The Siren

Important News and Updates for NYSPFFA Members

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AMENDMENTS TO MUNICIPAL AMBULANCE CERTIFICATE OF NEED PROCESS GAINING STRENGTH

Recognizing a history riddled with delays and inherent unfairness, both the Assembly and the Senate have introduced a proposal (S.6515/A.8617) seeking to revamp the certificate of need approval process under which municipalities and fire districts must apply to obtain their permanent certificates of need for the continued operation of ambulance services and first-responder services in the State. Over 30 meetings and the combined support of the New York State Professional Firefighters Associations, Fireman's Association of the State of New York, New York State Association of Fire Chiefs, New York Conference of Mayors, and other entities across the State, the possibility of a post-budget bill comes closer to a reality.

Currently, the Public Health Law requires that after the two-year presumptive certificate of need for a municipality or a fire

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CALENDAR

March 27 — Dennis Leary Firefighters Foundation Fundraiser (Troy, NY)
June 24-27 —2014 NYSPFFA Convention (Syracuse, 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 NYSPFFA matters, please contact Mike McManus or Sam Fresina at (518) 436-8827.

district providing ambulance or advanced life support services is up, that municipality or fire district must apply for a permanent certificate of need through the Regional Emergency Medical Services Council ("REMSCO") to continue operating. The REMSCOs are primarily composed of members from the private industry. This composition has led to long delays and unwarranted appeals for municipalities seeking to obtain their permanent certificate of need.

In 2012, the Legislature passed a bill and the Governor signed it into law (Ch. 464, L. 2012) exempting the City of Glens Falls and the City of Utica from having to submit their applications for a permanent certificate of need to their applicable REMSCOs and instead apply directly to the Commissioner of Health.

This bill takes the necessary next step and would remove the need for any municipality or fire district to apply to their local REMSCO and instead allow an application to be made directly to the Commissioner of Health. The Commissioner then would approve the application unless the municipality's or fire district's provision of services under their temporary 2-year certificate of need failed to meet the appropriate training, staffing, and equipment standards.

This legislation recognizes the significant benefit that municipal ambulance services provide to the local communities, including the generation of much needed revenue to offset costs and thwart increases in local taxes. Stay tuned for continued developments on this issue.

STATE LEGISLATIVE UPDATES

2014-15 State Budget

The Assembly and Senate each approved their one-house budget resolutions and kicked off budget conference subcommittees this past week.

Read the Assembly's report on its one-house budget bill here.

Highlights of the Assembly's $143.4 billion spending plan include:

- $213 million in additional spending above the Executive Budget;
- Additional $4 billion in education funding over the next four years;
- Authorization for New York City to impose a personal income tax surcharge to fund Universal Pre-K (UPK) and after-school programs;
- $25 million to fund the DREAM Act, which will allow undocumented immigrants to access state-funded college tuition assistance programs;
- Circuit breaker personal income tax credit, costing $1.1 billion over 3 years;
- Elimination of the 18-a energy surcharge on residential customers;
- System of public financing for statewide and state legislative offices, greater disclosure of independent expenditures and electioneering communications, and an independent enforcement counsel at the State Board of Elections; and
- Legalization of medical marijuana.

In the Senate, where the Majority Coalition is made up of 29 Republicans, 5 members of the Independent Democratic Conference (IDC) and 1 Democrat, the one-house budget resolution was also approved.

Highlights of the Senate's spending plan include:

- Enactment of the "Freeze Plus" property tax relief program, which will provide additional state aid to local governments that adhere to the 2% property tax cap;
- $540 million to fund UPK and after-school programs;
- Modification of the Governor's proposed corporate and bank tax reforms;
- Modification of the Governor's proposed campaign finance reforms (though it is unclear exactly how they plan to do so);
- Legalizing mixed martial arts; and
- Rejection of Gov. Cuomo's plan to provide college education to some prison inmates.

Assembly Approves Paid Family Leave Plan

The Assembly recently approved a paid family leave bill (A.1793-B) that would provide workers statewide with 12 weeks of paid leave in order to care for an ill relative or newborn child. During their leave, they would receive half of their weekly wage, which would be paid for by an employer-purchased family-leave insurance policy, with a small employee contribution.

In the Senate's one-house budget resolution, it similarly included a program, but required that after the first year of the law's implementation, the family leave policy would be paid entirely by the employee. The proposed language would also specifically prohibit the program's costs from being borne by the employer.

AGENCY SHOP FEES "101"

"Agency shop fees" are deductions made by a public employer from the wage or salary of a non-union employee in a collective bargaining unit and, thereafter, paid to the union representing that bargaining unit. The Taylor Law authorizes the deduction of agency shop fees in New York for public employees and provides that unions are entitled to these fees.

