

October 2011 Issue 1.1

## HTA Newsletter

### Hudson Teachers Association Newsletter

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### **Helping Victims of Hurricane Irene in Green County**

Recently, Ellsworth Slater, the owner of Great American, offered to match donations of up to ten thousand dollars for people affected by Hurricane Irene. Jack Beyer brought a check from the HTA for one thousand dollars to help fund the relief effort. It is important to help each other in times of need especially the flood victims who live so close to us. There is still a need for more assistance and help. We are going to run an HTA School Supply Drive to help the Windham and Hunter Tannersville school districts. It may seem late but as we know supplies are always in demand in the classroom.

Donations of supplies will be collected in each school in the month of November. Please see your Building Representatives if you have any questions. JLE – Melissa Brown and Matt Campbell, MCSIS – Marlene Parmentier and Tani Quinion, Junior High – Lisa Dwyer and Chuck Peters, High School – Mike Antonelli

## **Walk in the Albany Making Strides for breast cancer on October 16<sup>th</sup>**

On October 16, 2011 members of the HTA will be walking to raise money for breast cancer research. The HTA has made a donation to the Albany Making Strides for breast cancer. Anyone who wishes to make a personal donation can do so at The American Cancer Society [www.cancer.org/involved/donate/](http://www.cancer.org/involved/donate/) . All of us know a survivor of cancer whether it is a colleague like Ann Button, a family member or a friend. Through donations researchers have made successful medical advancements.



### **Website under Construction**

The HTA website is currently being updated. Pages are being added to provide members with additional information. To access the website go to [nysut.org](http://nysut.org), locals online and scroll down to Hudson Teachers Associations. A new email address has been set up to give members quicker access to answers to their questions and concerns.

## **The History of the Salary Schedule**

**The myth:** everyone perceives the step increase to be a raise.

**Truth:** the step increase is deferred compensation for equal pay for equal work.

The step was design through negotiations with school districts to help defer the costs. For example a 27 year 5<sup>th</sup> grade teacher is doing the same work as the 3<sup>rd</sup> year teacher they should receive equal pays for equal work. However, school districts could not and cannot afford these costs. Therefore the deferred compensation schedule was created to allow for equal pay for equal work on a salary scale.

A raise is the percentage negotiated. For instance the 3 percent increase from 2009-2010 year to 2010-2011 year was the raise.

## **Negotiations Corner**

Negotiations are still ongoing.

Please see your building negotiator if you have any questions.

## **Why we defend Triborough**

*By Richard E. Casagrande Esq., General Counsel, and Deborah A. Milham Esq., Senior Counsel - NYSUT United - February 18, 2011*

If you are a public school teacher or school-related professional, public university member or other public employee, you might have read that the Triborough Amendment has to be repealed because it gives you and your union too much power.

Don't believe it.

The truth is Triborough has leveled the bargaining playing field and stops public employers from slashing your salary and benefits — including crucial health care benefits — while your union is negotiating for a new contract.

New York's Constitution provides that human labor is not a commodity and that working people have the right to join unions and collectively bargain. For the public sector, bargaining rights are defined by the 1967 Taylor Law (Civil Service Law Article 14). It promotes an important public policy — ensuring uninterrupted public services through harmonious labor relations. This policy is best effected, according to the law, through collective bargaining.

The Taylor Law establishes a careful balance between labor and management. Unions are prohibited from striking, the traditional weapon of last resort used by labor to pressure management. Management, in turn, is prohibited from reducing or eliminating contract rights or benefits while the parties negotiate for a successor agreement.

Without this balance, employers would be able to delay or avoid bargaining in order to make unilateral changes to contracts.

## **History of Triborough**

In its 1972 Triborough Bridge & Tunnel Authority decision, the Public Employee Relations Board (PERB) interpreted the Taylor Law to prohibit employers from changing terms and conditions of employment while a successor agreement was being negotiated. This principle became known as the Triborough Doctrine.

The doctrine, however, did not protect all contract provisions, only those dealing with mandatory subjects of bargaining, such as salary and hours. Salary schedules and increments were excluded. Further, when a contract expired, public employers were free to alter contract provisions that dealt with permissive subjects of bargaining, such as retiree benefits, class size and staffing levels, among others.

Binding arbitration provisions also lapsed when the contract expired. This meant that once the contract expired, the union was still powerless to strike, but the employer could diminish or discontinue important contract benefits at will.

To address this imbalance, the legislature in 1982 enacted the Triborough Amendment, which had strong support from labor and management. The governor's office, in fact, issued a supporting memo, noting the amendment would guarantee that labor and management came to the table as equals.

The amendment expanded the Triborough Doctrine by making it an improper practice for an employer "to refuse to continue all the terms of an expired agreement until a new agreement is negotiated," unless the union violated the no-strike provision. This meant that all provisions of the contract, except those specifically intended by the parties to sunset on a certain date, would continue until a successor agreement was negotiated — unless, of course, the union engaged in a strike.

