



# 1991-92 Annual Report Edition

**1989-1990**

**CONCILIATION EXPERIENCE**

3,743 Negotiating Units  
2,426 Contracts Negotiable  
1,958 (80.46%) Settled without third party assistance  
468 (19.54%) Brought to PERB for assistance

**Of 493 Impasses resolved during 1989-90**

152 (30.83%) settled by mediation  
159 (32.25%) settled by mediation by fact-finder  
41 (8.32%) settled by negotiations based on fact-finding report  
43 (8.72%) settled by acceptance of fact-finding report  
28 (5.68%) settled by post fact-finding conciliation  
23 (4.67%) settled by arbitration  
47 (9.53%) Closed for other reasons

**REPRESENTATION ACTIVITY**

155 Petitions received  
64 Director's decisions  
26 Board decisions  
51 Board certifications  
120 Petitions withdrawn  
18 Elections involving 1,375 employees

**CLARIFICATION/UNIT PLACEMENT CASES**

39 Cases pending at beginning of year  
34 Applications received  
5 Director's decisions  
0 Board decision  
37 Withdrawn after conference  
31 Cases pending at end of year

**IMPROPER PRACTICES**

485 Cases pending at beginning of year  
746 Charges filed during year  
119 ALJ decisions  
51 Board decisions  
533 Charges settled by agreement, withdrawn or closed  
579 Cases pending at end of year

**MANAGEMENT/CONFIDENTIAL CASES**

35 Cases pending at beginning of year  
99 Applications received  
57 Director's decisions  
1 Board decision  
33 Withdrawn after conference  
44 Cases pending at end of year

**WORK STOPPAGES**

0 Strikes

**1990-1991**

**CONCILIATION EXPERIENCE**

3,769 Negotiating Units  
2,209 Contracts Negotiable  
1,664 (75.33%) Settled without third party assistance  
545 (24.67%) Brought to PERB for assistance

**Of 486 Impasses resolved during 1990-91**

183 (37.65%) settled by mediation  
137 (28.19%) settled by mediation by fact-finder  
63 (12.96%) settled by negotiations based on fact-finding report  
32 (6.58%) settled by acceptance of fact-finding report  
18 (3.70%) settled by post fact-finding conciliation  
22 (4.53%) settled by arbitration  
31 (6.38%) Closed for other reasons

**REPRESENTATION ACTIVITY**

161 Petitions received  
55 Director's decisions  
10 Board decisions  
42 Board certifications  
98 Petitions withdrawn  
18 Elections involving 1,375 employees

**CLARIFICATION/UNIT PLACEMENT CASES**

31 Cases pending at beginning of year  
24 Applications received  
9 Director's decisions  
0 Board decision  
22 Withdrawn after conference  
24 Cases pending at end of year

**IMPROPER PRACTICES**

579 Cases pending at beginning of year  
839 Charges filed during year  
139 ALJ decisions  
54 Board decisions  
660 Charges settled by agreement, withdrawn or closed  
619 Cases pending at end of year

**MANAGEMENT/CONFIDENTIAL CASES**

44 Cases pending at beginning of year  
69 Applications received  
57 Director's decisions  
1 Board decision  
30 Withdrawn after conference  
26 Cases pending at end of year

**WORK STOPPAGES**

4 Strikes

**1991-1992**

**CONCILIATION EXPERIENCE**

3,786 Negotiating Units  
2,303 Contracts Negotiable  
1,718 (74.6%) Settled without third party assistance  
585 (25.4%) Brought to PERB for assistance

**Of 480 Impasses resolved during 1991-92**

216 (45.0%) settled by mediation  
89 (18.5%) settled by mediation by fact-finder  
56 (11.7%) settled by negotiations based on fact-finding report  
24 (5.0%) settled by acceptance of fact-finding report  
26 (5.4%) settled by post fact-finding conciliation  
22 (4.6%) settled by arbitration  
47 (9.8%) Closed for other reasons

**REPRESENTATION ACTIVITY**

123 Petitions received  
34 Director's decisions  
11 Board decisions  
26 Board certifications  
56 Petitions withdrawn  
10 Elections involving 661 employees

**CLARIFICATION/UNIT PLACEMENT CASES**

24 Cases pending at beginning of year  
20 Applications received  
1 Director's decision  
2 Board decisions  
18 Withdrawn after conference  
23 Cases pending at end of year

**IMPROPER PRACTICES**

619 Cases pending at beginning of year  
967 Charges filed during year  
160 ALJ decisions  
66 Board decisions  
667 Charges settled by agreement, withdrawn or closed  
759 Cases pending at end of year

**MANAGEMENT/CONFIDENTIAL CASES**

26 Cases pending at beginning of year  
67 Applications received  
40 Director's decisions  
0 Board decision  
19 Withdrawn after conference  
34 Cases pending at end of year

**WORK STOPPAGES**

2 Strikes\*

\*Under PERB investigation

# Message of the Chair

1991-92 corresponds with my first year as Chair of PERB, so it is very special for me and a year of changes at PERB. In addition to my appointment to the Board, we finally were able to add our third member in Eric J. Schmertz last July. It has been a tremendous advantage to have a full board.

