1974  
NEGOTIATING EXPERIENCE  
2,600 Negotiating Units  
1,550 Contracts Negotiable  
762 (49%) settled without third-party assistance  
788 (51%) brought to PERB for assistance  

Of 782 Impasses brought to PERB  
493 Schools  
295 Other Governments  

Of 711 Impasses Resolved during 1974  
325 (46%) Settled by mediation  
134 Settled by mediation by fact finder  
64 (9%) Settled by negotiations based on fact-finding report  
128 (18%) Settled by acceptance of fact-finding report  
55 (8%) Settled by post-fact-finding conciliation  
0 Settled by arbitration  
5 (1%) Closed for other reasons  

REPRESENTATION  
160 Petitions received  
33 Director's decisions  
12 Board decisions  
49 Board certifications  
72 Petitions withdrawn  
41 Elections involving 13,728 employees  

IMPROPER PRACTICES  
100 Cases pending at beginning of year  
352 Charges filed  
40 Hearing Officer decisions  
30 Board decisions  
296 Charges settled by agreement  
129 Cases pending at end of year  

MANAGEMENT/CONFIDENTIAL  
23 Cases pending at beginning of year  
33 Applications received  
21 Director's decisions  
0 Board decisions (No Appeals to board)  
20 Withdrawn after conference  
15 Cases pending at end of year  

WORK STOPPAGES  
16 Strikes  
4,100 Employees involved  
19,300 Man-days idle  
1/100 of 1% Percentage of Estimated Working Time Lost  
11 Board decisions on dues forfeiture  

1Includes one 5-day strike by 63,000 New York City teachers, aides and paraprofessionals.  
2Preliminary data  

1975  
NEGOTIATING EXPERIENCE  
2,900 Negotiating Units  
1,900 Contracts Negotiable  
928 (49%) settled without third party assistance  
972 (51%) Brought to PERB for assistance  

Of 972 Impasses brought to PERB  
656 Schools  
316 Other Governments  

Of 892 Impasses Resolved during 1975  
272 (31%) Settled by mediation  
242 (27%) Settled by mediation by fact finder  
155 (17%) Settled by negotiations based on fact-finding report  
122 (14%) Settled by acceptance of fact-finding report  
69 (8%) Settled by post-fact-finding conciliation  
29 (3%) Settled by arbitration  
3 (0%) Closed for other reasons  

REPRESENTATION  
141 Petitions received  
46 Director's decisions  
16 Board decisions  
67 Board certifications  
45 Petitions withdrawn  
60 Elections involving 48,420 employees  

IMPROPER PRACTICES  
120 Cases pending at beginning of year  
541 Charges filed  
46 Hearing Officer decisions  
26 Board decisions  
373 Charges settled by agreement  
245 Cases pending at end of year  

MANAGEMENT/CONFIDENTIAL  
15 Cases pending at beginning of year  
45 Applications received  
16 Director's decisions  
1 Board decision  
13 Cases withdrawn after conference  
31 Cases pending at end of year  

WORK STOPPAGES  
32 Strikes  
77,745 Employees involved  
394,413 Man-days idle  
1/100 of 1% Percentage of Estimated Working Time Lost  
21 Board decisions on dues forfeiture  

1976  
NEGOTIATING EXPERIENCE  
12,950 Negotiating Units  
7,170 Contracts Negotiable  
841 (49%) settled without third party assistance  
859 (51%) Brought to PERB for assistance  

Of 859 Impasses brought to PERB  
541 Schools  
316 Other Governments  

Of 693 Impasses Resolved during 1976  
163 (23%) Settled by mediation  
209 (30%) Settled by mediation by fact finder  
155 (22%) Settled by negotiations based on fact-finding report  
81 (12%) Settled by acceptance of fact-finding report  
47 (7%) Settled by post-fact-finding conciliation  
40 (6%) Settled by arbitration  

REPRESENTATION  
114 Petitions received  
27 Director's decisions  
5 Board decisions  
56 Board certifications  
42 Petitions withdrawn  
43 Elections involving 46,365 employees  

IMPROPER PRACTICES  
251 Cases pending at beginning of year  
509 Charges filed  
62 Hearing Officer decisions  
37 Board decisions after hearing officer report  
22 Expedited Board decisions  
372 Charges settled by agreement  
298 Cases pending at end of year  

