Concurrent One

Taylor Law at 50
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Public Sector Labor Relations in Higher Education

Including:
Distinctive Issues in Higher Education under the Taylor Law

"The Taylor Law at 50" Conference

Panel: Public Sector Labor Relations in Higher Education:

Distinctive Issues in Higher Education under the Taylor Law

May 10, 2018

Panelists:

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I. Introduction

"Through its first few years, PERB would be primarily occupied by the first objective of the Taylor Law: organizing local unions and holding representation elections. [B]y the mid-1970s, with representation issues largely settled, applying the collective bargaining and impasse provisions of the Taylor Law would become the focal point." Jason A. Zwara, *Practitioners' Note: Left In The Dark: How New York's Taylor Law Impairs Collective Bargaining*, 31 Hofstra Lab. & Emp. L.J. 193, 200-01 (2013).

II. Employee rights under the Taylor Law

A. "The similarity in language between…public sector statutory provisions and Sections 7, 8(a)(1), (2) and (3) of the National Labor Relations Act has led to extensive reliance upon federal precedents." Richard Kirschner, *Labor Management Relations in the Public Sector: An Introductory Overview of Organizing Activities, Bargaining Units, Scope of Bargaining, and Dispute Resolution Techniques,* ALI-ABA Course of Study Materials (June and July 1999), see, e.g., Sec. 202.

   Sec. 202. 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.

B. Lack of protection for "concerted activities" under the Taylor Law.

   1. William Herbert describes the1984 decision from the New York Court of Appeals in a community college case: "In Rosen v. New York Public Employment Relations Board, 526 N.E.2d 25 (N.Y. 1988), the New York Court of Appeals sustained an administrative determination by the New York State Public Employment Relations

Board (NYPERB) that a community college teacher who presented grievances on behalf of herself and a group of other employees to the associate dean did not engage in a protected activity under the Taylor Law because there was no evidence that the teachers were in a union, were seeking to form a union, or were being represented by one. The Rosen holding demonstrates that, in contrast to the standard set forth in Meyers I and Meyers II [under the NLRA], a New York public employee 'bringing truly group complaints to the attention of management' is unprotected unless the complaint is related to forming, joining or participating in a union." William A. Herbert, *Can't Escape from the Memory: Social Media and Public Sector Labor Law*, 40 N. Ky. L. Rev. 427, 465 (2013).

2. In the absence of protection for "concerted activities" unrelated to unionization, academic freedom is important for protecting faculty concerted/group activity. Sources of academic freedom: constitutional rights of freedom of speech; university policies; collective bargaining agreements.

3. Excerpt from the UUP/SUNY Collective Bargaining Agreement (2011 – 2016)

   Academic Freedom
   §9.1 It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry, teaching and research. In the exercise of this freedom faculty members may, without limitation, discuss their own subject in the classroom; they may not, however, claim as their right the privilege of discussing in their classroom controversial matter which has no relation to their subject.

   §9.2 The principle of academic freedom shall be accompanied by a corresponding principle of responsibility.

   §9.3 In their role as citizens, employees have the same freedoms as other citizens. However, in their extramural utterances employees have an obligation to indicate that they are not institutional spokespersons.

III. Scope and make up of bargaining units

A. Significance of bargaining unit determination

"Unit determinations serve a dual function in both the public and private sectors: they (1) determine the constituency for purposes of selecting the majority representative; and (2) mold the structure of collective bargaining which takes place after a representative, if any, is selected." Kirschner, *supra*.

Under the Taylor Law, factors to determine appropriate bargaining units: "(1) the community of interest among the employees to be included in the unit; (2) whether the officials of the government at the level of the unit have the power to agree to the terms and conditions of employment upon which the employees desire to negotiate; and (3)

whether the unit is compatible with the joint responsibilities of the public employer and public employees to serve the public." Kirschner, *supra*.

B. Managerial Employees

1. Unlike the NLRA, supervisors are considered "employees" under the Taylor Law, with rights to unionize and engage in collective bargaining. Similar to the NLRA, "managerial employees" are excluded from the definition of "employee" under the Taylor Law. Section 201.7(a).

