

MASLA

New York State Association of
Management Advocates for School Labor Affairs
44TH ANNUAL SUMMER CONFERENCE

UNION DATA REQUESTS

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BOCES

7/18/2022

Union Data Requests

An association's right to obtain information from a public employer derives from the association's rights and obligations to represent unit employees in negotiations, the administration of collective bargaining agreements, and union's ability to effectively represent the interests of the employees in its unit.

Taylor Law Updates

Civil Service Law has been modified several times in recent years, the first revision occurring in April of 2018 in anticipation of the Janus decision.

- ▶ The Court determined that it was a violation of a non-members First Amendment rights to have agency fees withdrawn from an employee's, unless the employee affirmatively consents to the payment of union dues and fees.

Even before Janus, or the revision to CSL §208.1(b), General Municipal Law (GML) §93-b required a valid written authorization before union dues or fees could be deducted from an employee's wages.

Taylor Law Updates

- ▶ Civil Service Law §208 4(a) and (b) – data and access to newly appointed or newly hired; L. 2018, c. 59, pt. RRR §1, effective April 12, 2018.
- ▶ Civil Service Law §208 1(d) quarterly disclosure; L. 2019, c. 55, pt. E §2, effective April 12, 2019.
- ▶ Civil Service Law §209-a 1(h) – prohibition of disclosure; L. 2019, c. 55, pt. E §2, effective April 12, 2019.
- ▶ Civil Service Law §208 4(c) access to employee orientations; and Civil Service Law §209-a 1(h) except §208 (4) or otherwise required by law L. 2020, c. 55, pt. W §1, effective April 3, 2020.

New Hires

Civil Service Law §208 4(a)

Within thirty days of a public employee first being employed or reemployed by a public employer, or within thirty days of being promoted or transferred to a new bargaining unit, the public employer shall notify the employee organization, if any, that represents that bargaining unit of the employee's name, address, job title, employing agency, department or other operating unit, and work location.

Quarterly Demands

The Taylor Law requires the District to turn over the following:

(d) Unless otherwise specified by a collective bargaining agreement, upon the request of the employee organization, not more than quarterly, the employer shall provide the employee organization the name, address, job title, employing agency or department or other operating unit and work location of all employees of a bargaining unit.

Civil Service Law §208 1(d) quarterly disclosure; L. 2019, c. 55, pt. E §2, effective April 12, 2019.

Prohibition of Disclosure

► Civil Service Law §209-a 1(h)

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately . . .(h) to disclose home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of a public employee, as the term “public employee” is defined in subdivision seven of section two hundred one of this article, except

(i) where required pursuant to the provisions of this article,

(ii) to the extent compelled to do so by lawful service of process, subpoena, court order, or

(iii) in accordance with subdivision four of section two hundred eight of this article, or as otherwise required by law.

This paragraph shall not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment.

Intent of Taylor Law Changes

- ▶ Legislative summary narrative with regards to the changes to §208 1(d) and §209-a 1(h) – **“to amend the civil service law, in relation to continuing to protect and strengthen unions.”**

Intent of Taylor Law Changes

Civil Service Law §208 4(a)	Civil Service Law §208 1(d)	Civil Service Law §209 1(h)
New Employee	Quarterly Reports	Prohibition
<p><i>Disclosure of Name, address, job title, employing agency, department or other operating unit, and work location.</i></p>	<p><i>Disclosure of name, address, job title, employing agency or department or other operating unit and work location of all employees of a bargaining unit.</i></p>	<p><i>Improper to disclose home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of a public employee.</i></p>

Union Data Requests

1. Data requests regarding existing bargaining unit members;
2. Data requests regarding new bargaining unit members;
3. Data requests for non-union members in covered titles;
and
4. Data requests for District records.

Right to Receive Data

- An employee organization has a general right to receive documents and information and a failure to provide information may constitute an improper practice.

Local 456, International Brotherhood of Teamsters and City of Mount Vernon, 54 PERB 4548 (2021); CSEA and County of Montgomery, 44 PERB 3045 (2011)

Right of Data - Limitations

This right to data is limited by PERB's reasonableness standard. *“PERB's standard requires inquiring what is reasonable under the circumstances under the specific factual context presented by each individual case, and that no 'bright line rule' dictates every outcome.”*

Local 456, International Brotherhood of Teamsters and City of Mount Vernon, 54 PERB 4548 (2021)

Civil Service Law, Article 14

- A refusal to provide information is typically the subject of a charge alleging an improper practice under §§209-a.1(a) and 209-a.1(d) of the Act.

Civil Service Law, Article 14

Civil Service Law §209-a.1(a) and §209-a.1(d)1

Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately

(a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two of this article for the purpose of depriving them of such rights;

...

(d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees;

Right to Data - Limitations

➤ Reasonableness Standard

- *Burden upon the employer in providing the information;*
- *Availability of the information elsewhere*
- *The necessity of the information*
- *The relevancy of the information*

The Matter of Board of Education of the City of Albany School District and Albany Public School Teachers Association, 6 PERB 3012 (1973).

Right to Data - Limitations

- Even if the request is reasonable, data may be denied if it is not relevant or necessary.

New York State Public Employees Federation and Office of Temporary and Disability Assistance, 54 PERB 3011 (2021).

- The association demand may be denied if the association does not establish any need for the information in the form requested.

Hornell City School District and Hornell Teachers Association, 9 PERB 3032 (1976)

Failure to Provide Data

The denial of a reasonable demand for information which is relevant to collective negotiations, grievance adjustment, the administration of a collective bargaining agreement, or the resolution of impasses arising in the course of collective negotiations impairs the union's ability to effectively represent the interests of the employees in its unit. By rendering the union less able to represent the interests of its unit employees, an employer which improperly refuses a demand for information interferes per se with the statutory rights of its employees.

