

# Purpose for Taylor Law's Strike Provision: Redefining "Strike" in New York Public Sector and Employment Law

By Joanna Pericone

## Introduction

In 1977, a fire damaged the building of the New York State Unemployment Insurance Department.<sup>1</sup> The employees were moved to a temporary building that posed several dangerous and uncomfortable working conditions.<sup>2</sup> The building was essentially unheated, and electrical cords blew fuses and posed a walking hazard because they were strewn across the floor.<sup>3</sup> One of the two toilets in the building was backed up and there were only two exits in the building, one of which was blocked and the other was hard to open.<sup>4</sup> After the employees took their work and reported to another temporary building, their supervisor ordered them to go back to the deplorable building, but the employees refused to return.<sup>5</sup> The New York Court of Appeals held that the workers had engaged in an unlawful strike, in violation of New York's Civil Service Law, and that they were subsequently liable for sanctions imposed by their employer.<sup>6</sup> Although the conditions of the workplace created a "fire trap" and the strike was prompted out of concerns for safety, the Court found this to be irrelevant; under New York's Public Employee's Fair Employment Act, commonly known as the Taylor Law, the reason for a public employee participating in any kind of a work stoppage is not pertinent when determining whether an unlawful strike has occurred.<sup>7</sup>

The statutory definition of a strike in New York's Taylor law should be amended to include a purpose component. The current definition of a strike is "any strike or other concerted stoppage of work or slowdown by public employees."<sup>8</sup> The motive for a work stoppage should be considered because the penalties against those who violate the strike prohibition are severe.<sup>9</sup> Steps should be taken to confirm that public employees are withholding their labor to enhance their status at the workplace, not because of a need to protect themselves from risks to their safety and well-being. Additionally, motive should be considered in order to better effectuate the policies of the Taylor Committee, which wrote the report that led to the current law. Finally, the inclusion of a purpose component will coincide with public policy concerns.



## Strike Penalties

The penalties against those who participate in a strike can be devastating to both workers and unions. The Taylor Law allows for employees to be fired or disciplined if they are involved in a work stoppage.<sup>10</sup> The statute also allows an employer to punish an employee with the two-for-one penalty for their part in a strike.<sup>11</sup> A two-for-one penalty means that for each day—or part thereof—an employee is on strike, he or she forfeits a day's pay plus a fine for every day or partial day of the strike.<sup>12</sup> These penalties considerably raise the cost of strike penalties for unions and public employees.<sup>13</sup> Unions can also be punished if it is found that they have violated the strike prohibition; and if found guilty, a union can be forced to forfeit agency dues and agency shop fees for a period of time depending on how the stoppage affected the public.<sup>14</sup> These penalties are severe and can potentially cripple both public employees and their unions.

## Severe Strike Penalties Should Result in Purpose Component

Since the consequences for violating the Taylor Law's strike prohibition are so severe, a striking employee's motive should be considered before he or she is subjected to penalization. Currently, public employees cannot avoid the effects of their behavior when they have participated in a strike. To wit, in *Van Vlack v. Ternullo*, maintenance workers and teachers who worked at a correctional facility refused to accept out-of-title assignments as replacements for striking correctional officers because they were genuinely afraid of: (1) physical retaliation from the correction officers at the picketing line; (2) future revenge from the picketing officers; and (3) not being protected from the inmates once they were inside.<sup>15</sup> Despite the Second Department's previous ruling that the legitimate fears of the employees protected them from strike charges and penalties, the Court of Appeals nonetheless reversed; the Court of Appeals reasoned in its holding that since the employees did not do their assigned job, they had engaged in a strike under the Taylor Law.<sup>16</sup> If a purpose component were added to the definition of a strike, public employees would not be sanctioned for a work stoppage that is the result of a reasonable concern for their safety or well-being.

