

NYS TAXPAYER

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Triborough TROUBLE

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*How an obscure state law
guarantees pay hikes
for government employees -
and raises the tax toll
on New Yorkers*

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FOR NEW YORK STATE POLICY

A project of the Manhattan Institute for Policy Research

What you'll learn from this report:

- ✓ New York's 30-year-old "Triborough Amendment" requires public employers to maintain all contractual perks for unionized public employees, including automatic "step" increases in pay, after the expiration of a collective bargaining agreement.
- ✓ This law gives unions an incentive to resist negotiating structural changes to their contracts, since the *status quo* will be preserved even if there is no contract.
- ✓ Pay hikes required by the Triborough Amendment cost the state government \$140 million a year, despite a "freeze" on base salaries.
- ✓ The Triborough Amendment guarantees pay increases for teachers that add almost \$300 million a year to school budgets across the state.
- ✓ The requirement to finance automatic pay increases has undermined attempts to stretch taxpayer dollars further in a time of extreme financial stress.
- ✓ Repeal of the Triborough Amendment would establish a more equitable collective bargaining system in New York's public sector, preserving basic union rights while giving local officials the tools they now lack to negotiate needed changes to costly and outmoded contracts.

ABOUT THE AUTHORS

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OVERVIEW

In the wake of the nation's worst economic downturn since the 1930s, New York State's counties, municipalities and school districts face intense budgetary pressure. To bring spending into line with tightly constrained revenues, especially under a newly imposed property tax cap, local governments need more than ever to control rising employee salary and benefit costs.

But efforts to restructure costly public-sector labor agreements in New York State often run into a statutory brick wall known as the "Triborough Amendment."¹ Enacted in 1982, the amendment mandates that all provisions of a public employee union contract—including those providing for automatic annual pay increases—must remain in effect even after the contract expires, regardless of changing local priorities and fiscal conditions.

The Triborough Amendment gives public employees an incentive to hold out when management is seeking contract concessions. As one state worker put it when his union was asked to ratify contract givebacks in 2011: "We have Triborough ... why do this to yourself?"²

Triborough's toll on New York taxpayers is significant. For the state government alone, pay hikes guaranteed by the Triborough Amendment have cost \$140 million a year, even after Governor Andrew Cuomo negotiated a wage "freeze" with state unions.³ Similar increases for teachers cost New York City \$150 million a year⁴ and added \$93 million to school budgets elsewhere in the state.⁵

Contrary to assertions by public employee unions, repealing the Triborough Amendment would not free employers to unilaterally change pay and benefits after a contract expires.

These figures only tell part of the story. Since the Triborough Amendment makes it easier for unions to resist proposals for more significant and lasting changes to work rules, staffing requirements and fringe benefit cost-sharing arrangements, the full cost impact of the provision is incalculable.

Public employee unions claim that, without the Triborough Amendment, their members would be threatened with the loss of important benefits once their contracts expire, and would thus have greater reason to stage illegal strikes. In reality, as explained in this paper, repeal of the Triborough Amendment would leave intact New York's older "Triborough Doctrine." This would prevent government employers from unilaterally altering employee benefits that must be collectively bargained under state law—including salaries, hours and health insurance.

County executives, mayors, school administrators and school board members throughout New York State have cited the Triborough Amendment as an obstacle to providing better, more efficient, less costly public services. Repeal of the Triborough Amendment would strike a more equitable balance between the interests of taxpayers and of the people who work for them, promoting fair contract settlements for both sides.

1. HOW WE GOT HERE

Public employees in New York were granted collective bargaining rights in 1967⁶ under the state Taylor Law.⁷ The law empowered the state, local governments and other political subdivisions to recognize, negotiate with, and enter into written agreements with unions representing public employees. To help resolve disputes between unions and public employers, it created a state Public Employment Relations Board (PERB).⁸ The law also prohibited strikes by New York’s government employees, superseding a ban that dated back to the 1940s.⁹

Under the Taylor Law, “terms and conditions of employment” subject to collective bargaining include wages, salaries, hours and benefits for active employees. However, the law did not specify what government employers had to negotiate (“mandatory” subjects of bargaining), what they need not negotiate (“non-mandatory” or “permissive” subjects), and what they could not negotiate (“prohibited” subjects). The answers would evolve over the next several decades on the basis of PERB and court decisions.

One of the most important early clarifications of public employee union rights under the Taylor Law came in a 1972 PERB ruling in a contract dispute involving employees of the Triborough Bridge and Tunnel Authority.¹⁰ In that case, the board held that, following the expiration of a contract, public employers were prohibited from altering terms and conditions of employment while negotiating a successor agreement. This became known as the Triborough Doctrine.¹¹

An administrative ruling in 1972 established the principle that public employers cannot alter terms and conditions of employment in the absence of a contract.

