Concurrent One

Taylor Law at 50
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Half a Century of Managing Collective Bargaining Conflict: The New York Experience and Beyond

Including:
The Acceleration and Decline of Discord:
Collective Bargaining Impasses in New York State

The Challenges and Shortcomings in the United States:
A Comparative Analysis of Public Sector Labor Union Dispute Resolution Mechanisms

The Acceleration and Decline of Discord:
Collective Bargaining Impasses in New York State

By Anthony Zumbolo

Social dissonance during the 1960s, as manifest in racial, gender, artistic, and employment upheaval, shaped America's Cultural Revolution. During this period workplaces experienced increasing labor management conflict, especially in the public sector. Often, the vanguard striving for one social improvement joined with others to more vividly expose intertwined perceived injustices. One of the most well known examples of this social fusion was the Memphis sanitation workers strike of 1968. Dr. Martin Luther King, Jr. lent the vigor of the civil rights movement to the workers in their struggle to overcome deplorable working conditions at the sanitation department in the City of Memphis, Tennessee. It was during this strike that Dr. King was assassinated.

Workplace disruption by public employees had become fairly widespread earlier in the decade. Several states recognized the conflicts as symptoms of cultural injustice that needed to be addressed with progressive solutions rather than prosecution. For example, in 1959 Wisconsin, then Connecticut and Michigan in 1965, each afforded segments of their public workforce collective bargaining rights. Then in 1967 New York became the first state to legislatively grant this opportunity to virtually all public employees, regardless of governmental jurisdiction or job classification. The Public Employees' Fair Employment Act (commonly called the Taylor Law) allowed public employees to determine if they wished to be represented by a bargaining agent in negotiations. Subsequently, more than half the states granted similar rights to public employees.

Background

Turmoil paved the way for passage of the Taylor Law. Post World War II workplaces were fraught with strife. The easing of economic and political restrictions after 1946 gave rise to increased worker unrest. Public employees were not timid in their efforts to improve terms and conditions of employment after years of wartime suppression. As an illustration, between 1920 and 1943 there were thirteen public school teachers strikes nationwide, whereas between February 1946 and May 1947 there were twenty-nine. Beginning on February 24, 1947, twenty-four hundred schoolteachers in Buffalo, New York engaged in a week-long strike.[1] In March 1947, New York's Condon-Wadlin Law was enacted as an antistrike measure. The statute included severe penalties for public employees that engaged in work stoppages.

Condon-Wadlin remained in place for nearly twenty years with disparate enforcement applied to more than twenty-one strikes or job actions that occurred during that period.[2] Disruptions tapered off for awhile but the decade of the 1960s brought renewed vigor to workplace unrest. New York City schoolteachers conducted a one-day strike in November 1960 and again in 1962; also in 1962, two thousand New York City motor vehicle operators engaged in a work stoppage; a one-day wildcat strike by 648 New York ferryboat workers occurred in 1964; in January 1965, six thousand New York City welfare workers struck for twenty-eight days and the New York City Transit Workers Union rang in New Year 1966 by shutting down the entire transit system for

[1] Donovan, Ronald,"Administering the Taylor Law". 2, 3-4. (Donovan, 1990).
[2] Rosenzweig. Stefan, *The Condon-Wadlin Act Re-examined.* ILR Research 11(1), 3-8. (Rosenzweig, 1965).

twelve days.[3] The relative tranquility that shrouded public employment in New York during the 1950s, quickly gave way to a tumultuous 15-plus year period.

Within days of when the transit workers strike ended, Governor Nelson Rockefeller appointed the Committee on Public Employee Relations "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."[4] The committee's recommendations, issued on March 31, 1966, became the cornerstone of the Taylor Law. The committee recommended that: the Condon-Wadlin strike prohibition be continued; public employees have the right to organize and be represented by an agent of their choosing; public employers must collectively negotiate; and a dispute resolution system be designed to assist employee organizations and employers if they were unable to reach agreement by direct negotiations. Sections 9 and 10 of the 1966 report listed steps for mediation, fact-finding, and "In the event of the rejection of a fact-finding board's recommendations…the appropriate State or local legislative body (or committee) should hold a form of 'show cause' hearing…prior to final legislative action".[5] The recommendations became the Taylor Law's Section 209 - Resolution of Disputes in the Course of Collective Negotiations.

From Framework to Practice

The impasse resolution procedures of Section 209 have been amended and modified several times; however, mediation as the initial intervention has

[3] Donovan, 1990. 6-7, 9, 12, 16, 19.
[4] *New York State Governor's Committee on Public Employee Relations, Final Report*, March 31, 1966. 9. (Report, 1966).
[5] Report, 1966. 7-8.

remained unaltered. The procedures that follow mediation when it fails to lead parties to agreement have been revised. Two major modifications to the impasse resolution procedures occurred in 1974, both eliminating the ability of a legislative body to alter terms and conditions of employment. In educational jurisdictions the right to impose contract terms after the rejection of fact-finding recommendations was abolished. This impacted the greatest number of public employees in the state because, when combined, school districts and other educational organizations employ the most civil servants. As a result, bargaining between school districts and their employees continues until a new agreement is negotiated. The authority of other legislative bodies to change working conditions without employee organization agreement occurred when the state enacted compulsory binding arbitration of contract terms for units of public safety personnel, primarily police and firefighters. When mediation fails to produce a settlement in police and fire negotiations, a tri-partite panel of arbitrators establishes wages and benefits.

Criticism of compulsory interest arbitration produced a 2013 statutory amendment to the Taylor Law impasse procedure requiring greater attention be afforded to fiscal consequences of awards, especially in regard to “fiscally eligible municipalities”. “Fiscally eligible municipalities” are identified by the State Comptroller as those having an average full value property tax rate in the highest 25% of all municipalities and an average fund balance of less than 5%. Scope, implementation, procedural and other provisions necessary to define the impact of these substantive modifications constitute the entirety of the legislative

adjustment to the Taylor Law's Resolution of Disputes in the Course of Collective Negotiations article.

In addition to statutory changes over the years, the Taylor Law impasse procedures have been altered through policy and administrative action. These changes have been influenced by research into best practices, economics, and demographics, as well as geographic and political considerations. For example, beginning in 1967 mediation and, when necessary, fact-finding services were delivered by different individuals. However, the frail economy of the mid and late 1970s offered Chairman Harold Newman the opportunity to combine the two dispute resolution assignments so that the same individual would perform both functions. Chairman Newman strongly supported the notion that mediation offered the best means of providing the negotiating parties with the tools to resolve their dispute and that public fact-finding recommendations should be offered as a means of effectuating a voluntary settlement, not as judicial dictum. The mediator/fact finder could direct the parties toward a settlement with both spoken words during mediation and written recommendations, if necessary.

What Occurred

Since September 1967, PERB has assisted public employers and the organizations that represent their employees in negotiating collective bargaining agreements. The parties are free to establish their own resolution procedures, however, absent such an agreed upon process, the Taylor Law defines a statutorily mandated conciliation course of action. Upon mutual or unilateral request of both or either party, PERB determines if an impasse exists when a Declaration of Impasse is

filed. PERB may also make such a determination on its own if it discovers that the parties are having difficulty reaching agreement.

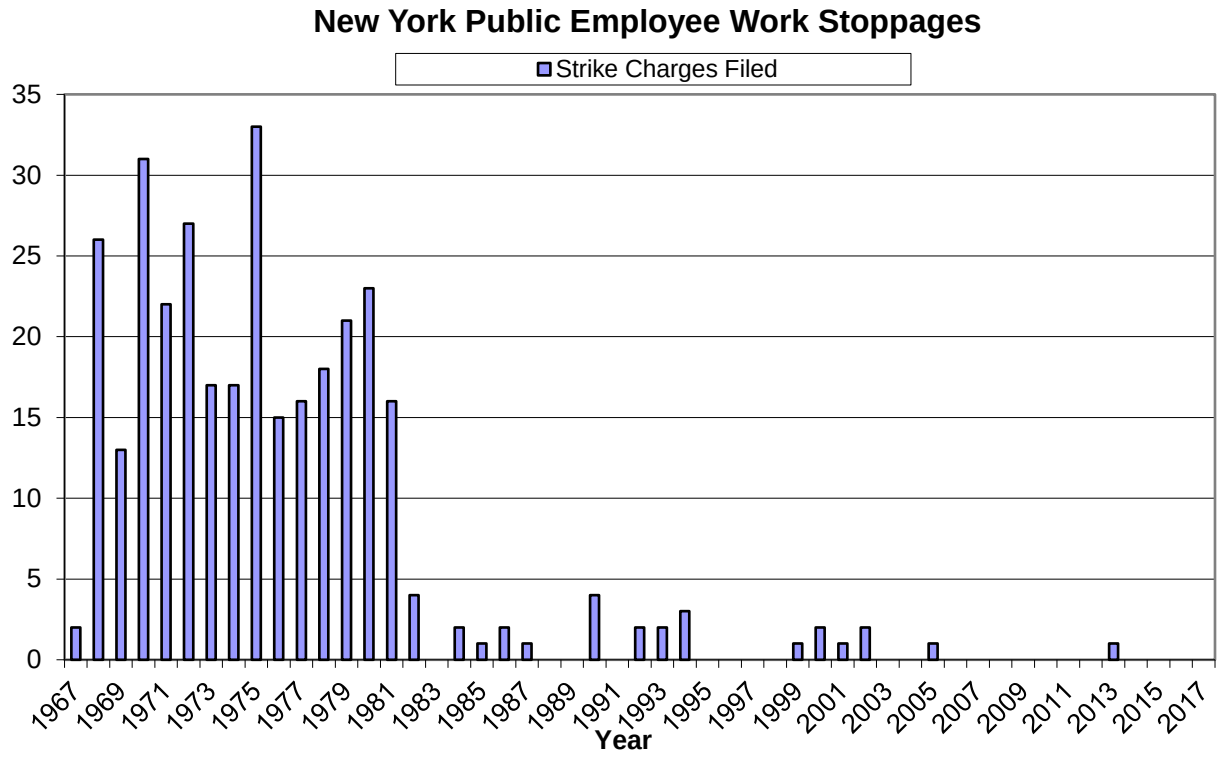
Once a determination has been made that an impasse in negotiations exists, the Director of Conciliation assigns a mediator or mediator/fact finder to assist the parties in their bargaining. The mediator has no authority to impose settlement terms, but facilitates discussions, addresses issues of miscommunication, provides general collective bargaining information and relies on the power of persuasion to lead the parties toward agreement. If mediation is unsuccessful, alternative resolution techniques are used depending on the classification of employees and type of employer. For public safety and a few other bargaining units, a tripartite interest arbitration panel can be appointed to award terms and conditions of employment that are binding on the parties. In educational institutions, a mediator/fact finder or fact finder may issue recommendations for settlement after accepting documents and/or hearing testimony from each party in support of its position. All other bargaining situations require the local legislative body to conduct a hearing into the dispute, address the fact-finding recommendations and "take such action as it deems to be in the public interest, including the interest of the public employees involved."[6] However, "It shall be an improper practice for a public employer or its agents deliberately… to refuse to continue all the terms of an expired agreement until a new agreement is negotiated..."[7]

Public sector collective bargaining discord is considered to be a breakdown in negotiations that requires third-party intervention by PERB, regardless of whether a

[6] Public Employees' Fair Employment Act, Sec. 209.3(e)(iv). (New York State, 1967),
[7] Ibid, Sec. 209-A.1(e).

strike ensues. Since strikes were depicted as a driving force for enactment of the Taylor Law, they will be one of two measures utilized to illustrate the level of bargaining discord in New York over the past 50 years. The number of strike charges filed since enactment of the Taylor Law is shown in Figure 1.

