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# The Outcome of Impasse Procedures in New York Schools Under the Taylor Law

## Abstract

The effectiveness of New York's Taylor Law, and of the Public Employment Relations Board established under it, may be measured in a number of ways. One is to see whether it does, in fact, eliminate strikes of public employees. Another is to compare the results of mediation and fact-finding under the Board's auspices with settlements arrived at without intervention of PERB. The authors, who are engaged in a broad study of the latter kind, present some of their findings as they relate to the public school system during 1969 and 1970.

## Keywords

public employees, Taylor Law, New York, Public Employment Relations Board, PERB

## Disciplines

Dispute Resolution and Arbitration | Labor History | Labor Relations

## Comments

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**The effectiveness of New York's Taylor Law, and of the Public Employment Relations Board established under it, may be measured in a number of ways. One is to see whether it does, in fact, eliminate strikes of public employees. Another is to compare the results of mediation and fact-finding under the Board's auspices with settlements arrived at without intervention of PERB. The authors, who are engaged in a broad study of the latter kind, present some of their findings as they relate to the public school system during 1969 and 1970.**

## **THE OUTCOME OF IMPASSE PROCEDURES IN NEW YORK SCHOOLS UNDER THE TAYLOR LAW**

by **John E. Drotning** and  
**David B. Lipsky\***

The search for effective strike substitutes in public employment has led scholars to devote much attention to the study of mediation, arbitration, and fact-finding in the public sector.<sup>1</sup> In September 1967 New York public employees came under the coverage of the Taylor Law, providing impasse procedures for collective negotiations in the public sector. An examination of some aspects of the New York experience may provide some insights about the use and effective-

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1. For example, see Richard Peggnetter, "Fact-Finding and Teacher Salary Disputes: The 1969 Experience in New York State," *Industrial and Labor Relations Review*, vol. 24, no. 2, January 1971, pp. 226-242; Jean T. McKelvey, "Fact-Finding in Public Employment Disputes: Promise or Illusion," *Industrial and Labor Relations Review*, vol. 22, no. 4, July 1969, pp. 528-543; James L. Stern, "The Wisconsin Public Employee Fact-Finding Procedure," *Industrial and Labor Relations Review*, vol. 20, no. 1, October 1966, pp. 3-29; David B. Ross, "The Arbitration of Public Employee Wage Disputes," *Industrial and Labor Relations Review*, vol. 23, no. 1, October 1969, pp. 3-14; Robert J. Jossen, "Fact-Finding: Is It Adjudication or Adjustment?" *Arbitration Journal*, vol. 24, no. 2, 1969. For an excellent bibliography of collective bargaining in the public sector generally, see Michael H. Moskow, J. Joseph Loewenberg, and Edward C. Koziara, *Collective Bargaining in Public Employment* (New York: Random House, 1970), pp. 307-325.

ness of statutory impasse procedures in public employee disputes.

In the first section of this paper we discuss the general effectiveness of public sector settlement procedures in terms of their avowed objectives. Reference is made to the use of impasse procedures under New York's Taylor Law. In the second section of the paper the factors that are probably related to the incidence of fact-finding in public teacher disputes are analyzed. No doubt the analysis in this section can be extended to other categories of public employees. In addition, information is supplied on the composition and experience of the panel of mediators and fact finders employed by New York's Public Employment Relations Board (PERB) and also on the costs of mediation and fact-finding in New York.

### **1. The Use of Impasse Procedures in Achieving the Law's Objectives**

The effectiveness of any legislation can be evaluated only in light of its professed purposes, which in the case of the Taylor Law are two-fold: (1) "to promote harmonious and cooperative relationships between government and its employees" and (2) "to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government."<sup>2</sup> Stated somewhat differently, then, the Act seeks to prevent strikes and to encourage the resolution of contract disputes by the parties themselves.

It is exceedingly difficult to judge the impasse procedures according to the absence or presence of strikes. Stoppages in the public service are illegal, and the Taylor Law imposes strict penalties on violators of this proscription.<sup>3</sup> This does not mean, of course, that the strike weapon is never used by public employees. Nevertheless, the possible penalties for striking are probably one factor explaining the relative absence of strikes in New York State education, as well as other public sector jurisdictions.