## **Impact of Triborough**

Contrary to current claims, Triborough has not tipped the balance of negotiating power unfairly. In fact, during the last 29 years, it has been remarkably successful in preserving the labor-management balance of power and in deterring strikes.

Before Triborough, the number of public sector labor strikes in New York peaked at 28 annually. In the years following the amendment, no more than four strikes have taken place in any given year, and there have been many years with no strikes at all.

Further, Triborough ended the practice of overreaching by public employers who, without the amendment, could and would threaten unions and working women and men with loss of crucial contract benefits in order to get negotiating concessions.

Repeal of the Triborough Amendment would have a chilling effect on public sector labor relations. Public employers would regain the power to eliminate or diminish important contract provisions while negotiating a new contract. They would have an incentive to delay negotiations past the contract's expiration date so they could alter your contract unilaterally.

The ability of employers to utilize this unilateral power, which has not been permitted for almost 30 years, could have a devastating effect on New York's public sector labor relations and on your contract rights — rights that we have fought for. NYSUT will oppose any Triborough repeal.

## From the Desk of the President

### Union, collective bargaining take the day in APPR lawsuit

The state Supreme Court in Albany County yesterday limited the use of standardized state test scores in teacher evaluation, a key claim raised by NYSUT in its lawsuit against SED and the Board of Regents.

In a published [statement](#) following release of the court's decision, NYSUT's Dick Iannuzzi said, "We are pleased the judge has upheld the statute as NYSUT interprets it. Today's ruling is good for students and teachers."

NYSUT sued over changes to portions of the APPR regulations adopted this year that conflict with the new APPR legislation, which was developed jointly by NYSUT and SED and enacted in 2010.

President Iannuzzi called the decision by State Supreme Court Justice Michael Lynch a significant victory, upholding the value of collective bargaining and the input of practitioners.

**"This decision affirms our position that teachers must be a part of developing a fair, meaningful evaluation that will impact student learning," said NYSUT Vice President Maria Neira.**

The court's 15-page decision clearly upholds NYSUT's interpretation of the statute. In a strongly worded decision, the court said, "The (Board) of Regents is unquestionably invested with broad rule-making authority concerning the State's educational system, but such authority must be exercised subject to and in conformity with the law of the state."

The court also said, "The theme throughout 3012-c is that except for the first 20 percent category ... the remaining 80 points must be established through collective bargaining."

Here's the [complete court decision](#). In its press statement, SED has indicated it plans to appeal or possibly seek further legislation.

Iannuzzi, in his statement, reaffirmed the union's commitment to the APPR process and reinforced NYSUT's expectation that SED will be at the table to proceed with the implementation of APPR in accordance with the court's ruling and the law we jointly developed.

## **NYSUT: APPR LITIGATION FINDINGS**

On Aug. 24, 2011, Justice Michael Lynch of the New York State Supreme Court for Albany County issued his decision in *NYSUT v. Board of Regents*, Index No. 4320-11, regarding the Regents' regulations pertaining to teacher evaluations. Below is a summary of how the court's decision impacts collective bargaining concerning teacher evaluations.

### ***Use of State Assessments***

The court held that *Education Law* 3012-c precluded the use of the State assessments utilized in the first 20 percent category of the composite score for the second 20 percent category of student achievement. The court, however, explained that this is not a comprehensive preclusion against the use of state assessments in the second 20 percent. The court stated that data derived from state assessments that defines a *distinctly different measure* of student achievement from the first 20 percent could be used for the second 20 percent, provided the measure is developed locally through collective bargaining.

What is clear is that the second 20 percent component of a teacher's APPR score must be collectively bargained. While a school district or BOCES might consider or attempt to propose a measure of student achievement for the second 20 percent that is derived from state assessments, it is unlikely that a school district or BOCES would be able to derive a distinctly different measure of student achievement than the first 20 percent.

Accordingly, it is expected that negotiations will focus on measures of student achievement for the second 20 percent that are not derived from state assessments.

### ***Remaining 60 percent***

The court also held that the remaining 60 percent of a teacher's composite score had to be collectively bargained. Accordingly, the court found that regulations regarding to what extent classroom observations and professional growth are utilized in the remaining 60 percent were invalid. The court determined that *Education Law 3012-c's* use of the word "standards" in reference to this 60 percent referred to teaching standards, and held that the Regents cannot regulate a specific number of observations or the weight these observations must be given. This means that collective bargaining will determine what components make up the remaining 60 percent.

### ***Appeals***

Though the court upheld the regulation providing for timely and expeditious resolution of APPR appeals, the court stated that this was a general objective and confirmed that the *specifics* of the appeals process must be collectively bargained.

