The Siren

Important News and Updates for NYSPFFA Members

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2014 LEGISLATIVE UPDATE

Over a month has passed since the conclusion of the 2014 legislative session. To date, one bill that NYSPFFA sponsored has been delivered to the Governor. We anticipate that bills will continue to be delivered to the Governor from now until the end of the year.

We are pleased to report that the Governor signed legislation authorizing an increase in the Special Accidental Death Benefit COLA into law as Chapter 104 of the Laws of 2014. This law continues to ensure that widows/widowers and children of fallen fire fighters are protected against increasing inflation and the cost of living.

As additional bills are delivered to the Governor, we will continue to report on all legislation of interest through both the Siren and our website.

CALENDAR

October 28-30, 2014 — Annual Health and Safety Conference (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.

CONSTITUTION AND BYLAWS UPDATED

NYSPFFA recently updated the Constitution and Bylaws, which is available for viewing on the Member's Only portion of website.

SKIDMORE TO RESEARCH FIRE FIGHTER DEATHS

The Department of Homeland Security's Federal Emergency Management Agency, in cooperation with the U.S. Fire Administration, granted $1.4 million to Skidmore College to research the medical cause of cardiac death among fire fighters.

Skidmore's professor of health and exercise sciences, who will be conducting the research, believes that the results will show that the cardiac deaths among fire fighters is not a heart attack but rather another type of cardiac event connected with the stress of fighting fires.

We are in the process of reaching out to Skidmore College to offer our assistance as an integral part of this endeavor.

LEGAL NEWS

Nassau County PFFA Arbitration Award Upheld on Appeal

The Appellate Division, Second Judicial Department recently upheld an arbitration award in favor of the Professional Fire Fighters Association of Nassau County, Local 3101 ("Union") concerning past practices and agreements with regard to having professional fire fighters operating first line equipment over volunteers. In doing so, the Court rejected the Supreme Court's holding that the arbitrator exceeded her authority when she determined that the Village of Garden City violated past practices and agreements even though the original question posed was whether the collective bargaining agreement was violated by assigning bargaining unit work to non-bargaining unit employees.

Facts

The Garden City Fire Department is composed of both professional fire fighters and volunteer fire fighters. The "firematic" response protocol for the Department was that if there was a fire at the eastern part of town, a professional fire fighter responds from the eastside firehouse with a pumper. Additionally, a professional fire fighter from Headquarters responds in an engine and a fire lieutenant drives an SUV to the scene. During that time, a professional fire fighter from the westside firehouse drives an engine to Headquarters and then takes a first line ladder truck to the scene.

On the date of the incident, which prompted the grievance, there were a number of volunteers at Headquarters for an election. When a call came in for a fire on the eastern part of town, the Chief sent one of the volunteers to the scene before the west side ladder truck operator arrived. When the professional westside ladder truck operator arrived, he took the first line ladder truck to the scene, which resulted in two ladder trucks at the scene.

The Union filed a grievance against the Village contending that the collective bargaining agreement ("CBA") provided that professional fire fighters were to be assigned the work of driving first line apparatus, while volunteers were assigned to driving second line apparatus.

Arbitrator Award

The issue before the arbitrator was framed as "whether the [Village] violated the collective bargaining agreement by assigning bargaining unit work to non-bargaining unit employees." The arbitrator found in favor of the Union that the Village violated past practices and agreements with the Union when the volunteers were assigned to operate first line apparatus. Such violation was based on the past practices and agreements that driving first line apparatus to an alarm was exclusively, or at least primarily, the work of the professional fire fighters. The arbitrator rightfully granted injunctive relief against the Village to protect the public from assigning volunteers to operate first line equipment.

Supreme Court Decision

Thereafter, in June 2013, the Nassau County Supreme Court rendered a decision vacating the arbitrator's award, holding that the arbitrator exceeded her authority. Specifically, the court held that the arbitrator failed to establish the necessary connection between the Village's violation of the past agreements and its connection to a violation of the CBA.

The Union appealed the decision.

Appellate Division

The Second Department overruled the Supreme Court and confirmed the arbitrator's award. The Court reaffirmed that arbitration decisions are entitled to deference from the courts, unless they are irrational, violate public policy, or exceed a specifically enumerated limitation of the arbitrator's power. The Court rejected the Supreme Court's holding that the arbitrator exceeded her enumerated power and found that she "acted within broad authority under the CBA in relying upon prior agreements and practices of the parties in interpreting the provisions of the agreement."

This holding is favorable to Unions in asserting that past practices and agreements are recognized authority under CBA.

Retirement System Experts Remain Difficult to Overcome

Two decisions were handed down from the Appellate Division, Third Judicial Department on August 7, 2014. These cases, among a plethora of others, reiterate the difficulty an applicant faces to overcome the Retirement System's medical experts when the expert's report conflicts with the opinion of the applicant's treating physician and medical evidence.

Case Number 1

In ***Matter of Bates v. New York State and Local Police and Fire Retirement System***, a fire fighter sought performance of duty and accidental disability retirement benefits for inju-

ries she sustained to her back. The issue was whether the fire fighter was permanently disabled. The Hearing Officer upheld the Retirement System's initial determination, which was subsequently upheld by the Comptroller.

On appeal, the fire fighter contended that the Retirement System's expert lacked proper foundation to have rendered a medical opinion as the expert by failing to review an MRI completed after her physical examination.

The Third Department, however, confirmed the Comptroller's decision holding that the Retirement System's expert had a proper foundation in rendering an opinion based upon a physical exam and a review of the pertinent medical records. Moreover, the Court found further support in the expert's opinion through testimony that he was aware of the MRI results and it did not have any affect on his opinion.

Case Number 2

In ***Matter of James v. DiNapoli***, the applicant sought disability retirement benefits. The petitioner presented her treating chiropractor who testified to certain back injuries and noted the possibility of demyelinating disease. She also put forth, among other things, reports from a neurologist indicating that she may be suffering from demyelinating disease.

The Retirement System's expert examined the applicant and found that the applicant had no "upper extremity or lower extremity disuse atrophy, reflex impairment or sensory deficit," and concluded that she was not disabled.

On appeal to the Third Department, the applicant argued that the opinion of the Retirement System's expert was irrational and not fact-based because it did not consider tests after his opinion. The Court rejected this argument, holding that the post-dated records "did not produce any new definitive diagnoses or new conclusions of disability." Accordingly, the Court confirmed the Comptroller's determination that the applicant was not disabled.