2. Public Employees Fair Employment Law (New York State), Sec. 200.

3. Under the Taylor Law, a striking union may be subject to loss of check off privileges and court imposed fines. An individual striker may (1) lose two days' pay for each day he is out; (2) be placed on probation for one year during which time he serves without tenure; and (3) suffer other disciplinary action (fine and/or imprisonment) as provided by the Civil Service Law. Many have argued that such penalties encourage employees to manifest their grievances in more subtle ways, which may have equally or even more severe repercussions on the efficient operation of government than a strike itself. The inability to resolve disputes to the satisfaction, let alone delight, of the parties may result in excessive turnover, morale problems, slowdowns, or other minor acts of sabotage (not necessarily in the violent sense) which inhibit progress toward the central function of government, namely, the provision of certain collective services.

If the strike criterion is an inadequate measure of effectiveness, another must be framed. One alternative is to ask whether or not the impasse procedures increase the parties' reliance on outside intervention. That is, does the law stimulate the resolution of conflict without a third party? Or does the law induce undue reliance on outside help?

Either alternative could be justified as an *a priori* hypothesis. For example, one might expect, particularly in the case of teachers unions and school boards with little negotiating experience, that outside experts called in a difficult situation would be able to provide valuable lessons in the art of bargaining. The parties might learn from a mediator how to avoid committing themselves publicly to an untenable position, or from a fact finder how to formulate and defend reasonable and realistic proposals and counter-proposals. In short, knowledgeable third parties might serve as instructors to inexperienced participants on both sides.

On the other hand, there is some prior experience to indicate that whenever free and unlimited outside intervention is available to the parties, they tend to forgo bargaining in anticipation of the third party's arrival and to condition their behavior on the expected impact it will have on the outside agent. The classic example, of course, is the railroad industry, where the parties' insistence on bargaining nationally has, for all intents and purposes, precluded resort to the strike weapon. The recent history of bargaining on the railroads, if it can be called "bargaining" in the conventional sense at all, hardly invites optimism for bargaining in the public service.<sup>4</sup> Furthermore, returning to the point made earlier, few observers of labor relations on the railroads would conclude from the absence of strike activity that the Railway Labor Act is working well.

Therefore it seems that the most promising way to evaluate mediation and fact-finding under the Taylor Law is to measure the extent to which the parties are encouraged to reach their own settlements or, conversely, are led to depend on outsiders to help them. At this juncture, certain conceptual problems present themselves. First, how is a voluntary settlement defined? Clearly, a dichotomous definition would be inappropriate, since there are obviously gradations of third party intervention. It thus becomes necessary to arrange bargaining outcomes on some scale which measures the extent to which the parties arrived at a settlement on their own. The

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4. See Jacob J. Kaufman, "The Railroad Labor Dispute: A Marathon of Maneuver and Improvisation," *Industrial and Labor Relations Review*, vol. 18, no. 2, January 1965, pp. 196-212.

extremes of this spectrum are fairly clear—bilateral agreement without an intervenor at one end, and perhaps unilateral imposition of terms with complete utilization of the impasse procedures at the other. However, the intermediate steps are somewhat fuzzier. Have the procedures worked “better,” for example, if a fact finder’s report is accepted without change than if the report merely furnishes the basis for a subsequent settlement on somewhat different terms?

One obvious outcome of the fact-finding process is for both parties to accept the report in its entirety. Another successful outcome is for both sides jointly to modify the report to their mutual satisfaction. On the other hand, both sides may strongly reject the report. But it is outcomes in between which pose some difficulties, that is, near settlements and no settlements. For example, one party may accept while the other modifies in a fashion unacceptable to the other or both parties may modify, each in a way that is incompatible with the other (near settlements). Another class of outcomes involves combinations of rejection by one party with unmodified or modified acceptances by the other (no settlement). The difficulty then is to array these outcomes in a rank order which is a valid measure of voluntarism.

The records of New York State’s Public Employment Relations Board permit some flesh to be added to the discussion. Table 1 shows the experience under the Taylor Law for the calendar year 1969. Table 2 gives the record for the first nine months of 1970.<sup>5</sup> First it should be noted that the bulk of cases closed by PERB involved public school disputes (453 out of 569, about 80 percent in 1969 and 373 out of 481 or 78 percent in 1970). Second, not all school districts have used the procedures of the Taylor Act. There were about 751 school districts in the state in 1969. A large but unknown number had not yet been organized for collective bargaining; presumably most of the unorganized districts were small and rural. The remainder of the districts were organized but either settled without any intervention whatsoever, or did not carry on authentic collective bargaining (in which case the school board continued to exercise effective unilateral authority).