While 1992 brings us to the 25th Anniversary of the Taylor Law, it is certainly not a time for any of us to rest on our laurels. Indeed, this early part of the decade has been a watershed time for labor relations. Because of the economic downturn last year and this year, the demands on the participants and the process of labor relations have been enormous. They show little sign of abating.

We at PERB have had a very active year. We moved our downstate office from private space on Broadway to excellent public quarters on Hanson Place in Brooklyn. We were able to restore two ALJ staff and a support position which we located there to respond to the 30% of our work load from the Long Island, Metropolitan New York region. The office and especially our staff, Phil Maier and Gary Johnson in Representation and Lou Smith and Karen Kenney in Conciliation, are making a significant contribution to managing the growing case load there. A special note of thanks goes to Savitri Persaud, our lone support person at Hanson Place, who does an extraordinary job.

We also moved our Albany office. Located for almost 20 years at 50 Wolf Road, we are now at 80 Wolf Road, where we were able to design space better suited to our present and future needs, as well as install our computer network.

As we've written in other issues, we have instituted new practices in both Representation and Conciliation, all aimed at getting more PERB services to our clients. In Representation, bifurcation of assignments to make separate ALJs more available for settlement conferences and hearings, as well as firmer hearing dates, had by February reduced the average time frame for completing cases to 11 months. Because of a growth in improper prac-

tice charges filed we haven't seen since the early seventies, it is unclear whether we will be able to continue to make progress or even hold the line in this area.

In Conciliation, we hope to refill a vacant Mediator position and we have separated the mediation and fact finding assignments. We are relying exclusively on panel members for fact finding. There has been a continuing growth in the utilization of fact finding as negotiations stretch out. Here, too, gains that we have made this year in response time are threatened by a pending avalanche of impasse declarations. We are going into the new fiscal year with a much larger number of unsettled contracts than we've seen in a very long time.

We took a very significant step in December of this year by reinstating a seminar for our panel members. Formerly an annual event, PERB's

*(Continued on page 9)*

## Conciliation in 1991-92

Persisting economic difficulties in New York State during fiscal year 1991 continued the upturn in demand for dispute resolution services that began last year. The pattern being established during the initial two years of the nineties is analogous to the early eighties.

For the first time since the 1982 and 1983 fiscal years, we have witnessed consecutive annual increases in the number of impasses filed. This year, PERB's Office of Conciliation became involved in 585 new collective bargaining disputes, an increase of 7.5 percent over the 545 impasses received in fiscal year 1990. The latter figure represented a 16.5 percent increase in impasses over fiscal year 1989. The 585 impasses received this year is the highest number filed since fiscal year 1983, and marks the first time since 1983 that more than 25 percent of the annual contracts negotiable reached the point of impasse.

The late passage of the 1991 state

budget proved to be a major stumbling block in the bargaining process. With state aid figures not available until the summer, school district negotiations were frequently tabled until autumn. Local government bargaining similarly hinged on state aid to locality commitments. The general sense of economic uncertainty abetted the parties' "wait and see" approach to bargaining in 1991, and led to the negotiation of more short term and "rollover" contracts. This will increase the number of contracts negotiable in 1992 and 1993. Cases were more difficult, took longer to settle and required more extensive PERB involvement. In fiscal year 1991, 480 impasses were resolved. Only in fiscal year 1988 were fewer settlements recorded, and then just four less. The number of cases remaining open at the end of the fiscal year has increased significantly over the past two years. There was a 35 percent increase in the number of impasses continuing into fiscal 1992, contributing to a total of 67 percent more unresolved impasses on April 1, 1992 than on April 1, 1990.

The distribution of school district disputes presents an interesting scenario. Fiscal year 1991 showed a 16.4 percent increase in school district impasses, yet teacher disputes declined by 8.7 percent from the 1990 level. Apparently, noninstructional and administrative unit negotiations resulted in impasse with far greater than usual frequency. The teacher negotiations in which PERB did provide assistance followed the pattern established last year: difficult, time-consuming, and extensive, with impasses often moving beyond mediation into the fact-finding and conciliation stages. At the end of fiscal year 1991 there were 66 continuing teacher impasses, six of which dealt with agreements which had expired in 1990. This represents a 24.5 percent increase over the 53 cases open on April 1, 1991.

On or about August 1, 1991, PERB changed its practice of assigning a single "mediator/fact finder" to an impasse. As of that date, absent a joint request from the parties for a mediator/fact finder assignment or a joint request to continue the designated mediator as the fact finder, PERB began to assign as fact finder an individual other than

*(continued on page 8)*

**NEW YORK STATE  
PUBLIC EMPLOYMENT  
RELATIONS BOARD**



**Vol. 6, No. 2 February, 1973**

*News*

**THE TAYLOR LAW — ANNUAL REPORT EDITION**

Five years of the Taylor Law have demonstrated that employees can be given a meaningful voice in determining their terms and conditions of employment without unduly jeopardizing the legitimate interests of the government and the public. It has also demonstrated that the machinery of the Law provides a viable framework under which all parties carry on labor relations activities. Experience under the Law in the last three years indicates: Total public employees — 1,000,000; Total organized in units — 900,000; and Total employee organization membership — 600,000.

