

Section 6
The Taylor Law
& Improper Practices

I. What Is the Taylor Law?

The Taylor Law is labor relations statute covering all public employees in New York State - whether employed by the State, or by counties, cities, towns, villages, school districts, public authorities or certain special service districts. It became effective on September 1, 1967 and was the first comprehensive labor relations law for public employees in the State, and among the first in the United States.

The Taylor Law does the following:

- grants public employees the right to organize and to be represented by employee organizations of their own choice;
- requires public employers to negotiate and enter into agreements with public employee organizations regarding their employees' terms and conditions of employment;
- establishes impasse procedures for the resolution of collective bargaining disputes;
- defines and prohibits improper practices by public employers and public employee organizations;
- prohibits strikes by public employees; and
- establishes a state agency to administer the Law - the Public Employment Relations Board (PERB).

POWERS AND FUNCTIONS OF THE BOARD

As a neutral agency, the Board acts primarily as an umpire in disputes arising under the Taylor Law. Its responsibilities include:

- Administration of the Taylor Law statewide within the policy framework established by the Legislature;
- Resolution of representation disputes;
- Provision of impasse resolution services;
- Adjudication of improper practice charges;
- Designation of management/confidential employees;
- Determination of responsibility of employee organizations for striking and ordering forfeiture of dues and agency fee check-off privileges;
- Making recommendations to the Legislature for changes in the Law;
- The conduct of educational programs for the public and the labor relations community;
- Administration of grievance and interest arbitration panels.

EXAMPLES OF MANDATORY SUBJECTS

- Salaries and wages
- Paid leave, vacations, holidays, sick leave, etc.
- Service credits and longevity pay.
- Insurance
- Employee services and benefits, i.e. company car or use of employer's tools.
- Tuition reimbursement
- Hours - Number of hours, change in hours unless *de minimus*
- Length of teacher's workday - but note, **the length and number of instructional periods for students** relates to educational policy and is a management prerogative, but because these changes affect teachers' workload, the employer is **required to bargain the impact of such decision.**
- Grievance/arbitration procedure.
- Procedures for determining layoff/recall.
- Evaluation procedures.
- Work rules
- Subcontracting - only if the work has been "exclusively" performed by unit members.
- Discharge and discipline.
- Paid time off for union business (but note- the use of the employer's facilities for union business is not a mandatory subject).

EXAMPLES OF NON-MANDATORY SUBJECTS

- Demands which go to the heart of the employer's mission, or which relate to the extent of services to be rendered to the public are not mandatory subjects of negotiation.
- Budget cuts
- Reductions in force
- Filling of vacancies
- Class Size - but note- because this is related to teacher workload, if class size is increased, employers may have to bargain the impact of the decision.
- Job Assignments including extra-curricular activities - so long as the employer does not add duties beyond the "essential character" of the position
- Employer's organizational structure
- Manpower
- Shift assignment
- Departmental rules that do not concern terms and conditions.
- Matters covered by statute - the employer is not required to negotiate a redundant provision into the agreement.
- Qualifications for appointment.
- Qualifications for promotion outside of the bargaining unit are non-mandatory, but if within the bargaining unit are mandatory.

EXAMPLES OF PROHIBITED SUBJECTS

- **Tenure** - the right to confer tenure rests with the Board of Education, but the preliminary procedural steps leading up to the final tenure decision are negotiable.
- **The Board of Education's right to inspect personnel files** cannot be negotiated.
- **Subcontracting to BOCES** is a prohibited subject.
- **Drug testing for bus drivers is prohibited-** but the specifics that are not covered by the law can be negotiated.
- **Pension/Retirement Benefits Clauses**

Guide for Individuals Filing an Improper Practice Charge on Their Own Behalf

PERB'S LAW & RULES

If you are thinking about filing a charge with the Public Employment Relations Board ("PERB"):

You can research the Public Employees' Fair Employment Act, more commonly known as the "Taylor Law" (Article 14 of the Civil Service Law, as amended), at: <http://www.perb.ny.gov/taylor-law/>. PERB only has jurisdiction over certain claims, certain public employees, and certain public employers. Reading the law will help you decide if you have a claim that you can file with PERB.

- PERB cannot hear claims of employment-related discrimination based on race, creed, color, national origin, sexual orientation, military status, sex, age, marital status, disability, or familial status. You may have a claim that can be heard by the Division of Human Rights. <https://dhr.ny.gov/complaint>.
- If you are an employee of the State of New York or other public employer (such as a county, city, town, village, school district, a public authority, commission, or public benefit corporation), PERB may be able to hear your claim. For a full list of public employers, see § 201.6 of the Taylor Law.
 - You cannot file with PERB if you are employed by a mayoral agency of the City of New York, such as the NYC Department of Transportation. You may have a claim that can be heard by the NYC Office of Collective Bargaining. <http://www.ocb-nyc.org/>.
 - If you are employed by the NYC Board of Education, also known as the Department of Education, as a teacher or other educator, PERB may be able to hear your claim. Other NYC Board of Education employees must file with OCB.
 - You cannot file with PERB if you are employed by a federal agency.

