Voluntary Action and the Taylor Law - A Profile in Legislative Reform

By Dr. Robert T. Farley, J.D./L.L.M.

Voluntary action and agreement are fundamental elements of the employment relationship. At the very heart of this relationship, is mutual agreement, expressed by voluntary actions, in the provision of services, in return for compensation and benefits. By recognizing and encouraging voluntary actions between unions, employers and employees, the New York State Public Employees' Fair Employment Act (commonly known as the Taylor law) intends to produce successful employment relationships, and therein ***"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."*** [1]

This statute's recognition of the importance of this voluntary nature within the employment relationship, is however, best seen as a reflection of George Taylor, the man selected to lead the Governor's 1966 Committee on Employee Relations. A highly respected labor advisor to five presidents, Dr. Taylor was known for his warm personality and practical problem solving ability. [2] A scholar and a realist, he held the firm belief that there were no non-negotiable demands, and that strikes represented a failure of creativity and process. [3]

Perhaps Professor Taylor's strongest held belief, however, was in the voluntary nature of the employment relationship. In a 1954 lecture, George Taylor was quoted, ***"men do not work except at terms voluntarily accepted. The avoidance or the termination of a work stoppage is the inducement for negotiators to modify extreme positions to the extent necessary to bring about a meeting of minds."*** [4]

Characterized as "The Industrial Peacemaker" in his Labor Hall of Fame biography, [5] Professor Taylor made a career out of forging voluntary agreements between Employers and Employees, becoming a legal pioneer in the areas of voluntary arbitration and mediation. [6]

With the respect of the bar, academia, labor, employers and government officials alike, George Taylor was the quintessential pick to seek to calm the churning waters of Public Employment Relations that were developing in 1960's New York.

Prior to the 1960's, New York's civil service law failed to understand, as Taylor did, that voluntary actions and agreements are fundamental elements of the employment relationship. Long known as a poster child for public sector patronage and corruption,[7] and with competitive class employees not even given tenure until 1955,[8] New York operated under very limited public employee rules. Although in 1939, New York's Constitution had awarded Employees ***"the right to organize and to bargain collectively through representatives of their own choosing"*** [9] the courts held that such only gave public employees rights of association, and not a right to collectively bargain. [10]

Accordingly, at this time, New York public employee relations were frustratingly one sided, breeding employee disrespect for management, and producing almost no creativity or flexibility in addressing the needs of the workforce. When labor unrest and frustration got too high, public employees simply ignored or disrespected the serious the anti-strike penalties of the Condlon-Wadlin Law, (which they knew would be frequently waived anyway due to public sentiment), and merely took work actions or went on strike. This failure of New York's civil service law to recognize that voluntary actions are a fundamental element of the employment relationship, only proved George Taylor's assertion that ***"men do not work except at terms voluntarily accepted."*** [11]

In early 1966, a massive 12 day strike of transit workers crippled the City of New York.[12] This was on top of a 28 day strike, just a year earlier, involving New York City's welfare department employees. [13] It was becoming apparent, in an era of changing times, that the Condlon-Wadlin Law of 1947, was proving both ineffective and non respected, and in desperate need of reform.[14]

On January 15, 1966, aware of the "deep public concern" over striking public employees,[15] and familiar with the memory of how Massachusetts Governor Calvin Coolidge propelled his response during the 1919 Boston Police Strike, into two terms in the White House,[16] Governor Nelson Rockefeller, a man with presidential aspirations of his own, appointed a "fast track" committee, of nationally renowned experts, to develop a new legislative solution for public employee relations.[17]

Led by George Taylor, the Committee got right to work. Within 75 days, on March 31, 1966, it unanimously issued its historic, Final Report. [18] Within thirteen months, thereafter, the Committee helped to repeal Condlon-Wadlin Law, and forge a lightening fast, new Public Employees' Fair Employment Act (referred to by Governor Rockefeller as the "Taylor Law" - a name that stuck).[19]

This new law, (Sections 200-214 of the Civil Service Law) was based upon Taylor's philosophy of:

- ***recognizing, permitting and encouraging voluntary actions,***
- ***understanding the need for flexible outcomes,***
- ***dedication to mutual respect between employers and employees, and***
- ***commitment to the importance of negotiated, voluntarily achieved agreements***.[20]

Since its enactment, its provisions have given New York State, and its governmental subdivisions, a practical and successful system of dispute resolution that has stood the test of time.

