

# Basic Negotiations

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Tarrytown Regional Office

Summer Conference

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# Basic Negotiations

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Before you go to the table....

# A Brief Comparison between Private and Public Sector Bargaining

## **Private Sector**

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Notice

Exchange Proposals

Negotiate

No Formal Declaration of Impasse

Federal Mediation & Conciliation Service

Contract Expires

## **Public Sector**

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Notice (if required by CBA)

Exchange Proposals

Negotiate

Formally declare impasse

PERB

Mediation / Fact-Finding /

Super-conciliation

Contract “Expires”



# What can Management Do After the Contract Expires?

## Private Sector

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The employer may begin implementing any or all of its last proposals (Last best offer).

Lockout

## Public Sector

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The employer **MUST** follow the rules and procedures of the Triborough Amendment to the Taylor Law

# What Can The Union Do After the Contract Expires?

## Private Sector

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Mutually agree to extend the contract and keep negotiating.

Keep negotiating without a contract extension.

Strike.

## Public Sector

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Keep negotiating

Illegally Strike (The penalties for striking is an additional day of pay for each day of a strike, totaling two days' loss for each strike day, removal of the "Dues Check-off", and imprisonment of the Union's President.)









The New York Times/Edward Heiner

Applauded by supporters, Joseph Barni, foreground, president of the Lakeland Federation of Teachers, and several striking members of the union presented themselves yesterday at the White Plains courthouse to begin jail terms.

## 3 Striking Westchester Teachers Jailed for Contempt

By THOMAS P. RONAN

Special to The New York Times

WHITE PLAINS, Oct. 28—Eight teachers from the Lakeland School District in northern Westchester County, scene of the second-longest teachers strike in the state's history, were jailed today for disobeying a court order to return to work. If the strike, which has covered 34 school days since the academic year began, continues through Monday, it will equal the state record for a teachers strike. That was set in 1968 when the

United Federation of Teachers struck the New York City school system.

Dr. Leon Bock, assistant superintendent of schools in Lakeland, who is the chief negotiator for the school board, said today that some progress had been made in salary negotiations last night. But he declined to discuss details or to assess prospects for a settlement. Salaries range from \$10,620 to \$24,000.

Most of the 450 members of the Lakeland teachers union have been striking the district's nine schools, which have an enrollment of about 8,000 students.

But substitutes hired by the board have largely taken their place, and 90 percent or more of the students have been attending classes.

In sentencing the Lakeland teachers Tuesday in State Supreme Court here, Justice Alvin R. Ruskin also fined the union \$75,000 plus \$2,500 for every school day the strike continued, beginning today.

Union leaders said that the penalties imposed by Justice Ruskin were among

Continued on Page 28, Column 1



# Legal Guardrails

## National Labor Relations Act

## Taylor Law

**NLRB**

**PERB**

**FMCS**

**Unfair Labor Practice (ULP)**

**Improper Practice (IP)**

**Mandatory Subject of Bargaining**

**Permissive**

**Non-Mandatory**

**Illegal**

**Prohibited**

**Strike**

**Triborough**

**Last Best Offer**

**Impasse**

**Inability to Pay**

**Request Information**



# Understanding the Taylor Law in Terms of Collective Bargaining

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- Grants public employees the right to organize and to be represented
- Requires public employers to negotiate regarding terms and conditions of employment.
- Establishes impasse procedures
- Defines improper practices
- Prohibits strikes by public employees
- Establishes the Public Employment Relations Board (PERB)
- Triborough Amendment



