

The Select Joint Legislative Committee on Public Employee Relations

1969 REPORT



STATE OF NEW YORK
LEGISLATIVE DOCUMENT (1969) — NUMBER 14

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Senator Thomas Laverne, Chairman

Senators

John E. Flynn
Basil A. Patterson

Assemblymen

John E. Kingston
Alfred D. Lerner
Frank G. Rossetti

Ex-Officio

Senator Earl W. Brydges, President Pro Tem, The Senate

Assemblyman Perry B. Duryea, Jr., Speaker, The Assembly

Senator Joseph Zaretski, Minority Leader, The Senate

Assemblyman Stanley Steingut, Minority Leader, The Assembly

Senator Warren M. Anderson, Chairman, Finance Committee,

The Senate

Assemblyman Willis H. Stephens, Chairman, Ways and Means

Committee, The Assembly

Caesar J. Naples, Staff Director and Counsel to the Committee

Steven Brenner, Research Analyst

Robert E. Doherty, Consultant

Irving R. Markowitz, Consultant

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Preface

To have served as Chairman of this Select Committee was indeed a privilege. I assumed my responsibilities knowing that the challenge required, first, the assembling of a talented staff, and, second, obtaining the full cooperation of various governmental agencies and staffs. The Committee was fortunate to accomplish both of these objectives.

It is proper that I should give recognition and appreciation to those who have so richly earned it.

Requests of the Executive Departments were enthusiastically received. Commissioner John Burns, of the Office for Local Government, and its counsel Murray Jaros, Dr. Robert E. Helsby, Chairman, and Jerome Lefkowitz, Deputy Chairman, of the Public Employee Relations Board and its staff, Commissioner Martin Catherwood, of the New York State Department of Labor, and his counsel, Deputy Commissioner Grey and Abraham Klein, all provided immediate and vital assistance to the solution of our problems. I acknowledge with sincere thanks their invaluable assistance.

The Committee was indeed fortunate to be able to secure the services of Attorney Caesar J. Naples, who has been working with the Taylor Law since its enactment. He undertook the combined responsibilities of general counsel and Staff Director of the Committee.

Dr. Robert E. Doherty, Professor of Labor Relations, New York School of Industrial and Labor Relations, Cornell University, and Dr. Irving R. Markowitz, Professor of Labor Relations, LeMoyne College, and Syracuse, University, agreed to serve as Consultants to the Committee. Their extensive experience in public and private labor relations and their suggestions and critical comments were invaluable assets to the Committee. Steven Brenner, who has written a fine Master's Thesis on the Taylor Law, ably coordinated staff research.

These four gave generously of their time and their complete devotion to this project. Their services are much appreciated. The results of their work, I am sure, will be a significant contribution to the research in this field.

The advice and counsel of many private organizations was requested and generously given. They included representatives of labor and management in both the public and private sector and many other organizations sincerely concerned with the solution of problems in the public employment area.

Many thanks to the Governor's Counsel Robert R. Douglass and

to Steven A. Hopkins of his staff for their complete cooperation and valuable assistance.

Special recognition should be given to Senator John E. Flynn for his significant contribution concerning a plan to revise the Civil Service System to conform to negotiations under the Taylor Law and to his counsel, Richard Sussman, Esq.

Finally, the Committee work would not have been possible without the complete support of leadership in both the Senate and the Assembly. Speaker Perry B. Duryea Jr. and his counsel, Charles Webb, and other members of his staff, Temporary President of the Senate, Earl W. Brydges, his counsel, John J. Phelan, and his staff, contributed much to the work of this Committee.

To all of them and to many others too numerous to mention, I give my sincere thanks and the gratitude of the members of this Committee.

The following report reexamines the basic policy questions posed by the Taylor Law: Can public employees be given a meaningful voice in the determination of their terms and conditions of employment while assuring the general public uninterrupted services. In the twenty months of its existence, the Taylor Law has succeeded in the vast majority of cases. Public employees have made significant advances through collective negotiations without resort to the strike. Accordingly, and for the additional reasons presented in the report, we conclude that strikes are inappropriate in the public service and their prohibition should be continued.

Central to the report is the analysis of the distinction between "collective bargaining" as it is known in the private sector and "collective negotiations" under the Taylor Law. The two terms are not—and cannot be—synonymous and an understanding of their differences is essential to the proper implementation, by employers and employees alike, of this vehicle for bilateral determination of public employee working conditions.

The report presents the history of the 1969 amendments and analyzes the effect they have upon collective negotiations. The introduction into the law of penalties against individual strikers and the code of improper employer and employee organization practices are described and are expected to have significant long-range consequences. The former is intended to be a deterrent to organized and especially wildcat strikes. The latter clarifies rights and provides remedies for overreaching by a party to negotiations.

The position of the legislative body as distinct from the executive is discussed and we conclude that the legislature must be free to approve or disapprove tentative "agreements" reached by

the executive and the employee organization insofar as they require legislative action. The independent action of the legislature or budgeting agency must be acknowledged as final in recognition of the constitutional responsibility placed upon it.

The report raises—for the first time in a legislative document—certain questions posed by the experience of the first two years of the Taylor Law. The impact of collective negotiations on the public and upon the operations of government is analyzed in detail. The allocation of resources resulting, inevitably, in higher taxes is an area that must be given the closest scrutiny when an already heavily-taxed citizenry is demanding greater economy in government.

The issues raised by problems of unit determination and the powers of the Public Employment Relations Board, mini-PERBS and New York City's Office of Collective Bargaining are reviewed and recommendations are made to improve their effectiveness.

Included also are copies of the bills which resulted from the staff's research. They vary from the extremely controversial to the purely technical and it should be stated clearly that their inclusion here should not necessarily be interpreted as an indication of agreement by any individual member of this Select Joint Legislative Committee. In fact, some members were opposed to certain of the bills introduced but agree that their inclusion in this report would serve to stimulate study of the many problems raised by the Taylor Law. The Committee members were not unanimous in recommending that the prohibition against the strike be continued in the public sector, but that view represents the consensus of the majority.

Finally, the report includes valuable reference data heretofore not available. An analysis of each fact-finding report from September 1, 1967 to June 1, 1969 is included and should serve as an excellent source for study of the causes of public sector disputes and should be thoroughly reviewed prior to any consideration of legislation to limit the scope of bargaining. The appendix also includes a comprehensive listing of all government employers under the Taylor Law identifying the chief executive officer and the legislative body and describing the budgetary process.

The life of this Committee, while brief, has we hope provided a new insight to the problems of the Taylor Law. Most importantly, it is hoped our efforts will continue progress toward peace and justice in public employment.

Thomas A. Laverne
Chairman

Introduction and Background

In 1967 the New York State Legislature enacted the most comprehensive and far-reaching legislation in the nation affecting labor-management relations in the public sector. The Taylor Law, named for the distinguished George W. Taylor, Harnwell professor of Industry at the Wharton School of Finance and Commerce, University of Pennsylvania and Chairman of Governor Rockefeller's Committee on Public Employee Relations,* granted public employees the right to negotiate collectively regarding their terms and conditions of employment, while retaining the statutory prohibition against strikes by such employees. The law recognized the right of public employees to form and participate in employee organizations for the purpose of collective negotiations and required government, as a public employer, to recognize employee organizations, to negotiate and enter with them into written agreements covering the terms and conditions of employment of their employees. In addition to prescribing various penalties for strikes, the law created an agency, the Public Employment Relations Board (PERB), with extensive powers to administer the law.

Since September 1, 1967, the effective date of the Taylor Law, over one thousand agreements have been negotiated affecting some four million public employees. Since that time, also, there have been twenty-eight strikes in violation of the Taylor Law.⁽¹⁾

Critics of the law have attacked its philosophy from all sides. To some the law did not go far enough in its grant of rights to public employees when it denied them the most potent weapon in the arsenal of private labor—the right to strike. Others feel the law went too far in thrusting a complete system of collective negotiations upon harried governmental executives not experienced in the techniques of labor-management negotiations. These people were concerned that negotiations would result in tax increases for an already heavily taxed electorate. Still others have begun to look into the nature of government itself and have asked whether representative democracy was designed to cope with the pressures which can be brought to bear against it at the bargaining table, and whether decisions are not now being made in the interests of labor harmony which might be detrimental to

* The other members of the Committee were E. Wight Bakke, David L. Cole, John T. Dunlop and Frederick H. Harbison.

the public good. As a result of this criticism, the Legislature determined to study the questions raised concerning the Taylor Law.

On January 27, 1969, during the Regular Session of the New York Legislature, President Pro Tem of the Senate, Hon. Earl W. Brydges, and Speaker of the Assembly, Hon. Perry B. Duryea, Jr., appointed a Select Joint Legislative Committee on Public Employee Relations to study the Taylor Law. In February, 1969 the Committee recruited a staff of experienced practitioners in the field of public labor-management relations to assist it. Caesar J. Naples, of Buffalo, an attorney with Moot, Sprague, Marcy, Landy and Fernbach, with extensive experience in collective negotiations, mediation and fact-finding under the Taylor Law, was hired to act as counsel for the Committee and as Staff Director. Robert E. Doherty, of Ithaca, Professor of Labor Relations, New York School of Industrial and Labor Relations, Cornell University, and an experienced mediator and fact-finder who has written extensively in the field of teacher-school board relationships, and Irving R. Markowitz, of Syracuse, Professor of Industrial and Labor Relations, LeMoyne College and Syracuse University, attorney, arbitrator, mediator and fact-finder in public and private labor disputes and labor relations consultant, agreed to serve as Research Consultants to the Committee. Steven Brenner, of New York City, lecturer at C. W. Post College and author of a master's thesis to be published entitled *New York Public Employment Labor Relations Under the Taylor Law*, was hired as research analyst for the Committee.

The Staff's responsibilities as outlined by the Committee were: (a) to assist the Committee by conducting research in the operation of the Taylor Law to date, e.g., examination of collective agreements, exploring the extent and cause of work stoppages, studying the impact of negotiations on resource allocations; (b) consult with employer and employee representatives, neutrals, agency administrators, and other interested groups and individuals to gain their insights into the operation of the Law and hear suggestions as to how it might be improved; (c) on the basis of the consultations, on the research, and the Staff's reflections, present to the Committee an analysis of the problem along with a list of tentative proposals. In anticipation of the Staff's work, the Joint Legislative Committee solicited from public employee and employer organizations suggestions for modification in the Law. Unfortunately, the Staff barely had an opportunity to organize itself and arrange for research and study facilities when the march of events by-passed it.

History

The Legislature had an immediate problem. On February 17,

1969 the Civil Service Employees Association (CSEA), which claimed to represent the bulk of State employees, threatened an unspecified form of "job action" (this term was later defined to mean "strike") by State employees unless the Governor's representatives, which had called off negotiations pursuant to a restraining order issued by the Public Employment Relations Board (PERB), returned to the negotiation table.

Since these events figure importantly in creating a public attitude which was reflected in the terms of the 1969 amendment, we recount briefly the circumstances that led up to the strike threat. The CSEA had been designated by the Governor as the negotiating representative of State employees in a state-wide unit on November 15, 1967. This designation was immediately challenged by other employee organizations claiming to represent State employees in smaller units. In response to this challenge, PERB issued an order to the State executive enjoining it from further negotiations with CSEA until the question of unit determination and certification was settled. This order was vacated by the courts. After extensive hearings, the staff of PERB rejected the state-wide unit and defined six separate negotiating units. While PERB was considering appeals by CSEA from this determination, the State commenced negotiations with CSEA for the second fiscal year. District Council 50, AFSCME, conducted a strike in four mental hospitals, complaining that the State was discriminating against it by negotiating with CSEA prior to an election. After PERB rendered its decision defining five separate negotiating units for State employees and re-issued its order enjoining negotiations with CSEA only, Council 50 called off its strike.

The CSEA appealed both the unit determination of PERB and its order stopping negotiations. Simultaneously, it advised the Governor that unless PERB's unit determinations were approved by the courts and elections conducted to determine the negotiating representative in each of the units, the Governor was obliged to continue negotiating with the employee organization he had recognized as representative of all the employees in the original unit. Early completion of negotiations was important because budget allocations affecting wages and salaries for employees for the coming fiscal year would have to be voted during the current Legislative Session. CSEA argued that unless negotiations were completed before the end of the Legislative Session, the employees would have no representation at all. On February 27, 1969, before the staff could even read the large number of documents submitted by employee and employer groups, the Governor and the legislative leaders, responding to the atmosphere

of public concern engendered by the CSEA strike threat, proposed several amendments to the Taylor Law.

The import of these amendments was to stiffen the strike penalties which, it was felt, would act as a deterrent to illegal strikes. Fines against employee organizations found guilty of instigating a strike were increased from a maximum of \$10,000.00 to an unlimited amount for each day the work stoppage continued. The duration of the loss of dues deduction privileges was changed from a maximum of eighteen months to an indefinite period of time to be determined by PERB, and the privilege would be restored only after the employee organization has proved its willingness to comply with the law.

The law, which has heretofore directed penalties only against the organization, applied penalties against individual strikers. One penalty required a forfeiture of two days' pay for each day the employee was on strike. Another placed the striking employee on probation for a term of one year.

The new amendments also sought to correct a number of problems which, it was felt, contributed to the occurrence of strikes. The law codified improper employer and employee practices and specifying remedies so as to enable PERB, acting on the request of a party, to correct an improper advantage gained by a party, and to encourage proper and orderly negotiations. Also, the function of the Legislature was more clearly defined. Finally, the law specifically recognized the power of the parties to submit disputes to binding arbitration. These changes are discussed more fully in the next chapter.

The public reaction to the amendments was, apparently, limited to the penalty provisions. Leaders of public employee organizations denounced the proposed amendments as "repressive" and conducive of delays in negotiations. Even public employer organizations such as the New York State School Boards Association and the Council of Mayors saw the new penalties, particularly those directed against individuals, as harsh and unworkable. The New York Times editorialized on March 4 on this "Draconian legislation", maintaining that ". . . experience makes it plain that there is no surer way to build militancy among public employees than to pile wholesale individual penalties on top of fines and other sanctions directed against the unions". Other observers, perhaps more dispassionate, pointed out that while penalties directed against employee organizations found guilty of fomenting a strike should be stiff and swiftly imposed, the lawmakers should be careful to insure that the penalties should not intrude into the work place once the strike has been settled. Placing a worker on probation and forcing him to work for an

unspecified number of days without pay or job security, it was argued, could be so destructive of morale and employee performance that the penalty would be more detrimental to the public interest than the strike itself. The Legislature, in other words, was putting nearly all its eggs in the deterrent basket, regardless of the consequences should that deterrent not work.

On March 4, 1969, the Governor announced that the State would resume negotiations with CSEA and other employee organizations claiming to represent state workers; on that day the CSEA leadership called for a delegate meeting on March 7, at which it would recommend that a strike resolution be rescinded. On that day, the bill was passed in the Legislature, and CSEA delegates voted 954 to 40 to rescind the organization's strike resolution.

Analysis of the Problem

The paradox of the Taylor Law is that while it has granted public employees unprecedented rights and has served as a vehicle for substantial economic gains, it seems also to have fostered an extraordinary amount of employee militancy and disaffection. It is arguable that the advantages brought about by the Taylor Law are to a significant degree the actual source of employee discontent. Many public employee leaders are saying that while the door to meaningful negotiations is no longer completely closed, neither has it been completely opened. The law has provided the means for improving several aspects of working conditions, but this appears to have had the effect of only raising expectations for even greater improvement.