The Taylor Committee Report was a reflection of the quality of its members. It is a remarkable document that provides the best source of legislative history and intent for the Public Employees' Fair Employment Act. The report established a new structure for public employee relations to:

(a) grant to public employees the right of organization and representation,

(b) empower the State, local governments and other political subdivisions to recognize, negotiate with, and enter into written agreements with employee organizations representing public employees,

(c) create a Public Employment Relations Board to assist in resolving disputes between public employees and public employers, and

(d) continue the prohibition against strikes by public employees and provide remedies for violations of such prohibition. [21]

The statute that the report produced, was extremely true to the Taylor Committee's findings, and even though it has seen some amendments over the four decades since it was first enacted, it remains very consistent to the Committee's original intent and philosophy. [22]

One of the most important amendments, was the famous 1982 Triborough Amendment.[23] This amendment, changed section 209-a 1 (e) of the Civil Service Law, regarding improper practices to require public employers to honor the provisions of the prior contract until a new agreement is reached.[24] After its adoption, the number of strikes and work actions decreased to almost none.[25]

One of the reasons for George Taylor's lifelong success is because he understood people. He knew that Americans, as products of a capitalistic democracy, crave control, choices, and power over their own lives.[26] He understood, that empowering people to take voluntary actions, would give them a sense of control, power and self respect, that would release the creativity, options and flexibility needed to solve difficult problems.[27] He comprehended that when people are given the ability to take voluntary actions, that they become accountable for their choices, and develop a mutual sense of respect with their competitors and adversaries.[28]

Conversely, he also understood that when people feel helpless, out of control, and powerless, such is a condition which stifles creativity and effective problem solving.[29] Moreover, when one party maintains total control over a relationship, it produces no mutual respect on either side, and little or no accountability for the actions of either party.[30] Desperate people can be counted on to do desperate and misguided things, while absolute power corrupts absolutely.

New York State had a public employee relations system where the employees felt helpless, and disrespected.[31] Professor Taylor knew that the system was broken, and understood that when an employee believed their only option to get their employer to do something, was to stop working, then they would avail themselves of that option, even if the penalties were severe.[32] He understood there was a better way. Give all parties, employees, employers and their representatives, the ability to take voluntary actions.[33] This would increase options, choices, and flexibility.[34] It would unleash creativity, and help to find better solutions to difficult problems.[35] It would develop mutual respect between the parties, and make them each accountable for their actions.[36] It would empower both sides and allow them to develop an employment relationship that worked for both themselves and the public.[37]

George Taylor's brilliance was that he understood the effect that empowerment had upon people. He would deliver that empowerment by allowing all parties to take voluntary actions, and hold them accountable for their results.[38] He would permit and encourage the parties to use these actions to create agreements.[39] These agreements would find solutions. When these "meetings of the minds" were stalled, he would establish procedures and mechanisms to bring the parties to resolution.[40] He understood that when a strike is the least attractive option for both sides, they will use their power of voluntary action to find another option. The statute that bears his name stands on this philosophy, and has successfully employed these solutions for over 40 years.

George Taylor's framework, upon which the Taylor Law statute was built, employed this power of voluntary action and agreement throughout its provisions. In order to fully understand how pervasive it is throughout the statute, we will examine its deployment with five areas. These areas include: Representation, Agreements, Improper Practices, Impasse Resolution, and Strikes.

Part One: Representation/Organization

Apart from the general overall introductory summary of all their recommendations, the very first recommendation of the Taylor Committee in its final report was that ***"Public employees should be granted the right to join or refrain from joining employee organizations of their own choosing for the purpose of the participation and the negotiation with their public employers of the conditions of their employment."*** [41] This language, which tracked the 1939 constitutional amendment aforementioned,[42] would appear in the Taylor Law statute in sections 202 and 203, respectively.[43]

As the state constitution recognized in 1939 (but the courts refused to with respect to public employees), the right of organization is intrinsically linked to the right of representation. Originally the state courts held that under first amendment grounds, the state constitution did give public employees the right of "association", but that such right did not extend to have such associated organization represent such public employees for purposes of collective bargaining.[44] The Taylor committee, reflective of its Chair, believed that any problem could be solved through negotiation,[45] and that in order to have such negotiation, public employees must be given the right (i.e. the choice and ability to voluntarily act) to collectively bargain through representatives of their own choosing.[46]

In keeping with the Taylor philosophy that people should be empowered by the choice of their own voluntary actions, the statutory sections of the Taylor law that address representation and organization (sections 202, 203, 204, 206, 207, and 208) keep to this theme.[47] Indeed, the statutory language of section 202 specifies in its very terms, the choice of employees by stating they "shall have the right to" as well as stating "or refrain from" joining "any employee organization of their own choosing".[48]

Indeed, under this statutory language of the Taylor law, not only is the voluntary act of joining a employee organization (i.e. union) authorized and permitted under this Act, but the right not to do so is as well. Moreover, the very right and process under which employee organizations are formed, and selected, is also voluntary (pursuant to sections 206 and 207) and is specifically recognized as an employees voluntary action under section 202, when it expressly states "of their own choosing".