The Triborough Doctrine prevented unilateral management changes to mandatory subjects of collective bargaining—a category which, under the evolving case law of the past 40 years, has come to include salaries, hours, health benefits, leave provisions, reimbursement for expenses, severance pay, disciplinary policies and certain work rules.¹²

However, the Triborough Doctrine did allow employers to alter or refuse to negotiate the continuation of non-mandatory provisions, such as those establishing minimum staffing levels or maximum class sizes, even if these provisions had been written into the previous agreement. As a result, unions still had an incentive to negotiate, since they could risk seeing some non-mandatory items changed in a prolonged holdout.

Automatic pay hikes

Under a practice pre-dating the Taylor Law, most public employees in New York are paid according to salary schedules, with multiple pay grades corresponding to different civil service job titles and salary “steps” in each grade based on years of service. Teacher pay schedules generally include numerous annual step increases as well as higher-paid “lanes” for those earning advance degrees or graduate credits.

Most teachers in New York are entitled to annual step increases for 20 or more years after they are hired, and are eligible to shift to higher paid lanes throughout their careers. (See “The Triborough Effect” on pp. 4-5).

In the first 10 years following enactment of the Taylor Law, before and after the Triborough Doctrine was established, union negotiators for teachers commonly insisted on treating costs associated with step and lane movements as “old money”; only raises applied to base salaries on the pay schedule were considered “new money.” The unions generally refused to acknowledge the costs of increments as part of a final settlement, regarding them as “guaranteed.” Thus, a 4 percent increase in base pay for teachers could actually cost school district taxpayers twice as much.

In 1977, public employers scored a major legal victory on the applicability of the Triborough Doctrine to step increments. In the case of *BOCES v. PERB*, the state Court of Appeals found that the doctrine “should not apply where the employer maintains the salaries in effect at the expiration of the contract but does not pay increments.” The unanimous court explained:

The concept of continual successive annual increments ... is tied into either constantly burgeoning growth and prosperity on the part of the public employer, or the territory served by it, or a continuing general inflationary spiral, without admeasurement either of the growth or inflation and without consideration of several other relevant good faith factors such as comparative compensation, the condition of the public fisc and a myriad of localized strengths and difficulties. In thriving periods the increment of the past may not squeeze the public purse, nor may it on the other hand be even fair to employees, but in times of escalating costs and diminishing tax bases, many public employers simply may not be able in good faith to continue to pay automatic increments to their employees.¹³

The *BOCES* ruling meant all pay increases were truly negotiable – and the employer was not required to implement step increases in the absence of a contract. This leveled the playing field for both employers and taxpayers, putting more pressure on unions to negotiate because no member of the unit was assured of a raise until a settlement was reached.

Trumping Triborough

The pro-taxpayer precedent lasted less than five years, however. In 1982, the Taylor Law’s definition of an “improper employer practice” was amended by the Legislature to include any refusal “to continue all the terms of an expired agreement until a new agreement is negotiated,” except in cases of illegal strikes.

Why was the Triborough change made? Public employee unions, in a lobbying campaign spearheaded by the largest statewide teachers’ union, New York State United Teachers (NYSUT), asserted that the Triborough Doctrine’s *status quo* guarantee wasn’t strong enough.¹⁴ The union-backed amendment won bi-partisan support from members of the state Senate and Assembly, who filed memoranda repeating the union’s arguments for passage. But in a statewide election year, the New York State School Boards Association (NYSSBA) saw another motive for the Legislature’s action. “Rather than reflecting any merit in the bill,” NYSSBA wrote to Governor Hugh L. Carey, “the Legislature’s approval was manifestly its way of appeasing public employee unions angered by Executive and Legislative rejection of their protracted and expensive campaign” to repeal pension reforms enacted in 1976.¹⁵

The Triborough Effect

Teacher salary schedules in New York State typically include 20 to 30 annual pay “steps” on each of at least four “lanes” for teachers with bachelor's degrees, master's degrees, master's plus 30 credits of graduate credits, and a master's plus 60 credits. The following is a simplified example; many districts actually have more steps and most (especially downstate) have more lanes than shown here.

