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The Negotiability of Parity Agreements in Public Sector Collective Bargaining

Susan P. Kass

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NOTE

THE NEGOTIABILITY OF PARITY AGREEMENTS IN PUBLIC SECTOR COLLECTIVE BARGAINING

I. Introduction

Parity clauses have historically been included in collective negotiation agreements between municipal employers and public employee unions, particularly those involving police and firefighter's unions. By maintaining recognizable relationships between the levels of compensation afforded various occupations, parity clauses were used as an aid to negotiators, arbitrators and political officials in calculating the salaries of municipal employees. In the past few decades parity clauses have become an increasingly common feature of public sector collective bargaining agreements, and a frequent source of tension between public employers and employees.

Wage parity in the public sector is an important concern of public employees who pressure their union representatives for wage protection. Parity is also of importance to city administrators, contract negotiators and the taxpaying public, all of whom are affected by federal budget reductions, inflationary pressures on state and local budgets and public demand for cost-efficient services.

1. Parity is defined as the fixed relationship between two or more professional groups in terms of wages, fringe benefits and job status, which must be maintained for the life of a contract. Parity in the Public Sector, Midwest Monitor, July-Aug. 1980, at 1. The concept includes wage equality as well as dollar or percentage differentials which are to remain constant. Lieutenants' Benevolent Ass'n and the City of New York, New York City Office of Collective Bargaining, No. B-10-75, at 11 (1975); Uniformed Fire Officers Ass'n and the City of New York, New York City Office of Collective Bargaining, No. B-14-72, at 2 (1972); City of New York, 10 N.Y. Pub. Emp. Rel. Bd. ¶ 10-3003, at 3010 (1977).

2. S. Spero & J. Capozzola, The Urban Community and Its Unionized Bureaucracies 218 (1973). For example, New York City has had a parity clause in its personnel procedures since 1898. Parity in the Public Sector, Midwest Monitor, July-Aug. 1980, at 2.

3. S. Spero & J. Capozzola, supra note 2, at 218.


5. Id. at 598.


7. Lafranchise & Leibig, supra note 4, at 598. The advent of public sector collective bargaining in New York State in 1967 seems to have provided public employees with more protection against inflation than previously afforded. In May 1977, the National Cities average cost of living was 181.3 (a figure calculated by converting
In the early 1970's, state courts and public employment relations boards declared generally that parity clauses are valid, enforceable, and a permissible subject of bargaining. During 1976 and 1977, however, the legality of parity arrangements in public employment contracts was challenged in many states. Parity was held to be unlawful and a prohibited subject of bargaining by state public employment relations boards in New York, Massachusetts, New Jersey, and Pennsylvania. The highest appellate courts of Connecticut and Maine, and the New York Supreme Court handed down similar decisions.

A recent challenge to a parity clause in City of Schenectady and City Fire Fighters Union, Local 28 resulted in the first decision that wage and salary changes to an index comparable to the consumer price index). By contrast, the figure relating to maximum patrolmen's salaries was 206.6. The prevalence of parity suggests substantially the same result for firemen, and the figure for teachers' salaries was 208.0, placing these employees somewhat ahead of inflationary trends. Joyner, Economic and Fiscal Trends, PERB [Public Employment Relations Board] News, Sept. 1977, at 3, cited in W. Newhouse, Public Sector Labor Relations Law in New York State 88-90 (1978).

8. Lafranchise & Leibig, supra note 4, at 598.


16. Lewiston Firefighters Ass'n v. City of Lewiston, 354 A.2d 154 (Me. 1976).


parity clauses are not invalid per se. The court cited the need for case-by-case scrutiny of the parity provisions of a collective negotiation agreement based upon the factual context of each case.

This Note will discuss the effect of City of Schenectady on the negotiability of parity clauses in public sector employment contracts. The New York State “Taylor Law” governing public employees, and the New York courts’ analysis of parity clauses under the Taylor Law also will be discussed. Finally, City of Schenectady will be analyzed for its effect on future parity clause enforcement in the courts.

