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BINDING ARBITRATION IN NEW YORK STATE

ITS HISTORY, HOW IT WORKS

AND WHY IT MUST BE CONTINUED

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GENERAL STATEMENT

With Civil Service Law Section 209(4), the binding arbitration provision resolving police and fire contract disputes, expiring on June 30, 2003, some municipal officials have once again argued that this statute, in effect since 1974, and extended every two years thereafter, most recently in 2001, not be extended for another term.

The New York State Conference of Mayors and others, in their bi-annual pursuit to upset the balance of power in collective bargaining for police and fire organizations, are once again making a strong push for the elimination of binding arbitration. By promoting the statutes demise, they have not offered a substitute to take its place, hoping to plunge the give and take of negotiations back into the dark ages. The long, studied history of how and why the provision was originally enacted as well as the documented success that municipalities and police and fire employees have had with the statute, more than justify the law's extension and even to make it permanent.

Claiming that binding arbitration is a transfer of control over salaries to an arbitration panel, opponents of the laws continuation have repeatedly offered incomplete, false data that arbitration awards have provided greater raises than would otherwise be attained during the normal collective bargaining process. If these opponents of the law could have their choice, there would be no collective bargaining, with municipalities throughout the State offering no wage increases and police and fire employees relegated to second-class citizenry and collective begging. When the statute was originally enacted in 1974, the uniqueness of police and fire service within New York State warranted and justified the creation of binding arbitration. The statute has served to meet the needs of both management and labor over the past twenty-nine years. With few exceptions, it has resulted in no major labor strike, nor job actions and has not forced any municipality or sub-division into bankruptcy or other adverse public consequence.

It is important that the Governor, State Senators and Members of the Assembly understand the importance of binding arbitration for the resolution of collective bargaining disputes and for it to continue. Notwithstanding the figures and documents which will be submitted by those who seeks the laws demise, none of what is submitted is official. They contain a biased, slanted view of arbitration for those local governments that have reported their findings to the New York Conference of Mayors and others similarly situated. Their statistics do not reflect the wage freezes, health insurance concessions and other proposals that arbitrators have awarded, nor do they reflect the substantial gains which municipalities have achieved in the 1990's. It is significant to stress that the New York State Public Employment Relations Board, as a result of budgetary cutbacks, has not maintained a research department for several years. However, past studies by them show that the number of arbitration awards issued each year have dropped substantially each year. Therefore, any summaries from any place other than PERB of negotiated or arbitrated police and fire settlement results are unofficial, undocumented and do not reflect the total picture of what has occurred at the bargaining table.

The history of the enactment of the Public Employees Fair Employment Act (Article 14 of the New York State Civil Service Law, the Taylor Law) is significant for consideration in deciding

whether the statutes should be re-enacted and/or whether alternatives or modifications should be considered. That history follows.

THE CURRENT STATUTE

After many years of turmoil, strife, and controversy in the areas of organization and collective bargaining in the public sector, the *Public Employment Fair Employment Act*, (Article 14 of the New York State Civil Service Law) was enacted in 1968. The Legislature, by passing that statute, declared in Section 200, that it was the policy of the State of New York and purpose of the 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.

THE TAYLOR LAW

Currently, when a public employer and labor union representing a fire department or police department ends its collective negotiating sessions without an agreement, either party may petition the Public Employment Relations Board (PERB or BOARD) to appoint a mediator who represents the Board to assist the parties in reaching a voluntary resolution of their dispute. If, however, the mediator is unable to effect settlement of the controversy, upon petition of either party, PERB will then refer the dispute to a public arbitration panel. This public arbitration panel consists of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by both parties who acts as the chairman of the panel. [Section 209(4)(c)(i)]. This public arbitration panel then holds hearings on all matters related to the dispute and the parties present either oral or written evidence, statement of facts, supporting witnesses and other evidence and arguments in support of their respective positions. [Section 209(4)(c)(iii)]. At the conclusion of the hearings, matters presented to the public arbitration panel for its determination are decided by a majority vote of the members. [Section 209(4)(c)(iv)]. The panel, prior to any vote on the issues in the dispute, often seeks to have the parties reach agreement on specific points. If no agreement can be made, the public arbitration panel then makes a just and reasonable determination of the matters in dispute [Section 209(4)(c)(v)].