Of the cases coming to PERB, 45.3 percent in 1969 and 60.1 percent in 1970 were settled by mediation. In 1969, as Table 1 shows, a higher percentage of non-school cases were settled by mediation

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5. The record for the final three months of 1970 was not available at the time of this writing. Almost all school cases are closed by the end of September. On the other hand, many non-school cases arise between October and December, the usual date of municipal contract expirations.

than were school cases. But in 1970, the picture changes. About 63 percent of non-school cases were settled by mediation in 1970. Further, although no hard statistics are available, the proportion of non-school cases reaching impasse is believed to be significantly lower than school cases. Note that a handful of cases coming to PERB were settled *without* mediation. In these cases one or both of the parties declared an impasse, but settlement was achieved before a PERB appointed mediator entered actively into the negotiations.

**TABLE I**  
**The Use of Impasse Procedures Under the Taylor Law, 1969**

| <i>Stage at which case closed</i>                             | <i>Total Cases</i> |          | <i>School Cases</i> |          | <i>Non-school Cases</i> |          |
|---|--------------------|----------|---------------------|----------|-------------------------|----------|
|   | <i>No.</i>         | <i>%</i> | <i>No.</i>          | <i>%</i> | <i>No.</i>              | <i>%</i> |
| Settled without intervention                                  | 28                 | 4.9      | 21                  | 4.6      | 7                       | 6.0      |
| Settled by mediation  | 258                | 45.3     | 184                 | 40.6     | 74                      | 63.8     |
| Settled by mediated fact-finding (no report)                  | 53                 | 9.3      | 46                  | 10.2     | 7                       | 6.0      |
| Settled by fact-finding; report accepted without modification | 93                 | 16.3     | 83                  | 18.3     | 10                      | 8.7      |
| Settled by fact-finding; report modified                      | 135                | 23.7     | 117                 | 25.8     | 18                      | 15.5     |
| Closed for other reasons                                      | 2                  | 0.5      | 2                   | 0.5      | 0                       | 0.0      |
| Super conciliations*  | (37)               | (6.5)    | (33)                | (7.3)    | (4)                     | (3.4)    |
| Total cases closed  | 569                | 100.0    | 453                 | 100.0    | 116                     | 100.0    |

\* Non-additive

SOURCE: New York Public Employment Relations Board.

Exactly 200 fact-finding reports were written in school cases in 1969 compared to 28 in non-school cases. In 1970, the number of fact-finding reports in school cases dropped to 102, about half of the previous year's total. The total of non-school cases for 1970 will obviously exceed that of 1969, since many non-school negotiations begin in September. The contract expiration date for many municipal employees is December 31st.

What comparison of 1969 and 1970 may suggest is that reliance on PERB by school districts and teachers is declining, while more non-school negotiators are coming to PERB for assistance in negotiations.

However, the evidence covers less than two years. In order to

judge whether, abstracting from other influences, the impasse procedures available to the parties are being relied on to a greater or lesser degree over time, one should follow negotiations over as many years as possible. Certainly this should give some indication as to whether or not the Act tends to "promote harmonious and cooperative relationships between government and its employees."

**TABLE 2**  
**The Use of Impasse Procedures Under the Taylor Law,**  
**January to September 1970**

| <i>Stage at which case closed</i>                             | <i>Total Cases</i> |          | <i>School Cases</i> |          | <i>Non-school Cases</i> |          |
|---|--------------------|----------|---------------------|----------|-------------------------|----------|
|   | <i>No.</i>         | <i>%</i> | <i>No.</i>          | <i>%</i> | <i>No.</i>              | <i>%</i> |
| Settled without intervention                                  | 9                  | 1.8      | 9                   | 2.4      | 0                       | 0.0      |
| Settled by mediation  | 289                | 60.1     | 221                 | 59.2     | 68                      | 63.0     |
| Settled by mediated fact-finding report (no report)           | 42                 | 8.7      | 36                  | 9.7      | 6                       | 5.5      |
| Settled by fact-finding; report accepted without modification | 75                 | 15.6     | 60                  | 16.1     | 15                      | 13.9     |
| Settled by fact-finding; report modified                      | 56                 | 11.7     | 42                  | 11.3     | 14                      | 13.0     |
| Closed for other reasons                                      | 10                 | 2.1      | 5                   | 1.3      | 5                       | 4.6      |
| Super conciliation*   | (20)               | (4.2)    | (15)                | (4.0)    | (5)                     | (4.6)    |
| Total cases closed  | 481                | 100.0    | 373                 | 100.0    | 108                     | 100.0    |

\* Non-additive

SOURCE: New York Public Employment Relations Board.