Although the Taylor Committee understood that employee organizations must be required to represent all employees within a bargaining unit, regardless, of whether or not they have chosen to join the union, the committee balanced this requirement by granting such employee organization the right of exclusive representation.[49] The legislature codified these recommendations under sections 203, 206, 207 and 208 of the statute,[50] and later through the agency shop amendments, added the further balance for mandatory representation by requiring that all represented employees must pay dues to the employee organization, to cover the cost of such representation.[51] But even under agency shop, the Taylor law merely took a "user fee" approach, and specifically does not require any employee to pay any portion of the union dues which are used for political or ideological purposes.[52]

Although not expressly set forth in the statutory provisions under the Taylor law, inherent in its Representation/Organizational framework, is the power of employee organizations to take, or not to take, the voluntary action to affiliate with other labor organizations, such as the AFL-CIO. For years the New York State Civil Service Association choose not to be affiliated with the AFL, which provides protections to its affiliates against competition for representation rights (i.e. being raided) by other AFL affiliates.[53] After its representation rights for certain bargaining units were lost in such raids, however, the CSEA choose to affiliate with the AFL-CIO, now ASFSCME, Local 1000. Such voluntary action of affiliation, as well as its prior decision not to affiliate, were both protected and permitted under the philosophy of the Taylor law. For pursuant to its terms, such statute permits and encourages voluntary actions by and between unions, employers and employees relating to the labor-employment relationship, and then as interpreted, administered and applied, uses those voluntary actions to define and determine their rights and duties under the Act.

Part Two: Negotiation and Agreements

George Taylor had as his credo that there were no "non-negotiable" demands.[54] He believed in the collective bargaining process, and that any problem could be solved by empowering the parties to unleash the creativity of new ideas.[55] Nowhere is this philosophy more apparent than under the application of provisions dealing with negotiation and collective bargaining agreements.

As set forth in Part One, the very first recommendation of the Taylor committee was to provide for the right of public employees to join employee organizations ***"for the purpose of the participation and the negotiation of their public employees of the conditions of their employment"***.[56] To Taylor, the very purpose of representation was to provide employees and employers with the effective ability to negotiate, and the very purpose of negotiation, was to reach "a meeting of the minds" as evidenced by a collective bargaining agreement.[57] Each of these factors deploys the use of voluntary actions to reach an agreement.

Sections 203, 204-a, 209, and 209-a, of the Taylor law, set forth and establish the nature and terms for the negotiation and development of a collective bargaining agreement between public employees (by means of their representative employee organization) and their public employers.[58] The statute further provides for the resolution of disputes arising from issues concerning collective bargaining agreements under sections 205 (PERB) and 213 (Judicial Review / Enforcement).[59]

Between Section Three and Section Five of the Taylor Committee report (the sections that deal with the resolution of deadlocks in collective negotiations and the organization for collective negotiations respectively) the committee devoted 24 of its 58 pages to this critical subject.[60] For to Professor Taylor, nothing was a more important tool for resolving conflicts in employee relations, than was negotiation to reach a meeting of the minds in a collective bargaining agreement.

The very nature of the collective bargaining processes, negotiation, and its end result, the collective bargaining agreement, is all about voluntary actions. Indeed the very word "agreement" connotes the volitional decision to come together with the other party to the terms that have been accepted. Inherent in agreement is choice and decisions.

When employers, employees and employee organizations are empowered to make such choices and decisions, the fundamental elements that George Taylor sought to advance: Recognizing, permitting and encouraging voluntary actions; Understanding the need for flexible outcomes; Dedication to mutual respect between employers and employees, and Commitment to the importance of negotiated, voluntarily achieved agreements, all become realized.

George Taylor believed that anything could, and almost everything should, be negotiated. Under the statute, however, he gave significant flexibility to this belief. For pursuant to the Taylor law, only items that are deemed to be "terms and conditions of employment" must be negotiated.[61] All other matters are left up to the discretion (the voluntary acts) of the parties.