II. Judicial Treatment of Parity Clauses in Public Employment Contracts

Analysis of parity clauses in collective bargaining agreements traditionally has focused on the clause’s effect on the bargaining of “third-party” or “reference” unions. Using this analysis, some courts and public employment commissions have upheld parity as a permissible subject of bargaining. Parity agreements have been enforced in Michigan and Wisconsin, even though they amounted to an imposition on the rights of the third-party union. In these cases, the cities of Detroit, Michigan and West Allis, Wisconsin were aware that a

19. Id. at 119, 448 N.Y.S.2d at 808.
20. Id.
21. See notes 45-60 infra and accompanying text.
22. See notes 138-56 infra and accompanying text.
23. These terms are used interchangeably to designate the union to which the wage of the contracting unit is linked. For example, in a contract between a municipality and a firefighters’ union establishing parity between the firefighters’ wage increases and those of policemen which are to be negotiated at a later date, courts have focused on the clause’s effect on the policemen’s subsequent negotiations. City of Detroit, Mich. Emp. Rel. Comm’n, No. C72-A-1 (1972); West Allis Professional Policemen’s Protective Ass’n, Wisc. Emp. Rel. Comm’n, Case XX, No. 17300 MP-294, Decision No. 12706 (1974).
24. See cases cited at note 23 supra.
25. A permissible subject is one about which the parties may bargain, but it may not be insisted upon to the point of impasse. R. Gorman, Basic Text on Labor Law, Unionization, and Collective Bargaining 529-30 (1976).
raise given to the third-party union would result in an automatic raise for the union which had the parity agreement. These employers, therefore, were reluctant to negotiate a raise with the “reference union.”

The Michigan and Wisconsin Public Employment Relations Commissions held that the third-party union’s right to “free and untrammeled collective bargaining” was not denied by the employers’ consideration of the “facts of economic life.” These “facts” were found to include higher aggregate labor costs due to the raise granted to the union which negotiated the parity clause. Therefore, an employer who deals with a number of unions must weigh the following tactical consideration: a contract with one union will affect future negotiations with other unions, which may point to pay increases granted to one group as a justification for their own similar proposals.

Until 1977, New York State also upheld parity clauses, but under a different rationale than that utilized in Michigan and Wisconsin. The New York approach emphasized contractual principles, specifically the duty of performance. Under this view, mere financial distress, without a showing of greater hardship, does not excuse performance of a voluntarily assumed duty. Thus, in New York, it was stated that a possible endless spiraling of raises that might lead to the em-


34. This appears in five cases involving an agreement between the Policemen’s Benevolent Association (PBA) and the City of New York establishing a fixed ratio of pay between the city’s patrolmen and sergeants. Policemen’s Benevolent Ass’n v. City of New York, 75 L.R.R.M. (BNA) 2293, aff’d, 75 L.R.R.M. (BNA) 2429 (1970), rev’d, 76 L.R.R.M. (BNA) 2634, on remand, 76 L.R.R.M. (BNA) 3087, 78 L.R.R.M. (BNA) 2747 (1971).

ployer's financial ruin does not constitute sufficient hardship to justify an employer's refusal to grant raises to the third-party union. This would be true despite the granting of increased benefits to another union under the terms of a parity provision "which on reflection prove[s] to be onerous, expensive, and sometimes the result of miscalculation." Parity clauses, however, have gradually come into disfavor in other jurisdictions due to their detrimental effect on employees' rights. These cases show the willingness of the courts and public employment commissions to uphold the employees' bargaining rights despite the financial hardship to the employer. Factors previously recognized in decisions enforcing parity have become determinative in invalidating parity clauses and/or deeming them to be prohibited subjects of bargaining.

One such factor is the detrimental effect of parity provisions on harmonious labor relations. As stated by the New Jersey Public Employment Relations Commission, parity provisions unlawfully infringe on the ability of the exclusive representative of the reference union to negotiate fully terms and conditions of employment on behalf of the union. The employee organizations which had negotiated the parity arrangement were found by the Commission to be "a determinant of the scope of bargaining, the size and nature of the economic benefit package of the employee organization which seeks to

36. Id.
37. Id.
41. New York's provision defining the role of the exclusive representative is set forth in N.Y. Civ. Serv. Law § 201(5) (McKinney 1973): "[t]he 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 . . . ."
negotiate independent of such a clause." In addition, the mere existence of the clause was considered sufficient to have an inevitable chilling effect on later negotiations within the scope of the clause, between the public employer and an employee organization not protected by a parity agreement. In striking down the parity clause it was acknowledged that these detrimental effects are difficult to prove since "[t]he parity clause will seldom surface in later negotiations, but it will surely be present in the minds of the negotiators and have a restraining or coercive effect not always consciously realized."