## II. Factors Related to the Use of Fact-Finding in School Negotiations

What are the various factors which influence the method or manner in which settlement is achieved in public sector disputes? Why is it that some school districts are able to reach settlement by themselves, while others require outside help? And why do some districts require only the assistance of a mediator (essentially a behavioral intervenor) while others proceed to the fact-finding stage (which is at least partly a juridical process—the third party proposes the terms of settlement)? What factors, if any, distinguish bargaining relationships which rely to varying degrees on third parties who perform the actual functions of bargaining, that is, who formulate and propose specific resolutions of labor disputes?

The variables which influence the mode of settlement in a



given set of circumstances may be conveniently grouped into three categories. These can be designated economic, institutional, and procedural.<sup>6</sup> The discussion rests specifically on the incidence of fact-finding in New York public teacher disputes.

### A. *Economic Variables*

One factor which may be related to the difficulty or ease of resolving teacher disputes without outside intervention is the district's ability to pay. However, the best *measure* of ability to pay is not entirely clear. Perhaps the most appropriate standard is that suggested by David B. Ross: "In order to reflect a community's ability to pay, the potential tax base must be considered in light of the community's need for a particular service. Available tax resources thus may be defined as the potential tax base per unit of need."<sup>7</sup> Whatever the measure used, however, the relationship is uncertain.<sup>8</sup> One might argue that a wealthy district can afford to be more generous and satisfy its teachers' demands with little haggling. On the other hand, unions facing wealthy districts are likely to escalate their demands accordingly, and thus make voluntary settlements more difficult. Moreover, in some districts, there may be discrepancies between the political unit's assessed value and income. It must be remembered that taxes are paid out of income, not assessed valuation.

A sophisticated public negotiator might know that ability to pay is a criterion likely to be used by a fact finder. Stern found that it was the second most important criterion, falling right behind wage comparisons as a standard applied in Wisconsin fact-finding cases.<sup>9</sup> If the parties know the fact finder will invoke ability to

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6. A fourth possible category can be labeled "behavioral." This category is excluded from discussion here, although the authors readily concede the critical influence of behavioral factors (e.g., interpersonal relations and attitudes) on the settlement process. The authors are principally concerned, however, with factors which are more easily observable, more nearly objective and measurable, and, further, which may more readily lend themselves to control by public policy.
  7. Ross, *op. cit.*, p. 8.
  8. Ashenfelter and Johnson have found that, in the private sector, profits have a negligible effect on strike levels. One might regard profits as analogous to ability to pay and strikes analogous to settlement procedures. Orley Ashenfelter and George E. Johnson, "Bargaining Theory, Trade Unions, and Industrial Strike Activity," *American Economic Review*, vol. 59, no. 1, March 1969, p. 45.
  9. Stern, *op. cit.*, p. 15. According to Pegnetter, "Ability to pay was the rationale most frequently relied on by school board negotiators." Pegnetter, *op. cit.*, p. 235. Fact finders cited the criterion in about one-quarter of their reports. *Ibid.*, p. 231.

pay as a basis for his recommendations, school boards in wealthier districts may wish to avoid fact-finding for this reason, while unions in such districts may be encouraged to hold out for a fact finder. But since in New York State either party can invoke the fact-finding procedure, it is likely that in the aggregate a direct relation between ability to pay and the incidence of fact-finding exists.

Another economic factor must be considered. Undoubtedly there are patterns in the negotiation of teacher collective agreements, and discovering the configuration of these patterns may help us to predict the probability of voluntary settlements. Those districts most instrumental in setting the pattern—the “leaders”—may undergo the most difficult negotiations and therefore be more prone to go to fact-finding. But “followers” may require little authentic bargaining, let alone fact-finding, to arrive at a settlement. They merely imitate the key settlement.

The time sequence of sets of negotiations may determine the pattern: early negotiators set the pattern, later ones follow it. The size, composition, and location of the district may also help determine the pattern. But scholars such as Reder and Eckstein and Wilson have demonstrated that, even though patterns may have certain institutional parameters, they are fundamentally related to economic factors.<sup>10</sup> One might then look at clusters of districts, geographically proximate, with similar tax bases, school expenditures, and salary structures, to see if fact-finding is more prevalent among certain districts within a pattern, or alternatively whether leaders (provided they can be identified) are more prone to fact-finding than followers.