Specifically, the provisions of section 209-a (1) (d) of the statute require that public employers must "negotiate in good faith with the duly recognized or certified representatives of its public employees", but that such negotiations need only concern subjects that are "terms and conditions of employment.[62]

This is once again the express recognition and encouragement of a voluntary actions. For although there is clearly a requirement to negotiate, no where does the statute require what decisions, either the employer or the employee organization of the employee, must make in determinating the outcome of such negotiations. In other words, although the parties must negotiate in good faith, they need only to agree to what they want to (a volitional act) and if the subject matter to be negotiated is deemed not to be a "term and condition of employment" they need only negotiate if they want to (another volitional act)

Indeed even the subject matter of the negotiations, by category (i.e. terms and conditions of employment) is very loosely defined in the statute to include ***"salaries, wages, hours and other terms and conditions of employment"***.[63] Accordingly, any determination as to what constitutes a "term and condition of employment" can be subjective, and is frequently left up to the ultimate decision of the Public Employment Relation Board, pursuant to such standards as ***"Traditional Analysis"*** or ***"Cohoes Conversion"***.[64]

As a result, the very duty to bargain (as determined by whether the item to be bargained is a "term and condition of employment), although encouraged by statute, tends to be a volitional act. For although the statutory framework promotes the negotiation and bargaining of all items of concern to the parties, the distinct requirement (or duty) to bargain, only attaches to those items that are deemed terms and conditions of employment.[65]

George Taylor believed that the best way to avoid strikes and prevent impasse, was to encourage the parties to negotiate in good faith and allow them to make their own decisions and agreements.[66] The Taylor law does just that and encourages both these outcomes. For by allowing parties to make their own decisions and agreements, they tend to have a higher respect for the outcome, and a greater willingness to actively participate in the negotiations.

It should be noted, however, that if there is one defect contained within the Taylor law, it has been argued that it is its lack of express definition as to what actually constitutes a "term and condition of employment". By providing the non express definition contained within Section 201 (4), perhaps the Taylor committee believed that all parties would deem everything bargainable (as of course George Taylor hoped they would) and that as parties of good faith, they would simply err on the side of negotiation (which of course as a volitional act they can).

The fact of the matter is, however, that far too often the parties can not agree on this threshold question, as to whether the item is in fact a term and condition of employment, and such must be determined by the PERB Board, on a case by case basis. It is unfortunate that the five brilliant minds (a paragon of labor experts) that made up the Taylor commission, and the subsequent legislatures since 1967, merely punted on this issue. For perhaps George Taylor's true desire, to see almost everything negotiated, could have been more attained, had this definition been more comprehensive and specific. As it is, it is but another example of the voluntary nature of the act.

Part Three: Improper Practices

In 1969, two years after the Legislature enacted the original provisions of the Taylor law, it adopted a series of amendments.[67] These amendments stiffened the penalties and sanctions imposed on employee organizations which violate the no strike provisions of section 210, and added a new section 209-a to impose obligations on public employers and public employee organizations for improper practices.[68] Under these amendments, the PERB Board was also authorized to take appropriate action in the event of a strike and to issue a public report thereon, and provisions were further added to authorize the voluntary arbitration of issues, such as non-fiscal matters which do not require legislative action.[69]

Accordingly, the provisions of the Taylor law governing improper practices were not a part of the original 1967 statute, and were not predominate in the Committee Report (although there is reference to "unfair practices).[70]

Section 209-a which governs improper practices, precludes the following employer deliberate acts:

(a) to interfere with, restrain or coerce public employees in the exercise of their rights to organize;
(b) to dominate or interfere with the formation or administration of any employee organization;
(c) to discriminate against an employee for participating in the any employee organization activities;
(d) to refuse to negotiate in good faith with the recognized or certified employee organization;
(e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated;
(f) to utilize any state funds to discourage union organization or employee participation in a union;
(g) to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a union representative at the time of questioning by the employer.[71]

This section also precludes the following deliberate acts by the employee organization:

(a) to interfere with, restrain or coerce public employees in the exercise of their rights not to organize;
(b) to refuse to negotiate in good faith with the public employer; or
(c) to breach its duty of fair representation to a public employee.[72]

All of the above acts are voluntary acts. They also all have consequences under the statute. Under section 209-a (4) (a), a party filing an improper practice charge may petition the PERB Board to obtain immediate injunctive relief, pending the decision of an administrative law judge. If the Board determines that there is reasonable cause to believe that an improper practice has occurred, then the Board shall petition the Albany County Supreme Court for injunctive relief. This injunctive relief can return the parties to the status quo ante, which can be incredibly burdensome and expensive upon the charged party.

