



Agenda for May 10 & 11, 2018 – Albany, NY

Day 1 – Thursday, May 10th

8:00 – 8:45 a.m.

Registration
Continental Breakfast

8:45 – 9:15 a.m.

Welcome - John F. Wirenius, Chair, New York State Public Employment Relations Board

9:15 – 10:35 a.m.

Plenary One: The Taylor Law in Context: National and International Comparisons (anticipated 1.5 professional practice CLE credits)

This session will discuss how the Taylor Law, particularly the prohibition on public employees' right to strike and penalties for engaging in strikes, compares with similar laws in other states as well as other countries. Topics discussed will include what, in the absence of a right to strike, provides the "motive power" for collective bargaining under the Taylor Law and the policy implications of the strike prohibition. The session will also offer perspectives from the federal sector regarding the operational and strategic realities of an open shop environment.

Panelists:

Martin H. Malin, Professor of Law and Director, Institute for Law and the Workplace, Chicago-Kent College of Law, Illinois Institute of Technology

Joseph Slater, Eugene N. Balk Professor of Law and Values, University of Toledo College of Law

Todd Dickey, School of Industrial and Labor Relations, Cornell University

10:35 – 10:45 a.m.

Coffee Break

10:45 a.m. – 12:00 p.m.

Plenary Two: The Potential Legal and Legislative Ramifications of *Janus v. AFSCME* (anticipated 1.5 professional practice CLE credits)

This session will combine a look at the jurisprudential roots of the *Janus* case with an examination of litigational and legislative strategies to respond to the Supreme Court's ultimate ruling while preserving collective bargaining and its benefits.

Introduction:

Danny Donohue, CSEA President

Moderator:

William A. Herbert, Distinguished Lecturer, Hunter College, and Executive Director of the National Center for the Study of Collective Bargaining in Higher Education, New York City

Panelists:

John H. Gross, Partner, Ingerman Smith

Judith Rivlin, General Counsel, American Federation of State, County and Municipal Employees (AFSCME)

Charlotte Garden, Co-Associate Dean for Research and Faculty Development and Professor of Law, Seattle University School of Law

12:00 – 1:30 p.m.

Lunch and Keynote Address: Harry Katz, Jack Sheinkman Professor and Director, Scheinman Institute on Conflict Resolution

1:30 – 2:45 p.m.

Concurrent 1: Public Sector Labor Relations in Higher Education (anticipated 1.5 professional practice CLE credits)

This session will examine challenges to unionization efforts by faculty and graduate students at public colleges and universities.

Moderator:

Risa L. Lieberwitz, Professor of Labor and Employment Law, Cornell University School of Industrial and Labor Relations, General Counsel of the American Association of University Professors

Panelists:

Frederick E. Kowal, President, United University Professions

Raymond Haines, former SUNY Associate Vice Chancellor for Employee Relations

Robert Scholfield, Partner, Whitemen, Osterman & Hanna

Luke Elliott-Negri, Doctoral Student, Sociology, CUNY Graduate Center

Concurrent 2: Considering the Optics of Labor-Management Issues in the Age of Instant Information

The ability to communicate to a large audience instantaneously, coupled with widespread attacks on public sector employees and government have presented unique challenges to practitioners addressing issues of “traditional” labor relations. This session will explore these types of issues and discuss how the parties and agencies deal with the optics of labor relations and the potential for unwarranted adverse public reactions.

Panelists:

Susan Panepento, Chair, New York City Office of Collective Bargaining

Catherine Creighton, Partner, Creighton, Johnson & Giroux

Susan Davis, Partner, Cohen, Weiss & Simon

Neil Abramson, Partner, Proskauer Rose

Matthew C. Van Vessem, Partner, Goldberg Segalla

Concurrent 3: Has Workplace Dispute Resolution Gone Astray? Helping the Process Serve the Parties

In this session, panel members discuss ways to use collaborative mindset, behavior, structure and processes outside of a rights based approach to resolve bargaining and long term relationship issues and demonstrate ways to reverse the relentless tide of legalism in arbitration and recapture the underlying conciliatory spirit of the process by introducing a simpler, more flexible, and “user-friendly” style of arbitration.