It would seem reasonable to argue that once a pattern has been firmly set for a given region, there should be little need for fact-finding, unless one of the parties has a good reason for trying to break the pattern, and hence becomes a “tough bargainer.” Even then, given the disposition of fact finders to use wage comparisons as a principal basis for their recommendations, one must doubt the usefulness of fact-finding to a “pattern-breaker.” In fact, in such situations, it may be that the party’s latent reason for requesting fact-finding is to get the intervenor’s support for the existing pattern.

If a tightening market makes bargaining more difficult, one would expect a greater tendency to rely upon fact-finding in the face of upward shifts in the demand for teachers. This implies a rising

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10. Melvin Reder, “The Theory of Union Wage Policy,” *Review of Economics and Statistics*, vol. 34, no. 1, February 1952, pp. 34-45; O. Eckstein and T. A. Wilson, “The Determinants of Money Wage Changes in American Industry,” *Quarterly Journal of Economics*, vol. 76, no. 3, August 1962, pp. 379-414.

starting salary: public employers may resist such market pressures, thus forcing the employees to push to fact-finding. In these cases it is extremely important that the negotiating parties consider relevant measures of teacher demand: the rate of increase of new hires in a district, the rate of increase of pupils in a district, or declines in the teacher-pupil ratio. Moreover, increases in the supply of teachers, a likely picture in the coming years, will exert downward pressure on salaries, especially if demand rises less rapidly than supply. This, compounded with the inflation of the past few years, can only exacerbate problems for the negotiators. It might be safe to say that rapid economic change is likely to increase the probability of fact-finding.

### B. *Institutional Variables*

The use of fact-finding in a school district must be related partly to the political climate of that district. In judging the "political climate" of a given school district, it is necessary to avoid simplistic epithets like "liberal" and "conservative." It is plausible to hypothesize, however, that districts in which there is political *stability* would find it easier to reach voluntary settlement than those where the situation is more volatile. The school board member who is constantly peering over his shoulder at his constituency might well feel obliged to adopt a "tougher" bargaining stance than his more secure counterpart. And the more adamant bargainer, of course, is in turn more likely to find himself in fact-finding. All this says simply that political instability is the parallel of economic instability. Both are likely to increase the incidence of third party intervention.

There are a number of possible approaches to measuring political instability. One is to ascertain the tenure of school board members or their relative turnover. Another might be to use the results of recent votes on bond issues or budgets in the district or neighboring districts. Presumably, board members in areas where school expenditures have been the object of voter dismay will be politically sensitive to the demands of teachers. Still another consideration would be whether the school board is fiscally independent, although it is not immediately clear whether independent boards would be more or less likely to reach agreement without intervention.<sup>11</sup>

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11. The independent board may be in a better position to agree to union demands because of its control over the budget, but at the same time it would presumably be more vulnerable to political pressures and less able to "pass the buck" to another public authority.

The political climate of a school district is related to the district's willingness to pay. To some extent this factor is beclouded by the same problems as ability to pay. A district which is more willing to pay may want to settle quickly (and generously), but a union may take advantage of the district's instincts and push them to fact-finding. However—in contrast to ability to pay—a district already straining its resources to meet its educational needs may receive a good deal of sympathy from a fact finder. This would provide a union with a disincentive to call upon outsiders. Therefore, one might expect to find a direct relationship between some relevant measure of willingness to pay and the probability of voluntary settlement.

In this connection David B. Ross speaks of a community's "effort": "An idea of the effort a community has made to supply public services comes from comparing its ability to pay, measured by its taxable resources, and the amount of tax revenues which actually have been collected and spent on services."<sup>12</sup> Thus one useful measure of willingness to pay is the ratio of the wage and salary component of school expenditures to assessed value of real property, which Ross would call the "resource utilization ratio."<sup>13</sup>

On the question of union strength, McKelvey seems to believe that where "strong and militant labor organizations" exist, fact-finding is likely to be less "effective."<sup>14</sup> That is, it will be heavily relied upon and further, the fact finders' reports will be rejected. Stern adds, "In the future strong unions in the big cities may tend to overuse the procedure and then tire of it."<sup>15</sup>

Independent and unaffiliated local bargaining agents are probably less militant than groups associated with either the National Education Association or the American Federation of Teachers. AFT locals are probably more militant than NEA affiliates. Other measures of union strength may be more useful. The ratio of union membership to the number of teachers in the district gives an indication of union strength. The rate of growth of union membership would be another indicator of union strength.

Further, McKelvey believes fact-finding is less effective, "where both sides have had more experience in collective bargaining, have more sophisticated practitioners, or have a longer history of joint dealings."<sup>16</sup> It should be noted again that McKelvey, in speaking of

12. Ross, *op. cit.*, p. 6.

13. *Ibid.*, p. 7.