In reaching that determination, the panel must base their decision upon the following four criteria:

a. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. The interest and welfare of the public and the financial ability of the public employer to pay (emphasis added);

c. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

THE LAW'S HISTORY

The balance provided by the *Taylor Law* is the preservation of harmonious relations by prohibiting municipal employees from striking [Section 210(1)]. It was this very factor which caused the enactment of the *Taylor Law.* In 1966, employees of the New York City Transit Authority began a strike which involved injunctive and contempt proceedings against the union and its officials, and resulted in the jailing of the union's president for contempt. The strike resulted in substantial hardships to commuters in the metropolitan area and served to focus attention on the basic conflict in labor relations of government employees and the tension between preventing strikes that disrupt government operations and the right of all employees to share in the process which determines the conditions of their work.

After formal resolution of the transit strike, there was substantial interest in creating some different type of process which would promote the harmony sought by the State, Governor Rockefeller established a committee which would make "Legislative Proposals" for protecting the public against disruption of vital public services by illegal strikes, while at the same time protect the rights of public employees. Professor George W. Taylor, of the University of Pennsylvania, was chairman of the committee and the Taylor report was issued 45 days after the formation of this committee.

The Taylor report urged the replacement of the Conlin-Waglin Act, the law then in existence, and recognized that to protect the public from strikes in the public service, some other way or means had to be established for dealing with claims of public employees for equitable treatment. *The Taylor Law, the OCB and the Public Employee*, by Gerald A. Schilian, 35 Brooklyn Law Review 214 at 217. They further recommended that public employees be given the right to organize and that state governmental units be granted authority to negotiate and enter into agreement with public employee organizations. It also suggested the formation of a public employment relations board which would administer the law. The final recommendation of the committee was to declare a

prohibition of strikes by public employees, with effective sanctions against such employees who would defy the law and go out on strike.

On April 21, 1967, the Conlin-Waglin Act was repealed, replaced by the Taylor Law. The Act continued the prohibition against strikes (Section 210, subdivision 1, Section 211); granted public employees the rights of organization and representation (Section 203 and 204); authorized state and local governments to recognize, negotiate with and enter into written agreements with pubic employee organizations (Section 204, 204-e); and created the Public Employment Relations Board (hereinafter referred to as PERB) to assist in resolving disputes (Section 205) which arose under the law. PERB was delegated the authority to establish procedures for determining representation status and to resolve disputes concerning representation status as well as to assist in collective bargaining and to generally exercise appellate jurisdiction overall local procedures and rules promulgated under the *Taylor Law.*

It is important to note that Section 206 and 212 of the *Taylor Law* gave the option to every government other than the state or state public authority, acting through its legislative body, to establish a governing board and procedures which would not be inconsistent with the provisions of the Act and which would perform the same functions as PERB. New York City took advantage of this procedure by enacting legislation which resulted in the creation of the Office of Collective Bargaining (OCB).

The Office of Collective Bargaining (hereinafter referred to as OCB) was created by the *New York City Collective Bargaining Law*, Chapter 54 of the Administrative Code of the City of New York. The law in substance is quite similar to the *Taylor Law*, in that it controls union representation and certification and matters concerning the collective bargaining process such as the duty to bargain, arbitration of grievances, and the resolution of contract impasses. It followed the same procedures for resolution of contract impasses as sanctions by the *Taylor Law* as previously enumerated. This particular law was drafted in 1967 and was further amended in 1972 and 1978. By the enactment of the law, New York City was removed from the jurisdiction of PERB.[1]

[1]The Court of Appeals affirmed a lower Court and appellate ruling in City of New York v. Patrolmens Benevolent Association affirming the sanctity of the local authority of the New York City Collective Bargaining Law. The decision declared that Chapter 13 of the laws of 1996 which permitted New York City's police and fire unions to fall under the auspices of the State Civil Service

There have always been at least three objections raised by interest arbitration critics. They question the delegation of government's authority to a private citizen or panel of citizens. They oppose a determination affecting the outflow of public funds by a person or panel untied to a public employer's budget and political process, and they are concerned that arbitration will discourage negotiations.

The Governor's Committee on Public Employee Relations reflected some of this criticism when it made its recommendation for a public employee collective bargaining statute to Governor Rockefeller in 1966. In its final report, the Committee expressed doubt about the legality of delegating legislative decision making authority to an unelected third person. Given the legislature's adherence to Committee recommendations in the 1967 Taylor Law, it is probably not an accident that there was no interest arbitration of any kind in the 1967 Taylor Law.