In the Matter of Schuyler-Chemung-Tioga and Schuyler-Chemung-Tioga BOCES, 34 PERB ¶ 3019 (2001)

How Does The New Prohibition Affect Prior Precedent

Civil Service Law §209 1(h)

Prohibition

Improper to disclose home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of a public employee.

Except when:

- Where required pursuant to the Taylor Law,
- Compelled to do so by subpoena, court order, or
- In accordance with 208(4) of the Taylor Law, or as otherwise required by law.

Construction and Application

- The Supreme Court in Albany County provided a detailed decision regarding the construction and application of Education Law's confidentiality provisions barring disclosure of medical peer review and quality assurance committee records did not preclude disclosure pursuant to a Taylor Law request to Union representatives.
- Even confidential documents that may be statutorily prohibited from disclosure may be required to be disclosed if it is directly related the union's need to effectively defend its members in an administrative disciplinary proceeding.

CSEA v. PERB, 46 AD3d 1037, (3d Dept. 12/13/17) affirming, 14 Misc. 3d 199, (Albany County, 9/22/06).

Names, Addresses, and Telephone Numbers

- Request for updated seniority list, including names, social security numbers, home addresses, home telephone numbers, and dates of hire.
- Names, addresses, and telephone numbers of employees were required to be disclosed to union after union articulated a need to communicate with its members. District did not demonstrate that the request was unduly burdensome or that the union had access to the information elsewhere.

Matter of Service Employees International Union and Utica City School District, 47 PERB 4572 (2014).

Disciplinary Proceedings

- Disciplinary proceedings are intended to promptly resolve allegations of employee misconduct and serve a distinctly different function than grievances. In disciplinary proceedings held pursuant to statute, there is no right to prehearing disclosure.
- No Taylor Law disclosure required in a statutory disciplinary proceeding.

In the Matter of Ann Pfau, as Chief Administrative Judge of the Unified Court System v. PERB, 69 AD3d 1080 (3d Dept. 1/14/10).

Disciplinary Proceedings

- Disclosure may be required when specific contract provisions expand disclosure to disciplinary proceeding. (CBA defined “*grievance*” to include “*a claimed wrongful disciplinary action taken against an employee.*”

City of New York v. New York State Nurses Association, 29 NY3d 546 (7/8/217) affirming, 130 AD3d 28 (1st Dept. 5/26/15).

- Disciplinary proceedings pursuant to statute, such as Civil Service Law Section 75, are a contrast to a disciplinary grievance pursuant to a negotiated contractual procedure.

New York State Correctional Officers and Police Benevolent Association and State Department of Corrections, 53 PERB 4548 (2020).

Disciplinary Proceedings

- Disclosure may be required when there are specific contract provisions allowing a grievance/arbitration challenging the implementation of a disciplinary penalty.

New York State Correctional Officers and Police Benevolent Association and State Department of Corrections, 54 PERB 3025 (2021); New York State Correctional Officers and Police Benevolent Association and State Department of Corrections, 53 PERB 4548; CSEA v. County of Montgomery, 44 PERB 3045 (2011)

Confidential Records Requested

- In certain limited circumstances, an employer may, under the Act, refuse to comply with an information request when it can demonstrate a legitimate claim that such production is prohibited by a specific statute, regulation, or common law.
- Party must first engage in a good faith effort with the requesting party in an attempt to accommodate the need for the requested information.

Matter of Hampton Bays Teachers' Association and Hampton Bays Union Free School District, 41 PERB 3008 (2008).

- Confidential records may be required to be disclosed under certain circumstances.

CSEA v. PERB, 46 AD 3d 1037 (3d Dept. 12/13/07).

Availability of Records Requested

- There is no duty to develop information not yet in existence and then to disclosure of that information.

New York State Inspection, Security and Law Enforcement Employees v. PERB, 197 AD 2d 341 (3d Dept. 5/12/94).

Waiver of Disclosure

- Union may waive Taylor Law right to bring an improper practice charge.

Buffalo Board of Education Professional, Clerical, Technical Employees Association and City School District of the City of Buffalo, 22 PERB 3047 (1989).

- Union may waive Taylor Law rights, but the waiver must be established by clear, intentional relinquishment of statutory rights.

County of Erie v. State of New York, 14 AD 3d 14 (3d Dept. 11/04/04).

- The language of the waiver must be unequivocal, as to permit no other interpretation.

Matter of Newburgh Firefighters Association and City of Newburgh, 30 PERB 3027 (1997).



FOIL – Public Officers Law

- ▶ Non-unit employee . Information - No – not for commercial or marketing purposes
 - ▶ In the Matter of New York State United Teachers, Respondent v Brighter Choice Charter School et al., Appellants, 15 N.Y.3d 560 (11/18/10)
 - ▶ Districts are required to maintain records of the names, public office address, title and salary of every officer or employee (Public Officers Law § 87 [3] [b]). There is a presumption that such records must be made available for public inspection and copying (Public Officers Law § 87 [2]). There is an exception, however. Under Public Officers Law § 89 (2), an entity subject to FOIL may deny access to records that “if disclosed would constitute an unwarranted invasion of personal privacy (Public Officers Law § 87 [2] [b]), which, as relevant here, includes the “sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes” (Public Officers Law § 89 [2] [b] [iii]).

District Data Requests

- Association has a duty to disclose data necessary for the District to engage in negotiations.

International Union of Operating Engineers v. PERB, 9 AD 3d 851 (4th Dept. 7/9/04).

➡ Questions?