate fiscal relief, while building in assurances to protect the funds.

Additional Mandate Relief: The Budget reinforces the Governor's commitment to providing additional local fiscal relief by advancing \$86 million in local Medicaid savings associated with enhanced Federal payments under the Affordable Care Act. In addition the Budget includes the first major overhaul of the General Public Health Work program which will provide mandate relief for local governments

Hunting & Fishing: The Enacted Budget streamlines hunting and fishing licenses and reduces license fees to attract resident and non-resident hunters, anglers and trappers to sporting opportunities in New York State. The restructuring simplifies the categories of available licenses and

Public Safety: The Budget closes two prisons – Bayview in Manhattan and Beacon in Dutchess County.

NY APPELLATE DIVISION AFFIRMS THAT EXACERBATED DEGENERATIVE CONDITIONS QUALIFY FOR POD BENEFITS

In a recent decision the NYS Appellate Division 3rd Department annulled the NYS Comptroller's determination that a corrections officer was not entitled to performance of duty benefits and affirmed the long standing principle that:

"when a preexisting dormant disease is aggravated by an accident, thereby causing a disability that did not previously exist, the accident is responsible for the ensuing disability" (citation omitted).

Accordingly, in this case where the report of the Retirement Systems' expert, which was accepted by the Comptroller, opined that the corrections officer's disability was the result of a degenerative condition which was only temporarily exacerbated by a 1992 incident, the determination that the officer's disability was not the natural and proximate result of her 1992 work-related incident was in error.

As such, the court ruled that the officer was entitled to POD benefits.

A copy of the Decision is available [here](#).

COURT OF APPEALS RULES THAT YONKERS AND OSWEGO CONTRACTS WERE NOT “IN EFFECT”

In a 5-2 opinion handed down Tuesday, the Court of Appeals upheld an Appellate Division ruling that went against the union. Writing for the majority, Judge Eugene Pigott said “it was not the Legislature’s intent” to allow older pension plans to remain in effect under the Triborough Amendment. He continued:

“If the Legislature had intended to invoke the Triborough doctrine, it would certainly have made that explicit. Instead, the Legislature, having set forth the [Triborough] exception for CBAs [collective bargaining agreements] that are “in effect,” expressly states that eligibility to join a CBA’s retirement plan “shall not apply upon termination of such agreement” ... This language makes clear that the Legislature did not intend to apply the exception to agreements that had expired and could only be deemed to continue through the Triborough Law.

This interpretation is further supported by the legislative history. Governor Paterson noted in a Program Bill Memorandum that Section 8 of the bill ensures “that members of an employee organization that are eligible to join a special retirement plan pursuant to a collectively negotiated agreement with any state or local government employers, would be able to continue to enroll in that special plan after the enactment of this bill, until the date on which such agreement terminated” ... Again, the chosen language indicates that a non-contributory plan does

not outlast the expiration of the CBA.”

In Oswego, the city firefighters’ contract expired at the end of 2009, and the union had won an arbitration award requiring the city to keep firefighters hired after that date in a non-contributory plan. Citing the reasoning in the Yonkers cases, the court overturned the arbitration award.

While the impact of the cases may appear limited, it also would affect any county or municipality that had employees working under an expired contract with a non-contributory pension clause when Tier 5 was enacted. Such clauses, pre-dating a 1973 state law barring collective bargaining of pension benefits, are found mainly in police and firefighter agreements.

Chief Judge Jonathan Lippman dissented in both cases, favoring a broader reading of the Triborough amendment. His dissent was joined by the newest member of the court, Judge Jenny Rivera, appointed a few months ago by Governor Andrew Cuomo.

Copies of the decisions are available [here](#).

NYS COMPTROLLER’S DETERMINATIONS REGARDING WHAT IS AND IS NOT AN ACCIDENT ARE NOT WITHOUT LIMIT

Contrary to an emerging and troubling trend whereby the

Appellate Division 3rd Department has affirmed a significant portion of the NYS Comptroller’s numerous denials of accidental disability benefits on the basis that an applicant’s injury was not an accident within the meaning of the RSSL, a recent decision is evidence that the Comptroller’s determinations are not without limit.

In *Scharp v. Dinapoli*, the 3rd Department a 30 year veteran of the police force was injured while evacuating an injured person from his home when a wheeled stretcher collapsed wrenching the officer’s back. After the Comptroller denied the officer benefits, a hearing ensued where the hearing officer found that the officer was entitled to benefits. The Comptroller disagreed with the hearing officer, overruled his decision and again denied the officer benefits.

Citing the hearing record, the 3rd department found that the Comptroller’s denial was not supported by substantial evidence as the officer, a fellow officer and an EMT all testified that they had used similar stretchers hundreds of times without a collapse. As such, the 3rd department found that while wheeling an injured person in a stretcher was undoubtedly part of the officer’s duties the collapse of the stretcher was an accident within the meaning of the RSSL

A copy of the Decision is available [here](#).