MASLA

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TESTIMONY

New York State Education Reform Commission
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2nd Floor
2608 Main Street
Lake Placid, NY 12946

Chairperson Parsons and other Commission Members:

Management Advocates for School Labor Affairs (MASLA) is pleased to have the opportunity to address the New York State Education Reform Commission ("Commission") established by Governor Cuomo. MASLA and our four hundred (400) plus members understand the value and importance the conversations originating from this forum have to our school communities and our most important customers . . . New York's children. MASLA is the only body in New York State solely representing school district management and those charged with negotiating school labor contracts. MASLA members are called on to deal with the most difficult day-to-day school labor issues and as such, MASLA is uniquely qualified to offer the Education Commission a simple and meaningful three-point plan.

MODIFY TRIBOROUGH

First, MASLA asks that the Education Reform Commission recommend, under the umbrella of cost reductions to improve effectiveness, the repeal of the Triborough Amendment. This act, without affecting the underlying Triborough Doctrine as established by PERB, **would maintain negotiated contracts in place upon expiration**, but would compel labor bargaining units to negotiate a subsequent increase in salary as opposed to automatic step increases.

The Education Reform Commission should revisit New York State's highest court, the Court of Appeals, which in 1977 prophetically declared in BOCES v. PERB (41 NY2d 753 (1977)), that the Triborough Doctrine "*should not apply where the employer maintains the salaries in effect at the expiration of the contract but does not pay increments*.[i]" The unanimous court decision explained with complete accuracy:

*"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 fiscal situation 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[ii]. [Id. (emphasis added)]"***

It is important for the Commission to know the aforementioned court ruling lasted less than five years. In 1982, the Legislature amended the Taylor Law to make it an "improper practice" for an employer to refuse to continue all of the terms of an expired agreement until a new agreement was negotiated. The *Triborough* Doctrine thus gave way to what became known as the Triborough Amendment. Within a year, the Public Employment Relations Board (PERB) interpreted the amendment to require employers to continue paying for both steps and lane movements in the absence of a new contract.[iii] Therefore, today the vast majority of school employees receive automatic salary increases and continued health benefits by allowing the contract to expire without facing increases or changes to terms and conditions that could reduce costs for districts. As the law now stands, the Triborough Amendment serves as a deterrent for unions to negotiate anything less than the average two percent salary increase with no change to health and retirement benefits. This must change.

MASLA believes re-leveling the negotiating table is paramount to the fiscal security of schools. It should not be forgotten schools are faced with the statutorily mandated property tax cap that limits the districts' ability of to meet these salary step increases, or the desired contract settlement.

The Empire Center for New York State Policy said it best in the report **Triborough Trouble:**

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[iv].

MASLA asks that the Commission recommend restoring the Taylor Law to provide the original balance between management and labor contemplated by law's founders. In making this recommendation, MASLA does not seek to eliminate the Taylor Law. Rather, the modification sought is intended to create a more level playing field and ensure schools possess the legal authority and discretion to properly allocate the funds necessary to produce the educational programs students need to meet the demands of our global economy.

EXPAND SHARED SERVICES

Second, MASLA asks the Commission consider expanding the current vision of shared services. MASLA recommends modifying existing laws to allow all towns, cities, villages, municipalities, community colleges, universities and most importantly school districts and BOCES to combine/share existing "hard" and "soft" infrastructure and services. This will help create economies of scale and allow local entities, particular smaller ones to work together and achieve common goals.

One element of this request is to free public employers to collaborate without facing claims of "bargaining unit work" belonging exclusively to particular unions. This lack of flexibility hamstrings innovation and impedes needed progress.

Sharing services would also provide taxpayers more direct control through the voting process. A recommendation in this direction would require the Legislature to eliminate or dramatically decrease the barriers currently in place to allow, when decided locally, for bargaining units to merge and renegotiate terms and conditions without the "leveling up" of contracts. MASLA's proposed modifications would enable the truly endless possibilities of schools sharing with other schools, towns, libraries, counties, etc., to allow a better utilization of taxpayers' money. A few examples of such collaboration could be:

- Allowing for **one** shared library within a town and school with expanded hours of operation;
- **One** garage staffed with one group of mechanics for a village, a school and a police department;
- **One** payroll department for all public employees in a county; and
- **One** head groundskeeper for the city and two neighboring school districts.