III. Judicial Interpretation of New York State's "Taylor Law"

The Public Employees' Fair Employment Act, better known as the "Taylor Law," governs public sector labor relations in New York State. The intent of the Taylor Law is to encourage public employees to participate fully in the process of determining all the terms and conditions of their employment. This may be accomplished by encouraging employees to enter into collective negotiations with their employers through their chosen organizations and thereby reach agreements binding upon both parties. "[T]o promote harmonious

46. As stated in the Taylor Law, this legislation was enacted in the hope that it would insure tranquility in the state government's labor relations: (1) by protecting the rights of employees and the public generally, N.Y. Civ. Serv. Law § 200 (McKinney 1973); see also Ulster County v. CSEA Unit of Ulster County Sheriff's Dep't, Ulster County CSEA Chapter, 37 A.D.2d 437, 439, 326 N.Y.S.2d 706, 709 (3d Dep't 1971), and (2) by assuring at all times the orderly and uninterrupted operations and functions of government, N.Y. Civ. Serv. Law § 200 (McKinney 1973). See also Civil Serv. Employees Ass'n v. Helsby, 31 A.D.2d 325, 330, 297 N.Y.S.2d 813, 818 (3d Dep't), aff'd, 24 N.Y.2d 993, 250 N.E.2d 230, 302 N.Y.S.2d 822 (1969).
and cooperative relationships between government and its employees, the Taylor Law empowers a public employer to recognize employee organizations for the purpose of collective negotiations. The employer thereafter must negotiate grievances and terms and conditions of employment. Written agreements incorporating the results of the negotiations must also be executed.

The scope of negotiations required by the Taylor Law has been analyzed and defined by the New York Court of Appeals. An expansive view was proposed in 1972 in Board of Education v. Associated Teachers of Huntington, Inc. There, the court stated that the obligation to negotiate under the Taylor Law is broad and unqualified, to be limited only in cases where some other express legislative provision definitively prohibits the public employer from agreeing upon a particular term or condition of employment. The rule was refined in 1974 to permit negotiation of any term or condition of employment, “limited [however] by plain and clear, rather than express, prohibitions in the statute or decisional law,” and “by public policy, whether derived from, and whether explicit or implicit in statute or decisional law, or in neither.” As a result, in evaluating the validity

50. Id. § 204(1).
51. Id. § 204(2).
52. Id.
55. Id. at 129, 282 N.E.2d at 113, 331 N.Y.S.2d at 23.
of a wage parity clause incorporated in a collective bargaining agreement, the courts and state labor relations boards must determine whether enforcement of this agreement in reference to a specific term or condition of employment is "interdicted by express statute, by 'plain and clear' statutory or decisional prohibition, or by public policy independent of statutory or decisional law."  

IV. The Evolving New York Approach to Parity Clauses

In 1974, the New York Public Employment Relations Board [PERB], in City of Albany and Albany Permanent Professional Firefighters Association, Local 2007, determined that a demand for automatic parity between the salary schedule of Albany firefighters and the yet-to-be negotiated salary schedule of Albany policemen was not a mandatory subject of negotiation, as was argued by the firefighters' union. The Board recognized that the result might be different were this not a parity clause but a demand to reopen the agreement for subsequent negotiations on the wage issue due to a wage increase given another union. The firefighters' union demanded the automatic reopening of their contract to mechanically institute the dollar value of benefits subsequently obtained by the policemen's union. The PERB found the automatic nature of the clause's operation so objectionable that it ruled the clause non-negotiable.  