Notwithstanding the doubt about delegation expressed by the Committee in 1966, the Legislature amended Section 209.2 in 1969 to permit an employer and a union to agree to submit their bargaining issues to voluntary interest arbitration as part of their own contractual impasse procedure machinery.

Law, was unconstitutional because the City of New York had not supported it with a home rule message. The Court of Appeals indicated that the unconstitutional statute triggered the home rule requirements because it was a "special law that applied only to the City and affected the property, affairs or government" of the City. As will be seen later herein, the constitutional infirmities of including New York City police and fire unions under the state provisions of binding arbitration were removed.

The Amendment actually was consistent with the Committee's original report. It recommended that "all written memoranda or agreements between public employers and public employees (state or local) should include procedures, developed by the parties themselves, to invoke in the event of such an impasse in advance of budget submission. The amendment expressly authorized public employers to agree to interest arbitration as part of an impasse procedure.[2]

The Joint Legislative Committee on the Taylor Law, in its 1971-72 Report[3] asked if the law should require arbitration when impasse continued. It noted legal and public policy issues about the feasibility of final and binding arbitration as state law. The report cast some cloud on arbitration. Nevertheless, after recognizing that some groups, such as the firefighters and the police officers, were showing an interest in arbitration, the Joint Committee acknowledged that it might be the best alternative in some circumstances.

[2]N.Y.Civ. Serv. ' 209.2.

[3]Joint Legis. Comm. on the Taylor Law, 1971-72 Rep., State of New York Legis. Doc. (1972) No. 25.

In 1974, interest arbitration for police and firefighters was introduced into the Taylor Law as a three year "experiment." When "the experiment" started, it was not clear that the state had the authority under the State Constitution to delegate decision making about wages and hours to an interest arbitrator. However, the Court of Appeals, in City of Amsterdam v. Helsby,[4] laid the question to rest. The Court found that the legislature could delegate to PERB, "its constitutional authority to regulate the hours of work, compensation, and so on, for policemen and firemen in the limited situation where an impasse occurs. The Court further found that PERB could regulate wages and hours through ad hoc arbitration panels[5].

Starting in 1977, and with the initial recommendation of the New York Public Employment Relations Board, the "experiment" has been extended every two years ever since, under an impasse resolution process reduced to two steps by the elimination of fact-finding.[6]

In 1986, the Legislature amended Section 209, adding the New York City Transit Authority, the Metropolitan Transit Authority, and Triborough Bridge and Tunnel Authority employees.[7] It amended Section 209 again in 1988 to make impasses with employees of the New York City School Construction Authority subject to compulsory arbitration.[8] The statute was amended in 1990 and 1991 to make detective-investigators in certain District Attorney offices and employees of the State Island Rapid Transit Operating Authority eligible for compulsory interest arbitration. The State Police were added to the law in 1995.

Under the 1977 statute, compulsory arbitration was to continue with two minor exceptions. Fact-finding, the process prior to the submission of the controversy to the Arbitration Panel was eliminated and a standard of guidelines for the contract arbitrators were enacted.

After the ***Helsby*** case, in the next Constitutional assault upon the *Taylor Law was Caso v. Coffey*[9] *in* 1976. The Appellate Division, Second Department and the Court of Appeals, once again sustained the statute, but the courts established guidelines for an arbitrator to consider before rendering an award. An arbitrator, in addition to the four areas established under Section 209 of the *Taylor Law,* must also evaluate the following criteria:

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[4]371 N.Y.S.2d 404 (1975).

[5]Id at 408.

[6]N.Y. Civ. Serv. Law '209.4.

[7]Id. '209.5.

[8]Id '209.6.

[9]41 NY2d 153, 391 NYS2d 88.

1. The municipality's constitutional limitations of taxing powers and borrowing power. The arbitrator must examine the amount of unused taxing power and the municipality's percentage of debt limitation.

2. The procedure of tax collection. Consideration must be given to the municipality's tax delinquency problem, and to the taxable evaluation of privately owned property. Obviously, in affluent areas, thee will be a very small percentage of tax delinquency and in most cases property valuation will be high.

3. The municipality's per capita income. The average household income for the actual contractual year and the projections of the average income over the next five year period must be considered. This amount should be compared to various areas surrounding the municipality in question. The average income for the particular area is of great weight in determining the actual cost of living within that area.

