

1981

## Comparison of Impasse Procedures: The New York City Collective Bargaining Law and the New York State Taylor Law

Robert H. Platt

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

 Part of the [Dispute Resolution and Arbitration Commons](#)

---

### Recommended Citation

Robert H. Platt, *Comparison of Impasse Procedures: The New York City Collective Bargaining Law and the New York State Taylor Law*, 9 Fordham Urb. L.J. 1039 (1981).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol9/iss4/10>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

# COMPARISON OF IMPASSE PROCEDURES: THE NEW YORK CITY COLLECTIVE BARGAINING LAW AND THE NEW YORK STATE TAYLOR LAW

## I. Introduction

The importance of resolving impasses<sup>1</sup> that arise during the course of collective bargaining in the public sector has increased as a result of the rapid unionization of public employees at the federal, state, and local levels.<sup>2</sup> This increase in the number of organized public employees has been accompanied by a growth in the volume of public sector strikes.<sup>3</sup> Speedy resolution of these disputes is often critical due to the essential nature of the jobs performed by many public sector employees, and has caused numerous state and local governments to reformulate the laws governing public sector labor relations.<sup>4</sup>

In the private sector, a union which attempts to expedite the settlement process by engaging in a strike is protected by statute.<sup>5</sup> In the public sector, however, strikes by state<sup>6</sup> and federal<sup>7</sup> em-

---

1. An impasse in the public sector has been defined as the "failure of a public employer and the exclusive representative to achieve agreement in the course of *good-faith* negotiations. . . ." Board of Educ. v. Hawaii Pub. Employment Rel. Bd., 56 Haw. 85, 87, 528 P.2d 809, 811 (1974). The National Labor Relations Board's finding of a deadlock in negotiations is equivalent to finding that negotiations are at an impasse. Newspaper Drivers & Handlers Local No. 372 v. NLRB, 404 F.2d 1159, 1160 (6th Cir. 1968), *cert. denied*, 395 U.S. 923 (1969). See note 33 *infra* for the Taylor Law's definition of an impasse.

2. SPERO AND CAPOZZOLA, THE URBAN COMMUNITY AND ITS UNIONIZED BUREAUCRACIES 15 (1973) ("In 1944 only 540,000 public employees were members of unions; in 1955 those organized numbered 900,000; but by 1971 more than three million state and local workers held union or associate membership cards.").

3. See D. LEWIN, PUBLIC SECTOR COLLECTIVE BARGAINING AND THE RIGHT TO STRIKE, *reprinted in* D. Lewin, P. Feuille, & T. Kochan, Public Sector Labor Relations, 237, 239 (1977) [hereinafter cited as PUBLIC SECTOR LABOR RELATIONS] ("Before 1966 work stoppages were limited to an average of 29 per year. However, between 1966 and 1974 there were approximately 319 strikes. Between 1958 and 1965 the number of workers involved in public sector strikes averaged less than 3,900 per year, in contrast to almost 176,000 over the 1966 to 1974 period.").

4. See note 12 *infra* and accompanying text.

5. "Employees shall have the right to . . . engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." 29 U.S.C. § 157 (1976). See NLRB v. International Bhd. of Elec. Workers, 346 U.S. 464 (1953).

6. See, e.g., Alabama: ALA. CODE §§ 11-43-143 (1977) (covers state and municipal

ployees are statutorily prohibited except in a few limited instances.<sup>8</sup> The ban on strikes in the public sector has eliminated the use of a weapon long regarded as necessary for unions to achieve their objectives. The primary rationale<sup>9</sup> for the elimination of strikes in the public sector is to prevent the disruption of essential services performed by government employees.<sup>10</sup> Past experience, however, indicates that unions, irrespective of statutory penalties,<sup>11</sup>

---

firefighters); *California*: CAL. LAB. CODE § 1962 (West) (covers firefighters); *Florida*: FLA. STAT. ANN. § 447.201 (West Supp. 1981) (covers state and local employees, police, firefighters and teachers); *New York*: N.Y. CIV. SERV. LAW § 210 (McKinney 1973) (covers state and local employees, police, firefighters and teachers); *North Dakota*: N.D. CENT. CODE § 15-38.1-14.1 (1971) (covers teachers). See also 10 T. KHEEL, LABOR LAW § 57.04 (2d ed. 1979) [hereinafter cited as T. KHEEL].

7. "An individual may not accept or hold a position in the Government of the United States . . . if he . . . participates in a strike, or asserts the right to strike, against the Government of the United States. . . ." 5 U.S.C. § 7311(3) (1976). See also *United Fed'n of Postal Clerks v. Blount*, 325 F. Supp. 879, 884 (D.D.C.), *aff'd*, 404 U.S. 802 (1971) ("Congress has an obligation to ensure that the machinery of the Federal Government continues to function at all times without interference. Prohibition of strikes by its employees is a reasonable implementation of that obligation.").

8. A limited right to strike has been authorized by statute in certain jurisdictions. See *Alaska*: ALASKA STAT. § 23.40.200 (1972) (permitted for all employees except police, firefighters, correctional employees, and hospital workers); *Hawaii*: HAWAII REV. STAT. § 89-12(b), (c) (1976) (permitted if public health and safety are not endangered, but requires a 60 day waiting period after fact-finding and a 10 day notice of intention to strike); *Minnesota*: MINN. STAT. ANN. §§ 179.64(1)(a)(d)(3), 179.68(2)(9) (West Supp. 1981) (permitted if employer refuses to comply with binding arbitration award or refuses request for binding arbitration); *Montana*: MONT. REV. CODES ANN. 59-1603 (1977) (all public employees have the right to strike for the purposes of binding arbitration); *Oregon*: OR. REV. STAT. § 243.726 (1979) (permitted if all impasse resolution procedures have been exhausted, but may be enjoined if public health, safety or welfare is endangered; prohibited to police and fire, OR. REV. STAT. § 243.736 (1979) who have binding arbitration instead, OR. REV. STAT. § 243.742 (1979)); *Pennsylvania*: PA. STAT. ANN. tit. 43, § 1101.1003 (Purdon 1980) (similar to Oregon); *Vermont*: VT. STAT. ANN. tit. 21 § 1730 (1978) (a strike is prohibited and enjoined only if it occurs within 30 days of fact-finder's report, or after submission to arbitration, or if it is shown to endanger public health, safety or welfare). See generally 9 T. KHEEL, *supra* note 6, at § 43.08.