A part of the difficulty can be attributed to the fact that, with but a few exceptions, neither employers or employee groups have had much experience with such negotiations. The old saw that the art of compromise is one of the hardest of arts to learn and practice may have special appropriateness in public sector labor relations. Public employers, long accustomed to the exercise of unilateral authority on personnel matters, have found it difficult to accept bilateral sharing of much of this authority. Frequently they responded to rather reasonable employee proposals with shock, dismay, anger and/or intransigence. Public employees, on the other hand, probing for the boundaries of a settlement, frequently made demands that were inconsistent with fiscal and financial realities or with sound administrative procedures. While these difficulties are to a degree persistent and intrinsic to the labor-management relationship, both public and private, time and experience will, no doubt, render them less abrasive.

"Collective Negotiations" vs. "Collective Bargaining"

The greatest source of our troubles probably rests with the failure to understand what the term "negotiations" means under the law. Certainly it does not carry quite the same connotations that "collective bargaining" carried in the private sector. There, it carries with it the right of the parties to resort to the strike or lockout, i.e., the ability (and, perhaps, the willingness) to inflict economic hardship on the opposing party, that serves as the lubricant. This right is the *sine qua non* of "collective bargaining" as it has been universally understood.

It is not possible to incorporate these same techniques into the public sector. Representative government was not designed to cope with the type of squeeze play a strike or strike threat presents. We have long assumed that in a democratic society, public policy—which certainly includes the methods by which we deal with public servants—should be determined by duly elected public bodies and not by those very interest groups that a specific policy is designed to effect. While certain types of "extra-political" pressures are consistent with the democratic process, it is also true that there must be limits to the kind of pressure any group should be allowed to exert. The Taylor Law presently provides for the kind of concerted pressure a government can tolerate, and, possibly, even benefit from. But if a legislative body were to allow the strike in the public service, it would mean that the body is prepared to reduce governmental authority by a significant and, perhaps, dangerous degree. Government which reflects the interest of all the people would then become government reflecting the wishes of powerful special interests. Employee organizations alone, among all government's claimants, could muster sufficient concerted strength to force their way. It would be difficult to imagine a system of representative government under lawful rule when any group of citizens pursuing its private ends, possesses the power to bring the operations of that government to a halt. ⁽²⁾

It is clear that free "collective bargaining" implies a balance of power. There can be no balance of power in the public sector. In the private sector, the balance of power is regulated by economic factors as well as by laws and regulations. However, in the public sector, the public employer exercises no economic leverage that can successfully balance the power that may be exerted by employee organizations.

If "collective negotiations" does not mean "collective bargaining", neither does it mean a maintenance of unilateral employer authority. It falls somewhere in between. The failure of both parties to grasp this notion is responsible for many of the

current difficulties. The Taylor Law was designed to give employees a collective voice in determining their conditions of employment; but that voice was not supposed to be controlling, nor can it be as strong as the voice of private sector unions. The law was also intended to prevent serious inroads into the legislative process; but it was not calculated, nor do we believe it ought, to leave this process untouched and unquestioned.

While this delicate and complicated procedure which falls between collective bargaining and the legislative process is the central issue, it is not the only problem dealt with in this report.

In order to put the present status of the Taylor Law into proper perspective, we have dealt first with the events leading up to the passage of the March 7, 1969 amendments, then with an analysis of these amendments, and finally with those subjects that need further study and investigation.

The necessarily limited confines of this report do not allow for full critical analysis of the arguments relating to the strike as appropriate to the public sector. This area, together with others equally necessary to a complete evaluation and analysis of the controversy surrounding the Taylor Law, should be developed in further studies.

Conferences with state, county, town, village, school and city officials and their employee representatives—each with its own differing problems and solutions—would be invaluable to the Committee's deliberation. The importance of holding hearings which allow a communication of these ideas and experiences cannot be overstated.

1969 Amendments to the Taylor Law ⁽³⁾

The amendments passed by the Legislature on March 7, 1969 and signed by Governor Rockefeller on March 10, 1969 changed the Taylor Law in five significant areas:

(1) Penalties against striking employee organizations and against individual employees were increased;

(2) The concept of improper employer and employee practice was codified in the law;

(3) Additional procedures to resolve impasses, including a recognition of the suitability of binding arbitration in certain circumstances, were introduced;

(4) Provisions relating to the finality of agreements, including a definition of the role of the legislative body, were added; and

(5) The Mayor of the City of New York was required to report to the Legislature and to PERB by August 1, 1969 indicating the steps to be taken by New York City to bring the Office of Collective Bargaining and its practices and procedures into more substantial equivalence with the Taylor Law.

Two of these amendments were based upon recommendations of the Governor's Committee on Public Employee Relations contained in its report of January 23, 1969.⁽⁴⁾ Prof. Taylor's Committee felt that the existing limitations on the amount of the fine which a court could levy upon an employee organization for criminal contempt in violating an order enjoining an illegal strike should be removed. The limitation on such fine—an amount equal to one week's dues or \$10,000.00, whichever is less, with a minimum of \$1,000.00 for each day the contempt persists—undoubtedly discriminates against smaller employee organizations. Consequently many larger unions might be better able—and, perhaps, more willing—to absorb such a fine, rendering a limited fine a less effective deterrent.

Consequently, the Judiciary Law was amended during this session to remove the limitation on fines in such cases and to leave the determination of the amount to the discretion of the court.⁽⁵⁾ As an indication that the Legislature intended that the fines function as a deterrent, the court is instructed to "consider both the income and the assets" of the employee organization in setting the amount of the fine. In this way, the court has the power to fashion a fine which could substantially affect the net worth of an employee organization, since its discretion is no longer limited to a consideration only of its income, and yet the organization cannot calculate in advance the "cost" of the strike.

Prof. Taylor's Committee applied like reasoning when it recommended a removal of the limitation upon the power of PERB or the courts to suspend the dues check-off of an employee organization found to have been responsible for an illegal strike for a period no longer than eighteen months. The new amendment removes this time limitation and provides for suspension of dues check-off for a period of time specified by the courts or PERB, or for an indefinite period of time, subject to restoration upon application and proof of "good faith compliance" with the prohibition against strikes.⁽⁶⁾ Such application shall be upon notice to "all interested parties".

At such hearing, the applicant shall be required to demonstrate its responsibility by having complied with the law. As evidence of such compliance, the employee organization might show, for example, that it has, since the violation, peacefully negotiated a new agreement.

The deterrent effect of the law should be materially strengthened by these changes. Further, this approach appears to be consistent with the philosophy underlying the penalties for civil contempt. The party punished under the law has the means to recoup rights lost for a violation by demonstrating its willingness to comply with the law.

Penalties against Individual Strikers

The amendments add an additional deterrent by providing for penalties against individual strikers. Under the original law, charges could be brought against individual strikers under §75 of the Civil Service Law for misconduct. After an individual hearing, the striker could be reprimanded, fined, dismissed or suspended. Experience has proved the unworkability of reliance upon §75 in a strike situation. Since action under this section is discretionary with the chief executive officer, it might be bargained away as part of the strike settlement. Employers might hesitate to bring charges for fear of exacerbating relations with an employee organization once a strike has been settled. Further, it would certainly be unwieldy to attempt to conduct hearings against all strikers in a large employee organization; while it might be unfair to bring charges against only a selected few. Finally, the penalties of suspensions or dismissal interfere with the primary concern of the law—the orderly continuation of services.

In addition to penalties under §75 of the Civil Service Law, individual employees could also be punished for violation of a court order enjoining a strike. The courts, however, generally concern themselves with the organization leadership and not the rank and file because individual members, although they participate in strikes, rarely possess the power to end the strike. Con-

sequently, penalties for contempt against the individual striker have not served as an effective deterrent. Also, it may be pointed out that one of the weaknesses in the original Taylor Law was the lack of deterrents to a wildcat strike other than §75, and contempt penalties as against individuals. The recent amendments providing penalties against individuals are intended to fill this void.

In the event of a strike, the law requires governmental officers to make two determinations: (a) that a strike has occurred, and (b) that an individual public employee has engaged in*, caused, instigated, encouraged or condoned such strike.⁽⁷⁾ Once these determinations have been made, two penalties are applied. The first, loss of permanent civil service status or tenure for a term of one year, would deprive a public employee of the protection afforded by law from dismissal without a hearing.⁽⁸⁾ The second penalty provides that a public employee shall lose a day's pay in addition to the loss of pay for the work not performed.⁽⁹⁾

These penalties cannot be bargained away and can be applied swiftly and with a minimum of delay and expense to the public. Their imposition dictated by law and not left to the discretion of the employer cannot be attributed retaliatory motives. Finally, the penalties are uniform and must be uniformly applied.

Critics of this approach point out, however, that such penalties may make it more difficult to settle strikes. Further, they say that the probation penalty intrudes into the work place and continues in its effect far beyond the duration of a strike. Consequently, lingering penalties may have an adverse effect upon employee morale and efficiency which may interfere with the orderly functioning of government. Experience will shed light on these questions.

It is significant to note that the bill passed on March 7, 1969 specifies probation for a *term* of one year.⁽¹⁰⁾ The word "term" has a particular significance when read in conjunction with §63 of the Civil Service Law. Under this section, probationers may not be discharged during the probationary term except after a hearing and for cause. At the conclusion of the probationary term, the employee may be discharged only upon unsatisfactory performance evaluations. Such discharge is reviewable under Article 7801 of the Civil Practice Law and Rules.

A later amendment to this section (S. 5699)⁽¹¹⁾ made clear the legislative intent was to give teachers the same protection during the probationary status as is accorded other public employ-

* An employee is presumed to have engaged in a strike if he is absent from work without permission, or abstains wholly or in part from the full performance of his duties in his normal manner without permission during the strike.

ees under the Civil Service Law. Teachers, therefore, when placed on probation as a result of penalties under the Taylor Law, may not be discharged without a hearing for cause during such probationary term. At the conclusion of the probationary term, a teacher might be discharged only upon unsatisfactory performance evaluations, and such discharge is reviewable under Article 7801 of the Civil Practice Law and Rules.

Of course, such a discharge might also be reviewed by PERB upon a challenge that such discharge constituted a reprisal for protected organizational activities.

Improper Practices

The amendment codified improper employer and employee organization practices.⁽¹²⁾ Most practitioners feel that these concepts, although not specifically stated in the original bill, were implied nevertheless, in order to protect the rights granted in the original law.

The concepts are similar to the National Labor Relations Act in seeking to prevent improper influence, coercion or other overreaching conduct by both employers and employee groups. The statute recognizes, however, that private sector precedents may not be controlling in the public sector. This is not an indication that public sector improper practices differ qualitatively or quantitatively from unfair labor practices in the private sector. Rather, in each instance, PERB should consider whether elements unique to public employment require a different interpretation or application of improper practices from those applied in the private sector.

Scope of Bargaining

PERB has also been given the power to require the parties to negotiate in good faith. The most significant aspect of this authority is in the determination of the proper scope of bargaining.

If an employee organization feels that a certain topic is a proper subject of mandatory bargaining and the public employer disagrees, the organization may seek a bargaining order from PERB. The administrative agency then would determine whether the issue involves a subject about which the public employer can be required to bargain. It can be expected that this authority may have far reaching effects.

Binding Arbitration

The Legislature has also expressly recognized the propriety of submitting negotiation disputes to binding arbitration for resolution.⁽¹³⁾ It should be kept in mind that an arbitrator's award

in such a case would determine the contents of an agreement. That agreement, however, is qualified by the statutory language in the new amendments. Any provision of an agreement which requires legislative action for implementation shall not be effective until the provision has been approved by the legislative body.⁽¹⁴⁾ The amendment was apparently intended to preserve to the legislative body its independence in approving commitments made by the chief executive officer in negotiations.

Whether a school board or other legislative body which conducts negotiations remains free to reject an agreement without running afoul of the statutory mandate to bargain in good faith is one of the questions which is certain to arise in the interpretation of this section.

The Legislative Program

The study performed by this Committee highlighted certain problems, the proposed solutions to which are reflected in the legislative program which was developed. Of these bills which are presented in Appendix 4 in their entirety, together with supportive memoranda, three were passed. The balance of the program, while not acted upon, will be used for study purposes by the Legislature next year.

New York City's Office of Collective Bargaining

The original report of the Taylor Committee envisioned the PERB as the sole agency to administer the Taylor Law. The Legislature, however, excluded mayoral agencies and departments in New York City—along with certain other governments as will be discussed later—from the jurisdiction of PERB so long as New York City had in effect its own provisions and procedures to implement the Taylor Law.

The Office of Collective Bargaining—a tripartite agency with its members representative of the government of the City of New York, the Municipal Labor Council and the public—has performed this function since 1967. During this time, the Office of Collective Bargaining has suffered much criticism, largely because of the national attention attracted by the magnitude of the public employee strikes which have occurred in New York City since its inception. In fact, of the eight strikes involving public employees which have taken place there, only four were conducted by organizations under the jurisdiction of the Office of Collective Bargaining. Yet, because of the nature of these strikes, critics have insisted that “something be done” to “correct” the situation. The 1967 Taylor Law exempted the Office of Collective Bargaining from the necessity of developing impasse machinery tied to the City's budget submission dates. This was done, no doubt, because New York City had already well-established patterns of collective negotiations with its employee organizations which were not necessarily so oriented. Further, it was not required to submit its procedures and provisions to PERB for a determination that such procedures were “substantially equivalent” to PERB as a precondition to the statutory exemption granted by the Law. These procedures and provisions vary in many respects from those established by PERB. Although the original Taylor Law charged PERB with the obligation to attempt to oversee the “continuing implementation” of the Law as it was administered and applied by the

Office of Collective Bargaining, it was required to do so by bringing an action for that purpose against the Office of Collective Bargaining in Supreme Court in New York County. Necessarily, such action might injure the delicate and necessary relationship of assistance and cooperation existing between those agencies. Prof. Taylor's Committee recommended that the Legislature consider means to require the extension of the jurisdiction of the Office of Collective Bargaining to include non-mayoral agencies or governments in New York City. We agree with this conclusion, but feel that the extension of the jurisdiction of the Office of Collective Bargaining should be accomplished with the cooperation of the City of New York and the Office of Collective Bargaining itself. Consequently, we proposed that the report which the Mayor of the City of New York is required to be submitted on or before August 1, 1969 contain recommendations how mandatory jurisdiction of the Office of Collective Bargaining should be extended to encompass non-mayoral agencies, departments and governments wholly or in substantial part conducting their affairs in or fiscally dependent upon the City of New York (S. 5534).

Another amendment (S. 5538) would have removed the existing requirement in the Law that PERB, in requiring "substantial equivalence" of the Office of Collective Bargaining, must seek court determination. Rather, the continued special status enjoyed by the Office of Collective Bargaining would be conditioned upon a determination by PERB that the provisions and procedures of the Office of Collective Bargaining were substantially equivalent to the procedures of the Taylor Law. This bill would, in addition, have continued the jurisdiction of the Office of Collective Bargaining over improper employer and employee organization practices. New Section 205(5)(d) which grants to PERB "exclusive nondelegable jurisdiction" to apply the code of improper practices would divest the Office of Collective Bargaining of such authority as of September 1, 1969. We felt that since the Office of Collective Bargaining had adopted such a code at its inception, and, of all local procedures, was certainly the most comprehensive and complete, it should continue to apply and enforce the improper practices provisions. To allow one agency to hear and determine representation issues, apply impasse procedures and assess penalties while improper practices were applied by another agency, would be an unnecessary waste of funds and effort. A version of this bill which continued the jurisdiction of the Office of Collective Bargaining over improper practices until March 1, 1970 was enacted (A. 7185). The Legislature will, thereby, have an opportunity to study the Mayor's report and to take legislative action during its next regular session.