### ***Significant Factor in Employment Decisions***

Education Law 3012-c provides that APPRs "shall be a significant factor for employment decisions including but not limited to ... retention, tenure determination [and] termination, ... which decisions are to be made in accordance with locally developed procedures negotiated pursuant to the requirements of article fourteen of the civil service law." In discussing the regulations which assert that a school district or BOCES retains the authority to terminate probationary teachers or deny tenure during the pendency of an appeal, the court recognized that *Education Law 3012-c* requires APPR reviews to be a significant factor for employment decisions, including retention, tenure determination, and termination. The court found that to the extent the regulations provide otherwise, the regulations were invalid. As such, it would not be appropriate for a school district or BOCES to negotiate a procedure that states APPR reviews will not be a significant factor for employment decisions, including *denial* of tenure.

### ***Scoring Ranges***

Finally, the court held that the regulations regarding scoring ranges for the rating categories of "highly effective," "effective," "developing," and "ineffective" were invalid, because the scoring ranges did not allow for the 60 point category to have meaningful impact in the composite score. The court highlighted that the scoring ranges would allow a teacher to be deemed "ineffective" solely on the basis of poor student achievement as reflected on standardized tests. The court explained that the draft regulations, in which a score of 50 and under was classified as "ineffective," allowed the 60 point category to have impact even in an instance of poor student achievement.

Since *Education Law* 3012-c provides that the regulations of the Commissioner of Education will set forth the minimum and maximum scoring ranges, it is unknown at this time what the scoring ranges for the APPR rating categories will ultimately be. Regardless, the overall scoring ranges for the four rating categories are not subject to collective bargaining.

### ***Evaluators***

The court next discussed Section 30-2.12 of the regulations, which provides that SED can monitor the new evaluation system and order a corrective action plan. The court found that this regulation was valid based on the Commissioner of Education's authority and obligation to enforce the *Education Law* and regulations. However, the court held that the regulation was invalid to the extent that Section 30-2.12[b] authorizes SED to appoint independent evaluators, since the identity of the evaluator is to be collectively bargained. Thus, the identity of the evaluator must be determined via collective bargaining.

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As SED has indicated that it intends to appeal the APPR decision, it is unknown how an appellate court could ultimately rule in this matter. For now, the above principles apply to collective-bargaining negotiations concerning teacher evaluations. We will keep you posted if anything should change in regards to the law and regulations relating to APPR negotiations.

## Regents debate state-centralized scoring for tests



Citing cost, a lack of field input and numerous logistical concerns, the Regents urged State Education officials to do more homework on a proposed plan to establish state-centralized scoring on Regents Exams and other standardized tests. The "testing improvement" overhaul was recommended by SED Commissioner John King at the Regents September meeting in response to cheating scandals in Atlanta, Philadelphia and other cities. The recommendations would prohibit teachers from proctoring and scoring their own students' exams and that schools switch to a statewide, centralized scoring system.

Regents expressed concerns, including how the recommendations would affect the school and testing calendars; how small school districts could comply; and whether some students may be too young to have someone other than their teacher proctor their exams. Others voiced concern that the Regents Exams, traditionally given in June, would need to be given earlier to ensure that grading was finished in time for graduation.

NYSUT Vice President Maria Neira said that, as SED works to improve the integrity of the system, the state needs to find funding and ensure that costs are not pushed down to school districts. She noted the recommendations were formulated internally, without input from educators.

"There are many implementation issues, based on the size of the district," Neira said. "It's critical for the field to have input." See full coverage in *NYSUT United*.

The Regents this week also introduced second-grade teacher [Kathleen Ferguson of the Schenectady FT](#) as the 2012 New York State Teacher of the Year.

"In a state where teaching excellence is commonplace, Kathleen Ferguson stands out," said NYSUT President Dick Iannuzzi. "Her union stands proudly with her, and congratulates her."

## **President Obama's balanced plan would create jobs and help to reduce deficit**

With his [American Jobs Act](#) on the table, the "Super Committee" beginning to consider ways to cut the deficit and Speaker Boehner threatening to kill any plan that would raise tax revenue, the President has proposed a balanced plan that will reduce debt and put middle-class people back to work. The jobs bill restores thousands of teaching positions and creates jobs for construction trades. It includes plans to improve infrastructure for commerce and renovate aging school buildings for kids. Here's a [memo](#) sent by Executive VP Andy Pallotta to NYSUT PAC coordinators this week.



Meanwhile, the president proposed a tax plan that would trim \$400 billion from the deficit. The plan includes the expiration of the Bush-era tax cuts, and it would push the deficit-reduction panel a quarter of the way toward its goal of cutting \$1.5 trillion over 10 years.

Urge your members to send letters of support through the [NYSUT](#), [AFT](#) and [NEA](#) websites to let their representatives in Washington, D.C., know that union members support the President's jobs bill and economic proposals. Share this [AFT video](#) of members speaking about the American Jobs Act.