**Three Years  
At a Glance**

**1970**

**NEGOTIATING EXPERIENCE**

2,300 contracts  
1,604 - 70% settled without  
third party assistance  
696 - 30% brought to PERB  
for assistance

**Of 696 brought to the Board**

453 Schools  
243 Other governments

**Of 630 cases closed during 1970**

About 60% (366) settled by  
mediation  
About 40% (252) went to  
fact-finding

**Of 252 cases going to fact-finding**

27% Settled by mediation during  
fact-finding  
32% Report accepted  
41% Report modified before  
settlement

**REPRESENTATION**

173 Petitions received  
27 Director's decisions  
10 Board decisions  
56 Board certifications  
97 Petitions withdrawn  
50 Elections involving 38,948  
employees

**IMPROPER PRACTICES**

26 Cases pending at beginning  
of year  
147 Charges filed  
17 Board decisions  
115 Charges settled by agreement  
41 Cases pending at end of year

**WORK STOPPAGES**

34 Strikes by employees  
6,980 Employees involved  
28,900 Man-days idle  
0.012% Percentage of Estimated  
Working Time  
10 Board decisions on dues forfeiture

**1971**

**NEGOTIATING EXPERIENCE**

2,500 contracts  
1,750 - 70% settled without  
third party assistance  
755 - 30% brought to PERB  
for assistance

**Of 755 brought to the Board**

552 Schools  
203 Other governments

**Of 777 cases closed during 1971**

About 50% (374) settled by  
mediation  
About 50% (385) went to  
fact-finding

**Of 385 cases going to fact-finding**

23% Settled by mediation during  
fact-finding  
30% Report accepted  
47% Report modified before  
settlement

**REPRESENTATION**

143 Petitions received  
21 Director's decisions  
13 Board decisions  
42 Board certifications  
82 Petitions withdrawn  
37 Elections involving 30,801  
employees

**IMPROPER PRACTICES**

41 Cases pending at beginning  
of year  
227 Charges filed  
23 Board decisions  
165 Charges settled by agreement  
80 Cases pending at end of year

**MANAGEMENT/CONFIDENTIAL  
(August-December (\*) )**

150 Applications received  
4 Director's decisions  
1 Board decision  
61 Withdrawn after conference  
87 Cases pending at end of year

**WORK STOPPAGES**

19 Strikes by employees  
32,900 Employees involved  
136,300 Man-days idle  
0.058% Percentage of Estimated  
Working Time  
12 Board decisions on dues forfeiture

(\*) Amendment effective middle of 1971

**1972**

**NEGOTIATING EXPERIENCE**

2,800 contracts  
2,000 - 70% settled without third  
party assistance  
839 - 30% brought to PERB  
for assistance

**Of 839 brought to the Board**

605 Schools  
234 Other governments

**Of 828 cases closed during 1972**

About 42% (349) settled by  
mediation  
About 57% (468) went to  
fact-finding

No, this is not a mistake. This is history — the first PERB annual report. The contrast between this and Vol. 25, April 1992 is instructive. Notice, no interest arbitration, small improper practice numbers, but high management/confidential volumes and work stoppage numbers.

**IMPROPER PRACTICES**

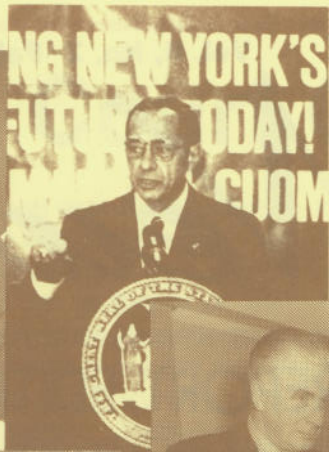
80 Cases pending at beginning  
of year  
297 Charges filed  
21 Board decisions  
245 Charges settled by agreement  
111 Cases pending at end of year

**MANAGEMENT/CONFIDENTIAL**

87 Cases pending at beginning of year  
44 Applications received  
26 Director's decisions  
5 Board decisions  
75 Withdrawn after conference  
31 Cases pending at end of year

**WORK STOPPAGES**

25 Strikes by employees  
14,200 Employees involved  
55,000 Man-days idle  
0.023% Percentage of Estimated  
Working Time  
23 Board decisions on dues forfeiture



# Public Job Relations Board Assumes Office

NEW YORK — The new three-man State Public Employment Relations Board, which it is hoped will keep the peace in the controversy-laden government-employee relations field, was sworn in today at Governor Rockefeller's New York City office.