Public Employment Relations Board

The Committee prepared two bills which affected PERB. The first (S. 5536 passed) created a statutory term for the Chairman of PERB commensurate with his term as a member of PERB. This bill was consistent with the intent of the statute to create an agency that was independent of the executive.

The second bill (S. 5543) would have authorized PERB to retain its own counsel to represent it before the courts. In the recent series of cases involving the State, PERB, and various employee organizations, the State Attorney General was faced with the dilemma of representing two parties to the action with somewhat different interests. The proposed bill would avoid any similar problem in the future. Further, the bill would have extended to PERB mediators the same protection from forced disclosure of confidential statements made to them by the parties during the mediation of a dispute which has been enjoyed by State Mediation Board personnel since 1938. A mediator cannot be effective in his efforts to bring the parties to a voluntary resolution of their dispute unless the parties feel that they can be completely candid before him. If the parties fear that statements made in confidence to a mediator could be revealed in a later proceeding, they certainly might feel reluctant to reveal their true position to him. This principle was recognized in 1938 when the New York Labor Law was amended to provide this protection for State Mediation Board mediators, and we feel that it should apply to the public sector as well.

Ratification of Agreements by Secret Ballot

Some employee organizations invest their negotiators with complete authority to make agreements which are binding on the membership without subsequent ratification. Others provide that their negotiators must obtain membership approval of agreements. Negotiated agreements are the product of considerable time and effort on the part of the representatives of both parties and are, necessarily the products of compromise. We feel that careful consideration should be given such agreements by the organization membership. Occasionally the membership is required to express its approval or disapproval at mass meetings in an inflammatory atmosphere which is not conducive to the deliberate study which the agreement deserves. The number of agreements repudiated by organizational memberships in the private sector is increasing; often, for reasons which, in the opinion of the Staff, should be extraneous to the merits of the agreement. While we hesitate to interfere with the internal operations of

employee organizations, we feel nevertheless that ratification at mass meetings by voice vote does not carry with it the necessary safeguards to guarantee due consideration of agreements by each member. Consequently, we recommend that in those instances where an employee organization adopts a procedure providing for membership ratification of agreements, such ratification be by secret ballot (S. 5535).

Increase the time within which Parties might reach an Agreement

The original Taylor Law required the fact-finder to issue its report and recommendations for resolving the dispute at least fifteen days prior to the budget submission date. It further required simultaneous publication of the report. Prof. Taylor's Committee felt—and we agree—that the parties should have more time to attempt to reach a voluntary resolution of their dispute after they receive the report and recommendations of the fact-finder. The amendments passed on March 7, 1969 require the fact-finder to issue its report at least twenty days prior to the budget submission date and allows a delay of five days before the report is made public. We feel that such delay is conducive to a settlement because it does not require the parties to take an immediate public position with respect to the report, thereby solidifying their positions. We feel, however, that the parties would benefit if the fact-finder's report were issued thirty days prior to the budget submission date to give the parties additional time to resolve their differences voluntarily.

Define the Nature of Probation as a Penalty for a Strike

As has been discussed earlier, the amendments passed on March 7, 1969 provide as a penalty for a strike that an employee be "on probation for a term of one year . . . during which period he shall serve without tenure." The word "tenure" is found in the Education Law but not in the Civil Service Law. The phrase "probation for a term" is contained in the Civil Service Law and not in the Education Law. The Taylor Law, of course, applies to both teachers and civil service employees as well. As discussed earlier, probationary teachers may be dismissed at any time during the probationary period upon thirty days' notice without a hearing and without being informed of the reason therefor. Civil service probationers, however, are entitled to a hearing on charges before they may be discharged during their term of probation. The Legislature did not distinguish between teachers and civil service employees in any other provision of the Taylor Law and did not intend to do so here. To make it clear

that teachers are to be accorded the same hearing on charges accorded civil service probationers, we recommended that this provision be clarified (S. 5542). Another bill (A. 6629) to substantially the same effect was passed.

Scope of Bargaining

The concept of what is or is not a proper subject for negotiations under the Taylor Law is a difficult question at best. Considerations differ depending upon the nature of the employer, the type of employees, the bargaining history, and the nature and type of services performed. The Committee introduced a bill (S. 5540) which set in general terms guidelines for employers and employee groups outlining those prerogatives of government about which a public employer cannot be compelled to negotiate while allowing negotiations in the discretion of the employer. The bill would have provided guidelines for PERB in the exercise of its new powers to compel negotiations. Essentially, the employer was to be protected in his right to determine the standards of his services, the standards for selection of his employees, direct his employees, determine the content of job classifications, and determine his facilities and the numbers of his personnel.

Anti-martyrdom Bill

The bill would amend the N.Y. Judiciary Law (§751) to prohibit jailing of leaders of employee organizations for the sole reason that the striking organization failed to obey an injunction to return to work. The organization and its officers would still, of course, be subject to a fine for each such contempt. Imprisonment would be used for other types of contemptuous conduct. The jailing of strike leaders tends to make "martyrs" of them and many tend to solidify the organization membership. It further may have an adverse effect upon the settlement of the issues in dispute. When the leadership of an employee organization is unable or unavailable to assist in resolving a dispute, settlement becomes more difficult.

Abolition of Mini-PERBS

While not provided in the original report of Prof. Taylor's Committee, mini-PERBS were included in the 1967 Taylor Law primarily to relieve PERB from the rush of representation questions that were expected and which occurred during the first year of the Taylor Law. Experience has led the staff to question whether mini-PERBS continue to serve a useful function.

Of the thirty-five mini-PERBS originally approved by PERB, five have been revoked by PERB for failing to remain in substantial compliance with the Taylor Law and two have been voluntarily rescinded by the local governments involved. Of the remaining twenty-eight, there is evidence of activity in nine and except for one board, this activity has been limited to one decision per board.

In a number of instances, difficult problems have been referred to PERB by a local mini-PERB. In part this may be attributable to the lack of qualified persons with sufficient knowledge and experience in this complex area of law to staff mini-PERBS. It must be noted, however, that a few boards are comprised of persons with eminent qualifications who have performed their functions well. But the knowledge and skills of such persons might better be used if they were made available across the entire state.

Further, we believe that the function served by mini-PERBS is not typically a local government activity. It would appear to be a wasteful expenditure of funds to maintain an office and a staff to be called upon in merely a few instances. In addition, many local agencies interpreting and applying a law which is state-wide in nature may lead to seriously conflicting decisions.

Mini-PERBS must also be totally neutral. In order to maintain the confidence not only of the public but also of the public employees, the mini-PERB must avoid the appearance of alliance with the employer. Most mini-PERBS are advised and represented by the government attorney. Their offices are housed in the City Hall or County office building and they share an office staff with the chief executive officer or a department head. Further, mini-PERBS are rarely provided with a separate budget, relying, instead, upon the largess of the executive or the legislative body on an *ad hoc* basis. Such factors could lead one to question whether such boards are in substantial compliance with the spirit of the Taylor Law. The staff feels that mini-PERBS no longer serve a useful purpose and should be abolished.

Agency Shop

Agency shop is the practice resulting from negotiations whereby the employer agrees to deduct a sum—usually equivalent to dues—from the wages of non-members of an employee organization and to pay the sum to the organization. The sum is intended to defray the expenses incurred by the employee organization in representing non-members. All public employees in a unit—members or not—must be represented equally by an employee organization. All employees also must share equally in

benefits obtained by such organization through negotiations or by processing grievances. So, the argument goes, all employees ought to share equally in the expenses of obtaining those benefits.

Agency payments would be limited to a sum equivalent to that portion of membership dues directly attributable to expenses incurred by an employee organization as a result of negotiation and administration of an agreement. Further, an agency shop provision in an agreement could not require any employee to join an employee organization and it is consistent with right-to-work legislation.

The staff feels that legislation which removes the barriers to the negotiation of an agency shop would serve as an effective deterrent to a strike. In order to be eligible to negotiate for an agency shop, an employee organization must demonstrate its responsibility by not having violated the Taylor Law for a two-year period. It must affirm that it does not assert the right to strike against government as required in §207 of the Taylor Law and it must be certified or recognized as the exclusive negotiating representative of the employees in a unit. The two year provision is designed not only to insure responsibility on the part of the employee organization, but also to establish its stability. A rival organization would have two opportunities during that time to unseat the recognized or certified representative. If the recognized or certified organization has been able to maintain majority support of the employees in the unit for that period, it would seem to have demonstrated its stability and responsiveness to its constituents.

Additionally, we believe that an agency shop can be an effective deterrent against the strike. In the event of a violation of the Taylor Law, not only would an employee organization lose its dues deduction privileges and be subject to a fine, but it would also lose its agency shop. Dues may be collected from the "faithful" by personal collections or other means but there is no way to recoup the financial loss suffered by the loss of agency shop. A fine which depletes a union's treasury is a stiff penalty. The loss of dues check-off may damage an employee organization until it can develop alternate methods to collect dues. In fact, regarding one large employee organization which lost its dues check-off, it has been estimated that it has lost almost 30% of its income. The loss of agency payments that can never be recouped could be a severely disabling blow to an employee organization. These considerations we believe would serve as an effective deterrent against the strike.

Subjects for Further Consideration

Collective negotiations in the public sector is a relatively new development, both as a practice and as a concept. The Taylor Law can best be viewed as an experiment in the continuing search for methods by which the interests of public employees can be meshed with the interests of the broader community. It is too early to tell whether the experiment has failed or succeeded. Indeed, a set of criteria has not yet been developed by which to judge success or failure. If one thing appears certain, it is that we cannot look for guidance solely to the commercial market place, which, with its heavy emphasis on efficiency, productivity and profitability is the final arbiter in private sector labor relations. The tendency in the public sector is to seek guidance in such abstract concepts as equity or justice or fairness—terms that are admittedly imprecise and open to widely differing interpretations.

The key is to arrive at standards of judgment which, while not eschewing either efficiency or justice, can be used to measure not only the performance of our public enterprises but also the degree to which the relationship between public employers and employee organizations contribute to the quality of the performance. To illustrate, while it is fair to say that public employers should not exploit the limited mobility opportunities of their employees by offering sub-standard wages, neither is it proper to allow union pressure to force wages far beyond what the condition of the labor market would dictate. Somewhere between these extremes lies the "appropriate" settlement, which is about as close a meshing of justice and efficiency as can be achieved in public sector labor relations. There, too, is located the elusive goal, the public interest.

When the 1969-70 Legislature returns in January, 1970 for its second session, there will have been over two years of experience under the original provisions of the Taylor Law. Undoubtedly more amendments will be proposed at that time. In our view, the Legislature should not act on these proposals until it has taken a very careful look at how our public enterprises are meeting our public interest standards, the practices and procedures of our collective negotiations system, and their interrelationship. The Legislature should be guided by a thorough analysis of how the existing procedures protect or fail to protect the varied interest of public employees and the interests of those who must pay for and rely upon public services.

This Committee should continue its study of all facets of the problem. It should go about its task by consulting with employer and employee groups, administrative agencies, tax experts and neutrals; studying the operation of public employee statutes in other states and other countries; conducting research on the application of specific provisions of the Taylor Law.

Specifically, the Committee should attempt to reach conclusions and recommendations covering the following subject areas:

I. The General Impact of Collective Negotiations on the Public.

(a) *Resource Allocation:* The primary objective of collective negotiations is to achieve a different allocation of resources from the one prevailing under unilateral authority. This can come about either by giving a larger proportion of the tax dollar to employees in wages and benefits—at the expense of other matters of public concern—or by increasing employee benefits by increasing the total tax revenue. In either case, the question is: how large a percentage of total community resources governmental operations should occupy?

From this basic public policy question, one can extract several more specific questions which are deserving of legislative attention:

(1) At what point does an additional increment in local or state taxes, property, sales, or income, result in undesirable social effects?

(2) How far away are we from a tax rate that would discourage the location of industry into the state or community, encourage out-migration, or result in a high degree of tax delinquency?

(3) What percentage of wage and salary increases can be attributable to collective negotiations?

(4) What percentage of recent local and state tax increases can be attributable to public employee wage and salary increases?

(5) To what extent, if any, can public employees be expected to subsidize important community programs by working for wages lower than those paid to employees in comparable private employment?

(b) *Recruitment and Retention of a Quality Work Force:* It is often argued that wage scales of public employees have lagged behind those of private sector employees with similar occupations. In previous years this differential could be justified on the grounds that public employees had greater job security and more benefits, e.g. vacations, retirement, health and welfare, than their counterparts in the private sector. Now it is frequently

pointed out that private sector employees have almost as much job security and similar benefits. The differential is, therefore, no longer justified. The consequence, so it is alleged, is that public employers are at a disadvantage when they compete in the labor market for qualified workers.

Detailed studies of the comparability of wages in the public and private sector, taking into account all the other benefits provided in both instances, should be updated and kept current. Results of such studies should be made available to both employers and employee organizations so that they would have a greater chance to achieve "equity" at the negotiating table.

Of course, there are several occupations that predominate in the public sector: public school teachers, police, firemen, prison guards, etc. (One might add parenthetically that the hotly debated issue of parity between police and firemen should be given a high priority in any study of wage comparability.) Is it possible to compare wage scales for these occupations with counterparts in the private arena that require similar training and other requirements? It is a difficult task, but we have a critical need to design some rational means of arriving at wage standards. Unless some standards are made available, both parties at the negotiating table will have scant resources to draw upon other than obstinancy and power.

(c) *The Impact on Representative Government:* We, as a nation, are committed to some form of representative government. The question arises: how far should individual citizens be permitted to participate in the actual operations of governmental enterprises? If our conclusion is that citizen participation should be minimal, then collective negotiations do not seriously interfere with the representative process. If, on the other hand, we conclude that citizen influence should be more direct, that the "public will" should somehow be manifest in the day-to-day operations of the enterprise (i.e., as conceived by some of the proponents of school decentralization in New York City), then collective negotiations may be a serious obstacle to representative government. It is the essential purpose of collective negotiations that the employer be prevailed upon to change his mind. The influence of the employee organization must be such that the employer is no longer guided in his decision-making solely by his own dictates or by whatever instructions he may receive from the community. He must also be guided by the collective will and intelligence of his employees. Thus, another variety of representative government enters into the picture: the concept of democracy at the work place.

So long as these forces are compatible—that is to say that so long as they seek the same objective—there is no serious problem.

But it is almost in the nature of things that there will be occasions for differences of opinion and for conflict. Collective negotiations places the notion of representative government in a new light:

(1) Does the pressure to which they are exposed at the negotiating table tend to cause public officials to make decisions against their will, their better judgment, and contrary to what they believe to be the community interest?

(2) If some erosion of public management's prerogatives and flexibility was anticipated when the Taylor Law was enacted, what standards should now apply so that this erosion does not proceed to a point that is inimical to the public interest?

Neither of these questions lend themselves readily to a statutory solution; but they need to be asked nonetheless. Otherwise, we shall never learn, except by experience—and possibly a bitter experience at that—just what the perimeters of public sector negotiations ought to be.