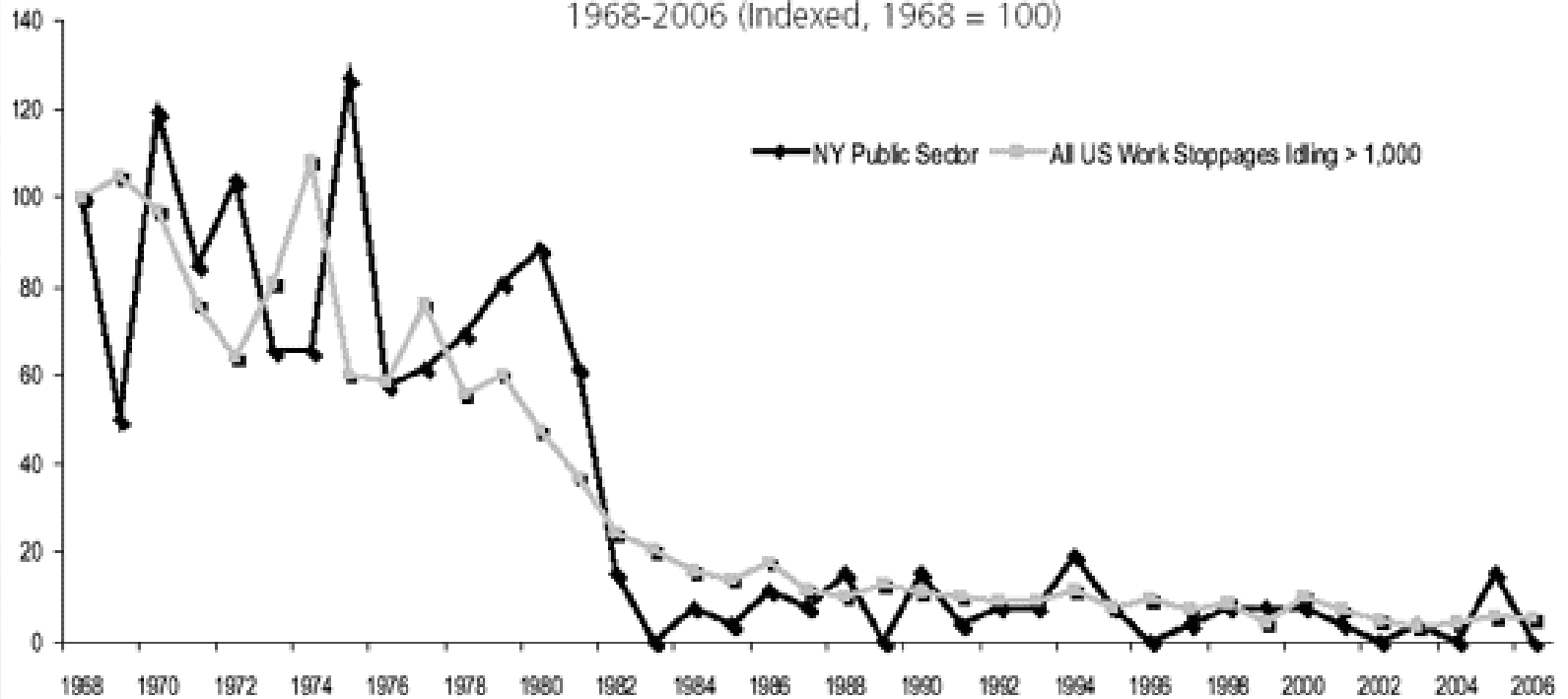
# Triborough Amendment 209-a.1(e)

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- The employer's unilateral change in terms and conditions of employment during the period after a contract expires and before negotiations on a new contract have concluded constitutes an improper practice.
- Because of the prohibition against strikes, no public employer may be permitted to alter the status quo during the course of negotiations.



Figure 6. Public Sector Strikes in New York State and Major Work Stoppages in U.S.  
1968-2006 (Indexed, 1968 = 100)



Source: NYS Public Employment Relations Board statistics from Annual Report and U.S. Department of Labor



# Public Employment Relations Board in terms of Collective Bargaining

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- Defines mandatory, non-mandatory and prohibitive subjects of bargaining
- Impasse Resolution
- Can impose fines and sanctions for illegal strikes

# Impasse Resolution

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- Mediation
  - PERB appointed neutral (works to get agreement)
  - Non-binding
- Fact-Finding
  - Hearing and/or Briefs
  - Fact-finder's Report
  - Non-binding
  - Public document after 5 days
- Conciliation
  - Process like mediation
  - Conciliator "armed" with fact-finder's report
  - Non-binding

*Section 2 Page 71*  
*Section 3 Page 28*



# Bad Faith Bargaining

A party's only obligation is to bargain in good faith with an intent to reach an agreement.

