The Acceleration and Decline of Discord: Collective Bargaining Impasses in New York State

Anthony Zumbolo
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By Anthony Zumbolo*

I. INTRODUCTION

Social dissonance during the 1960s, as manifest in racial, gender, artistic, and employment upheaval, shaped America’s Cultural Revolution.¹ During this period workplaces experienced an increase in labor management conflict, especially in the public sector. Often, the vanguard striving for one social improvement joined with others to more vividly expose intertwined perceived injustices. One of the most well-known examples of this social fusion was the Memphis sanitation workers strike of 1968.² Dr. Martin Luther King, Jr. lent the vigor of the civil rights movement to the workers in their struggle to overcome deplorable working conditions at the sanitation department in the City of Memphis, Tennessee.³ It was during this strike that Dr. King was assassinated.⁴

Workplace disruption by public employees had become fairly widespread earlier in the decade. Many states addressed the situation with strict prohibitive legislation.⁵ Several states recognized the conflicts as symptoms of cultural injustice that needed to be addressed with progressive solutions rather than prosecution. For example, in 1959

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3. Id.
4. Id.
Wisconsin\textsuperscript{6}, then Connecticut\textsuperscript{7} and Michigan in 1965,\textsuperscript{8} each afforded segments of their public workforce collective bargaining rights. In 1967, New York became the first state to legislatively grant this opportunity to virtually all public employees, regardless of governmental jurisdiction or job classification.\textsuperscript{9} The Public Employees’ Fair Employment Act (commonly called the Taylor Law) allowed public employees to determine if they wished to be represented by a bargaining agent in negotiations.\textsuperscript{10} Subsequently, more than half the states granted similar rights to public employees.\textsuperscript{11}

To stem the rise of disruptive public sector strikes that significantly impacted the lives of thousands of New York State citizens,\textsuperscript{12} the framers of the Taylor Law sought to balance the need for nonstop public services with employee insistence on participation in establishing terms and conditions of employment.

Section 200 of the Taylor Law asserts that:

The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act 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 functions of government.\textsuperscript{13}

The fundamental issue addressed here is whether this public policy objective has been satisfied over the fifty years since the Taylor Law’s guiding principle was established. Also examined is whether strikes and


\textsuperscript{13} Public Employees’ Fair Employment Act (Taylor Law), ch. 392, 1967 N.Y. Sess. Laws 393, 394 (McKinney) (codified as amended at N.Y. CIV. SERV. LAW § 200 (Mckinney 2018)).
workplace discord dissipated, thus prompting more harmonious and cooperative relations between labor and management. Can projections regarding future conflict be developed from the historical data? Finally, an assessment is made regarding whether there is empirical support for the notion that the Taylor Law’s policy goal can be accomplished in the future. This treatise examines the evidence in order to answer these questions.

Turmoil paved the way for passage of the Taylor Law. Post World War II workplaces were fraught with strife. The easing of economic and political restrictions after 1946 gave rise to increased worker unrest.\textsuperscript{14} Public employees were not timid in their efforts to improve terms and conditions of employment after years of wartime suppression. As an illustration, between 1920 and 1943 there were thirteen public school teachers strikes nationwide,\textsuperscript{15} whereas between February 1946 and May 1947 there were twenty-nine.\textsuperscript{16} Beginning on February 24, 1947, twenty-four hundred schoolteachers in Buffalo, New York engaged in a week-long strike.\textsuperscript{17} In March 1947, New York’s Condon-Wadlin Law was enacted as an antistrike measure.\textsuperscript{18} The statute included severe penalties for public employees that engaged in work stoppages.\textsuperscript{19}

Condon-Wadlin remained in place for nearly twenty years with disparate enforcement applied to more than twenty-one strikes or job actions that occurred during that period.\textsuperscript{20} Disruptions tapered off for awhile but the decade of the 1960s brought renewed vigor to workplace unrest. New York City schoolteachers conducted a one-day strike in November 1960 and again in 1962.\textsuperscript{21} Also in 1962, two thousand New York City motor vehicle operators engaged in a work stoppage.\textsuperscript{22} A one-day wildcat strike by 648 New York ferryboat workers occurred in 1964\textsuperscript{23} and in January 1965, six thousand New York City welfare workers struck for twenty-eight days.\textsuperscript{24} Subsequently, the New York City Transit Workers Union rang in the new year in 1966 by shutting down the entire