MANAGEMENT/CONFIDENTIAL  
31 Cases pending at beginning of year  
48 Applications received  
23 Director's decisions  
0 Board decisions  
23 Withdrawn after conference  
32 Cases pending at end of year  

WORK STOPPAGES  
13 Strikes  
234,824 Employees involved  
1,373,393 Man-days idle  
36/100 of 1% Percent of estimated working time lost  
13 Board decisions on dues forfeiture  

1Includes one 5-day strike by 63,000 New York City teachers, aides and paraprofessionals.  
2Preliminary data
ANNUAL REPORT EDITION

On September 1, 1976, the Taylor Law began its tenth year. As it moved into the year, public sector collective bargaining continued to be surrounded by fiscal crisis. The economic difficulties that plagued New York City and the state itself the previous year were making their weight felt in local government and school negotiations in 1976.

As a result, collective bargaining in the public sector underwent transition, re-evaluation and modification. There was a dramatic change in public concept and attitude; accommodations were made by management and unions to find a balance between fiscal crisis and the needs of employees to meet the spiraling web of inflation. New and innovative measures were devised to respond to the needs on both sides of the bargaining equation.

It was a difficult year which sorely tested the Law, the collective bargaining system, and the administering agency.

THE PUBLIC EMPLOYMENT

RELATIONS BOARD

The State Public Employment Relations Board was established in 1967 to resolve disputes between public employees and public employers in all aspects of collective bargaining. It carried out its mission during 1976 by rendering decisions in 5 representation matters, 59 improper practice cases, and 13 cases involving work stoppages. The Board also certified 56 employee organizations to represent public employees in various jurisdictions.

On June 2, 1976, the State Senate confirmed the appointment of a new member of the Board, Ida Klaus, of New York City. An attorney and arbitrator, Ms. Klaus has been active in labor relations for over 30 years on both the local and federal levels and has played a key role in shaping collective bargaining rights for public employees. Her term extends to May 31, 1981. She succeeds Fred L. Denson of Webster.

The two other members of the Board are Robert D. Helsby, Chairman, and Joseph R. Crowley.

CONCILIATION

The continued problem of the poor state of the economy was once again reflected in the severe problems faced by both union and government employer negotiators at the bargaining table in 1976. While negotiations became more difficult, the number of impasses brought to PERB during the year was lower than the previous year which had hit an all time high — 859 in 1976 compared to 972 in 1975. The decline in the number of impasses appears to be related to fewer expirations of multi-year contracts.

PERB continued the practice of sending a large number of contract disputes directly to fact-finding for fiscal reasons and because experience demonstrated that neutrals armed with the authority of fact finders are able to mediate more effectively. Of 693 impasses resolved in 1976, 23 percent were settled in mediation by a mediator, 30 percent were mediated by fact finders, 12 percent were settled when the parties accepted the fact-finding report, and 22 percent were resolved through additional negotiations by the parties on the basis of the fact-finding report.

The statute continues to provide three different impasse procedures for different classifications of public employees. One covers educational personnel, a second, police and firefighters, and a third, all other state and local government employees.

Education Personnel

For impasses involving education personnel, PERB has responsibility to provide appropriate post fact-finding conciliation if the fact finder's report is rejected by either party. During the year, 541 school impasses involving both

The Board

Members of the Public Employment Relations Board include, left to right, Joseph R. Crowley, Ida Klaus, and Robert D. Helsby, Chairman.
teaching and non-teaching personnel were brought to PERB. Of these, 76 were settled in mediation; 146 were mediated by fact finders; 57 were settled by acceptance of a fact-finding report; 103 were resolved by negotiations following issuance of a fact-finding report and 42 were resolved by post-fact-finding conciliation.

Disputes between teachers and school boards resulted in seven work stoppages. The longest occurred in Eastchester and lasted 21 days while the Buffalo teacher strike was the second longest, 14 days, but more severe in the number of worker days idle — 42,294.

The decline in school population and in the labor market brought job security questions into the forefront of bargaining issues. This was not only true of school district disputes. Job security was a major issue in most negotiations throughout the state.

The impact of the troubled economy was reflected in a down turn in the size of wage agreements negotiated for school personnel in 1976. A discussion of this and other wage data is included in the Research section of this annual report.

**Police/Firefighters**

The second set of impasse procedures covers police and firefighter disputes and provides as the final step binding arbitration. In 1974, the Taylor Law was amended to provide binding arbitration in police/firefighter impasses for a three year experimental period. Last year was the second full year under this section of the Law.