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- No single factor determines whether an employer or a union are bargaining in good faith.
- Good faith is judged on the facts of the particular case based on the totality of a party's conduct.

# Evidence of Bad Faith Bargaining

- Refusing to meet at reasonable times and places

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- Refusing to give basic information to the union needed for meaningful bargaining
- Refusing to discuss certain issues at all with the union
- Agreeing only on minor bargaining issues (surface bargaining)



# Subjects of Bargaining

## Mandatory Subjects:

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Must be bargained upon demand by either party.

## Non-Mandatory Subjects (Permissive):

Parties may negotiate voluntarily; may be taken to impasse,  
but not to fact-finding

## Prohibited Subjects:

May not be negotiated by either party

*Section 2 Page 73*

# Examples of Mandatory Subjects

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- Salaries and wages
- Paid leave, vacations, holidays, sick leave, etc.
- Service credits and longevity pay
- Insurance
- Employee services and benefits
- Tuition Reimbursements
- Hours
- Length of workday
- Grievance/arbitration procedure
- Evaluation procedure



# Examples of Mandatory Subjects

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- Procedures for determining layoff/recall
- Evaluation procedures
- Work rules
- Subcontracting- only if work has been exclusively performed by unit members
- Discipline and Discharge
- Paid time off for union business

# Examples of Non-Mandatory Subjects

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- Budget Cuts
- Reductions in force
- Filling Vacancies
- Class size
- Job assignment
- Employer's organizational structure
- Manpower/Staffing
- Shift Assignment



# Examples of Prohibited Subjects:

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- Gift of Public Funds
- Tenure
- Subcontracting to BOCES
- Drug testing for bus drivers is prohibited, BUT the specifics that are not covered by the law can be negotiated.
- Pension/Retirement Benefits clauses.
- Board Of Education's right to inspect personnel files can not be negotiated.

Important Decisions  
from PERB

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and

Important Elements of the  
Taylor Law



# Important Decisions

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- **Matter of Hempstead**- 209-a.1(e) does not apply to language with sunset clauses.
- **Matter of Cohoes**- Contract language that is non-mandatory, becomes a mandatory subject of negotiations.
- **Matter of Florida**- “whole issue” negotiations and past practice versus contract reversion.
- **Matter of Wappingers Falls** – employer can make a unilateral change in an otherwise mandatory topic, as long as the three (3) prong thresholds are met.
- **Matter of Adirondack** – past practice claim on a mandatory subject does not apply if employer demonstrates a legitimate business claim.

# The Negotiations Process

- Understanding the Local's History
- Understanding the Taylor Law in Terms of Collective Bargaining
- Organizing for Negotiations
- Negotiations Research

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- Establishing a Negotiations Team
- Preparing Contract Proposals
- Negotiations Skills and Dynamics
- Negotiations Team Group Norms
- Negotiations Process at the Bargaining Table



# Understanding the Local's History

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- How has the negotiations process worked previously in the local?
- What have been perennial issues?
- Are there new issues that are surfacing?

# Organizing for Collective Bargaining

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- Organize a research committee
- Organize the negotiations committee
- Organize an action committee
- Organize a political action committee
- Organize a public relations committee
- Organize all of the above at least several months prior to negotiating.



# Establishing the Negotiating Team

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- Check the local constitution!
- Should the team be elected or selected?
- Should the President be on the team?
- Should the team be representative of the membership?
- Should there be representation from different facilities, departments, special interest groups?
- Should all members of the team come from the executive board?
- Who should be the chairperson of the team? How is this determined?