59. N.Y. Civ. Serv. Law § 201(4) (McKinney 1973) defines terms and conditions of employment to include salaries, wages and hours.  
61. 7 N.Y. PUB. EMP. REL. BD. ¶ 7-3079 (1974).  
62. Id. at 3146. New York's Public Employment Relations Board uses the term "nonmandatory" in the place of "permissible." Compare City of New York, 10 N.Y. PUB. EMP. REL. BD. ¶ 10-3003 ("we are now asked to determine whether a demand for 'parity' is not only a nonmandatory, but is also a prohibited, subject of negotiation," id. at 3007, with Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. 1156, 1194 (1974) ("[t]he principal question in the private sector is what the mandatory subjects of bargaining are . . . [t]he principal question in the public sector is what the permissible subjects of bargaining are . . . .").  
63. City of Albany, 7 N.Y. PUB. EMP. REL. Bd. ¶ 7-3079, at 3146.  
64. Were this only a demand to reopen the agreement for negotiations on the wage issue, it would be a mandatory subject of bargaining. Id.  
65. Id.  
66. Lafranchise & Leibig, supra note 4, at 607. The Board acknowledged that settlements often follow established patterns, as well as cost of living indices, and deemed these practices "not inappropriate." City of Albany, 7 N.Y. PUB. EMP. REL. Bd. ¶ 7-3079, at 3146. Nonetheless, the Board was compelled to find demands for parity nonmandatory because "the firefighters seek to be silent partners in negotiations between employer and employees in another negotiating unit. Moreover, an
New York’s PERB again was faced with the issue of negotiability of parity in 1977. In *City of New York and Patrolmen’s Benevolent Association*\(^6^7\) the Board considered clauses establishing parity between the salaries of sanitationmen, firefighters, correction officers and those of the policemen’s union. The latter union was not involved in the negotiation of the agreements entered into by the other unions.\(^6^8\) The Board declared such a provision\(^6^9\) to be a prohibited subject of negotiation\(^7^0\) because of its inhibiting effect upon the policemen’s subsequent collective negotiations which would become neither free nor competitive.\(^7^1\) The City of New York was prevented from evaluating or negotiating the reference union’s demands on the merits.\(^7^2\) Rather, the Board acknowledged that the employer must view the demands in the light of the parity agreement.\(^7^3\)

An analysis of the clause’s effect led the New York PERB in *City of New York* to conclude that the clause was implicitly prohibited under the Taylor Law.\(^7^4\) The Taylor Law,\(^7^5\) it was held, contemplates that an employee organization’s negotiating representative should be able

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\(^6^7\) 10 N.Y. PUBL. EMP. REL. BD. ¶ 10-3003 (1977).

\(^6^8\) Id. at 3006.

\(^6^9\) A typical example of the clauses involved is the City-Uniformed Sanitationmen’s Association parity clause, which reads:

[i]t is expressly understood and agreed that should, at any time during the term of the Agreement, the City of New York, or any Mayoral Agency or instrumentality thereof, be or become, directly or indirectly, a party to any agreement or obligation (in any way resulting from the collective bargaining process) negotiated, consummated, executed, or awarded, in whole or in part, with respect to comparable employees [there follows formula language which encompasses, among others, employees in the negotiating unit represented by the PBA] where such agreement or obligation is as to such term or condition, in any respect, on balance, more favorable to the employees participant therein than any of the terms and conditions hereof then such more favorable term or condition shall be extended to the Uniformed Sanitationmen’s Association at its option.

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\(^7^0\) Id. at 3011.

\(^7^1\) Id. at 3008.

\(^7^2\) Id. at 3009.

\(^7^3\) Id.

\(^7^4\) Id. at 3010.

\(^7^5\) N.Y. CIV. SERV. LAW §§ 202, 204(2) (McKinney 1973).
to: (1) seek improvements in the terms and conditions of employment that are of concern to the organization and (2) determine its negotiating priorities without the limitations of an agreement negotiated with another employee organization. The Board found that implementing the clause would contravene the letter and intent of the Taylor Law. This result is consistent with the New York Court of Appeals decisions which recognize that the scope of negotiations may be limited when the effect of an agreement would contravene the statutory scheme.

The Board of Collective Bargaining of the New York City Office of Collective Bargaining, in Lieutenant's Benevolent Association and the City of New York, also has found demands for parity to be incompatible with sound bargaining principles. The Board stated that since the clause would cause the city to make unilateral, automatic changes in the terms and conditions of employment, it would result in the city's assisting the contracting union in impinging on the bargaining of the reference organization. These decisions reflect the increased emphasis given to the bargaining rights of the reference union, as opposed to the contractual principles that predominated in earlier cases.