PERB estimates that 436 of the police and fire departments in the State are potentially affected by the arbitration amendments. Negotiations actually take place in 331 fire and police departments — 227 police and 104 fire departments — depending on how many contracts expire in a particular year.

In 1975, the first year under the amendment, there were 124 fire and police impasse situations of which 104 were settled or closed. Of these, 28 percent settled at the mediation stage. A fact finder was able to mediate 19 percent of the closed cases; a fact-finding report was accepted in 6 percent by both parties; negotiations on the basis of the fact-finding report settled 19 percent; and arbitration was the final step in 28 percent of the impasses closed.

During 1976, there were 127 fire and police impasses, of which 111 were closed. Mediation settled 9 percent. Fact finders mediated successfully 22 percent of police and fire impasses; fact-finding reports were accepted by both parties in 12 percent; additional negotiations based on the fact-finding report settled 22 percent; and arbitration was the final step in 36 percent of the impasses closed.

There were a number of significant PERB decisions and Court determinations that impacted on this section of the Law. These are discussed in the "The Taylor Law In The Courts" and "Improper Labor Practices."

<table>
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<tr>
<th>Compulsory Interest Arbitration</th>
<th>1975</th>
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<tbody>
<tr>
<td>Petitions for Arbitration received</td>
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<td>Employees involved</td>
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<td>Fire</td>
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<td>Cases Administratively Closed</td>
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<td>4</td>
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<tr>
<td>Voluntarily settled after the designation of the panel</td>
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<td>10</td>
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<tr>
<td>By award</td>
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<tr>
<td>Pending</td>
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**Arbitration Study**

The arbitration procedure is due to expire on July 1, 1977 unless the Legislature extends or modifies it. To assist the legislators in assessing the experience under this section of the Law, PERB cooperated in a study carried out under a National Science Foundation grant. The study was conducted under the direction of Thomas A. Kochan, Assistant Professor at the New York State School of Industrial and Labor Relations at Cornell University.

The study is based on more than 700 interviews with the parties, advocate members of arbitration panels and neutrals who served as mediators, fact finders and the chairpersons of arbitration panels. Bargaining experience in 133 sets of negotiations under the prior procedure was compared with 118 negotiations experiences in the first round under arbitration. Police and firefighter impasse experiences were compared, before and after the change in legislation, with experience of teachers in New York State and with police and firefighters under alternative types of arbitration procedures in other states.

The study indicated that arbitrated settlements were lower than those negotiated between the parties without necessity of going to arbitration; that arbitrators placed heavy reliance on fact-finding reports, and that bargaining had not been chilled or discouraged by the existence of the arbitration provision. The full report is to be available in early 1977.

In early December 1976, PERB, assisted by a grant from the National Science Foundation, sponsored a Symposium on Police and Firefighter Arbitration. Over 100 union and management representatives, neutrals, press and other interested parties attended by invitation. The purpose was to serve as a vehicle for PERB in shaping its legislative recommendation on this matter. In effect, the seminar was actually a cross between a conference and a public hearing. A summary of the Kochan report served as the focal point of the discussion. Management and union representatives, as well as labor mediators and arbitrators, expressed strong and differing views on how well the arbitration amendments have worked and whether, and in what form, they should be extended.
Perb Recommendations

After careful study and evaluation, the Public Employment Relations Board unanimously came to the following conclusions and recommendations:

1. The three-year experiment was really more limited than the passage of three years would imply. The first year was largely used in litigation of the constitutionality question and the cut-off date for the Kochan study was about a year before the experiment's scheduled expiration date of June 30, 1977. In addition, the time during which the experiment took place occurred in one of the most difficult periods of New York State financial history—a period when voluntary settlement was most difficult and any dispute resolution system would have been severely tested. This was not a good time for any kind of experiment with a new system.

2. In spite of a few difficult situations and controversial awards:
   a. The system provided finality of resolution;
   b. The arbitration wage awards were, generally speaking, in line with negotiated agreements. In fact, the wage awards averaged about 1 ½ percent less than the negotiated agreements;
   c. Although there were three minor instances of slowdown, there were no police or fire work stoppages;
   d. Judicial Court review, albeit limited, has been declared to be available.

3. The experiment should be permitted to continue for a longer period in order to provide a more representative experience base.

All Other Public Employees

For those public employees not under the police/firefighter arbitration procedure or in the field of education, 201 impasses were brought to PERB. Of 158 such cases closed during the year, 75 were settled in mediation, 78 through fact-finding, and 5 in post fact-finding conciliation.