\begin{footnotesize}
\begin{itemize}
\item 15. Id. at 2.
\item 16. Id.
\item 17. See id. at 3-4.
\item 18. Id. at 3, 5.
\item 21. Id. at 6.
\item 22. DONOVAN, supra note 14, at 6.
\item 23. Rozensweig, supra note 20, at 6.
\item 24. Id. at 3.
\end{itemize}
\end{footnotesize}
transit system for twelve days.\textsuperscript{25} The relative tranquility that shrouded public employment in New York during the 1950s\textsuperscript{26} quickly gave way to a tumultuous period that lasted for over fifteen years.

On January 15, 1966, just days after the transit workers strike ended, Governor Nelson Rockefeller appointed the Committee on Public Employee Relations, "to make legislative proposals for protecting the public against the disruption of vital public services by illegal strikes, while at the same time protecting the rights of public employees."\textsuperscript{27} The committee’s recommendations, issued on March 31, 1966,\textsuperscript{28} became the cornerstone of the Taylor Law. The committee recommended that: the Condon-Wadlin strike prohibition be continued;\textsuperscript{29} public employees have the right to organize and be represented by an agent of their choosing;\textsuperscript{30} public employers must collectively negotiate;\textsuperscript{31} and a dispute resolution system be designed to assist employee organizations and employers if they are unable to reach agreement by direct negotiations.\textsuperscript{32} Sections 9 and 10 of the 1966 report endorsed the dispute resolution procedures of mediation\textsuperscript{33}, fact-finding\textsuperscript{34}, and, "In the event of the rejection of a fact-finding board's recommendations... the appropriate State or local legislative body (or committee) should hold a form of 'show cause hearing'... prior to final legislative action."\textsuperscript{35} The Committee’s recommendations for impasse procedures became the Taylor Law’s impasse procedures, codified in Section 209 - Resolution of Disputes in the Course of Collective Negotiations.\textsuperscript{36}

II. FROM FRAMEWORK TO PRACTICE

The impasse resolution procedures of Section 209 have been amended and modified several times,\textsuperscript{37} however, mediation as the initial intervention has remained unaltered.\textsuperscript{38} The procedures that follow

\begin{itemize}
  \item 25. DONOVAN, supra note 14, at 19.
  \item 26. Id. at 20.
  \item 27. Id. at 23.
  \item 28. STATE OF NEW YORK, GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS, FINAL REPORT 1 (1966) [hereinafter TAYLOR COMMITTEE REPORT].
  \item 29. Id. at 6.
  \item 30. Id. at 6, 12.
  \item 31. Id. at 12.
  \item 32. See id. at 6-7, 22.
  \item 33. Id. at 7.
  \item 34. Id. at 8.
  \item 35. Id.
  \item 36. See N.Y. CIV. SERV. LAW § 209 (McKinney 2018).
  \item 37. DONOVAN, supra note 14, at 212-13.
  \item 38. See Harold Newman, The Neutral-The Catalyst In Resolving Disputes, N.Y.S. PUB. EMP.
mediation when it fails to lead parties to agreement have been revised. Two major modifications to the impasse resolution procedures occurred in 1974, both eliminating the ability of a legislative body to alter terms and conditions of employment. In educational jurisdictions the right to impose contract terms after the rejection of fact-finding recommendations was abolished. This impacted the greatest number of public employees in the state because, when combined, school districts and other educational organizations employ the most civil servants. As a result, bargaining between school districts and their employees continues until a new agreement is negotiated. The restriction of authority for other legislative bodies to change working conditions without employee organization agreement occurred when the state enacted compulsory binding interest arbitration of contract terms for units of public safety personnel, primarily police and firefighters. When mediation fails to produce a settlement in police and fire negotiations, a tri-partite panel of arbitrators establishes wages and benefits.