# Establishing the Negotiating Team

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- What is the role of the NYSUT Labor Relations Specialist?
- Who is the spokesperson to the media?
- Can the President run the union, be the spokesperson to the press and chair the negotiations sessions?



# Negotiations Team

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Establish team member roles:

- Chief Spokesperson
- Financial Expert
- Resource people
- Scribe
- Subcommittees

# Preparing Contract Proposals

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- School/hospital/building/department meetings
- Surveys and Questionnaires
- Special interest group meetings
- Negotiations conferences and workshops
- Using proposals and language from other unions
- Reviewing previous negotiations proposals
- Supporting Data
  - Salary Cost Out (Section 2 Page 88)

*Section 2 Page 10-15*



# White Plains TA Survey

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- <https://www.surveymonkey.com/r/TBKRF2>
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- <https://www.surveymonkey.com/results/SM-GN9QC7JC9/>

# Preparing Contract Proposals

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- Like any well-drafted document there will most likely be several versions:
  - General Proposals
  - Rough Draft using General Proposals with more specific language
  - Fine-tuning the draft- reflect on proposal, understand the impact of the proposals, organize proposals & final edit of proposals
  - Final Draft



# General Areas of the Contract

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## Group Activity

- Union Security
- Economic Items
- Working Conditions

# Union Security

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- Recognition as the exclusive bargaining agent with a description of the bargaining unit
- Frequency of meetings with the administration
- Grievance procedure and binding arbitration
- Dues check-off
- Agency shop/union shop
- Use of mailboxes and/or internal mail system
- Release time for officers, negotiators, grievance representatives
- Any others?



# Economic Items

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- Salaries
- Fringe benefits
- Extra pay – stipends
- Vacation time
- Sick time
- Personal time
- Leaves of absence
- In-service training
- Overtime
- Any others?

# Working Conditions

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- Work Day- e.g. additional period of teaching, mandatory overtime
- Work Week
- Class Size
- Job Descriptions
- Non-professional duties
- Health and Safety



# Guidelines for Contract Language

- Avoid different terms for the same person or entity
- Avoid different meanings for the same term

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- Avoid redundant or needless phrases
- Avoid legalisms
- Use gender-neutral language
- Use headings where possible
- Be precise in the use of numbers and units of time
- Number multiple terms
- Insert new provisions in the proper locations
- Use consistent sequential numbering of paragraphs

# General Standards for Interpreting Contract Language

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**Language which is clear and unambiguous means what it says.**

The contract says:

“The company will provide required safety equipment.”

*Who pays for the equipment?*



## General Standards for Interpreting Contract Language

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*Specific wording will be given greater weight than  
general wording.*

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The contract says:

“The company shall continue to make reasonable provisions for the safety and health of its employees.

The contract also says:

“Wearing apparel and other protective equipment necessary to protect employees from injury shall be provided by the company in accordance with practices now prevailing or as such practices may be improved from time to time by the company.

*Does the employer have to provide rain gear to certain employees if they hadn't before?*

## General Standards for Interpreting Contract Language

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*To express one thing is to exclude another.*

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- If one group or class of items is mentioned, and others are not mentioned, this generally means the others were meant to be excluded.

The contract says:

“At the convenience of the company,  
swing-shift workers will be given 20  
minutes from their shift to eat a meal.”

*Can straight day workers claim the same  
benefit?*



## General Standards for Interpreting Contract Language

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*The agreement will be interpreted as a whole.*

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- The meaning of each sentence and each paragraph must be determined in relation to the contract as a whole
- Sections or portions of the contract cannot be isolated from the rest of the agreement and interpreted without regard to what the rest of the contract says
- All parts of the contract have some meaning, or they would not have been included in the agreement.

# General Standards for Interpreting Contract Language

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## *Intent of both sides*

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- If the language is not specifically clear, it will be necessary to determine what the intent of both sides was when the contract was written.
- It is this meaning which governs, not any meaning that can possibly be read into the language.
- Written records or minutes of negotiations or testimony of people who participated in negotiations should be considered.



