

Money Talks/Ed Law Negotiations October 10, 2025

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About the Taylor law (Civil Service Law Article XIV)

- Requires public employers to negotiate with unions concerning terms and conditions of employment but there is no duty to negotiate non-mandatory subjects
- Establishes impasse procedures for the resolution of disputes in negotiations. If negotiations fail, the parties must submit to mediation and if mediation fails to fact finding.
- There is no finality mechanism should fact finding not enable a settlement, unlike interest arbitration which applies to police and fire negotiations.
- Defines and prohibits improper practices by unions and public employees. Most prominently the failure to negotiate in good faith or charges when management makes unnegotiated unilateral changes.
- See Civil Service Law §§ 209-a.1(d) and 209-a(2)(b)
- Prohibits strike and imposes individual penalties of 2 days' loss of pay for each day of strike activity.

The Parties to the Negotiations

- **Superintendent of Schools**: Chief Executive Officer with authority to execute collectively negotiated agreement on behalf of the District. (Civil Service Law § 201[10]) Essentially the “bargaining representative”, but cannot bind the District to the expenditure of additional money.
- **Board of Education**: “Legislative Body” charged with the duty of approving any additional monies necessary to fund the provisions of a successor collectively negotiated agreement. (Civil Service Law § 204-a)
- **Union/Employee Organization**: Union has the authority to execute a collectively negotiated agreement on behalf of the employees in its bargaining unit. (Civil Service Law § 201(5))

Obligations of the Negotiating Team

- Each side has the right to select who it wishes to represent it at the table. A party may not refuse to negotiate because it objects to the designation of the representative for the other party.
- If agreements reached by the negotiating team are subject to ratification, the negotiators have an affirmative obligation to recommend the agreement to their constituencies unless the other party has been advised that the member has dissented from that part of the agreement.
- The failure of the union negotiating team to bring a memorandum of agreement before its membership for a ratification vote will result in PERB ordering the parties to execute the contract.

Negotiation Over Terms and Conditions of Employment

- The parties must negotiate in good faith on mandatory subjects of negotiation. See Civil Service Law, Sections 204, 209-a.1(d); 209-a.2(b).
- There is a mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment.
- While reasonable efforts must be made by the parties to resolve differences, there is no duty to agree to any particular proposal. See, Lynbrook PBA, 10 PERB ¶ 3067 (1977).

Subjects of Bargaining

- **Under the Taylor Law, public employers and unions must negotiate over “terms and conditions of employment”.**
 - Definition of “terms and conditions of employment” is stated as – “salaries, wages, hours, and other terms and conditions of employment.”
- Accordingly, PERB and the courts have been left to interpret this phrase so employers and unions know what can be negotiated versus what must be negotiated.
- **Three categories:**
 - **Mandatory subjects;**
 - **Non-mandatory or permissive subjects; and**
 - **Prohibited subjects.**

Mandatory, Non-Mandatory (Permissive) and Prohibited Subjects of Collective Bargaining

- The ability of a school district or a BOCES to make unilateral changes regarding contract matters depends upon whether or not the subject is a mandatory subject of bargaining or a term already incorporated within a collective bargaining agreement.

Mandatory Subjects of Collective Bargaining

- Terms and conditions of employment which, when using a balancing approach, are more central to employee work rights than the mission of the employer.
- Must be discussed if either party brings the issue to the table. Precludes the public employer from taking unilateral action prior to agreement unless after impasse there's a compelling reason to make a unilateral change.
- Resolved by agreement or withdrawal of such demand.

Mandatory Subjects of Collective Bargaining

Examples:

- Compensation – salary, longevity pay, overtime pay
- Benefits – health, dental, and optical insurance for current employees, life insurance for current employees, payments to a welfare benefit fund
- Paid and unpaid leaves of absence – sick leave, personal leave, vacation, holidays, bereavement leave
- Retirement benefits for current employees, but not pension selection
- Employment issues – sign-in and sign-out procedures, dress codes, length of work-day and work year, disciplinary procedures
- Contracting out of exclusive bargaining unit work, with an exception for instruction through BOCES CoSer Agreements.

Subjects of Negotiations: Non-Mandatory

A subject which parties may choose to bargain, but there is no legal obligation to do so. Generally, involve **inherent and fundamental policy decisions relating to the primary mission** of the public employer and usually have only an incidental relationship to the district's relationship with its employees.

*The District is not required to bargain over proposals concerning non-mandatory subjects of collective bargaining!

If a non-mandatory subject is covered within the terms of a CBA, it may only be changed through negotiations and reaching an agreement.