It should be noted that the vast majority of claims under this section arise from alleged employer improper practices. Alleged improper practices by employee organizations, do happen, but are brought very infrequently. This is mostly due to the fact that employee organizations, by their nature, almost always seek to bargain and negotiate, whereas employers are frequently more reluctant. Again these are all voluntary acts, that have consequences, and from which flow, rights and duties under the law.

Two of the most frequent sources of litigation concerning improper practices are sections 209-a (1) (d) failure of an employer to negotiate in good faith, and (1) (e) failure of an employer to continue all the terms of an expired agreement. These claims are allegations of voluntary acts by the employer. They impose both rights and duties, and have both consequences and defenses under the law.

Most of these claims arise where these is some degree of confusion with respect to the view of the facts. With respect to a claim under 209-a (1) (d), most frequently, the employer views the subject that the employee organization seeks to have negotiated, to not be a term and condition of employment. With respect to a claim under 209-a (1) (e) - the famous Triborough amendment - the employer sees that facts of the item sought by the employee organization to be continued, as not having been contained within the prior collective bargaining agreement.

The filing of an improper practice charge represents a breakdown in communication and a failure in the negotiating/collective bargaining process. Some argue, that this is inevitable, and such is why the Taylor commission created the Public Employment Relations Board. This is, however, not really consistent with the philosophy of George Taylor or his Committee that produced the statute. For although the committee did see an important role for PERB, especially in the area of resolving disputes concerning representative status of employee organizations,[73] it did not foresee the Board having such a huge role as the arbitrator of what constitutes a term and condition of employment.

The current system of PERB making determinations under the aforementioned analyses, to decide on a case by case basis, what constitutes "terms and conditions of employment", lends itself to inconsistent decisions, and unnecessary disputes. Such definitions should either be codified, or delegated to PERB to express by regulation. For the current law, lends itself to a disagreement, that in so many other areas, the Taylor law has been so successful to reduce or eliminate.

Part Four: Impasse Resolution

Part Three of the Taylor Committee Final Report addressed the issue of Resolution of Deadlocks in Collective Negotiations.[74] That section commences by stating that the ***"avoidance of the strike is the perfection of procedures and policies to provide an effective alternative to conflict."***[75]

The Committee was very smart in its approach, seeking to take all measure to avoid impasse, as well as try to address it if it did in fact occur. As in other sections of the statute, the impasse provisions addressed in Section 209 of the Taylor Law, rely heavily on the voluntary actions of the parties.[76] From negotiations, to declaration of impasse, to mediation, to fact finding (for schools and non interest arbitration employees) or interest arbitration (for certain public safety personnel), and then to conciliation (for school districts - bargain til death) or legislative hearing (for all others), the Taylor law seeks to take what ever steps necessary to break impasse through voluntary party agreement, assisted agreement, or third party decision.[77]

Moreover, the Taylor Committee expressed its vision, consistent with George Taylor's belief that everything was negotiable, that even rules to solve impasse should be deemed negotiable, and could be established by the parties, through their own voluntary action. Although this hope of the Committee has been seldom realized, it was expressed in the Final Report as follows:

"This variety in the patterns of collective relations between government agencies and employee organizations in New York State, and the early stage of many of these relations. has led this Committee to conclude that every opportunity and encouragement should be afforded each collective relationship to develop its own procedures and dispute-settling machinery. No single procedure or style of dispute settlement is likely to prove equally acceptable or effective. Moreover, parties may wish to experiment and to revise procedures in the light of experience. No procedure should be imposed by law without first affording the governmental agencies and employee organizations involved in collective relations the opportunity to develop directly their own procedures for resolving an impasse." [78]

This section of the report can be seen as a logical outgrowth of Professor Taylor's views. Sadly, present experience has proven, that when parties are in conflict, it is very difficult for them to agree over the rules upon which to settle their dispute. Such tends to be a mission that will be more successful outside of the heat of battle, or by a third, non interested party.

The procedures and mechanisms contained within section 209, however, have been employed with significant success, and largely have achieved the Committee's goal, outlined in Part Three of its report, to avoid strikes. These procedures and mechanisms, as is consistent with the ideology of the Taylor law, use voluntary actions to achieve their goals and define their rights and duties.