Sample Teachers' Salary Schedule				
Based on Suffolk County Medians, 2010-11				
STEPS	LANES			
	Bachelors	Masters	Masters+30	Masters+60
1	48,622	56,064	61,250	65,770
2	50,723	58,301	63,626	68,192
3	52,914	60,626	66,094	70,703
4	55,200	63,045	68,657	73,306
5	57,584	65,560	71,321	76,005
6	60,072	68,175	74,087	78,804
7	62,410	70,700	76,598	81,439
8	64,840	73,319	79,193	84,163
9	67,364	76,034	81,877	86,977
10	69,986	78,851	84,651	89,886
11	72,710	81,771	87,520	92,892
12	74,599	84,248	90,051	95,382
13	76,538	86,801	92,655	97,938
14	78,526	89,430	95,334	100,563
15	80,567	92,140	98,091	103,258
16	82,660	94,931	100,928	106,025
17	83,442	96,270	102,632	107,670
18	84,232	97,628	104,364	109,340
19	85,028	99,005	106,125	111,036
20	85,833	100,402	107,917	112,758
21	86,645	101,818	109,738	114,507
Average Step	2.90%	3.00%	3.00%	2.80%

Source: "Salary Workbook and Fringe Benefit Study, Long Island, NY, 2010-11," Long Island Schools Boards Association. Assumes uniform increments between selected steps reported as the 50th percentile for Suffolk County school districts.

Most teachers spend most of their careers moving up salary steps—and, occasionally, across salary lanes—even if their union contract has expired, because the Triborough Amendment guarantees these changes. As a result, a school district's salary costs rise even when union negotiations have reached impasse and there is no new contract.

For the same reason, a contract calling for seemingly modest, inflation-level increases in base salaries—or even a supposed “salary freeze” or “zeroes”—can be far more costly than it looks. This is especially true in districts with predominantly younger teachers, who move up steps every year.

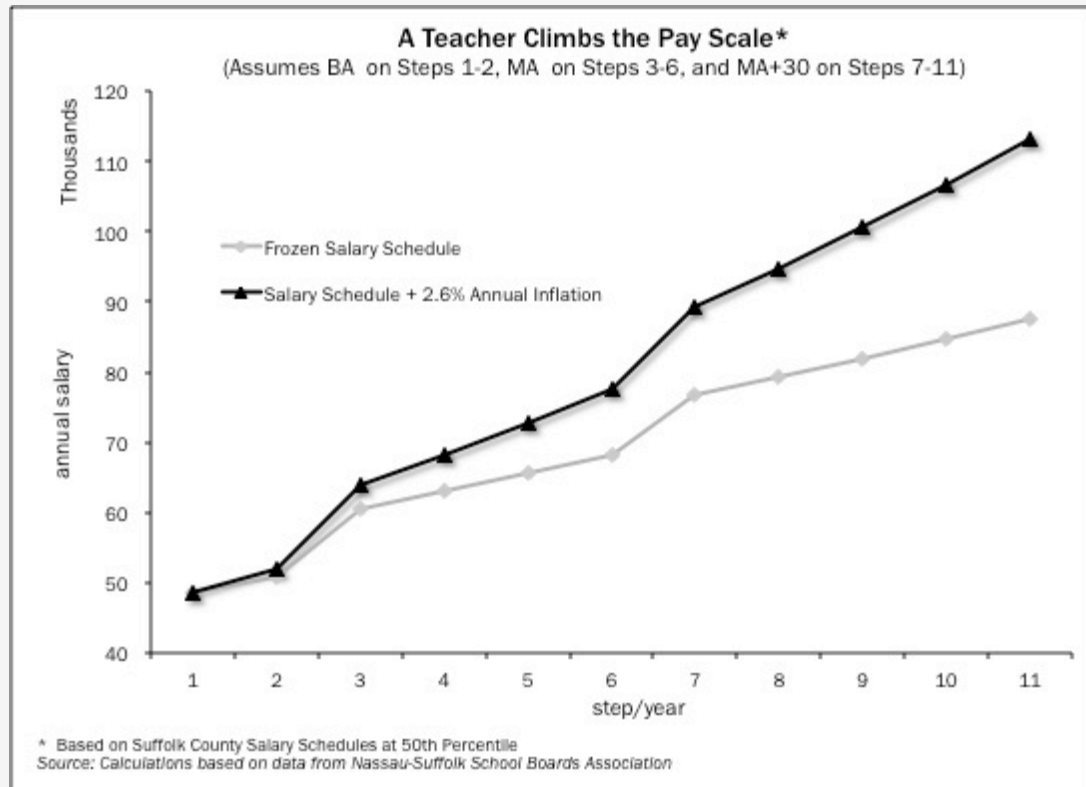
The chart at the bottom of this page illustrates the projected 10-year pay history of a newly hired teacher, fresh out of college, working in a district with a salary schedule based on the 2010-11 reported medians for all Suffolk County districts.