Civil Service Law §209-a.1[e] a/k/a “Legislative Triborough”

Subjects of Negotiations: Non-Mandatory

Examples:

- Job descriptions
- Reduction in Workforce/ Layoffs
- Deployment of Staff
- Job security
- Staffing levels
Rye Police Assn., 17 PERB ¶4645 [1984]
- Creating or filling new positions; Starting salary for a new position

Subjects of Negotiations: Non-Mandatory

Examples:

- Class Size

West Irondequoit CSD, 35 N.Y.2d 46 (1975)

- Method of Instruction: remote instruction when the learning is occurring at home.

Somers CSD, 9 PERB 3005 (1976)

Non-Mandatory Subjects of Bargaining (continued)

Examples Cont'd:

- PERB considers the time of the workday to be broken down into only two components: [1]duty time and [2]duty free time.
Wyandanch CSD, 16 PERB ¶3012(1984)
- Unassigned time not contractually denoted as duty free time may be assigned for the performance of duties inherent to teachers' work.
Savona CSD, 20 PERB ¶3055(1987)
- The number of periods of teaching assigned each day
Greece CSD, 22 PERB ¶3005(1989)
- The time of day when the public service will be provided.
County of Orange, 9 PERB ¶3068(1976)

Impact Bargaining

- The effects of a unilateral change in a non-mandatory subject of negotiations made by the school district or BOCES whereby an employer may have an obligation to negotiate over the impact such decision or action has on the terms and conditions of employment of the affected employee.
- For example, while it is a district's prerogative to lay off employees, the decision will most likely have a direct impact on the working conditions of the remaining employees, such as increasing their workload.

Impact Bargaining (continued)

- **Duty to Impact Bargain** when exercising a management prerogative:
 - The Duty to go to the bargaining table to listen for impact. If agreement isn't reached, the parties are subject to mediation and fact-finding, even on a single issue in dispute.

New Rochelle CSD, 4 PERB 3060 (1970)

Greenburgh Eleven Conversion Theory

- Under Conversion Theory, bargaining is required in order to change or remove any non mandatory subject of negotiations already contained in a collective bargaining agreement. The same may not be altered or discontinued upon the expiration of the collective bargaining agreement, but remain in effect until it is negotiated out of the CBA. (Civil Service Law §209-a.1(e)).

Greenburgh No. 11 UFSD, 32 PERB ¶ 3024 (1999)

Prohibited Subjects of Bargaining

- Those that are **forbidden by statute or public policy from being embodied in a collective bargaining agreement**. If negotiations do occur and agreement is reached on a prohibited subject, such agreement is not enforceable – neither a court nor an arbitrator can give legal effect to the provision.
- The Taylor Law prohibits negotiation concerning the provision of **benefits by a public retirement system** and an employer's consent to strike.
- Other examples:
 - Establishment of classes
 - Payment of salaries before they are earned (Ed Law §3015)
 - Delegation of board's right to grant or deny tenure to teachers.
Matter of Cohoes v. Teachers' Assn., 40 N.Y.2d 774,777 (1976)
 - Delegation of board's right to inspect personnel files
Bd. of Educ. v. Areman, 41 NY2d527 (1977)

Triborough Amendment

- Under Triborough, the public employer is required to continue all terms and conditions of employment of an expired contract until a new contract is negotiated, provided that the Union does not strike. *Pearl River UFSD* 11 PERB ¶3085(1978) & Civil Service Law §209-a.1(e).

Is there any way around the Triborough Amendment?

- Sunset clauses:
 - A sunset clause terminates the substantive provision in the collective bargaining agreement at a specified time or upon specified conditions independent of the contract's duration clause.

Hard Bargaining

Hard bargaining is not a *per se* violation of good faith bargaining.

- A zero increase proposal can be proposed without violating the duty to negotiate in good faith.
- PERB states that a union “misconstrues the duty of good faith negotiations by equating adamancy or hard bargaining with a failure to negotiate in good faith.” As long as the employer’s approach to the negotiations is premised upon a “serious desire to reach an agreement” by making sincere efforts to do so, the duty to negotiate in good faith is satisfied. Columbia County CSEA, 10 PERB 3047 (1977)

Hard Bargaining

- **U-Turns and Regressive Bargaining**

- PERB ruled that changed economic circumstances may justify withdrawal from a partial agreement before full agreement has been reached “where there is no evidence of an intention to frustrate the reaching of a final agreement.” *Town of Newark Valley, 17 PERB 4532 (1984)*.
- PERB also ruled that a material change in circumstances also can justify a party’s submission of new or revised demands during bargaining to meet unanticipated consequences even if such a submission would be otherwise prohibited. *County of Dutchess, 22 PERB 4530 (1989)*.
- PERB sided with the Union contention that the change in circumstances must be unanticipated and material. *Odessa-Montour CSD, 28 PERB 4572 (1995)*.