2. A key distinction between the category "managerial employees" as applied to faculty in higher education in the private and public sectors.

    a. Since the 1980 U.S. Supreme Court decision of *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), many tenure-track/tenured faculty have been considered managerial employees excluded from protection under the NLRA. Contingent faculty (full-time and part-time nontenure-track faculty) will likely be considered employees covered by the NLRA. Under the Taylor Law, all faculty are employees with rights to unionize and collectively bargain.

    b. "While the court's decision in *Yeshiva* has resulted in the decertification or voluntary withdrawals of some 25 faculty unions at various private colleges and universities, including four in New York State, it has not lead to the decertification of a single unit in the public sector, despite their having similar collegial governance policies and practices." Sid Braufman, *Coping with Arbitrability: Private Industry v. Academia*, 48 Arbitration Journal 42 (March 1993).

C. Teaching Assistants and Research Assistants

1. Under the NLRA, employee status of teaching assistants and research assistants (whether graduate students or undergraduate students) has been an issue that has seesawed back and forth, depending on whether the NLRB majority was appointed by a Democratic or Republican administration (*NYU* (2000) employee status; *Brown University* (2004) no employee status; *Columbia University* (2016) employee status).

2. Under the Taylor Law, TAs and RAs are considered employees.

D. Scope of bargaining units.

1. A significant issue concerning the scope of bargaining units in colleges and universities under the Taylor Law is whether a "wall-to-wall" bargaining unit is appropriate; i.e. a unit that includes nontenure-track faculty, tenure-track/tenured faculty, and graduate assistants (TAs; RAs). Is there a community of interests

sufficient to include all these groups in a single bargaining unit, or separate bargaining units appropriate?

2. *Cayuga Community College Part-Time Faculty Association and Cayuga Community College, and County of Cayuga* (2016) (PERB upheld ALJ finding that separate bargaining unit of part-time faculty was appropriate due to lack of strong community of interests with full-time faculty and conflicts between part-time and full-time faculty).

3. *In the Matter of Tompkins Cortland Community College Adjunct Association, NYSUT, NEA, AFT, AFL-CIO and Tompkins Cortland Community College, and County of Tompkins and County of Cortland.* 50 PERB ¶4001 (ALJ 2013) (separate bargaining unit of adjunct faculty was appropriate because of conflicts of interests with full-time faculty).

4. The Professional Staff Congress (PSC), the union representing full and part-time faculty, professional staff and graduate student-workers, across some two dozen urban campuses at the City University of New York (CUNY), was chartered as an American Federation of Teachers local in 1972, through the merger of two previously existing unions. See, Luke Elliott-Negri, "Wall to Wall: Industrial Unionism at the City University of New York, 1972 – 2017," In *Professors in the Gig Economy*, Kim Tolley editor (2018), documenting the history of the PSC with respect to contingent faculty (adjuncts). Rather than making a final assessment with respect to whether adjuncts have more power in a wall-to-wall unit like PSC-CUNY's or in their own union (as is the case at many universities, especially in the private sector), Elliott-Negri argues that there are, simply, *trade-offs* involved in "wall to wall" unionism: adjuncts benefit from the dues base and lobbying power of full time faculty, but tend to find their goals submerged.

IV. Collective bargaining issues

A. Defining Mandatory and Nonmandatory Subjects of Bargaining

1. Introduction

a. **"**The main public sector justification for excluding a legal topic from the mandated bargaining process is that the demand involves a significant public policy question which should not be determined in the…collective bargaining process…." Kirschner, *supra.*

b. Courtlyn G. Roser Jones contrasts private sector collective bargaining, where employers resist discussing permissive subjects, with public sector collective bargaining, where unions, "have proved immensely successful in bargaining over these permissive subjects, particularly as they relate to collaborative policy roles for their professional employees." Courtlyn G. Roser-Jones, *Reconciling Agency*

Fee Doctrine, The First Amendment, and the Modern Public Sector Union, 112 NW. U. L.Rev. 597, 628 (2018). Roser-Jones cites teachers unions as being "at the forefront of this, negotiating provisions in collective bargaining agreements related to the length of school days, student--teacher ratios, instructional and preparation time, the use of performance indicators, school safety provisions, and professional qualifications for hire." *Id.*

c. Roser-Jones continues:

"Widening the typical scope of bargaining topics to influence organizational policy was a fundamental early victory for public sector unions. That collectively-bargained-for agreements in the public sector still generally encompass a broader scope of activities remains a modern distinction between public and private sector collective bargaining mechanics. Although most state statutes regulating public sector collective bargaining also distinguish between permissive and mandatory subjects, government officials who bargain on the other side of the table with public sector unions have (up until very recently) been more willing to discuss permissive topics than private sector employers. Unlike in private sector bargaining, a combination of social and political pressures made avoidance of permissive topics in the public sector unpopular." *Id*. at 629.