# Standards Going Beyond the Contract Language

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## *Industry practice*

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- When practice in a particular workplace does not provide a sufficient guide, then look to practice in other workplaces of same company or other workplaces in same industry or business. This would be especially true in these cases:
  - ▶ where the practice was found in other workplaces of the same company under the same clause;
  - ▶ where the same agreement was entered into by one employer with several unions;
  - ▶ where the same agreement was entered into by several employers with one union.
- ▶ A general industry practice may be taken into account.

# At the Table

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Are you an effective negotiator?



*Section 3 Page 14*



# Dimensions of Bargaining

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- **Horizontal-** This is bargaining between the parties across the table.
- **Internal-** This process takes place within each team. Team behaviors may reflect individual ambitions, fears, hidden agenda, union/management politics, etc.
- **Vertical-** This describes the process within the hierarchy of the union and the employer.
- **External-** These are the forces outside the union and management.

# Understanding the Other Side

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- Know the source of power.
  - Who has it?
  - Do you have a direct line of communication to the power source?
- Know the economics of the other side.
- Know the style and personalities of the other side's bargaining team.



# Ground Rules

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- Establish the rules of negotiating

- Examples:

- Place / Length of Meetings
- Package Bargaining
- Tentative Agreements
- Ratification Procedures
- Agendas
- Chief Spokespersons
- Caucuses

- **PERB has ruled that ground rules may be unenforceable**

*Section 3 Page 5*

# Exchanging Proposals

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- Know the history of exchanging proposals.
- Communicate with the other side prior to the exchange to have a consensus on the exchange process.
- **Follow timelines on exchanges in the CBA if there are any.**



# Clarifying Proposals

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- Be prepared to explain the each proposal (i.e. how it would change current language and/or practice.)
- Be prepared to provide a rationale for why the you are making a proposal.
- Know who will be explaining/providing the rationale.

# Discuss, Negotiate and Analyze Proposals

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During Negotiations:

- Discuss proposals with your team.
- Discuss proposals with the employer's team.
- Analyze each of the employer's proposals to better understand the impact on your members.
- Discuss with the employer the impact of your/ their proposals.
- Internally negotiate counter proposals with your own team.



# Counter Proposals/Packages

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- Counter Proposals- may be a modification of either side's proposals.
- Package Bargaining- includes proposals from both sides used by either side to attempt to move the process along and/or come to an agreement.

# Costing Out Proposals

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- Every proposal, whether monetary or not, has a value.
- Four elements to consider:
  - compensation
  - time
  - benefits
  - working conditions.
- Cost out all proposals prior to agreement.



# Taking Notes!

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- Notes are used as a record to show where progress has been made or lost.
- You will forget and need to refer to notes!

# Communicating with the Membership

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- How much should the membership know during negotiations?
- Should we show our initial package to the membership?
- Should we show management's package of proposals to the membership?
- How do we keep the membership informed?



# The Caucus

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- When?
- When not to?
- Why?
- How?
- Duration?

# 5 Steps of Breakthrough Negotiations

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- Don't React
  - Buy time and take a time out to caucus.
- Don't Argue
  - Use I statements instead of You statements
- Don't Reject, Reframe
  - Ask why, what if, what makes this fair?
- Don't Push, build them a golden bridge
  - Ask for and build their ideas
  - Offer a choice
  - Help them sell an idea
- Don't use power to destroy (Section 3 page 31)
  - Let them know the consequences of their actions



# Closing the Deal

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- Memorandum of Agreement (MOA/TA) is signed
- Review Ratification Procedure in Local's Constitution
- Preparation for Ratification Meeting
- Presentation of MOA/TA
- All negotiators must have an **AFFIRMATIVE OBLIGATION** under the Taylor Law to endorse ratification, unless disclosed otherwise
- Printing of New Agreement