Assuming the teacher in this example earns a master's degree (a prerequisite for certification) within two years, and assuming all base salary steps also increase annually by 2.6 percent under the union contract, his salary by Step 6 will reach \$77,511, a pay boost of 59 percent after five years.

But even if the schedule is indefinitely “frozen” at the base year level, the salary of a teacher moving from the “Bachelors” to “Masters” lane during his first six years will reach \$68,175—an **increase averaging 7 percent a year, guaranteed by the Triborough Amendment.**

Earning 30 more graduate or “in-service” credits by the end of his sixth year will move the teacher across yet another lane. Assuming continued annual inflation level increases in base steps, the “Masters + 30” salary by Step 11 will reach \$113,131, an increase of 133 percent after 10 years on the job.

Under a contract allowing for zero base pay increase throughout the period, Triborough would guarantee that a starting teacher moving from Bachelor to Masters + 30 on this salary schedule will reach \$87,250 in his eleventh year—an **average of 6 percent a year over his first decade on the job.**



NYSSBA argued that while the proposed amendment would restrict the employer leverage in stalled contract negotiations, it “would not restrict the concerted efforts of public employees to disturb the *status quo* by participating in job actions, resigning coaching and extra-curricular positions and refusing to help students after school” – all common teacher union tactics during contract impasses.¹⁶

New York State’s Conference of Mayors and Municipal Officials (NYCOM) cited many of the same concerns, and said the amendment would undermine the ability of local legislative bodies to settle contract impasses for unions representing employees other than police and firefighters.¹⁷ Mayor Edward Koch of New York City also urged a veto, saying the bill “would have the effect of stultifying negotiations since there would be no impetus for the union to negotiate difficult contract provisions.”¹⁸

Governor Carey’s own budget staff “strongly” recommended that he veto the Triborough Amendment in 1982, saying the measure was “unnecessary to achieve its primary objectives.”

The governor’s own Division of the Budget “strongly” recommended a veto – saying the bill “legislatively grants a benefit which is more appropriately sought in negotiations and is unnecessary to achieve its primary objectives.”¹⁹ Nonetheless, on July 29, 1982, Governor Carey signed the measure.²⁰

The Triborough Doctrine, which preserved employee benefits found to be mandatory subjects of collective bargaining, thus gave way to the Triborough Amendment, which locked in contract provisions whether mandatory or not. Within a year, as opponents of the 1982 bill had expected, PERB interpreted the Triborough Amendment to require employers to continue paying salary increases required by step and lane movements in the absence of a new contract.²¹

Salary steps, longevity increments and higher-paid salary lanes in an expired agreement, like any other provision of an agreement, can still be modified or negotiated away by the union under the current law. Practically speaking, however, unions usually treat these provisions as off limits. The impact of these mandated increases is particularly costly for school districts, since all but the most senior teachers in most districts are entitled to annual step increases – and, by pursuing added graduate credits, can move to higher pay lanes even after contracts expire.

Arbitration complication

The Triborough Amendment also gave significant added negotiating leverage to police officers and firefighters, who (unlike other government employees in New York) have the right to binding “interest arbitration” of their contract impasses.

After adoption of the amendment, PERB held that an interest arbitration award could not change the terms and conditions of an existing contract without the consent of the union.²² In the same case, the board effectively ruled that an employer cannot exercise its own legal right to initiate interest arbitration of police and fire contract disputes unless a union first waives its own rights under the law to have the contract continued, or files its own arbitration petition.²³ Police and fire unions can thus lock in all provisions of their contracts, leaving employers with no countervailing ability to initiate compulsory interest arbitration. While compulsory interest arbi-

tration has driven up salaries for police and firefighters, there are some circumstances in which an employer might find it beneficial to pursue the arbitration option. However, as a result of the Triborough Amendment, a union that has a favorable contract—especially one protecting a costly non-salary item, such as a no-layoff guarantee or minimum staffing levels—may simply stop the bargaining process at mediation and refuse to negotiate further. Interpreted strictly, the Triborough Amendment and related Taylor Law provisions allow a police or fire union to block arbitration indefinitely if the impasse involves a crucial item. There has yet to be a case in which a government employer in New York has been able to proceed to arbitration over a union's objection.