The United States Supreme Court, New York courts, and PERB have held that the collection of agency shop fees is constitutional provided that a non-union member's fee is not used for activities that promote political and ideological activities only incidentally related to employment and does not violate rights under the First Amendment. The rationale behind collecting these mandatory fees is routed in the "government's interest in preventing freeriding by nonmembers who benefit from the union's collective-bargaining activities and in maintaining peaceful labor relations." As a result, deduction of an agency fee turns on whether the employee is in a bargaining unit.

In New York, agency shop fees may be collected from non-union members of a bargaining unit in the same amount as that collected from union members, provided that the union has established and is maintaining a proper refund procedure for amounts specifically exempted from being collected from non-union members. This means that any pro rata share of expenditures used by the union for ideological and political activities must be refunded to the non-union member. The same holds true for any portion of the agency shop fee

that is allocated or paid to a national or state affiliate and used for political or ideological activities.

Proper expenditures of agency shop fees include any activity taken that is normally or reasonably related to a union performing its duties are the exclusive representative of the employees within a bargaining unit. Courts and the New York State Public Employee Relations Board ("PERB") have held that the following expenditures of agency shop fees, among others, are permissible:

- Fees transferred to a union's parent and/or affiliated organization;
- Litigation expenses of national organizations related to collective bargaining so long as the litigation could inure to the benefit of the local union;
- Lobbying expenses involving the legislative ratification of, or fiscal appropriations for, a union's collective bargaining unit;
- Expenditures on union conventions, social activities, and publications; and
- Medical and life insurance so long as it is made unconditionally available to non-union members.

On other hand, improper expenditures of agency shop fees include the use of non-union members' dues for the advancement of political or ideological activities only incidentally related to the terms and conditions of employment.

Additionally, use of agency shop fees cannot put a non-union member in the position of not being able to take advantage of a substantial economic or job-related benefit offered solely to union members even though a pro rata portion of his or her agency shop fees pay for that benefit. Nor can the use of the agency fee have the effect or potential of coercing or pressuring a non-union member in joining the union to receive a benefit paid from their agency fee. In fact, New York courts and PERB has held such to be an improper practice under Section 209-a(2)(a) of the Taylor Law. For example, in *Matter of University Professions, Inc. v. Newman*, the Appellate Division Third Department confirmed a PERB determination that offering group life insurance only to members of the union but using a portion of the agency shop fees to fund it amounted to an improper practice of coercion.

WHERE CAN A FIREFIGHTER CALL HOME?

From time-to-time the occasional questions is asked about where a paid firefighter can reside without his or her choice of residence affecting the ability to serve a particular fire department or fire district. So, where can you live? Unfortunately, this article cannot provide a concrete answer for each individual firefighter because it depends on the local laws, charters, codes, rules, and regulations affecting each individual fire department or fire district.

While public officers in New York State are generally required to live within the State and, if holding a local office, within the political subdivision or municipal corporation pursuant to Public Officers Law § 3, this does not apply to persons employed by paid fire departments or fire districts. The rationale is that paid

firefighters are not considered to be holding civil or local office for purposes of the Public Officers Law. Therefore, on the state-level, there are no residency requirements for persons employed by paid fire department or fire districts.

Rather, a residency requirement can be imposed through a general, special, or local law, city or village charter, code or ordinance, or any rule or regulation. Such may require a person employed by a paid fire department of a fire district to reside in the political subdivision or municipal corporation of the State where the employee exercises his or her official functions or duties.

The Public Officers Law, however, affords protection on how restrictive political subdivisions and municipal corporations can draw their residence requirements. The narrowest and still permissible residency requirement would include residency in the county or one of the counties in which the political subdivision or municipal corporation is located. This means that a person employed by a paid fire department cannot be forced to live in a specific municipality unless that municipality has the exact same boundaries as the county in which it is located.

For paid firefighters and fire alarm dispatches of New York City, the Public Officers Law provides an exception further limiting how narrow the city can set a residency requirement. That is, the residency requirements can be no more restrictive than:

- the county in which such city is located;
- a county within the state contiguous to the county in which said city is located;
- a county within the state contiguous to such city; or
- a county within the state which is not more than fifteen miles from said city.

Therefore, if you have questions about the residency requirements of your paid fire department or fire district, then your answer will be found in the general, special, or local law, city or village charter, code or ordinance, or any rule or regulation affecting your fire department or fire district. If there are none, then you are free to live anywhere, including out of the state.

ACCIDENT AGGRAVATING PRE-EXISTING INJURY CAN BE SUFFICIENT

On February 20, 2014, the Third Department annulled a determination of the Comptroller finding that a correction officer's work-related incident aggravated a preexisting injury—i.e., degenerative disk disease and, therefore, he was not entitled to performance of duty disability retirement benefits.

Importantly, prior to the incident, the officer's pre-existing injury was asymptomatic. Medical evidence, including the Retirement System's own expert, showed that he only began to suffer symptoms after the incident. Based upon this, the Court found that there was insufficient evidence to support the Comptroller's determination that his injuries were not the proximate and natural consequence of his work-related injuries and the matter was remanded.