

## PAULINE R. KINSELLA

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Pauline Kinsella was PERB's Chairperson from 1991 until 1998, following a 4-year stint as its Deputy Chair beginning in 1987. She was PERB's third Chairperson, its second Deputy Chair, and the first woman in each position.

Pauline was born in Britain not long after World War II. Soon after, her family emigrated to the US where they settled in New Jersey. Inspired and encouraged by her father and mother, she embarked upon a life of scholarly pursuits, graduating *cum laude* from Brown University in 1970 and receiving her J.D. from Boston University School of Law in 1973. She entered the practice of law as a Staff Attorney with the Massachusetts Commission Against Discrimination where, for two years, she investigated complaints involving discrimination in employment, housing, credit, and public accommodations, and prosecuted them before the agency and in court. Pauline joined the Albany law firm of Roemer and Featherstonhaugh (now, Roemer Wallens, Gold and Mineaux) in 1976, where she later became a partner and shareholder in 1979. There, she represented employee organizations in myriad cases before PERB, arbitrators and courts until 1987, when she joined PERB as Deputy Chair, succeeding Jerome Lefkowitz.

As Deputy Chair, Pauline drafted for the Newman Board some of PERB's most cited decisions, perhaps most notably *Herkimer County BOCES*, 20 PERB ¶ 3050 (1987) (first announcement of PERB's "jurisdictional deferral" policy).

When, in 1991, Pauline assumed the helm as PERB's Chairperson, she established the Kinsella Board as a formidable body characterized by scholarship and neutrality.<sup>1</sup> Strictly adhering to the Taylor Law's express articulation of public policy and its unambiguous statutory mandates, the decisions of the Kinsella Board reflect a firm commitment to the rights of working people to organize and bargain collectively through employee organizations of their own choosing, and the balanced obligations of such employee organizations and public employers to negotiate in good faith in the determination of represented employees' terms and conditions of employment.

Disinclined to disturb established precedent, the Kinsella Board was, nevertheless, not averse to reexamining precedent that yielded results that it viewed to be inconsistent with the balanced bargaining obligations contemplated by the Act. For example, in *Johnstown Police Benevolent Assn (City of Johnstown)*, 25 PERB ¶ 3085 (1992), the Kinsella Board examined the negotiability of nonmandatory terms contained in expired agreements, which, under § 209-a.1 (e) of the Act, must be continued, absent

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<sup>1</sup> The "Kinsella Board" consisted of Pauline, Walter Eisenberg, and Eric Schmertz, and, later, Pauline and Marc Abbott. The Board was ably supported by John Crotty, Deputy Chair, Rosemarie Rosen, Executive Director (the first woman in that position), Richard Curreri, Director of Conciliation, Monte Klein, Director of Practices and Representation, and Ernest Hart and later Gary Johnson, Counsel, each of whom was appointed by Pauline, as well as a staff of ALJs, mediators, and support personnel, who, together, contributed to the Board's credibility.

agreement to the contrary. The problem confronted by the Board was that once a nonmandatory provision was negotiated into a collective bargaining agreement, any subsequent negotiations concerning the subject could be blocked by the party seeking to have it continued, because it is a nonmandatory subject. Standing by its well-settled precedent that the negotiations history of a subject does not affect its negotiability, the Kinsella Board directed the employer to withdraw its bargaining proposal to obtain relief from a nonmandatory term in the parties' expired contract.

However, the Board highlighted its dissatisfaction with the result in *Johnstown* and cautioned parties in similar circumstances that the problem presented by the employer's dilemma was very real and inconsistent with the policies of the Act, which contemplates a bilateral duty to negotiate. The Board recommended that the problem be addressed by the Legislature, but that if it were not, then the Board would address the issue pursuant to the policies of the Act within the Board's control. Notably, the Cuevas Board did just that at its first meeting. Upon acknowledging the conundrum discussed by the Kinsella Board in *Johnstown*, the Board held the Act "requires both parties to a contractual relationship to bargain on demand [concerning] nonmandatory subjects of negotiation contained within their agreements and thereby effectuate the fundamental policies of the Act" (*Uniformed Firefighters of Cohoes (City of Cohoes)*, 31 PERB ¶ 3020, at p. 3040 [July 1998], *subsequent history omitted*).