Hot Topics in Negotiations

1. Retiree Health Insurance

A. Plan Identity

B. Years of Service Threshold for Eligibility for Retiree Health Insurance

C. Rates of Premium Contributions

i. Is contribution rate impacted by years of service with the District?

ii. Can employee use unused sick leave to offset retiree health insurance cost or receive a greater District contribution?

D. Does employee have to be enrolled in health insurance immediately preceding retirement in order to be eligible?

E. Is the employee eligible for Medicare Part B reimbursement, and if so, at what rate?

F. Is the employee's spouse eligible for Medicare Part B reimbursement, and if so, at what rate?

Hot Topics in Negotiations

- Medicare Part B
 - i. Part A – Hospital Insurance
 - ii. Part B – Medical Insurance
 - iii. Part C – Medicare Advantage Plan
 - iv. Part D – Drug Coverage
 - v. Medicare Supplemental Insurance (Medigap)

Hot Topics in Negotiations

- Medicare Part B

If your yearly income in 2023 (for what you pay in 2025) was			You pay each month (in 2025)
File Individual Tax Return	File Joint Tax Return	File Married & Separate Tax Return	
\$106,000 or less	\$212,000 or less	\$106,000 or less	\$185.00
Above \$106,000 up to \$133,000	Above \$212,000 up to \$266,000	Not applicable	\$259.00
Above \$133,000 up to \$167,000	Above \$266,000 up to \$334,000	Not applicable	\$370.00
Above \$167,000 up to \$200,000	Above \$334,000 up to \$400,000	Not applicable	\$480.90
Above \$200,000 and less than \$500,000	Above \$400,000 and less than \$750,000	Above \$106,000 and less than \$394,000	\$591.90
\$500,000 or above	\$750,000 or above	\$394,000 or above	\$628.90

Hot Topics in Negotiations

- Defining Compensable Credits
 - i. In service course work
 - ii. Graduate coursework
 - iii. Are there limitations on the number of credits that could be earned for salary advancement in a single school year?
 - iv. Are there limitations on the amount of salary credit that could be awarded for non-traditional classes, such as online classes?
 - v. Is a teacher who obtains a master's degree that has more than the traditional 30 or 36 credits entitled to post-master's credits?
 - vi. Can post-master's credit be awarded for graduate credits obtained prior to a teacher earning a master's degree if those credits were not required to obtain a master's degree?

Hot Topics in Negotiations

- 6th Class Assignments
 - i. When can a district assign a teacher to teach a 6th instructional class?
 - ii. Can the assignment be involuntary?
 - iii. Can a probationary teacher be assigned a 6th instructional class?
 - iv. What is the rate of compensation for a 6th instructional class?
 - v. Are there any limitations on the number of teachers in a tenure area, or district-wide, who can be assigned a 6th instructional class?

Hot Topics in Negotiations

- Salary Schedule Placement
 - i. Does the district have the discretion to place a teacher upon initial hire at a step above step 1 of the salary schedule? If yes:
 - a. Is there is a maximum step that a new teacher can be placed on upon initial hire?
 - b. Is there a formula that must be administered when determining what prior service credit should be awarded for salary placement?
 - ii. Does the district have the discretion to not award salary credit for courses beyond the master's degree which it believes are not relevant to their assignment?

Hot Topics in Negotiations

- ✓ Remote Instruction
- ✓ Districtwide Safety Plan – *Comm Reg. 155.1(c)(1)(xxi)*
- ✓ Mid-Year Recess Periods
- ✓ Summer Work
- ✓ Home Instruction
- ✓ BOCES CoSer Classes
- ✓ Arrangements among school Districts

Ref: *County of Orange 9 PERB ¶3068; BOE City of New York 21 PERB ¶3068*

Hot Topics in Negotiations

APPR Evaluation Under New Education Law §3012-e

- Duty to change from current evaluation plan for classroom teachers and building principals under Education Law §3012-d by no later than the 2032-33 school year.
- The 3012-e plan will make every aspect of evaluation subject to mandatory collective bargaining, except for the rating standards (1,2,3 &4) and inclusion of the terms reached to be within the parties' CBA.
- Later rather than sooner may be a prudent approach in transitioning to 3012-e.

The End

Questions?