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MEMORANDUM

TO: E. J. McMahon, Director
The Empire Center for New York
State Policy

FROM: Terry O'Neil and Howard Miller

DATE: May 3, 2010

RE: Legislative Wage Freeze

Attached please find our legal opinion regarding the legality of a public sector wage freeze in NewYork.

QUESTION PRESENTED

Would a legislatively imposed public sector wage freeze be legal under New York and Federal Law?

SHORT ANSWER

Because it would serve a public purpose, a State statute that freezes salaries, including abrogating so-called "step" increases and lane movement in existing collective bargaining agreements, would be valid under both state and federal law as long as specific legislative findings demonstrate that the scope and duration of the freeze is reasonable and necessary to protect the public.

BACKGROUND

A. The State's Bleak Financial Picture

In his 2010-2011 budget message, Governor Paterson aptly summarized New York's current financial condition:

> New York is facing an inevitable fiscal reckoning…
>
> The mistakes of the past — squandering surpluses, papering over deficits, relying on irresponsible fiscal gimmicks to finance unsustainable spending increases — have led us to a financial breaking point.
>
> There are no more easy answers. Avoidance behavior is simply not acceptable. Federal stimulus funding is running dry. We have already increased taxes on high-income New Yorkers. And those who have doubted the severity of our financial difficulties were proven wrong time and time again.

> *Further spending reductions are both necessary and inescapable.*
> [emphasis added]

The Governor's grim assessment is not overstated. Lieutenant Governor Richard Ravitch, who has been credited with helping rescue New York City from the brink of bankruptcy in the 1970s, described the state's dangerous financial situation as "even more serious" than what the city faced in its darkest hour.[1] The economic crisis is sweeping in scope. According to the Economic and Revenue forecasting volume of the 2010-2011 Executive Budget:

> With New York as the world's financial capital, the impact of the most recent financial crisis on the State's fiscal condition has been devastating …

Id. at page 6.

> Adjusting for tax law changes, the state's base receipts fell by over 11 percent in 2009-10, following a 3.0 percent decline for 2008-09…The estimated 6.1 percent decline in wages for 2009 represents the largest in the history of Quarterly Census of Employment and Wages (QCEW) data, and is due in large part to the 50.9 percent decline in finance and insurance sector bonuses estimated for the first quarter of the year, compared with the same quarter of 2008.

Id. at page 4.[2]

Cash shortfalls have resulted in, among other things, reduced State-aid to municipalities with resulting trickle-down consequences. For example, a cash shortfall forced the state to delay $1.1 billion in payments during the final quarter of its 2009-10 fiscal year,

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[1] Bobby Cuzza, *Ravitch Warns: NY Has No Fairy Godmother*, Capital Tonight Blog available at http://capitaltonight.com/2010/04/ravitch-warns-ny-has-no-fairy-godmother/

[2] This Report is available at http://publications.budget.state.ny.us/eBudget1011/economicRevenueOutlook/economicRevenueOutlook

including school aid and tax refunds. The State Comptroller has reported other ominous benchmarks in the economy:

> In December 2009, for the first time since the General Fund was reconstituted to its current structure in 1981, the General Fund ended the month with a negative balance.
>
> Because recurring spending continues to outpace recurring revenue, New York State's finances are not improving despite improving economic conditions. Symptomatic of the State's worsening fiscal picture, the Financial Plan projects rolling monthly deficits for the State's main operating fund for four consecutive months of the fiscal year.

See State Comptroller's Fiscal Update: Closeout Analysis of State Fiscal Year 2009-10, April 2010, at page 4.

Additionally, in a report that documented the extent to which "sweeps" of dedicated funds have served to mask the true magnitude of the budget problems, the New York State Comptroller stated:

> Facing a persistent and widening budget gap, State leaders must fundamentally realign recurring spending with recurring revenue to restore the State's fiscal health.

See New York's Deficit Shuffle April 2010 at page 2.