Panelists:

Tia Schneider Dennenburg, Arbitrator

Marcia L. Greenbaum, Arbitrator and Mediator

Dan McCray, Director, Labor Relations, Scheinman Institute on Conflict Resolution

Concurrent 4: New Approaches to Negotiations under the Taylor Law

Commencing in 2000, on an experimental and limited basis, PERB has provided assistance to parties engaged in *Facilitated Intensive Negotiation* (FIN), an alternative negotiations process in which the parties commit to a limited but continuous meeting schedule to expedite negotiations. This process was created to address difficulties in teacher negotiations, but has proven to be equally successful in municipal jurisdictions including counties and community colleges. The panel, consisting of experienced advocates and the creator of the FIN process, will share their collective experiences utilizing this alternate negotiation process in both education and municipal sectors. The Panel will also explore creative use of existing impasse procedures, including the use of mediation and draft fact-finding reports during fact-finding.

Panelists:

Kevin Flanigan, Director of Conciliation, NYS Public Employment Relations Board

Mark Pettitt, Onondaga, Cortland, Madison BOCES, Co-Executive Director, Management Advocates for School Labor Affairs (MASLA)

Will Streeter, CSEA (Retired), Syracuse

Don Ryall, NYSUT, Vestal

Don Mesibov, Mediator and Fact-Finder, Potsdam

2:45 – 3:00 p.m.

Coffee Break

3:00 – 3:50 p.m.

Concurrent 1: Half a Century of Managing Collective Bargaining Conflict: The New York Experience and Beyond (anticipated 1.0 professional practice CLE credits)

This session analyzes PERB’s historical involvement in managing public sector collective-bargaining disputes and analyzes trends in the number of impasses and strikes that occurred each year. Historical data will be used as a model to offer a prediction of the level of collective-bargaining discord that PERB might anticipate in the future.

Panelists:

Anthony Zumbolo, Public Service Professor, Rockefeller College, University at Albany, former Executive Director, NYS Public Employment Relations Board

Matthew W. Burr, Human Resources Consultant, Burr Consulting, LLC

Richard A. Curreri, Arbitrator and Mediator

Concurrent 2: The *Triborough* Doctrine and Statute: A Catalyst or Hindrance to Harmonious Labor Relations? (anticipated 1.0 professional practice CLE credits)

This session will discuss the history and impact of the *Triborough* doctrine and statute, their impact on labor relations and negotiations from both the labor and employer perspective, and current and future issues, including the meaning and impact of *City of Ithaca*, 49 PERB ¶ 3030 (2016).

Panelists:

Angela M. Blassman, Administrative Law Judge, NYS Public Employment Relations Board
Richard K. Zuckerman, Esq., Partner, Lamb & Barnosky, L.L.P.
Michael Krauthamer, Esq., Labor Relations Specialist, NYSUT

Concurrent 3: Injunctive Relief Under the Taylor Law: An Update and Discussion (anticipated 1.0 professional practice CLE credits)

This session will discuss the history of injunctive relief under the Taylor Law, its early cases, and an update of cases over recent years, including PERB’s denials and petitions for injunctive relief in court. Panelists will provide insight into developing applications and responses, difficulties encountered, and how the proceedings help or hinder settlements or the litigation of the underlying improper practice charge.

Panelists:

David P. Quinn, General Counsel, NYS Public Employment Relations Board
Ed Aluck, General Counsel, NYS Public Employees Federation
Amy Petraghani, Associate Counsel, NYS Governor’s Office of Employee Relations

Concurrent 4: Arbitration Rationales under 3020-a

Moderator:

Lee Adler, Senior Extension Associate, School of Industrial and Labor Relations, Cornell University

Panelists:

James Gross, Professor, School of Industrial and Labor Relations, Cornell University
Lena M. Ackerman, Associate General Counsel, NYSUT Office of General Counsel
Jay Worona, Deputy Executive Director, General Counsel & Director of Legal & Policy Services, New York State School Boards Association

4:00 – 5:15 p.m.

Plenary Three: The Taylor Law over the Years: A Discussion with Former PERB Chairs

(anticipated 1.5 professional practice CLE credits) - Seth H. Agata, William A. Herbert, Michael R. Cuevas, Pauline R. Kinsella. Moderated by John F. Wirenius.