Hailing the statute enacted in the last legislative session setting up the new agency, its chairman, Robert D. Helsby, said:



Jerome Lefkowitz



Thomas E. Joyner

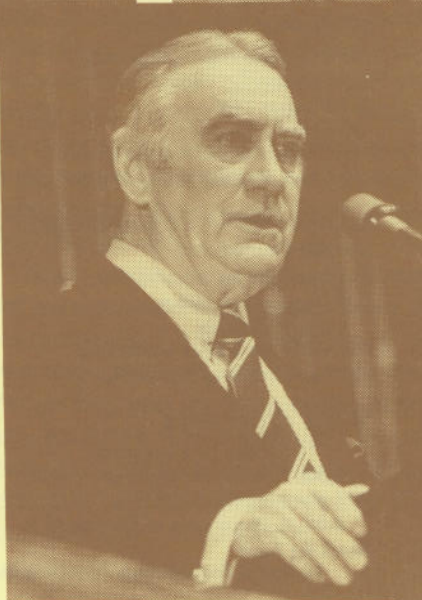
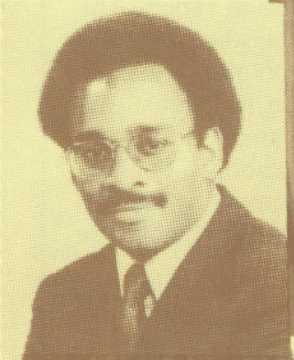
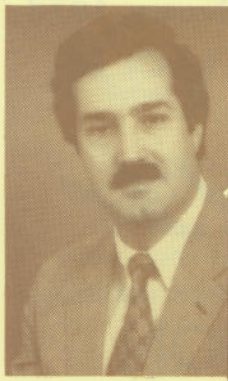


John Hans



Ralph Vatalaro

[Law Department in 1959 and] Singer and Mr. Hans still have

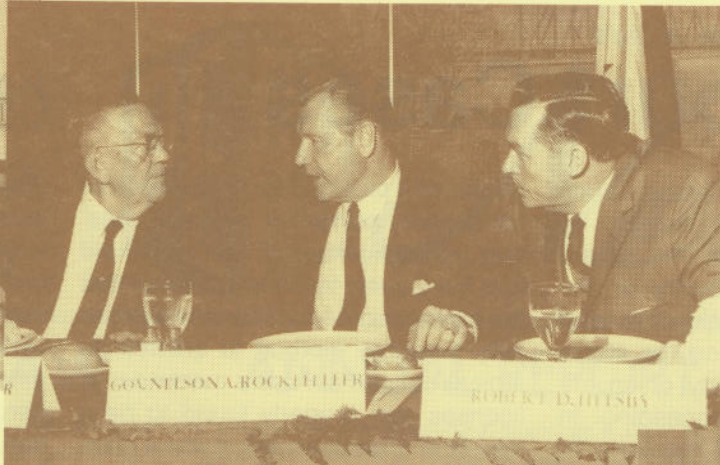


QUESTIONS  
and  
ANSWERS

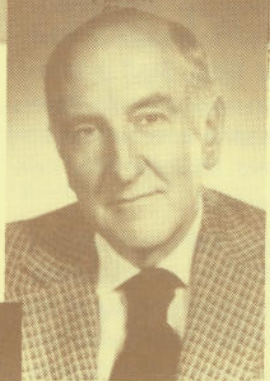
on the  
Public Employees' Fair Employment Act  
1967



NEW YORK STATE  
PUBLIC EMPLOYMENT  
RELATIONS BOARD



GOVERNOR'S  
CONFERENCE  
on  
Public Employment  
Relations  
OCTOBER 14-16, 1967  
New York City  
STATE OF NEW YORK  
NELSON A. ROCKEFELLER  
GOVERNOR



# The Taylor Law 1967-1992



the State Public Employment  
Relations Board had the right to  
order 500,000 state workers into  
five shifts for bargaining.

### Court Backs Five-Unit PERB Plan

Declined from PERB  
that to have any role and  
500,000 state employees.

### ies Propo

the State Public Employment  
Relations Board to  
order 500,000 state workers into  
five shifts for bargaining.

and 500,000 members among many  
workers, unions, to have the  
right to bargain.

A decision in court  
would have halted the election,  
before Governor Rockefeller  
could sign the law.

### Loud and Clear



and in accord with the state's  
policy that down by the Legisla-  
ture," the Appellate Division is  
to be heard.

### PERB Wins

The state's highest appellate  
court Wednesday to have an-  
nounced by the State Public Em-  
ployment Relations Board that  
it is striking down the Taylor Law  
workers under the Taylor Law.

### PERB Wins

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## State

# Latham man 'on spot' in guard strike

By LOIS UTTLEY

The man in the middle of the explosive dispute between the state and its striking prison guards today is a soft-spoken state official from Latham, Erwin J. Kelly.