Similar conclusions were reached by the Appellate Division of the New York Supreme Court in 1976. In Doyle v. City of Troy, the

76. City of New York, 10 N.Y. PUB. EMP. REL. Bd. ¶ 10-3003, at 3010.
77. Id. The Board was referring specifically to N.Y. Civ. Serv. Law §§ 202 and 204(2) (McKinney 1973).
78. See notes 53-60 supra and accompanying text.
79. See notes 53-60 supra and accompanying text.
80. The Office of Collective Bargaining is an impartial tripartite agency created by local law as authorized by the Taylor Law § 212. It consists of two boards: the Board of Collective Bargaining and the Board of Certification. The former helps to bring about agreements on contracts by designating mediators and impasse panels. The latter determines bargaining units and conducts representation elections. The primary distinction between the Office of Collective Bargaining and the state PERB is that the former is comprised of management (the City), labor (unions representing city employees), and public, impartial members. PERB members are appointed solely by the Governor. New York City Office of Collective Bargaining, "About the OCB" 2, 4 (1982).
82. Id. at 13.
83. Id. at 12 (discussing the arguments presented by the City of New York in Uniformed Fire Officers Ass'n, New York City Office of Collective Bargaining, No. B-14-72 (1972)).
84. See notes 33-37 supra and accompanying text.
clause was struck down in a case involving a city charter parity provision because its operation impaired the full range of negotiations to which the city was entitled under the Taylor Law. The court declared the provision to be a prohibited subject of bargaining. The PERB relied on Doyle when it held that parity clauses are prohibited subjects of negotiation. In City of New York, the Board noted that if a parity clause in a city charter "must fall before the City's right to negotiations under the Taylor Law, a fortiori, it must fall before such rights of an employee organization that had no part in the establishment of the clause."

In a subsequent decision, the appellate division expounded further on its rationale for invalidating the parity provision. In Voigt v. Bowen, the court held that parties would have had to submit salary negotiations to an arbitration panel if they were unable to reach an agreement concerning the effect of parity. This panel would be statutorily required to consider, so far as it deems them applicable: (1) the wages, hours and conditions of employment of public and private employees in comparable communities, as well as, (2) "the interests and welfare of the public and the financial ability of the public employer to pay." The court stated that there was no requirement that the parties must consider these factors during collective negotiations. However, in this case, the parity provision at issue entailed dispute resolution in a manner that foreclosed the consideration of these factors. The clause therefore, was "plainly, clearly and implic-
ily violative both of the Taylor Law and public policy.” The parity
clause, it was held, in effect enabled the reference union to negotiate
without any consideration of the effect of its demands on the em-
ployer. As a result, the clause had the potential to seriously undermine
harmonious relations between the employer and the original contract-
ing union.

The PERB has continued to apply these principles in its recognition
of the distinction between the types of bargaining approved of in City
of Albany and the parity bargaining prohibited in City of New
York. In Lynbrook Police Benevolent Association and Incorporated
Village of Lynbrook, the Village of Lynbrook Police Benevolent
Association’s (PBA) substantive demands for specific benefits, either
derived from or identical to terms and conditions of the Nassau
County PBA, were held not to be objectionable. One reason for the
Board’s holding was that the Lynbrook PBA did not seek an automatic
adjustment in their contract, as was the case in City of Albany. The
demands were recognized as pattern bargaining, the validity of which
was upheld in City of Albany. In addition, the Board held that since the Nassau County PBA represented employees of the County itself, the right of the Lynbrook PBA to negotiate with the Village of
Lynbrook was not impaired by the level of benefits the parties in this
case may negotiate.

examination was limited exclusively to the wage scale of one specific group of
employees. Those factors were unrelated to this bargaining unit and were unauthor-
ized by statute. Id. at 281-82, 385 N.Y.S.2d at 603.

100. Id. at 281, 385 N.Y.S. at 603.

101. Id.


position when it stated:

It is one thing, as in the case of pattern bargaining, for an employer to
conclude that its resources would permit only a six percent increase to its
employees and then to have each negotiating unit negotiate which of the
terms and conditions are to be improved within that limitation. It is
another thing, as in the case of “parity” negotiations for the first employee
organization to determine its priorities and thereby foreclose such freedom
from other employee organizations or to make them beneficiaries in subse-
quent negotiations. Either effect of a “parity” clause precludes effective
and meaningful negotiations subsequently with other employee organiza-


105. One of these demands stated “[a]ll employees shall receive an increase in
their base salaries, exclusive of longevity or other entitlements, of nine and one-half
(9½ %) percent.” Id. at 3120.

106. Id. Lynbrook is a village within Nassau County.


In Mutual Aid Association of the Paid Fire Department of the City of Yonkers, Local 628, International Association of Fire Fighters and City of Yonkers a similar decision was rendered. In that case, the PERB held that a contract provision providing for the reopening of negotiations in the event of the granting of additional benefits to another bargaining unit was not a prohibited subject of negotiation. The language of the clause was acceptable since the event of reopening the contract for adjustment would not occur automatically, but rather only at the option of the firefighters’ union. The result of such renewed negotiations would not be predetermined, but rather would be agreed to by the parties.