9. Two other rationales for prohibiting public sector employees from striking are: (1) the government is sovereign and its employees have no right to strike; and (2) public employee unions are in an especially strong position negotiating with a monopolist - permitting them to strike would cause substantial costs on the taxpaying public since there is often no alternative to their services. PUBLIC SECTOR LABOR RELATIONS, *supra* note 3, at 239.

10. *Id.* See also *Board of Educ. v. New Jersey Educ. Ass'n*, 53 N.J. 29, 37-38, 247 A.2d 867, 872 (1968).

11. A number of state laws provide severe penalties against public employee strikers, their union, and the strike leaders. See, e.g., N.Y. CIV. SERV. LAW § 210 (McKinney 1973); TEX. LABOR CODE ANN. tit. 83 § 5154a(11) (Vernon 1971). In New York, in addition to being

will tend to disregard strike prohibitions if there is no reasonable alternative to pursue.<sup>12</sup>

Many states have enacted statutes which offer viable alternatives to unions that wish to press their demands at the negotiation table but have been stripped of their power to conduct a lawful strike.<sup>13</sup> These alternatives include mediation,<sup>14</sup> fact-finding<sup>15</sup> and a variation of interest arbitration.<sup>16</sup> These methods of dispute resolution are offered as the *quid pro quo* for the ban on strikes.

New York's earliest statutory response to strikes in the public sector was the Condon-Wadlin Act of 1947,<sup>17</sup> which prohibited strikes by public employees and levied severe, if not draconian, penalties for violations of the prohibition.<sup>18</sup> The Condon-Wadlin

---

subject to statutory penalties for disregarding strike prohibitions, public employees and their unions may also be subject to criminal and civil liability. *Caso v. Dist. Council 37*, 43 A.D.2d 159, 350 N.Y.S.2d 173 (2d Dep't 1973); *People v. Vizzini*, 78 Misc. 2d 1040, 359 N.Y.S.2d 1430 (Sup. Ct. 1974).

12. See 10 T. KHEEL, *supra* note 6, at § 57.01.

13. See, e.g., *Maine*: ME. REV. STAT. ANN. tit. 26 §§ 961-972 (1974); *Michigan*: MICH. COMP. LAWS §§ 423.201-.216 (1978); *New York*: N.Y. CIV. SERV. LAW §§ 200-214 (McKinney 1973); *Wisconsin*: WIS. STAT. ANN. §§ 111.80-.94 (West 1974).

14. See, e.g., *Florida*: FLA. STAT. ANN. § 447.403(1) (West Supp. 1981); *Iowa*: IOWA CODE § 20.20 (1978); *Michigan*: MICH. COMP. LAWS § 423.207 (1978); *New York*: N.Y. CIV. SERV. LAW § 209(3)(a) (McKinney 1973). See also 10 T. KHEEL, *supra* note 6, at § 56.03 n.3.

15. See, e.g., *Indiana*: IND. CODE § 20-7.5-1-12(d) (1975); *Massachusetts*: MASS. GEN. LAWS ANN., ch. 150E, § 9 (West 1976); *Nevada*: NEV. REV. STAT. § 288.200 (1979); *New York*: N.Y. CIV. SERV. LAW § 209(3)(b) (McKinney 1973); *Pennsylvania*: PA. STAT. ANN. tit. 43 § 1101.802(1) (Purdon Supp. 1980). See also 10 T. KHEEL, *supra* note 6, at § 56.04 n.2.

16. See, e.g., *Alaska*: ALASKA STAT. § 23.40.200 (1972); *Delaware*: DEL. CODE ANN. tit. 19, § 1310 (1979); *Iowa*: IOWA CODE § 20.22 (1978); *New York*: N.Y. CIV. SERV. LAW § 209(4)(c) (McKinney 1973); *Vermont*: VT. STAT. ANN. tit. 21, § 1733(a) (1978). See also 10 T. KHEEL, *supra* note 6, at § 56.05 n.2.

17. 1958 N.Y. Laws ch. 790.

18. The Condon-Wadlin Act provided that: "No person holding a position by appointment or employment in the government . . . shall strike. . . . [A]ny public employee who violates the provisions of this section shall thereby abandon and terminate his appointment or employment and shall no longer hold such position . . . except if appointed or reappointed." 1958 N.Y. Laws ch. 790, § 108. The Act further provides that an employee can be reappointed only under the following conditions:

(a) his compensation shall in no event exceed that received by him immediately prior to the time of such violation; (b) the compensation of such person shall not be increased until after the expiration of three years from such . . . reappointment . . . ; and (c) such person shall be on probation for a period of five years following . . . reappointment . . . during which period he shall serve without tenure and at the pleasure of the appointing officer. . . .

*Id.*

Act proved to be ineffectual because its penalties were so severe that they were rarely imposed, thereby giving unions little incentive to refrain from striking.<sup>19</sup> Contending that New York needed a more effective method of resolving public sector disputes, Governor Rockefeller convened the Governor's Committee on Public Employee Relations in 1966, also known as the Taylor Committee. This committee proposed legislation<sup>20</sup> that led to the passage in 1967 of the New York Public Employees' Fair Employment Act,<sup>21</sup> commonly known as the Taylor Law.<sup>22</sup>

The Taylor Law not only prescribes rules and procedures for public employees in the State of New York, but also permits any public employer<sup>23</sup> to enact different "provisions and procedures"<sup>24</sup> for the regulation of its own employees as long as these provisions and procedures are "substantially equivalent"<sup>25</sup> to those found in the Taylor Law.<sup>26</sup> Pursuant to this option, New York City enacted the New York City Collective Bargaining Law<sup>27</sup> ("NYCCBL") which established procedures for the resolution of bargaining im-

19. The ineffectiveness of the Condon-Wadlin Act was apparent during the 1966 transit strike in New York City. This 12 day strike cost New Yorkers an estimated one billion dollars, mainly in lost wages and retail sales. See Morris, *Public Policy and the Law Relating to Collective Bargaining in the Public Service*, 22 Sw. L. J. 585, 585-86 (1968) [hereinafter cited as *Public Policy and the Law*]; Taylor, *Public Employment: Strikes or Procedures?*, 20 INDUS. & LAB. REL. REV. 617, 631 (1966).