4. Per capita assessed valuation. Per capital assessed valuation of property and dividing it by the population in the area of question. This amount should be compared with local and statewide per capita averages.

5. Retain sales within the municipality's boundaries. The increase in projected retail sales within the area would give the municipality a higher per capita assessed valuation. The use of sales tax revenues would diminish reliance on the real property tax which takes pressure off the homeowner and local businessman.

6. Nature of the communities. He must consider the market value of homes assessed within the municipality. If, in fact, the area has maintained its attractiveness to buyers, this not only shows a higher market value, but remains taxable at the rate of last assessment which is usually much lower than the actual home value. Further, the homeowner has a hidden tax break in that he may deduct for federal and state income tax purposes from his adjusted income in establishing taxable net income, interest payments on his montage and real property taxes.

7. Economic trends and economic rates. The current and projected economic health of the area should be studied. Past, present and future economic studies, including current trends in unemployment rates compared with national averages must be examined.

8. Projections beyond current year. The municipality's ability to sustain its taxing and borrowing must be considered, along with the fact that its tax delinquency will continue to be minimal.

9. The impact of contractual increases on the taxpayer. If the area is in a favorable economic position, the actual tax rates, when converted by the State equalization rates into full value rates, should indicate that the tax rates are actually declining. This is the ideal situation in selling a contract to the taxpayers.

In that binding arbitration was a three year experiment, there was a great deal of interest to see whether the law would be extended when it expired in 1977. A study prepared by the New York School of Industrial and Labor Relationship evaluated the experience of the change in the *Taylor Law*. The findings of the study are contained in the *New York State School of Industrial and Labor Relations, Cornell University. "An Evaluation of Impasse Procedures for Police and Firefighters in New York State; A Summary of the Findings, Conclusions, and Recommendations"; Ithaca, New York, November 1976.* The study compared the net effects of the binding arbitration procedures with the State's previous experience under the *Taylor Law*. Although the study disclosed, at that time, a significant increase in the probability of an impasse occurring in negotiations, as well as corresponding increases in the number of disputes which reached the terminal step in the settlement procedures, these disadvantages were offset by an increased effectiveness in the initial mediation step of the procedure. This study strongly recommended the continuation of binding arbitration with certain modifications, such as the elimination of fact finding, the option of final offer arbitration as a final step, having strict time limits for each step of the procedure, etc.

The report found that the arbitration process itself led to the following general conclusions:

1. The parties were generally satisfied with the performance of the specific components of the arbitration system. However, the report emphasized the great desirability of getting the parties to reach their own agreement without any third party intervention.

2. They found no deviation between fact-finding recommendations and the arbitration awards in 70% of the cases studied and where the arbitration panels did deviate on salary issues, the magnitude of the deviation was small.

3. In the majority of studied cases, the parties presented essentially the same arguments before the fact finder as they presented to the arbitrator.

4. The criteria for framing an award were not applied in any uniform or consistent manner, but rather gave more weight to comparability with other police and firefighter units.

5. A very high rate of unanimous awards (60%) was achieved by the arbitration panel in comparison to other interest arbitration schemes.

6. An average of 280 days elapsed between the filing of an initial impasse and the receipt of an arbitration award.

These findings were taken from the first sixty arbitration cases that were processed under the new statute. The major findings of the Cornell Report (although the change in the general economic and political climate were determined a major factor in the increase of arbitration) concluded that the effects of binding arbitration caused:

1. A 16% increase in the probability of an impasse occurring in negotiations.

2. A 13 to 18% increase in the probability of settlement in the initial mediation step of the procedure for the impasses that reached this stage.

3. A 15% increase or decrease in the amount of movement or compromising behavior of the parties. Bargaining was less chilled under arbitration than under fact-finding.

4. A 12% increase in the probability of going to the terminal step of the dispute settlement procedure.

5. No significant increase in wages due to the existence of the arbitration statute.

6. No significant increase or decrease in wages due to going to the arbitration procedure as opposed to settling prior to the issuance of an arbitration award.

Although the Cornell evaluation study drew no substantial concluding regarding the effectiveness of compulsory binding arbitration in preventing labor disputes injurious to the public interest, it did note that the *threat of strikes by police officers and firefighters was far more remote at that time than it was in 1974 when compulsory arbitration was initiated.*

In 1977, Governor Carey signed the extension of the *Taylor Law* for another two years, but he stressed that arbitrators must make findings with respect to each statutory criterion which the parties put in issue, that each such findings must have an evidentiary basis in the record, and that the arbitrators must specify in their final determination what weight was given to each finding and why.