While these may seem like simple solutions that ought to take place, they do not and cannot without enhanced flexibility and reduced bureaucracy. Removing legal barriers to enable sharing will give rise to literally hundreds of possibilities. Public employee sharing can be seamlessly accomplished in the name of saving taxpayer dollars and enhancing efficiencies while allowing for the sharing of infrastructure/services to enable small schools, towns, villages, and cities to maintain their viability and identity. This sharing would reduce property and school taxes in a number of ways including:

- A sharing/reduction in the number of employees;
- Elimination of the purchasing of duplicate items (copiers, plows, buses, tractors, etc.);
- A sharing/reduction in the number of buildings needed for services;
- A sharing/reduction in accrued legacy costs; and
- The sale of excess property and its return to the tax rolls.

By giving schools, municipalities and public employers an unhindered mechanism for sharing, school districts could better utilize limited property tax levies raised by school budget votes to ensure a greater proportion is properly spent directly on students and education programming rather than duplication of local infrastructure/services.

EASE BURDEN OF INCREASING HEALTH AND PENSION COSTS

Third, ease the financial burden on schools by addressing health and pension costs. This can be done without inhibiting the Constitutional guaranty associated with pensions (N.Y. Const. Art. V, §7[v]) or by impacting collective bargaining rights.

School districts' largest cost is, by far, labor. Costs associated with paying employee salaries and benefits trump all other school budget allocations. Pension and health costs, however, are the items which schools have the least amount of control. The Commission should look at ways to help stabilize and limit the impact of these cost increases on school districts.

Pension contribution rates are set annually by the New York State Teachers' Retirement System (NYSTRS) and the New York State Employees' Retirement (NYSERS). Schools have no way to know how much they will increase as fluctuations can be dramatic. According to NYSTRS, the contribution rate increases over the past two years have been more than eleven percent and are expected to be similar next year (NYSTRS Administrative Bulletins Nos. 2011-8 & 2012-8). In contrast, a few years ago contribution rates to NYSTRS were virtually zero for employers. They then spiked to a few percent and continued to climb. While a few percent may seem nominal, it is a huge budget-to-budget increase from virtually minimal contributions. School districts simply cannot sustain working with such volatility on a year-to-year basis.

Limiting the overall amount of increases for which a school district is responsible for paying would alleviate the large year-to-year increases. This would aid planning and assist schools with the tough choices to cut programs in the face of pension contribution increases. For example, when costs exceed a predetermined percent increase, the difference could be funded either by State aid to schools or by the pension system itself. The current volatility, while certainly a function of market forces, is too much of a burden for school districts to allow for managed long term systematic support of critical education services. When increases are too high, the systems themselves should bear the costs.

The same holds for health care costs. For now, districts must individually negotiate health care costs. The Commission should consider taking this out of the equation for school budgeting and long-term sustainable education operations. Setting a flat amount (percentage) school districts must pay for health care coverage would allow smoothing costs and ensuring they did not become an insurmountable burden. Year-to-year differences could be made up either by increases to employee contributions or even more unique solutions such as negotiations of alternative coverage/benefits.

Neither of these suggestions would be a detriment to employees. Guaranteed benefit pensions would continue as would the generous health insurance plans so many school employees enjoy. What would change is the volatility of these costs seen by school districts. This is certainly a change worth serious consideration for the long-term financial health and sustainability of New York's 700 school districts.

CONCLUSION

On behalf of all our MASLA members, we thank the Commission for its time, energy and effort in looking for ways to improve and expand students' educational opportunities. We have great educators working throughout New York State and we applaud your efforts to enhance their work for the betterment of student learning.

MASLA is at your service to further explore the nuances of the ideas presented here and others. We remain a willing partner to the Commission to improve and sustain education for all students for the future.

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[i] BOCES v. PERB (41 NY2d 753 (1977)), (see also, Taylor Made: The Cost and Consequences of New York's Public-Sector Labor Laws Part 2, Terry O'Neil and E.J. McMahon October 17, 2007

[ii] Ibid

iii ibid

[iv] Empire Center for New York State Policy, Triborough Trouble EJ McMahon and Terry O'Neil, January 2012 p. 13

[v] "Art 5, § 7. After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."