20. STATE OF NEW YORK, GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS FINAL REPORT, (March 31, 1966) [hereinafter cited as GOVERNOR'S FINAL REPORT].

21. N.Y. CIV. SERV. LAW §§ 200-214 (McKinney 1973 & Supp. 1981).

22. See generally Taylor, *Public Employment: Strikes or Procedures?*, 20 INDUS. & LAB. REL. REV. 617 (1966).

23. The Taylor Law defines "public employer" as:

(i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, or (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

N.Y. CIV. SERV. LAW § 201(6)(a) (McKinney 1973).

24. N.Y. CIV. SERV. LAW § 212(1) (McKinney 1973).

25. *Id.*

26. The Taylor Law's classification of New York City municipal employees as different from other public employees throughout the rest of the state is "based in reason, and the different statutory treatment bears a rational relationship to the state interest in allowing local governments to develop their own machinery to supervise their own public employees." *Civil Serv. Employees Ass'n v. Helsby*, 439 F. Supp. 1272, 1279-80 (S.D.N.Y. 1977).

27. N.Y.C. ADMIN. CODE ch. 54 §§ 1173-1.0-13.0 (1975).

passes. The parameters of the NYCCBL are generally<sup>28</sup> limited to "municipal agencies"<sup>29</sup> in New York City while the Taylor Law encompasses the remainder of the public sector employees in New York State.<sup>30</sup>

The NYCCBL and the Taylor Law each attempt to resolve collective bargaining impasses in the public sector through multi-tiered dispute resolution procedures. Section II of this Note will examine the dispute resolution processes of the Taylor Law and the NYCCBL. Section III will analyze empirically the relative successes of both of these laws in resolving disputes, and will make recommendations as to how to improve their effectiveness.

## II. Dispute Resolution Procedures

### A. The Taylor Law

The Taylor Law, like the Condon-Wadlin Act,<sup>31</sup> prohibits strikes by public sector employees.<sup>32</sup> The Taylor Law, however, goes further than the old Condon-Wadlin Act in that it provides for the resolution of impasses that arise during the course of collective bargaining.<sup>33</sup> In enacting the Taylor Law, the legislature was attempting to expand on the purely punitive purposes of the Condon-Wadlin Act. It stated that the purpose of the Taylor Law is "to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and

---

28. See notes 61-66 *infra* and accompanying text.

29. The NYCCBL covers "all municipal agencies and public employees and public employee organizations thereof." N.Y.C. ADMIN. CODE ch. 54, § 1173-4.0 (1975). "The term 'municipal agency' shall mean an administration, department, division, bureau, office, board, or commission, or other agency of the city established under the charter or any other law, the head of which has appointive powers, and whose employees are paid in whole or in part from the city treasury. . . ." *Id.* § 1173-3.0(d). The law is also applicable to "any other public employer . . . to the extent to which the public employer . . . elects by executive order to make this chapter applicable. . . ." *Id.* § 1173-4.0(c) (1975).

30. The Taylor Law defines public employee as "any person holding a position by appointment or employment in the service of a public employer. . . ." N.Y. CIV. SERV. LAW § 201(7)(a) (McKinney 1973). See also *Shelofsky v. Helsby*, 32 N.Y.2d 54, 295 N.E.2d 774, 343 N.Y.S.2d 98 (1973).

31. 1958 N.Y. Laws, ch. 790.

32. N.Y. CIV. SERV. LAW § 210(1) (McKinney 1973).

33. Under the Taylor Law an impasse exists "if the parties fail to achieve agreement at least 120 days prior to the end of the fiscal year of the public employer." *Id.* § 209(1).

functions of government.”<sup>34</sup> The Taylor Law created the Public Employee Relations Board (“PERB”),<sup>35</sup> which determines when an impasse exists<sup>36</sup> and puts into operation the impasse mechanisms<sup>37</sup> of the Taylor Law.<sup>38</sup>

34. *Id.* § 200. See also *Civil Serv. Employees Ass'n v. Helsby*, 31 A.D.2d 325, 297 N.Y.S.2d 813, (3d Dep't), *aff'd*, 24 N.Y.2d 993, 250 N.E.2d 230, 302 N.Y.S.2d 822 (1969).

35. In addition to the powers the board has under § 209 to settle impasses, see notes 39-59 *infra* and accompanying text, the board also has the following powers with respect to the settling of impasses:

To make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations.

To establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, arbitrators or members of fact-finding boards.

To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and powers.

For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions. Such subpoenas shall be regulated and enforced under the civil practice law and rules.

N.Y. CIV. SERV. LAW § 205(5)(H), (I), (J), (K) (McKinney 1973).

36. See note 33 *supra* and accompanying text.

37. N.Y. CIV. SERV. LAW § 209 (McKinney 1973).

38. PERB's findings are reviewable under the Taylor Law which states:

Orders of the board made pursuant to this article shall be deemed to be final against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as hereinafter provided. Such orders shall be (i) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (ii) enforceable in a special proceeding, upon petition of such board, by the supreme court.

*Id.* § 213(a). Section 213 of the Taylor Law explicitly provides for review under article 78 of the Civil Practice Laws and Rules (“CPLR”) because PERB is classified as an administrative body, whereas decisions by the Board of Collective Bargaining are appealed under article 75 of the CPLR because it is considered an arbitration panel. See note 89 *infra*. See *New York State Pub. Employment Rel. Bd. v. Buffalo Bd. of Educ.*, 39 N.Y.2d 86, 346 N.E.2d 803, 382 N.Y.S.2d 965 (1976) (article 78 proceeding); *Patrolmen's Benev. Ass'n v. City of New York*, 52 A.D.2d 43, 382 N.Y.S.2d 494 (1st Dep't), *aff'd*, 41 N.Y.2d 205, 359 N.E.2d 1338, 391 N.Y.S.2d 544 (1976) (article 75 proceeding). See generally Koretz & Rabin, *Labor Relations Law*, 28 SYRACUSE L. REV. 75, 91-104 (1977); Mironi, *The Functional Approach to Judicial Oversight of Specialized Tribunals — A Case Study*, 52 N.Y.U. L. REV. 745 (1977).