Perhaps in no other area is the deployment of voluntary action more pronounced under the Taylor law than in Section 209, dealing with Resolution of Disputes in the Course of Collective Negotiations.[79] Throughout the course of the section the term voluntary is actually even used five times.[80] With negotiation, mediation and fact finding, every effort possible is made to bring the parties together to have them reach a "voluntary resolution".[81]

This idea is also carried over into the Rules of the Public Employment Relations Board, with respect to Voluntary Grievance Arbitration.[82] Under the terms of Part 207, the Committee's language in its final report can be heard when PERB states:

"It is the policy of the act to encourage public employers and recognized or certified employee organizations to enter into written agreements containing grievance procedures. In furtherance of this policy, the following voluntary arbitration rules of procedure are provided to (a) insure an efficient and orderly procedure for grievance arbitration, (b) assist the parties in remedying procedural deadlocks, and (c) effectuate the rapid adjudication of disputes and controversies." [83]

Under all these procedures it can be seen that both in the statutory section to resolve impasse, as well as the Rules section to resolve grievances, the direction is to utilize voluntary actions. It is under this vision, that the Taylor Committee believed that results were best achieved, and log jams broken. It is upon this vision that strikes have been effectively avoided and the Committee has achieved its stated goal.

Part Five: Strikes

As aforementioned, George Taylor viewed strikes as a fundamental failure of communication and negotiation. The Committee which he Chaired, was formed to prevent strikes, and they took their charge extremely seriously. The first paragraph of Part One of the Final report states their charge ***"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 employees."*** [84]

George Taylor knew the best way to prevent strikes was to give employees other options. To empower all parties to find other solutions. To enhance communication, allow collective bargaining, encourage negotiation, and establish procedures for impasse. This was the recommendations his Committee made, and this was the theme of the provisions of the statute that resulted.

Although the first recommendation of the Taylor law report was to repeal the Condlon Wadlin law, with its serious strike penalties, the Committee recommended, and the statute provides in Section 210, for the establishment of almost equally serious strike penalties.[85] Clearly, the Committee believed they needed a stick (the penalties) together with the carrot (to enhance communication, allow collective bargaining, encourage negotiation, and establish procedures for impasse).

Strikes like so many other elements of labor relations recognized under the Taylor law are voluntary actions. They are voluntary actions with serious consequences.

Section 210 expressly prohibits strikes and establishes those consequences for both employees and their organizations.[86] Under the terms of Section 210 (1), ***"No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike."*** [87]

Section 210 (2) establishes the violations and penalties for strikes, including:

For public employees:

- Being subject to removal or other disciplinary action provided by law for misconduct, and
- Having deducted from their compensation an amount equal to twice their daily rate of pay for each day or part thereof they were on strike, and

For employee organizations:

- Losing the right to have their dues deducted via payroll deduction, and
- Being subject to a fine pursuant to section 1751 of the judiciary law.[88]

These penalties offer a serious deterrent and consequence to those who wish to avail themselves of the voluntary action of striking. Under the law, public employees have an express duty not to strike, and their organizations have an express duty not to encourage them to do so.[89]

Conclusion

As has been demonstrated, the Taylor law permits and encourages voluntary actions by and between unions, employers and employees relating to the labor-employment relationship. The Act as interpreted, administered and applied then uses those voluntary actions to define and determine their rights and duties under the act.

Notes

1. The New York State Civil Service Law (The Public Employee's Fair Employment Act - "The Taylor Law'), Chapter 392 of the Laws of 1967, signed into law on April 21, 1967), at Section 200.

2. George W. Taylor: Industrial Peacemaker, Monthly Labor Review, December 1995, Pages. 29-34.

3. Id., at Pages 29-34.

4. Id., at Page 34.

5. Id., at Pages 29-34.

6. Id..

7. Jerome Lefkowitz, Jean Doerr and Sharon Berlin, Public Sector Labor and Employment Law, at Pages 3-8.

8. Id., at Page 8.

9. Article I, Section 17 of the Constitution of the State of New York, proposed in the 1938 Constitutional Convention, adopted by the voters on Nov. 8, 1938, effective Jan. 1, 1939.

10. Public Sector Labor and Employment Law, Supra at Note 7, at Page 13.

11. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 34.

12. Public Sector Labor and Employment Law, Supra at Note 7, at Page 23.

13. Origins of the Taylor Law, A Publication of the New York State Public Employment Relations Board - Paula Kinsella, Chairwoman, 1997, at Page 3.

14. Public Sector Labor and Employment Law, Supra at Note 7, at Pages 22-24.

15. Governor's Committee on Public Employee Relations, Final Report, M arch 31, 1967, as Reprinted in Jerome Lefkowitz, Jean Doerr and Sharon Berlin, Public Sector Labor and
Employment Law on Pages 59-120, at Page 65.

16. Public Sector Labor and Employment Law, Supra at Note 7, at Page 14.

17. Id., at Pages 23-24.

18. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 65; and Public Sector Labor and Employment Law, Supra at Note 7, at Page 24.