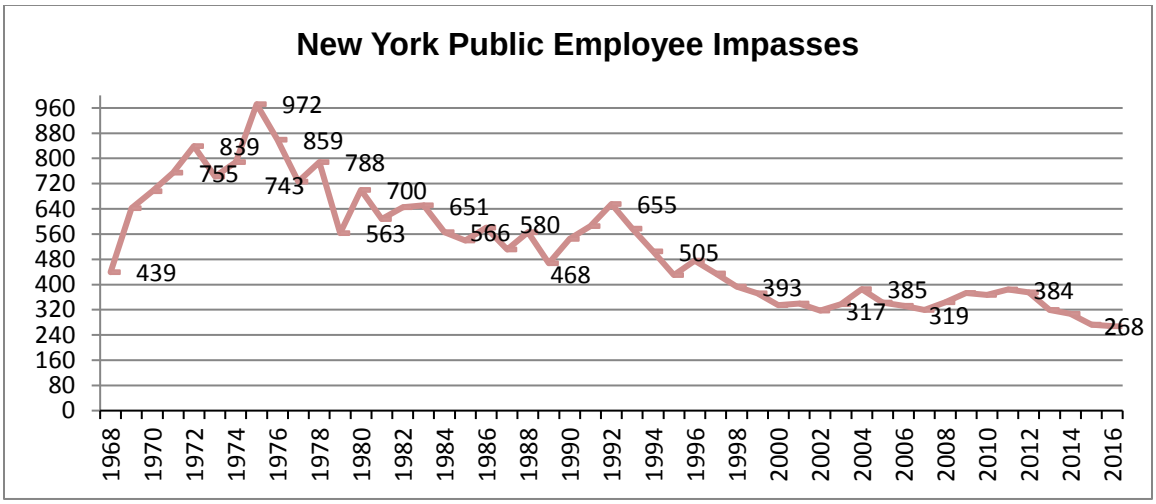
Figure 1



The other, and arguably a better gauge, will be the number of contract impasses that PERB reported in each of those years. Impasses rather than strikes more accurately reflect dissatisfaction with terms and conditions of employment because the penalties for striking in New York deter all but the most distressed employees from engaging in such activity. Therefore, the number of impasses presents a more complete set of negotiations that experience discord. Figure 2 charts the number of impasses processed by PERB's Office of Conciliation during each year since 1967.

The PERB News, its Statistical Yearbook, and the Office of Conciliation are the sources of the data for strikes and impasses. The annual reporting periods were January through December until 1977, then New York State's fiscal year, April through March, thereafter.[8] [9]

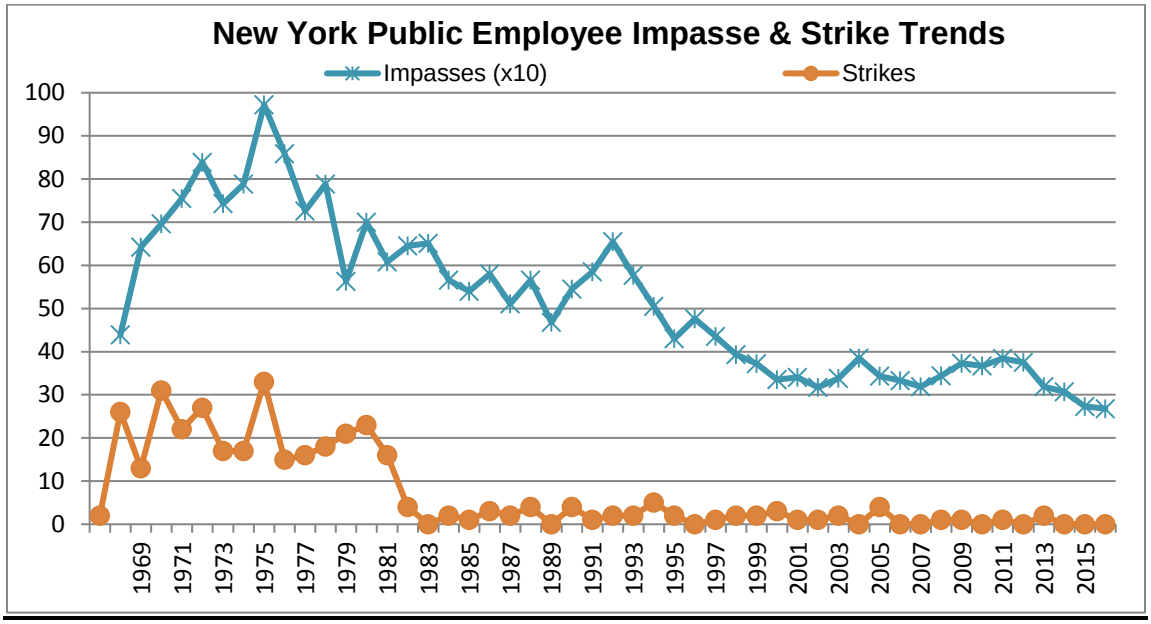
Figure 2



To compare the 50 year trends of impasses and strikes they have been plotted together in Figure 3. So that both measures are adequately displayed, the annual number of impasses was scaled back by a factor of 10. Not surprisingly, the picture illustrates corresponding increases and decreases in impasses and strikes. Impasse and strike activity is not in lockstep for individual years, mostly because impasses are counted in the year in which the Declaration of Impasse is received and a strike charge is recorded on the date it is docketed. Typically, impasses are reported in one year and a strike, if one occurs in those negotiations, does not take place until the subsequent reporting year.

[8] New York State Public Employment Relations Board, *PERB News, Vol.5-Vol.42.* (NYS PERB, 1972-2009).
[9] New York State Public Employment Relations Board, *PERB by the Numbers.* (NYS PERB).

Figure 3



The illustration depicts the rise and fall of impasse and strike activity during the life of the Taylor Law but offers no insight into what may cause such disputes. Thomas Kochan and Todd Gick presented a theory that public sector bargaining is "affected by economic, political, legal, structural, organizational, interpersonal, and personal forces. Impasses may arise from one or any combination of these forces as well as from the parties' behavior in negotiations."[10]

Have any of these forces impacted the level of bargaining conflict in New York since 1967? The personal, interpersonal, behavioral and organizational elements are unique to each set of negotiations. These distinctive characteristics certainly contribute to whether an impasse is declared or a strike occurs. Unfortunately, no matter how big an impact these situational characteristics may play in causing an impasse, they cannot be adequately measured to apply to this aggregate trend analysis.

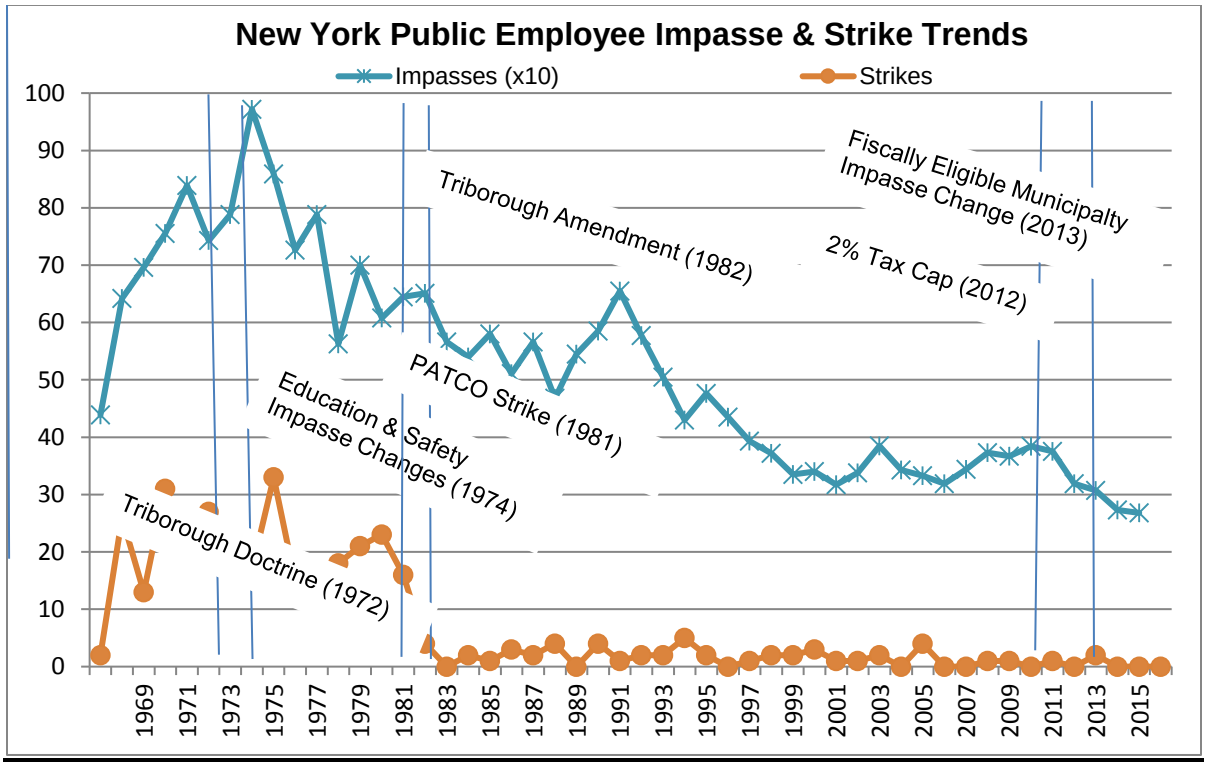
[10] Kochan, Thomas A. and Todd Gick, *The Public Sector Mediation Process: A Theory and Empirical Examination*, Journal of Conflict Resolution, Vol. 22 No. 2, June 1978. (Kochan, 1978).

External factors can be identified and they help explain the trends. The economic expansion of the 1950s prompted workers in both the private and public sectors to seek a more equal share of prosperity through social action. In New York, the most direct political and legal impact on collective bargaining was Governor Rockefeller's efforts to enact the Taylor Law. Immediately following the implementation of the statute, impasses and strikes began climbing. The largest number of Taylor Law strikes (33) and impasses (972) occurred in 1975. Both strikes and impasses have trended downward ever since, with the fewest impasses declared in 2016 (268). Other changes to the law over the last 50 years that likely impacted impasses and strikes were: the Triborough Doctrine (1972 Board decision), which limited a public employer's ability to unilaterally make changes in terms and conditions of employment; statutory amendments to the impasse procedures that abolished the legislative hearing in educational jurisdictions and replaced the hearing with compulsory interest arbitration for police and firefighter bargaining units (1974); enactment of the Triborough Amendment (1982) making it illegal for an employer to unilaterally change any term of an expired agreement until a new agreement is negotiated; and amendments to constrain interest arbitration panels when "fiscally eligible municipalities" are involved in the negotiations (2013).