II. Representation Questions

(a) *Exclusivity*: The Taylor Law provides for a number of forms of representation: exclusive; members only; or proportional representation. In virtually all jurisdictions, however, the parties have opted for exclusivity. The right of exclusive representation, however, is not usually granted automatically; it is a right that must be won at the negotiating table. The negotiations process would be more effective if the law were amended to provide that the recognized employee organization be the sole negotiating representative for all the employees in the unit—members and non-members alike.

(b) *Unit Questions*: Unlike the National Labor Relations Act and several of the state statutes covering public employees, the Taylor Law does not exclude supervisory personnel from coverage of the act, nor does it provide for a craft severance procedure through a *Globe* type election.* The Law merely provides that in establishing a negotiating unit, the employer, the parties and/or neutrals shall be guided by the principles of community interest between the affected employees and by the public interest, the latter being generally interpreted to mean that units should not

* In the private sector, a *Globe* election is an election in which craft groups are permitted to vote separately to determine whether they shall be represented by a craft union in a separate craft unit or by an industrial union in a larger, plant-wide unit. Its public sector counterpart might be a procedure whereby supervisory personnel would be included in a general unit with those whom they supervise unless they opt, by election, to form a separate unit.

be "balkanized." In a great many jurisdictions, supervisory personnel have been included in the primary negotiating unit. In other cases, employees with rather disparate occupations and interests have been lumped together.

These unit configurations should be studied to determine whether or not employees are receiving the kind of representation they are promised under the Taylor Law and whether existing unit structures impede or facilitate the administrative process. More specifically:

(1) Does the inclusion of supervisory personnel in the non-supervisory unit tend to confuse and frustrate the hierarchical administrative structure of the enterprise, thereby making it less efficient and less responsive to community needs? Should supervisors be excluded from coverage of the Act?

(2) Does the inclusion of lower level supervisors in the non-supervisory unit make a grievance procedure awkward or untenable when the supervisor who is the subject of a grievance is forced to weigh his loyalty to his employer against his loyalty to his fellow worker?

(3) Are those employees with peripheral occupations and with little or no political voice in the employee organization, but who are nonetheless included in the unit, receiving the protection and representation to which they are entitled under the law? How can these employees be accommodated under the act in the light of the "public interest" criterion?

(4) The concept of collective negotiations may be inconsistent with present rigid civil service classifications. Should the Taylor Law and other relevant statutes be modified so as to make them more consistent? Senator John E. Flynn, Chairman Senate Civil Service and Pension Committee, has made a significant proposal for revamping the existing Civil Service Classification. (See Appendix G).

(5) Should the Taylor Law and the appropriate provisions of the Education Law, the General Municipal Law, the Civil Service Law and other relevant statutes be amended so as to allow for multi-employer negotiating arrangements?

(6) No case which has come up under the Taylor Law thus far is as important as the one which followed the recognition of the Civil Service Employees Association (CSEA) by the State government on November 15, 1967, as negotiating representative for all non-managerial State employees, except for members of the State Police and the faculty of the State University. The primary reason for this unique importance derives from the parties. The public employer is the State

of New York itself, the government whose legislative body enacted the Taylor Law. The employees number over 130,000, well over twice as many employees as have ever been involved in a single dispute over representational status under any labor relations statute ever enacted within the United States. Another reason for the importance of this case is that during the year-and-a-half since recognition, there has been considerable litigation which has resulted in significant precedents. The litigation has involved the appropriateness of the negotiating unit for which the State recognized CSEA, as well as the propriety of that recognition. Following the recognition, thirty-nine petitions were filed by employee organizations seeking reversal by PERB of the unit determination and the recognition. The proceeding before PERB has already been twice interrupted by judicial review, both cases going to the Court of Appeals.

In part because of the novelty and complexity of the issues, in part because of the large number of parties, and in part because of the interruptions for judicial review, the dispute occasioned by the recognition of CSEA has not yet been resolved. Twice since the enactment of the Taylor Law, the State Legislature has been requested by the Governor to approve an increase in wages for State employees that was determined by a consultative process short of collective negotiations contemplated by the Taylor Law; during all this time there has been no employee organization eligible to assert demands on behalf of State employees regarding non-economic matters.

This circumstance, whereby laws are enacted giving employees the promise of representational rights only to have this promise aborted by prolonged administrative procedures, extended even more by judicial restraint, is unfortunate, but is not unique. Most recently such a problem became the subject of legislative concern as a result of a case involving employees of non-profit-making hospitals (*Long Island College Hospital v. Catherwood*, 23 NY 2d 20 [1968]). In that case, a union had filed a petition on July 1, 1963 with the State Labor Relations Board seeking to be certified as collective bargaining representative of a unit of hospital employees. Although certification did not follow until December 28, 1964, the problems of the union had just begun. In the four years that followed, protracted administrative procedures, intermittently interrupted by judicial review, left the union still without a contract. At that time the Court of Appeals ruled that the union, in seeking to compel the hospital to arbitrate contract demands, had been following the wrong procedure; it should have sought an order from the State Labor Relations Board directing

the employer to bargain. Concerned with the delay which had occurred, Senator Thomas Laverne, Chairman of the Senate Committee on Labor and Industry, introduced a bill (S. 4653) to expedite administrative and judicial procedures. That bill was enacted as Chapter 526 of the Laws of 1969. Among other things, it authorizes the simultaneous pursuit of both the unfair labor practice and arbitration procedures, and it narrows the authority of the courts to issue restraining orders. In support of this bill, a memorandum was submitted to the Legislature by its sponsor stating in part:

"This bill would eliminate a major source of employee dissatisfaction with the procedures of Section 716 which, in turn, has led to labor-management strife. Section 716's few failures have arisen because of employees' understandable frustration when judicial review has been used, in good faith and otherwise, to prevent a newly certified union from bargaining—delays of two and three years have been common between certification as bargaining representative and the commencement of bargaining.

"A newly certified union has, typically, just been through an intense period of organization activity prior to the election. Feelings run high. With the goal of the right to bargain apparently won, the union wants to get to the bargaining table as soon as possible to show its new and old members their confidence was not misplaced. In the private sector, a union could legally strike if the employer refuses to bargain after certification. But, strikes against voluntary hospitals are illegal and, when a hospital refuses to bargain, a victorious union must either submit to years of judicial maneuvering, or resort to the illegal strike."

The description of the problems of hospital employees is also applicable to State employees. If anything, the public policy against strikes by government employees is even more pronounced. The frustrations of the public employees are also more pronounced. Not only are they being deprived of negotiation rights, they have not even been able to obtain an election. This frustration has already erupted in one tragic strike affecting employees in State mental hospitals.

As is the case with respect to employees of non-profitmaking hospitals, this frustration must be relieved by expedited procedures. It is, therefore, unfortunate that the courts have read into the Taylor Law the possibility of even greater delays than they would countenance under any other labor relations act. Ever since *Wallachs, Inc. v. Boland*, 253 App. Div. 371 (1938), aff'd 227 N.Y. 345 (1938), the courts of this State have refused to review any determination of the State Labor Relations Board other than a final order. This is consistent with review of administrative determinations generally under §7801 of the Civil Practice Law and Rules. Notwithstanding the language of §210.3 of the Civil

Service Law authorizing review of final orders of PERB under §7801 of the Civil Practice Law and Rules, the Court of Appeals permitted review of an intermediate determination of that body because "the public importance of the issues raised in the proceeding requires prompt adjudication" (*CSEA v. Helsby*, 25 NY 2d 842 [1969]). The implication of this language is that intermediate determination of the Public Employment Relations Board may be reviewed generally. All disputes involving governments may raise issues of public importance. The effect of this procedure will be to retard the resolution of disputes.⁽¹⁶⁾

In enacting the Taylor Law, the Legislature established an agency, the Public Employment Relations Board, possessed of the expertise to resolve disputes concerning negotiating units and other representational issues. That agency was given the power to establish procedures which, in its discretion, were appropriate to resolve such disputes. It was intended that this agency should, like any other expert administrative agency, be permitted to complete its deliberations unhampered by review of intermediate determinations. Upon the completion of its deliberations, it was contemplated that it would issue a determination which, if appropriate, would be accompanied by an order. It was provided that this order would be reviewable under Article 78 of the Civil Practice Law and Rules, §7801 of which sets forth the limited number of questions for which review may be sought.

This procedure is well designed to expedite the resolution of representation disputes. Unfortunately, it would appear that the legislative intent is not sufficiently manifest in the language of the Taylor Law. Perhaps those amendments to the Taylor Law (L. 1969, C. 24) which authorize PERB to establish the procedures for the prevention of improper employer and employee organization practices will clarify the legislative intent. Judicial decisions have held that review of determinations by labor relations agencies must await the issuance of agency orders. These decisions have been derived, in part, from the power of such agencies to order the abatement of unfair labor practices. The extension to PERB of similar power, effective September 1, 1969, may clarify the situation under the Taylor Law. If it does not, specific amendment to the Taylor Law will be required for this purpose.

III. The Scope of Collective Negotiations ⁽¹⁷⁾

There are few areas in labor relations, public or private, that are more controversial than the appropriate subject matter of collective negotiations. Employers, generally jealous of their prerogatives, attempt to confine the scope of negotiations to a relatively small number of issues. Employee organizations on the other

hand tend to interpret the phrase "other terms and conditions of employment" rather broadly. The role of the employee organization is, after all, to reduce unilateral authority to bilateral determinations in all areas which in their judgment lend themselves to the negotiating process.

Public employee statutes require a clearer definition of the scope of bargaining than do those laws regulating employee relations in the private sector.

Public employers do not necessarily have a profit motivation. Public enterprise, and very often public officials, have a way of continuing on, no matter how badly the enterprise is run or what has been agreed to at the bargaining table. Moreover, the consequences of some negotiated provisions are not always apparent at the time they are negotiated. Weak or inept employers seem to be particularly vulnerable to employee pressure to include all sorts of extraneous matter into the agreement.

Accordingly, a representative sample of collective agreements negotiated during the first two years of the Taylor Law should be scrutinized to determine how broad an interpretation the parties have placed on the expression "other conditions of employment." On the basis of such a survey, recommendation could then be made on the following issues:

- (1) Should the Taylor Law be amended so that mandated bargaining issues are spelled out?
- (2) Should the Law prohibit negotiations over specific items?
- (3) Should the Law or should PERB provide guidance to the parties on "permissive" subject matter areas?
- (4) Is it feasible to broaden the scope of negotiations for professional employees, e.g., teachers, social workers, etc. on the grounds that they are competent to deal with policy matters, while limiting the scope of the generally understood employment conditions to non-professional employees?

IV. Grievance Procedures

Both the General Municipal Law and State Education Law provide for a grievance procedure or some method of appeal from administrative decisions. The question that has plagued many practitioners is how these procedures can be meshed with a grievance procedure negotiated by the parties.

(1) Should the aggrieved party be compelled to opt for one his grievance under the contract, eschewing General Municipal Law or Education Law procedures?

(2) Should the aggrieved party be compelled to opt for one of the two routes?

(3) Should the grievance and appeals provision of Educa-

tion Law and General Municipal Law be modified in light of the Taylor Law?

V. Impasse Problems

Much emphasis has been placed on laws and procedures that seek deterrents against strikes or other forms of crisis and not enough emphasis on methods providing for a more constructive role of the government in collective negotiations in the public sector.

In this connection, it should be recognized that the conflicts involved in labor management relations are normal and natural. Indeed, the absence of any conflict usually means an oppressive employer and workers without rights. While cooperative and harmonious conduct between employers and employees is certainly preferable to labor strife, perhaps the best that can be hoped for is the development of fair and orderly impasse procedures when serious disagreement occurs.

(a) *Role of State Agencies:* Accordingly, a sizeable effort should be directed at determining how effectively government agencies, especially PERB, are contributing to problem-solving in negotiations. PERB has supplied, upon request, "statistical data, relating to wages, benefits and employment practices" to the parties as required under the Taylor Law. Such information is supplied as a matter of course to mediators and fact-finders. Other government agencies could well provide data and training in the use of such materials in the areas of budgeting and taxes.

(b) *Mediation:* How has the mediation process worked? In the absence of the right to strike, mediation takes on a new significance since the alternative to settlement under the mediator's influence is not a costly work stoppage but merely a decision to go on to the next step of the impasse procedure. The mediator then is working in a new environment, and is subject to a different kind of pressure. In this context, it is fair to ask whether the practices, or the personnel imported from the private sector are entirely appropriate to public sector labor relations? What have the experiences shown? It is one thing to cajole the parties into a settlement in the private sector, even if they both regret the bargain once the agreement becomes operational. It is quite another thing to induce a settlement in the public sector when public monies and the quality and efficiency of the government's operations are involved.

Not much is actually known about the mediation process, relying so heavily as it does on individual and highly personalized skills and the temperament and personality of the mediator. The first two years of the Taylor Law should provide an excellent

laboratory in which to study the mediation process. The parties to mediation as well as the mediator himself could testify as to the effectiveness of the process, indicating why it succeeded or failed, whichever the case may have been. Were successes due to the skill or the art of the mediators or the nature of the dispute? Were failures caused by the ineptness of the mediator, the intransigence of one or both of the parties, or the knottiness of the issue? In short, there should be a systematic study, not only of mediation, but of mediators themselves, to determine, if indeed it can be determined, what the qualification and training needs of mediators might be. It might also be well to explore the possibility of applying preventive mediation techniques to consistently troublesome relationships, a technique which, at least on an experimental basis, has enjoyed some success in the private sector.

(c) *Fact Finding*: Fact finding is a relatively new concept to labor relations. It has not been used extensively in the private sector (the strike is the ultimate "fact finder" in those quarters) and has only recently been employed in public sector labor relations.

Before the legislature meets in January, 1970, there will have been dozens of fact finder reports issued. These reports should be carefully analyzed—both those which were accepted by the parties and those which were not.* The parties themselves should be consulted so that their views on the decision as well as the conduct of the fact finding hearings can be obtained. On the basis of these analyses and consultations, it should be possible to discern a pattern of rejection and acceptance, to get some clues as to the causes of employer and employee resistance to the fact finding procedure. Another product of consultation and analysis might be the development of a set of guide lines for fact-finders to follow which could either be incorporated into law or be promulgated by PERB. As things stand at the moment, some fact-finders are guided by the principle of "acceptability" while others are persuaded that "objective standards" should govern.

How familiar should fact-finders be with the enterprises in which they find themselves involved? Do they have sufficient understanding of those man-power, operational and fiscal problems in the various agencies and governmental units to make intelligent and intelligible recommendations? If it is ascertained that they are not knowledgeable enough, or if they have by-and-large failed to consider the administrative and fiscal implications of their recommendations, then some form of instructional programs should be implemented.

* For an analysis of the fact finding reports rendered during the first year under the Taylor Law, see Appendix B.

The success of the Taylor Law rests on the ability of PERB to resolve disputes. During the first year of the law, there were three hundred sixty disputes calling for the intervention of third parties. A large number of these neutrals were new to the art of dispute settlement, a perhaps even larger number had only private sector experience. Thus, in too many instances we have to depend upon novices and dilettantes to carry out the Taylor Law's most important mission. Now that the parties have become more sophisticated about the negotiations process, the real question is whether we can afford to allow this condition to continue. A careful study of the fact finding process should reveal what the problems are. If it is discovered that the problem lies less with fact finding than it does with the fact-finder, that discovery in itself suggests a remedy.

