

PERB NEWS

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September/October 2002

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2001-2002 RECAP

Throughout the 2001-2002 fiscal year, PERB has continued its efforts to increase efficiency and accessibility to its constituency. PERB's collective bargaining impasse caseload reached its high point this decade in 1992-93 and has since declined to fewer than four hundred cases per year. More impasses have been resolved than filed in each of the past five fiscal years. As a result, there are very few long-standing (more than one year) impasses in the state.

The improper practice charge caseload reached its high point of 1,193 cases in 1997-98 and has since declined to 799 cases received in 2001-02. However, the number of improper practice charges filed in the first five months of fiscal year 2002-03 (403) represents a 42 case increase from the 361 filed in the same period last year. It is expected that this upward trend will continue for the remainder of this fiscal year. Since fiscal austerity has a tendency to increase labor relations friction, it is possible that this upward trend may be signaling that more difficult times lie ahead for dispute resolution.

At the same time that the improper practice caseload was declining to historic lows, the cases received for litigation by Counsel's office have shown a remarkable decrease to about one-third the average level experienced over the past decade. However, early indications for 2002-03 would indicate that here, also, the rates are again turning upward.

The only strike last fiscal year involved fire fighters in the City of New Rochelle who staged a "sick out" on several days. Public inconvenience was limited to calling-in additional fire fighters on overtime. The Board imposed a six-month suspension of the union's dues deduction privileges.

While the New York City Teachers and Police contract settlements were the subjects of intense negotiating efforts and extraordinary media attention in the early months of 2002-03, the purposes of the Taylor Law have been upheld with peaceful settlements and no work stoppages. Throughout this period, PERB has continued to modernize our client services, increase individual productivity and accelerate the disposition of charges brought to us for resolution and adjudication.

Decision times:

Continuing a trend begun several years ago, we have again reduced the amount of time needed to process a case to record low levels. For fiscal year 2001-02, it took an average of 155 days to process a case to closure. This is a reduction from the 226-day average the prior fiscal year and the 261-day average the fiscal year prior thereto.

We place great emphasis on the full utilization of pre-hearing settlement efforts in furtherance of our belief that the parties and the agency are best served by reducing time-consuming and expensive litigation. Our efforts have contributed, in part, to the lowest number of improper practice cases carried forward at the end of the fiscal year in over a decade.

Outreach:

We continue to collaborate with educational institutions, professional organizations and with the Bar Association throughout the state to provide educational outreach and training to labor law practitioners. Over 850 individuals participated in programs with PERB staff as presenters during 2001-02.

In keeping with our more traditional roles of client outreach, we have continued to update our printed publications, including the *Mandatory/Nonmandatory Subjects of Negotiation*. An updated version of the 1997 edition of *The Taylor Law* is being readied for publication and will reflect all legislative action from 1997 through 2002. We are currently marketing a new publication entitled *The Taylor Law and the Duty of Fair Representation*, PERB's latest effort to assist the thousands of public employers, the approximately 4,350 bargaining units and the approximately 950,000 public employees in understanding their rights and obligations under the Taylor Law.

We continue to make PERB forms available on diskette and on-line and offer the monthly *PERB News* and subscription service to *PERB Advance Decisions* to our constituency electronically.

PERB decisions are available on Westlaw and Lexis/Nexis and summaries are available on our website.

The annual publication of The Official Opinions and Decisions of the Public Employment Relations Board is marketed in a CD-ROM version in addition to the traditional printed volume.

In our ongoing effort to educate our clients and publicize our services, our Internet web site continues to be a two-way vehicle for communication with our constituency. The web site features answers to questions frequently asked about the Taylor Law, provides access to PERB's departments and individual staff members, offers synopses of current decisions, includes petitions and other official forms which can be downloaded, and provides an order form for our publications and educational outreach programs.



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State of New York
Public Employment
Relations Board
80 Wolf Rd
Albany, NY 12205-2604

Published monthly by PERB
(518) 457-2676
www.perb.state.ny.us

Decisions of the Office of Representation

RONALD PAGANINI AND CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO.

The ALJ dismissed a charge which alleged that the union violated its duty of fair representation by failing to file a grievance on behalf of a unit member. The charge was dismissed since the record demonstrated that the union undertook a good faith investigation of the charge and determined that the grievance lacked merit. There was no evidence that the union acted in an arbitrary, discriminatory or bad faith manner, or that the employee's interpretation of the parties' collective bargaining agreement was the only possible interpretation of the clause in issue. As a result, the charge was dismissed in its entirety. (ALJ Maier, U-23182, 10/10/02)

CITY OF WATERVLIET AND WATERVLIET POLICE BENEVOLENT ASSOCIATION. The City was found to have violated §209-a.1(d) of the Act when it unilaterally imposed a residency requirement on currently employed police officers as a condition of continued employment. (ALJ Doerr, U-23287, 10/10/02)

DARLENE DAVIS AND TRANSPORT WORKERS UNION OF AMERICA, LOCAL 100 AND NEW YORK CITY TRANSIT AUTHORITY. Applying the balancing test set forth in *Board of Education of the City School District of the City of Albany*, 6 PERB ¶3012 (1973), the ALJ held that the Authority did not violate the Act when it refused to provide the TWU with records it sought to represent Davis, a unit member, in a disciplinary matter, including disciplinary records of other unit employees, complaints against a non-unit supervisor, and records of employee

assignments. Some of the records had never existed or did not exist at the time the request was made and the Authority, therefore, had no obligation to produce the documents. As to other requests, the TWU's failure to identify in its requests to the Authority the relevance of, and need for the information to, its representation of Davis, balanced against the Authority's interests, including its interest in maintaining employee privacy, weighed against requiring the production. The allegation that the Authority unlawfully disciplined Davis in retaliation for protected activity was dismissed on the ground that Davis' supervisors were not motivated by Davis' protected activity, but by her misconduct. (ALJ Blassman, U-22244, 10/15/02)

DAVID L. KIBLER AND STATE OF NEW YORK (OFFICE OF GENERAL SERVICES) AND CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO. The Director dismissed, as being untimely, a charge alleging, as amended, a violation of §209-a.1(a) of the Act by the State for retaliation for filing grievances and a violation of §§209-a.2(a) and (c) of the Act by CSEA for failure to address claims of harassment by the State. (Director Klein, U-23727, 10/22/02)

NEW YORK STATE PUBLIC EMPLOYEES FEDERATION, AFL-CIO AND STATE OF NEW YORK. The ALJ dismissed a charge which alleged that the State had retaliated against PEF for filing an improper practice charge. Although the filing of the charge was protected activity, the ALJ concluded that the State's actions and response to said charge were driven by legitimate business reasons, not anti-union animus. (ALJ Mayo, U-22178, 10/30/02)

PERB Newsletter

**NYS Public Employment Relations Board
80 Wolf Road, Albany, NY 12205-2604**

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