2. THE PSYCHOLOGY OF TRIBOROUGH

The impact of the Triborough Amendment on contract talks was illustrated during Governor Andrew Cuomo's efforts to win ratification of a new contract with the Public Employees Federation (PEF), the state's second largest union, in mid-2011. A similar contract had been ratified by the largest state government union, the Civil Service Employees Association (CSEA).²⁴

Soon after PEF leaders tentatively agreed to the contract, a weekly newspaper devoted to public employee issues reported that opposition to the deal seemed to be strong among PEF members. It quoted one anonymous union member as follows:

The prevailing sentiment I am hearing is that [the contract] is going to go down... The furloughs are a problem for people. We have the Triborough Amendment – why do this to yourself?²⁵

In the first PEF ratification vote, the contract was rejected by a sizable margin.²⁶ A slightly revised version was ratified by employees a few weeks later, after the governor fleshed out a layoff threat by releasing the names of PEF members whose jobs were targeted for elimination.²⁷ But throughout the negotiating process, one outcome was never in doubt: thanks to the Triborough Amendment, PEF and CSEA members would receive all scheduled step increases and longevity increases under the existing pay schedule. Despite the governor's pledge to "freeze" state salaries, the state set aside \$140 million for employee pay increases in fiscal 2011-12 alone.²⁸

"We have the Triborough Amendment, (so) why do this to yourself?"

Local leverage

County executives, mayors and school board members who seek to restructure collective bargaining agreements must confront a similar reaction from their employees: "We have Triborough – why do this to ourselves?"

Compared to the governor – who has substantial power under New York's executive budget process, and who can balance his budget largely through cuts in aid to lower levels of government – local officials have far more limited options for avoiding deficits. Employee compensation makes up less than 20 percent of Albany's state operating funds budget, which consists overwhelmingly of aid to localities and transfer payments to individuals, including welfare and Medicaid.²⁹ By contrast, employee salaries and benefits typically comprise more than 50 percent of county operating budgets and more than 70 percent of operating expenditures by municipalities and school districts.³⁰

In times of extreme fiscal stress, when unions refuse to make concessions that would stretch local tax dollars further, local officials often have little choice but to reduce services and lay off employees. Even after slashing headcounts, employers must budget additional funds for step and longevity pay increases to the remaining workers, whose jobs have been protected by rigid "last in, first out" seniority rules.

This explains why statewide associations representing New York's local governments and school districts have continued to call for repeal or reform of the Triborough Amendment. The New York State Conference of Mayor (NYCOM), which represents a wide cross section of city and village officials, puts it this way:

The Triborough Amendment ... undermines the collective bargaining process by discouraging unions from offering concessions or givebacks since, as long as no agreement is reached, the terms of the current contract remain in effect. Not only is New York the only state in the nation known to have such a requirement, but in the private sector, where collective bargaining has existed for more than [75] years under the National Labor Relations Act, no similar obligation is imposed upon employers who are parties to a labor contract.³¹

The New York State School Boards Association (NYSSBA) also has identified Triborough as a top mandate relief priority:

The Triborough Amendment creates a disincentive for teachers to accept terms and conditions less costly than those allowed in the previous contract (in spite of economic realities) and it drastically hampers school districts' ability to effectively negotiate changes in terms in response to economic hardship. This stands in stark contrast to the options of salary freezes and renegotiation available to private businesses facing issues of fiscal crisis and viability. State and local taxpayers can no longer afford to underwrite the ability of public employees to ignore the fiscal realities faced by those who pay their salaries. The resulting loss of jobs has too great an impact on the state's economy and the programs and services needed by students.³²

3. THE NEED FOR CHANGE

The financial crisis and national recession that began to unfold in 2008 had a severe impact on local government and school finances. The slump in retail sales, real estate development and property values directly affected local revenues from sales, real estate transfer and property taxes. The state responded to its own severe fiscal crisis by shifting more costs to county governments and reducing aid to school districts and municipalities, exacerbating the problem.

Many local governments and school districts undoubtedly contributed to their current distress through their own mismanagement, including poorly conceived and unsustainable collective bargaining agreements. But some of the more costly elements of local union contracts around the state—such as minimal or non-existent employee contributions to health insurance—were negotiated by a previous generation of local officials. Such provisions remain locked in place, decades later, with the help of the Triborough Amendment.

The enactment in 2011 of Governor Cuomo’s 2 percent cap on the growth of county, municipal, school and special district property tax levies only strengthens the case for repealing the Triborough Amendment. To live within the cap without disrupting public services, local governments and school districts need greater flexibility to restrain automatic pay increases and to restructure the most costly aspects of their collective bargaining agreements. But Triborough, as noted, gives unions an incentive to resist such changes.

