

Why we defend Triborough

By Richard E. Casagrande Esq., General Counsel, and Deborah A. Milham Esq., Senior Counsel - NYSUT United - February 18, 2011

If you are a public school teacher or school-related professional, public university member or other public employee, you might have read that the Triborough Amendment has to be repealed *because it gives you and your union too much power.*

Don't believe it.

The truth is Triborough has leveled the bargaining playing field and stops public employers from slashing your salary and benefits — including crucial health care benefits — while your union is negotiating for a new contract.

New York's Constitution provides that human labor is not a commodity and that working people have the right to join unions and collectively bargain. For the public sector, bargaining rights are defined by the 1967 Taylor Law (Civil Service Law Article 14). It promotes an important public policy — ensuring uninterrupted public services through harmonious labor relations. This policy is best effected, according to the law, through collective bargaining.

The Taylor Law establishes a careful balance between labor and management. Unions are prohibited from striking, the traditional weapon of last resort used by labor to pressure management. Management, in turn, is prohibited from reducing or eliminating contract rights or benefits while the parties negotiate for a successor agreement.

Without this balance, employers would be able to delay or avoid bargaining in order to make unilateral changes to contracts.

History of Triborough

In its 1972 Triborough Bridge & Tunnel Authority decision, the Public Employee Relations Board (PERB) interpreted the Taylor Law to prohibit employers from changing terms and conditions of employment while a successor agreement was being negotiated. This principle became known as the Triborough Doctrine.

The doctrine, however, did not protect all contract provisions, only those dealing with mandatory subjects of bargaining, such as salary and hours. Salary schedules and increments were excluded. Further, when a contract expired, public employers were free to alter contract provisions that dealt with permissive subjects of bargaining, such as retiree benefits, class size and staffing levels, among others.

Binding arbitration provisions also lapsed when the contract expired. This meant that once the contract expired, the union was still powerless to strike, but the employer could diminish or discontinue important contract benefits at will.

To address this imbalance, the legislature in 1982 enacted the Triborough Amendment, which had strong support from labor and management. The governor's office, in fact, issued a supporting memo, noting the amendment would guarantee that labor and management came to the table as equals.

The amendment expanded the Triborough Doctrine by making it an improper practice for an employer "to refuse to continue all the terms of an expired agreement until a new agreement is negotiated," unless the union violated the no-strike provision. This meant that all provisions of the contract, except those specifically intended by the parties to sunset on a certain date, would continue until a successor agreement was negotiated — unless, of course, the union engaged in a strike.

Impact of Triborough

Contrary to current claims, Triborough has not tipped the balance of negotiating power unfairly. In fact, during the last 29 years, it has been remarkably successful in preserving the labor-management balance of power and in deterring strikes.

Before Triborough, the number of public sector labor strikes in New York peaked at 28 annually. In the years following the amendment, no more than four strikes have taken place in any given year, and there have been many years with no strikes at all.

Further, Triborough ended the practice of overreaching by public employers who, without the amendment, could and would threaten unions and working women and men with loss of crucial contract benefits in order to get negotiating concessions.

Repeal of the Triborough Amendment would have a chilling effect on public sector labor relations. Public employers would regain the power to eliminate or diminish important contract provisions while negotiating a new contract. They would have an incentive to delay negotiations past the contract's expiration date so they could alter your contract unilaterally.

The ability of employers to utilize this unilateral power, which has not been permitted for almost 30 years, could have a devastating effect on New York's public sector labor relations and on your contract rights — rights that we have fought for. NYSUT will oppose any Triborough repeal.

This is the first in an ongoing series of articles by NYSUT's Office of the General Counsel.