Showing these legal milestones, along with the impasse and strike trends, in Figure 4 helps illustrate how negotiations conflict was impacted by these changes to the law. Two additional actions are included on the chart to highlight significant political and legal events affecting contract negotiations in New York, even though they did not modify the Taylor Law directly. First, it is widely believed that the termination of striking

air traffic controllers by President Reagan in 1981 had the political impact of dramatically dispiriting private and public sector employees' enthusiasm to engage in work stoppages. Second, the 2011 enactment of a 2% property tax cap in New York has buttressed the demand for tempered wage adjustments in negotiations.

Figure 4



Going forward, strikes have been omitted from the charts. There are several reasons for this: 1) to make comprehension of the illustrations clearer, 2) impasses likely are a better measure of workplace conflict than strikes because the sway of strike penalties is omitted, 3) the framers of the Taylor Law saw the dispute resolution procedures as a substitute for engaging in an illegal strike, 4) declaring an impasse is the first indication of conflict, 5) the dearth of strikes for all but the first 15 years of the period makes the measure less significant over time, 6) and the strike trendline mirrors that of impasses.

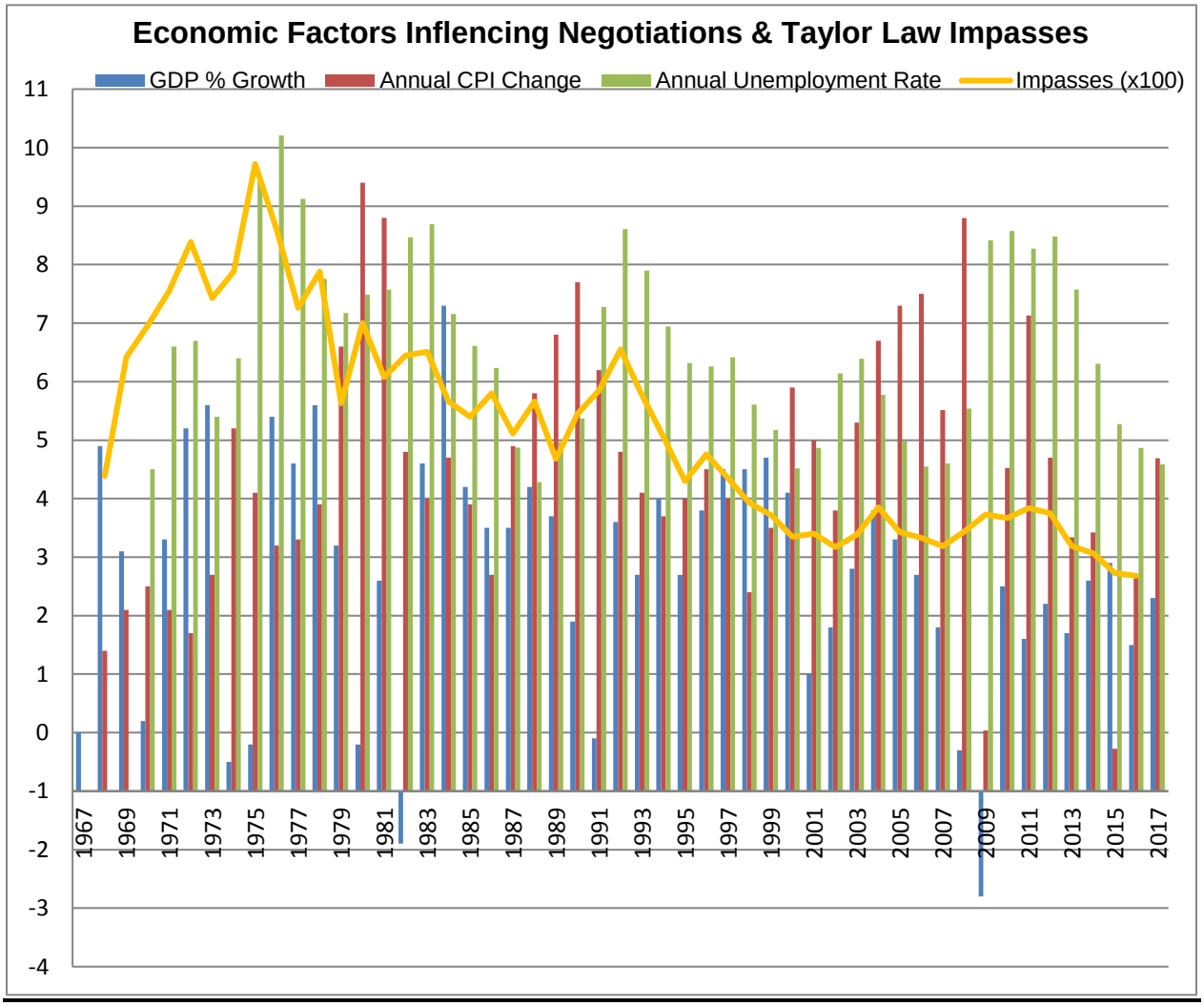
Economic factors frequently affect collective bargaining and subsequent strife. Three economic variables regularly identified as impacting bargaining and conflict are: general economic well being, cost of living, and supply and demand of labor.[11] To examine the influence of these variables on impasses, the following measures are used: annual change in Gross Domestic Product (GDP) describes general economic wellbeing; cost of living is measured by the annual unit change in the consumer price index (CPI) from year-to-year in the Northeast (not the percentage change from the previous year, which is another common measure); and annual unemployment rates portray the supply and demand of labor. Figure 5 superimposes the history of impasses under the Taylor Law (in 100s) on measures of national GDP[12], the Northeast's CPI[13], and the unemployment rate in New York State[14].

The information shown here supports a common theory regarding the relationship between the economy and union efforts. Generally, when the economy is faltering and unemployment is high, conflict at the bargaining table increases; however, when the economy is doing well and unemployment is low, employers tend to accommodate employee demands.[15] Since 1967 there have been six recessions evidenced by falling GDP and rising unemployment. Figure 5 shows that Taylor Law impasses increased during the hard times experienced in 1970, 1974/75, 1980-82, 1991/92, 2001, and 2008/09. During most of these recessions, increasing CPI

[11] Kearney, Richard, "Labor Relations in the Public Sector (4th)", 149-150. (Kearney, 2009).
[12] U.S. Bureau of Economic Analysis, "Table 1.1.5 Gross Domestic Product", January 28, 2018. (Bureau of Economic Analysis, 2018).
[13] U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Price Index", February 20, 2018. (U.S. Department of Labor, Bureau of Labor Statitistics, 2018).
[14] New York State Department of Labor, "Current Population Survey Data New York State: 1970-2016" and "Average Annual Unemployment Rate: 1976-2017", February 20, 2018. (New York State Department of Labor).
[15] Kearney, 2009,3.

compounded the misery resulting from the GDP and unemployment damage. Conversely, during the periods of economic expansion experienced after the recessions, impasses in New York's public sector fell. The two most obvious examples of this are the decade of the 1990s and the years following the Great Recession of 2008/09. After the 1991/92 recession, a prolonged period of recovery brought with it fewer annual impasses each year, except in 1996, until the 2001 downturn in the economy. Then, beginning in 2011, with the worst economic conditions since the Depression waning, impasses began falling to an all-time low.

Figure 5



What's Next

Recognizing the role that historical social, political, legal and economic events played in influencing collective bargaining conflict in New York, can any predictions be made concerning the number of impasses that PERB might expect over the next five years? It is widely recognized that establishment of the legal right for public employees to collectively bargain is closely related to the level of public sector bargaining leading to negotiations and potential disagreement.[16] Clearly, the enactment of the Taylor Law prompted an explosion in the number of public sector contract negotiations. Along with the increase in bargaining came conflict, measured in impasses and strikes, especially during the first decade of the statute's existence. Over the past 50 years, nearly all public sector employees that can legally be organized into bargaining units in New York are now negotiating with their employers.

One legal change that could have a significant downward impact would be the abolition or severe restriction on the right of these employees to bargain. Such precedent was set in 2011 when Wisconsin upended its law of more than 50 years that endorsed public sector unionization. The impact was stunning, "no state has lost more of its labor union identity since 2011 … Union members made up 14.2% of workers before Act 10, but just 8.3% in 2015."[17] The fewer union members were mostly teachers and other public workers.

In the last ten years, other states have also legislated workplace changes, such as restrictions on who can negotiate or what can be bargained and right–to-

[16] Ibid, 30.
[17] Umhoefer, Dave, "For Unions in Wisconsin, a Fast and Hard Fall Since Act 10", Milwaukee Journal Sentinel, November 27, 2016. (Umhoefer, 2016).

work laws that adversely affect union membership. An expected ruling by the U.S. Supreme Court in *Janus v. AFSCME* will prohibit unions from collecting representation fees from nonmembers who object to paying for services in the public sector. It is unclear what, if any, impact such a ruling will have on the number of impasses filed under the Taylor Law. If it results in fewer bargaining units engaging in negotiations, impasses may decline because there would be less opportunity for deadlocks to occur. Alternatively, an increase in workplace militancy may be the union's reaction, thus leading to an increase in impasse activity. Another potential source for an upswing in impasses would be enactment of reactionary legislation abandoning bargaining agent exclusivity, which would lead to more than one bargaining agent for a unit of employees, creating more opportunity for negotiations to result in impasse. It is also conceivable that the Supreme Court's decision would have no effect on public sector bargaining in the state and the number of impasses would be unaffected.

Another more restrictive tax cap law could potentially change the bargaining landscape. It is impossible to forecast what will be legislated or imposed, however, the retrenchment on bargaining rights during this decade portends change in New York. This is particularly true since the two most recent New York legislative actions addressing negotiations under the Taylor Law, i.e., the 2% property tax cap and considerations for "fiscally eligible municipalities", have imposed restrictions on bargaining. Correspondingly, impasses have declined steadily since 2012 when the tax cap became effective. The "fiscally eligible municipalities" legislation appears to have had little impact on impasses.

History indicates that additional constraints on bargaining would likely continue to hold impasses in check.

Each set of negotiations has distinct characteristics that help determine whether an impasse may result. For example, animosity between negotiators may predetermine impasse or maybe long-standing practices of tolerance and cooperation throughout an organization may preordain settlement. Regardless of how important these situational factors may be, as well as others such as negotiator conduct, interpersonal, behavioral, and organizational traits, they cannot be measured to help predict future unrest. This leaves the economic variables to help predict future impasses.