19. Public Sector Labor and Employment Law, Supra at Note 7, at Page 25.

20. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120, The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 200-214, and George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34.

21. Public Sector Labor and Employment Law, Supra at Note 7, at Page 24.

22. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120, The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 200-214, and George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34.

23. Chapter 868 of the Laws of 1982, amending Section 209-a 1 (e) of the Civil Service law to provide that It shall be an improper practice for public employer or its agents deliberately
"(e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article".

24. Id.

25. Origins of the Taylor Law, Supra at Note 13, at Page 6.

26. George W. Taylor: Industrial Peacemaker, Monthly Labor Review, December 1995, Pages. 29-34.

27-30. Id.

31. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120.

32.- 40. Id.

41. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

42. Article I, Section 17 of the Constitution of the State of New York, Supra at Note 9.

43. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 202 and 203. Such sections are as follows: "§202. R ight of Organization. Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing. §203. Right of Representation. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

44. Public Sector Labor and Employment Law, Supra at Note 7, at Page 13.

45. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 29.

46. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 76-89.

47. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 202-204, and 206-208.

48. Id., at Section 202.

49. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 75-89.

50. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 203, and 206-208.

51 .The Public Employees' Fair Employment Act, Supra at Note 1, at Section 208 (3).

52. Id.

53. See Article 20 of the AFL-CIO Constitution, which provides in section 2 that "No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists w ith any other affiliate."

54. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 29.

55. Id., at Pages 29-34.

56. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

57. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34; and Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120.

58. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 203, 204-a, 209 and 209-a.

59. Id., at Sections 205 and 213.

60. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 62-120.

61. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1) d.

62. Id.

63. Id., at Section 201 (4).

64. In determining negotiability, there are two supplemental theories. Traditional Analysis that 1. Looks tot he nature of the subject, 2. Applies a Balancing Test weighing employer and employee interests - asking is the subject a governmental mission or predominately a private interest, 3. Balance upon the inherent nature of the subject, not the facts of the particular case,
4. Effects uniformity of results, and 5. Some Predictability of Result; and Cohoes Conversion that 1. Looks to the Collective Bargaining Agreement, 2. Does not apply a balancing test - not applicable, 3. Controlled by Facts - Is the subject addressed by the Collective Bargaining Agreement, 4. No uniformity of Results, and Maximizes the Predictability of the Result. It should be noted that if the subject is deemed to be a term and condition of employment, there can still be no duty to bargain if there is either a clear legislative intent exempting a party from the duty, or a contrary public policy is found in common law, constitution or statutes (although this may require the balancing of competing or conflicting public policies).

65. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1) d.

66. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 90.

67. See Chapter 24 of the Laws of 1969.

68- 69. Id.

70. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 62-120, and The New York State Civil Service Law (The Public Employee's Fair Employment Act - "The Taylor Law'), Chapter 392 of the Laws of 1967, signed into law on April 21, 1967).

71. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1)

72. Id., at Section 209-a (2).

73. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

74. Id., at Pages 90-97.

75. Id., at Page 90.

76. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209.

77. Id.

78. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 91-92.

79. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209.

80- 81. Id.

82. Part 207 of the Rules of the New York State Public Employment Relations Board.

83. Id., at Section 207.1

84. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 65.

85. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62, and The Public Employees' Fair Employment Act, Supra at Note 1, at Section 210.

86. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 210.

87. Id., at Section 210 (1).

88. Id., at Sections 210 (2) and (3).

89. Id., at Section 210.

1. The New York State Civil Service Law (The Public Employee's Fair Employment Act - "The Taylor Law'), Chapter 392 of the Laws of 1967, signed into law on April 21, 1967), at Section 200.

2. George W. Taylor: Industrial Peacemaker, Monthly Labor Review, December 1995, Pages. 29-34.

3. Id., at Pages 29-34.

4. Id., at Page 34.

5. Id., at Pages 29-34.

6. Id..

7. Jerome Lefkowitz, Jean Doerr and Sharon Berlin, Public Sector Labor and Employment Law, at Pages 3-8.

8. Id., at Page 8.

9. Article I, Section 17 of the Constitution of the State of New York, proposed in the 1938 Constitutional Convention, adopted by the voters on Nov. 8, 1938, effective Jan. 1, 1939.

10. Public Sector Labor and Employment Law, Supra at Note 7, at Page 13.

11. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 34.

12. Public Sector Labor and Employment Law, Supra at Note 7, at Page 23.

13. Origins of the Taylor Law, A Publication of the New York State Public Employment Relations Board - Paula Kinsella, Chairwoman, 1997, at Page 3.