Job security provisions were a major issue for this group of employees also. For example, the mediated settlement between New York State and the Civil Service Employees Association produced a contract which provided no increase in salary but did provide substantial job security provisions.

Grievance Arbitration

PERB is the designated agency for the empaneling of arbitrators in grievance disputes in a number of contracts across the state. In addition, many contracts make provision for the selection of an arbitrator based upon procedures agreed to by the parties.

The grievance case load handled by PERB increased again in 1976 to 262 cases. This is a 2 percent increase over the 257 cases handled in 1975 but both 1975 and 1976 registered a substantial increase over the 179 cases in 1974.

OFFICE OF PUBLIC EMPLOYMENT

PRACTICES AND REPRESENTATION

This office has jurisdiction over improper practices and representation matters, including designations of persons as managerial or confidential. The number of charges filed in 1976 remained essentially the same as the previous year; more cases resulted in hearing officer and Board decisions. Several important decisions in these areas were rendered during the year.

Two PERB staff members were elevated to head the office during the year. Harvey Milowe, the former assistant director, was named director upon the resignation of Paul E. Klein in March. Robert J. Miller, formerly associate attorney in the Office of Counsel, was named assistant director.

IMPROPER PRACTICES

In a consolidated decision in four cases raising the same issue, PERB held that absent proof of anti-union animus, an employer's unilateral alteration of a recognized bargaining unit during the appropriate challenge period is not violative of the Taylor Law. The employer's decision to alter the recognized unit is subject to challenge by the employee organization by the filing of a timely representation petition. This decision was confirmed by the Supreme Court, Onondaga County, in November.

Interference or Discrimination

The Board held in City of New York Department of Investigation that the exclusion of a union representative from a preliminary investigation interview of an employee, absent proof of animus, is not a violation of the Taylor Law.

In another case involving the Environmental Protection Administration of the City of New York, the Board held that an employer may properly refuse to promote an employee who fails to satisfactorily perform the normal duties of his job even though the employee claims that his duties conflict with his role of union officer.

In the City of Rochester, the Director held that an employer has a right to disseminate information to its employees and to express opinions or positions provided this expression is not intended or serves to impede reaching an agreement or subverts the employees' right of organization and representation.
Interest Arbitration

In two significant decisions dealing with arbitration of police and fire disputes, Town of Haverstraw and City of Binghamton, the Board made clear that it would decline to permit a party to proceed to arbitration if it had not previously negotiated in good faith. It said, "Interest arbitration is not, and was not, intended as an alternative to, or substitute for, good faith negotiations. Rather, it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted."

Refusal To Negotiate

In Northport Union Free School District, the Board found that the school district failed to negotiate in good faith when it assigned to an administrator certain functions which had previously been performed by unit members, without negotiating with the employee organization. The decision was affirmed by the Appellate Division, Second Department.

The Board held in City of Binghamton that the union's reduction of its salary proposal in its demand for interest arbitration petition which was a lower figure than its previous proposal in fact-finding was violative of the duty to negotiate in good faith inasmuch as negotiations had not truly been exhausted. The Board stated that the duty to negotiate contemplates each party communicating to the other the concessions it is prepared to make since "Concessions by one party may elicit concessions of the other on different demands."

Reaffirming an earlier decision, the Board determined in Hornell City School District that although a union is entitled to receive information necessary for the preparation for collective negotiations and administration of a contract, the obligation to supply information is circumscribed by reasonableness, including the burden it places on the employer, the availability of the information elsewhere, its necessity and relevancy. Moreover, the information need not be in the form requested provided it satisfies the need.

Triborough Doctrine

During 1976, the "Triborough" doctrine, under which the Board will find it an improper practice to unilaterally alter mandatory terms and conditions of employment following expiration of a contract and during negotiations for a new contract, was reaffirmed on many occasions. In two cases (Troy City School District and County of Suffolk), it was made clear that this statutory duty to maintain the status quo derives from an established past practice. In Somers Central School District, the Board emphasized that a party seeking relief under the Triborough Doctrine will not be permitted in this forum if it has resorted to self help.

In Nassau County, BOCES the Board affirmed the decision of the hearing officer that the pendency of a question concerning representation, although suspending an employer's duty to negotiate, did not permit an employer to alter terms and conditions of employment unilaterally.