The first step of the impasse procedure under the Taylor Law is for PERB to appoint a mediator or mediators from a list of qualified candidates.<sup>39</sup> If mediation fails to resolve the dispute, PERB will appoint a fact-finding board of not more than three members<sup>40</sup> which shall have the power to make recommendations for resolution of the dispute after hearing the facts presented by both sides.<sup>41</sup> The fact-finding board has the power to submit its findings to the union and the public employer, and to assist the parties in voluntary resolution.<sup>42</sup>

If after the exhaustion of the fact-finding board's methods, an impasse still exists, PERB has the power to take whatever steps it deems appropriate to resolve the dispute.<sup>43</sup> These options include the making of recommendations after due consideration of the findings of fact and recommendations of the fact-finding board.<sup>44</sup> In addition, voluntary interest arbitration is available at the request of the parties.<sup>45</sup>

If at this juncture PERB has failed to resolve the impasse, the final dispute resolution method under the Taylor Law is, in most cases,<sup>46</sup> the legislative hearing.<sup>47</sup> Should either the union or the

---

[hereinafter cited as *The Functional Approach to Judicial Oversight*].

39. N.Y. CIV. SERV. LAW § 209(3)(a). See Division 580, Amalgamated Transit Union v. Central N.Y. Regional Transp. Auth., 556 F.2d 659, 661 (2d Cir. 1977).

40. In the majority of cases one fact-finder is appointed. Interview with Joseph R. Crowley, former member of PERB, in New York City (Jan. 28, 1981).

41. N.Y. CIV. SERV. LAW § 209(3)(b) (McKinney 1973).

42. *Id.* § 209(3)(c).

43. *Id.* § 209(3)(d).

44. *Id.*

45. *Id.* The Taylor Committee, in its original report considered, but ultimately rejected compulsory arbitration. GOVERNOR'S FINAL REPORT, *supra* note 20. The committee questioned the legality of delegating the legislature's fiscal duties. The New York Court of Appeals, however, in *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S.2d 404 (1975), subsequently determined that the Taylor Law interest arbitration procedure for police and firefighters was not an unconstitutional delegation of legislative authority. Today the court would probably rule similarly with respect to other state employees holding that their terms and conditions of employment could also be decided by impartial arbitrators. See *Mount St. Mary's Hosp. v. Catherwood*, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863 (1970) (compulsory arbitration of contract disputes in private voluntary or nonprofit hospitals held constitutional). See generally McAvoy, *Binding Arbitration of Contract Terms: A New Approach to the Resolution of Disputes in the Public Sector*, 72 COLUM. L. REV. 1192, 1205-08 (1972); Comment, *Public Sector Interest Arbitration: Threat to Local Representative Government?*, 9 PAC. L.J. 165 (1978).

46. See notes 53-59 *infra* and accompanying text.

47. N.Y. CIV. SERV. LAW § 209(3)(e) (McKinney 1973). Section 209 merely authorizes



public employer not accept in whole or in part the fact-finder's recommendations, the government-employer must submit to the legislature his recommendations for resolving the dispute<sup>48</sup> and a copy of the findings of fact and recommendations of the fact-finding board. The union may also submit to the legislature its recommendations for settling the dispute.<sup>49</sup>

Upon receiving the recommendations of both parties, the legislature will conduct a public hearing to enable the parties to explain their positions with respect to the fact-finding board's recommendations.<sup>50</sup> The legislature will then "take such action as it deems to be in the public interest, including the interest of the public employees involved,"<sup>51</sup> and may impose the terms and conditions of employment for union members for a period of up to one year.<sup>52</sup>

Not all bargaining impasses, however, may be submitted to the legislature for resolution.<sup>53</sup> Disputes involving the police,<sup>54</sup> firefighters,<sup>55</sup> and public schools<sup>56</sup> are exempted by the Taylor Law from legislative review. If the police or firefighters are a party to the dispute, and a mediator has been unable to effect a settlement, PERB will refer the dispute to a public arbitration panel which will make a final and binding decision.<sup>57</sup> If the public employer,

---

and does not mandate that the legislature resolve impasses. *Lesser v. Suffolk County Class. & Sal. App. Bd.*, 74 A.D.2d 842, 425 N.Y.S.2d 391, 392 (2d Dep't 1980).

48. N.Y. CIV. SERV. LAW § 209(3)(e) (McKinney 1973).

49. *Id.*

50. *Id.*

51. *Id.* § 209(3)(e)(iv). *See* Division 580, *Amalgamated Transit Union v. Central N.Y. Regional Transp. Auth.*, 556 F.2d at 661 (2d Cir. 1977).

52. *Triborough Bridge and Tunnel Authority*, 9 N.Y. PUB. EMP. REL. BD. ¶ 10-3027 (1977); *City of Mount Vernon*, 5 N.Y. PUB. EMP. REL. BD. ¶ 5-3057 (1972).

53. N.Y. CIV. SERV. LAW §§ 209(3)(f), 209(4) (McKinney Supp. 1980).

54. *Id.* § 209(4). *See* *City of Corning v. Police*, 81 Misc. 2d 294, 366 N.Y.S.2d 241 (Sup. Ct. 1974).

55. N.Y. CIV. SERV. LAW § 209(4) (McKinney Supp. 1980).

56. *Id.* § 209(3)(f).

57. *Id.* § 209(4). The arbitration panel is tripartite — one member appointed by the union, one member appointed by the public employer, and one member appointed jointly by the public employer and the union. *Id.* § 209(4)(c)(ii). The Taylor Law is silent concerning the issue whether the decisions of the arbitration panel should be appealed to the courts via article 75 or 78 of the CPLR. *See* *Buffalo Police Benev. Ass'n v. City of Buffalo*, 81 Misc. 2d 172, 173, 364 N.Y.S.2d 362, 363 (Sup. Ct. 1975) (court concluded that enforcement of the award issued by the public arbitration panel could only be brought under article 78 of the CPLR because § 213 of the Taylor Law specifically triggered this section). *But cf.* *Albany Permanent Professional Firefighters Ass'n, Local 2007 v. City of Corning*, 84 Misc. 2d 759,

however, is a school district, a board of cooperative educational services, a community college, the State University of New York, or the City University of New York, there is no final resolution of the dispute.<sup>58</sup> In the situation where mediation or fact-finding fails to resolve the dispute, rather than submit the dispute to the legislature or to an arbitration panel, PERB will continue its conciliatory efforts in the form of mediation and fact-finding until the impasse is resolved.<sup>59</sup>

