



# THE ADVOCATE

CAYUGA-ONONDAGA BOCES  
OFFICE OF PERSONNEL RELATIONS  
1879 WEST GENESEE STREET ROAD  
AUBURN, NEW YORK 13021-9430

**VOLUME XXXII**  
**DECEMBER 2012**

## Office of Personnel Relations

**Matthew R. Fletcher**  
Assistant Superintendent for  
Personnel Relations

**Randy J. Ray**  
Director of Personnel Relations

**Brent D. Cooley**  
Senior Labor Relations Specialist

**Michaela Perrotto**  
Labor Relations Specialist

**Mark W. Snyder**  
Safety Coordinator

**Diane B. Dougherty**  
**Linda M. Brown**  
Administrative Support

Telephone: (315) 255-7683 or (315) 253-0361  
FAX (315) 255-7625  
Email: lbrown@cayboces.org

---

*Providing comprehensive  
employment and personnel  
relations services to local  
school districts for over  
39 years.*

## IN THIS ISSUE ...

- **WELCOME NEW CHIEF SCHOOL OFFICER**
- **JUUL AGREEMENTS AND BOARD APPROVAL**
- **THE TRIBOROUGH STATUTE: WHAT IS IT? AND WHAT DOES IT MEAN FOR YOUR DISTRICT?**
- **AREA UNEMPLOYMENT RATES FOR OCTOBER 2012**
- **CPI FOR NOVEMBER 2012**

*Happy Holidays from the staff of the  
Office of Personnel Relations*

# Welcome New Chief School Officer



The Cayuga-Onondaga BOCES Office of Personnel Relations welcomes and wishes much success to these recently appointed Chief School Officers:

**CHARLENE HARVEY. at the  
MANCHESTER-SHORTSVILLE  
(RED JACKET) CENTRAL SCHOOL  
DISTRICT**

Best wishes!



## Juul Agreements and Board Approval

Most public educators in New York State are familiar with what is commonly referred to as a “Juul agreement,” or an agreement between an educator and his/her appointing authority, which extends the educator’s probationary period, rather than terminate the individual at the end of his/her probationary period for not satisfactorily completing the probationary period. This type of an agreement is typically done in an effort to provide the individual with an

opportunity to improve his/her performance and then become eligible for tenure in the position at the conclusion of an additional year of service to the school district. When done in an “open, knowing and voluntary” manner, these agreements waive the educator’s right to claim tenure by estoppel. At the end of the extended probationary period the school district may then grant or deny tenure. *Juul v. Board of Educ. of Hempstead UFSD*, 76 AD2d 837, affirmed, 55 N.Y.2d 648 (1981).

In a recently decided Appellate Division, Fourth Department case, the Pittsford Central School District was challenged by a former employee on the validity of a *Juul* agreement. The petitioner, a fourth grade teacher, was hired in 2007. Near the conclusion of her probationary period, she was informed that she would not be recommended for tenure. At such time, she and the District entered into a *Juul* agreement to extend her probationary period into a fourth year, in exchange for her waiver of her right to claim tenure by estoppel. *Matter of Marshall v. Pittsford Cent. Sch. Dist.* 2012 NY Slip Op 07791 (2d Dep’t 2012).

This agreement was signed by the petitioner, the teachers’ association president, and the Superintendent, but was not presented to nor ratified by the Board of Education. Nearing the end of her fourth year as a probationary teacher, the petitioner was informed that she would not be recommended for tenure. The Board then denied tenure and the petitioner’s service to the District ended in June of 2011.

The petitioner then filed a CPLR article 78 proceeding seeking reinstatement by the District and with tenure by estoppel. The District’s motion to dismiss the article 78 proceeding was granted by the Monroe County Supreme Court. Thereafter, the petitioner appealed. The Appellate Division noted their agreement with the petitioner “that a *Juul* agreement not approved by a school board is an impermissible abdication of a school board’s responsibility to act as trustee (see Education Law §1710) and

manager (see §1804 [1]) of the school district...”

Nonetheless, in the interest of fairness, the court found that the petitioner was “equitably estopped” from disaffirming the Juul agreement despite the Board’s failure to authorize or ratify it. The court went on to say, “the Superintendent unequivocally stated that she did not intend to recommend petitioner for tenure at the end of her third probationary year based on petitioner’s evaluations and input from the Principal. Thus, in place of a recommendation by the Superintendent to the Board that petitioner be denied tenure, the parties entered into the *Juul* agreement. The agreement expressly provides that ‘the Superintendent . . . has informed [petitioner] that she will not be recommended for tenure at the end of her probationary period (June 30, 2010); and . . . the Superintendent has informed [petitioner] that she is willing to recommend an extension of her probationary period for one year.’ The agreement further provides that petitioner ‘accepts the extension of her probationary period until June 30, 2011,’ and that she ‘agrees that she waives any right to claim status as tenured teacher by estoppel, acquiescence or any other reason as a result of this extension.’”