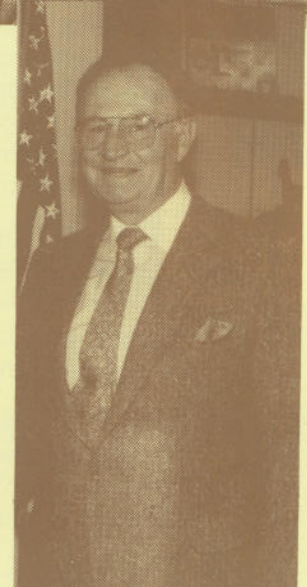
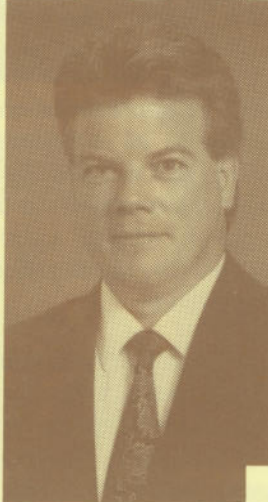
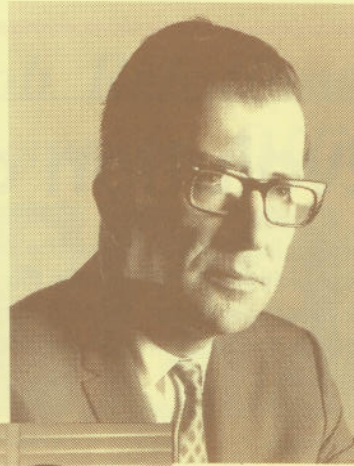
Kelly, director of conciliation for the state Public Employment Relations Board, heads a team of state mediators prepared today to attempt to negotiate an end to the strike that is crippling the state's prisons.

With the National Guard taking up positions at the prisons today, Kelly was scheduled to bring both sides in the dispute together at PERB offices at 50



Erwin J. Kelly  
... heads state mediator





# Taylor Act Denounced by Labor

By SV SAFRANSKY

A stinging denunciation of New York State's Taylor Act as well as a defense of the controversial measure that governs collective bargaining procedures for public employees were sounded yesterday at the Tri-County Long Island Labor-Management Institute forum.

"This legislation visits upon labor a standard it doesn't exact from anyone else in society," declared Victor H. Gotbaum, executive director of District Council 37, American Federation of State, County, and Municipal Employees, AFL-CIO, which has 52,000 members.

Gotbaum, who leveled most of his criticism at the law's no-strike provision, insisted that "the strike is a democratic action of working men and women" and should not be outlawed.

But Dr. Robert D. Helsby, chairman of the New York State Employment Relations Board, which admin-

isters a constructive spirit of good faith.

"Both must learn to negotiate collectively."

He noted that the Taylor Act is "not simply a replacement of Condon-Wadlin but represents a whole new approach to public employment relations."

The Condon-Wadlin Law, which the Taylor Act replaced, was generally thought to be unworkable since it called for stiff penalties against striking public employees such as automatic dismissal and a severe fine upon reinstatement.

Dr. Helsby conceded that "in the future, additional steps and modification will undoubtedly be required" but noted that the law provides the "initial framework through which these steps can be taken."

Dr. Helsby delivered his speech during a luncheon at International Hotel, Kennedy Airport where the all-day institute session was staged.

Gotbaum spoke in the



Arnold Zack, left, director of the Labor Management Institute of the American Arbitration Association, discusses penalty procedures with John Hans, conciliation director of the state PERB.



# Evolution of the Taylor Law

- 1947** The Condon-Wadlin Act continues the common law prohibition of strikes, and enforces the prohibition through severe penalties. Striking employees are terminated, with reappointment possible only on condition that:
- a) compensation not exceed that received prior to the strike;
  - b) no pay increase be granted for three years; and
  - c) reinstatement be probationary for five years.
- 1963** Condon-Wadlin is amended to add a penalty of two days pay for each day the employee is on strike, but the probationary period is reduced to one year and an increase in salary is permitted after six months.
- 1965** Condon-Wadlin amendment expires and Condon-Wadlin Act reverts to its original terms.
- 1966** Twelve-day New York City transit strike. State Legislature grants amnesty to striking employees. Governor appoints Taylor Committee to make legislative proposals regarding public sector strikes and employee rights. Taylor Committee issues its report on March 31, recommending repeal of Condon-Wadlin and enactment of a statute similar to that which would become the Taylor Law.
- 1967** The Public Employees' Fair Employment Act (Taylor Law) is enacted, granting employees the right to organize and bargain collectively with their employers, while continuing the strike prohibition.
- 1969** The Taylor Law is amended to prohibit improper practices (unfair labor practices) by employers and unions and to make individual strikers subject to the "two for one" penalty and one year of probation.
- 1971** The Taylor Law is amended to permit the exclusion of managerial/confidential employees. Communication privilege created for agency staff and appointees.
- 1973** Negotiation over retirement benefits prohibited.
- 1974** The Law is amended to provide binding arbitration as the last step in police and firefighter impasses. Another amendment eliminates the legislative hearing from impasse procedures for educational institutions.
- 1977** The agency shop fee is made mandatory for state negotiating units, and a mandatory subject of negotiations at the local level. Fact finding is eliminated as an impasse resolution step in police and fire disputes. PERB's remedial powers expanded in refusal to bargain charges. Jurisdiction limited over contract violations. Definition of collective bargaining added.
- 1978** The probationary period for employees who strike is eliminated.
- 1981** Substitute teachers with reasonable assurance of employment deemed covered employees.
- 1982** The Law is amended to require employers to continue the terms of an expired contract until a new agreement is negotiated, provided that the employee organization does not strike.
- 1986** Employee organizations representing units of the New York City Transit Authority, the Metropolitan Transit Authority and the Triborough Bridge and Tunnel Authority, and subsidiaries thereof, are given rights under a new binding interest arbitration provision.
- 1989** Unions granted exclusivity of representation. Statutory coverage extended to all substitute employees of a school district or BOCES who have been issued a notice of reasonable assurance of continuing employment under altered Labor Department definition. New York City transit police made eligible for interest arbitration.
- 1990** Union's duty of fair representation codified. Four month statute of limitations established for judicial proceedings on duty of fair representation causes of action. Public employers joined as parties on certain duty of fair representation improper practices. PERB's remedial powers regarding duty of fair representation charges expanded. Detective investigators in county district attorney offices made eligible for interest arbitration.
- 1991** Criminal investigators in county district attorney offices made eligible for interest arbitration. Employees of Staten Island Rapid Transit Operating Authority made eligible to elect interest arbitration.