Historical GDP, CPI, and unemployment data have tracked the impasse trend quite closely and there is no reason to believe the future will be any different, unless momentous social, political and/or legal disruptions occur. If relatively constant values for each of these economic variables are assumed over the next five years, impasses can be expected to remain steady or continue to decline.

However, it is expected that the economy will become sluggish and unemployment in New York will tick upward, thus causing negotiation conflict to reverse the current trend. Now that there has been nearly 10 years of economic improvement since the 2008/09 recession, business cycle theory suggests a recession looms, which would bring with it an increase in bargaining conflict. Using different methods of analysis, the International Monetary Fund (IMF),[18]

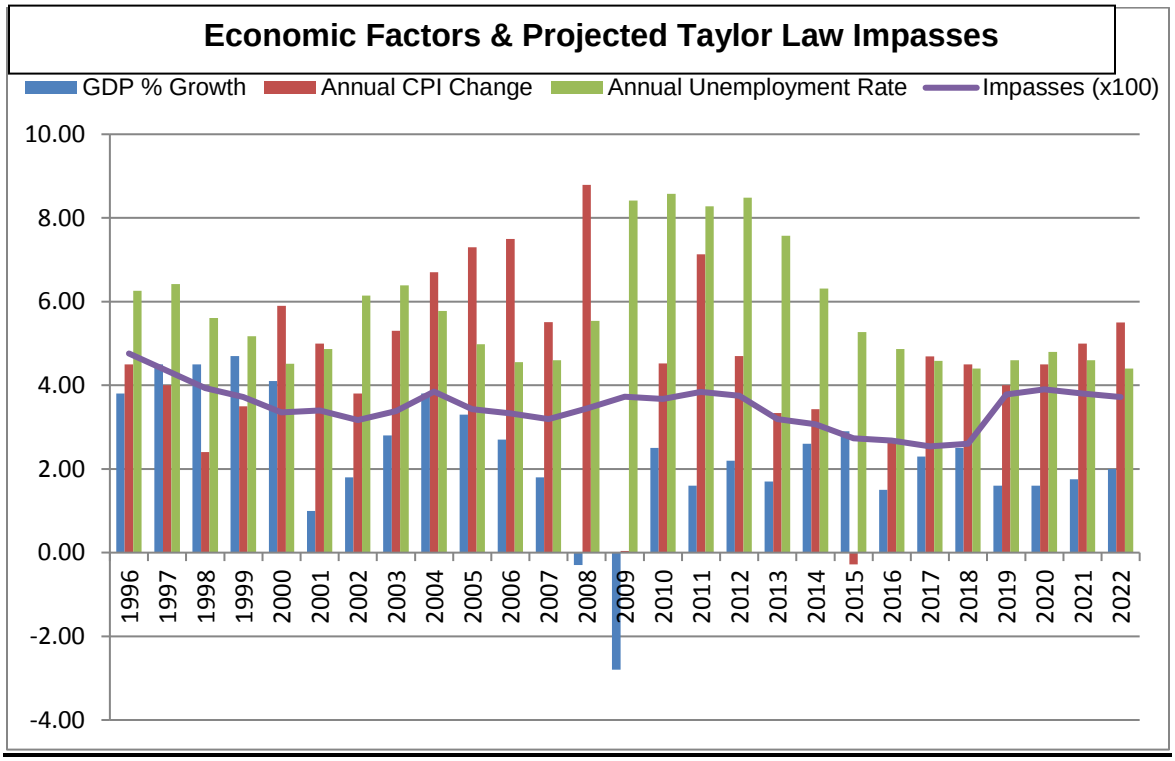
[18] Dagher, Jihad, *Regulatory Cycles: Revisiting the Political Economy of Financial Crises*, International Monetary Fund, Working Paper No. 18/8. January 15, 2018. (Dagher, 2018).

Guggenheim Investments,[19] and New York Times economic reporter Eduardo Porter,[20] conclude that the economy is ripe for a recession. After examining economic conditions surrounding ten worldwide financial crises going back centuries, the IMF report posits that the current situation in America exhibits many of the same characteristics as past misfortunes. Guggenheim Investments relies on six economic indicators to calculate that the next recession will begin in late 2019 to early 2020. Today's American political enthusiasm for business deregulation and the historical consequences of such action is the basis for Porter's prediction. A 2019/20 recession would likely produce a pattern of bargaining strife akin to that of 1991/92. A concurrent spike in inflation would boost the likelihood that impasses will grow.

Multivariate regression using the values for GDP, CPI, and unemployment presented in Figure 5 as independent variables provides an estimate of impasses over the next five years.[21] The model assumes that a modest recession with small decreases in GDP and increasing unemployment will set in for two years beginning in 2019, followed by a very modest recovery. The results are presented in Figure 6. The chart depicts rising impasse activity as GDP falls, unemployment rises and recession creeps in. The illustrated impasse trendline is quite illuminating.

[19] Guggenheim Investments, *Forecasting the Next Recession*. https://www.guggenheiminvestments.com. November 29, 2017. (Guggenheim Investments, 2017).
[20] Porter, Eduardo*, Come the Recession, Don't Count on that Safety Net*, New York Times. February 20, 2018. (Porter, 2018).
[21] Kerlinger, Fred N., "Foundations of Behavioral Research (3rd edition)". 1986, 531-536. (Kerlinger, 1986).

Figure 6



Conclusion

The Taylor Law was born from the social, political, and economic unrest of the 1960s. Public employee strikes challenged the then existing laws governing employee relations in New York. The flawed Condon-Wadlin Act was replaced by the Taylor Law, which protects the right of public employees to collectively bargain with their employers, while retaining the prohibition on strikes. A negotiations dispute resolution procedure was included in the law offering employees a process to settle contracts without resorting to strikes. The statute and dispute resolution system immediately underwent a baptism by fire as impasses and strikes escalated until 1975 and then steadily declined until today.

Three sources of impasses and strikes are political and legal actions, situational characteristics, and economic conditions. Without a legal foundation

for public sector collective bargaining, few contracts are negotiated, so there are limited opportunities to bargain to impasse. Enactment of the Taylor Law vastly expanded the possibility for negotiations to result in impasse, and a large proportion did, because every public employer was open to an obligation to bargain. Similar statutory frameworks in other states produced like results. After the first ten years of testing the law and PERB's administration of it, the impact of the legislation began to give way to the influence of situational and economic factors.

After 1975, the number of impasses may well have become more dependent on the immediate climate in which individual negotiations were conducted. Negotiators' challenging each other's skills and attempts to exploit organizational weaknesses likely exerted greater pressure on negotiations. As bargaining relationships became more mature over time, much of the testing was completed and parties are now more comfortable with each other and the process. PERB, especially its Office of Conciliation and neutrals, have played a role in the parties' maturation that has led to less dissension. Over the years, PERB's mediators and fact finders adapted their approaches to help parties resolve their disputes. As they worked with negotiating committees they provided them with tools to help avoid impasses. These PERB conciliation efforts undoubtedly influenced the downward trend in impasses and strikes.

Consequently, the third source of impasse, economic factors, probably has become the most important element in determining impasse activity. The number of Taylor Law impasses increased during periods of recession and declined as the

economy recovered. Future impasse activity is apt to mirror future GDP, CPI, and unemployment indicators. This assessment may be altered dramatically if a major political, legislative, or judicial intrusion into New York's collective bargaining stasis occurs. In that case the crystal ball used for this prognostication becomes very cloudy.

Appendix

Table 1: Strikes and Impasses Under the Taylor Law

Year	Strikes	Impasses		Year	Strikes	Impasses
1967	2			**1993**	2	577
1968	26	439		**1994**	3	505
1969	13	642		**1995**	0	430
1970	31	696		**1996**	0	476
1971	22	755		**1997**	0	435
1972	27	839		**1998**	0	393
1973	17	743		**1999**	1	372
1974	17	788		**2000**	2	335
1975	33	972		**2001**	1	340
1976	15	859		**2002**	2	317
1977	16	726		**2003**	0	338
1978	18	788		**2004**	0	385
1979	21	563		**2005**	1	343
1980	23	700		**2006**	0	333
1981	16	608		**2007**	0	319
1982	4	645		**2008**	0	344
1983	0	651		**2009**	0	373
1984	2	566		**2010**	0	367
1985	1	540		**2011**	0	384
1986	2	580		**2012**	0	375
1987	1	511		**2013**	1	319
1988	0	566		**2014**	0	307
1989	0	468		**2015**	0	273
1990	4	545		**2016**	0	268
1991	0	585		**2017**		
1992	2	655				

Table 2: Economic Factors Influencing Negotiations*

Year	Annual GDP Growth	Annual CPI Change	Annual CPI % Change	Annual NYS Unemploy-ment Rate		Year	Annual GDP Growth	Annual CPI Change	Annual CPI % Change	Annual NYS Unemploy-ment Rate
1967						**1993**	2.70	4.10	2.78	7.90
1968	4.90	1.40	4.12			**1994**	4.00	3.70	2.44	6.94
1969	3.10	2.10	5.93			**1995**	2.70	4.00	2.58	6.32
1970	0.20	2.50	6.67	4.5		**1996**	3.80	4.50	2.83	6.26
1971	3.30	2.10	5.25	6.6		**1997**	4.50	4.00	2.44	6.42
1972	5.20	1.70	4.04	6.7		**1998**	4.50	2.40	1.43	5.61
1973	5.60	2.70	6.16	5.4		**1999**	4.70	3.50	2.06	5.18
1974	-0.50	5.20	11.18	6.4		**2000**	4.10	5.90	3.40	4.52
1975	-0.20	4.10	7.93	9.5		**2001**	1.00	5.00	2.79	4.87
1976	5.40	3.20	5.73	10.21		**2002**	1.80	3.80	2.06	6.14
1977	4.60	3.30	5.59	9.13		**2003**	2.80	5.30	2.82	6.39
1978	5.60	3.90	6.26	7.76		**2004**	3.80	6.70	3.46	5.78
1979	3.20	6.60	9.97	7.18		**2005**	3.30	7.30	3.65	4.98
1980	-0.20	9.40	12.91	7.48		**2006**	2.70	7.50	3.61	4.55
1981	2.60	8.80	10.71	7.58		**2007**	1.80	5.51	2.56	4.60
1982	-1.90	4.80	5.27	8.47		**2008**	-0.30	8.79	3.99	5.54
1983	4.60	4.00	4.18	8.69		**2009**	-2.80	0.04	0.02	8.42
1984	7.30	4.70	4.71	7.16		**2010**	2.50	4.53	1.97	8.58
1985	4.20	3.90	3.73	6.61		**2011**	1.60	7.13	3.05	8.28
1986	3.50	2.70	2.49	6.23		**2012**	2.20	4.70	1.95	8.48
1987	3.50	4.90	4.41	4.88		**2013**	1.70	3.34	1.36	7.58
1988	4.20	5.80	5.00	4.28		**2014**	2.60	3.42	1.38	6.31
1989	3.70	6.80	5.58	4.97		**2015**	2.90	-0.28	-0.11	5.28
1990	1.90	7.70	5.99	5.37		**2016**	1.50	2.66	1.06	4.87
1991	-0.10	6.20	4.55	7.28		**2017**	2.30	4.69	1.84	4.58
1992	3.60	4.80	3.37	8.61						

*/ Annual CPI % Change is presented as additional information since it is a common reference statistic for cost of living.