Criticism of compulsory interest arbitration produced a 2013 statutory amendment to the Taylor Law impasse procedure requiring greater attention be afforded to fiscal consequences of awards, especially in regard to fiscally eligible municipalities. Fiscally eligible municipalities are identified by the State Comptroller as those having an average full value property tax rate in the highest 25% of all municipalities and an average fund balance of less than 5%. Scope, implementation, procedural and other provisions necessary to define the impact of these substantive modifications constitute the entirety of the legislative adjustment to the Taylor Law’s Resolution of Disputes in the Course of

39. DONOVAN, supra note 14, at 200.
40. See id.
44. See N.Y. CIV. SERV. LAW § 209(2) (Mckinney 1967); Memorandum of Senator Norman J. Levy, in NEW YORK STATE LEGISLATURE ANNUAL 52 (1974).
45. See CIV. SERV. LAW § 209(2).
47. See id.
48. See N.Y. LOCAL FIN. LAW § 160.05(2)(A) (McKinney 1942).
Collective Negotiations article.\textsuperscript{49}

In addition to statutory changes over the years, the Taylor Law impasse procedures have been altered through policy and administrative action.\textsuperscript{50} These changes have been influenced by research into best practices, economics, and demographics, as well as geographic and political considerations.\textsuperscript{51} For example, beginning in 1967 mediation and, when necessary, fact-finding services were delivered by different individuals.\textsuperscript{52} However, the frail economy of the mid and late 1970s offered Chairman Harold Newman the opportunity to combine the two dispute resolution assignments so that the same individual would perform both functions.\textsuperscript{53} He sanctioned Byron Yaffe's observation that, "several factors inhibit the fact finder's ability to ascertain all relevant facts which are necessary to formulate an acceptable and workable solution to a public employment dispute."\textsuperscript{54} Chairman Newman strongly supported the notion that mediation was the most effective aid to settlement.\textsuperscript{55} He believed it offered the best means of providing the negotiating parties with the tools to resolve their dispute\textsuperscript{56} and that public fact-finding recommendations should be offered as a means of effectuating a voluntary settlement, not as judicial dictum.\textsuperscript{57} During mediation, the mediator/fact finder could direct the parties toward a settlement with verbal communication and if fact-finding is necessary, written recommendations.\textsuperscript{58}

III. WHAT OCCURRED

Since September 1967, PERB has assisted public employers and the

\textsuperscript{49} See CIV. SERV. LAW § 209.
\textsuperscript{50} See Platt, supra note 19, at 1041-45.
\textsuperscript{52} See Platt, supra note 19, at 1041.
\textsuperscript{56} See Newman, supra note 55, at 239.
\textsuperscript{57} See Newman, supra note 55, at 239; Robert G. Howlett, Comment, Fact-Finding: Its Values and Limitations, in ARBITRATION AND THE EXPANDING ROLE OF NEUTRALS, 175-182 (1970) (discussing the importance of fact-finding recommendations, but noting that they have no legal basis in relevant statutes and are not binding on the parties).
\textsuperscript{58} See Newman, supra note 55, at 242-44 (noting that a fact finder publishes a written report, and, in necessary situations, mediates between the parties).
organizations that represent their employees in negotiating collective bargaining agreements. The parties are free to establish their own resolution procedures, however, absent such an agreed upon process, the Taylor Law defines a statutorily mandated conciliation course of action. Upon mutual or unilateral request of both or either party, PERB determines if an impasse exists when a Declaration of Impasse is filed. PERB may also make such a determination on its own if it discovers that the parties are having difficulty reaching agreement.

Once a determination has been made that an impasse in negotiations exists, the Director of Conciliation assigns a mediator or mediator/fact finder to assist the parties in the bargaining process. The mediator does not have the authority to impose settlement terms, but may facilitate discussions, address issues of miscommunication, provide general collective bargaining information and rely on the power of persuasion to lead the parties toward an agreement. If mediation is unsuccessful, alternative resolution methods are used depending on the classification of employees and the type of employer. For public safety and a few other bargaining units, a tripartite interest arbitration panel can be appointed to award terms and conditions of employment that are binding on the parties. In educational institutions, a fact finder or mediator/fact finder may issue recommendations for settlement after accepting documents and/or hearing testimony from each party in support of its position. All other bargaining situations require the local legislative body to conduct a hearing into the dispute, address the fact-finding recommendations and, “take such action as it deems to be in the public interest, including the interest of the public employees involved.” However, “It shall be an improper practice for a public employer or its agents deliberately . . . to refuse to continue all the terms of an expired agreement until a new