## B. New York City Collective Bargaining Law

The NYCCBL, like the Taylor Law, has provisions to resolve public sector collective bargaining impasses.<sup>60</sup> Generally, the NYCCBL has jurisdiction over all public employees in municipal agencies<sup>61</sup> in New York City<sup>62</sup> except for employees of the Transit Authority, the Board of Education and the Board of Higher Education.<sup>63</sup> Other public employers which are not covered automatically, by the NYCCBL such as the Board of Elections, the Health and Hospitals Corporation, the Housing Authority, the District Attorneys, and the Off-Track Betting Corporation, have opted to be covered under the NYCCBL.<sup>64</sup> Currently there are fifty-six labor organizations,<sup>65</sup> representing approximately 173,000 employees,<sup>66</sup> under the jurisdiction of the NYCCBL. As with PERB under the Taylor Law, the NYCCBL is also administered by a board known

---

761-62, 376 N.Y.S.2d 796, 799 (Sup. Ct. 1975), *aff'd*, 51 A.D.2d 386, 381 N.Y.S.2d 699 (3d Dep't), *aff'd sub nom.* City of Albany v. Public Employment Rel. Bd., 84 Misc. 2d 555, 377 N.Y.S.2d 444 (Sup. Ct. 1976) (court held that article 75 of the CPLR was the appropriate procedure for judicial review since PERB itself had made no determination and there was no statutory direction to the contrary). See generally *The Functional Approach to Judicial Oversight*, *supra* note 38.

58. *Id.* § 209(3)(f).

59. *Id.*

60. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0 (1975).

61. See note 29 *supra* and accompanying text.

62. N.Y.C. ADMIN. CODE ch. 54 § 1173-4.0(a)-(b) (1975).

63. N.Y.C. OFFICE OF COLLECTIVE BARGAINING, STRUCTURE AND FUNCTION OF THE OFFICE OF COLLECTIVE BARGAINING 3 (1980) [hereinafter cited as STRUCTURE AND FUNCTION OF OCB].

64. *Id.* See also N.Y.C. ADMIN. CODE ch. 56 § 1173-4.0(c) (1975).

65. STRUCTURE AND FUNCTION OF THE OCB, *supra* note 63, at 3. Some of the agencies and departments under the OCB jurisdiction are the Art Commission, Borough Presidents, Department of Parks and Recreation, Department of Sanitation, Fire Department, and the Police Department. *Id.* at 3-5.

66. Information provided by Office of Collective Bargaining as the figure reported to the United States Census Bureau.

as the Board of Collective Bargaining.<sup>67</sup> The chairman of the Board is also the director of the Office of Collective Bargaining.<sup>68</sup>

If an impasse is reached, the director of the Office of Collective Bargaining has the option, upon the request of a party or upon his own initiative, to appoint a mediation panel.<sup>69</sup> Unlike mediation under the Taylor Law, mediation under the NYCCBL may be bypassed and the dispute may go directly to the next step of the procedure — the impasse panel.<sup>70</sup>

If the parties exhaust mediation,<sup>71</sup> or choose to circumvent this step, the next procedure is a hearing before the impasse panel.<sup>72</sup> The impasse panel normally consists of either one or three members, depending upon either the parties' agreements or the decision of the director absent such agreement.<sup>73</sup> The Office of Collective Bargaining maintains a list of impasse panel members who have been approved by the Board of Collective Bargaining.<sup>74</sup> The director submits a list of seven persons to the parties and each party indicates their preference in numerical order;<sup>75</sup> based upon these preferences the director will appoint a panel. Additionally, each party may at its own expense designate a consultant to the impasse panel who is to be available for assistance.<sup>76</sup> The NYCCBL empowers the impasse panel "to mediate, hold hearings . . . and take whatever action it considers necessary to resolve the impasse."<sup>77</sup> If mediation fails, the impasse panel will submit its findings and rec-

---

67. N.Y.C. CHARTER ch. 54 § 1171 (1976). The Board of Collective Bargaining consists of seven members: two appointed by the city, two appointed by labor, and three impartial members. *Id.*

68. *Id.*

69. N.Y.C. ADMIN. CODE ch. 56 § 1173-7.0(b)(2) (1975).

70. *Id.* § 1173-7.0(c).

71. The mediator has no fixed time by which he must resolve the dispute. Interview with Joseph R. Crowley, former member of PERB, in New York City (Jan. 28, 1981).

72. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0(c) (1975).

73. Anderson, MacDonald, and O'Reilly, *Impasse Resolution in Public Sector Collective Bargaining — An Examination of Compulsory Interest Arbitration in New York*, 51 ST. JOHN'S L. REV. 453, 483-84 (1977) [hereinafter cited as *Impasse Resolution in Public Sector Bargaining*].

74. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0(c)(1) (1975).

75. *Id.* § 1173-7.0(c)(2).

76. *Id.*

77. NYCCBL gives the impasse panel the "power to mediate, hold hearings, compel the attendance of witnesses and the production of documents, review data, and take whatever action it considers necessary to resolve the impasse." *Id.* § 1173-7.0(c)(3)(a).

ommendations to each party<sup>78</sup> and to the director of the Office of Collective Bargaining.<sup>79</sup> The NYCCBL does not prescribe a deadline by which the panel must file a report of its findings and recommendations.<sup>80</sup>

Within ten days<sup>81</sup> after submission of the panel's report, each party must notify the director and the other party of its acceptance or rejection of the panel's recommendations.<sup>82</sup> If either party fails to notify the board within the ten day period,<sup>83</sup> or if both parties accept the parties' recommendations, the recommendations of the panel are final and binding.<sup>84</sup> A party who rejects in whole or in part the recommendations of the impasse panel may appeal to the Board of Collective Bargaining for a review of the recommendations.<sup>85</sup> The party's notice of appeal to the board must specify the basis of the appeal, the alleged errors of the panel, and the modifications requested.<sup>86</sup> The board will give the parties the opportunity to submit briefs and argue before them.<sup>87</sup> After a review

---

78. *Id.* § 1173-7.0(c)(3)(d). The impasse panel considers wherever relevant the following standards in making its recommendations:

(1) comparison of wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city [sic] or comparable communities; (2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received; (3) changes in the average consumer prices for goods and services, commonly known as the cost of living; (4) the interest and welfare of the public; (5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

*Id.* § 1173-7.0(c)(3)(b)(1)-(5).