VI. Who is the Employer?

Additional study should be given to the question of who is the chief executive officer in certain governmental situations. Many governmental units do not have separate legislative bodies. Less populous counties, villages, school boards and commissions have no clearly defined independent chief executive officers. Consequently, negotiations are usually conducted between the employee organization and an agent of the legislative body. If the Legislature is indeed to have the power to review independently those portions of an agreement which require legislative action, it should not conduct negotiations itself. It may be that the Taylor Law should be amended to provide special procedures for such governments.

Included as an Appendix is a description of the various governmental entities with a breakdown by executive and legislative body.

Footnotes

1. See Appendix A. Listing of work stoppages in New York State, September 1, 1967-June 1, 1969.

2. See Appendix D. On the question of legalizing public employee strikes.

3. Chapter 24 of the laws of 1969.

4. See Appendix C. A history of developments in public employee labor relations in New York State.

5. *N.Y. Judiciary Law* §751 (2)(a) as amended by Chapter 24 of the laws of 1969.

6. *IBID.* See also *N.Y. Civil Service Law* §210(3)(f) as amended by Chapter 24 of the laws of 1969.

7. *N.Y. Civil Service Law* §210(1) as amended by Chapter 24 of the laws of 1969.

8. *N.Y. Civil Service Law* §210(2)(f) as added by Chapter 24 and amended by Chapter 492 of the laws of 1969.

9. *N.Y. Civil Service Law* §210(2)(g) as added by Chapter 24 of the laws of 1969.

10. *Op Cit.* Footnote 8.

11. Chapter 492 of the laws of 1969.

12. *N.Y. Civil Service Law* §209-a as added by Chapter 24 of the laws of 1969.

13. *N.Y. Civil Service Law* §209(2) as amended by Chapter 24 of the laws of 1969.

14. *N.Y. Civil Service Law* §210(13) as added by Chapter 24 of the laws of 1969.

15. New York City Executive Order 52 (1967).

16. Final decision of Court of Appeals.

17. See Appendix G. Proposal by Senator John E. Flynn to revise the Civil Service System to conform to collective negotiations under the Taylor Law.

**APPENDIX A—Public Employee Work Stoppages
New York State, September 1, 1967—June 1, 1969**

Date	Employer	Employees	Organization	No. of Individ.	Duration (Work Days)	Man Days Lost	Causes
1967							
9/5-10/2	Onondaga County	Pub. Health Nurses	None	27	20	540	Refusal to Negotiate
9/11-9/27	N.Y.C. School Board	Teachers	UFT	49,500	13	643,500	Salary
1968							
1/22-1/24	Schenectady County	Glendale Nursing Home (Non-profess.)	None	100	3	300	Refusal to Negotiate
2/2-2/10	N.Y.C. Sanitation Dept.	Sanitation Workers	Sanit. Workers	10,000	8	80,000	Salary
3/5-3/3	Oyster Bay—Town	Sanitation Dept.	None	143	3	429	Salary
3/5-3/7	New York State	Mental Hygiene (Clerical, N.Y.C.)	CSEA ¹¹	160	3	480	Job Description
3/26 -	West Seneca School District	Bus Drivers	CSEA	100	1	100	Driver's right to discipline students
4/1-4/2	Hempstead—Town	Sanitary District	None	143	2	286	Salary

Date	Employer	Employees	Organization	No. of Individ.	Duration (Work Days)	Man Days Lost	Causes
1968							
4/15	New York State	Taxation & Finance Key punch Operators	None	69	1/2	0	Job Description
5/7- 5/10	Lakeland School District	Teachers	Lakeland Faculty Assoc.	35	4	140	No contract
5/7- 5/15	Huntington School District	Teachers	Assoc. Teachers of Huntington			2,800	Board's failure to accept fact- finder report
5/28- 6/28	N.Y.C. School Board	Oceanhill-Brownsville Teachers	UFT	350	23	8,050	Community control v. organizatio ⁿ rights
6/10- 6/11	Island Trees School District	Teachers	Island Trees Teachers Assoc.	275	2	550	No contract
6/11- 6/13	Suffolk County Water Authority	All	None	260	3	780	Repre- sentation
7/21	Mamaroneck—Town	Police	Police Benevolent Assoc.	12	1	12	Wages
7/27	N.Y.C. Parks	Lifeguards	None	675	1	675	Salaries
8/30	Huntington—Town	Highway Dept.	Local 342, NMU	75	1	75	Repre- sentation
9/5	Middle County School District	Bus Drivers	None	26	1	26	Extension medical benefits

Date	Employer	Employees	Organization	No. of Individ.	Duration (Work Days)	Man Days Lost	Causes
1968							
9/9-11/18	N.Y.C. School Board	Teachers and Supervisors	UFT CSA ^{b1}	53,000 ^{a1}	35	1,860,000	Grievance dispute
9/10	Buffalo—City	Police	Erie Club, PBA	600	1/2	0	No contract
10/11	Tonawanda—City	Sanitation Workers	Local Organ.	17	1	17	Grievance dispute
10/12-10/21	Bethpage Bd. of Ed.	Teachers	AFT	166	10	1,660	No contract
10/21-10/26	New York City	Police	PBA	2,600	6	15,600	No contract
10/28-11/14	N.Y.C. Sanitation Dept.	Sanitation Workers	Local 704, Firemen & Oilers	400	14	5,600	Salaries
11/6	Babylon—Town	Highway Dept.	Local 237, IBT	400	1	400	Grievance Procedures
11/18-11/27	New York State	Mental Hygiene Attendants	AFSCME	2,800	10	28,000	Representation
11/22	Troy—City	Firemen	Unif. Firemen's Assoc.	—	2 hrs.	—	No contract
12/18	N.Y.C. Judicial Conference	Probation and Parole Officers	Prob. & Parole Officers Assoc.	500	1	500	Wages
TOTALS:				122,833	175	2,650,520	

a] N.Y.S. Labor Department estimate—includes custodians and other affected personnel.

b] Council of Supervisory Associations.

APPENDIX B

Issues Dealt With in Fact-Finding Reports

Issues Dealt With in 116 Fact-Finding Reports

All Organizations

Salary	85 %
Sick Leave	17 %
Grievance	35 %
Overtime	8 %
Personal Leave	20 %
Holidays and Vacation	14 %
Life Insurance	12 %
Medical Insurance	28 %
Retirement and Pensions	14 %
Seniority	4 %
Longevity	9 %
Union Dues and Check-off	4 %
Salary in Step	6 %
Increments	5 %
Duration of Agreement	3 %

Issues Dealt With in 87 Fact-Finding Reports

Teachers

Salaries	83%
Grievances	39%
Teaching hours and Teaching loads	27%
Longevity	5%
Teacher Assignments	7%
Sabbatical Leave	18%
Personal Leave	20%
Sick Leave	17%
Vacation	7%
Non-teaching duties	7%
Teacher Aides	10%
Duty-free Lunch	4%
Life Insurance	11%
Health Insurance	23%
Dental Insurance	3%
Retirement	3%
Maternity Leave	3%
Welfare Benefits	1%
Class Size	11%
Salary in Step	4%
Tenure	2%
Extra-curricular Activities	13%
Increments	7%

Issues Dealt With in 17 Fact-Finding Reports

Police and Firemen

Salary	94%
Sick Leave	18%
Grievance	24%
Overtime	48%
Personal Leave	18%
Holidays/Vacation	36%
Life Insurance	18%
Medical Insurance	41%
Retirement/Pensions	65%
Seniority	18%
Longevity	24%
Union Dues/Check-off	24%

Issues Dealt With in 12 Fact-Finding Reports

Other Organizations

Salaries	91%
Retirement	25%
Grievances and Arbitration	25%
Seniority	17%
New and Part-time Employees	17%
Insurance, Health and Welfare	25%
Unionshop and Check-off	8%
Sick Leave	17%
Time off charged to Sick Leave	8%
Vacation	25%
Personal Leave	17%
Holidays	17%
Funeral Leave	8%
Paid Birthday when it falls on school day as Holiday for Bus Drivers	8%
Mechanics relieved of driving responsibility	8%
Duration of Contract	25%
Terminal Benefits in case of Layoff	8%
Tuition refund for Nurses	8%
Educational Differential—Nurses	8%
Experience Differential—Nurses	8%
Longevity	17%
Shift Differential	17%
Time and one-half for Overtime	8%
Meal Ticket	8%
Uniform and Glove Allowance	8%
Use of booths for bridge employees	8%
Revised Work Schedule	8%
Procedure regarding shortage in toll collections	8%

APPENDIX C

History of Developments in Public Employee Labor Relations

Prior to 1947

Common Law prohibition against strikes against government based upon the sovereignty concept.

- 1947 Condon-Wadlin Law
New York Civil Service Law §22-a (Chapter 391 of the Laws of 1947).
- 1958 Condon-Wadlin Law
Repealed old §22-a New York Civil Service Law and replaced it with §108 of the New York Civil Service Law (Chapter 790 of the laws of 1958).
- 1963 Condon-Wadlin Law
Amended by Chapter 702 of the Laws of 1963.
- 1966 Final Report of the Governor's Committee on Public Employee Relations
- 1966 Legislative Document #40-1966: "The Key to Labor-Management Peace and Prosperity in New York State."
- 1967 Taylor Law
Enacted (Chapter 392 of the Laws of 1967).
- 1967 Legislative Document #21-1967: "Preparing for the 'Fourth Decade'—A Backcast and a Forecast of Labor-Industry Relations in New York State, 1938-1968."
- 1968 Interim Report of the Governor's Committee on Public Employee Relations.
- 1968 Legislative Document #11-1968: "The Unfinished Business of Industrial and Labor Conditions in New York State."
- 1969 Report of the Governor's Committee on Public Employee Relations; Report of January 23, 1969
- 1969 Report of the Joint Legislative Committee on Industrial and Labor Conditions—February 3, 1969

APPENDIX D

On the Question of Legalizing Public Employee Strikes

During the course of its deliberations, the committee staff explored the many arguments pro and con dealing with the question of amending the Taylor Law so as to permit strikes by various categories of public employees. The arguments for and against such an amendment are summarized as follows.

I. Arguments Favoring Legalization of Public Employee Strikes

A. There can be no meaningful collective bargaining without the right to strike. In the absence of a strike threat or some other form of concerted activity public employers will not be inclined to grant concessions. This is particularly true in those instances where the executive and legislative functions are combined into one body, such as most school boards and some county and municipal governments. In such cases the public employer may, and often does, view negotiations as an interesting but nonetheless rather meaningless dialogue whereby all of the important decisions are eventually imposed unilaterally.

B. Proponents of legalizing the strike also maintain that the anti-strike provisions of the Taylor Law have not been effective. They point to the number of strikes that have taken place since the act was passed. They further argue that any attempt to enforce a statute that is almost guaranteed to be flaunted only promises to create further disrespect for the law.

C. It is inequitable to prohibit the right to strike to a public employee when a worker in the private sector in an identical type of job (a bus driver in a publicly as against a privately owned transit system is the most common form of illustration) enjoys this right.

D. Public employees in several of the other western democracies have enjoyed the right to strike for some time and this has not caused any undue disruption to the economy or to the social fabric of those nations.

E. If strikes were allowed in the public sector, there is a very good chance that there would actually be fewer strikes since the fear of not settling would force the parties to develop more skill in negotiations and would also cause them to deal more realistically and more honestly with the issues and with each other.

II. Arguments Opposing Legalization of Public Employee Strikes

A. As was pointed out in the main body of this report, public sector negotiations do not carry the same connotation as private sector collective bargaining. The possible effect of public employee strikes on our system of representative government suggests that the public sector work stoppages should be looked at in a new and different light. The first two years under the Taylor Law would strongly indicate, moreover, that there *can* be meaningful negotiations in the absence of the right to strike. Employee organizations have been able to win significant improvements in salaries, fringes, and other benefits in face of the fact that in very few instances was there even so much as a strike threat.

B. It is alleged that the anti-strike provisions of the Taylor Law have not been effective. Of course, there is no accurate way of measuring the impact of the anti-strike provisions and their accompanying penalties. There were, during 1968, 26 public employee strikes out of a total of 1400 collective agreements negotiated. It is not known how many employee organizations were constrained from striking because of the penalties. Outside of New York City only 3000 public employees were involved in strikes. This figure represents .01% of work time lost due to stoppages.

Obviously, no anti-strike provision, regardless of the severity of the penalties, can guarantee to prevent all strikes, any more than legislation outlawing thievery can guarantee that no bank will ever be robbed. Nonetheless, this unpleasant fact that strikes exist even though they are outlawed has led some "doves" on this subject to conclude that such laws are futile. This is a curious logic that we suspect those proponents of lifting the strike ban would be reluctant to apply to the few thousand other laws that do not guarantee perfect compliance.

C. It is difficult to meet head on the argument that it is inequitable to prohibit the right to strike to a public employee and at the same time allow that right to a private employee who is similarly employed. The point is, however, that the monopolistic nature of public services tends to catch employees of all similar services, public and private, in its net. It is, therefore, probably just as logical to deny the right to strike to bus drivers in a privately owned bus company so long as alternative transportation is not available as it is to deny strike rights to publicly employed bus drivers.

Indeed, the question sometimes comes down to the issue of the nature of the service performed rather than whether that service is provided by the private or public sectors.

The public bears a disproportionate amount of the cost of the strike when the industry that serves it is, for all purposes and intents, a monopoly. In this context, it is instructive that in two of the most consumer-oriented industries in the private sector, automobiles and electrical goods, neither of which have been notably strike-free, there has never been a time when a prospective consumer could not buy a new automobile, an electric toaster, or a waffle iron because the entire industry had been shut down. A public employee strike, on the other hand, such as in education or transportation, effectively denies the consumer any alternative at all.

Moreover, unions dealing with employers in privately owned utilities, such as a bus company, are keenly aware that long strikes can force the company out of business. Should that happen, as recent events have shown, the municipality, responding to community needs, usually assumes financial control of the company.

D. As for the argument that other Western countries tolerate public employee strikes, one can only say that that is a judgment for officials in that country to make. It is evidently not the position of the majority of citizens in the State of New York. If the Canadian officials, for example, give a higher value to the right of postal workers to strike than they do the right of its citizens to have uninterrupted mail delivery, that is their business. The citizens of New York State view the matter differently.

E. The assertion that if strikes are allowed in the public sector, the parties to negotiations would be forced to develop greater skills and this would result in actually fewer strikes, does not square with the facts. Collective bargaining has been going on for decades in the private sector, yet, between the years 1960 and 1968 the number of private sector work stoppages increased steadily from 3333 to 4700. This would indicate, on the surface at least, that their skill and familiarity with the process of collective bargaining does not necessarily lead to labor harmony.