60. N.Y. CIV. SERV. LAW § 209(2) (McKinney 2016).
61. N.Y. CIV. SERV. LAW §§ 209(4)-(4a).
62. N.Y. CIV. SERV. LAW § 209.2 (McKinney 1967); Platt, supra note 19, at 1045.
63. N.Y. CIV. SERV. LAW § 209.1; Platt, supra note 19, at 1045.
64. N.Y. CIV. SERV. LAW § 209.3; Platt, supra note 19, at 1045.
66. Platt, supra note 19, at 1042.
69. N.Y. CIV. SERV. LAW § 209.3(e)(ii)-(iv).
70. N.Y. CIV. SERV. LAW § 209.3(e)(iv).
agreement is negotiated. . .\textsuperscript{71}

Public sector collective bargaining discord is considered to be a breakdown in negotiations that requires third-party intervention by PERB, regardless of whether a strike ensues.\textsuperscript{72} Since strikes were depicted as a driving force for enactment of the Taylor Law,\textsuperscript{73} they will be one of two measures utilized to illustrate the level of bargaining discord in New York over the past fifty years. The number of strike charges filed since the enactment of the Taylor Law is shown in Figure 1. The PERB News, its Statistical Yearbook, and the Office of Conciliation are the sources of the data for strikes and impasses. The annual reporting periods were January through December until 1977, then New York State's fiscal year, April through March, thereafter.\textsuperscript{74}

\textbf{Figure 1}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure1.png}
\caption{New York Public Employee Work Stoppages}
\end{figure}

The other, and arguably a better gauge of conflict, will be the number of contract impasses that PERB reported in each of those years. Impasses rather than strikes more accurately reflect dissatisfaction with terms and conditions of employment because the penalties for striking in

\textsuperscript{71} N.Y. CIV. SERV. LAW § 209.3(e)(iv); N.Y. CIV. SERV. LAW § 209-a.1(e) (McKinney 1969) (amended 2018).
\textsuperscript{72} See N.Y. CIV. SERV. LAW §§ 209.1, 209.3; See also Gershenfeld, supra note 67, at 16-17.
\textsuperscript{73} DONOVAN, supra note 14, at 20, 23.
\textsuperscript{74} See The Budget Process: Overview, N.Y. STATE DIVISION OF THE BUDGET, https://www.budget.ny.gov/citizen/process/process.html (last visited Nov. 27, 2018) ("The State's Fiscal year begins April 1 and end on March 31.")
New York deter all but the most distressed employees from engaging in such activity. Therefore, the number of impasses presents a more complete set of negotiations that experience discord. Figure 2 charts the number of impasses processed by PERB’s Office of Conciliation during each year since 1967.

**Figure 2**

![Graph of New York Public Employee Impasses](image)

To compare the fifty-year trends of impasses and strikes they have been plotted together in Figure 3. So that both measures are adequately displayed, the annual number of impasses was scaled back by a factor of 10. Not surprisingly, the picture illustrates corresponding increases and decreases in impasses and strikes. Impasse and strike activity is not in lockstep for individual years, mostly because impasses are counted in the year in which the Declaration of Impasse is received and a strike charge is recorded on the date it is docketed. Typically, impasses are reported in one year and a strike, if one occurs in those negotiations, does not take place until the subsequent reporting year.

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Figure 3

The illustration depicts the rise and fall of impasse and strike activity during the life of the Taylor Law but offers no insight into what may cause such disputes. A number of scholars, including Henry Farber, Babcock and Loewenstein, Babcock and Olson, have offered views regarding bargaining theory and what causes an impasse in labor relations negotiations. Thomas Kochan and Todd Gick presented the theory that public sector bargaining is, "affected by economic, political, legal, structural, organizational, interpersonal, and personal forces." Impasses may arise from one or any combination of these forces as well as from the parties' behavior in negotiations.