Subsequent to the extension of binding arbitration in 1977, the New York State School of Industrial and Labor Relations, Cornell University, conducted a further study and issued a report in February of 1979 detailing the experiences under the 1977 amendments of compulsory interest arbitration in New York State. During that period, 120 police and firefighter bargaining impasses were declared between July 1, 1977 and January 1, 1979. This was from a total sphere of 400 bargaining units and 215 negotiations. During this period, there were 84 petitions for arbitration of which 66 were police and 18 were for firefighters and 17 were settled prior to the issuance of an award. As of January 1, 1979, there were 32 cases pending. The statistics clearly demonstrated a decline in the percentage of negotiations going to an impasse. This trend has continued to the present time. Fewer and fewer negotiations, particularly after the parties have gone to arbitration, proceeded to a final award again. Familiarity between the parties, and past experiences, usually result in a settlement. In fact, the number of impasses and awards argued to be relevant by NYCOM, demonstrate this. They offer limited examples over a substantial period of years. This number represents a minute percentage of the negotiations which have transpired over that time, hardly a valid analysis.

In the 1977 study, there was also an increase in voluntary settlements, and this was found to be the influence of pattern setting settlements in the immediate area. This trend remains today. Furthermore, the study showed that the opportunity to settle negotiation differences through arbitration does not necessarily lead to the use of that mechanism. There have been no expansive studies since.

STATEMENT IN SUPPORT OF BINDING ARBITRATION'S EXTENSION

Evidently, statistics as well as peaceful and harmonious relations between public employers and police and firefighter unions shows that the binding arbitration aspects of the *Taylor Law* have been successful. Greater certainty and finality have been achieved through arbitration, where both parties are permitted a fair opportunity to present their arguments on the merits. The arbitration panel brings to the negotiations a neutral expertise which is well suited for determining the concrete, particularized issues which arise during negotiations. Any changes would result in a deterioration of the negotiations and result in opening up that area to lobbying and other political efforts. If arbitration is eliminated, one side of the bargaining table would appear always to have the power ultimately to impose its will. Such a procedure produces a sense of "second-class citizenship"leaving employees dissatisfied with the political resolution. It is apparent that the law, as it is established, generates meaningful negotiation. If changed, there would be a high risk that the very reason for the creation of the *Taylor Law* to avoid strikes and labor unrest and disruption of services provided to the public would be threatened. Employees would learn that the only way to make bargaining effective would be by threatening to violate the law and that there wold be encouragement to defy the law and ignore the process of peaceful settlement. Therefore, the probability of harmonious relationships would be severely diminished.

Compulsory binding arbitration was the result of a long and continuing search for an acceptable answer to the problem of finality in public sector labor negotiations. It provides a

mechanism for the resolution of deadlocks in collective bargaining and thus avoids the alternative of a strike. This right to strike distinguishes collective bargaining in the pubic sector to collective bargaining in the private sector. In private employment, collective bargaining is a process of private decision making shaped primarily by market forces, while in public employment, it is a process of governmental decision making shaped ultimately by political forces. *(The Public Arbitration Panel as an Administrative Agency: Can Compulsory Interest Arbitration be an Acceptable Dispute Resolution Method in the Public Sector?*, by Martin L. Barr 39 Albany Law Review, 377 at page 379).

In the public sector, political forces and the political process must and do play an ultimate role in the determination of a contract. By submitting the dispute for a final decision to a tripartite panel as is required by the *Taylor Law*, the interests of the political process are satisfied. Although as a practical matter, the neutral makes the final decision, both parties have opportunities for input into the decision making process which would not be available if arbitration was eliminated. In post-hearing deliberations, the parties, through their respective members, have a second crack at reaching a settlement. Real positions may be aired instead of formal ones, and views may be amplified and certain points may be emphasized. The neutral plays a mediation function between the respective parties. It is inevitable that there will be continued bargaining between the party members and between them and the neutral. the neutral must be persuaded or he must persuade. Therefore, the parties have the right to change their position and the change involves compromises which is the heart of the collective bargaining process. While such political pressures may seem to be at odds with an expert's objective resolution of the dispute, it seems desirable to retain these virtues of the political process (*Barr* article at pages 386 and 387). These advantages are lost if the process is changed to last offer-best offer arbitration or no arbitration at all. However, the problem with this approach is that the final decision may not reflect the reality of the market and it results in inflexibility and possibly unfair results.