Other public officials have publicly made clear the scope of the economic crisis. For example, on March 10, 2010, Lieutenant Governor Ravitch submitted a five-year plan to address the structural problems in the state budget. Mincing no words, Mr. Ravitch pointed out the stark reality:

> New York ... is facing a generational challenge that will test the durability and flexibility of its government…
>
> But the current economic crisis did not cause New York's budget troubles; it merely exposed them. A long-term, unsustainable divergence between state revenues and expenditures has led directly to a large and growing structural budget deficit that is

> marked, year after year, through accounting techniques, borrowing and one-time actions.

Ravitch Report at page 1.

The Ravitch report estimated a "structural gap" of $13 billion between recurring revenues and recurring expenditures. This gap, the report noted, "will remain even if economic times improve" and can be closed only by bringing recurring expenditures into line with recurring revenues. *Id*. at 3. Unfortunately, according to the report, "many people in the state do not yet understand the severity of the structural deficit problem." *Id*. at page 1

Tax increases are also being proposed to fend off deeper cuts. The Legislature and Governor Paterson agreed to an estimated $8 billion in state tax and fee increases as part of the 2009-10 budget. These increases, as alluded to in the Governor's message, included a sharp temporary increase in personal income tax rates.[3]

In addition to tax increases, delayed payments and local government layoffs, other dramatic steps are being considered. For example, the Governor is considering a furlough program for 100,000 State employees. *See* Jacob Gershman, *Paterson Proposes Furloughs*, Wall Street Journal, April 28, 2010, at A22.

B. The Devastation at the local level

Since most of the state budget is classified as local assistance, the "necessary and inescapable" budget cuts proposed by the governor, including what would be a record reduction in school aid, threaten to have a devastating impact on local services. That impact will be exacerbated by continuing increases in fixed costs, the largest of which is employee compensation. Put simply, across all levels of government, we are living in the most difficult economic time in generations. Local public sector employers, particularly school districts, have

[3] *See* Michael Quint, *New York $131.8 Billion Plan Depends on Taxes and Aid*, Bloomberg.com, March 30, 2010, available at http://www.bloomberg.com/apps/news?pid=20601087&sid=a_m4EZx2bsgU&refer=home

been the hardest hit by the financial crisis. Facing massive aid cuts and unfathomable increases in fixed costs, local public employers have been forced into a proverbial "Morton's Fork" dilemma of painful layoffs either in lieu of or in conjunction with service cuts and consolidation of services. On Sunday, April 17, 2010, Newsday ran a front page story detailing the public pension crisis in New York. According to Newsday, Long Island school districts will be slammed with a $100 million increase in employee pension costs. John Hildebrand, Public Pension Costs Pushing LI Taxes Up, Newsday, April 17, 2010, at A1.

The harsh consequences of such a widespread depletion of already scarce resources are real and palpable. Of particular misfortune, school children, the most innocent victims of aid cuts, are the most directly affected by them. Indeed, an April 16, 2010 article in the *Daily News* reports that budget cuts to the Department of Youth and Community Development are forcing the closure of after-school programs for New York City's neediest children.[4]

Hardship is also faced by those government employees who face the potential loss of their jobs.

School districts and other municipal providers of essential services are finding themselves hamstrung in their ability to confront the fiscal crisis with minimal damage because, in addition to dwindling revenue, they are locked into collective bargaining agreements that require raises and/or "step" increases and lane movement. Consequently, while a non-unionized, private-sector employer may avoid layoffs by imposing salary freezes, public employers have no such option. Without such flexibility, the public suffers from the loss of services.

Put another way, built-in raises for public employees in a time of extreme financial stress has rendered government – both on the local and State level – unable to meet the needs of the

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[4]This article is available at http://www.nydailynews.com/ny_local/education/2010/04/16/2010-04-16_afterschool _ ax_cuts_deep.html

public, particularly those who are the most in need. The irreconcilable paradox, consequently, is that the citizens who are already *in extremis* are seeing their tax dollars directed towards the payment of salary increases for the very public employees whose duty it is to *serve them*.[5] Public service, thus, has been stood on its head.