# Key Court Cases

During the past year, diverse issues highlighted the courts' dockets.

The Court of Appeals, in a recent case, defined the authority of the Supreme Court to grant injunctive relief as a means of preserving the status quo during the pendency of an improper labor practice proceeding. In *Uniformed Firefighters Association of Greater New York v. the City of New York*, the Court determined that it has no such power. The case involved a dispute where the City of New York issued an intra-departmental order changing the classification of a position within the New York City Fire Department from full duty to light duty. The plaintiff, contending that the reclassification would have a negative impact on the safety of its members, filed an improper practice charge and argued that the order should be rescinded so the matter could be resolved through the collective bargaining process. In addition, plaintiff commenced an action in Supreme Court seeking an order enjoining the City of New York from implementing its new policy until an adjudication of the improper practice charge. Plaintiff alleged that such relief was necessary because the implementation of the new policy was imminent and if injunctive relief were not granted, the safety of firefighters would be placed in jeopardy, rendering any order made pursuant to the improper practice charge, ineffectual. The Court, in dismissing the request for preliminary injunctive relief, stated "...[it] would have the undesirable effect of embroiling the courts in the merits of such disputes, a matter best left to the 'impartial body with expertise in th[at] area'" Therefore, absent expressed statutory intent, New York State courts and PERB are without authority to grant injunctive relief during the pendency of improper practice charges.

In *County of Suffolk v. PERB, et al.*, the Appellate Division, Second Department confirmed PERB's determination that Suffolk County's directive prohibiting employees in its real estate department from working off-duty on real estate transactions, was negotiable

insofar as it provided for confiscation or compulsory surrender of employees' real estate licenses. The Court held that the County failed to establish that the surrender of such licenses was the only available method to enforce its ethical concerns. As the surrender of licenses was properly found to be a new term of employment, it was a mandatory subject for negotiation.

In *State of New York (Department of Transportation) v. PERB*, the Appellate Division, Third Department found that PERB properly determined that the State violated its Taylor Law bargaining obligation by unilaterally increasing the workweek of certain Transportation Department employees from 37.5 to 40 hours. The Court held that while Civil Service Law §134 establishes a ceiling of a 40-hour workweek, with certain exceptions, it specifically authorizes an appointing agency to establish a workweek of not less than 37.5 hours when such "would not interfere with the proper performance of government functions." In this case, the Department of Transportation established a 37.5 hour workweek and, therefore, the State had an obligation to bargain an increase of those hours.

Finally, the Appellate Division, Third Department in *Crosson v. PERB* affirmed PERB's authority to include family court hearing examiners in existing units of court non-judicial personnel. The Court held that even though hearing examiners are subject to the Code of Judicial Conduct and must refrain from engaging in political activity inappropriate to their office, the political activity of a bargaining unit to which they may belong is of no consequence as the hearing examiners could easily disassociate themselves from inappropriate activity.

These cases, together with those that were decided in the past, continue to emphasize PERB's importance in New York State public labor relations. The coming year will no doubt be quite busy as a now fully-constituted Board continues to insure the integrity of the collective bargaining process in a difficult economic atmosphere.

## Conciliation . . .

(Continued from page 2)

the mediator who had serviced the given case. This change, along with workload increases cited above, brought total staff and panel assignments for mediation, fact finding, conciliation and grievance mediation-arbitration to 803, an increase of 16.4 percent over fiscal 1990. Staff mediation and conciliation assignments were up 3.2 percent, despite a reduction in staffing level. Panel assignments increased by 51.8 percent.

During fiscal year 1991 fact finding panels were appointed in impasses between New York State and six of its employee units. Daniel Collins was appointed to chair the panel in the dispute with Council 82, Security and Law Enforcement Employees, AFSCME, which represents a 22,000 member corrections officer unit. Howard Edelman and Thomas Rinaldo also sit on the panel. Eva Robins as chair, Susan MacKenzie and Martin Scheinman make up the panel assigned to make recommendations in the negotiations involving over 100,000 employees in four statewide units represented by the Civil Service Employees Association, AFSCME. Fact-finding involving the 58,000 member unit represented by the Public Employees Federation is being conducted by Thomas Carey as panel chair, together with Rodney Dennis and John Watson. The panels met with the parties during fiscal 1991, and hearings continue into fiscal 1992. As we went to press, the State reached tentative agreement with the four CSEA units.