79. *Id.* § 1173-7.0(c)(3)(d).

80. *Id.* It is left to the discretion of the director as to when the impasse panel must submit its report and recommendations to him.

81. *Id.* § 1173-7.0(c)(3)(e). The NYCCBL provides that the director may, at his discretion, extend the deadline up to 30 days. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* See *Patrolmen's Benev. Ass'n v. City of New York*, 52 A.D.2d 43, 382 N.Y.S.2d 494 (1st Dep't), *aff'd*, 41 N.Y.2d 205, 359 N.E.2d 1338, 391 N.Y.S.2d 544 (1976).

85. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0(c)(4)(a) (1975).

86. *Id.* § 1173-7.0(4)(b).

87. *Id.*

of the facts, the board, by a majority vote, will affirm or modify the panel's recommendations in whole or in part.<sup>88</sup> This decision is final and binding upon the parties.<sup>89</sup>

### III. Comparative Analysis of the Impasse Procedures

Statistics concerning the number of work stoppages,<sup>90</sup> the number of workers involved in these stoppages, and the number of man-days idle due to these stoppages, have been compiled for the five-year period between 1975 and 1979.<sup>91</sup>

---

88. *Id.* § 1173-7.0(4)(c).

89. *Id.* § 1173-7.0(4)(f). Under article 75 of the CPLR, however, decisions of the Board of Collective Bargaining are appealable to the courts. N.Y. CIV. PRAC. LAW §§ 7501-7511 (McKinney Supp. 1980).

The courts, may review an award as defined by article 75 of the CPLR. The New York Court of Appeals has held that if both parties to the dispute unequivocally accept the decision and recommendations of the impasse panel, and thereby foreclose an opportunity to appeal to the Board of Collective Bargaining, the impasse panel's decision is considered an award, and this is appealable to the courts under article 75. *Patrolmen's Benev. Ass'n v. City of New York*, 52 A.D.2d 43, 382 N.Y.S.2d 494 (1st Dep't), *aff'd*, 41 N.Y.2d 205, 359 N.E.2d 1338, 391 N.Y.S.2d 544 (1976). See note 38 *supra*.

90. The Taylor Law defines strike as "any strike or other concerted stoppage of work or slowdown by public employees." N.Y. CIV. SERV. LAW § 201(9) (McKinney 1973). See also *School Dist. v. United Teachers Inc.*, 85 Misc. 2d 282, 287, 378 N.Y.S.2d 881, 886 (Sup. Ct. 1975), where the court held that the teachers' failure to attend a "Back-to-School Night" constituted a strike under § 201(9) of the Taylor Law. Police officers who, during a three day period, stopped city buses, sanitation trucks and sewer maintenance vehicles, and detained them for time-consuming inspections, and who had abstained from performance of other duties necessary to the effective functioning of the police, engaged in a strike within the meaning of the Taylor Law because this three day period was commensurate with a campaign to induce city officials to rescind an order which had demoted certain high ranking police officials for budgeting reasons. *Dowling v. Bowen*, 53 A.D.2d 862, 385 N.Y.S.2d 355, 356 (Sup. Ct. 1976). For a full discussion on what constitutes a strike see [1977] LRX (BNA) § 2 at 672-73.

91. The statistics collected were supplied by the Office of Collective Bargaining and the Public Employee Relations Board, although some of the information had to be extrapolated due to lack of recordation by these agencies as of January 5, 1981.

| YEAR    | STRIKES* |        | WORKERS INVOLVED** |        | PERCENT OF***<br>WORKERS INVOLVED |        | MAN-DAYS IDLE**** |         | PERCENT OF*****<br>MAN-DAYS IDLE |        |
|---------|----------|--------|--------------------|--------|-----------------------------------|--------|-------------------|---------|----------------------------------|--------|
|         | TAYLOR   | NYCCBL | TAYLOR             | NYCCBL | TAYLOR                            | NYCCBL | TAYLOR            | NYCCBL  | TAYLOR                           | NYCCBL |
| 1979    | 16       | 2      | 10,083             | 2,300  | 1.29%                             | 1.33%  | 67,798            | 21,300  | .035%                            | .049%  |
| 1978    | 14       | 1      | 3,375              | 83     | .43%                              | .05%   | 31,790            | 249     | .016%                            | .001%  |
| 1977    | 16       | 0      | 5,702              | 0      | .74%                              | 0%     | 56,301            | 0       | .029%                            | 0%     |
| 1976    | 14       | 1      | 7,549              | 18,000 | .98%                              | 10%    | 67,448            | 72,000  | .035%                            | .16%   |
| 1975    | 29       | 3      | 69,600             | 7,845  | 9.04%                             | 4.36%  | 372,468           | 21,645  | .193%                            | .048%  |
| TOTALS: | 89       | 7      | 96,309             | 28,228 | 2.49%                             | 1.36%  | 595,805           | 115,194 | .062%                            | .052%  |

\* The information concerning stoppages was obtained from the Office of Collective Bargaining and the Public Employee Relations Board. A strike is defined as "any strike or other concerted stoppage of work or slowdown by public employees." N.Y. Civ. Serv. Law § 201(9) (McKinney 1973).

\*\* The information concerning the workers involved in the stoppages was obtained from the Office of Collective Bargaining and the Public Employee Relations Board.

\*\*\* *Id.*

\*\*\*\* The percent of workers involved in the stoppages was determined by dividing the total workforce into the number of workers involved in the stoppages. The Office of Collective Bargaining compiled the following workforce figures for the 1980 Census: 173,000 workers in 1979, 174,000 workers in 1978, and 178,000 workers under the NYCCBL in 1977. During 1975 and 1976 it is estimated that there was approximately 180,000 public employees under the jurisdiction of the NYCCBL. The number of public employees under the Taylor Law was supplied by the Public Employee Relations Board, and are the figures generally relied on by that agency.

\*\*\*\*\* The percent of man-days idle was determined by taking the number of man-days idle and dividing it by the total workforce multiplied by 250 the approximate number of days in the work year.