The need for Triborough reform in the wake of a state-imposed property tax cap was acknowledged in the landmark 2008 report of the New York State Commission on Property Tax Relief. The Commission, chaired by Nassau County Executive Thomas Suozzi, had been established by Governor Eliot Spitzer to recommend a cap on school property taxes. Noting that “personnel costs are the major component of school district expenditures, and have been increasing at a rate above inflation for a number of years,” the Commission recommended a series of reforms to curb these expenses, including a modification of the Triborough Amendment to exclude salary steps and lanes for teachers.³³

A new statewide cap on local property taxes highlights the problems caused by the Triborough Amendment.

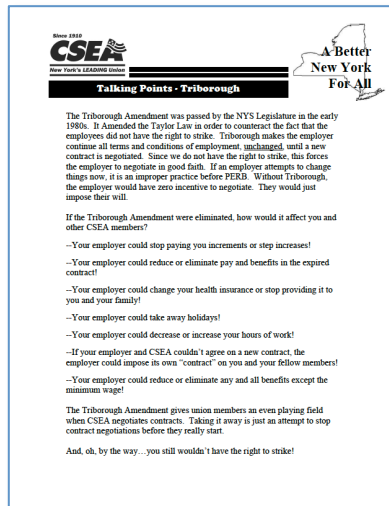
“This proposal recognizes the basic purpose of Triborough to maintain the *status quo* during contract negotiations, and would not preclude school districts from bargaining to pay step and lane increments, which may have accrued during the contract hiatus, at a later date,” the Commission said.³⁴

While the Suozzi Commission’s focus was limited to school taxes, its rationale for Triborough reform would equally apply to all local governments under Governor Cuomo’s more comprehensive tax cap. Contract-driven personnel costs are an especially important issue for municipalities whose payrolls are dominated by members of police and firefighter unions, whose negotiating leverage is greatly strengthened by the interplay of the Triborough Amendment and their legal right to invoke or block binding interest arbitration of impasses.

Labor's response

NYSUT claims that repeal of Triborough would have a “chilling effect” on labor relations by giving employers “the power to eliminate or diminish important contract provisions while negotiating a new contract.”³⁵

CSEA, meanwhile, has circulated a set of “Triborough Talking Points” (image below at left) warning union members that if the Triborough Amendment were repealed, employers could “reduce or eliminate pay and benefits in the expired contract ...



change your health insurance or stop providing it to you and your family ... take away holidays ... decrease or increase your hours of work,” and “reduce or eliminate any and all benefits except the minimum wage.”³⁶

In fact, these assertions are grossly misleading.

If the Triborough Amendment were repealed, public-sector labor relations in New York would remain subject to the Triborough Doctrine. Thus, after a contract expires, employers could not unilaterally alter health insurance, holidays, hours of work, or other benefits defined as mandatory subjects of collective bargaining.³⁷

Striking out

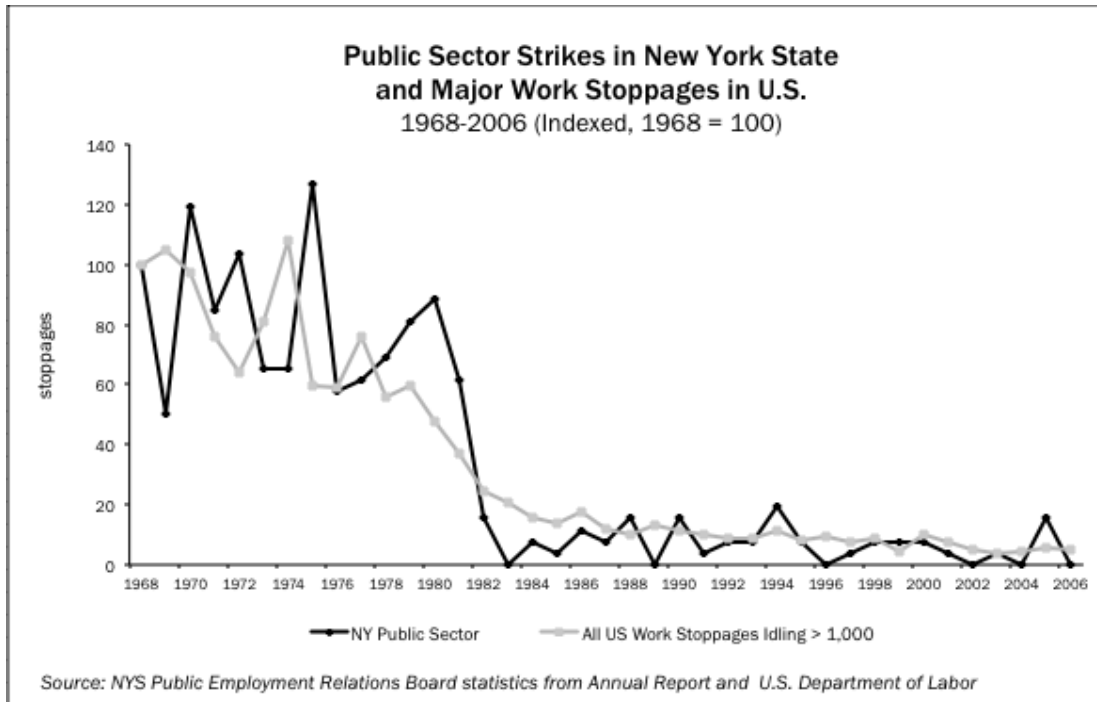
Unions also frequently assert the Triborough Amendment was enacted to make up for the outlawing of public-sector strikes. NYSUT’s president, for example, has described Triborough as “a tradeoff for labor peace” – pointedly implying that there can be no peace without it.³⁸