Many other negotiations involving large groups of employees required assistance from PERB during fiscal 1991. The New York City Board of Education and its 3,650 supervisors and administrators had a mediator appointed. In the Sachem School District a settlement was reached with its 1,140 teachers after a PERB conciliator joined the parties. Onondaga County and its 3,800 CSEA-represented employees settled through mediation while Cattaraugus County and the CSEA are now engaged in fact-finding for a 1,200 employee unit.

(Continued on page 9)

## Message . . .

(Continued from page 2)

budget cuts had made it necessary to eliminate these training opportunities for three years. With the difficult economic times in which we find ourselves, communication and information throughout the labor relations community is critical. We are planning another session this May in conjunction with the Taylor Law Conference and hope to continue these this year.

As many of you know, PERB's Directors and I, held a series of meetings from the fall into the final quarter of this year with many of our major client organizations. It was very valuable to hear from you as to what you were experiencing and how we were able to help meet the parties' needs.

As we closed this year, PERB was looking back at record growth in cases filed (25% growth in improper practices and 35% growth in impasses) over the last three to four years and record numbers in the volume of cases we are carrying into the new year in Representation, Conciliation and at the Board. As I look ahead, it is virtually certain that we will all face continuing pressure and challenge. I look forward to the opportunity afforded by this 25th year and the Conference to participate with many of you in an examination of the past as guidance for the future. Your input will be essential if we are to effectively address the problems and concerns facing public sector employers, unions and the employees they represent.

*Pauline R. Kinsella*

## On the Lighter Side in Representation

Yes, it's been an interesting year.

We moved our main office (lost three files and found five others), re-established an office in New York City (yes, the Borough of Brooklyn is still part of the City) and staffed it with two administrative law judges (restoring the ALJ complement which we had three years ago). And, if that wasn't enough of a change in our status quo, we made major changes in our case handling practices and introduced the concept of "bifurcation," separating the conference from the hearing function.

Yes, it's been a challenging year.

As computers appeared, the secretaries had to start teaching the ALJs, "What's a diskette?" and to patiently quiet their screams, "Damn, I've lost it!" While this was all going on, we sustained a 15% increase in the number of improper practice charges filed, issued 15% more improper practice decisions, and held 30% more hearing sessions.

Yes, it's been a hectic year.

But, somehow, we survived and did it with style, I think. Hopefully, most of the pieces are now in place, most of the glitches have been smoothed out, and with bright, smiling faces we begin the next interesting, challenging and hectic year.

## Conciliation . . .

(Continued from page 8)

Three major cities and the employee organizations representing their employees called upon PERB to assist in negotiations during fiscal 1991. In Buffalo, negotiations involving 1,000 police officers have been aided by a mediator; the 700 member white collar unit is involved in fact-finding and an impasse involving 1,000 firefighters was resolved through the issuance of an interest arbitration award. Rochester has been provided with a mediator in talks with its 610 police officers as well as in a general unit of over 1,400 employees represented by Council 66, AFSCME. In Syracuse, units of nearly 500 police and fire fighters sought the assistance of PERB in their failed negotiations with the City and ultimately had terms of a new agreement established through interest arbitration. Meanwhile, the City remains in mediation with a 350 member CSEA unit.

For fiscal year 1991, the Office of Conciliation processed 600 Demands for Arbitration under its Voluntary Grievance Arbitration Rules of Procedure. Another 290 arbitration demands were processed according to the arbitration rules established by New York State and AFSCME Council 82. The total of 890 arbitration cases processed in 1991 exceeds fiscal year 1990 by 19.3 percent. PERB also processed 43 petitions for compulsory interest arbitration involving police and fire fighter units. This represents a 19.4 percent increase over the petitions received in 1990 and is the largest number of filings in the last few years. Finally, PERB received 21 joint requests for Staff Grievance Mediation-Arbitration, representing a slight decline from fiscal 1990.

### PERB NEWS

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# PERB DECISIONS

## Board

### Improper Practice

**PUBLIC EMPLOYEES FEDERATION — STATE OF NEW YORK (DEPARTMENT OF SOCIAL SERVICES)** The Board dismissed the charge that the State acted improperly in restricting a PEF's steward's access to unit employees at the worksite. The Board found the State's actions were not improperly motivated and that they did not interfere with the steward's ability to serve the unit's employees. A second aspect of the charge, which alleged that the State circulated a petition to remove the steward, was also dismissed for lack of credible evidence. (U-9495, 3/17/92)

**AFSCME COUNCIL 66, o/b/o, AFSCME LOCAL 930 — ERIE COUNTY WATER AUTHORITY** The Board dismissed the charge, affirming the decision of the ALJ that the alleged unilateral change in shift was a contract dispute beyond the Board's jurisdiction. (U-11326, 3/17/92)