80. Id. at 213.
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Have any of these forces impacted the level of bargaining conflict in New York since 1967? The personal, interpersonal, behavioral and organizational elements are unique to each set of negotiations. These distinctive characteristics certainly contribute to whether an impasse is declared or a strike occurs.\textsuperscript{81} Unfortunately, no matter how big an impact these situational characteristics may play in causing an impasse, they cannot be adequately measured to apply to this aggregate trend analysis.\textsuperscript{82}

External factors can be identified and they help explain the trends.\textsuperscript{83} The economic expansion of the 1950s prompted workers in both the private and public sectors to seek a more equal share of prosperity through social action.\textsuperscript{84} In New York, the most direct political and legal impact on collective bargaining was Governor Rockefeller’s enactment of the Taylor Law.\textsuperscript{85} Immediately following the implementation of the statute, impasses and strikes began climbing.\textsuperscript{86} The largest number of Taylor Law strikes (33) and impasses (972) occurred in 1975.\textsuperscript{87} Both strikes and impasses have trended downward ever since, with the fewest impasses declared in 2017 (190).\textsuperscript{88} Other changes to the law over the last 50 years that likely impacted impasses and strikes were: the Triborough Doctrine (1972 Board decision),\textsuperscript{89} which limited a public employer’s ability to unilaterally make changes in terms and conditions of employment;\textsuperscript{90} statutory amendments to the impasse procedures that abolished the legislative hearing in educational jurisdictions,\textsuperscript{91} and replaced the hearing with compulsory interest arbitration for police and firefighter bargaining units (1974);\textsuperscript{92} enactment of the Triborough Amendment (1982)\textsuperscript{93} making it illegal for an employer to unilaterally change any term of an expired agreement until a new agreement is negotiated; and amendments to


\textsuperscript{82} Id. at 442.

\textsuperscript{83} Eddie W. Bankston, Value Differences Between Attorney and Economist Labor Arbitrators, in INDUSTRIAL RELATIONS RESEARCH ASSOCIATION: PROCEEDINGS OF THE TWENTY-NINTH ANNUAL WINTER MEETING 151, 152 (James L. Stern & Barbara D. Dennis eds. 1976).

\textsuperscript{84} See supra Introduction Section.

\textsuperscript{85} See DONOVAN, supra note 14, at 52-53.

\textsuperscript{86} See DONOVAN, supra note 14, at 53.

\textsuperscript{87} 1975: Negotiating Experience: Of 972 Impasses brought to PERB, 10 N.Y. STATE PERB NEWS, no. 3, March 1977.

\textsuperscript{88} Correspondence from and interviews with New York State Public Employment Relations Board, Office of Conciliation. (NYS PERB Conciliation, 2018).

\textsuperscript{89} Triborough Bridge & Tunnel Auth., 5 PERB 3037 (1972).

\textsuperscript{90} Id. at *2.

\textsuperscript{91} N.Y. CIV. SERV. LAW § 209.3(f) (McKinney 1969) (amended 2018).

\textsuperscript{92} N.Y. CIV. SERV. LAW § 209.2.

\textsuperscript{93} N.Y. CIV. SERV. LAW § 209-a.1(e).
constrain interest arbitration panels when fiscally eligible municipalities are involved in the negotiations (2013).94

Showing these legal milestones, along with the impasse and strike trends, in Figure 4 helps illustrate how negotiations conflict was impacted by these changes to the law. Two additional actions are included on the chart to highlight significant political and legal events affecting contract negotiations in New York, even though they did not modify the Taylor Law directly. First, it is widely believed that the termination of striking air traffic controllers by President Reagan in 1981 had the political impact of dramatically dispiriting private and public sector employees' enthusiasm to engage in work stoppages.95 Second, the 2011 enactment of a 2% property tax cap in New York has buttressed the demand for tempered wage adjustments in negotiations.96

Figure 4

![Graph showing New York Public Employee Impasse & Strike Trends]

94. N.Y. CIV. SERV. LAW §§ 209.4a., 209.6(a)-(f).
Going forward, strikes have been omitted from the charts. There are several reasons for this: 1) to make comprehension of the illustrations clearer; 2) impasses likely are a better measure of workplace conflict than strikes because the sway of strike penalties is omitted; 3) the framers of the Taylor Law saw the dispute resolution procedures as a substitute for engaging in an illegal strike; 4) declaring an impasse is the first indication of conflict; 5) the dearth of strikes for all but the first 15 years of the period makes the measure less significant over time; and 6) the strike trend line mirrors that of impasses.