5:15 – 6:30 p.m.

Cocktail Reception

6:30 p.m.

Dinner



Day 2 – Friday, May 11th

7:30 – 8:45 a.m.

Hot Breakfast

8:45 – 10:00 a.m.

Plenary Four: Taylor Law and Impasse Procedure: Creative Resolution Despite Protraction

This session will explore two of the lengthiest contract negotiations in the history of the Taylor Law. In both Buffalo and New York City, teacher negotiations and subsequent impasses culminated in historic voluntary agreements. The moderators will present a thumbnail sketch of each unique negotiation and panel members will discuss both unique successes and mistakes followed by specific recommendations for improving the impasse resolution procedures under the Taylor Law. While this session highlights dispute resolution in the education sector, the moderators will draw out relevant parallels in municipal negotiations throughout New York.

Moderator:

Kevin Flanigan, Director of Conciliation, NYS Public Employment Relations Board

Panelists:

Martin F. Scheinman, Arbitrator, Mediator

Robert Linn, Commissioner, New York City Office of Labor Relations

Michael Mulgrew, President, United Federation of Teachers

Nathaniel J. Kuzma, General Counsel, Buffalo City Schools

Philip Rumore, President, Buffalo Teachers Federation

10:10– 11:00 a.m.

Concurrent 1: Improper Practice Charges and Collective Bargaining: Duty Satisfaction, Contract Reversion and Waiver (anticipated 1.0 professional practice CLE credits)

This session will distinguish the three distinct but related defenses of duty satisfaction, contract reversion, and waiver. The session will review recent cases and will provide union and management representatives with an understanding of when such defenses are appropriate and the evidence necessary to overcome such a defense.

Moderator:

Melanie Wlasuk, Director, Office of Public Employment Practices and Representation, NYS Public Employment Relations Board

Panelists:

Jonathan Rubin, Director of Field and Affiliate Services, NYSUT

Douglas Gerhardt, Esq., Harris Beach PLLC

Monte Klein, Esq., Arbitrator

Concurrent 2: Bargaining for Better Schools in New York State

This session will provide the results from a multi-year study of all New York State contracts between school districts and teacher unions that tracks variation in key features of teacher contracts such as salary structures, health care provisions, tenure rules, grievance procedures, and procedures for appealing performance evaluations under the APPR system conducted by the Scheinman Institute on Conflict Resolution at Cornell's ILR School. The session will also examine whether teacher contracts contain significant limitations on the ability of school administrators to deploy teachers.

Panelists:

Sally Klingel, Director of Labor Management Relations, Scheinman Institute on Conflict Resolution

Alex Colvin, Martin F. Scheinman Professor of Conflict Resolution, ILR School
Clifford Donn, Department of Anthropology, Criminology and Sociology, Le Moyne College

Concurrent 3: Jurisdictional Evolution: A Panel Discussion Concerning PERB's Deferral Policies (anticipated 1.0 professional practice CLE credits)

This session will provide an overview of both jurisdictional and merits deferral and discuss practical considerations from the perspective of employers, unions, and a PERB ALJ.

Panelists:

Joseph E. O'Donnell, Administrative Law Judge, NYS Public Employment Relations Board
Edward A. Trevvett, Esq., Harris Beach PLLC
Steven M. Klein, Esq., CSEA

Concurrent 4: Police Officers and Collective Bargaining: How Limited Should Bargaining Be About Discipline? (anticipated 1.0 professional practice CLE credits)

This session will discuss case law from PERB and the Court of Appeals that impacts bargaining over the discipline of police officers and will explore whether any further restrictions should be imposed on police officer unions' ability to bargain over discipline.

Panelists:

Lee Adler, Senior Extension Associate, School of Industrial and Labor Relations, Cornell University
Mike Mazzeo, President of the Rochester Locust Club
Maxwell Leighton, New York City Law Department, Office of the Corporation Counsel
David Quinn, General Counsel, NYS Public Employment Relations Board

Concurrent 5: Collective Bargaining Under the Taylor Law: New Methods for Constructive Dialogue

Public sector collective bargaining in New York State presents multiple challenges to those who participate in the negotiation process. Facing constrained economic resources and sometimes unreasonable expectations from their clients, negotiators need to understand their behavior at the bargaining table and how they are perceived by the other team will impact the outcome of the negotiation. Participants will be given a DiSC questionnaire profile to fill out. DiSC is a non-judgmental tool used for discussion of people's behavioral differences. Participants will gain insight into their own behavior and the demeanor they present within the context of collective bargaining and will receive tips for working with people with other personality styles.