F. Perhaps the most important reason why we should be concerned about work stoppages in the public sector is the fact that the cost of the strike is borne, not by the public employer, but by that segment of the public least able to avail themselves of substitute services. This is particularly the case with the poor. To use the rash of public employee strikes in New York City over the last few years as an example: (1) over 50% of the N.Y.C. public school population are ghetto residents. The most affluent residents of that city rarely send their children to the public schools. Thus, when the teachers strike the school system, the effect of that strike, to the degree that it denies educational opportunity to school children, falls most heavily on the poor. To a ghetto

dweller, Andover or Exeter are hardly realistic alternatives. (2) The people living in Park Avenue apartments equipped with incinerators and other substitute means of disposing of garbage did not suffer nearly to the same extent during the recent sanitation strike as did those people living along 125th Street. (3) Nor did Park Avenue residents suffer any measurable inconvenience during the 1966 transportation strike. Not primarily dependent on public transportation, they may indeed have actually found it easier to get to work because of the absence of the usual congestion caused by city buses. At the same time, 40% of workers normally using the subway or bus to go to work lost one or more work days during the strike. Fifteen percent did not get to work at all. *Among low income workers the corresponding figures were sixty percent losing some time and thirty percent not getting to work at all.*

APPENDIX E

Public Employers under the Taylor Law

Chief Executive Officers and Legislative Bodies

Public Employer Under Taylor Law	Chief Executive Officer	Legislative Body	Budget Process
1. Counties	*county executive, manager, or chairman of county legislature or of board of supervisors	county legislature ^{or} of board of supervisors* (name may vary as result of reapportionment)	departmental estimates; tentative budget; review and report by standing committee; changes by legislative body, final budget and tax levy. Procedure and power to make changes may vary in charter counties, i.e. changes may require approval by county exec., and a 2/3 or 3/5 vote to override disapproval (see attachment)

* Should be clarified by legislation.

— County improvement
or special districts (not
a governmental unit)

(a) ad valorem basis

(b) spec. benefit basis

”

”

”

”

tentative, public hearing; fi-
nal and levy no changes after
hearing unless another hear-
ing held; could be earlier or
at same time as county
budget.

2. Cities other than City of
New York

*Mayor of manager
(charter controls)

City or common council
(city charter controls)

Generally tentative, public
hearing and final. City char-
ter or local law controls as to
whether changes from tenta-
tive can be made by council.
In some cities, Second Class
Cities Law controls which
prohibits increases and salary
decreases. In others, changes
require approval of mayor,
and a 2/3 or 3/5 vote to
override disapproval.

Public Employer Under Taylor Law	Chief Executive Officer	Legislative Body	Budget Process
3. Towns	*Supervisor	Town board	Departmental estimates; tentative public hearing; changes but generally no increases; final.
—town improvement or special districts (not a gov. unit)	”	”	”
(a) ad valorem basis	”	”	”
(b) spec. benefit basis	”	”	Tentative, public hearing; final—which is earlier than town budget. No changes unless another hearing held.
— certain improvement or special districts with separate board of commissioners (not a governmental unit)			
(a) ad valorem basis spec. benefit basis	Chairman of board Chairman of board	Town Board Board of commissioners	same as 3-(a) same as 3-(b)

Public Employer Under Taylor Law	Chief Executive Officer	Legislative Body	Budget Process
4. Villages	*Mayor or manager	Board of trustees	department estimates; tentative; changes by board of tr.; final and tax levy. Procedure may vary in the eleven charter villages.
5. City school district —in cities under 125,000	Superintendent of schools	Board of education	tentative; public hearing; changes by board; final and levy.
—in cities 125,000 and over (other than New York)	Superintendent of schools	Board of education — under Taylor Law, but not in fact; see—	same as with city department estimates with power to make changes.
—in City of New York	Superintendent of schools	Central board of education (could vary under decentral- ization); see also—	if total budget shall be equiv- alent to or less than 4 and 9/10 mills on every dollar of assessed val. the appropri- ate is mandatory; if it exceeds said sum, then excess sub- ject to same procedure as other city department esti- mates.

- | | | | |
|--|--|--|---|
| 6. School district other than city | District principal | Board of trustees or sole trustee | Annual estimates presented by board voted upon by school district voters; failure to approve budget does not affect teachers' salaries. |
| —common school district | | | |
| —union free school district | Superintendent of schools | Board of education | ” |
| —central school district | supervising principal or superintendent of schools | Board of education | ” |
| 7. Community colleges | president of board of trustees | Board of trustees—in practice (technically—legislative body of sponsor | Trustees prepare, estimate and submit to sponsor for approval thereafter same as that of sponsor. |
| 8. Board of Cooper. educational services (BOCES) | Generally, district super of BOCES schools | | BOCES prepares estimates, makes them available to component boards of education at BOCES annual meeting (in April) and thereafter adopts final budget. There- |

after proportionate share of component school districts is included in school district budget for levy.

9. Fire district	Chairman of board of fire commissioners	Board of fire commissioners board of fire commissioners	Internal procedure; no public hearing or vote required, except to increase spending limitation.
10. District corporations	Chairman or designee	Governing board	Procedure set forth in act creating same.
11. State and local authorities, public benefit corporations and certain independent commissions	Chairman or designee	Governing board	Internal procedure, no requirement for public hearing; generally, dept. estimates, review by budget officer, chairman and final adoption by governing board.

The Legislative Program of the
Select Joint Legislative Committee
on Public Employee Relations

- p.58 S 5534 The jurisdiction of the Office of Collective Bargaining.
- p.60 S 5535 Ratification by secret ballot.
- p.62 S 5536* Creation of a statutory term for the chairman of PERB. Chapter 391 of the laws of 1969.
- p.63 S 5537 A 6921 Extension of time to resolve disputes.
- p.64 S 5538 OCB and "substantial equivalence".
- p.67 S 5539 Abolition of mini-PERB.
- p.69 S 5540 Scope of Bargaining.
- p.70 S 5541 Agency shop.
- p.74 S 5542 Definition of probation as a penalty.
- p.76 S 5543 PERB - protection for mediators from disclosure; appointment of counsel.
- p.78 S 5544 Double jeopardy.
- p.81 S 5477 Anti-martyrdom bill.
- p.81 S 5670 A 7185* Extension of improper practice jurisdiction of OCB. Chapter 494 of the Laws of 1969.

ADDENDUM, page 80
MEMORANDUM IN SUPPORT OF

AN ACT to ammend the Civil Service Law, in relation to providing remission of probationary status and return of payroll deductions for public employees who are provoked into illegal strikes by acts of extreme provocation.

SENATE 4648

Purpose of the Bill:

To provide for the remission of penalties against individual public employees upon a finding of extreme provocation as the cause of a strike.

Summary of the Provisions of the Bill:

This bill would ammend the Taylor Law to provide that if a court or PERB should determine that a public employer by its acts of extreme provocation caused the strike, the penalties against public employees (probation and fine) would be remitted

ADDENDUM, page 81
MEMORANDUM IN SUPPORT OF

AN ACT to amend the Judiciary
Law, in relation to
punishment for contempt
in labor disputes.

SENATE 5477

Purpose of the Bill:

To prevent the jailing of union leaders for criminal contempt because the union is on strike.

Summary of the Provisions of the Bill:

This bill would amend the judiciary law to prohibit jailing of union leaders on the sole grounds that a striking union failed to obey an injunction to return to work. The organization and its officers would, of course, still be subject to a fine for such contempt.

Statement in Support of the Bill:

Recommended by the original Taylor Committee, the bill would amend the Judiciary Law to prevent

recognize this fact by waiting until the strike is settled before imposing a jail sentence. Jailing for criminal contempt is based on the assumption that the leader has the power to end the strike. Experience indicates that this is not always true. It is important to note that the prohibition extends only to the instance where the sole basis for contempt imprisonment is the failure of the union to return to work. Any other out of court conduct could be punished as before.

ADDENDUM, page 81
MEMORANDUM IN SUPPORT OF

SENATE 5670

AN ACT to amend the civil service law in relation to procedures, including those in the city of New York, to assist in resolving disputes between public employees and public employers.

Purpose of the Bill:

To exempt the City of New York temporarily from

Statement in Support of the Bill:

New York City's Office of Collective Bargaining has exercised jurisdiction in disputes over the scope of bargaining and over the meaning of the City's management rights clause to determine questions of what is bargainable, and thus what subjects may go to an impasse panel for its recommendations.

The recent amendment to the Public Employees' Fair Employment Act (Taylor Law) would preempt OCB's jurisdiction over these matters by giving PERB exclusive and non-delegable jurisdiction over improper practices by public employers and public employee organizations.

The recent amendment to the Taylor Law also requires the City to report prior to the next Session with regard to certain problems affecting OCB believed by some experts to have contributed to strife between the City and its employees. Consistent with this approach, the bill would defer changes in the scope of OCB's operations by exempting it from PERB's exclusive jurisdiction over improper practices until March 1, 1970.

ADDENDUM, page 82
MEMORANDUM IN SUPPORT OF

AN ACT to amend the Civil Service law, in relation to clarifying certain penalties for strikes by public employees.

SENATE 5699

Purpose of the Bill:

To give teachers the same protection during their probationary status as is accorded other public employees under the Civil Service Law.

Summary of the Provisions of the Bill:

Teachers, when placed on probation as a result of penalties under the Taylor Law, may not be discharged without a hearing for cause during such probationary term. At the conclusion of the probationary term, a teacher might be discharged only upon unsatisfactory performance evaluations, and such discharge is reviewable under Article 7801 of the Civil Practice Law and Rules.

Statement in Support of the Bill:

their probationary period. Since the Education Law presently specifies the probationary procedure for teachers, this amendment is necessary to assure that all public employees are treated equally under the Public Employees' Fair Employment Act.

A-6629 substituted and passed
May 5, 1969.

APPENDIX F

The Legislative Program of

- s. 5534 A. none The jurisdiction of the Office of Collective Bargaining.
- s. 5535 A. none Ratification by secret ballot.
- s. 5536* A. none Creation of a statutory term for the chairman of PERB. Chapter 391 of the Laws of 1969.
- s. 5537 A. 6921 Extension of time to resolve disputes.
- s. 5538 A. none OCB and "substantial equivalence."
- s. 5539 A. none Abolition of mini-PERBS.
- s. 5540 A. none Scope of bargaining.
- s. 5541 A. none Agency shop.
- s. 5542 A. none Definition of probation as a penalty.
- s. 5543 A. none PERB—protection for mediators from disclosure; appointment of counsel.
- s. 5544 A. none Double jeopardy.
- s. 5670 A. 7185* Extension of improper practice jurisdiction of OCB. Chapter 494 of the Laws of 1969.
- s. 5699 A. 6629* Equal treatment for teachers. Chapter 492 of the Laws of 1969.
- s. 5477 A. none Anti-martyrdom bill.

MEMORANDUM IN SUPPORT OF

An Act to amend chapter twenty-four of the laws of nineteen hundred sixty-nine entitled "An Act to amend the civil service law and the judiciary law in relation to procedures, including those in the City of New York, to assist in resolving disputes between public employees and public employers, and providing remedies for violations of the prohibition against strikes by public employees," in relation to a report by the mayor of the City of New York to the legislature concerning mandatory jurisdiction over political subdivisions or agencies of the City of New York in collective bargaining

SENATE 5534

Purpose of the Bill:

To require the mayor of the City of New York to include in this report to the temporary president of the senate, the speaker of the assembly and PERB his plan, among others, how mandatory jurisdiction of New York City's Office of Collective Bargaining should be extended over any non-mayoral agencies or governments wholly or

* Version signed by the Governor.

in substantial part conducting its affairs in or fiscally dependent upon the City of New York.

Summary of the Provisions of the Bill:

The Bill would amend bill section 11 of the recent amendments to the Taylor Law to clarify the contents of the report to be submitted by the mayor of the City of New York to the temporary president of the senate, the speaker of the assembly and PERB.

Statement in Support of the Bill:

The work stoppages in the City of New York have provided fuel for critics of the Taylor Law. New York City's Office of Collective Bargaining (OCB) presently has mandatory jurisdictions over mayoral agencies but its jurisdiction over non-mayoral agencies and governments is consensual. In preparation for further legislation at a future session, the mayor was required to submit a plan to the legislature regarding improvements in the operation and organization of OCB. This amendment would require the mayor to include in his plan proposals how mandatory jurisdiction of OCB would be extended over non-mayoral agencies. The bill is merely a request for information and does not affect the jurisdiction of OCB.

STATE OF NEW YORK
5534
1969-1970 Regular Sessions
IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend chapter twenty-four of the laws of nineteen hundred sixty-nine, entitled "An act to amend the civil service law and the judiciary law, in relation to procedures, including those in the city of New York, to assist in resolving disputes between public employees and public employers, and providing remedies for violations of the prohibition against strikes by public employees," in relation to a report by the mayor of the city of New York to the legislature concerning mandatory jurisdiction over political subdivisions or agencies of the city of New York in collective bargaining

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eleven of chapter twenty-four of the laws of nineteen hundred sixty-nine, entitled "An act to amend the civil

service law and the judiciary law in relation to procedures, including those in the city of New York, to assist in resolving disputes between public employees and public employers, and providing remedies for violations of the prohibition against strikes by public employees," is hereby amended to read as follows:

§ 11. In order to promote harmonious and cooperative relationships between the city of New York and its employees, and thereby to protect the public from the interruption of vital public services, it is necessary that the city of New York adopt provisions and procedures which would effectuate the fundamental principles of the public employees fair employment act of nineteen hundred sixty-seven. Consequently, on or before August one, nineteen hundred sixty-nine the mayor of the city of New York shall submit to the temporary president of the senate, the speaker of the assembly and the public employment relations board a report of the steps taken and a plan designed to bring such practices of the city of New York into substantial equivalence with such state law. This report and plan shall, among other things, particularly deal with *how mandatory jurisdiction should be extended over any non-mayoral agencies or governments wholly or in substantial part conducting its affairs in, or fiscally dependent upon the city of New York* making effective the jurisdiction of the office of collective bargaining, the need for a specified final step in the impasse procedures, and the relation of negotiations and impasse procedures to budget submission dates. On or before December one, nineteen hundred sixty-nine the public employment relations board shall submit to the temporary president of the senate and speaker of the assembly its comments and recommendations regarding such report and plan. If the report of the mayor is not received as aforesaid, the special provisions relating to the city of New York contained in paragraph two of section two hundred twelve of the civil service law, shall cease on August one, nineteen hundred sixty-nine and such paragraph shall be deemed null and void.

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to approval by secret ballot of negotiated settlements.

SENATE 5535

Purpose of the Bill:

To insure that individual public employees obtain a voice in approving the terms of a settlement by guaranteeing that an employee organization which provides for membership ratification do so by secret ballot.

Summary of the Provisions of the Bill:

This bill would require an employee organization whose constitution or by-laws presently provide for membership ratification of settlements to guarantee a secret ballot vote.

Statement in Support of the Bill:

In the event an employee organization, by constitution or by-laws, provides for membership ratification of negotiated settlements, such ratification shall be by secret ballot. The purpose of this bill is to enable individual members privately to express approval or disapproval of a settlement without undue influence on the part of leadership because ratification by voice vote is often accomplished in an atmosphere of hysteria. This bill would not mandate membership ratification for employee organizations whose constitution or by-laws presently do not provide for such ratification.

STATE OF NEW YORK
5535
1969-1970 Regular Sessions
IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to approval by secret ballot of negotiated settlement

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision six of section two hundred one of the civil service law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

6. The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, [or] (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from

the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board or (d) if the constitution, charter or by-laws of such organization provide for membership approval of negotiated settlements, unless such approval be by secret ballot, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article.

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to the appointment of the chairman of the public employment relations board by the governor

SENATE 5536

Purpose of the Bill:

To create a statutory term for the chairman of PERB commensurate with his term of appointment to PERB.

Summary of the Provisions of the Bill:

This bill would require the Governor to appoint the chairman of PERB for a specified term.