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The Challenges and Shortcomings in the United States:

A Comparative Analysis of Public Sector Labor Union Dispute Resolution Mechanisms

INTRODUCTION

Organizations will always be faced with workplace conflict. The way in which conflict is resolved continues to change as the workplace has evolved. Conflict resolution processes continue to differ from state to state and country to country. Processes also vary based on rules, regulations, and legislation. As public sector unions, have increased in percentage density throughout the United States, conflict between union and administration has also increased. Rules governing public sector unions and conflict resolution procedures vary, as rules and regulations are often passed through legislative action specific to local, state, federal or country governing entities. Governments throughout the world continue to face unique and not so unique challenges in resolving workplace conflict, while maintaining fiscally conservative budgeting practices.

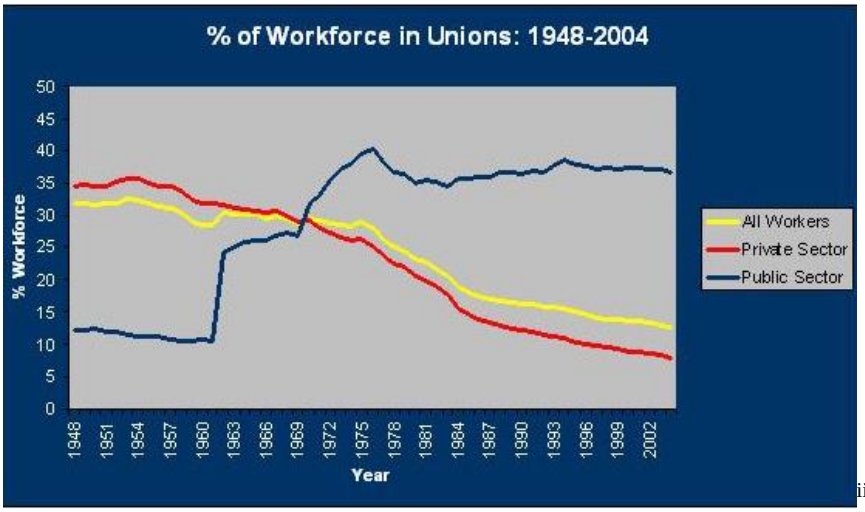
This comparative analysis will focus on three main arguments. The first, conflict resolution processes are not perfect. The second, procedural and settlement precedent are crucial in resolving and potentially eliminating future conflict; efficiently and timely, with archival systems of pasts settlements. And the third, Alternative Dispute Resolution (ADR) is underutilized in the United States (New York and Illinois) and other countries (Ireland and Germany). The analysis will focus on two states within the United States and two countries; New York State and the State of Illinois, comparing the conflict resolution procedures to those found in Germany and Ireland.

While focusing on dispute resolution, the analysis will center on contract negotiations, grievance resolution procedures and impasse procedures as outlined in the respected state or country laws and regulations. The focus is where we see the most conflict between labor and management. The comparison will begin with a brief description of labor union activity,

reasoning for state and country selection, followed by the procedural analysis of each state and country, while defining and comparing conflict resolution practices.

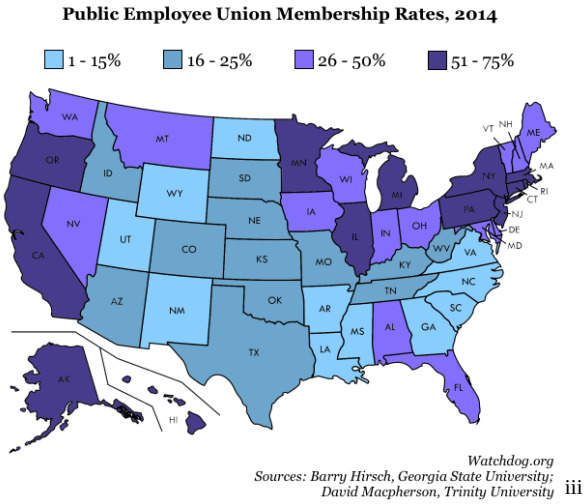
Labor union activity has evolved in the United States throughout the last half of the 20th century and into the 21st century. Union activity has grown significantly in the public sector. In the United States alone, "In 2015, 7.2 million employees in the public sector belonged to a union, compared with 7.6 million workers in the private sector. The union membership rate for public-sector workers (35.2 percent) was substantially higher than the rate for private-sector workers (6.7 percent). Within the public sector, the union membership rate was highest for local government (41.3 percent), which includes employees in heavily unionized occupations, such as teachers, police officers, and firefighters."[i] The increase is significant as; local, state and federal employees adhere to differing legislation, contracts, procedures, rules and regulations. These significant differences add to the complexity of managing labor contracts and resolving disputes. Conflict resolution has an impact on the budgeting process, as mediators, fact-finders, arbitrators and attorneys are hired or employed full-time to resolve disputes, causing increased funding for conflict management processes.

Comparing this to the private sector employee unionization rate, there continues to be a steady decline over the past fifty years. Falling significantly in the 1970's and 1980's. The chart below shows the percentage of unionized employees in the public sector and private sector 1948-2004. Until recently the trend was continuing a steady downward slope, leveling off in late 2014 and early 2015 as rules and regulations regarding elections and unionization have changed to be more pro-employee/pro-union.



[ii]

New York State and the State of Illinois were chosen for this paper specific to public sector union density and their differing laws for conflict resolution. In 2014, both New York State and the State of Illinois were 51-75% unionized in the public sector, as shown on the map below.



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New York State does not allow public sector employees to strike, under current legislation, while the State of Illinois does allow public sector employees to strike. The unique rules and regulations governing each state will provide perspective into a strike versus non-strike

legislation and the conflict resolution procedures in place, while comparing current statistics on successful resolution of disputes. Does strike language change dispute resolution?

Germany and Ireland were selected for the comparative analysis due to the similarities and unique differences in conflict resolution processes and procedures. Both countries do allow public sector unions to strike (with certain restrictions in Germany). We will explore and compare both Germany and Ireland to New York and Illinois in later sections.

Germany has many branches of public sector unions throughout the country. Covering a range of employees, both professional and trade. "The main trade union confederation in Germany is the DGB, which aims to recruit all types of worker. It is by far the largest confederation and the unions affiliated to it have 6,104,851members (2014)."[iv] DGB originally organized trade and industrial unions but has grown into the private sector, now covering finance and retail. "Ver.di was created in 2001 from a merger of five unions, covering transport and a range of public services, retail and finance, post and telecommunications, the graphical and media sector and a non-manual confederation, the DAG, which had previously been outside the DGB. For a period after the merger it was the largest union in the DGB but, following membership losses, it is now in second place with 2,039,931 members (end 2014). Ver.di seeks to organise service workers in both the private and public sector."[v]

In Germany, there are many small union associations that cover both industrial and public sector unions. DGB and Ver.di are similar to the AFL-CIO, each organization consists of many labor unions and act as the political arm for both public and private sector unions. Public sector labor unions in Germany do not have the right to bargain over conditions and pay. These decisions are made at the legislative level.

Union density in the Republic of Ireland is significant, as density in the public and private sector is higher than those in the United States. The second largest union in the Republic of Ireland is IMPACT, the public-sector labor union. "The public services union IMPACT, with 63,566 (all but 60 in the Republic of Ireland)"[vi] members. "The household survey does not break down union membership between the public and private sectors. However, separately compiled figures from the National Workplace Survey show that unions are much stronger in the public sector – where more than two-thirds of employees are members (68.7%) – than in the private sector – where the proportion is about a quarter (24.9%)."[vii] Other bargaining groups include trade unions, nursing unions, technical unions and retail or service sector unions.

There is no simple answer in resolving conflict and disputes, the likely answer is, it will depend. It will depend on the issue, the city, the state, the country, the legislation, political party in power, bargaining opportunities and fiscal budgets. Attempting to resolve conflict proactively and efficiently will add value to any local, state, federal and national government. The analysis will focus on the three arguments and recommendations to improve the conflict resolution process. In Section 1, I will define current processes for resolving conflict.

SECTION 1

New York State: The Taylor Law at Age 50

New York State has specific laws and regulations that guide employee, manager and legislative body through the complexities of dispute resolution and collective bargaining in the public sector. The current law, is known as The Taylor Law. The Taylor Law was adopted on September 1, 1967 and has evolved over the last half century. The Taylor Law as defined, is "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."[viii] The Taylor Law as designed, grants public sector employees the rights to form unions and select a bargaining organization of their own choosing. It provides employees with the ability to negotiate certain terms and conditions of employment. Compensation adjustments and healthcare are addressed at a local level, while changes to the New York State Pension Fund are decided by legislative bodies.

The law established impasse procedures for the resolution of collective bargaining disputes and grievance mechanisms. The law prohibits public sector employees from striking and established a state agency known as the Public Employment Relations Board (PERB). This agency administers the law and assists in the resolution of collective bargaining and grievance conflict.

Since the law was passed in 1967, there continues to be labor peace throughout New York State. Labor peace has a broad definition, contracts and grievances can go unsettled and unresolved for years. The union(s) can continue to work under expired contract terms until agreement or resolution is agreed upon. Recently, a contract involving the city of Buffalo, NY and the teacher's union went unsettled for 13 years, prior to an agreed upon contract in October of 2016.

The Taylor Law provides multiple avenues for parties to resolve conflict; "The law allows the parties to develop their own impasse procedures, in which event they assume the costs…prescribes specific impasse procedures to be followed absent such agreement, in which event PERB assumes most costs."[ix] The Taylor Law prescribes three separate impasse procedures, throughout the state.

With the complex process of dispute resolution for public sector employees throughout New York State, the law was modified in 2003 to streamline the process and ensure consistency throughout the state. "The first two steps in the dispute resolution process, mediation and fact-finding, are the same for all disputes except those involving police, fire fighters, certain transit employees, and the state police, state security services and law enforcement personnel, and deputy sheriffs who are policy officers engaged in law enforcement. In those, the parties go directly from mediation to arbitration except as to those issues that are statutorily excluded from arbitration."[x] Which may be brought to fact-finding.

The first step of impasse in the resolution procedure is mediation. "Either or both parties may request mediation assistance by filing a "Declaration of Impasse" with the board (PERB)."[xi] The board (PERB) employees both staff and panel mediators (such as myself) to assist labor and management in the resolution of the bargaining dispute. If mediation is unsuccessful, the next step in the process is fact-finding.

Fact-finding "is a procedure by which a third party examines the cause and status of an impasse through oral and/or written presentation by the parties, and issues written recommendations for settling the dispute."[xii] The fact-finder can resolve the dispute through further mediation if the individual feels it is an appropriate step prior to a fact-finding session.