Other than layoffs and furloughs, the only avenue for avoiding service and program cuts is tax increases. Both on the broad macro State level, however, and on the more micro municipal level, there is a general consensus that taxes simply cannot be increased to stem the fiscal bleeding. The same "bleeding" existing in state and local budgets also exists in the personal budgets of each taxpayer and resident. With unemployment in the State at 8.6%, the highest level in new York in 18 years, the public simply cannot shoulder the burden of increased taxation. Put simply, the consequences of statewide decreased revenue and increased pension costs are staggering. For example:

- New York City is facing 19,000 layoffs, including 8,500 teachers
- City of Yonkers is facing 900 layoffs
- State budget proposals could lead to the closing of 40-75 senior centers
- State aid to school districts proposed to drop by $1.4 billion
- $750 million of budgeted State aid payments were delayed this past winter
- An MTA tax was imposed on local municipalities, including school districts
- 41 State Parks and 14 Historical Sites are slated to be closed
- Children's Aid Society was forced to cut social workers, health professionals and administrative aids Buffalo City School District to layoff 680 employees
- Yonkers School District to cut 400 positions

[5] The same is true on the pension front. Private sector employees whose 401(k) accounts have been battered during the recession pay additional taxes to maintain the defined benefit of public employee pensions. *See* Hildebrand, *supra*.

- William Floyd School District to cut 150 positions
- Central Islip School District to cut more than 100 positions
- North Syracuse School District budget includes cuts of 114 positions and some athletic teams.
- White Plains School District plans to cut 83 positions
- Lindenhurst School District 59 teachers
- Guilderland School district to cut 56 full-time positions because of $2.6 million anticipated cut in state aid
- Northport-East Northport 40 teachers
- Patchogue-Medford School District 50-70 teachers
- New Rochelle School District to cut between 25-35 employees and eliminate busing for sixth graders
- Lewiston Porter School District looking at cutting 29 positions
- Katonah-Lewisboro School District budget would cut 30 teacher jobs

Additionally, pension costs for public employers are anticipated to skyrocket for the foreseeable future. For example, the Teachers' Retirement System has warned school districts they will be billed for "significant" increases in pension contributions , starting with a nearly 40% increase in the 2010-11 school year. *See* New York State Teachers' Retirement System, Administrative Bulletin Issue No. 2010-2, January 2010. Pension costs for other public employees around the state will more than *double* over the next four years, according to Governor Paterson's budget. Equally crippling are the projected increases in health insurance. Indeed, health insurance costs for state employees are projected to rise ten percent next year and more than eight percent annually thereafter. *See* 2010-11 Executive Budget Financial Plan, Updated for Forecast Revisions and Governor's Amendments, Feb. 9, 2010, p. 31. Mayor Bloomberg forecasts that New York City's fringe benefit costs will rise by a total of more than $1.6 billion, equivalent to seven percent of the current salary base, in the next three years. *See* City of New York, January 2010 Financial Plan, Fiscal Years 2010-2014.

The combination of reduced revenue and increased pension and health insurance costs has left local government in unprecedential distress. According to a front-page story in *Newsday*, Nassau County is projecting a $286 million deficit next year – "the largest gap in the County's history." *See* Celeste Hadrick, *Record Deficit Seen for 2011*, Newsday, April 30, 2009, at A2.

For these reasons, there is a growing public outcry to freeze public sector salaries. Such a freeze, according to its supporters, would allow public employers a temporary and necessary respite so that they may navigate the fiscal crisis in a manner that best protects the public.

