

The Taylor Law **(at a glance)**

Q: What is the Taylor Law?

A: The Taylor Law (Article 14 of the Civil Service Law) is a comprehensive labor relations statute covering all public employees in New York State. It became effective in 1967 and does the following:

1. grants public employees the right to organize and be represented by a union of their choice, or to refrain therefrom;
2. requires public employers to negotiate with such unions concerning terms and conditions of employment of employees;
3. establishes impasse procedures for the resolution of disputes in negotiations;
4. defines and prohibits improper practices by unions and public employers;
5. prohibits strikes.

Q: What is a strike?

A: The Taylor Law defines a strike as "any strike or other concerted stoppage of work or slowdown by public employees." The Board has found sick-outs, slowdowns, a refusal to work regularly scheduled overtime, concerted high absenteeism, sometimes called the "blue flu," "work-to-rule" tactics, and teachers' refusals to participate in field trips, faculty meetings, and parent-teacher conferences, all to be unlawful strikes in the particular circumstances presented in each case.

Q: What is the penalty for striking?

A: A public employee whose employer determines that he or she has unlawfully engaged in or consented to a strike is liable to have deducted from his or her compensation an amount equal to twice his or her daily rate of pay for each day or part of a day that it is determined that the employee violated Civil Service Law Section 210. This penalty is often referred to as the "two-for-one" penalty. In addition, an employee who unlawfully strikes may be subject to removal or other disciplinary action provided by law for misconduct. The public employer makes the strike determination and imposes these strike penalties.

A public employee union that violates Civil Service Law Section 210 is liable to forfeit its right to have the public employer deduct membership dues and agency shop fees from the compensation of employees in the bargaining unit that union represents. PERB makes the strike determination and imposes any strike penalty in regard to unions.

Q: Our contract negotiations have stalled. How do we obtain the services of a mediator from PERB?

A: Either the public employer, or the employee organization, or both jointly, may file an original and three copies of a Declaration of Impasse with the Director of Conciliation. PERB maintains a form for this purpose. The Declaration of Impasse must contain all the information specified in Section 205.1(b) of PERB's Rules of Procedure. A detailed description of the negotiating history of the dispute is especially important. Assuming the information submitted is complete and sufficient, the Director will assign a mediator to the negotiations.

Q: Who will be assigned as the mediator?

A: The mediator will either be a member of PERB's full-time staff of professional mediators, or a member of PERB's *ad hoc* panel of independent, professional neutrals.

Q: Can we request that a specific mediator be assigned to our impasse?

A: Yes, provided that it is in the form of a *joint* request from the appropriate employee organization and public employer representatives. In such case, either a particular staff mediator or panel mediator may be requested, and will be assigned if workload, availability and budget so allow. The Director must be advised of the joint request either prior to, or simultaneous with, the filing of the Declaration of Impasse. In no instance will the Director assign a requested neutral if it is a one-sided request.

Q: Can the mediator require the parties to agree on any contract term(s)?

A: No. The mediator's function is to assist the parties in reaching their own voluntary agreement. The mediator will seek to do so through his or her own creativity, expertise, problem-solving and consensus-building skills.

Q: What happens if mediation does not result in a contract being reached?

A: Generally, in the case of all bargaining units other than police, fire fighters, troopers, state agency law enforcement services officers, state correctional services security services personnel, criminal law enforcement deputy sheriffs, and certain transit employees, if either party, or both, feels that further mediation efforts will not bring about an agreement, the party(ies) may so inform the Director of Conciliation, in writing, and request the assignment of a fact finder.

Q: What does a fact finder do?

A: A fact finder inquires into the causes and circumstances of the impasse, along with the positions being advanced by the parties on the disputed issues, through oral and/or written testimony, exhibits, briefs, etc. The fact finder may hold a hearing to receive such evidence. If deemed appropriate, the fact finder may conduct a limited amount of mediation during the course of his or her assignment.

Q: Can the fact finder require the parties to agree on contract terms?

A: No. The fact finder is empowered only to make public recommendations for resolving the impasse. Either party is free to accept or reject the fact finder's report and

recommendations, in whole or in part. The report and recommendations are made public five days after their transmission to the parties.

Q: One or both parties did not accept the fact finder's recommendations. Does PERB provide any further impasse resolution assistance?

A: The Director has discretion to authorize appointment of a conciliator to provide additional mediation after issuance of the fact finder's report, but prior to any imposition of employment terms by the public employer's legislative body. The Director is more likely to provide such assistance in the case of bargaining units in educational institutions like school districts, BOCES and community colleges, because under the Taylor Law, those impasses cannot culminate in a legislative imposition, and hence lack a mechanism to provide finality. The Director will generally require that the parties have attempted to voluntarily negotiate on the basis of the fact finder's report before assigning a conciliator. The conciliator may be one of PERB's full-time staff mediators, or a member of its *ad hoc* panel. Conciliation requests should be in writing. Again, joint requests that a particular individual be appointed will be honored consistent with workload, availability and budget.

Q: What is Triborough?

In 1982, the state legislature passed the Triborough Amendment to the Taylor Law. Before the enactment of the law, public employers were free to unilaterally diminish benefits as contracts expired. Many school districts ceased to honor clauses they disliked in expired teacher union contracts, which led many locals to strike. The Triborough Amendment required school districts to honor the entire contract until a new agreement was reached, and the number of strikes fell drastically. Employees' organizations can violate Section 210(1) of the Taylor Law by striking or instigating, encouraging or condoning a strike.