The court therefore affirmed the decision of the Supreme Court based on the premise that “parties cannot accept the benefits under a contract fairly made and at the same time question its validity.”

## Editor’s Note:



Although the circumstances of the case garnered a favorable outcome to the district, we strongly encourage school districts to remain compliant with the requirements set forth in the Education Law and ensure that the school board approves any *Juul* agreements.

# THE TRIBOROUGH STATUTE: WHAT IS IT? AND WHAT DOES IT MEAN FOR YOUR DISTRICT?

Civil Service Law §209-a(1)(e), commonly referred to as the Triborough Statute, is known to most school administrators; however, the historical derivation of the Triborough Statute is not as well known.

In *Triborough Bridge and Tunnel Authority*, the public employer refused to grant salary increments provided in a prior collective bargaining agreement once that agreement expired and until a successor contract was entered into (this period is commonly referred to as the hiatus period). 5 PERB ¶3037 (1972). PERB held that this action was an improper practice in that it was a violation of the duty to negotiate in good faith. PERB ordered the employer to cease and desist from making unilateral changes in “*terms and conditions of employment*” during a contractual hiatus period. *Id.* (Emphasis added).

PERB unequivocally reasserted its holding in *Triborough Bridge and Tunnel Authority* in *Rockland County BOCES*, 8 PERB ¶3018 (1975), when it held:

Civil Service Law §209-a(1)(d) declares it to be an improper practice for a public employer “to refuse to negotiate in good faith with the duly recognized or certified representative of its public employees.” The *sine qua non* (emphasis in original) of negotiating in good faith is refraining from imposing unilateral changes in *terms and conditions of employment* (emphasis added) during negotiations. This proposition is the essence of our Triborough doctrine. In the *Triborough* case, we held that the expectation of an annual increment based upon a long standing and continual practice of its having been paid is a term and condition of employment that cannot be altered unilaterally during negotiations.

Essentially, the *Triborough Bridge and Tunnel Authority* and *Rockland County BOCES* decisions focused on whether or not the matter in issue, by contract, past practice or otherwise, was “so embedded in the relationship between the employer and its employees as to have become an integral part of the employer’s compensatory structure.” *County of Suffolk*, 9 PERB ¶4537 (1976). If an employer unilaterally changed an integral part of its compensatory structure, a term and condition of employment, while the obligation to negotiate persists, it is in violation of the duty to negotiate in good faith. In other words, the so-called Triborough Doctrine (not the Triborough Statute or Amendment), as developed by PERB, prevented an employer from unilaterally changing *mandatory* subjects of negotiation during a contractual hiatus period.

The Triborough Doctrine enjoyed a relatively short lifespan. In 1977, the Court of Appeals overruled PERB’s decision in *Rockland County BOCES*. *Rockland County BOCES v. PERB*, 41 N.Y.2d 753, 395 N.Y.S.2d 439, 363 N.E.2d 1174, 10 PERB ¶7010 (1977). The Court of Appeals held and reasoned that:

After the expiration of an employment agreement, it is not a violation of a public employer’s duty to negotiate in good faith to discontinue during negotiations for a new agreement the payment of automatic annual salary increments, however long standing the practice of paying such increments may have been.

The concept of continual successive annual increments is premised on constantly burgeoning growth and prosperity on the part of the public employer. In thriving periods the increment of the past may not squeeze the public purse, but in times of escalating costs and diminishing tax bases, many public employers simply may not be able in good faith to continue to pay automatic increments to their employees.

Based on the foregoing, the Court of Appeals overturned PERB’s decision in *Rockland County BOCES*. However, this decision was expressly limited to a public employer’s obligation to pay increments after the expiration of a contract. The Court refused to express complete disapproval of the Triborough Doctrine.

In 1982 the New York State Legislature amended the Civil Service Law by adding a new subdivision (e) to section 209-a(1). See Chapter 921 of the Laws of 1982. Civil Service Law §209-a(1)(e), otherwise known as the “Triborough Statute” or “Amendment” expanded the Triborough Doctrine by providing that “it shall be an improper practice for a public employer...to refuse to continue *all the terms of an expired agreement* until a new agreement is negotiated ...”. Civil Service Law §209-a(1)(e). Emphasis added. The amendment requires public employers to continue *all provisions of an expired agreement*, not just mandatory subjects, until a new agreement is reached.