DISCUSSION

A. The Constitutionality of A Wage Freeze

Over the last several decades, various fiscal crises have resulted in wage freezes being imposed on public sector employees, even those employees with contractually guaranteed wage increases. Not surprisingly, there have been several cases challenging such wage freezes. Two primary theories have been asserted by the plaintiff unions in those challenges: (1) legislatively imposed wage freezes violate the Contracts Clause of the United States Constitution; and (2) wage freezes violate union rights under the Taylor Law. Both of these theories have been rejected by New York Courts.

In the most recent case, *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362 (2d Cir. 2005), the Second Circuit rejected a challenge to a wage freeze imposed by the legislatively created Buffalo Fiscal Authority (the "Authority"). The salient facts in *Buffalo Teachers* were as follows. The Legislature, based upon factually supported findings, enacted a statute that created the Authority as a public benefit corporation. Under the enabling legislation, the Authority had the power to impose a wage and/or hiring freeze upon the finding that such a freeze is "essential to the adoption or maintenance of a city budget or a financial plan…" The Authority determined that, given current and looming massive budget deficits, a wage freeze was necessary. The wage freeze included prohibiting members of several unions from receiving two percent wage increases to which they would have otherwise been entitled under negotiated agreements.

Various Buffalo unions brought suit, claiming that the wage freezes violated the Contract Clause under the United States Constitution. The Second Circuit, after an exhaustive analysis of U.S. Supreme Court precedent, upheld the constitutionality of the wage freeze.

The Contract Clause provides that no state shall enact any law "impairing the Obligation of Contracts." U.S. Const. Art. I, § 10, cl. I. While the language of the clause may appear absolute on its face, it "does not trump the police power of a state to protect the general welfare of its citizens, a power which is paramount to any rights under contracts between individuals." *Buffalo Teachers*, 464 F.3d at 366 (internal quotations and citations omitted). Whether a state law impermissibly impairs contract rights is subject to a three pronged test to be answered in succession: "(1) is the contractual impairment substantial and, if so; (2) does the law serve a legitimate public purpose such as remedying a general social or economic problem and, if such a purpose is demonstrated, (3) are the means chosen to accomplish this purpose reasonable and necessary." *Id*. at 367.

Employing the test as it pertained to the wage freeze in Buffalo, the Second Circuit found that there was substantial impairment of contract rights. As for the second part of the test, the Court held that: "The New York legislature had a legitimate public purpose in passing [the statute] and its wage freeze power. It is not disputed that Buffalo was suffering at the time, and continues to suffer, a fiscal crisis. The state legislature passed the [statute] to address specifically the City's financial problems." *Id*. at 368.

The third part of the test involved the most detailed analysis. In order to determine whether the wage freeze authority was reasonable and necessary to address the fiscal crisis, the Court needed to first determine how much deference should be accorded to the legislative findings supporting the statute. Ultimately, the Court determined that for a wage freeze that impairs public sector collective bargaining agreements to be deemed reasonable, it must be shown that the state did not:

> (1) consider impairing the ... contracts on par with other policy alternatives or (2) impose a drastic impairment when an evident and more moderate course would serve its purpose equally well, nor (3) act unreasonably in light of the surrounding circumstances.

Buffalo Teachers, 464 F.3d at 371 (internal citations and quotations omitted).

The Second Circuit determined that the wage freeze statute in Buffalo passed Constitutional muster. In language that is instructive for our purposes, the Court reasoned:

> With the above standard in mind, we hold the wage freeze was reasonable and necessary. The legislature and Board did not treat the wage freeze on par with other policy alternatives. According to the Act, the Buffalo Fiscal Authority was empowered to enact the wage freeze provision only if it was essential to maintenance of the City's budget. N.Y. Pub. Auth. Law § 3858(2)(c) (McKinney Supp.2006). We read this to mean the wage freeze must have been a last resort measure. Indeed the Board imposed the freeze only after other alternatives had been considered and tried. The Board first instituted a hiring freeze pursuant to its powers under the Act. Moreover, the City had already taken other more drastic measures including, school closings and layoffs; in the four years prior to the wage freeze Buffalo eliminated 800 teaching and 250 teaching assistant positions. Only after these more drastic steps were taken and a finding that the freeze was essential was made, did the BFSA institute the wage freeze.
>
> This discussion dovetails with the second question of whether a more moderate course as available to remedy the fiscal crisis. As noted, *the alternatives to the wage freeze consisted of elimination*