2. Mandatory and nonmandatory subjects under the Taylor Law

a. Kirschner, *supra*, notes "how incredibly fine-lined some of the distinctions can be" in defining mandatory, nonmandatory, or prohibited subjects of bargaining under the Taylor Law. (citing, *Mandatory/Nonmandatory Subjects of Negotiation*, New York State Public Employment Relations Board (May 31, 1988)).

b. *Mandatory/Nonmandatory Subjects of Negotiation*, New York State Public Employment Relations Board 38 (May 31, 2007), provides case descriptions and citations of mandatory and nonmandatory subjects of bargaining, including the following that concern issues relevant to collective bargaining in higher education:

Tenure reviews and job security:

A substantive limitation on the authority of a board of education to grant or deny tenure violates public policy that such boards have sole authority to make tenure decisions. It is not a term or condition of employment subject to mandatory negotiations. However, procedural safeguards preliminary to a tenure determination are mandatorily negotiable. *Cohoes City Sch Dist v Cohoes Teachers Assn*, 40 NY2d 774, 9 PERB ¶ 7529 (1976); *Conte v Board of Educ Town of Hinsdale, Cattaraugus County*, 58 AD2d 219, 10 PERB ¶ 7532 (4th Dept 1977); *Board of Educ Elwood Union Free Sch Dist v Elwood Teachers' Alliance*, 94 AD2d 692, 16 PERB ¶ 7517 (2d Dept 1983).

Procedural aspects of an evaluation system are mandatorily negotiable, especially where the implementation of the evaluation system involves employee participation. *County of Nassau,* 35 PERB ¶ 4566 (2002).

A demand for union approval of evaluation forms is a mandatory subject since it relates to evaluation procedures. *Somers Faculty Assn,* 9 PERB ¶ 3014 (1976).

Requirements of a written statement of evaluation criteria and of written rationale for denial of promotion, reappointment or tenure are mandatory subjects. *Orange County Community Coll,* 9 PERB ¶ 3068 (1976).

A demand that unit employees determine their own evaluation system is a nonmandatory subject; due process in the application of an evaluation system is a mandatory subject. *Orange County Community Coll,* 9 PERB ¶ 3068 (1976).

The identity of persons or members of a committee who will evaluate is not a term and condition of employment of the employees to be evaluated and, therefore, their designation is a nonmandatory subject. *Board of Educ of the City Sch Dist of the City of New York,* 5 PERB ¶ 3054 (1972); *Board of Educ of the City Sch Dist of the City of New York,* 7 PERB ¶ 3028 (1974); *Orange County Community Coll,* 9 PERB 3¶ 068 (1976), *Orange County Community Coll Faculty Assn,* 10 PERB ¶ 3080 (1977); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll,*11 PERB ¶ 3045 (1978).

Standards or criteria for evaluation are nonmandatory subjects. *Somers Faculty Assn,* 9 PERB ¶ 3014 (1976); *Elwood Union Free Sch Dist,* 10 PERB ¶ 3107 (1977); *Roswell Park Cancer Institute,* 36PERB ¶ 4518 (2003).

A demand to preclude the layoff of unit employees is a nonmandatory proposal for job security. *Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll,* 12 PERB ¶ 3030 (1979); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll,* 11 PERB ¶ 3045 (1978).

Demands regarding the order of retrenchment or layoff are mandatory. *Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll,* 12PERB ¶ 3030 (1979).

Course content and teaching materials:

A demand for faculty input into the courses they will teach is nonmandatory. *Orange County Community Coll Faculty Assn,* 10 PERB ¶ 3080 (1977).

Courses (curriculum) to be offered relates to educational policy and are nonmandatory. *Orange County Community Coll,* 9 PERB ¶ 3068 (1976); *Yorktown Faculty Assn and Yorktown Cent Sch Dist,* 7 PERB ¶ 3030 (1974).

A demand that textbooks and other teaching materials be selected by unit employees deals with educational policy and is nonmandatory. *Orange County Community Coll,* 9 PERB ¶ 3068 (1976).