In fact, while a *quid pro quo* theory was cited in the 1972 PERB decision establishing the Triborough Doctrine, the strike prohibition was never conditioned on preservation of contract terms. Strikes by public employees in New York have been prohibited by court decisions since the late 1940s. The *real* “trade-off for labor peace” was the 1967 enactment of the Taylor Law itself, which made New York one of the first states to give all public employees a blanket right to organize unions and to collectively bargain terms and condition of their employment. The Taylor Law continued New York’s strike prohibition, but lessened some of the penalties previously imposed on unions for striking.³⁹

Public employee unions in New York, especially those representing teachers, continued to stage frequent strikes throughout the 1970s despite PERB’s promulgation of the Triborough Doctrine in 1972. The number of public employee strikes in New York did drop sharply starting in the early 1980s, a trend unions inevitably attribute to the enactment of the Triborough Amendment.

However, as shown in the chart on page 12, federal data reflect a similar decrease in strikes against large public and private sector employers throughout the country in the 1980s, even though Triborough-like guarantees are not available to most union

members elsewhere. This broad trend may be explained by two other developments in the early 1980s. The first was President Reagan's 1981 dismissal and replacement of striking air traffic controllers, which had strong public support after an era wracked by strikes in the public and private sectors.⁴⁰ The second development, starting in 1983, was a prolonged economic boom that swelled corporate profits and government tax coffers, relaxing the pressure for concessions from public unions.



CONCLUSION

It should come as no surprise that public employee unions have fought strenuously to preserve the bargaining leverage they gain from the Triborough Amendment. But elected officials, at the state and local level, need to take a broader view. The public interest is poorly served by a law that makes it easier for unions to hold out against any effort to change costly, outdated contract provisions during a period of intense fiscal and economic stress.

Repeal of the Triborough Amendment would leave intact the earlier Triborough Doctrine, which preserves the major elements of the contractual *status quo* after an agreement expires. Contrary to union assertions, this would protect all of the most important benefits public employees receive under their current contracts. At the same time, it would give employers the ability to truly freeze employee wage increases in the absence of a new contract. The result would restore at least some balance to a collective bargaining system that now disproportionately favors unions at the expense of taxpayers across New York.

ENDNOTES

¹ N.Y.S. Civil Service Law, Section 209-a(1)e

² “PEF Deal Matches CSEA’s, To Dismay of Its Members,” *The Chief*, Aug. 1, 2011, p. 1.

³ “State locked into hikes,” *Albany Times Union*, Feb. 23, 2011.

⁴ “A new lease on LIFO,” *New York Post*, March 28, 2011.

⁵ New York State School Boards Association estimate, assuming 25 percent of contracts expire each year without immediate successor agreements.

⁶ Formally known as the Public Employees Fair Employment Act, Article 14 of the Civil Service Law.

⁷ In New York City, collective bargaining for municipal employees was first authorized under mayoral executive orders in the late 1950s.

⁸ In New York City, labor relations with most municipal unions are regulated by the city Board of Collective Bargaining.

⁹ The Taylor Law gave some invaluable added privileges to government unions, including automatic deduction of union dues from employee paychecks and certification of unions on the basis of authorization cards (i.e., “card check”) instead of secret-ballot elections then required for certification of private-sector unions.

¹⁰ *Triborough*, 5 PERB 3037 (1972)

¹¹ PERB’s rationale was based in part on a *quid pro quo* theory: since unions could not strike to protest a failure to agree on a new contract, employers should not be able to unilaterally change terms and conditions of employment while negotiations continued.