Economic factors frequently affect collective bargaining and subsequent strife. Three economic variables regularly identified as impacting bargaining and conflict are: general economic well being, cost of living, and supply and demand of labor. To examine the influence of these variables on impasses, the following measures are used: annual change in Gross Domestic Product (GDP) describes general economic wellbeing; cost of living is measured by the annual unit change in the consumer price index (CPI) from year-to-year in the Northeast (not the percentage change from the previous year, which is another common measure); and annual unemployment rates portray the supply and demand of labor. Figure 5 superimposes the history of impasses (in 100s) under the Taylor Law on measures of national GDP, the Northeast’s CPI, and the unemployment rate in New York State.

The information shown here supports a common theory regarding the relationship between the economy and union efforts. Generally, when the economy is faltering and unemployment is high, conflict at the bargaining table increases. However, when the economy is doing well and unemployment is low, employers tend to accommodate employee

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100. See U.S. DEPT OF LAB., BUREAU OF LAB. STATISTICS, ISSUES IN LABOR STATISTICS: LABOR SUPPLY IN A TIGHT LABOR MARKET (June 2000).
101. See N.Y. STATE PERB NEWS, supra note 87.
Since 1967 there have been six recessions evidenced by falling GDP and rising unemployment. Figure 5 shows that Taylor Law impasses increased during the hard times experienced in 1970, 1974-75, 1980-82, 1991-92, 2001, and 2008-09. During most of these recessions, increasing CPI compounded the misery resulting from the GDP and unemployment damage. Conversely, during the periods of economic expansion experienced after the recessions, impasses in New York’s public sector fell. The two most obvious examples of this are the decade of the 1990s and the years following the Great Recession of 2008-09. After the 1991-92 recession, a prolonged period of recovery brought with it fewer annual impasses each year, except in 1996, until impasses began increasing with the 2001 downturn in the economy. Then, beginning in 2011, with the worst economic conditions since the Depression waning, impasses began falling to an all-time low.

109. Id.
110. See id.
What’s Next

Recognizing the role that historical social, political, legal and economic events played in influencing collective bargaining conflict in New York, can any predictions be made concerning the number of impasses that PERB might expect over the next five years? It is widely recognized that establishment of the legal right for public employees to collectively bargain is closely related to the level of public sector bargaining leading to negotiations and potential disagreement. The enactment of the Taylor Law prompted an explosion in the number of public sector contract negotiations. Along with the increase in bargaining came conflict, measured in impasses and strikes, especially

112. KEARNEY, supra note 99, at 2.
during the first decade of the statute’s existence.\textsuperscript{114} Over the past 50 years, nearly all public sector employees that can legally be organized into bargaining units in New York are now covered by a collective bargaining agreement.\textsuperscript{115}

One legal change that could have a significant downward impact would be the abolition or severe restriction on the right of these employees to bargain. Such precedent was set in 2011 when Wisconsin upended its law of more than 50 years that endorsed public sector unionization.\textsuperscript{116} The impact was stunning, “no state has lost more of its labor union identity since 2011 . . . Union members made up 14.2% of workers before Act 10, but just 8.3% in 2015.”\textsuperscript{117} The fewer union members were mostly teachers and other public workers.\textsuperscript{118}

In the last ten years, other states have also legislated workplace changes, such as restrictions on who can negotiate or what can be bargained and right-to-work laws that adversely affect union membership.\textsuperscript{119} The U.S. Supreme Court ruling in \textit{Janus v. AFSCME} prohibits unions in the public sector from collecting representation fees from nonmembers who object to paying for services.\textsuperscript{120} It is unclear what, if any, impact this ruling will have on the number of impasses filed under the Taylor Law, which was amended in 1982 to require that representation fees be paid by all members of bargaining units.\textsuperscript{121} If the ruling results in fewer bargaining units engaged in negotiations, impasses may decline because there would be less opportunity for deadlocks to occur. Alternatively, an increase in workplace militancy may be the union’s reaction, thus leading to an increase in impasse activity. Another potential source for an upswing in impasses would be enactment of reactionary legislation abandoning bargaining agent exclusivity, which would lead to more than one bargaining agent for a unit of employees, creating more opportunity for negotiations to result in impasse. It is also

\textsuperscript{114} \textit{Id.}, at 2.
\textsuperscript{118} \textit{Id.}
\textsuperscript{121} See generally N.Y. CIV. SERV. LAW § 208(3)(a-b) (1967).
conceivable that the Supreme Court’s decision will have no effect on the number of impasses filed in New York.