With PERB to govern the relationship, an agency exists which is completely familiar with the disputes and the disputants as well as being familiar with the process. PERB decides each problem and award on a case by case basis. There is no substantive solution to any problem as would be the case in New York City (*New York's Experiment in Public Employee Relations: The Public Employees Fair Employment Act*, by William F. McHugh, 32 Albany Law Review, 58 at page 66).

What would happen if binding arbitration was eliminated? What is the best possible solution to the problem? It would seem that the early critics of the *Taylor Law* were unhappy with the fact that mediation and fact-finding were too rigidly constructed to provide flexibility and that a resort to the Legislature as a final determination on the merits of a dispute was a mistake. *The Taylor Law, the OCB and the Public Employee*, by Gerald A. Schilian, 5 Brooklyn Law Review, 214 at page 230. However, the changes wrought by the elimination of fact-finding, the creation of a standard of an ability to pay, as well as basing a decision on specified criteria and listing the weight given to those criteria by the arbitration panel have answered the problems.

One arbitrator pointed out in *Interest Arbitration in Public Employment: An Arbitrator Views the Process*, 29 Labor Law Journal, 77 that the better the arbitrator does his job, the less the parties are encouraged to bargain. However, statistics, as indicated by the Cornell reports, do not bear this

out. Furthermore, that arbitrator pointed out that he is an unelected official who is in essence spending tax dollars, who has no expertise in the economic issues involved. However, this problem is answered by the fact that the more experience arbitrators gain, the better they are able to deal with these problems and to deal with the financial solutions.

Still, objectors to binding arbitration for police and fire labor disputes have their problems. One complaint raised about binding arbitration is that a panel's decision could affect the cost of police and firefighter services to their local governments. However, the cities, villages or towns who are so affected still have the right to make their own decisions as to how they will meet such costs whether by taxation, cutbacks in spending or other means (Justice Fuchsberg in *City of Amsterdam v. Helsby*, supra. Justice Fuchsberg's statement is in accord with the view that neither arbitration awards nor collective bargaining agreements in the public sector are self-implementing. If legislative authorization to finance a contract or an arbitration award does not already exist, the executive must secure such funding from the Legislature, reduce services, decline to fill vacancies or take other management action to implement the agreement. *Impasse Resolution in Public Sector Collective Bargaining - An Explanation of Compulsory Interest Arbitration in New York*, by Arvid Anderson, Eleanor MacDonald and John O'Reilly, 51 St. John's Law Review, 453 at 468.

Furthermore, and significantly, there is a detailed standard of judicial review applicable to police and firefighter arbitration awards. *Caso v. Coffey*, supra. That, as well as other court decisions tend to indicate that the courts are willing to enforce the arbitration awards when the proper procedures have been followed and the arbitrators decisions rest on a rational basis. *Compulsory Interest Arbitration,* 51 St. John's Law Review, 453, supra at 481.

With all the progress made under the *Taylor Law*, why are the municipalities unhappy. None have gone bankrupt and no government has had to dramatically change its operations as a consequence of an award. Furthermore, the number of awards has gone down. On a purely economic basis, early statistics compiled show that interest arbitration awards issued under the *Taylor Law* provided lower average wage benefits than did voluntary negotiated benefits in the same period. Therefore, there is no indication that arbitrators have been overly generous with public funds. Why, then, should the balance of power with respect to arbitration be tampered with by the Legislature, particularly without an extensive study conducted by labor professionals, with input from management and labor. The requirement of bargaining in good faith mandates the continuation of the balance and avoidance of one side gaining an unfair advantage.

There have been a number of solutions proposed to those procedures which are currently in existence in other states for collective bargaining. One suggestion was to make arbitrators more politically responsible by electing them or by having them appointed by elected officials to serve on a continuing basis. However, this would not be satisfactory since the nature of the arbitration would be that it would lose its neutral character inasmuch as the arbitrator will be making a decision which would indirectly affect himself. *Political Aspects of Public Sector Interest Arbitration*, by Joseph R. Groden, I Industrial Relations Law Journal, page 1, Spring, 1976. Furthermore, if he was elected, the arbitrator would be an agent of the government involved primarily in negotiating the contract with the unions.