SCOPE OF NEGOTIATIONS

A full listing of mandatory and non-mandatory subjects of negotiations, as determined by PERB and the Courts, was compiled as of October 1, 1976 and made available to those involved in negotiations. Among the items ruled upon during the year were:

Mandatory Subjects of Negotiation

In City of Auburn, the Board confirmed its earlier holding that although a residency requirement for prospective employees is a management prerogative, a residency requirement for existing employees is a mandatory subject. In addition, the Board held that as to tenured employees, a residency requirement is prohibited by law and the imposition of such a requirement upon them is not a mandatory subject.

The Board also found several items to be mandatory in City of Buffalo. One item involved the availability of long weekends on a regular rotating basis. Since it is a management prerogative for the City to determine the number of police required to be on duty for any shift, PERB said negotiations on this demand must be restricted to rotation in a manner that will provide the employer with the number of men it requires at all times. Other issues found to be mandatory were initiation of grievances relating to transfer and "tenure" for detectives.

In Somers Central School District, the Board held subcontracting to be a mandatory subject of bargaining when it relates to a situation in which the employer causes one group of employees to be replaced by non-employees performing the same service. The Board saw "subcontracting as being a technique that can be used by management to undermine its agreement and/or its duty to reach agreement on other terms and conditions of employment. Thus the decision to contract unit work is inextricably bound to the other mandatory items and conditions of employment."

In another City of Buffalo case, the Board's finding was reversed as the court determined that a demand that police officers not be required to submit to a polygraph test during investigations of departmental misconduct was a mandatory subject of negotiation because the parties had negotiated the subject previously and the demand involved a term and condition of employment.

Negotiability of higher education items was dealt with in Orange County Community College. The Board found demands relating to conduct of union business on
employer property, opportunities for unit employees to earn extra pay in job-related assignments, pay for absences caused by on-the-job injury, definition of criteria for promotion, retention and tenure and written reasons for denial thereof, all to be mandatory.

Non-Mandatory Subjects

Demands held to be non-mandatory in the Orange County Community College included those regarding contractual language affirming mutual responsibility for quality education, use of employer equipment for union business, union approval of school calendar, selection of courses and teaching materials, weekend and evening teaching, location of work, building keys for faculty and faculty determination of evaluation system.

In yet another City of Buffalo case, it was held that the requirement that a police officer carry a service revolver while off duty is a non-mandatory subject of negotiation. Implicit in this ruling is a recognition that when an employer imposes a duty to carry a service revolver while the employee is ostensibly off duty, it is imposing some work responsibilities upon the employee and thus, the impact would be a mandatory subject of negotiation. The Board also found that a demand for specific, non-transferable job assignments for union officers was not a mandatory subject of negotiation.

REPRESENTATION

In 1976, representation cases most frequently involved an application to fragment an existing overall unit. Illustrative of this type of case is County of Erie (Edward J. Meyer Memorial Hospital), in which the Board found that the dual status of hospital interns and residents as employees and students warranted their placement in a separate negotiating unit because of their distinct and separate community of interest from other doctors and white collar employees. The Board indicated that the terms and conditions of employment of the interns and residents were unique and that they alone shared a separate community of interest arising from educative factors in their employment and resultant differences in negotiating interests from others in the unit. Also City of Binghamton, where the Board determined that a separate unit for blue collar foremen was warranted because the rank-and-file viewed foremen as being part of management and this created conflicts of interest during negotiations as well as in the administration of the contract.

As to supervisors, a separate unit for police sergeants, lieutenants and captains was found by the Director to be appropriate in City of New Rochelle since they had significant supervisory and disciplinary responsibilities. In another City of New Rochelle decision, the Director held that negotiating history is not a dispositive consideration in cases of supervisory exclusion.

Whether one group of employees had special negotiating interests was the subject of County of Rockland. There, the Director declined to establish a separate unit for either probation officers or nurses since to justify fragmentation and to override the employer's claim of administrative convenience to preserve an existing unit, there must be evidence of special negotiating concerns that create conflicts of interest so as to prevent effective negotiations. That one sub-category of employees in an overall unit enjoys a community of interest among themselves is not sufficient to warrant fragmentation. Similarly, a separate unit for deputy sheriffs was also denied in County of Ontario and County of Wyoming. In these decisions, the Director again emphasized that the dispositive factors when the fragmentation of a long standing overall unit is at issue is "negotiating history" and whether the employees' special interests have been sacrificed or submerged.