The most significant impact of the Triborough Statute is that it requires public employers to pay incremental salary increases during the hiatus period if the collective bargaining agreement contains some form of a salary schedule or wage system. While public employers are required to continue employees on the expired salary schedule, the formulas used to generate dollars amounts on the step are generally not subject to continuation. *Waterford-Halfmoon Union Free School District*, 27 PERB ¶3070 (1994); *Greece Central School District*, 29 PERB ¶3059 (1996). Hence, a public employer is not obligated to calculate new salary schedules after the expiration of the contract.

PERB has held that effect of Triborough on salary increments can be mitigated by “sunset” clauses. Of course, any contractual provision can be sunsetted. A sunset provision is a clause in a collective agreement which intends to terminative a substantive benefit specified in the collective bargaining agreement at a specified time or upon specified conditions. See *Matter of Suffolk County*, 18 PERB ¶3030 (1985) at footnote 1 “[A] sunset provision must explicitly and expressly evidence an intent to limit the life of a contractual obligation.” *Id.* Where the contractual language expressly evinces a clear and unambiguous mutual intent to limit salary increases to only those years covered by the contract, a school district will not be required to continue salary increments. See *Schuylerville Central School District*, 29 PERB ¶3029 (1996); *Waterford-Halfmoon Union Free School District*, supra; *Matter of Cobleskill Central School District*, supra; *Matter of Suffolk County*, supra.



# AREA UNEMPLOYMENT RATES

## New York State Rate

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.1%	9.2%	8.7%	8.1%	8.6%	9.1%	9.1%	8.8%	8.2%	8.3%			
2011	8.9%	8.6%	8.2%	7.7%	7.8%	8.1%	8.3%	8.1%	8.2%	8.0%	7.9%	8.0%	8.2%

## Syracuse, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.4%	9.4%	8.7%	8.1%	8.5%	9.0%	8.9%	8.6%	8.4%	8.2%			
2011	9.3%	9.0%	8.5%	7.8%	7.8%	8.2%	8.2%	7.8%	8.1%	7.7%	7.8%	8.2%	8.2%

## Auburn, NY Micropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.2%	9.3%	8.6%	7.9%	8.1%	8.4%	8.3%	7.9%	7.5%	7.6%			
2011	9.1%	9.0%	8.5%	7.5%	7.3%	7.5%	7.5%	7.1%	7.2%	7.1%	7.3%	7.8%	7.7%

## Cayuga County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.2%	9.3%	8.6%	7.9%	8.1%	8.4%	8.3%	7.9%	7.5%	7.6%			
2011	9.1%	9.0%	8.5%	7.5%	7.3%	7.5%	7.5%	7.1%	7.2%	7.1%	7.3%	7.8%	7.7%

## Broome County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.7%	9.4%	8.7%	8.2%	8.6%	9.2%	9.3%	9.0%	8.5%	8.4%			
2011	9.7%	9.2%	8.8%	8.3%	8.0%	8.5%	8.5%	8.0%	8.2%	7.9%	8.0%	8.4%	8.5%

## Ithaca, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	6.9%	6.5%	5.9%	5.7%	6.3%	7.2%	7.0%	6.7%	5.7%	5.8%			
2011	6.4%	5.8%	5.3%	5.3%	5.4%	6.5%	6.7%	6.2%	5.9%	5.6%	5.5%	5.6%	5.8%

## Ontario/Seneca/Wayne/Yates Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.1%	9.1%	8.5%	7.5%	7.9%	8.1%	7.7%	7.4%	7.1%	7.2%			
2011	9.2%	9.0%	8.5%	7.6%	7.3%	7.4%	7.1%	6.8%	6.9%	6.6%	6.8%	7.6%	7.6%

## Rochester, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	8.5%	8.6%	8.0%	7.7%	8.0%	8.4%	8.5%	8.3%	7.9%	7.8%			
2011	8.6%	8.4%	7.9%	7.3%	7.3%	7.7%	7.8%	7.5%	7.6%	7.2%	7.2%	7.5%	7.7%

*Source: New York State Department of Labor  
Labor Statistics*

# CONSUMER PRICE INDEX

## November 2012

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM 2011	% INCREASE FROM PRIOR MONTH
NY-Northeastern New Jersey Area			
1. All Urban Consumers	254.285	2.0	0.0
2. Urban Wage Earners & Clerical Workers	250.586	2.1	0.0
U.S. City Average			
1. All Urban Consumers	230.221	1.8	-0.5
2. Urban Wage Earners & Clerical Workers	226.595	1.7	-0.6