A demand that time limits be set on the promulgation of required textbooks to give teachers preparation time for their usage is mandatory. *Orange County Community Coll Faculty Assn,* 10 PERB ¶ 3080 (1977).

Due process in disciplinary procedures:

Arbitration as the last step of disciplinary procedures relating to tenured teachers is a mandatory subject. *Board of Educ of Union Free Sch Dist No. 3 Town of Huntington v Associated Teachers of Huntington,* 30 NY2d 122, 5 PERB ¶ 7507 (1972).

Intellectual Property:

The portions of an intellectual property policy which relate to compensation, dispute resolution and grievances are mandatorily negotiable. *Matter of City Univ. of New York*, 36 PERB ¶ 4547 (2003), *revd in part* 37 PERB ¶ 3006 (2004), *revd and remanded sub nom. Matter of Professional Staff Congress-City Univ of New York v Pub. Empl Relations Bd.,* 21 AD3d 10, 38 PERB ¶ 7009 (1st Dept 2005), *motion to dismiss on the ground of mootness denied*, 7 NY3d 780, 39 PERB ¶ 7008, *revd* 7 NY3d 458, 39 PERB ¶ 7010 (2006).

B. **Factors influencing the scope of bargaining, outside legal definitions under the Taylor Law**

1. Parties' relationship in collective bargaining.

Kirschner, *supra*, notes: "Personal experience and involvement in the dynamics of collective bargaining in a variety of public sector settings, confirms the truth that, in many instances, bargaining results are not primarily determined by the legal rules related to the scope of bargaining. This does not mean, however, that the law which defines scope is irrelevant to the bargaining process…At times, legal doctrines relating to scope may be used as a sword by a weak union or weak management to provide additional bargaining leverage or as a shield to provide some protection against granting undesired bargaining concessions. Moreover, in the 'real' bargaining world, parties usually seek to arrange workable tradeoffs. These may be easier to arrange when there is a broad scope of bargaining which gives the parties greater flexibility."

2. "Matters which are nonmandatory in nature may become mandatorily negotiable between the parties to a collective bargaining agreement that already contains such matters. This 'conversion theory of negotiability' effectuates the fundamental policies of the Public Employees' Fair Employment Act (Act) and avoids continuing litigation

of disputes which should be resolved through good faith negotiations." *Mandatory/Nonmandatory Subjects of Negotiation*, New York State Public Employment Relations Board (May 31, 2007), *citing, City of Cohoes*, 31 PERB ¶ 3020 (1998), *confirmed sub nom. Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v Cuevas*, 32 PERB ¶ ~7026 (Sup Ct Albany County 1999), *affd*, 276 AD2d 184, 33 PERB ¶ ~7019 (3d Dept 2000); *Iv denied*, 96 NY2d 711, 34 PERB ¶ 7018 (2001); *City of Utica*, 31 PERB ¶ 3075 (1998), *affd*, 32 PERB ¶ 7005 (Sup Ct Albany County 1999); *Greenburgh No 11 Union Free Sch Dist*, 32 PERB ¶ 3023 (1999)."

3. **Collective bargaining and shared governance.**

   There may be overlapping issues of wages, hours, and terms and conditions of employment (i.e. mandatory subjects of bargaining) and issues deliberated on by Faculty Senates or other shared governance bodies. Further, the parties may agree to engage in collective bargaining over nonmandatory subjects of bargaining (see above for examples of PERB and/or ALJ decisions). Such nonmandatory subjects may also be deliberated on by Faculty Senates or other shared governance bodies as policy matters of interest to the faculty.

C. **Alternative dispute resolution processes during collective bargaining**

1. Taylor Law section 209(3)(f) only applies where "the public employer is a school district, a board of cooperative educational services, a community college, the state university of New York, or the city university of New York." In these educational institutions, at the point of impasse, the parties are not required to enter binding interest arbitration and there is no requirement that the impasse be resolved through legislative intervention.

2. Kirschner, *supra*, quotes a Buffalo Teachers Federation representative's statement in a 2010 consultant report, that "there is no purpose in [declaring impasse] since the dispute would go to a Fact Finder. The Fact Finder's Report would then be submitted to the School Board and to Union leadership. No purpose would be served since the process lacks binding arbitration… ." Contrast with other parts of the public sector: In "emergency service" sectors, including police and firefighters, section 209(4) subjects the parties to binding interest arbitration after negotiations reach impasse. In all other parts of the public sectors, section 209(3) the impasse and arbitration process ends with a legislatively imposed agreement.