ELECTIONS

Of the 43 elections held during the year, two mail ballot elections involved units of state employees — a run-off election for employees within the professional, scientific and technical services unit and the second for toll collectors, maintenance and clerical employees of the State Thruway. In Riverhead Central School District, the distribution of an allegedly false and misleading leaflet by the incumbent union prior to an election was held to be an insufficient reason to set aside the election. The Director decided that to justify the voiding of an election there must be a material misrepresentation made at a time so short before the scheduled date of election as to preclude an effective reply. As the rival union had sufficient time to respond, the election was not set aside.

MANAGEMENT/CONFIDENTIAL

During 1976, the vast majority of designations of persons as managerial or confidential were made pursuant to stipulation between the parties reached with the assistance of PERB.

Certain supervisory personnel in the New York City School District were designated managerial or confidential after formal hearing. The Director re-emphasized that the designation of persons as managerial or confidential is to be made solely upon application of the statutory standards and that the prior legislative statement of intent, which required a different standard of proof be applied to those who are in existing negotiating units, is no longer operative.
Improper Practices

Several improper practice determinations were confirmed by the courts during the year. Although PERB's jurisdiction to entertain a charge alleging that the dismissal of a non-tenured teacher constituted an improper practice was recognized by the Court of Appeals in 1973 in the Grand Island case, the first case to review a determination of PERB ordering reinstatement of dismissed non-tenured teachers was decided this past year. The court concluded that there was substantial support in the record for the Board's finding that anti-union animus was the motivation for the teachers' dismissal. The court reaffirmed the principle that while a Board of Education has wide unreviewable discretion to terminate a probationary teacher, it may not do so for an illegal reason, such as the exercise of rights protected by the Taylor Law (Sag Harbor UFSD v. Helsby, et al.).

There were other improper practice determinations of interest. In one, the court agreed with PERB that a public employer's refusal to reduce to writing and execute an oral agreement as to terms and conditions of employment constituted an improper practice (Westbury UFSD v. PERB). In another decision upheld by the Court, PERB had determined that a public employer failed to negotiate in good faith when it refused to negotiate the reassignment of the responsibilities of teacher's extra compensation job to administrators. (Northport-East Northport UFSD v. Helsby, et al). A determination that a public employer had committed an improper practice when it refused to negotiate the impact of the abolition of teacher positions was confirmed (Port Washington UFSD v. PERB).

Scope of Negotiation

A Board order directing negotiations with an employee organization as a remedy for improper practices found by the Board to be of such a substantial nature as to make a fair representation election impossible was annulled by the court. The court concluded that the record evidence did not support the conclusion that the improper practices committed by the employer were of such a nature as to warrant a bargaining order in this case. In doing so, however, the court recognized that such a bargaining order would be an appropriate remedy when the possibility of insuring a fair election is slight (Town of Clay v. Helsby).

A Board determination that an employer's requirement that new employee mechanics furnish their own hand tools was a qualification for employment and not a mandatory subject of negotiation was annulled by the court, which concluded that such a requirement involved a term or condition of employment (Nassau CSEA v. Helsby).

The Erie County Supreme Court annulled PERB's decision in the Buffalo PBA case holding that, contrary to...
PERB's determination, a demand that police officers not be required to submit to a polygraph test during investigations of departmental misconduct was a mandatory subject of negotiation because the parties had negotiated the subject previously and the demand does involve a term and condition of employment.

Managerial/Confidential

A Board determination that the principals and assistant principals of the Copiague Union Free School District were not managerial employees within the meaning of §201.7 of the Civil Service Law was sustained by the court. Although PERB had found in a prior proceeding that these employees were managerial, the court recognized that the earlier determination was based upon a much more limited record and on an evidentiary standard which had been subsequently changed by statute. The court concluded that the record evidence supported the Board's determination that the principal and assistant principals did not directly assist in or significantly participate in collective negotiations between the school board and the teachers' association (Copiague UFSD v. PERB).

Judicial Review Procedures

Section 213 of the Civil Service Law requires that an Article 78 proceeding to review a PERB determination be instituted within 30 days. In the absence of such a timely review proceeding, if PERB institutes an enforcement proceeding after such 30-day period, the respondent is barred from challenging both the substantive merits of the determination and the remedial provisions of the order sought to be enforced, the Court of Appeals has held (PERB v. Board of Education, City of Buffalo).