Statement in Support of the Bill:

Presently, although the chairman of PERB is appointed for a statutory term as a *member* of PERB, he serves as chairman at the pleasure of the Governor. The bill would insure that he would not be reduced in rank during his term of office without cause.

STATE OF NEW YORK

5536

1969-1970 Regular Sessions

IN SENATE

April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to the appointment of the chairman of the public employment relations board by the governor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section two hundred five of the

civil service law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

1. There is hereby created in the state department of civil service a board, to be known as the public employment relations board, which shall consist of three members appointed by the governor, by and with the advice and consent of the senate from persons representative of the public. Not more than two members of the board shall be members of the same political party. Each member shall be appointed for a term of six years, except that of the members first appointed, one shall be appointed for a term to expire on May thirty-first, nineteen hundred sixty-nine, one for a term to expire on May thirty-first, nineteen hundred seventy-one, and one for a term to expire on May thirty-first, nineteen hundred seventy-three. The governor shall designate one member *who shall serve* as chairman of the board *until the expiration of his term*. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to time within which to resolve disputes

SENATE 5537

Purpose of the Bill:

To extend by ten days (from 20 to 30 days prior to budget submission date) the time at which a fact-finder must submit its report and recommendations to the chief executive officer and the employee organization. This would give the parties an additional 10 days to reach a voluntary resolution of their differences.

Summary of the Provisions of the Bill:

This bill would require a fact-finder to issue his report to the parties 30 days prior to the budget submission date so as to give the parties additional time to resolve their differences.

Statement in Support of the Bill:

Fact-finders would be required to issue their reports and recommendations to the chief executive officer of a public employer and to the employee organization 10 days sooner so as to afford the parties additional time to study the report and attempt further settlement efforts.

STATE OF NEW YORK
5537
1969-1970 Regular Sessions

IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT

To amend the civil service law, in relation to time within which to resolve disputes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision three of section two hundred nine of the civil service law, as last amended by chapter twenty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(c) if the dispute is not resolved at least [twenty] *thirty* days prior to the budget submission date, the fact-finding board, acting by a majority of its members, (i) shall immediately transmit its findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved and to the employee organization involved, (ii) may thereafter assist the parties to effect a voluntary resolution of the dispute, and (iii) shall within five days of such transmission make public such findings and recommendations;

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to local government procedures

SENATE 5538

Purpose of the Bill:

To require New York City's Office of Collective Bargaining to bring itself into substantial compliance with the Taylor Law and to continue its jurisdiction over improper employer and employee practices.

Summary of the Provisions of the Bill:

This Bill would remove the obligation for PERB to obtain a judicial determination whether OCB complies with the Taylor Law. Instead, OCB would be required to bring itself into substantial equivalence with the Taylor Law, as determined by PERB.

Additionally the bill would restore the power of New York City's

Office of Collective Bargaining to hear and determine improper employee or employer practices and to guarantee the development of a single, uniform body of law thereunder by providing New York Public Employment Relations Board with discretionary review of OCB's determination by permissive appeal or on motion by New York PERB.

Statement in Support of the Bill:

New York City's Office of Collective Bargaining has administered the unfair labor practices provisions of New York City's executive Order # 52 since its inception. With the adoption of improper employer-employee practices in the Taylor Law, OCB's power was curtailed. The bill would restore such jurisdiction but guarantee the development of a uniform body of law by providing that a party could seek review of OCB's decision in an improper employer-employee practice case by request to PERB. PERB may, in its discretion grant or deny permission to appeal if it wished to clarify or correct OCB's determination. In addition, PERB could review a decision by OCB on its own motion.

The provisions and procedures of New York City's Office of Collective Bargaining differ substantially, in many respects, from the provisions of the Taylor Law. It is accorded special status under the Taylor Law so long as it remains in substantial equivalence to the provisions of the Taylor Law. The determination of substantial equivalence may be made only by a court upon an action brought by PERB for that purpose. This bill removes the requirement that PERB bring an action in court and directly requires OCB to bring itself into substantial equivalence with the Taylor Law. Its continuing operation would then be conditioned upon its remaining in substantial compliance with the Taylor Law. The mayor of the City of New York is required to submit a plan to PERB by August 1, 1969, or such other date as PERB may set, to bring OCB into substantial equivalence.

STATE OF NEW YORK
5538
1969-1970 Regular Sessions

IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to local government procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred twelve of the civil service law, as last amended by chapter twenty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 212. [Local government procedures] *Special provisions relating to New York City.* 1. This article, except sections two hundred one, two hundred two, two hundred three, two hundred four, [paragraph d of subdivision five of section two hundred five,] paragraph b of subdivision three of section two hundred seven, section two hundred eight, section two hundred nine-a, [subdivisions one and two of] section two hundred ten, and section two hundred eleven, shall be inapplicable to [any government (other than the state or state public authority) which, acting through its legislative body, has adopted by local law, ordinance or resolution,] *the city of New York so long as it has in operation a local law adopted by its legislative body establishing its own provisions and procedures which have been submitted to the board by such government and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this article with respect to the state, provided, however, that such provisions and procedures need not be related to budget submission dates.*

2. With respect to [the city of New York, such provisions and procedures need not be related to budget submission dates; and with respect to provisions and procedures adopted by local law by the city of New York no such submission to or determination by the board shall be required, but such provisions and procedures shall be of full force and effect unless and until such provisions and procedures, or the continuing implementation thereof, are found by a court of competent jurisdiction, in an action brought by the board in the county of New York for a declaratory judgment, not to be substantially equivalent to the provisions and procedures set forth in this article] *its enforcement of section two hundred nine-a of this article, a party aggrieved by a determination of the agency administering the local law of the city of New York may request review of that determination by the board. The board may, on its own motion, review any such determination of the agency administering the local law of the city of New York. A decision of the board not to review such a determination shall not be reviewable.*

3. *The mayor of the city of New York shall, by August first, nineteen hundred sixty-nine or by such later date as the board shall set, submit to the board provisions and procedures that are substantially equivalent to the provisions and procedures set forth in this article with respect to the state. Any local law adopted by the*

legislative body of the city of New York designed to accomplish the purposes of this article may remain in effect until August first, nineteen hundred sixty-nine or such later date as the board may set.

§ 2. This act shall take effect immediately except that so much of section two hundred twelve withdraws authorization to a local government to enact and administer its own procedures shall take effect on July first, nineteen hundred sixty-nine; and except that subdivision two of section two hundred twelve as amended by this act shall take effect on September first, nineteen hundred sixty-nine.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to resolving disputes between public employers and employees and repealing the provisions of section two hundred six which provide local procedures for determination of representation status of employees

SENATE 5539

Purpose of the Bill:

To insure statewide uniform application of the Taylor Law and to avoid wasteful duplication of services by abolishing mini-PERBS.

Summary of the Provisions of the Bill:

The bill would abolish the local procedures which exempt certain local governments from the operation of various sections of the Taylor Law.

Statement in Support of the Bill:

This bill abolishes mini-PERBS in order to guarantee uniform application of the Taylor Law. While not provided in the Taylor Report, mini-PERBS were included in the 1967 Taylor Law primarily to relieve PERB from the rush of representation questions that were expected and which occurred during the first year of the Taylor Law. Of the original 35 mini-PERBS approved by PERB, 5 have been revoked by PERB for failing to remain in compliance with the Taylor Law. Two have been voluntarily rescinded by the local government involved. Of the remaining 28, only 4 have rendered any real assistance to the parties and few have any provision for a regular budget appropriation although funding may be available upon an ad hoc request to the legislature. Since mini-PERBS are manned on a part-time, volunteer basis experience has shown that whenever a difficult problem has arisen, it has been referred to New York State PERB for resolution or assistance although there is no provisions in the law for this. The difficulty apparently arises with the lack of qualified persons with sufficient expertise in this complex area of law to staff the mini-PERBS. In a few boards, persons with eminent qualifications have been selected and do perform well but in the vast majority

of instances, the persons selected, while of the highest integrity, do not have the time nor the expertise to settle the difficult technical questions which arise in a certification or decertification proceeding. In addition, a board appointed by the employer and attempting to remain neutral, would have a difficult time in hearing and determining a reprisal case. Further, decentralized administration of laws with statewide application is not typically a local government function and mini-PERBS tend to lead to a waste of funds and talent that would be available to all communities in the state through state PERB. Local governments would still be empowered to set up local procedures for the resolution of impasses by agreement with local employee organizations.

STATE OF NEW YORK
5539
1969-1970 Regular Sessions

IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to resolving disputes between public employers and employees and repealing the provisions of section two hundred six which provide local procedures for determination of representation status of employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision five of section two hundred five of the civil service law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

(c) To resolve, pursuant to such procedures [but only in the absence of applicable procedures established pursuant to section two hundred six of this article], disputes concerning the representation status of other employee organizations, upon request of any employee organization or other government or public employer involved.

§ 2. Section two hundred six of the civil service law is hereby repealed.

§ 3. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.

NOTE.—Section 206 of the Civil Service Law authorized governments other than the State or a state public authority to establish local procedures for the determination of representation status of local employees.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to the rights and duties of a public employer

SENATE 5540

Purpose of the Bill:

To define the scope of bargaining under the Taylor Law by enumerating government's prerogatives and removing certain items from the realm of mandatory bargaining so that public employers may not be *required* to bargain regarding such items but still to allow public employers to discuss such matters at their discretion.

Summary of the Bill:

The bill enumerates in general terms the right of government to make decisions regarding policy and resource allocation and safeguards against public employers being required to negotiate those items. These public employers which choose to discuss or negotiate any of the enumerated items may do so at their discretion.

Statement in Support of the Bill:

The concept of what is or what is not a proper subject for negotiations under the Taylor Law is a difficult question at best. Considerations differ from public employer to public employer depending upon the nature and type of the services performed and the geographical area of the state. While some public employers may not wish to bargain regarding a particular item, other public employers may wish to negotiate or, perhaps, discuss the same matter.

This bill would specify in general terms those prerogatives of government upon which a public employer cannot be compelled to negotiate while allowing such negotiations in the discretion of the employer.

Presently, if an employee organization considers an item to be a proper subject for negotiations and the public employer disagrees, PERB may issue an order to bargain in good faith on that item. There are presently no guidelines in the public sector to assist PERB in making its determination. This bill provides those guidelines by reserving to the public employer the right to determine the standards of its services, determine the standards for the selection of its employees, direct its employees, determine the content of job classifications and to determine the facilities, limitations, means and number of its personnel.

The bill would not void the provisions of any existing agreements and would require the parties to comply with their agreement.

STATE OF NEW YORK
5540
1969-1970 Regular Sessions
IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to the rights and duties of a public employer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section two hundred four of the civil service law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

2. Where an employee organization has been certified or recognized pursuant to the provisions of this article, the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment. *Notwithstanding the foregoing, it is the right of every government to determine the standards of its services; determine the standards of selection of its employees; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the content of job classifications; take all necessary action to carry out its mission in emergencies; and exercise control and discretion over its organization and methods by determining the facilities, limitations, means and number of its personnel. Such rights of government are subject to the conditions, rights and limitations as may be applicable under law and must be exercised consistent with the provisions of the written agreement.*

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to the rights extended by a public employer to an employee organization and the prohibition of strikes by public employees

Purpose of the Bill:

To provide more effective deterrents against public employee strikes while insuring greater stability in government's relations with employee organizations by removing the legal barriers to agency shop and making agency shop a subject for negotiations after an employee organization has complied with the law for two years. Agency shop would be revoked for a two year period if the employee organization violates the Taylor Law.

Summary of the Provisions of the Bill:

The bill would remove the barriers to agency shop presently contained in the General Municipal Law (§ 93-b) and the State Finance Laws (§ 6-a) and allow public employers to deduct from the wages or salaries of employees who are part of the bargaining unit but who are not members of the employee organization representing them in negotiations a sum equivalent to their pro rata share of the cost of negotiating and administering the contract and to pay such funds to the employee organization. In order to be eligible to negotiate an agency shop, an employee organization must have been the exclusive bargaining agent for two years, be certified or recognized under the Taylor Law and must not have violated the law during that time. In the event an employee organization violates the Taylor Law, agency shop would be lost for an indefinite period of time but not less than two years later.

Statement in Support of the Bill:

Agency shop is the provision in a negotiated agreement whereby the employer agrees to deduct a sum from the wages or salary of non-members of an employee organization and to pay the same to the organization. The sum, by decision of the United States Supreme Court, cannot exceed the employee's pro rata share of the cost of negotiating an agreement and administering it for his benefit. Sums so collected cannot be used for any other purposes. Since all public employees in a bargaining unit must be represented equally by an employee organization which has been granted negotiating rights and since all such employees must, by law, share equally in any benefits obtained by the organization through negotiations or by processing grievances, then all such employees should share the expenses incurred in obtaining such benefits.

STATE OF NEW YORK
5541
1969-1970 Regular Sessions

IN SENATE

April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to the rights extended by a public employer to an employee organization and the prohibition of strikes by public employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions (f) and (g) of subdivision three of section two hundred ten of the civil service law, as last amended by chapter twenty-four of the laws of nineteen hundred sixty-nine, are hereby amended to read, respectively, as follows:

(f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision two of section two hundred eight of this chapter, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization; and

the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of section two hundred eight of this chapter, the books and records of such public employer shall be prima facie evidence of the amount so collected.

(g) An employee organization whose rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision two of section two hundred eight of this article have been ordered forfeited pursuant to this section may be granted such rights after the termination of such forfeiture only after complying with the provisions of clause (b) of subdivision three of section two hundred seven of this article.

§ 2. Section two hundred eight of such law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

§ 208. Rights accompanying certification or recognition. 1. A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights:

(a) to represent the employees in negotiations and in the settlement of grievances;

(b) to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees; and

(c) to unchallenged representation status until the next succeeding budget submission date and, thereafter, for an additional period of either twelve months or, if the parties so agree, not less than twelve months nor more than twenty-four months, which period shall commence one hundred twenty days prior to such next succeeding budget submission date.

2. *Notwithstanding provisions of and restrictions in section ninety-three-b of the general municipal law and of section six-a of the state finance law, the comptroller of the state of New York and the fiscal or disbursing officer of every other government or government employer may, pursuant to a written agreement with an employee organization that has been the exclusive representative of employees within a negotiating unit for the preceding twenty-four months, which is certified or recognized pursuant to this article and which has not been found to be in violation of subdivision three of*

section two hundred ten of this article and of section seven hundred fifty-one of the judiciary law during such period, deduct from the wage or salary of employees in the negotiating unit the amount equivalent to that portion of the dues levied by such employee organization and certified by it as attributable to the administration of representational rights, and transmit the sum so deducted to such employee organization.

§ 3. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to probation of public employee who violated the provisions relating to the prohibition of strikes

SENATE 5542

Purpose of the Bill:

To guarantee equal treatment of teachers punished under the Taylor Law by defining the nature of probationary status imposed under the law.

Summary of the Provisions of the Bill:

The bill would clarify the individual penalty provisions of the Taylor Law as they relate to the nature of the probationary period by specifying that the term probation term shall be that which is described in the Civil Service Law to insure that all public employees, including teachers receive equal treatment.

Statement in Support of the Bill:

There presently exists an ambiguity in the Taylor Law with respect to the meaning of the term "probation" as used as a penalty for violation of the prohibition against a strike.