## Intent of the Taylor Committee

The Taylor Committee was assembled in 1966 by then-Governor Nelson Rockefeller in order “to make legislative proposals for protecting the public against the disruption of vital public services by illegal strikes, while at the same time, protecting the rights of public employees.”<sup>17</sup> The Committee made several proposals for how to improve public labor law in New York and one of its recommendations was to compel employers to take into account the motive behind a public employee’s strike.<sup>18</sup> The Committee’s definition of a strike was “any concerted work stoppage or slowdown by public employees for the purpose of inducing or coercing a change in the terms and conditions of their employment....”<sup>19</sup>

The Committee understood that a public employee’s sense of powerlessness may encourage him or her to go on strike, but its hope was to create a system of collective bargaining that would help him or her avoid a work stoppage.<sup>20</sup> Public employees, according to the Taylor Committee, have considerable power because they are in charge of state services, and they must therefore be prohibited from striking because a work stoppage can be costly and paralyze the community.<sup>21</sup>

## Public Policy Considerations

It is not good policy to ignore the purpose of a strike or work stoppage. Workers should be entitled to protect themselves at the workplace when their safety is being threatened. A policy of ensuring that workers are actually withholding their labor to enhance their standing in the workplace should be implemented before punishing them for their actions. Public employees—or any employees, for that matter—should not be forced to accept working conditions that are hazardous to their health, safety or welfare. If work temporarily stops for those reasons, it seems fundamentally unfair to punish them for protecting themselves from reasonable risks. It is good policy to take the purpose of a work stoppage into consideration when determining whether an unlawful strike has occurred.

## Conclusion

New York’s Taylor Law does not regard the reasons for a strike to be relevant when discerning whether a work stoppage has occurred. Adding a purpose

component to the statutory definition of strike would ensure that workers who are punished for violating the strike prohibition are actually guilty of striking. Considering the motive for a stoppage will also coincide with the intent of the Taylor Committee and be in accordance with public policy concerns.

## Endnotes

1. *Acosta v. Wollett*, 430 N.Y.S.2d 890, 890 (App. Div. 1980).
2. *Id.* at 891.
3. *Id.*
4. *Id.* at 892 (Mikoll, J., dissenting).
5. *Id.* at 893 (Mikoll, J., dissenting).
6. *See Acosta v. Wollett*, 431 N.E.2d 966, 966 (N.Y. 1981); N.Y. CIV. SERV. LAW § 210(1) (McKinney 2012).
7. *Acosta*, 430 N.Y.S.2d at 893–94 (Mikoll, J., dissenting); PUBLIC SECTOR LABOR AND EMPLOYMENT LAW, 980 (Jerome Lefkowitz ed., N.Y. State Bar Ass’n 3d ed. 2009); Kate Montgomery Swearingen, Comment, *Tailoring the Taylor Law: Restoring a Balance of Power to Bargaining*, 44 COLUM. J.L. & SOC. PROBS. 513, 519 (2011).
8. CIV. SERV. LAW § 201(9).
9. *See id.* § 210(2)(f), (3)(f).
10. *Id.* § 210(2)(a).
11. *Id.* § 210(2)(f); PUBLIC SECTOR LABOR AND EMPLOYMENT LAW, *supra* note 7, at 985.
12. CIV. SERV. LAW § 210(2)(f).
13. Martin H. Malin, *Public Employees’ Right to Striking: Law and Experience*, 26 U. MICH. J.L. REFORM 313, 329 (1993).
14. CIV. SERV. LAW § 210(3)(f).
15. *Van Vlack, v. Ternullo*, 425 N.Y.S.2d 347, 347 (App. Div. 1980), *rev’d*, 425 N.E.2d 862 (N.Y. 1981).
16. *Van Vlack*, 425 N.Y.S.2d at 347; *Van Vlack*, 425 N.E.2d at 862.
17. GOVERNOR’S COMM., PUB. EMP. RELATIONS: FINAL REPORT 9 (1966), available at <http://www.perb.state.ny.us/pdf/1966PERR.pdf>.
18. *Id.* at 8 (recommending that a strike be defined as “a concerted work stoppage or slowdown by public employees, for the purpose of inducing or coercing a change in the conditions of their employment”) (emphasis added).
19. *Id.* at 43.
20. *Id.* at 12.
21. *Id.*

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