The PERB continued to invalidate parity agreements which interfered with the statutory negotiation rights of employees under the Taylor Law. In Rockville Centre Principals Association and Rockville Centre Union Free School District the Board struck down a wage parity proposal “tie-in” provision which based school principals’ salaries on those yet-to-be negotiated by the school district and the teachers’ union. In doing so, the Board deemed the case of Niagara Wheatfield Administrators Association and Niagara Wheatfield Central School District not to be dispositive.

In Niagara Wheatfield, the New York Court of Appeals ruled that a contract clause providing for the continuation of contractual benefits after the expiration of the contract was valid and reinstated an arbitrator’s award enforcing a parity clause. The Board found that the Niagara Wheatfield opinion did not reflect any City of New York considerations since the validity of the parity clause was not at issue and was therefore assumed. In Niagara Wheatfield the court had ruled that the tie-in provision alone was not offensive to public pol-

110. Id. at 4563. See note 64 supra and accompanying text.
112. See notes 50-63 supra and accompanying text.
114. The Board considered City of New York to be a clear precedent. In that case the city agreed to extend to firefighters any wage increases that might thereafter be obtained by the policemen in negotiations. 12 N.Y. Pub. Emp. Rel. Bd. ¶ 12-3021, at 3042-43.
117. The arbitrator issued an award ordering the school board to reimburse each administrator according to terms of the parity provision requiring the school board to adjust the administrators’ salaries to reflect the increases granted to the teachers. 44 N.Y.2d at 71-72, 375 N.E.2d at 39, 404 N.Y.S.2d at 83.
icy. In fact, such a parity clause was statutorily required by the New York State Education Law until 1971. The Niagara Wheatfield court, however, did not consider the rationale for the statute's repeal specifically, that it was inconsistent with the Taylor Law.

This rationale represented a new public policy in this area and was deemed by the PERB in Rockville Centre to support its understanding of the shift in the scope of proper negotiation now contemplated by the Taylor Law: that in the future, public employees would "receive that compensation obtained through the collective bargaining process" in order to foster harmonious employer-employee negotiations.

An alternative to the City of New York ruling is presented by the dissenting opinions filed in that case and another subsequent case. Recognizing the guiding principles regarding the scope of collective negotiations which emphasize an expansive policy and narrow exception, dissenting Member Klaus, in City of New York, construed parity clauses as not prohibited by any plain and clear provision of the Taylor Law or state public policy as exemplified by state statutes or common law. Moreover, Niagara Wheatfield seems to establish implicitly that in the context of public employment relations, parity clauses do not contravene public policy. Member Klaus questioned

119. 44 N.Y.2d at 73, 375 N.E.2d at 40, 404 N.Y.S.2d at 85.
120. N.Y. EDUC. LAW § 3103 (McKinney 1981) (repealed 1971). This section: (1) provided the minimum salary schedules for teachers, (2) mandated specific salary increases, and (3) specified that principals and other supervisory personnel receive a salary at least 30% higher than those received by teachers. Memorandum of State Senate Committee on Rules, reprinted in [1971] N.Y. LEGIS. ANN. 51-52.
122. Rockville Centre Principals Ass'n, 12 N.Y. PUB. EMP. REL. BD. ¶ 12-3021, at 3043.
123. Memorandum of State Senate Committee on Rules, reprinted in [1971] N.Y. LEGIS. ANN. 52. The PERB thus found parity clauses of the Niagara Wheatfield category offensive to the Taylor Law as presently construed and a prohibited subject of bargaining. Rockville Centre Principals Ass'n, 12 N.Y. PUB. EMP. REL. BD. ¶ 12-3021, at 3043.
124. See notes 67-79 supra and accompanying text.
125. Rockville Centre Principals Ass’n, 12 N.Y. PUB. EMP. REL. BD. ¶ 12-3021, at 3044 (Klaus, dissenting); City of New York, 10 N.Y. PUB. EMP. REL. BD. ¶ 10-3003, at 3011 (Klaus, dissenting).
126. See notes 53-60 supra and accompanying text.
127. City of New York, 10 N.Y. PUB. EMP. REL. BD. ¶ 10-3003, at 3012 (Klaus, dissenting).
129. This understanding stems from the recognition that the court must have noted and disposed of this issue before addressing the broader question in that case. Rockville Centre Principals Ass’n, 12 N.Y. PUB. EMP. REL. BD. ¶ 12-3021, at 3044 (Klaus, dissenting).
how a demand dealing with salaries, a term defined as within the scope of terms and conditions of employment that are negotiable under the Taylor Law, could be found unlawful.