An analysis of the statistics reveals that during this five year period more negotiations have ended in strikes under the jurisdiction of the Taylor Law than under the jurisdiction of the NYCCBL.<sup>92</sup> From 1975 to 1979 there were eighty-nine strikes under the Taylor Law jurisdiction, whereas under the NYCCBL's jurisdiction there were only seven.<sup>93</sup> Similarly, the percentage of workers involved in strikes, and the percentage of man-days idle due to strikes was higher under the Taylor Law jurisdiction than under the NYCCBL jurisdiction.<sup>94</sup> Under the Taylor Law during this period 2.49% of all workers were involved in strikes, whereas only 1.36% of all the workers under the jurisdiction of the NYCCBL were involved in strikes.<sup>95</sup> Additionally, .062% of the work year under the Taylor Law's jurisdiction was idle due to strikes, contrasted to .052% of the work year lost to strike time under the NYCCBL's jurisdiction.<sup>96</sup>

Not only were there comparatively more stoppages, more workers involved, and more man-days idle under the Taylor Law's jurisdiction during this five-year period, but during almost every year these statistics increased under the Taylor Law's jurisdiction.<sup>97</sup> The trend clearly indicates that negotiations were more likely to result in a strike under the Taylor Law's jurisdiction than under the NYCCBL jurisdiction.

There are a number of reasons why there were almost thirteen times as many strikes under the Taylor Law's jurisdiction than under the NYCCBL's jurisdiction. The most significant reason is the ineffective dispute resolution techniques under the Taylor Law. Although it must be recognized that not all strikes are the direct consequence of the failure of the impasse procedure to operate successfully,<sup>98</sup> the impasse procedures nevertheless must be

---

92. See note 91 *supra*.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. The exception to this trend occurred in 1976. Although under the jurisdiction of the NYCCBL there was only one stoppage compared to 14 under the Taylor Law's jurisdiction, the NYCCBL jurisdiction had a higher percentage of workers involved in strikes and a higher percentage of man-days idle due to a four day strike by 18,000 public employees of Local 1420, AFSCME, D.C. 37, who struck the New York City Health and Hospital Corporation. Information furnished to author by OCB (Jan. 5, 1981).

98. Strikes can be the result of a multiplicity of factors such as animosity towards the

carefully scrutinized because their purpose is to minimize the incidence of strikes.<sup>99</sup>

The basis for the success of any dispute resolution mechanism is the acceptance of the procedure by those who must abide by its decisions.<sup>100</sup> The NYCCBL, unlike the legislatively imposed Taylor Law, may be more likely to achieve acceptance by those who must abide by its decisions because it was written with both union and city input.<sup>101</sup>

In early 1965, Mayor Robert F. Wagner and the leadership of the major unions of city employees agreed to attempt to devise a mutually palatable set of procedures to resolve bargaining impasses.<sup>102</sup> A tripartite panel was established consisting of representatives of the mayor on one side, representatives of the municipal labor committee<sup>103</sup> on the other side, and four "public members" who acted as an impartial third party.<sup>104</sup> The municipal labor committee represented approximately one hundred unions and 200,000 city employees, thereby helping to make the law more responsive to those employees it would affect.<sup>105</sup> The essential point is that for the first time impasse procedures were established through a negotiated agreement<sup>106</sup> thus enjoying a higher degree of acceptability because the agreement represented and reflected the views of both parties.

---

employer, safety, union politics, severe fiscal constraints, or one of a number of other reasons besides the failure of the dispute resolution process. See 29 U.S.C. § 143 (1976) for permissible work stoppages due to safety hazards. The Supreme Court in *Gateway Coal Co. v. UMW*, 414 U.S. 368 (1974), held that employees can walk off their jobs if they believe the working conditions to be unsafe and if there is "ascertainable, objective evidence" to support their contention that an abnormally dangerous condition exists. *Id.* at 387.

99. See notes 12-15 *supra* and accompanying text.

100. See generally *Public Policy and the Law*, *supra* note 18; Comment, *The Taylor Law, The OCB and the Public Employee*, 35 BROOKLYN L. REV. 214 (1969) [hereinafter cited as *The Taylor Law*].

101. *The Taylor Law*, *supra* note 100, at 218-19.

102. Exec. Order No. 49 (1958). Prior to 1965 the city of New York operated under Executive Order 49 which encouraged city employees to join unions and engage in a form of collective bargaining, but which provided no viable method for resolving collective bargaining disputes.

103. The Municipal Labor Committee is an organization of unions representing city employees. N.Y.C. ADMIN. CODE ch. 54 §§ 1173-3.0(k), 1173-9.0 (1975).

104. See *The Taylor Law*, *supra* note 100, at 218-20.

105. *Id.* at 218.

106. *Id.* at 219.



Another factor that hampers the effectiveness of the Taylor Law to resolve disputes is the rigidity of its impasse procedures.<sup>107</sup> The Taylor Law automatically requires that, upon the finding of an impasse,<sup>108</sup> the first step of the dispute resolution process must be mediation.<sup>109</sup> This step is a prerequisite for the utilization of other finality procedures. The NYCCBL, unlike the Taylor Law, does not automatically require mediation upon the finding of an impasse,<sup>110</sup> nor is it a requirement for the utilization of other finality procedures.<sup>111</sup> Mediation is imposed under the NYCCBL only if the director determines that "collective bargaining negotiations . . . would be aided by mediation."<sup>112</sup> This affords the NYCCBL, unlike the Taylor Law, sufficient flexibility to respond to any situation which may arise.<sup>113</sup>

Time constraints also increase the rigidity of the Taylor Law. The implementation of the various impasse procedures of the Taylor Law are geared to the fiscal year of the employer.<sup>114</sup> Although the implementation of the procedures are somewhat flexible,<sup>115</sup> the fiscal year timetable is generally adhered to. The NYCCBL, however, accords the director and the parties wide latitude<sup>116</sup> with re-

---

107. Theodore Kheel has criticized the inflexibility of the impasse procedures of the Taylor Law during his involvement in the New York City transit negotiations of December 1967. Mr. Kheel has stated:

In the early hours of 1968, within minutes of the expiration date of the contract a transit strike was averted. But the settlement was reached, at least in part, because some aspects of the machinery established by the new [Taylor] law were not used. . . . The Board appointed to resolve the dispute was given broader authority. . . . This flexibility was insisted upon and it proved effective in avoiding a strike. *Id.* at 230 (quoting Kheel, *Report to Speaker Anthony J. Travia on the Taylor Law*, 101 (1968)).