Other Cases of Interest

Several important cases in which PERB was not a party should be reported. In last year's annual report it was noted that notwithstanding the decision of the Court of Appeals in the Susquehanna Valley case that a public employer may lawfully agree in a collective bargaining agreement to limit its power to reduce its work force; the Appellate Division, Second Department, in a series of decisions, had held that in the event of a fiscal emergency a government may lawfully reduce staff size although it has by contract agreed not to do so. During the past year the Court of Appeals reversed those decisions of the Appellate Division. The Court of Appeals reaffirmed that if a public employer voluntarily contracts with regard to a non-mandatory subject of bargaining, it will be legally bound by such agreement in the absence of statute or controlling decisional law or restrictive public policy prohibiting agreement upon such subject. No such prohibition applies to a public employer voluntarily agreeing to a job security clause. The Court stated that where a job security clause is explicit, short term in length and negotiated before a legislatively declared emergency, it is indistinguishable from the employer's other contractual obligations which remain enforceable (Bd. of Educ., Yonkers City School District v. Yonkers Federation of Teachers, Burke v. Bowen and Yonkers School Crossing Guard Union v. City of Yonkers).

Arbitration

The enactment of the statute mandating arbitration as the final step in police and firefighter negotiation impasses has given rise to numerous court proceedings. A major issue resolved this past year related to the proper method and scope of judicial review of such arbitration awards. The statute did not specifically deal with this question and conflicting decisions were rendered by the lower courts. In two cases decided jointly by the Court of Appeals (Caso v. Coffey and Albany Permanent Professional Firefighters Assn. v. Corning and PERB), that court concluded that the proper procedure to review or enforce these arbitration awards is pursuant to CPLR Article 75 rather than CPLR Article 78, that the union and the public employer, and not PERB and the arbitration panel, are the proper parties in interest in such a proceeding, and that the proper standard of review is whether such awards are rational or arbitrary and capricious. The awards in both cases were upheld.

Two other awards, however, were annulled by the Courts. The Appellate Division, Fourth Department, affirmed the judgment of the Supreme Court judge annulling an arbitration award between the City of Lackawanna and the police union. The court agreed that Bethlehem Steel Corporation, as a taxpayer, had standing to properly challenge the award of the arbitration panel; it also concluded that the award “was the result of fraud upon the City” pointing out there was no factual basis for the City's panel member to change his position and to agree with the employee organization's panel member “except for the prospect of his early return as Captain in the City Police Department.”

The second case involving review of an arbitration award dealt principally with the ability of the City of Buffalo to pay a 5% salary increase granted by an arbitration panel for police. The Supreme Court transferred jurisdiction to the Appellate Division which early in 1977 annulled the award concluding that there was no basis in the record for such an increase and therefore the award was arbitrary and capricious.
STRIKES

The Office of Counsel issued 14 charges against employee organizations for violation of the Taylor Law strike prohibition. In addition, two charges were issued by the chief legal officer as is authorized by the Taylor Law. (One of these charges was dismissed by the Board in early 1977 on the basis that no strike was proved.) Counsel's Office investigated two other apparent strikes but no charges were issued because the union was not found to be responsible. Two of the charges issued in 1976 related to strikes that happened in the latter part of 1975.

The Board rendered decisions in 13 strike proceedings assessing penalties ranging from three months suspension of the dues check-off privilege to indefinite suspensions in the case of employee organizations previously penalized. For the first time the Board established a two-step procedure through which a union may apply for conditional restoration and full restoration of the dues deduction privilege.

MINI-PERBS

The number of mini-PERBS remained constant during the year; thirteen mini-PERBS are now in existence. No petitions were filed with PERB during the year challenging the determinations or conduct of these mini-PERBS.

Current mini-PERBS are as follows: Delaware County PERB, Hempstead PERB, Nassau County PERB, North Castle PERB, Town of North Hempstead PERB, Onondaga County PERB, Oyster Bay PERB, Town of Rye PERB, Suffolk County PERB, Syracuse City PERB, Syracuse School District Employment Relations Council, Tompkins County PERB and Westchester County PERB.

CHANGES IN THE LAW AND RULES

There were no changes made in the Law during the year. Two amendments were passed by the Legislature involving expansion of PERB's powers and the jurisdiction of New York City improper practice charges. Both were vetoed.

PERB clarified its rules of procedure on compulsory interest arbitration on May 14 and filed these amendments with the Secretary of State. The changes dealt with time for filing a response and the question of objections of the arbitrability of matters set forth by the petitioner or respondent.