14. McKelvey, *op. cit.*, p. 539.

15. Stern, *op. cit.*, p. 19.

16. McKelvey, *op. cit.*, pp. 539-540.

"effectiveness," is referring principally to the acceptance of the fact finder's report, and not to the incidence of fact-finding itself.

In New York State, the parties have the opportunity to enter into voluntary written agreements providing for procedures to be followed in the event of impasse, rather than relying upon the statutory procedures.<sup>17</sup> McKelvey predicts, "Contractual impasse procedures will become more prevalent and may well replace statutory procedures."<sup>18</sup> If this is so, a longer bargaining history may lead to less reliance upon the statutory procedure of fact-finding. There is no obvious reason why contract impasse procedures should be substantively different from the impasse procedures of the Taylor Law.

Further, Krinsky, in his study of the Wisconsin procedure, discovered that "initial use of fact-finding has improved the bargaining relationships both in terms of educating the parties through the recommendations and making them realize that they should be able to bargain themselves and reach the same point that a fact finder would recommend without going through the cost and delays of the process."<sup>19</sup> This may not be true in New York State where there is no direct cost to the parties of fact-finding. (Nevertheless, there are delays, which have a cost equivalent, and can serve the function of promoting voluntary settlements.)

At this point it is interesting to look at the cost of the procedures to the State of New York. Table 3 shows a breakdown of mediation and fact-finding costs for 1969 and 1970. The median cost of mediation was about \$350 a case both years. The median cost of fact-finding was about \$450 a case in 1969 and about \$500 a case in 1970. Whether these costs are excessive or not is a function of the benefits flowing from the settlements or conversely the costs avoided as a consequence of few work stoppages in public employment in New York State since the advent of the Taylor Law. In any event there is no evidence to indicate that the costs of the impasse procedures to the taxpayers of New York have been increasing substantially.

In addition to the opinions of McKelvey and Krinsky, Belasco and Alutto found that as a consequence of the high turnover and inexperience of teacher negotiators, "the negotiation process itself was laborious and agreement difficult to reach. In particular, there

17. Public Employees Fair Employment Law (New York State [the Taylor Law]), section 209.

18. McKelvey, *op. cit.*, p. 543.

19. Edward B. Krinsky, "An Analysis of Fact-Finding as a Procedure for the Settlement of Labor Disputes Involving Public Employees," Ph.D. dissertation. University of Wisconsin, 1969.

were innumerable instances in which negotiators for both sides missed crucial 'signals' because they were insensitive to such cues."<sup>20</sup> Hence, one might hypothesize that experienced or professional negotiators would lead to less reliance on fact-finding.

**TABLE 3**  
**The Cost of Impasse Procedures in New York State,**  
**1969 and 1970\***

| Cost per Case  | 1969         |              |              |              | 1970         |              |              |              |
|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|                | Mediation    |              | Fact-Finding |              | Mediation    |              | Fact-Finding |              |
|                | No. of Cases | %            | No. of Cases | %            | No. of Cases | %            | No. of Cases | %            |
| \$ 50-349      | 161          | 50.1         | 105          | 36.2         | 177          | 54.3         | 84           | 34.3         |
| 350-499        | 78           | 24.3         | 51           | 17.6         | 55           | 16.9         | 38           | 15.5         |
| 500-649        | 38           | 11.8         | 47           | 16.2         | 48           | 14.7         | 44           | 18.0         |
| 650-949        | 27           | 8.4          | 45           | 15.5         | 22           | 6.7          | 37           | 15.1         |
| 950-1099       | 10           | 3.2          | 11           | 3.8          | 11           | 3.4          | 15           | 6.1          |
| \$1,100 and up | 7            | 2.2          | 31           | 10.7         | 13           | 4.0          | 27           | 11.0         |
| <b>Total</b>   | <b>321</b>   | <b>100.0</b> | <b>290</b>   | <b>100.0</b> | <b>326</b>   | <b>100.0</b> | <b>245</b>   | <b>100.0</b> |

\* Only bills submitted between the months of January and September of each year are shown, permitting direct comparisons between the two years.

It might be posited, on the other hand, that if fact-finding has an educational function, it is to teach the parties the advantages of its use. The age, or "vintage," of a bargaining relationship can be measured in at least two ways: the number of years the district's teachers have been organized, and the number of contracts negotiated in the district. The "maturity" of the relationship can also be represented in one of several ways, e.g., whether the contract contains a grievance procedure and arbitration provision or whether professional negotiators are employed. Thus, mature relationships may be characterized by a high incidence of fact-finding.