The history of public sector arbitration throughout the country seems to indicate that mandatory arbitration is premised on the need for protecting the public against harmful strikes. An option for local governments to consider would be to have the choice to arbitrate or incur the possibility of a strike. It is less likely that a governing body would consider a police or fire department strike to be preferable to arbitration. However, this would be unfair to grant such an option to the governing body while withholding it from the union. Another argument about that option would be that it may be influenced either by the political pressures of a union that wants to strike or it may allow a strike because of the fiscal savings that may temporarily be gained. *Political Aspects of Public Sector Interest Arbitration, supra,* page 23.

It is generally conceded that compulsory binding arbitration is the most successful form of collective bargaining resolution particularly in view of avoiding a strike. *Binding Arbitration: The Answer to a State's No-Strike Provision in Contract Negotiations for Public Education*, 10 New England Law Review, 157 at 173.

Will Aitchison, a well-known labor lawyer practicing on the West Coast, has authored a book titled Law Enforcement Officers (2nd Edition, 1992). In his treatise on the rights of law enforcement officers, he has undertaken a careful analysis of the 50 states in the nation and the collective bargaining laws governing law enforcement officers (See Appendix "A"). One can note that binding arbitration exists in approximately half the states in the country, more than justifying the reasons that binding arbitration was enacted in New York in the first place. Charles M. Rehmus, former Chairman of the Michigan Employment Relations Commission (1976-1980) and Dean of the New York State School of Industrial and Labor Relations at Cornell University from 1980 to 1985, wrote an interesting article on interest arbitration which appears in a publication published by the Association of Labor Relations Agencies (ALRA). This article, The Evolving Process - *Collective Negotiations in Public Employment*, LRP Publications, Labor Relations Press 1985, indicates that in 1984, 31 states and the District of Columbia had provided for binding arbitration as the ultimate means or last resort to resolve disputes over the terms of new contracts for some or all of their public employees (a description of the variety of these statutes may be found in Tanimito, *Guide to Statutory Provisions in Public Sector Collective Bargaining*, Number 38: Honolulu, Industrial Relations Center, University of Hawaii, 1981.

Despite any theoretical and practical arguments made by opponents to binding arbitration, the number of states which have adopted arbitration as the final step in statutory impasse procedures has increased in recent years. After considering all possible alternatives and the record to date, it would seem that compulsory arbitration as provided by the *Taylor Law,* would be the best system. There are checks and balances provided since there are mandatory criteria which must be considered including the ability to pay factor as well as the direction that an award must be based on the criteria, and the arbitrator must enumerate his findings of fact and how they have applied it to the mandatory statutory criteria. Based on these standards, an arbitrator is not likely to render decisions that they know or believe are inappropriate. There has been and will be no showing by any opponent to binding arbitration that such an award has been issued.

With the significance of the statute and its long history of amendments occurring after extensive studies, it would be totally inappropriate to change the statute without some legislative hearings where the issues can be thoroughly investigated, proposed changes could be studied, and where proponents and opponents would have an equal say and opportunity to be heard. Since any changes in the statute have occurred after extensive study and debate, a change in that procedure is inconsistent with the acts history and demonstrates the unfairness and shift in the balance of power which would occur at the bargaining table if such change actually took place. Since the statute already places a premium on an employee's ability to pay, there is no need to address it further. In fact, the State Troopers and State Police Investigators were added by Chapters 432 and 447 of the Laws of 1995, thereby documenting legislative recognition of the appropriateness of binding arbitration.

Although the Governor in his 1997 budget submission recommended changes, the Legislature and Governor, by Chapter 149 of the laws of 1997, extended the binding arbitration provisions for an additional two years through June 30, 1997. The memorandum in support for the extension submitted by the New York State Senate provided that:

> Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations to the effects of this law have been positive and have advocated the continued use of this process.
>
> There have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.
>
> The record of this law in New York State is unprecedented for any type of impasse procedure. New York seems to be very comfortable with the exception of binding arbitration. At the lease, the Legislature should approve an extension of law to provide for settlements peacefully.

The same rational was offered when the statute was extended by Chapter 237 of the laws of 1989; Chapter 211 of the laws of 1991; Chapter 130 of the laws of 1993, and Chapter 123 of the Laws of 1995.