3. Examples of long negotiations for renewal of a new collective bargaining agreement:
   a. David W. Chen, "Tentative Contract Deal at CUNY Ends Stalemate and Strike Threat," New York Times (Jun. 16, 2016).
   b. Keshia Clukey, "SUNY Employees Rally for New Contract," Politico (Albany) (Nov. 16, 2017), http://uupinfo.org/communications/docs/PoliticoAlbanyContractRallyNov17.jpg

D. Effect of Triborough Amendment

1. The Triborough Amendment (1982): It is an improper practice "to refuse to continue all the terms of an expired agreement until a new agreement is negotiated… ." Section 209-a(1)(e)

2. *Prof'l Staff Congress-City Univ. of N.Y. v PERB*, 799 N.Y.S.2d 7, 15 (App. Div. 1st Dep't 2005), rev'd on other grounds 857 N.E.2d 1108 (N.Y. 2007) ("the Triborough doctrine is primarily a protection for employee representatives and not, as PERB views it, an imposition of reciprocal obligations to maintain the status quo."). (*see*, Zwara, *supra* at 175 n. 68)

3. Does the Triborough Amendment have a distinctive impact on collective bargaining in educational institutions that are not required to engage in binding arbitration due to 209(3)(f) of the Taylor Law? See, Kirschner, *supra*.

E. Potential impact of *Janus v. AFSCME*, currently pending in the U.S. Supreme Court, concerning a First Amendment challenge to agency fee provisions in public sector collective bargaining agreements.

V. Enforcement of the collective bargaining agreement: Distinctive issues in higher education.

A. Dispute resolution processes for different types of grievances.

1. Braufman describes "[t]he most significant difference between the two models [industrial and academia]…. [W]hile virtually all kinds of controversies and disputes in industry, with very few exceptions, can be appealed to arbitration, grievances challenging exercises of academic judgment are sharply restricted. Thus, where such critical matters as appointment, reappointment, promotion, termination and tenure are concerned, the tendency in academia is to limit arbitrability severely. The arbitrator's authority is greatly curbed with respect to both the scope of examination and the remedy. More specifically, the examination must focus exclusively on procedural matters, while the remedy is confined solely to a remand order." Sid Braufman, *Coping with Arbitrability: Private Industry v. Academia*, 48 Arbitration Journal 42 (March 1993)

2. Braufman also describes the more complex nature of grievance procedures in higher education CBAs: "Relatively speaking, industry takes a rather simple approach to its grievance and arbitration machinery, with virtually all disputes, regardless of type, being subject to the same procedure. In higher education, however, that is clearly not the case. All procedures applicable to the full-time faculty comprise at least three separate and distinct systems. One deals with discipline, one involves academic judgment and the ARPT [appointment, reappointment, promotion, and tenure] process, and still another concerns all

other disputes. And, that doesn't even take into account the usual peer-review or other appeals processes available to the complainant, not part of the regular grievance and arbitration process." *Id.*

B. Procedures concerning appointment, reappointment, promotion, and tenure.

1. The CBA may limit the arbitrator's authority.

Example from PSC/CUNY CBA (2007-2010):

> (b) For purposes of this sub-paragraph, "academic judgment" shall mean the judgment of academic authorities including faculty, as defined by the bylaws and the board (1) as to the procedures, criteria and information to be used in making determinations as to appointment, reappointment, promotions, and tenure and (2) as to whether to recommend or grant appointment, reappointment, promotions and tenure to a particular individual on the basis of such procedures, criteria and information. In the arbitration of any grievance or action based in whole or in part upon such academic judgment, the arbitrator shall not review the merits of the academic judgment or substitute his/her own judgment therefor, provided that the arbitrator may determine (i) that the action violates a term of this agreement, or (ii) that it is not in accordance with the bylaws or written policies of the board, or (iii) that the claimed academic judgment in respect of the appointment, reappointment, promotion or tenure of a particular individual in fact constituted an arbitrary or discriminatory application of the bylaws or written policies of the board.
>
> (c)(1) In cases involving the failure to appoint, promote or reappoint an employee in which the arbitrator sustains the grievance, except as specifically provided by sub-par. (d) below, the arbitrator shall not, in any case, direct that a promotion, appointment or reappointment with or without tenure be made, but upon his/her finding that there is a likelihood that a fair academic judgment may not be made on remand if normal academic procedures are followed, the arbitrator shall remand the matter to a select faculty committee of three tenured full or associate professors of the City University of New York….