It is impossible to forecast what will be legislated or imposed, however, the retrenchment on bargaining rights during the current decade portends change in New York. This is particularly true since two of the latest New York legislative actions affecting negotiations under the Taylor Law, i.e., the 2% property tax cap[122] and considerations for fiscally eligible municipalities[123] have imposed conditions on bargaining. Correspondingly, impasses have declined steadily since 2012 when the tax cap became effective.[124] Another more restrictive tax cap law could potentially change the bargaining landscape yet again. The fiscally eligible municipalities’ legislation appears to have had little impact on impasses.[125] History indicates that additional constraints on bargaining would likely continue to hold impasses in check.

Each set of negotiations has distinct characteristics that help determine whether an impasse may result.[126] For example, animosity between negotiators may predetermine impasse[127] or maybe long-standing practices of tolerance and cooperation throughout an organization may preordain settlement.[128] Regardless of how important these situational factors may be, as well as others such as negotiator conduct, interpersonal, behavioral, and organizational traits, they cannot be measured to predict future unrest. This leaves the economic variables to help predict future impasses.

Historical GDP, CPI, and unemployment trend data have tracked the impasse trend quite closely and there is no reason to believe the future will be any different, unless momentous social, political and/or legal disruptions occur.[129] If relatively constant values for each of these economic variables are assumed over the next five years, impasses can be expected to remain steady or continue to decline.

However, it is expected that the economy will become sluggish[130] and unemployment in New York will tick upward, thus causing

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122. N.Y. TAX CAP Ch. 97 Pt. A § 1 (McKinney 2011)
123. N.Y. CIV. SERV. LAW 209.4-a, 6.
125. NYS PERB Conciliation, 2018.
126. Kochan, supra note 79, at 213.
128. KEARNEY, supra note 99, at 145.
129. Chandler, supra note 127, at 151.
negotiation conflict to reverse the current trend. Now that there has been nearly ten years of economic improvement since the 2008-09 recession\textsuperscript{131}, business cycle theory suggests a recession looms\textsuperscript{132}, which would bring with it an increase in bargaining conflict. Using different methods of analysis, the International Monetary Fund (IMF),\textsuperscript{133} Guggenheim Investments,\textsuperscript{134} and New York Times economic reporter Eduardo Porter,\textsuperscript{135} conclude that the economy is ripe for a recession. After examining economic conditions surrounding ten worldwide financial crises going back centuries, the IMF report posits that the current situation in America exhibits many of the same characteristics as past misfortunes.\textsuperscript{136} Guggenheim Investments relies on six economic indicators to calculate that the next recession will begin in late 2019 to early 2020.\textsuperscript{137} Today’s American political enthusiasm for business deregulation and the historical consequences of such action is the basis for Porter’s prediction.\textsuperscript{138} A 2019-20 recession would likely produce a pattern of bargaining strife akin to that of 1991-92. A concurrent spike in inflation would boost the likelihood that impasses will grow.

Multivariate regression using the values for GDP, CPI, and unemployment presented in Figure 5 as independent variables provides an estimate of impasses over the next five years.\textsuperscript{139} The model assumes that a modest recession with small decreases in GDP and increasing unemployment will set in for two years beginning in 2019, followed by a very modest recovery. The results are presented in Figure 6. The chart depicts rising impasse activity as GDP falls, unemployment rises and recession creeps in. The illustrated impasse trend line is quite illuminating.


\textsuperscript{134} GUGGENHEIM INV.S., \textit{supra} note 132, at 2.


\textsuperscript{136} Dagher, \textit{supra} note 133, at 43-44, 48-49.

\textsuperscript{137} GUGGENHEIM INV.S., \textit{supra} note 132, at 2.

\textsuperscript{138} See Porter, \textit{supra} note 136.

\textsuperscript{139} FRED N. KERLINGER, \textbf{FOUNDATIONS OF BEHAVIORAL RESEARCH} 531-36 (3rd ed. 1986).
Conclusion

The Taylor Law was born from the social, political, and economic unrest of the 1960s. During this time period, public employee strikes challenged the existing laws governing employee relations in New York. The flawed Condon-Wadlin Act was replaced by the Taylor Law, which protects the right of public employees to collectively bargain with their employers, while retaining the prohibition on strikes. A negotiations dispute resolution procedure was included in the law offering employees a process to settle contracts without resorting to strikes. The statute and dispute resolution system immediately underwent a baptism by fire as impasses and strikes escalated until 1975 and then steadily declined until today.