Member Klaus suggested that through its processes the PERB, in *City of New York*, was defining a public policy and imposing it on the parties by condemning the clause because it believed its presence "to be so pernicious as to deprive employees of their basic rights under the Act." She stated that the Board was thereby regulating terms and conditions of employment that the Taylor Law has left to the negotiating parties to determine for themselves. She indicated that it is beyond the Board's legislative grant of authority to declare such a policy and then find the clauses illegal per se as a subject of negotiation. Moreover, Member Klaus recognized that the inclusion of the clause may in fact have a beneficial effect in the negotiating process. The clause may promote the early resolution of bargaining disputes and the timely conclusion of an agreement by providing the contracting union with assurance that it will not risk less favorable treatment by an early settlement as compared with playing for "the competitive advantage of a long wait-and-see policy."

In addition to these dissents there have been recent PERB opinions which recognize the *City of New York* rule, yet hold that a union's demand to establish automatic parity is merely a nonmandatory subject of negotiation.

The most recent case decided on this issue in New York manifests another shift in the law on enforceability of parity agreements. In *City of Schenectady and City Fire Fighters Union, Local 28, Interna-

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131. *Rockville Centre Principals Ass'n*, 12 N.Y. PUB. EMP. REL. Bd. ¶ 12-3021, at 3044 (Klaus, dissenting).
132. *City of New York*, 10 N.Y. PUB. EMP. REL. Bd. ¶ 10-3003, at 3011-12 (Klaus, dissenting).
133. *Id.* at 3012 (Klaus, dissenting).
134. *Id.* at 3011 (Klaus, dissenting).
135. *Id.* (Klaus, dissenting).
136. *Id.* at 3012 (Klaus, dissenting).
137. See, e.g., *Greenville Uniformed Firemen's Ass'n, Local 2093, Int'l Ass'n of Fire Fighters*, 15 N.Y. PUB. EMP. REL. Bd. ¶ 15-4501, at 4509 (1981) (firefighters' union's proposal, providing for extension to rank-and-file firefighters of all benefits already granted to superior officers, was not mandatorily negotiable because it was not limited to terms and conditions of employment); *Onondaga Community College*, 11 N.Y. PUB. EMP. REL. Bd. ¶ 11-3045, at 3069 (1978) (teachers' union's demand to establish automatic parity between benefits of unit employees and those granted to other county employees is not mandatorily negotiable since there is no duty to negotiate over a demand which may be changed automatically based on the outcome of a different negotiating unit's bargaining).
The Appellate Division of the New York State Supreme Court ruled that such clauses are not per se invalid, and thus not automatically prohibited subjects of bargaining. The court held that a case-by-case examination of the factual circumstances surrounding each agreement is required. The facts presented to the court in City of Schenectady differed from those of all prior parity cases in a very significant aspect—both bargaining unions involved had jointly agreed to the incorporation of the parity clauses in their respective contracts.

The court addressed two public policy objections regarding the incorporation of parity provisions in public employee collective bargaining agreements: parity clauses (1) limit the full range of negotiating rights granted to the city under the Taylor Law by inhibiting subsequent negotiations with one group on the merits of its demands and (2) effectively entail dispute resolution without the consideration of the "interests and welfare of the public and the financial ability of the public employer to pay."