Belasco and Alutto also found that "those teachers most favorably disposed toward both collective bargaining and strikes were either married males, teaching in the secondary schools, and/or between the ages of 31 and 45. These results . . . indicate that while the bulk of teachers are favorably disposed towards collective action, some groups of teachers may be more willing than others to actually engage in collective activities."<sup>21</sup> This finding leads to the hypothesis that there may be a relationship between the composition of the teacher work force and the proclivity to use fact-finding. Districts

20. James A. Belasco and Joseph A. Alutto, "Organizational Impacts of Teacher Negotiations," *Industrial Relations*, vol. 9, no. 1, October 1969, p. 70.

21. *Ibid.*, p. 70.

characterized by a work force predominantly consisting of prime-age, married males may show a higher incidence of fact-finding. Put in other terms, the higher the degree of commitment to bargaining, the likelier the use of all dispute settlement procedures available to the parties.<sup>22</sup>

It can also be postulated that the extent of participation is related to fact-finding. Where many persons—and interests—are a party to bargaining, settlements become more difficult to achieve. The presence of diverse interests may be reflected by the size and nature of the district—voluntary settlements are likelier in small, homogeneous districts.

There seems to be a difference of opinion on the relation between location and fact-finding. McKelvey says, "Fact-finding seems to be more effective in smaller communities and rural areas than in large urban centers . . ."<sup>23</sup> Stern reaches the opposite conclusion: in all cases where fact-finding failed, "the municipal employer was a county or small city in a rural or suburban section of Wisconsin."<sup>24</sup> Once again, however, the measure of effectiveness is whether the report was *accepted*, not whether the procedure was used. Whether, all other things being equal, fact-finding is more frequently used in rural, suburban, or urban areas is a question which needs to be explored. To the extent that urban areas are characterized by militant unions (as McKelvey believes), then fact-finding is likely to have a higher incidence in such areas. The real question is what location by itself represents, when it is not serving as a surrogate for something else, e.g., militancy or inexperience.

### C. *Procedural Variables*

One can put forth the proposition that effective mediation of a dispute will forestall the need for fact-finding, but how is one to measure effective mediation? Obviously mediation is effective if it achieves a settlement, but this tells us little about the characteristics of the process which lead to settlements. Is effective mediation dependent upon the timing of intervention? Some observers recommend early intervention, and it may be that early entrance by a mediator lessens the necessity of fact-finding. However, as Stevens

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22. Stern found that "successful fact-finding," that is, acceptance of the fact finder's report, was likelier in cases where the parties were committed to bargaining. In "unsuccessful" cases, on the other hand, "managements did not look with favor upon any part of the process of collective bargaining." *Op. cit.*, p. 12.

23. McKelvey, *op. cit.*, p. 539.

24. Stern, *op. cit.*, p. 12.

points out, attention must be paid to the "negotiation cycle," i.e., the progression of events or succession of stages common to many collective negotiations.<sup>25</sup> The function of the mediator will vary according to the stage of the cycle at which he enters. Early entrance may result in grandstanding and lessen the chance for settlement.

Another aspect of the timing question is the rapidity of response of PERB and the appointed mediator to the request of the parties. If, for some reason, there should be delays between the parties' call for a mediator and his actual appearance at negotiations, the chances of his playing an effective role would seem to be diminished and the likelihood of fact-finding increased.

The mediation process is one of the most intensely personal facets of labor relations. The effectiveness of mediation depends largely on the skills, experience, and personality of the mediator. A thorough exploration is needed of the extent to which the characteristics of the mediator help lead to settlement rather than fact-finding.

A number of considerations are relevant here—the mediator's primary occupation, his age, the number of PERB cases he has handled, his record of success in the past, and so forth. One would think that younger, inexperienced mediators, with little experience in labor relations, would have less chance of success. However, older, well-known mediators may have developed biases and rigidities which make them less effective. But there is some evidence to suggest that experienced people are partly responsible for PERB's record since 1967. Table 4 shows that 45 percent of the PERB's three hundred and nine (309) panel members are lawyers and 18 percent have doctorates. Moreover, another nine percent have a Master's degree. In addition, when tabulated by primary occupation, nearly 74 percent of the panel are attorneys, educators or professional arbitrators. Attorneys and educators serving on the PERB panel are likely to have prior experience in collective bargaining.