Panelists:

Lori Matles, Mediator, NYS Public Employment Relations Board
Peter B. Pepper, Labor Consultant

Limited to the first 30 participants

11:00 – 11:15 a.m.

Coffee Break

11:15 a.m. – 12:30 p.m.

Concurrent 1: Interest Arbitration and the Taylor Law

The Taylor Law's tripartite interest arbitration procedure, which serves as the final step of the impasse procedure for law enforcement and fire services personnel, has a unique and fascinating legislative history. In addition to providing a historical overview of the tripartite interest arbitration procedure

first adopted in 1974, panelists will provide their insights into the rarely discussed negotiation process that takes place inside executive sessions and shapes interest arbitration awards.

Moderator:

William Conley, Assistant Director of Conciliation, NYS Public Employment Relations Board

Panelists:

Ronald G. Dunn, Partner, Gleason, Dunn, Walsh & O'Shea

Elayne G. Gold, Founding Partner, Roemer Wallens Gold & Mineaux, LLP

Howard C. Edelman, Arbitrator

David B. Lipsky, Anne Evans Estabrook Professor of Dispute Resolution in the School of Industrial and Labor Relations, Adjunct Professor of Law, and Stephen H. Weiss Presidential Fellow at Cornell University

Concurrent 2: Comparative Public Sector Unionization and Collective Bargaining

This session will compare and public sector unionization and collective bargaining statutes and related experiences in New Jersey, Illinois, and California with New York's experience under the Taylor Law.

Moderator:

Martin H. Malin, Professor of Law and Director, Institute for Law and the Workplace, Chicago-Kent College of Law, Illinois Institute of Technology

Panelists:

David Lewin, Neil H. Jacoby Professor Emeritus of Management, Human Resources and Organizational Behavior, UCLA Anderson School of Management

Robert Bruno, Professor of Labor and Employment Relations, Director of Labor Education Program, School of Labor and Employment Relations, University of Illinois at Urbana-Champaign

Concurrent 3: Strategies for Adapting to a post-*Janus* World (anticipated 1.5 professional practice CLE credits)

This session will examine practical ways in which unions and employers might react to the anticipated ruling in *Janus v. AFSCME*. Topics discussed will include the state of affairs prior to the agency fee becoming a statutory mandate as well as the experiences of public sector employers and unions in a right-to-work state.

Panelists:

Sarah Cudahy, Executive Director, General Counsel and PIO, Indiana Education Employment Relations Board

James Roemer, Founding Partner, Roemer Wallens Gold & Mineaux, LLP

Kate Luscombe, CSEA Director of Field Operations

Concurrent 4: Expedited Arbitration Procedures: The NY/CSEA Experience

The Panel will explain and discuss the various innovative expedited arbitration procedures currently utilized by the State of New York and the Civil Service Employees Association, including The Time and Attendance Disciplinary Procedure, The Expedited Disciplinary Arbitration Procedure and The Contract Grievance Procedure. The panel will review the reasons for the implementation of these programs, the procedures that govern the programs and the practical aspects of such streamlined and efficient grievance resolution procedures. The presenters will also discuss the proven benefits and results of the programs which include cost savings, increased morale, timely resolution of disputes, reduced back pay liability, and increased productivity.

Panelists:

Jeffrey M. Selchick, Esq., NYS/CSEA Master Arbitrator

Michael N. Volforte, Esq., Director, NYS Governor's Office of Employee Relations

Daren J. Rylewicz, Esq., General Counsel and Director of Legal Services, CSEA

Charles Barley, Labor Relations Specialist, CSEA

Carin C. Perkins, Assistant Director of Employee Relations, SUNY

12:30 p.m.

Lunch and Keynote Address: Cynthia Estlund, Catherine A. Rein Professor of Law, New York University School of Law