RESEARCH

PERB's statutory responsibilities in the research area include compiling data on and acting as a clearing house for studies on wages, fringe benefits and related conditions of employment; it undertakes special studies from time to time with respect to problems arising from the administration of the law, and monitors and reports settlement trends.

Current settlements are reported in PERB News as space permits and in a special bulletin published for the mediation, fact-finding, and arbitration panels. From time to time trend data on public sector settlements are published, usually at the end of the third and fourth quarters. Public sector employment constitutes about one sixth of wage and salary employment nationally, but no wage and salary data are systematically reported for this sector of the economy.

Bargaining outcomes in 1976 continued to reflect the fiscal difficulties faced by state and local governments. Contracts negotiated in 1976 produced smaller increases than 1975 settlements. New teacher contract negotiations resulted in an average salary schedule change of 2.8 percent statewide — 3.1 percent upstate and 2.2 percent in the New York suburban area (Nassau, Suffolk, Westchester, and Rockland Counties). Teachers with long term contracts — in the second year of a contract, for example — fared somewhat better, averaging 5.8 percent statewide if the contract provided for a fixed increase and 5.2 percent if related to a cost-of-living formula.

Increases in new police contracts averaged 6.6 percent; 7.3 percent where the settlement was negotiated and 6.3 percent for arbitration awards. Firefighter increases averaged 6.1 percent; 7.7 percent where the settlement was negotiated and 4.9 percent for arbitration awards.

Excluding firefighters and police officers, negotiated settlements for local government employees averaged 6.0 percent. Where such employees were covered by multi-year contracts, the average increase was 7.8 percent. There was a substantial increase in the number of legislative hearings at the county level and a substantial number of local government negotiations had not yet been completed by the end of the year.

The increases referred to above refer to changes in salary schedules and have been weighted by the number of employees involved.

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Public Employment Relations Board
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Muriel Gibbons, Editor

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PERB published reports on wages and fringe benefits for various types of public employees in New York State. These reports are compiled from contracts on file and inquiries made to the parties to verify analysis of contracts. Wages and salary reports normally summarize salary schedules. Fringe benefit reports provide data on retirement plans, health insurance, sick leave benefits, vacation and holiday policies, and other benefits.

These reports are updated periodically, usually at the conclusion of the applicable negotiating cycle, so that revised data becomes available at the beginning of or early in the next cycle. When new developments or trends are detected, special reports are prepared or existing reports are revised to incorporate these developments.

The following reports were published during the year:

**Wages and Salaries.** Police (city, county, town, and village), firefighters, city blue collar, city clerical, county probation officer, county nurses, county blue collar, county clerical, county social services, and regional reports and non-instructional employees of school districts.

**Fringe Benefits.** Police and firefighter.

**Other.** Community colleges — salaries, fringe benefits, and related practices.

Data are furnished to advocates upon direct inquiry to assist in the preparation for negotiations and in the preparation of positions to be advocated at various stages of the impasse procedure. Technical assistance is also provided to neutrals upon request. Information supplied upon request usually comes from the contract files. An attempt is made to collect on a timely basis all public sector labor contracts. These files are open to the public and are used extensively by labor and management representatives as well as labor relations specialists from the academic community. Settlement information is also received from mediators and fact finders as impasses are resolved.

**PUBLIC RELATIONS**

The continuing fiscal problems faced by state and local governments, including school districts kept the Taylor Law and PERB in the public eye. PERB, its staff and the Panel of Mediators and Fact-finders were very visible in newspapers, radio and television throughout the state. The large number of impasses brought to PERB created interest in the media for information on all phases of the conciliation procedures — mediation, fact-finding and post fact-finding conciliation.

To meet this need, data was supplied to the media on a daily basis in response to specific requests and also through more than 500 news releases.

The State Board has endeavored to communicate to the public and to its clientele as much information as possible on the Law, any changes and how these affect day-to-day operations, decisions and various data from its resource files.

This information was disseminated through the monthly **PERB News**, three basic guides to the Law — the **Taylor Law, Rules of Procedure and What Is the Taylor Law — And How Does It Work?**, and a compilation of **Official Decisions, Opinions and Related Matters**.

PERB staff participated in seminars and conferences throughout the year. It also conducted programs, in cooperation with the New York State School of Industrial and Labor Relations at Cornell to provide up-to-date data on labor relations for members of PERB’s various panels.

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NYS Public Employment Relations Board
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