### **School need repair?**

As part of President Obama's plan to address the nation's persistent economic problems, he would put Americans back to work renovating and modernizing at least 35,000 schools across the country that are in need of repair. Are there schools in your community that need attention? In light of this focus on repairing

and modernizing schools and colleges, the AFT is updating its database. The national union started this work a few years ago as part of its "Building Minds, Minding Buildings" campaign. Click on the question linked above to add buildings to the list.

### **3. Obama offers NCLB waivers**

President Obama on Friday offered to give states that embrace his educational reform agenda relief from portions of the Elementary and Secondary Education Act -- or No Child Left Behind -- including deadlines for meeting 100 percent proficiency on state tests.

[White House press release](#)

[White House fact sheet](#)

*New York Times* [article](#)

AFT President [Randi Weingarten](#) said ESEA/NCLB needs to be fixed now and reauthorized. She said waivers "are an imperfect answer to the stalemate in Congress and at best can provide only a temporary salve." NEA President [Dennis Van Roekel](#) said the administration's waiver plan sets much more realistic goals for schools, while maintaining ESEA's original commitment to civil rights, high academic standards and success for all students. "Teachers have been sounding the alarm on NCLB's test-label-punish approach for more than 10 years," Van Roekel said. "Now there is a real opportunity to move forward with real reform, especially for the most disadvantaged students."

### **Teacher centers offer new technology discount program**

The state Teacher Center Network has a new technology discount program. Beginning Monday, teachers logging into the [teacher center website](#) will find a link to an online store where they can purchase select computers and software titles at dramatically reduced academic prices. The store is managed by Digital River Education Services. In addition, teacher centers will be offering discounts on certain professional development courses for teachers who buy through this new program. Store offerings will continue to expand as the teacher centers work

with their partners at Microsoft and Intel and other software and hardware vendors to obtain special academic prices.

### **Short takes**

- NYSUT members are supporting more than two dozen "[Making Strides Against Breast Cancer](#)" events starting this weekend and through October. Use your union network to help gather a team. When you register online, be sure to enter NYSUT in the "company" line. The union is a statewide flagship sponsor for the 10th consecutive year.
- NYSUT and the AFT host the Northeast Region "See a Bully, Stop a Bully: Making a Difference" conference Nov. 14 in Albany. It is for union leaders, school support teams, district leaders and other interested stakeholders. You can [register online](#).
- Local presidents will be receiving packets of voter registration cards, posters for the workplace and a memo from Exec. VP Andy Pallotta about the importance of getting people registered to vote. You also will get a list showing the registration status of your local union members, but note this is not limited to the union. We need to register ALL those friends in the community who are not registered to vote.
- The MLK March for Jobs and Justice -- with labor, faith-based, civil rights and community support -- has been rescheduled for 11 a.m. Saturday, Oct. 15, in Washington, D.C. The official unveiling of the Rev. Martin Luther King, Jr., memorial will be the following day. If you are interested in attending, please contact your regional office. Here's a [flier](#) with more information.

### **Take a look at TED, a Teacher Evaluation and Development system created by labor/management teams**

Breaking new ground in teacher evaluations, the union is ready to unveil TED, an integrated system of Teacher Evaluation and Development, which was created by six labor/management teams involved with NYSUT's Innovation Initiative. As part of a new web page at [www.nysut.org](http://www.nysut.org), we've posted a

comprehensive TED Handbook and Workbook, which together provide the "how to" for developing a sustainable teacher evaluation and support system.

"Our work reframes the terms and tenor of teacher evaluation, establishing teachers as participants in, not recipients of, their own evaluations," said NYSUT Vice President Maria Neira, who has shepherded the Innovation Initiative pilot work for more than two years. "What makes this model different is that it was developed through labor-management collaboration and we've taken the time to do it right."

Neira is sending a letter about the launch to local union presidents and school superintendents, inviting them to take a look at the new web page packed with user-friendly information, links and research. The TED system, which includes the project's Teacher Practice Rubric approved by the State Education Department, offers templates for observations, goal-setting and professional learning plans that are aligned with New York State Teaching Standards. You can find information on NYSUT Education & Learning Trust training academies for how to use the Teacher Practice Rubric. [Click here for more.](#)

### **Update: NCLB waivers**

State Education officials have indicated New York intends to pursue a waiver for No Child Left Behind requirements, hoping to leverage additional federal support for college- and career-ready standards and assessments, as well as teacher and principal effectiveness. NYSUT Vice President Maria Neira said that as a Race to the Top state, New York already meets the criteria to apply for a waiver to receive flexibility in the 2014 time line for achieving 100 percent proficiency; district and school improvement accountability requirements; and the use of federal education funds. We'll keep you posted as more details become available.