The fact-finding process consists of the steps below:

- "Hold a hearing
- Take testimony of witnesses
- Accept data, statistics, briefs, etc., from the parties
- Make written, nonbinding recommendations for settling the dispute to the parties

- Make the report and recommendations public within five days after transmission of the report to the parties"[xiii]

PERB assigns mediators and fact-finders, based on geographical location. They maintain a log of per diem on-call mediators and fact-finders, dispensed throughout the state.

If both mediation and fact-finding are unsuccessful at resolving the respected impasse, one of three options remains to resolve the dispute, as outlined below:

1. **Employees of Educational Institutions**

   "PERB may afford the parties an opportunity to explain their positions with respect to the fact-finding report at a meeting where the legislative body or its duly authorized committee may be present…The legislative body may take such action as is necessary and appropriate to reach an agreement, but may not impose terms and conditions of employment in order to end the dispute…PERB may provide such assistance as may be appropriate. In its discretion, PERB will often appoint a "conciliator" to provide further mediation efforts."[xiv]

2. **For Police, Fire Fighters, State Police, Certain Transit Employees, State Security and Law Enforcement Personnel and Deputy Sheriffs**

   The issues covered by the panel varies depending upon the type of eligible employees, i.e. Sheriff's deputies are limited to core economic issues. "In all cases, the arbitration panel is made up of; one member appointed by the employer, one member appointed by the employee organization and one public member selected jointly by the parties, who serves as a chairperson."[xv]

   The panel follows a similar process as outlined under fact-finding; hold hearings, take written and oral testimony and can defer back to bargaining or further mediation. The

arbitration process for this group ends "by majority vote, make a determination and award which is final and binding on the parties."[xvi]

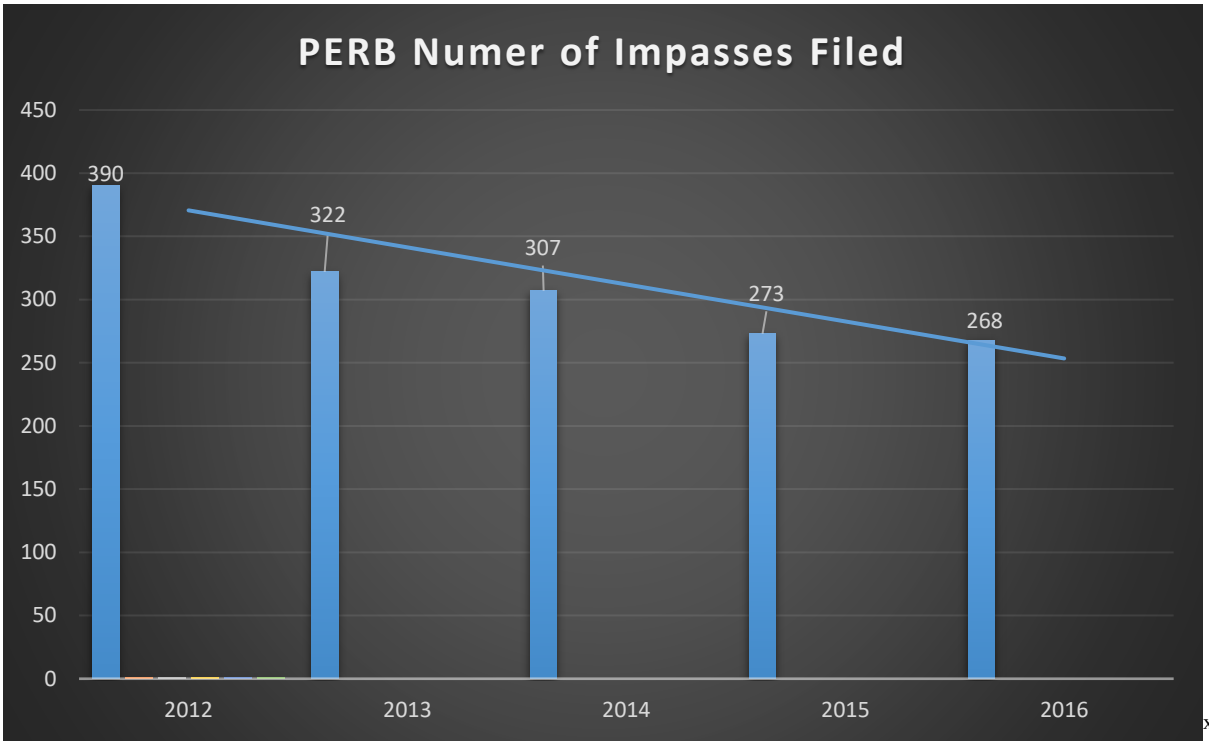
3. **For All Other Public Employees**

   If either or both parties reject all or some of the fact-finding report, the process may at either party's discretion move to a legislative hearing. Unions engage on the merits of their case at their own peril as such action could waive Triborough protection, "the legislative body thereafter takes such action as it deems to be in public interest, including the interest of the public employees involved. The parties may be direct to resume negotiations, or the legislative body may choose to impose employment terms…such imposition may be for no more than a single fiscal year."[xvii]

Is the Taylor Law successful? There have been almost 50 years of no-strike language, which has resulted in continued operation of government entities, school districts and emergency services. However, unresolved contracts and disputes can undermine the effectiveness of the Taylor Law and the no-strike language. Forced settlements and arbitration rulings can cause added conflict or issues as future contracts expire.

Below is a chart outlining PERB cases from 2012-2016. Current data only provides information related to the number impasses filed throughout New York State. There is no clarification on how many cases were resolved in the current year or carried over to proceeding years. In most cases and in my personal experience, mediation has proven successful when resolving conflict between labor and management in New York State. As the statistics provide

evidence that conflict and impasses filed continues to drop significantly over the 4-year period.



[xviii]

The Taylor has evolved over the last half century, but the processes as defined by the legislative body have remained status quo. The dispute resolution process is far from perfect. An example is allowing workers to continue working under old contracts with no resolution mandates or forced settlement.

During the mediation, fact-finding or arbitration processes; there is no precedent setting mechanism or archival system to research past settlements. Currently, there is access to fact-finding settlements throughout the state on PERB website. However, mediation settlements are not published. Therefore, one small town can have a similar dispute as another small town and there is no way to utilize that information to resolve the current dispute and develop consistency. The process has worked in resolving most disputes at mediation.

Alternative Dispute Resolution is now in it's infancy in New York State. Until recently, the dispute resolution process has been followed per The Taylor Law and collective bargaining

agreements in New York State. PERB is now implementing alternative forms of dispute resolution within the public sector. 80% of public sector disputes are settled during the mediation process. However, implementing new processes is a proactive step in resolving current and future disputes, prior to a disagreement moving forward to mediation.

SECTION 2

The State of Illinois: Illinois Public Labor Relations Act

In comparing the State of Illinois's conflict resolution processes and procedure to The Taylor Law in New York State, there are distinct similarities and differences.

The State of Illinois granted public sector employees the right to form unions and bargain in 1984, almost 20 years after the Taylor Law. The act in Illinois, known as Illinois Public Labor Relations Act was enacted to, "grant public employee's full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection."[xix] The Illinois Public Relations Act is similar in comparison to the Taylor Law regarding the regulation of labor relations of public sector employees. The employee's ability to choose a bargaining representative, negotiation of wages, hours and other working conditions, are contained within the Act.

For the comparative analysis, the focus in this Section 2 will be "Subpart C: Impasse Procedures for Public Employee Units."[xx] Each section in The State of Illinois rules and regulations is similar in relation to the language contained within The Taylor Law. However, under Subpart C, this rule grant employees the right to strike.

Subpart C states, “This Subpart governs employees with the right to strike, provided that certain conditions are met. The Act requires that the parties attempt to mutually resolve their bargaining disputes prior to resorting to a strike. To facilitate amicable settlement between the parties, the Board shall provide, in accordance with this Subpart, services of mediators, interest arbitrators and fact-finders. All costs of such services shall be shared equally by the parties.”[xxi]

When comparing New York and Illinois, mediation is also the first step in impasse resolution process. The parties will be provided a panel list of 7mediators to choose from, they have 7 days to select (or strike the list as is done in arbitration), and if no decision is made in 7 days a mediator is assigned to the case. In the State of New York, mediators are directly assigned to the case through PERB, first asked if they would like the case, but then directly assigned to the mediation, with no input from the governing body or the local union. If mediation is unsuccessful at resolving the impasse, fact-finding is the next step in the process. “e) The fact-finding hearing shall be conducted as follows:

1) The person appointed as fact-finder shall immediately establish the dates and place of hearing.

2) Upon request, the Board shall issue subpoenas for hearings conducted by the fact-finder.

3) The fact-finder may administer oaths. (Section 13(b) of the Act) f)

The fact-finder shall issue a report and findings as follows:

1) The fact-finder shall serve these findings and report on the parties and the Board within 45 days after the fact finder's appointment, unless the parties mutually agree to extend the time period.

2) Within 5 days after service of the findings and report, the fact-finder shall mail the findings and report to all newspapers of general circulation in the community as mutually designated by the parties, unless the parties mutually request otherwise."[xxii]

The next step in the impasse resolution process is voluntary interest arbitration. Both parties must agree to interest arbitration in writing. As collective bargaining contracts vary throughout the State of Illinois, the arbitrator will follow the rules and regulations as outlined in the respected agreement. Arbitration awards are to be submitted 30 days after the hearing has taken place between the parties.

Arbitration procedures in New York State and the State of Illinois vary. The ruling in New York State is final and binding, whereas, in the State of Illinois it is voluntary, if no resolution is agreed upon, public sector employees have the right to strike under certain conditions:

"a) The employees are represented by an exclusive bargaining representative (Section 17(a)(1) of the Act) that has been certified by the Board or that has a valid claim to status as an historical bargaining representative pursuant to Section 3(f) of the Act.

b) The collective bargaining agreement between the public employer and the public employees, if any, has expired, or such agreement does not prohibit the strike. (Section 17(a) (2) of the Act) Pursuant to Section 8 of the Act, a collective bargaining agreement must contain provisions prohibiting strikes for the agreement's duration and providing for a grievance procedure culminating in final and binding arbitration of disputes over the interpretation of the agreement unless the parties agree to forgo these provisions.