Presently, the term "probation" is defined in both the Civil Service Law (§ 63) and the Education Law (§ 3012 et seq and § 2573 et seq). The definitions vary considerably and could result in a confusion as to which definition should be used in determining the status of a public employee punished under the Taylor Law.

Under the Civil Service Law and Rules 45 of the Civil Service Commission a probationer is appointed for a "term" and may be removed during such term only upon notice of charges and a hearing at which sufficient cause for his removal must be shown. (Subdivision k)

If he is to be terminated at the end of his probationary period, such termination must be for "conduct or performance" which is "not satisfactory". Specific provision is made for a written report by the probationer's supervisor on his "conduct or performance" at least two weeks prior to the end of the probationary term. If he is to be terminated "for unsatisfactory service," a Civil Service pro-

bationer must receive written notice one week prior thereto and has a right to an "interview" with "the appointing authority or his representative" (Subdivision (1)). If the probationer can establish that the denial of permanent status was based upon improper considerations ("arbitrary and capricious") he can seek and obtain judicial redress. (CPLR Article 78)

Probationary status under the Education Law is considerably different. Sections 3012 et seq. and 2573 et seq. state that a probationer may be terminated at any time during the period of probation without reason upon recommendation by the Superintendent of Schools and a majority vote of the Board of Education. Termination is effective thirty (30) days after notice of such actions. No charges or hearing are required and such decision is generally not renewable except upon a showing of "bad faith, prejudice or gross error."

In order to guarantee equal treatment for all employees under the Taylor Law, the word "probation" is specifically defined in the bill as that term is used in the Civil Service Law.

STATE OF NEW YORK
5542
1969-1970 Regular Sessions
IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to probation of public employee who violated the provisions relating to the prohibition of strikes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (f) of subdivision two of section two hundred ten of the civil service law, as last amended by chapter twenty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(f) Probation. Notwithstanding any inconsistent provision of law, any public employee who has been determined to have violated this subdivision shall be on probation *as that word is defined by this chapter* for a term of one year following such determination during which period he shall serve without tenure.

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the civil service law, in relation to making confidential proceedings of the public employment relations board

SENATE 5543

Purpose of the Bill:

To authorize PERB to retain its own counsel to represent it before the courts and to enable PERB to appoint trial examiners to conduct its hearings.

To protect the confidentiality of statements made to mediators during the course of dispute resolution by extending to PERB mediators the same protection from forced disclosure that presently protects State Mediation Board Mediators in the private sector.

Summary of the Provisions of the Bill:

This bill would authorize PERB to appoint attorneys and trial examiners to its staff.

This bill would adopt the present language of the labor law which protects State Mediation Board Mediators from forced disclosure of information given them by parties to a dispute during a hearing before an administrative agency or the courts and extend the same protection to PERB Mediators and fact-finders. Without this protection, the parties to a dispute would hesitate to be candid with a mediator or fact-finder thereby rendering them less effective in attempting to resolve a dispute.

Statement in Support of the Bill:

There exists presently no specific statutory authority for PERB to appoint attorneys or trial examiners to its staff. In the event PERB must be represented before the courts, the Attorney General's Office has supplied counsel. The recent experience where both PERB and the Executive were parties and the Attorney General's office was required to represent both parties highlights the problem. In addition, although PERB is required to conduct hearings in representation, reprisal and improper employer-employee practice cases, there presently exists no specific statutory authority for PERB to appoint trial examiners to conduct such hearings.

In a recent case, an employee organization subpoenaed a PERB mediator in a judicial proceeding which was to determine the issue of extreme provocation for a strike. The mediator was asked to reveal statements made to him by the public employer in confidence during the course of a private conference as part of the mediation process.

The language in this bill is taken directly from the labor law which extends protection to State Mediation Board Mediators from

such disclosure. Without such protection, the parties to a dispute would not be candid with a mediator or fact-finder for fear that such statements, given in confidence, could later be elicited by the other party in establishing extreme provocation or bad faith in bargaining.

STATE OF NEW YORK
5543
1969-1970 Regular Sessions

IN SENATE
April 18, 1969

Introduced by COMMITTEE ON RULES—at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to making confidential proceedings of the public employment relations board

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision four of section two hundred five of the civil service law, as added by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

4. (a) The board may appoint an executive director and such other persons, including but not limited to *attorneys, examiners, mediators, members of fact-finding boards and representatives of employee organizations and public employers* to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation.

Attorneys appointed under this section may, at the direction of the board, appear and represent the board in any case in court.

(b) *No member of the board, or any mediator or fact-finder employed or appointed by the board shall be compelled to disclose to any administrative or judicial tribunal any information relating to, or acquired in the resolution of disputes in the course of collective negotiations acquired in the course of his official activities under this article, nor shall any reports, minutes, written communications, or other documents of the board pertaining to such information and acquired in the course of his official activities under this article be subject to subpoena, except where the information so required in-*

dicates that the person appearing or who has appeared before the board has been the victim or subject of a crime, said members of the board, or any mediator or fact-finder employed or appointed by the board may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry.

§ 2. This act shall take effect immediately.

MEMORANDUM IN SUPPORT OF

AN ACT to amend the judiciary law, in relation to removal of double jeopardy provisions pertaining to Civil Service Employees [sic]

SENATE 5544

Purpose of the Bill:

To remove the "double jeopardy" provisions of the present Taylor Law which allow the courts, a mini-PERB and PERB to order forfeiture of dues deductions as a penalty for a strike.

Summary of the Provisions of the Bill:

The Bill would remove the power of a court to order dues check-off privileges suspended as a penalty for a strike where PERB or mini-PERB presently has such authority.

Statement in Support of the Bill:

The present provisions of the Taylor Law contain a type of "double jeopardy" in relation to the forfeiture of the dues deduction privilege as a penalty for a strike. In the case of a government which has a mini-PERB, the court, the mini-PERB and PERB may order forfeiture of dues deductions as a penalty. In the case of a government which does not have a mini-PERB, only the courts and PERB may order such forfeiture. There is no sound reason to add an additional level of penalties in the case of a government which has adopted a mini-PERB. This bill would equalize the exposure to penalties in both instances.

STATE OF NEW YORK

5544

1969-1970 Regular Sessions

IN SENATE

April 18, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the judiciary law, in relation to removal of double

jeopardy provisions pertaining to civil service employees [sic]
*The People of the State of New York, represented in Senate and
Assembly, do enact as follows:*

Section 1. Paragraph (a) of subdivision two of section seven hundred fifty-one of the judiciary law, as amended by chapter twenty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(a) Where an employee organization, as defined in section two hundred one of the civil service law, wilfully disobeys a lawful mandate of a court of record, or wilfully offers resistance to such lawful mandate, in a case involving or growing out of a strike in violation of subdivision one of section two hundred ten of the civil service law, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court. [In the case of a government exempt from certain provisions of article fourteen of the civil service law, pursuant to section two hundred twelve of such law, the court may, as an additional punishment for such contempt, order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of section two hundred eight of such law, for such specified period of time, as the court shall determine or, in the discretion of the court, for an indefinite period of time subject to restoration upon application; with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed pursuant to this subdivision remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, such forfeiture shall be suspended to the extent necessary for the unpaid portion of such fine to be accumulated by the public employer and transmitted to the court.] In fixing the amount of the fine [and/or duration of the forfeiture,] the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the wilful defiance of or a resistance to the court's mandate (ii) the impact of the strike on the public health, safety and welfare of the community and (iii) the ability of the employee organization to pay the fine imposed; and the court may consider (i) the refusal of the employee organization or the appropriate public employer, as defined in section two hundred one of the civil service law, or the representatives thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine of the civil service law and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its rep-

representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the ability of the employee organization to pay the fine imposed, the court shall consider both the income and the assets of such employee organization.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK

4648

1969-1970 Regular Sessions

IN SENATE

February 14, 1969

Introduced by Messrs. MARCHI, LAVERNE, FLYNN, SPENO, ADAMS—read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT

To amend the civil service law, in relation to providing remission of probationary status and return of payroll deductions for public employees who are provoked into illegal strikes by acts of extreme provocation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section two hundred ten of the civil service law is hereby amended by inserting therein a new paragraph, to be paragraph (i), to read as follows:

(i) Remission of penalties for extreme provocation. Notwithstanding the provisions of paragraphs (f) and (g) of this subdivision, if the board, in connection with its determination under subdivision three of this section, or if a court, in connection with its determination under subdivision two of section seven hundred fifty-one of the judiciary law, finds that there were acts of extreme provocation committed by the appropriate public employer or its representatives, of the quality described in paragraph (f) of subdivision three of this section, then within ten days after receipt of a determination of the board or an order of the court containing such a finding, any public employees determined to have violated the provisions of subdivision one hereof and covered by such a finding by the board or order of a court shall have their status restored and their probation, under paragraph (f) of this subdivision, terminated and a reprimand shall be substituted therefor on his record and entered in the personal record of such employees and also shall have returned to them any payroll deductions made pursuant to paragraph (g) of this subdivision.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK
5477
1969-1970 Regular Sessions

IN SENATE

April 15, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Laverne, Flynn, Speno, Marchi, Adams)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT

To amend the judiciary law, in relation to punishment for contempt in labor disputes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section seven hundred fifty-one of the judiciary law, as amended by chapter three hundred ninety-two of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

1. Except as provided in subdivision (2), punishment for a contempt, specified in section seven hundred and fifty, may be by fine, not exceeding two hundred and fifty dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, he must be discharged at the expiration of thirty days; but where he is also committed for a definite time, the thirty days must be computed from the expiration of the definite time. *Notwithstanding the foregoing provisions, no officer or agent of an employee organization shall be imprisoned solely for a violation of an order of a court which enjoins a violation of subdivision one of section two hundred ten of the civil service law.*

Such a contempt, committed in the immediate view and presence of the court, may be punished summarily; when not so committed, the party charged must be notified of the accusation, and have a reasonable time to make a defense.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK
5670
1969-1970 Regular Sessions

IN SENATE

April 27, 1969

Introduced by COMMITTEE ON RULES—read twice and ordered

printed, and when printed to be committed to the Committee on City of New York

AN ACT

To amend the civil service law in relation to procedures, including those in the city of New York, to assist in resolving disputes between public employees and public employers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (d) of subdivision five of section two hundred five of the civil service law, as added by chapter twenty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(d) to establish procedures for the prevention of improper employer and employee organization practices as provided in section two hundred nine-a of this article, provided, however, that in case of a claimed violation of paragraph (d) of subdivision one or paragraph (b) of subdivision two of such section, such procedures shall provide only for the entry of an order directing the public employer or employee organization to negotiate in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations. The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph; *provided, however, that this sentence shall not apply to the city of New York prior to March first, nineteen hundred seventy.*

§ 2. This act shall take effect immediately.

STATE OF NEW YORK

5699

1969-1970 Regular Sessions

IN SENATE

May 2, 1969

Introduced by COMMITTEE ON RULES—(at request of Mr. Laverne)—read twice and ordered printed, and when printed to be committed to the Committee on Labor and Industry

AN ACT

To amend the civil service law, in relation to clarifying certain penalties for strikes by public employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (f) of subdivision two of section two hundred ten of the civil service law, as added by chapter twenty-four of

the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(f) Probation. Notwithstanding any inconsistent provision of law, any public employee who has been determined to have violated this subdivision shall be on probation for a term of one year following such determination during which period he shall serve without tenure; *provided, however, that the effect of probation hereunder with regard to teachers and others subject to the education law shall not exceed or differ from the effect of probation hereunder with regard to other public employees.*

§ 2. This act shall take effect immediately.

APPENDIX G

Proposal by Senator John E. Flynn

Suggested plan for reevaluation and revision of salary and grade classification procedures by Senator John E. Flynn, Chairman New York State Senate Standing Committee on Civil Service and Pensions.

A complete reevaluation and revision of salaries and grade classification procedures in the New York State Department of Civil Service would prove most successful and blend into the new program of Labor Management Relations established through the Taylor Law.

Article 5, section 6 of the constitution states that "Appointments and promotions in the Civil Service of the State and all the Civil Divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive".

By the formation of a Joint Labor Management Committee with sufficient number and representatives from all segments to assure full coverage of operations and control, the State can set up a procedure for the reevaluation and revision of salaries and grade classification. The first step in the procedure would be to establish a revised job description which would be prepared for each job classification from persons designated through analyses by the Joint Labor Management Steering Committee. The complete job description would then be approved by appropriate department heads for further submission to the Steering Committee.

The committee would establish after analyses, common factors for all jobs. Such factors would encompass such subjects as knowledge experience, speed, physical effort, accuracy, neatness, and formal education. Thereafter, the Steering Committee would assign credit points for each factor.

Each approved job description shall thereafter be modified by the agreed weight factor thereby establishing a point value for the job through mathematical computation and the use of a graph. The committee would ascertain the true grade of each position. The advantages of this plan are apparent: 1) start the application of the Taylor Law with the labor management agreed salary and classification structure; 2) prevent arguments and time loss on complaints on the importance of one job to another, or the need to re-allocate to higher grades. All the "in-fighting" between employees would therefore be reduced to a minimum; 3) set up a simpler

method for establishment of new jobs and correction in changing responsibilities of present jobs; 4) provide a simple fact chart for all employees relative to their grades, salaries and comparison; 5) provide a solid foundation for future negotiations; 6) provide a formula which has labor management acceptance and sets a foundation of good will.

For example:

KNOWLEDGE
 EXPERIENCE
 SPEED
 PHYSICAL EFFORTS
 ACCURACY
 NEATNESS
 FORMAL EDUCATION

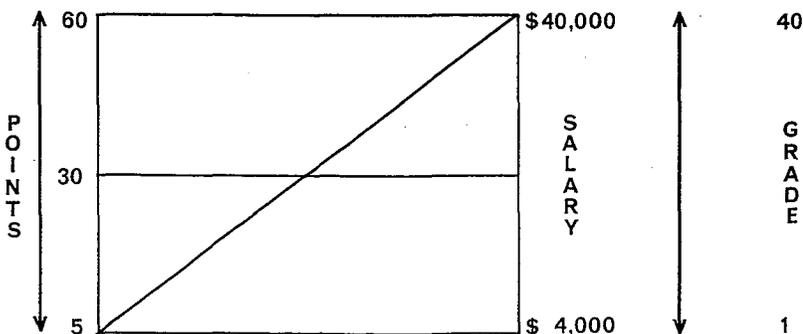
The above are only examples of what factors may be declared by the Committee as being relevant to all jobs.

The Steering Committee, after selecting the factors, would assign weighted points according to their value. For examples:

KNOWLEDGE	0 — 12
EXPERIENCE	0 — 10
SPEED	0 — 5
PHYSICAL EFFORT	0 — 3
ACCURACY	0 — 8
NEATNESS	0 — 7
FORMAL EDUCATION	0 — 15
TOTAL	60 Points Maximum.

The Committee would process each approved job description and apply the percentage of allocation against each factor stated above. The percentage times the weight will establish the point-value of the job.

A graph would then be prepared, as follows: (Example)



Each job classification after being weighted would be placed in the proper slot on the chart. Where the point value line crosses the salary line, it will denote the True Grade.

Any new job classification, or major variations in responsibilities of present jobs, either upward or downward, would require a job description which would follow the procedure outlined. In the case of a job requiring a reduction in Labor Grade due to changing conditions, such would be adjusted on the Chart. However, the individual presently in such a position would not be affected, but such reduction in Labor Grade would apply to all new personnel.