Three sources of impasses and strikes are political and legal actions, situational characteristics, and economic conditions. Without a legal foundation for public sector collective bargaining, few contracts are negotiated, so there are limited opportunities to bargain to impasse.

140. See supra note 12.  
141. See supra notes 17-25.  
142. Id.  
143. See supra note 32.  
144. See supra Figure 3.  
145. Kochan, supra note 79, at 433.
Enactment of the Taylor Law vastly expanded the possibility for negotiations to result in impasse, and a large proportion did, because every public employer was open to an obligation to bargain.\textsuperscript{146} Similar statutory frameworks in other states produced like results.\textsuperscript{147} After the first ten years of testing the law and PERB’s administration of it, the impact of the legislation began to give way to the influence of situational and economic factors.\textsuperscript{148}

After 1975, the number of impasses may well have become more dependent on the immediate climate in which individual negotiations were conducted. Negotiators challenging each other’s skills and attempts to exploit organizational weaknesses likely exerted greater pressure on negotiations. As bargaining relationships became more mature over time, much of the testing was completed and parties became more comfortable with each other and the process.\textsuperscript{149} Harold Newman, then chairman of the PERB, observed that “the Taylor Law create[d] a positive labor relations environment in the public sector of New York that did not exist before 1967.” \textsuperscript{150} PERB, especially its Office of Conciliation, have played a role in the parties’ maturation that has led to less dissension. Over the years, PERB’s mediators and fact finders adapted their approaches to help parties resolve their disputes.\textsuperscript{151} As they worked with negotiating committees they provided them with tools to help avoid impasses.\textsuperscript{152} These PERB conciliation efforts undoubtedly influenced the downward trend in impasses and strikes.

Consequently, the third source of impasse, economic factors, probably has become the most important element in determining impasse activity. The number of Taylor Law impasses increased during periods of recession and declined as the economy recovered.\textsuperscript{153} Future impasse activity is apt to mirror future GDP, CPI, and unemployment indicators.\textsuperscript{154} This assessment may be altered dramatically if a major political, legislative, or judicial intrusion into New York’s collective bargaining stasis occurs. In that case the crystal ball used for this prognostication becomes very cloudy.

So, has the Taylor Law’s policy prescription to, “promote harmonious and cooperative relationships between government and its

\textsuperscript{146} Id. at 434.
\textsuperscript{147} Id. at 448.
\textsuperscript{148} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id. at 3.
\textsuperscript{153} Id. at 4.
\textsuperscript{154} See supra Figure 5.
employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government”155 been realized over the past 50 years? The data shows that for at least the last thirty years government operations and functions have continued without interruption by strikes, with very few exceptions.156 After about fifteen years of robust strike activity immediately following enactment of the statute, strikes under the Taylor Law have become almost nonexistent.157 A similar pattern for impasse declarations has occurred.158

The economic tools utilized to examine the historical data offer the opportunity to assess the level of workplace discord expected in the next five years. Predictions for a downturn in the economy entering the next decade produce a model that suggests an increase in the number of impasses.159 However, no factors indicate that the number of impasses will climb above that which existed at any other time during this century. Moreover, it is likely that strike activity will remain absent or modest because, “public employees and their unions know that the public is not all that sympathetic toward public sector strikes.”160 In conclusion, the empirical evidence indicates that for the past fifty years the Taylor Law has fulfilled its public policy mandate and it can be expected to do so into the future. Perhaps PERB’s first Chairman, Robert Helsby, may have been somewhat prophetic when he optimistically quoted from Sir William Gilbert’s Iolanthe, “The law’s the true embodiment of everything that’s excellent; it has no fault, it has no flaw. . . .”161

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155. N.Y. CIV. SERV. LAW § 200 (McKinney 1967).
156. See supra Figure 1.
157. Id.
158. See supra Figure 2.
159. See supra Figure 6.
160. Doherty, supra note 75, at 298.
Appendix

Table 1: Strikes and Impasses Under the Taylor Law

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<tr>
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162. PERB by the Numbers, supra note 111.
Table 2: Economic Factors Influencing Negotiations

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