14. Public Sector Labor and Employment Law, Supra at Note 7, at Pages 22-24.

15. Governor's Committee on Public Employee Relations, Final Report, March 31, 1967, as Reprinted in Jerome Lefkowitz, Jean Doerr and Sharon Berlin, Public Sector Labor and Employment Law on Pages 59-120, at Page 65.

16. Public Sector Labor and Employment Law, Supra at Note 7, at Page 14.

17. Id., at Pages 23-24.

18. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 65; and Public Sector Labor and Employment Law, Supra at Note 7, at Page 24.

19. Public Sector Labor and Employment Law, Supra at Note 7, at Page 25.

20. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120, The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 200-214, and George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34.

21. Public Sector Labor and Employment Law, Supra at Note 7, at Page 24.

22. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120, The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 200-214, and George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34.

23. Chapter 868 of the Laws of 1982, amending Section 209-a 1 (e) of the Civil Service law to provide that It shall be an improper practice for public employer or its agents deliberately "(e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article".

24. Id.

25. Origins of the Taylor Law, Supra at Note 13, at Page 6.

26. George W. Taylor: Industrial Peacemaker, Monthly Labor Review, December 1995, Pages. 29-34.

27. Id.

28. Id.

29. Id.

30. Id.

31. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120.

32. Id.

33. Id.

34. Id.

35. Id.

36. Id.

37. Id.

38. Id.

39. Id.

40. Id.

41. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

42. Article I, Section 17 of the Constitution of the State of New York, Supra at Note 9.

43. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 202 and 203. Such sections are as follows: "§202. Right of Organization. Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing. §203. Right of Representation. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

44. Public Sector Labor and Employment Law, Supra at Note 7, at Page 13.

45. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 29.

46. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 76-89.

47. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 202-204, and 206-208.

48. Id., at Section 202.

49. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 75-89.

50. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 203, and 206-208.

51 .The Public Employees' Fair Employment Act, Supra at Note 1, at Section 208 (3).

52. Id.

53. See Article 20 of the AFL-CIO Constitution, which provides in section 2 that "No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate."

54. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Page 29.

55. Id., at Pages 29-34.

56. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

57. George W. Taylor: Industrial Peacemaker, Supra at Note 2, at Pages 29-34; and Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 59-120.

58. The Public Employees' Fair Employment Act, Supra at Note 1, at Sections 203, 204-a, 209 and 209-a.

59. Id., at Sections 205 and 213.

60. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 62-120.

61. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1) d.

62. Id.

63. Id., at Section 201 (4).

64. In determining negotiability, there are two supplemental theories. Traditional Analysis that 1. Looks tot he nature of the subject, 2. Applies a Balancing Test weighing employer and employee interests - asking is the subject a governmental mission or predominately a private interest, 3. Balance upon the inherent nature of the subject, not the facts of the particular case, 4. Effects uniformity of results, and 5. Some Predictability of Result; and Cohoes Conversion that 1. Looks to the Collective Bargaining Agreement, 2. Does not apply a balancing test - not applicable, 3. Controlled by Facts - Is the subject addressed by the Collective Bargaining Agreement, 4. No uniformity of Results, and Maximizes the Predictability of the Result. It should be noted that if the subject is deemed to be a term and condition of employment, there can still be no duty to bargain if there is either a clear legislative intent exempting a party from the duty, or a contrary public policy is found in common law, constitution or statutes (although this may require the balancing of competing or conflicting public policies).

65. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1) d.

66. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 90.

67. See Chapter 24 of the Laws of 1969.

68. Id.

69. Id.

70. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 62-120, and The New York State Civil Service Law (The Public Employee's Fair Employment Act - "The Taylor Law'), Chapter 392 of the Laws of 1967, signed into law on April 21, 1967).

71. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209-a (1)

72. Id., at Section 209-a (2).

73. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62.

74. Id., at Pages 90-97.

75. Id., at Page 90.

76. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209.

77. Id.

78. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Pages 91-92.

79. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 209.

80. Id.

81. Id.

82. Part 207 of the Rules of the New York State Public Employment Relations Board.

83. Id., at Section 207.1

84. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 65.

85. Governor's Committee on Public Employee Relations, Final Report, Supra at Note 15, at Page 62, and The Public Employees' Fair Employment Act, Supra at Note 1, at Section 210.

86. The Public Employees' Fair Employment Act, Supra at Note 1, at Section 210.

87. Id., at Section 210 (1).

88. Id., at Sections 210 (2) and (3).

89. Id., at Section 210.