# COST OF LIVING UPDATE

## ALL CITIES

## NY - NORTHEASTERN NEW JERSEY

Month	Revised Wage Earner Index	%	All Urban Consumers Index	%	Revised Wage Earner Index	%	All Urban Consumers Index	%
Jan-10	212.6	3.3	216.7	2.6	234.1	2.9	239.0	2.4
Feb-10	212.5	2.8	216.7	2.1	234.2	2.4	238.9	1.8
Mar-10	213.5	3.0	217.6	2.3	235.2	2.7	240.1	2.1
Apr-10	214.0	2.9	218.0	2.2	235.8	2.7	240.5	2.1
May-10	214.1	2.6	218.2	2.0	236.1	2.5	241.1	2.2
Jun-10	213.8	1.4	218.0	1.1	235.9	1.7	240.8	1.5
Jul-10	213.9	1.6	218.0	1.2	236.3	1.8	241.1	1.5
Aug-10	214.2	1.4	218.3	1.1	236.8	1.7	241.6	1.4
Sep-10	214.3	1.4	218.4	1.1	236.7	1.4	241.5	1.2
Oct-10	214.6	1.5	218.7	1.2	237.5	1.9	242.0	1.5
Nov-10	214.8	1.3	218.8	1.1	237.6	1.6	242.0	1.3
Dec-10	215.3	1.7	219.2	1.5	237.6	1.8	241.9	1.4
Jan-11	216.4	1.8	220.2	1.6	238.4	1.8	242.6	1.5
Feb-11	217.5	2.3	221.3	2.1	239.8	2.4	243.8	2.1
Mar-11	220.0	3.0	223.5	2.7	241.7	2.7	245.6	2.3
Apr-11	221.7	3.6	224.9	3.2	242.7	2.9	246.5	2.5
May-11	223.0	4.1	226.0	3.6	244.3	3.5	248.1	2.9
Jun-11	222.5	4.1	225.7	3.6	244.6	3.7	248.5	3.2
Jul-11	222.7	4.1	225.9	3.6	245.3	3.8	249.2	3.3
Aug-11	223.3	4.3	226.5	3.8	246.0	3.9	250.1	3.5
Sep-11	223.7	4.4	226.9	3.9	246.9	4.3	250.6	3.8
Oct-11	223.0	3.9	226.4	3.5	246.3	3.7	250.1	3.3
Nov-11	222.8	3.8	226.2	3.4	245.5	3.3	249.3	3.0
Dec-11	222.2	3.2	225.7	3.0	244.6	3.0	248.3	2.7
Jan-12	223.2	3.1	226.7	2.9	245.5	3.0	249.3	2.8
Feb-12	224.3	3.1	227.7	2.9	246.5	2.8	250.3	2.6
Mar-12	226.3	2.9	229.4	2.7	248.2	2.7	245.1	2.5
Apr-12	227.0	2.4	230.1	2.3	248.7	2.5	245.9	2.3
May-12	226.6	1.6	229.8	1.7	249.0	1.9	252.7	1.8
Jun-12	226.0	1.6	229.5	1.7	248.5	1.6	252.4	1.6
Jul-12	225.6	1.3	229.1	1.4	248.2	1.2	252.0	1.1
Aug-12	227.1	1.7	230.4	1.7	249.7	1.5	253.5	1.4
Sep-12	228.2	2.0	231.4	2.0	251.0	1.7	254.6	1.6
Oct-12	228.0	2.2	231.3	2.2	250.5	1.7	254.3	1.7
Nov-12	226.6	1.7	230.2	1.8	250.6	2.1	254.3	2.0
Dec-12								

# THE ADVOCATE STAFF

## Editor:

Michaela Perrotto

## Editorial Assistant &

## Desktop Publisher:

Linda M. Brown

## Contributors:

Matthew R. Fletcher

Randy J. Ray

Brent D. Cooley

Mark W. Snyder

Linda M. Brown

## Published by:

Cayuga-Onondaga BOCES

Office of Personnel Relations

1879 West Genesee Street Road

Auburn, NY 13021-9430

Telephone: (315) 255-7683 or (315) 253-0361

Fax: (315) 255-7625

\* All Rights Reserved

## PAST ISSUES OF “THE ADVOCATE”

Past issues of “The Advocate” can be read and/or downloaded for your reference at your convenience.

Simply go to our website at [www.cayboces.org](http://www.cayboces.org), navigate through Administrative Services, Negotiations and Safety Services, Personnel Relations Service, and then click the button for OPR Publications.