The court relied on its restricted authority to strike down provisions in bargained-for agreements or to overturn arbitration awards enforcing these agreements, on the ground that they offend public policy. The court stated that this limited judicial power exists "[o]nly when the award contravenes a strong public policy, almost invariably involving an important constitutional or statutory duty or responsibility . . . ." The courts are encouraged to exercise restraint so as not to disturb the bargained-for and agreed upon process for dispute

138. 85 A.D.2d 116, 448 N.Y.S.2d 806 (3d Dep't 1982).
139. Id. at 118-19, 448 N.Y.S.2d at 808.
140. Id. at 119, 448 N.Y.S.2d at 808.
141. The relevant history indicates that the City of Schenectady negotiated separate agreements effective January 1, 1980, with the police and firefighters' unions jointly with each agreement containing a parity clause. In September, 1980, the Police Benevolent Association and the city entered into a supplementary agreement which increased the policemen's overtime compensation from straight time to time and a half. The city refused to afford the same additional remuneration to the firefighters. The arbitrator directed enforcement of the parity provision. The Supreme Court of Schenectady County refused to grant the city's motion to set aside the arbitrator's award on the grounds that enforcement of the parity provision was against public policy. Id. at 116-17, 448 N.Y.S.2d at 807.
144. 85 A.D.2d at 117-18, 448 N.Y.S.2d at 808 (quoting Port Jefferson Station Teachers Ass'n, 45 N.Y.2d 898, 899, 383 N.E.2d 553, 554, 411 N.Y.S.2d 1, 2 (1978)).
resolution. Although it may be argued that every controversy involves some issue that requires weighing public policy considerations, the court held there are but a small number of matters "recognized as so intertwined with overriding public policy considerations as to either place them beyond the bounds of the arbitration process itself or mandate the vacatur of awards which do violence to the principles upon which such matters rest." The circumstances and issues of this case were deemed not to fall into that situation.

The appellate division analogized to the facts of Niagara Wheatfield and recognized that while in both cases the two aforementioned potential vices did exist, the Niagara Wheatfield court refrained from invalidating the tie-in provision when it determined that the following factors were satisfied: (1) the application of the provision must be reasonably limited in time, (2) the enforcement of the provision must not impair the city's ability to negotiate and (3) the provision must not imperil the employer financially. Similarly, the appellate division determined that the arbitrator's award enforcing parity in City of Schenectady was not violative of public policy after it, too, found these factors were met.

V. Conclusion

The holding in City of Schenectady conforms with prior decisions striking down parity clauses negotiated without the input or approval of the third-party union. The reasons cited by the courts included: these agreements (1) interfere with, restrain, or coerce the third-party union in the exercise of its negotiating rights, (2) may entail bad
faith bargaining and (3) violate the principle of exclusivity of bargaining units by expanding and diluting them. These grounds are premised on the fact that the clause imposes future wage equality on the reference union which had not participated in the creation of the parity agreement. As a result, the parity clause causes the reference union to bargain on behalf of persons other than those whom it represents.

This unfair burden is not thrust upon a reference union which, like the firefighters in City of Schenectady, participated in the negotiations and with full knowledge and awareness of the clause's effect, voluntarily agreed to the incorporation of the clause in their collective bargaining agreement. The court's determination on the facts before it is in accord with the Taylor Law, which allows negotiation of nonmandatory subjects of bargaining as long as those subjects are not violative of public policy. The earlier wholesale invalidation of parity clauses on public policy grounds in City of New York did not anticipate the development of parity clause arrangements which tend to


156. None of the aforementioned cases should be construed as requiring an employer "to bargain with blinders on, oblivious to the impact that one wage settlement may have on other negotiations." Medford School Comm., Mass. Lab. Rel. Comm'n, No. MUP-2349, at 4-5 (1977). By the very nature of a parity provision, the public employer who, during the course of negotiations agrees to grant any additional compensation or fringe benefit, must weigh the immediate economic consequences of such a proposal with the ultimate result of providing similar increases to those other employee organizations who are the beneficiaries of a parity clause in their agreement. City of Plainfield, N.J. Pub. Emp. Rel. Comm'n, No. 78-87, 4 NJPER ¶ 4114, at 229 (1978). Rather, these cases, including City of Schenectady, define the rule for the future to be that an employer may not impose such a result on one employee organization through bargaining with another when the result would entail these detrimental, impermissible effects on collective bargaining.
stabilize employer-employee relationships. The *City of Schenectady* decision shows sensitivity to parity clauses which in certain circumstances not only are not violative of Taylor Law imperatives, but rather actively support its stated goal of fostering harmonious labor relations.

*City of Schenectady* recognized that some parity clause arrangements can allow the employer and one or more unions to plan and execute long-range agreements. Two or more unions can agree among themselves that one union can implicate the others in a parity arrangement. Thus, the courts should follow *City of Schenectady* and uphold the validity of parity clauses where no union's right to freedom of bargaining is impinged.

Susan P. Kass