There are other aspects of mediation which may have an impact on the possibility of settlement. For example, are panels (multiple neutrals) more effective than single intervenors? Small group psychology suggests that two or three men in groups of 10-12 can have a significant impact on the direction of the group. Put simply a panel may be able to generate much more pressure for settlement than a single person. Moreover, how does time affect the

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25. Carl Stevens, "Mediation and the Role of the Neutral," in John T. Dunlop and Neil W. Chamberlain, eds., *Frontiers of Collective Bargaining* (New York: Harper and Row, 1967), p. 275.



process? One might expect that successful negotiations are affected by the amount of time (other things equal) that the mediator spends with negotiating parties. In addition, his own drive to settle the dispute must play a very important role in his efforts. Clearly, there are times when holding on to a case too long hurts rather than helps, but this is not likely to be a frequent problem. Another aspect of time is the relationship of the meeting to the budget deadline. It seems reasonable to think that successful mediation efforts occur in time reasonably close to the budget or contract deadline, simply because of the mounting pressures for settlement felt by both parties.

**TABLE 4**  
**Education and Occupation of PERB Fact Finders and Mediators**  
(N = 309)

| <i>Education</i>                 | <i>%</i> | <i>Primary Occupation</i> | <i>%</i> |
|----------------------------------|----------|---------------------------|----------|
| High School Only                 | 1.9      | Consultant                | 3.2      |
| Some College                     | 3.6      | Mediator-Arbitrator       | 9.1      |
| B.S. or B.A.                     | 5.8      | Clergy                    | 0.7      |
| Some Graduate Work               | 4.2      | Attorney                  | 41.4     |
| Master's                         | 9.1      | Educator                  | 24.6     |
| Law                              | 45.3     | Management (Personnel)    | 8.4      |
| Doctorate                        | 17.8     | Labor Official            | 1.9      |
| Combination Law &<br>Adv. Degree | 11.0     | Student                   | 1.0      |
| Others or Unknown                | 1.3      | Other                     | 9.7      |
|                                  | 100.0    |                           | 100.0    |

### III. Concluding Observations

In the discussion above the factors which cause variation in the use of the impasse procedures were discussed; the question of the effect of those variations on the *terms* of settlement was not taken up. Does the use in varying degree of third parties differentiate the quality of the final settlement? For example, are mediated settlements significantly different from fact-finding settlements? Do unions which rely on third parties do better than those which reach settlement on their own?

At first glance, the answer may appear self-evident. Since it is exceedingly unlikely that a fact finder would recommend settlement terms inferior to those last proposed by the school board, one might be tempted to conclude that a union will always do at least as well, and sometimes better, than if it eschewed third party intervention. This assertion is simplistic, for it ignores the bargaining

strategy of the school board. If the school were convinced that third party intervention was inevitable, might it not deliberately refrain from putting its best offer on the table? It then becomes conceivable that a fact-finder might recommend terms which are less valuable to the union than those it should have obtained without fact-finding. In this respect, moreover, the maturity of the bargaining relationship becomes crucial, for one might well expect school boards which are relatively inexperienced in bargaining matters to be less likely to adopt this strategy.

Since the terms of settlement will depend on many factors other than the settlement process, it would be necessary somehow to adjust for these other factors. Economic variables, in particular, seem especially important. One possible approach would be to group school districts in terms of some measure of ability to pay and to examine each group separately. Other variables, such as "orbits of coercive comparison," would also require standardization. In this case, school districts might be grouped into a number of geographical units, with each unit analyzed separately.

In conclusion, it is obvious from the analysis in this paper that there are numerous questions in the area of the resolution of teacher bargaining disputes that need to be answered. The authors are now undertaking a systematic examination of the empirical evidence available in New York State, using the framework and hypotheses shaped in this article, in the hope that some of the answers can be provided.<sup>26</sup>

Any thorough, empirical investigation of the hypotheses and questions raised in earlier pages doubtless would involve difficult conceptual and methodological problems. Nevertheless, the authors are convinced that such problems would not be insurmountable. Further, there is little doubt that an administrative agency such as New York State's Public Employment Relations Board ought to use all the relevant information it can get in order to improve its ability to implement the law. Certainly, organized research can be one significant input for the makers of public policy.<sup>27</sup> New information is one necessary ingredient of successful policy formulation and this research is contemplated in that light.

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26. The study is being sponsored by PERB under authority of the Taylor Law.  
27. See for example, James A. Gross, "Economics, Politics and the Law: The NLRB's Division of Economic Research, 1935-40," *Cornell Law Review*, February 1970, p. 344.

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