- Your charge must allege a violation of the Taylor Law (Article 14 of the Civil Service Law). We encourage you to read the Taylor Law in full, which is available on our website at <http://www.perb.ny.gov/taylor-law/>.
 - Improper practices by a **public employer** are defined in Section 209-a.1 of the Taylor Law.
 - Individuals may file claims alleging violations of Section 209-a.1 (a), (c), and/or (g).
 - Improper practices by a **union** are defined in Section 209-a.2 of the Taylor Law.
 - Individuals may file claims alleging violations of Section 209-a.2 (a) and/or (c).

You can research PERB's Rules of Procedure ("Rules") at: <http://www.perb.ny.gov/rules-of-procedure/>. The Rules describe the procedures for filing an improper practice charge with PERB. See Part 204 for the Rules covering Improper Practices.

You can review prior Board cases at: <http://www.perb.ny.gov/nys-perb-board-decisions/>.

FILING A CHARGE

If you decide to file an improper practice charge, the form is available on our website at: <http://www.perb.ny.gov/wp-content/uploads/2018/04/ipcharge.pdf>.

Please read and follow the instructions on the form carefully. Here are some tips to help you complete the form fully and accurately.

- **Item 1 – CHARGING PARTY:** You are the Charging Party. You must provide your full contact information and advise PERB and all parties of any changes.
- **Item 2 – PUBLIC EMPLOYER AND/OR EMPLOYEE ORGANIZATION AGAINST WHICH CHARGE IS BROUGHT:**
 - If you are alleging that your **employer** has violated the Taylor Law, put your employer's name and full contact information here, including

telephone number and email address.

- If you are alleging that your **union** has violated its duty of fair representation to you, put your union's name, full address, telephone number, and email address in this section. Even if your charge is only against your union, your employer's name, address, telephone number, and email address should go in section 4a and b.
 - If you are alleging that your union has violated its duty of fair representation, you do not have to file separate charge forms against the union and the employer.
- **Item 4 – VIOLATIONS ALLEGED:** Identify the specific subsections of the Taylor Law that you are alleging have been violated.
 - Please note that individuals do not have standing to allege violations of § 209-a.1 (d), § 209-a.1 (e), or § 209-a.2 (b).
 - A claim that a union has breached its duty of fair representation alleges a § 209-a.2 (c) violation.
- **Item 5 – DETAILS OF ALLEGED VIOLATION(S):**
 - Here you should state the facts of your case, preferably in numbered or lettered paragraphs. Tell us what happened, how it harmed you, and why you believe it violated the Taylor Law. You should include the names, and, where known or relevant, the titles and work locations of the individuals involved in the alleged improper practice(s), the DATE and the place of the occurrence of each particular act alleged, and the particular actions constituting each alleged violation.
 - You may attach exhibits and other documents, but you must label and explain each exhibit and document. Your statement may NOT consist solely of attachments.
 - You must file your charge within FOUR MONTHS of when you first knew, or reasonably should have known, of the alleged improper practice. See Rule § 204.1 (a)(1).
- **Item 7 –** Be sure to indicate whether you are available to participate immediately in a pre-hearing conference and a formal hearing.

IMPORTANT: Your charge **MUST** be **SIGNED** and **SWORN** to before any person authorized to authorized to administer oaths (i.e. notarized). See Rule § 204.1 (a)(3). Your charge **WILL NOT** be processed if it is not properly signed and sworn.

Mail an **ORIGINAL** plus **FOUR** copies of the charge along with any exhibits. See Rule § 204.1 (a)(1).

WHAT HAPPENS AFTER I FILE MY CHARGE?

Your charge will be assigned a case number, which begins with a "U-". Always use this number when writing or calling PERB.

The Director of Public Employment Practices and Representation ("Director") will review your charge and any documents you submit. The Director will determine whether the facts you allege may constitute an improper practice as set forth in section 209-a of the Taylor Law.

If the Director determines that the facts you allege **MAY** constitute an improper practice, she will assign your case to an administrative law judge for processing, and you will receive a Notice of Conference that contains information about the next steps. **Such an assignment does not mean that the Director has found that an improper practice has occurred, and the other party or parties will have the opportunity to reply to your allegations.**

If the Director determines that the facts you allege do not, as a matter of law, constitute a violation, or that the charge as pleaded is not timely, the Director may dismiss the charge. If the Director dismisses your charge, you may appeal her decision by filing exceptions with the Board. Part 213 of the Rules covers filing exceptions with the Board (<http://www.perb.ny.gov/rules-of-procedure/>).

Alternatively, the Director may allow you to amend your charge to fix such deficiency in the charge. If the deficiency is not cured, the director may dismiss the charge or deem the charge, or any part thereof, withdrawn.

- You must submit an original plus **FOUR** copies of any amended charges.
- All amended charges must be **MUST** be **SIGNED** and **SWORN** to before any person authorized to authorized to administer oaths (i.e. notarized).
- Attachments included with your original charge need not be resubmitted.