**MARVIN NORMAN CASID — UNITED FEDERATION OF TEACHERS, LOCAL NO. 2** The Board dismissed the charge and affirmed the finding after hearing of the ALJ that UFT, though not responsible for the medical arbitration process, had voluntarily assisted the employee throughout. (U-11508, 3/17/92)

**RICHARD W. GLASHEEN — COUNTY OF SUFFOLK AND SUFFOLK COMMUNITY COLLEGE** The Board affirmed the Director's dismissal of the charge on the basis that no facts were presented to establish the allegation that Mr. Glasheen's transfer violated his rights. (U-12230, 3/17/92)

**THOMAS CONDE — SUFFOLK COUNTY BOCES III** The Board affirmed the Director's dismissal of Mr. Conde's charge as untimely and legally deficient. The charge failed to present any facts to establish that BOCES discharged Mr. Conde for reasons which would violate the Act. (U-12497, 3/17/92)

### Unit Placement

**JAMESTOWN PROFESSIONAL FIREFIGHTERS ASSOCIATION — CITY OF JAMESTOWN** The Board affirmed the Director's decision, arrived at after an investigation including a hearing, to dismiss the petition to return four assistant chiefs to the unit because they do not perform managerial duties. The finding was that as a matter of continuing practice, the assistant chiefs attend cabinet meetings and participate in policy level decision-making. (CP-204, 3/17/92)

## Director

### Improper Practice

**NYS INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES (COUNCIL 82) — STATE OF NEW YORK** The Director dismissed the charge of Council 82 finding that it failed to prove the falsity of the State's response that it had not yet determined whether it would pay performance and longevity increments if a successor agreement was not reached before 3/31/92. (U-12379, 3/5/92)

**CITY OF JOHNSTOWN — JOHNSTOWN POLICE BENEVOLENT ASSOCIATION** The Director found the PBA's refusal to negotiate not in violation of the Act since the City's demand for deletion of non-mandatory items from the contract was itself a nonmandatory subject. (U-13222, 3/13/92)

## ALJ DECISIONS

**WARREN DEITZ, LOUISE BINNEY AND DAVID PLEETER — STATE OF NEW YORK (AUDIT AND CONTROL); PEF — STATE OF NEW YORK (AUDIT AND CONTROL)** Kenneth J. Toomey found that the employer had violated the Act in regards to Pleeter by giving him a poor evaluation report in response to his engaging in protected activities. He dismissed all other causes of action involving the other charging parties. (U-10653/U-10768, 2/27/92)

**NEW BERLIN FACULTY ASSOCIATION — NEW BERLIN CENTRAL SCHOOL DISTRICT** Monte Klein found that the District violated the Act when it unilaterally changed its practice of extending the Memorial Day holiday by one day whenever the District's snow or emergency allotment had not been exhausted. He ordered the prior practice reinstated. (U-12502, 2/28/92)

**LAWRENCE CARP — OSWEGO CITY SCHOOL DISTRICT** David P. Quinn dismissed a charge which alleged that the District had terminated charging party's employment in retaliation for his efforts to form an employee organization. (U-12210, 3/2/92)

**SHERRILL PBA — CITY OF SHERRILL** Deborah A. Sabin found that the City violated the Act when it unilaterally implemented a procedure by which a hearing officer for Civil Service Law §75 disciplinary charges was selected. (U-12251, 3/3/92)

**CSEA — TOWN OF CLARENCE** Marilyn Dixon Zahm found that the Town violated the Act when it unilaterally implemented a change in the docking policy for tardiness without negotiating with CSEA. She ordered the offending policy rescinded. (U-12061, 3/5/92)

**AFSCME, COUNCIL 66 — VILLAGE OF ENDICOTT** Gordon R. Mayo dismissed a charge which alleged that the Village had violated the Act by failing to negotiate new hours of work for refuse workers. (U-10890, 3/11/92)

**BUFFALO PBA — CITY OF BUFFALO** Marilyn Dixon Zahm dismissed a charge which alleged that the City violated the Act when it transferred police officers out of the Detective Division, allegedly with improper motivation. (U-11603, 3/12/92)

**CSEA — UNIFIED COURT SYSTEM; SUFFOLK COUNTY COURT EMPLOYEES ASSOCIATION — UNIFIED COURT SYSTEM** Deborah A. Sabin dismissed two charges against the employer which alleged that it had violated the Act by unilaterally abolishing existing promotion units and creating one promotion unit for the employees represented by the respective unions. (U-11993/U-11997, 3/16/92)

## Certifications

**ENDICOTT TEACHERS ASSOCIATION** has been certified to represent all teachers including long-term substitutes in the Union-Endicott Central School District. (C-3776, 3/17/92)

**DANSVILLE NON-INSTRUCTIONAL EMPLOYEES ASSOCIATION** has been certified to represent all noninstructional employees excluding those in various supervisory and finance positions in the Dansville Central School District. (C-3869, 3/17/92)

**UNITED INDUSTRY WORKERS, LOCAL 424** has been certified to represent all employees in the positions of cleaners, custodians, groundskeepers and equipment operators in the West Hempstead Union Free School District. (C-3883, 3/17/92)

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