¹² *Lawyers Co-operative Publishing Co.* 1982 New York Jurisprudence 2d. Volume 19. Civil Service Law §347-§404. Rochester, NY: Lawyers Co-Operative Publishing Co., as cited in “Negotiating to Avoid Strikes in the Public Sector,” by Kristin Guild, May 1998, at http://government.cce.cornell.edu/doc/reports/labor-management/ny_civil_service_law.asp#mandatory.

¹³ *BOCES v. PERB*, 41 N.Y.2d 753 (1977)

¹⁴ New York State United Teachers, “Triborough Legislation: Why It Is Necessary,” Memorandum on S.3086 and A. 6662, May 1982.

¹⁵ Letter from New York State Schools Boards Association, Bill Jacket, L. 1982, ch. 868. The Tier 3 pension reforms most disliked by unions were effectively erased by the enactment of Tier 4 in 1983, just a year after the Triborough Amendment’s passage.

¹⁶ *Ibid.*

¹⁷ Letter from New York State Conference of Mayors, Bill Jacket, L. 1982, ch. 868.

¹⁸ Letter City of New York, Bill Jacket, L. 1982, ch. 868.

¹⁹ Budget Report on A.6462, Bill Jacket, L. 1982, ch. 868.

²⁰ Governor’s Mem. approving L. 1982, ch 868. As originally worded, the bill implied that all provisions of a contract could remain in effect even if the union staged a strike in violation of the Taylor Law. In his memorandum of approval, Carey said he had “sought and received” assurances that the Legislature would clarify this point in a chapter amendment, which was duly enacted later that year.

²¹ *Cobleskill Central School District*, 16 PERB 3057 (1983).

²² *City of Kingston*, 18 PERB 3036 (1985)

²³ *City of Kingston*, *op. cit.*

²⁴ Release from Governor’s Press Office, Aug. 15, 2011, at <http://www.governor.ny.gov/press/081611cseacontract>

²⁵ *Op. cit.*, “PEF Deal Matches CSEA’s, To Dismay of Its Members.”

²⁶ “State Workers Reject Contract, Risking 3500 Layoffs,” *The New York Times*, Sept. 27, 2011.

²⁷ “Public union accepts deal,” *Newsday*, Nov. 16, 2011.

²⁸ “State locked into hikes,” *op. cit.*

²⁹ Using the broader “all funds” measure, employee salaries and benefits were just 14 percent of the state’s total budget.

³⁰ Percentages computed from 2010 “Expenditures by Object” spreadsheets for local governments and school districts, posted by the state comptroller www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm. Operating expenditures exclude debt service and capital spending.

³¹ NYCOM, “You Can’t Cap What You Can’t Control: Recommendations of the Mayoral Task Force on Mandate and Property Tax Relief,” December 2010, p. 11.

³² NYSSBA, *Triborough Reform Issue Brief*, available at http://www.nyssba.org/index.php?src=gendocs&ref=Triborough%20Reform&category=advocacy_legislation

³³ N.Y.S. Commission on Property Tax Relief, Final Report, p. 71. Available at http://www.cptr.state.ny.us/reports/CPTRFinalReport_20081201.pdf

³⁴ N.Y.S. Commission on Property Tax Relief, Final Report, p. 71. Available at http://www.cptr.state.ny.us/reports/CPTRFinalReport_20081201.pdf

³⁵ NYSUT, “Why we defend Triborough,” http://www.nysut.org/nysutunited_16262.htm

³⁶ www.csealocal1000.org/images/terryj4/TRIBOROUGH.PDF

³⁷ Under Section 209(3)(e) of the Taylor Law, after all other impasse resolution procedures are exhausted, the governing bodies of counties and municipalities can resolve contract impasses involving employees other than police and firefighters through legislative determinations effective one year at a time. Repeal of the Triborough Amendment would conceivably allow governing bodies in such cases to change contract provisions. In practice, however, the settlement of contract disputes through legislative determinations has been very rare in the more than four decades since the Taylor Law was enacted.

³⁸ Marc Humbert, “Unions Face New Political Climate as States Confront Spending Issues,” *On Board Online*, Jan. 24, 2011, available at www.nyssba.org

³⁹ Under New York’s first law prohibiting public employee strikes, the Condin-Wadlin Act of 1947, striking workers were automatically fired and could be reappointed only if they derived no financial benefit from the strike. Employee compensation following a strike could be no higher than pre-termination levels for at least three years, and rehired workers were placed on probation for five years.

⁴⁰ “In Showdown with Air Traffic Controllers, the Public Sided with Reagan,” Pew Research Center for the People and the Press, February 22, 2011, available at <http://pewresearch.org/pubs/1900/air-traffic-controllers-strike-public-sided-with-reagan>

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