The Kinsella Board was also not averse to reversing precedent that it considered to be wrong on the law. For example, in another matter involving the City of Cohoes (*Cohoes Police Benevolent and Protective Assn*, 27 PERB ¶ 3058 [1994]), the Kinsella Board reversed a line of cases holding that benefits for active employees after they retire had to be paid out during the life of the agreement in order to be mandatorily negotiable. Observing that the precedent was based on a fundamental misreading of the Court of Appeals decision in *Village of Lynbrook v PERB*, 48 NY2d 398 (1979), the Board held that benefits for active employees after they retire are nothing more than deferred payment of wages earned while employed. In a simple observation, the Board held that "the duration of a benefit cannot be material to a determination regarding its negotiability." Here again, as in *Johnstown*, the Board provided a cautionary warning:

Because the union is not the representative of retirees, it has no bargaining rights or obligations on behalf of retirees. Similarly, the employer could not compel the union to negotiate on their behalf, and there are questions . . . as to the parties' right to even bargain voluntarily on behalf of retirees, at least to the extent the bargaining would effect a change in retiree benefits which [are] unacceptable to them. *Therefore, the demand, once negotiated, might well be insulated from any subsequent negotiation by the parties. The open-ended, unfixed, potentially escalating nature and extent of an employer's financial obligations under this type of demand only compounds the problems associated with a right of negotiation limited to current unit employees. Nonetheless, Lynbrook compels the conclusion we reach. The policy issues associated with retiree*

*health insurance are best addressed in the context of legislation.*  
[Emphasis added, internal citations and footnotes omitted.]

*Johnstown* and *Cohoes PBA* illustrate that the Kinsella Board did not shy from highlighting weaknesses in the Taylor Law affecting the collective bargaining rights of both labor and management.

During a recent interview in association with this biography, Pauline stated that, as Chairperson, she was guided by the principle that “the Taylor Law, by its unambiguous language, supports and encourages the right to organize and collectively bargain, and that my role at PERB was to support and enforce that public policy.” She stated that “the rights of working people to organize and to collectively negotiate concerning their terms and conditions of employment are “necessary ingredients for a healthy democracy.” In her view, “when workers are empowered to participate in the determination of their working conditions through collective representation, they present a unified counter balance to economic and political forces that can press them toward disenfranchisement and apathy.”

“Collective negotiations,” she further explained, “can be an effective tool to overcome a variety of social ills, such as unequal pay and other inequities in the workplace.” Put simply, she believes that an organized workforce is a power that must be reckoned with, whereas an unorganized workforce is virtually voiceless. At the same time, she recognizes that “overreaching or complaisant unions are counterproductive, and can diminish the interests of workers to participate in collective representation.”

Soon after her term as PERB’s Chairperson, Pauline became the Director of Field Services for the New York State United Teachers, where, among her many responsibilities, she oversaw NYSUT’s staff in providing collective negotiations and contract administration services to NYSUT’s many affiliated local unions.

In 2003, five years after joining NYSUT, Pauline became NYSUT’s Executive Director, where, again, among her innumerable responsibilities, was the oversight of NYSUT’s Director of Field Services and its General Counsel. In that capacity, Pauline represented NYSUT in collective negotiations and contract administration involving NYSUT’s more than 500 employees represented by employee organizations in several bargaining units under the National Labor Relations Act.

No discussion of Pauline would be complete without a nod to her family, with whom she shares a reciprocal devotion. She married her husband, Donald Kinsella, in 1982 when he was the Chief Attorney for the U.S. Department of Justice’s Criminal Division for the Northern District of New York. They have five children and nine grandchildren, of whom she is immensely proud.

David P. Quinn  
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