The Legislature, in 1998, to address the discrepancies of earlier legislation held unconstitutional by the Court of Appeals in City of New York v. Patrolmens Benevolent Association of the City of New York, 654 NYS 2d 85, which would have permitted New York City police and fire unions to be included under the binding arbitration provisions of the law, adopted Chapter 641 of the Laws of 1998 which finally added New York City to State Law. In the legislative findings and declaration, the Bill provided as follows:

> The legislature hereby finds and declares that the orderly resolution of collective bargaining disputes involving police and fire bargaining units throughout the state is necessary to enhance public safety and prevent the loss or interruption of vital public services. The legislature also finds and declares that the local option provided in section 212 of the civil service law is not sufficient to fulfill the purposes of the public employees= fair employment act when applied to resolving disputes between local governments and police and fire bargaining units. Therefore, the legislature declares the necessity for the enactment of this act to enhance protection against strikes and disruption of vital public services by public safety employees throughout the state.

When the statute expired in 1999, Chapter 141 extended binding arbitration for an additional two years. In its Memorandum in Support of the legislation, the New York State Senate declared:

> Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations of the effects of this law have been positive and have advocated the continued use of this process. There have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.
>
> This legislation is necessary to extend binding arbitration for an additional two years to continue to provide for peaceful settlement of disputes.

Just prior to the statute=s expiration in 2001, the Governor signed Chapter 58 of the Laws of 2001 extending binding arbitration for an additional two years. The Governor noted that this was the thirteenth extension of compulsory binding arbitration since it was first enacted in 1974 and noted that he shared the fiscal concerns of local governments regarding reform that would require arbitration panels to afford first priority to the financial ability of a governmental employer to pay. He urged the Legislature to enact this reform and expressed further concern regarding the increasing number of legislative proposals to extend compulsory binding arbitration to other classes of public employees. To review the situation, he established a Task Force to undertake a comprehensive study of all issues relating to binding arbitration and to make recommendations on the future of it in New York State. This Task Force has never conducted public hearings or solicited the Police and Fire Lobby for its comments.

The above notwithstanding, the Governor signed into law two measures which enhanced and broadened the scope of binding arbitration for state employees. By Chapter 586 of the Laws of 2001, binding arbitration for security services unit and security unit supervisors was adopted to

permit New York State=s Correction Officers to resolve their collective bargaining disputes through binding arbitration as well. Although limiting arbitration to salary, stipends, location pay, insurance, medical and hospital benefits and excluding non-compensatory issues including, but not limited to job security, disciplinary procedures and actions, deployment of scheduling or issues relating to eligibility for overtime compensation, binding arbitration was still expanded to cover State Correction employees.

At the same time, the Governor signed Chapter 587 of the Laws of 2001 into effect amending the binding arbitration provisions for State Troopers to expand binding arbitration into non-compensatory issues. The change permits these issues, with the exclusion of job security and disciplinary procedures, to now proceed to arbitration. No support memorandum was submitted for either enactment.

Clearly, the Legislature has demonstrated a propensity to recognize the values of binding arbitration by its extension every two years since 1977. The Legislature and the Governor have permitted State Troopers and State Correction Officers along with New York City=s Police Officers and Firefighters to fall under the statute=s jurisdiction. Although some will argue otherwise, a careful inspection of the record demonstrates that nothing has occurred in the interim to justify any change.

CONCLUSIONS

For the reasons stated above and, more particularly, without a fair alternative, and without legislative hearings to evaluate the experience, the statute must be extended.

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APPENDIX "A"

COLLECTIVE BARGAINING LAWS GOVERNING LAW ENFORCEMENT OFFICERS

State	Binding Arbitration Model	Meet and Confer Model	Bargaining Not Required Model
Alabama			X
Alaska	X		
Arizona			X
Arkansas			X
California		X	
Connecticut	X		
Delaware	X		
District of Columbia	X		
Florida		X	
Georgia			X
Hawaii	X		
Idaho			X
Illinois	X		
Indiana			X
Iowa	X		
Kansas	X		
Kentucky			X
Louisiana			X
Maine	X		
Maryland			X
Massachusetts	X		
Michigan	X		
Minnesota	X		

Mississippi			X
Missouri			X
Montana	X		
Nebraska			X
Nevada	X		
New Hampshire	X		
New Jersey	X		
New Mexico		X	
New York	X		
North Carolina			X
North Dakota			X
Ohio	X		
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
South Carolina			X
South Dakota			X
Tennessee			X
Texas			X
Utah			X
Vermont	X		
Virginia			X
Washington	X		
West Virginia			X
Wisconsin	X		
Wyoming			X