2. The CBA may limit use of grievance/arbitration in procedures concerning appointment renewals:

Excerpts from the UUP/SUNY Collective Bargaining Agreement (2011 – 2016)

§33.1 Definitions

a. "Professional staff" shall mean all persons occupying positions designated by the Chancellor as being in the unclassified service.

b. "Initial academic review" shall mean a review and recommendation by a committee of academic employees at the departmental level or, in the event academic employees are not organized along departmental lines, at the division, school, college or other academic employee organizational level next higher than the departmental level, which may exist for the purpose of evaluating an academic employee for continuing appointment.

c. "Subsequent academic review" shall mean a review and recommendation by a committee of academic employees at the division, school, college or other academic employee organizational level next higher than the initial academic review committee which may exist for the purpose of evaluating an academic employee for continuing appointment.

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§33.4 Procedure for Review

a. Within 10 working days following receipt by an employee of notification, in writing, by the College President of the right to a review of the reasons for non-renewal, such employee may submit to the Chancellor a request, in writing, that the Chancellor, or designee, review the reasons for such notice of non-renewal. It is recommended that the employee enclose a copy of the College President's letter providing the reasons for the non-renewal with the request to the Chancellor.

b. Within 10 working days following receipt by the Chancellor of the employee's request for review submitted pursuant to subdivision (a) of this Section, the Chancellor, or designee, shall acknowledge the employee's request and shall notify both the employee and the College President that a review of the matter shall take place by an ad hoc tripartite committee of members of the professional staff at the employee's campus, to be known as the Chancellor's Advisory Committee.

* * *

The scope of the review conducted by the Chancellor's Advisory Committee shall not exceed the following:

1. Where the reasons for the notice of non-renewal were the employee's performance or competence, the Chancellor's Advisory Committee may review the substance of the judgments relating to such performance or competence.

2. Where the reasons for the notice of non-renewal involved matters of program, the review conducted by the Chancellor's Advisory Committee shall be limited to the sole question of whether the notice of non-renewal was in fact based upon such considerations when issued. The Chancellor's Advisory Committee shall not be empowered to determine the correctness of determinations of the College President involving matters other than the employee's performance or competence, but shall satisfy itself that the matters of program were the reasons for the decision and shall so state to the Chancellor.

* * *

§33.7 Neither provisions of this Article nor any review conducted pursuant thereto shall be subject to the provisions of Article 7, Grievance Procedure, of this Agreement.

3. Procedures concerning disciplinary actions;

a. For grievances dealing with disciplinary actions (e.g. suspension or discharge), in academia, the norm is that a hearing by peers precedes such disciplinary actions cannot be implemented without some form of hearing by faculty peers. This contrasts with traditional industry settings, where the grievance/arbitration process follows management's imposition of discipline.

Example: Art. 21.10 of the contract between the Professional Staff Congress (PSC) and City University of New York (CUNY): "Any person against whom charges have been made may, at any time during the pendency of the charges, be suspended by the president of the college. Such suspension shall be without loss of pay."

c. A CBA may provide faculty member with option of going to arbitration or taking the disciplinary grievance to a faculty governance body.

d. Excerpts from the UUP/SUNY Collective Bargaining Agreement (2011 – 2016) regarding grievance/arbitration for disciplinary actions.

§19.4 Disciplinary Procedure

a. Discipline shall be imposed only for just cause. Where the College President, or designee, seeks to impose discipline, notice of such discipline shall be made in writing and served upon the employee in person or by registered or certified mail, return receipt requested, to the employee's address of record. The conduct for

which discipline is being imposed and the penalty proposed shall be specified in the notice. The notice served on the employee shall contain a detailed description of the alleged acts and conduct including reference to dates, times and places.

b. The penalty proposed may not be implemented until the employee (1) fails to file a disciplinary grievance within 10 days of service of the notice of discipline, or (2) having filed a disciplinary grievance, fails to file a timely appeal to disciplinary arbitration, or (3) having appealed to disciplinary arbitration, until and to the extent that it is upheld by the disciplinary arbitrator, or (4) until the matter is settled.