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NYSCOPBA PRESIDENT LARRY FLANAGAN CALLS FOR LEGISLATIVE REMEDY TO ENSURE FAIR PUBLIC EMPLOYEE REPRESENTATION

Recent Court of Appeals Ruling Strips Public Employees of Critical Protections

March 1, 2007 - Larry Flanagan, President of NYSCOPBA today called for immediate legislative action to reverse a recent Court of Appeals ruling that creates a glaring inequity between New York's public and private employees.

New York State's highest court recently issued a decision holding that New York State's public employees do not have a right, under New York's Taylor Law, to union representation at an interview which an employee reasonably fears might result in disciplinary action. Currently, private-sector employees have that right.

"This court decision should serve as a wake up call for public employees at any level of government," said President Flanagan. "It doesn't matter if you are in law enforcement, health care, or in a lab. This decision takes away an important right of all union members. Public employees should not be prevented from representation when we need it most."

The High Court's Chief Judge, Judith Kaye, wrote a twelve page dissenting opinion, in which she expressed her hope that legislation will be enacted to provide public sector employees with the important representation and rights enjoyed by their private sector counterparts.

"Judge Kaye could not have been more correct in her dissent, and could not have been more clear in her call for a legislative fix to this problem," said Flanagan.

Flanagan noted in the Senate, legislation has been introduced by Senator Joe Robach and Senator George Maziarz (S.3202) and Assemblyman Peter Abbate (A.5984) in their respective houses to address this immediate need.

Without these important representational rights, “many public employees will be left to fend for themselves in disciplinary interviews. This is a decision our elected officials need to address immediately. I look forward to working with both the Senate and the Assembly to help lead the charge with the legislature on behalf of our members.” Flanagan said.

The case reached the high court after an employer challenged a decision of New York State’s Public Employment Relations Board (PERB), finding that public sector employees were entitled to union representation at disciplinary interviews, a right long held by private sector employees under the US. Supreme Court’s Weingarten decision. The Court of Appeals overturned PERB’s determination, with two judges dissenting.

According to Flanagan, the Chief Judge recognized that there is no more fundamental or important right to New York State’s public employees than to know that they can be represented by their union when being questioned about an incident which may result in disciplinary action.

Chief Judge Kaye noted in her dissenting opinion that the Taylor Law extends the right to public sector employees to join and participate in an employee organization and the right to be represented by an employee organization.

The Taylor Law further prohibits public employers from interfering with employee’s exercise of these rights.

While Judge Kaye would have held that the right to representation when facing potential disciplinary action is implicit in the existing law, the majority of the court disagreed.

In response, the Chief Judge took the unusual step of expressly calling for legislative action in her dissent. “My hope is that the Legislature will enact, and the Governor will sign into law, an amendment to make explicit in the Taylor Law what to my mind is now implicit.”

While the majority of the court found the differing language of the State and federal laws to require a different result, Judge Kaye noted that “here public and private sector employees represented by a union are in essentially the same position — seeking to participate in a protected union activity of getting advice from a union representative when discipline is at issue.”

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