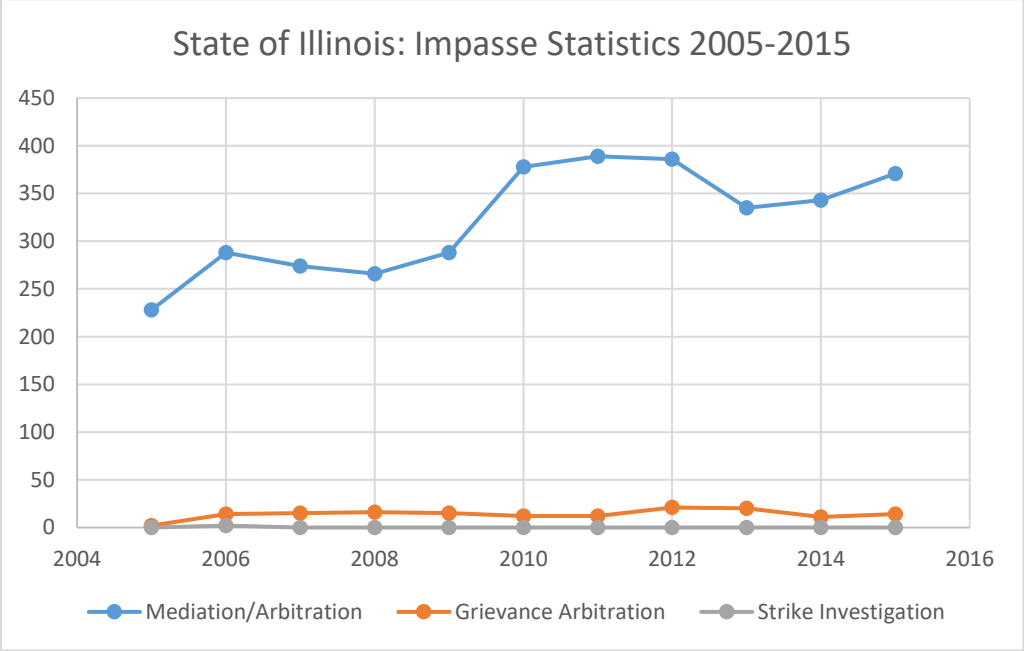
c) The public employer and the labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration. (Section 17(a) (3) of the Act)

d) The exclusive representative has requested a mediator pursuant to Section 12 of the Act and Section 1230.150 of this Part and mediation has been used. (Section 17(a) (4) of the Act) e) At least 5 days have elapsed after a notice of intent to strike has been given by the exclusive representative to the public employer. (Section 17(a) (5) of the Act) A copy of the notice shall be filed with the Board and shall reference the contract number in cases of negotiations for successor contracts or the certification case number in cases of negotiations for initial contracts. The 5-day time period shall be calculated in accordance with 80 Ill. Adm. Code 1200.30(a) and (b).”[xxiii]

In the event of a union strike in the State of Illinois, the governing body has the right to petition the state labor board to stop the labor strike and resume normal operation. The governing body must submit evidence to the board that the strike, “clear and present danger to the health and safety of the public.”[xxiv] From this point, the board will investigate the threat of strike or actual strike to determine if there is evidence of clear and present danger to the health and safety of the public and rule on the legality of the strike.

The graph below provides statistics on current resolution procedures in the State of Illinois from 2005-2015. The average number of mediation and arbitration in the State of Illinois during the 10-year period is 322. Grievance arbitration also spiked in 2012 and 2013, overall the number has not increased as significantly as mediation and arbitration cases related to the labor contract. The average number of grievance arbitration cases fell just below 14 per year during the 10-year period. Surprisingly, there were only 2 strike investigations or an average of 0.18,

during the 10-year period, both occurring in 2006. The other 9-years of data showed no strike investigations. In comparison, both states resolve conflict during the mediation step.



[xxv]

The significant difference is the use of the economic weapon, a strike. Even with the ability or opportunity to use the economic weapon, over the 10-year period there were only two investigations into a strike or threat of a strike in the State of Illinois.

Illinois faces many of the same challenges as New York State in precedent setting settlements. With different mediators, fact-finders and arbitrators assigned to multiple cases and resolving many disputes, there is no clear process in establishing precedent or archival system(s) to research for future disputes or consistent settlements throughout the state.

In my research, there is no evidence of other means of ADR (prior to mediation, fact-finding, etc.) currently being utilized in The State of Illinois. As ADR continues to evolve and redefine the way in which disputes are resolved, there is opportunity to trial new resolution techniques throughout the public-sector.

The systems are far from perfect and resolution processes can be improved upon. As we did see in 2014, teacher union strikes in Illinois play a significant role on public education and unresolved contracts in New York can drag on for years. The systems have proven successful at resolving disputes early in the process.

SECTION 3

Germany: The Act on Collective Agreements

German processes and procedures have similarities and differences when comparing to those used in the United States. German unions are perceived differently than those in the United States, not as an adversarial enemy but as an integral partner in conflict resolution and organizational decision making.

The Act on Collective Agreements was adopted in 1969 in Germany, this legislation governs the process of collective bargaining and labor relations throughout the country. Germany has many specific laws governing public and private sector labor unions. Labor courts are the mechanism of dispute and impasse resolution for the private sector. Public servants as known in Germany are excluded from the labor court, "the relationship between career public servants and the state is not a private contractual relationship, but is defined by, and based on, public law. Therefore, the law on career public servants (Beamtenrecht) is a special section of public law. Disputes concerning career public servants are not settled by labour courts, but by administrative courts."[xxvi]

The "role of the administrative court is not an administration control with a general goal, but the protection of the individual rights before the public authorities. The constitution guarantees an individual a subjective right against violation of his/her rights by administrative

action. Illegality of action may consist in an intervention against his/her rights or in a refusal of his/her legal right by the administration."[xxvii] The administrative courts not only provides service to the public-sector unions, but citizens throughout the country. The efficiencies of the court proceedings is determined by specific laws and regulations. If the court rules the law is unconstitutional, the case will be remanded for additional hearings at a higher-level court or recommended for legislative action.

Comparable to the New York States arbitration process; the hearing can be decided by a sole judge or a panel of three judges. "The chamber must generally hand over a dispute to one of its members, adjudicating as a sole judge, at the level of the administrative courts for first hearing, when the case is not showing any particular difficulties and has no scope for principle. In asylum application procedures, a sole judge adjudicates in 90 % of cases. For other Law fields, no statistical data is available; the volume of decisions delivered by a sole judge should be on average inferior to 50 % of the Länder."[xxviii] The speed of the process again will vary based on a sole judge or tripartite of judges and the current case backlog.

In Germany, public sector union regulations have similarities to those in the State of Illinois. Most significantly the right to use an economic weapon. Some (not all) German unions can use an economic weapon and strike if conflict is unresolved after proceeding through the resolution steps.

German conflict resolution processes are far from perfect. The system can be slow and inefficient by court and legislative proceedings, which can cause additional turmoil on top of existing conflict. The positive attribute of the German system is precedent setting. The German conflict resolution process guarantees precedent through court and legislative action. Conflict

will vary. However, the precedent can be utilized for efficient, timely and proactive resolution to existing disputes.

Opportunities for Germany include; ADR, mediation and fact-finding. In my research, there was no statistical information related to ADR or other dispute resolution techniques being utilized in the public sector, only legislative and court action. With a growing trend in ADR usage, the trialing of ADR has many potential benefits in Germany.

SECTION 4

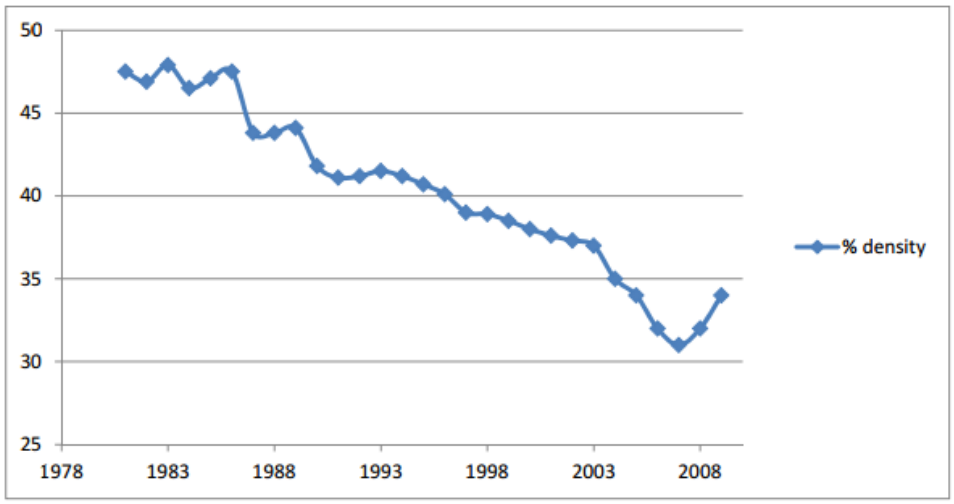
The Republic of Ireland: Conciliation Service Division

The Republic of Ireland was selected for the comparative analysis for two reasons. The first being, the percentage of unionized workers throughout the Republic of Ireland. The second being, the similarities of dispute resolution techniques to those used in both New York and Illinois.

The Republic of Ireland (excluding Northern Ireland) has multiple labor unions representing the public sector; The Irish Municipal, Public and Civil Trade Union "IMPACT" and the Civil Public & Services Union "CPSU" are the two largest. IMPACT formed in 1991, currently has over 35,000 members in civil service, education, health, local authorities, municipal employers and non-commercial state agencies. CPSU formed in 1922, currently has over 13,000 members working in the clerical and administrative grades of civil service, semi-state bodies and the private sector. "The household survey does not break down union membership between the public and private sectors. However, separately compiled figures from the National Workplace Survey show that unions are much stronger in the public sector – where more than two-thirds of employees are members (68.7%) – than in the private sector – where the

proportion is about a quarter (24.9%)."[xxix] The chart below shows current statistics through 2008 on trade union density in Ireland.

Figure 1
Trade union density, 1980–2009



Source: Central Statistics Office, Ireland

[xxx]

In the Republic of Ireland, the dispute resolution process comparable to what is used in the United States. "The Irish employment dispute resolution system is currently made up of a variety of agencies. The oldest dispute resolution body is the Labour Court, a tripartite industrial relations tribunal and not a court of law. It was set up in 1946 and provides a range of services for the resolution of collective and individual employment disputes: (1) it hears both sides in trade disputes and then issues Recommendations setting out its opinion on the dispute and the terms on which it should be settled. While these Recommendations are not binding on the parties concerned, the parties are expected to give serious consideration to them. Ultimately, however, responsibility for the settlement of a dispute rests with the parties; (2) in relation to cases involving breaches of registered employment agreements, the Labour Court makes legally binding orders; (3) also, the Court's determinations under the Employment Equality, Pensions and Organisation of Working Time, National Minimum Wage, Industrial Relations

(Amendment), Protection of Employees (Part-Time Work), Protection of Employees (Fixed-Term Work) and Safety, Health and Welfare at Work Acts are legally binding."[xxxi]

The Republic of Ireland Conciliation Service Division comparable to Public Employee Relations Board (PERB) in New York State, with the one significant difference. The Conciliation Service Division assists both public and private sector employers in resolving disputes. In the United States, we see federal agencies (FMCS, American Arbitration Association) working with private sector management and unions to resolve conflict. The Conciliation Service Division uses 7 methods in resolving disputes:

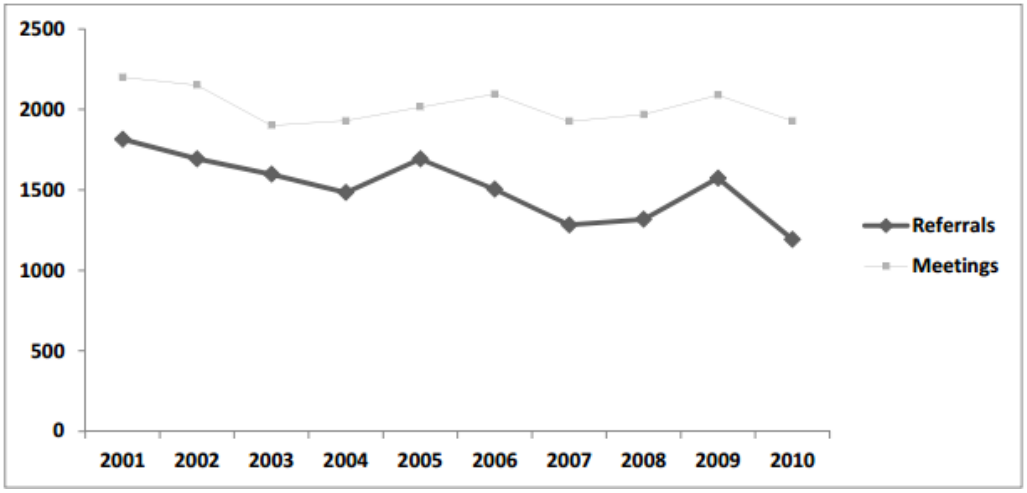
1. "Preventative dispute resolution: Averting conflict at work by creating procedures that promote cooperative management-employee interactions.
2. Early neutral evaluation: Where a third party neutral reviews aspects of a dispute and renders an advisory opinion as to the likely outcome.
3. Expert fact finding: Where a third party neutral examines or appraises the facts of a particular matter and makes a finding or conclusion. This procedure may be binding or non-binding.
4. Facilitation: A third party neutral assists disputants in reaching a satisfactory resolution to the matter at issue. The neutral has no authority to impose a solution.
5. Mediation: The neutral is neither a decision maker nor an expert adviser.
6. Non-binding arbitration: The third part may advise on a possible settlement, but recommendation is not binding on the parties."[xxxii]

Mediation is pursued after facilitation and fact-finding, a significant difference in resolution process as compared with New York State and the State of Illinois.

The Conciliation Service Division employees a staff of 13 conciliators, with the goal of efficient and timely conflict resolution. "In 2010, a total of 1,193 collective disputes were referred to the Conciliation Service, which although representing a 24 per cent decline on the 2009 figure, is still a high number. Moreover, the Conciliation Division chaired 1,783

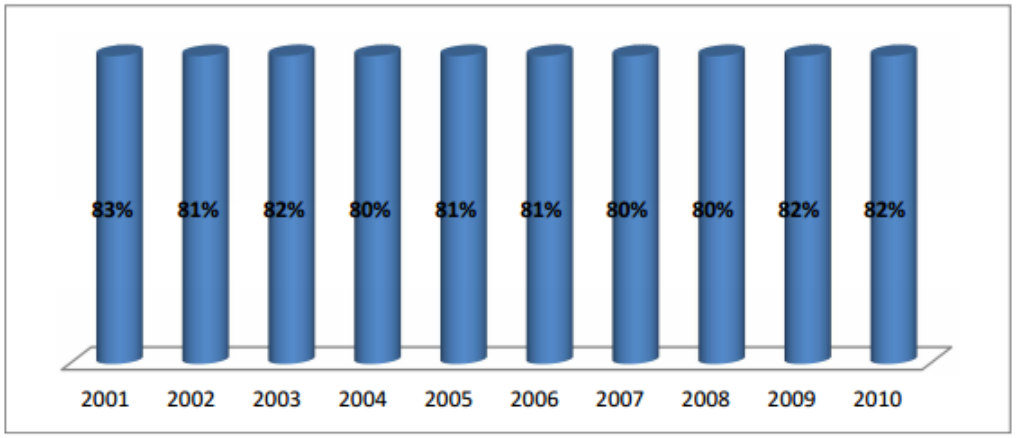
conciliation conferences over the course of 2010. Thus, the workload of the Conciliation Division, particularly in terms of formal meetings convened, has remained consistent over the years."[xxxiii] The graphs below represent the conciliation activities, success rates and days lost due to industrial action; strike or lockout. The conciliation service has a success rate of over 80%. The Republic of Ireland has been stable with minimal industrial action in both the public and private sectors.

Figure 3
Conciliation Service activity, 2001–2010



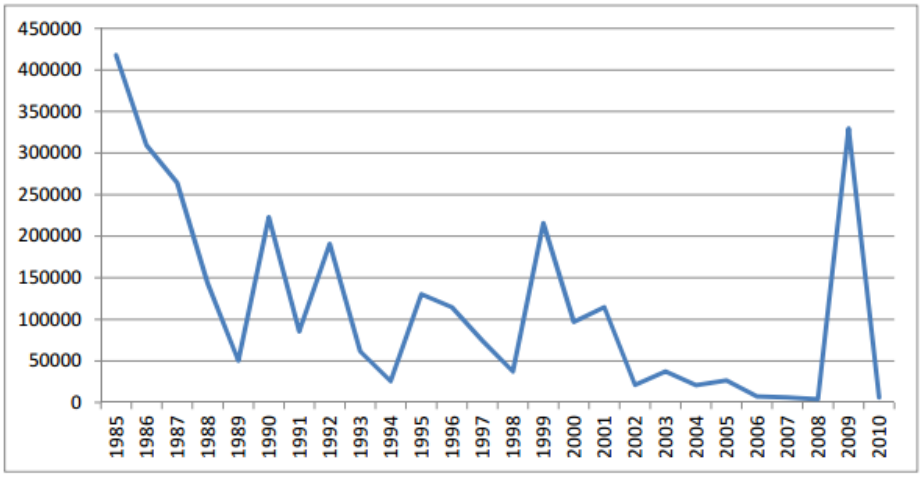
[xxxiv]

Figure 4
Conciliation Service settlement rate, 2001–2010



[xxxv]

Figure 2
Annual days lost due to industrial action, 1985–2010



xxxvi

The conciliation service is successful in the Republic of Ireland and is now in the evolutionary process. Implementing alternative dispute resolution techniques. The ADR practices include; open-door policies, ombudsman, review panels, assisted bargaining, interest-based bargaining with facilitation and increased communication within organizations. The proactive implementation of ADR techniques in both the private and public sector throughout Ireland is a sign that established dispute models can evolve.

The system is not perfect. Throughout Ireland we do see strikes, lockouts and lost days due to unresolved conflict. However, Ireland is continuing to reinvent the process by implementing new techniques, ensuring adequate and timely resolution to disputes.

Ireland is faced with the same challenges as New York and Illinois, settlements are not precedent setting and vary. The archival and precedent setting processes could significantly impact future disputes.

SECTION 5

Comparison: Similarities, Differences and Shortcomings

There are similarities and differences as we compare New York and Illinois to Germany and Ireland. The dispute resolution processes and procedures throughout the world have varying levels of success, most of which have been resolved at the lower steps in the varying processes. Overall, the systems can be deemed as a success based on the resolved dispute statistics.

The first argument, conflict resolution processes are not perfect. Illinois, Germany and Ireland have had strikes and currently allow strikes, while New York public sector employees can and do work without an agreed upon contract, sometimes for years. Most disputes are resolved at the lower levels of the process, but others take years to resolve. This adds increased costs to the sovereignty and potential for additional conflict and turmoil, adding burden to the fiscally strapped governing bodies. There is no formula for a perfect process to resolve disputes. Continuous evolution and embracing change will bring each group closer to sound process.

The second argument, the need for precedent setting settlements and an archival system. In New York, Illinois and Ireland, the system as currently utilized does not support precedent setting decisions in mediations, fact-finding or arbitration. Each agreement is specific to the union and governing body. There is no process in place currently to research or utilize past settlements to resolve current or future disputes. Germany settles public sector union disputes in the court system or through legislative channels, this does establish a precedent setting process. Thus, assisting in maintaining consistency in settlements and resolution. The downfall to a precedent setting process such as Germany's is the inefficiencies related to the

court systems and legislative changes. Precedent can be both good and bad, it is a double-edged sword. Precedent can add additional costs and complexity to bargaining and dispute resolution.

The underutilization of archival systems in the public sector slows resolution processes. With the implementation of an archival system, resolution can be more efficient and consistent. Conflict will very and should be respected as such. However, archival systems can be utilized to offer proactive suggestions while working through the resolution process throughout the state and/or country.

The third and final argument is the underutilization of Alternative Dispute Resolution in New York, Illinois and Germany. The conciliation service in Ireland has taken proactive steps in implementing and trialing ADR. The work environment has evolved and so to should the processes we use to resolve disputes. Until new processes and procedures are trialed, we will never know the success rates of Alternative Dispute Resolution throughout the public sector.

ADR Techniques to Consider for the Public Sector:

1. *Ombudsman:* Designate an ombudsman or neutral to assist in resolving conflicts. The position should be rotated every three years, to ensure neutrality.
2. *Review Panels:* Design a process to review disputes or grievances at a lower level, prior to mediation, fact-finding or arbitration. Offer recommendations or considerations.
3. *Standing Umpire:* Designate a mediator or arbitrator to oversee the collective bargaining agreement. The individual will develop a relationship with the union, management and will fully understand the contract and history of the conflict. The individual can potentially have full authority to render a decision or mediate a settlement.

4. *Conflict Resolution Training for Supervisors:* Train and retrain the workforce in communication, conflict resolution and other forms or dispute resolution techniques.

CONCLUSION

The comparative analysis examined the challenges and shortcomings faced in resolving disputes in the public-sector employment relationship, while focusing on three main arguments.

There is not a perfect conflict resolution process. As the analysis, has shown, states and countries utilize different techniques when resolving disputes and each system has both positive and negative attributes. Each state or country has found successes within the current systems. Evolution is necessary to resolve disputes efficiently and proactively.

Precedent is a double-edged sword, it can create a consistent, fair and timely resolution process. However, precedent can be a liability to future bargaining agreements and resolutions. Past resolutions should be viewed as recommendations for current or future conflict and to know the history of the issues. An archival system has the potential of increasing the efficiency in which disputes are resolved.

Alternative Dispute Resolution is designed to resolve disputes at the lowest possible level in any organization. There are opportunities to resolve disputes, decrease costs and increase procedural efficiencies through alternative dispute resolution techniques. Evolving dispute resolution systems will provide a more proactive, consistent, and efficient relationship building system to manage and resolve conflict. Evolution of these systems will take time. Both labor and administration must embrace change.

Labor and management will always be challenged with varying levels of conflict. Conflict should not be avoided, but welcomed and managed accordingly. Without conflict, we would not see change in the workplace or throughout the world. Conflict is necessary for progress. How we manage conflict is a choice.

"Conflict is inevitable, but combat is optional."
-Max Lucade[xxxvii]

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