108. Under § 209(1) of the Taylor Law "an impasse may be deemed to exist if the parties fail to achieve agreement at least 120 days prior to the end of the fiscal year of the public employer." (emphasis supplied) N.Y. CIV. SERV. LAW § 209(1) (McKinney 1973). PERB has interpreted this section to mean that the word *may* implies that PERB "is not obligated to conclude that a true impasse exists simply by reason of the advent of the 120-day period." *In re Uniformed Firefighters Ass'n v. City of Mount Vernon*, 11 N.Y. PUB. EMP. REL. BD. ¶ 11-3095, (1978).

109. N.Y. CIV. SERV. LAW § 209(3)(a) (McKinney 1973).

110. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0(b)(2) (1975).

111. *Id.*

112. *Id.*

113. See *The Taylor Law*, *supra* note 100, at 230-31.

114. See, e.g., N.Y. CIV. SERV. LAW §§ 209(1), (3)(c) (McKinney 1973).

115. See, e.g., N.Y. CIV. SERV. LAW § 209(3)(c) (McKinney 1973) which gives PERB the discretion to extend the fact-finding period.

116. The NYCCBL places no time constraints on the mediation or fact-finding process.

spect to the implementation of the impasse procedures, thereby allowing the Office of Collective Bargaining to respond differently to various collective bargaining impasses.

If a dispute is not resolved to the satisfaction of both parties it can be appealed to the Board of Collective Bargaining under the NYCCBL,<sup>117</sup> or to the legislature under the Taylor Law.<sup>118</sup> This final step in the attempt to resolve collective bargaining disputes has caused much debate and concern.<sup>119</sup> The NYCCBL provides that a final determination by the Board of Collective Bargaining shall be final and binding.<sup>120</sup> The Board of Collective Bargaining is an impartial body,<sup>121</sup> whereas under the Taylor Law, the final method for resolving the dispute is a decision rendered by the "legislative body of the government involved."<sup>122</sup>

The effect of the Taylor Law is to place the final decision<sup>123</sup> concerning the terms and conditions of employment into the political arena. Placing the resolution of disputes into a legislative forum allows politicians to dictate the terms and conditions of employment for public employees. Politicians can be viewed as impartial since they have a vested interest in keeping wages low, thereby providing the citizen with services at a low cost. Labor leader Victor Gotbaum argues that the final step in the Taylor Law allows the employer to make the ultimate unilateral decision.<sup>124</sup>

Not only does the Taylor Law provide an ineffective means for

---

N.Y.C. ADMIN. CODE ch. 54 §§ 1173-7.0(b), (c) (1975).

117. *Id.* § 1173-7.0(c)(4)(a).

118. N.Y. CIV. SERV. LAW § 209(3)(e) (McKinney 1973). See notes 47-52 *supra* and accompanying text.

119. Theodore Kheel has said "the legislature should not become a participant in the negotiations; it should limit its role to a consideration of the most effective steps to resolve the dispute, including the possibility of referring the matter to binding arbitration as a last resort." Kheel, *The Taylor Law: A Critical Examination of its Virtues and Defects*, 20 SYRACUSE L. REV. 181, 191 (1969) [hereinafter cited as *The Taylor Law: A Critical Examination*]. Victor Gotbaum has stated that "no serious observer can view the dispute resolution techniques of the [Taylor] Act as anything but a total negation of the concept of collective bargaining." Gotbaum, *Finality in Collective Bargaining Disputes: The New York Experience*, 21 CATH. U. L. REV. 589, 591 (1972) [hereinafter cited as *Finality in Collective Bargaining*].

120. N.Y.C. ADMIN. CODE ch. 54 § 1173-7.0(c)(4)(f) (1975).

121. N.Y.C. CHARTER ch. 54 § 1171 (1976). See also note 67 *supra*.

122. N.Y. CIV. SERV. LAW § 209(3)(e) (McKinney 1973).

123. See notes 47-52 *supra* and accompanying text.

124. *Finality in Collective Bargaining*, *supra* note 119, at 591.

dispute resolution, but in some cases the law provides virtually no effective dispute resolution procedures at all.<sup>125</sup> Teachers have no right to a final and binding decision by either the legislature or by an arbitration panel.<sup>126</sup> The Taylor Law was amended in 1974 so that a final determination of terms and conditions of employment in the event of an impasse during negotiations of a teachers agreement would not be decided by the "legislative body of the government involved."<sup>127</sup> This was amended so that the final decision concerning the negotiations would be removed from the discretion of the school board.<sup>128</sup> Previously, a school board could be involved in the negotiations and then ultimately be the final arbitrator of the agreement. When the Taylor Law was amended to exclude the teachers from legislative review, no alternative procedure was designed to resolve teacher disputes, thereby leaving a void if an impasse is reached.<sup>129</sup> Based on the relative success of the dispute resolution procedures of the NYCCBL, the legislature should enact similar interest arbitration procedures for school teachers.

#### IV. Conclusion

The statistics indicate that during the five-year period between 1975 and 1979 strikes were more prevalent under the Taylor Law than under the NYCCBL. This result may be explained in part by the differing dispute resolution techniques utilized under each law.

If workers are to respect this outside dictation of wages and working conditions, they must perceive the dispute resolution mechanism as equitable. Theodore Kheel has said, "[r]espect and compliance must depend on the apparent and innate fairness of the legal system governing the employment relationship."<sup>130</sup> At this juncture the Taylor Law does not provide the most expeditious and judicious methods for resolving public sector disputes.

---

125. When an impasse is reached during negotiations with teachers the Taylor Law does provide for mediation and fact-finding. N.Y. CIV. SERV. LAW §§ 209(3)(a), (b) (McKinney 1973).

126. *Id.* § 209(3)(f) (McKinney Supp. 1980).

127. *Id.*

128. See *Impasse Resolution in Public Sector Collective Bargaining*, *supra* note 73, at 483-84.

129. In the event an impasse continues, PERB will continue conciliatory efforts through mediation and fact-finding and sometimes will conduct show-cause hearings. Interview with Joseph R. Crowley, former member of PERB, in New York City (Jan. 28, 1981).

130. *The Taylor Law: A Critical Examination*, *supra* note 119, at 184.

What is needed is a flexible method for resolving disputes which culminates in a final and binding decision by a neutral panel. Until this end is achieved, there will continue to be a proliferation of public sector strikes.

*Robert H. Platt*