> *of more municipal jobs and school closures, alternatives which clearly are more drastic than a temporary wage freeze.* Thus, in light of the surrounding circumstances, we cannot say the state or the Buffalo Fiscal Authority acted unreasonably.
>
> The temporary and prospective nature of the wage freeze underscores further its reasonableness. ***The impairment here does not affect past salary due for labor already rendered or money invested. It only suspends temporarily the two percent increase in salary for services to be rendered.
>
> * * *
>
> *Our holding can be summarized simply: An emergency exists in Buffalo that furnishes a proper occasion for the state and BFSA to impose a wage freeze to "protect the vital interests of the community," and the existence of the emergency "cannot be regarded as a subterfuge or as lacking in adequate basis." Nor can the wage freeze be regarded as unreasonable or unnecessary to achieve the important public purpose of stabilizing Buffalo's fiscal position.*

Buffalo Teachers, 464 F.3d at 371-373 (emphasis added).

In reaching its decision, the Second Circuit followed the Court of Appeals holding in *Subway-Surface Supervisors Ass'n v. New York City Trans. Auth.*, 44 N.Y.2d 101, 404 N.Y.S.2d 323 (1978). In *Subway-Surface*, the Court of Appeals held that a statute implementing a wage freeze for all New York City employees, which precluded payment of wage increases provided for in collective bargaining agreements, was constitutional. *Id*. at 109, 110, 404 N.Y.S.2d at 328. In enacting the statute, the Legislature found that there was a financial emergency in the City of New York requiring State action to remedy the crisis. Because there was no dispute that there was in fact a fiscal crisis in the City of New York, the Court held that it was "undisputed" that the wage freeze served an "important public purpose." *Id.* at 110, 404 N.Y.S.2d at 328.

The Court of Appeals further held that the wage freeze was reasonable and necessary:

> In reaching the result we do, we attach significance to the fact that the impairment of contract accomplished by the wage freeze provisions of [the statute] was prospective in nature. Thus, when

> the statute was enacted in August, 1975, the personal services for which the Transit Authority would be obligated under the existing collective bargaining agreement to pay increased wages after October 1 of that year had not yet been rendered. Full consideration had not passed from the employees and, as regards the services for which compensation at the increased rates provided by the agreement would be paid, the contract of employment was still executory.

Id. at 112-13, 404 N.Y.S.2d at 330. The fact that the wage freeze was prospective made it a "limited intrusion" on the petitioners' contract rights. *Id*. at 113, 404 N.Y.S.2d at 330.

Consequently, a prospective wage freeze that addresses an irrefutable fiscal crisis would be lawful under the Court of Appeals holding in *Subway-Surface*. *See also, Board of Educ., Yonkers City Sch. Dist. v. Cassidy*, 59 A.D.2d 180, 189, 399 N.Y.S.2d 20, 26 (2d Dep't 1977) (holding a suspension of wage increases under the Yonkers Financial Emergency Act constitutionally valid because the constitutional provisions against the impairment of contracts "never stripped from the States the power to regulate the terms and conditions of work for municipal employees. Whether couched in terms of emergency power or public policy, a State certainly has warrant to adjust the terms of public employment in order to cope with exigent circumstances.")

An even more intrusive freeze was held reasonable and necessary in *Baltimore Teachers' Union, American Federation of Teachers. Local 340 v. Mayor and City Council of Baltimore*, 6 F.3d 1012 (4th Cir. 1993). In *Baltimore Teachers*, the Fourth Circuit held *pay cuts* to be reasonable because the City of Baltimore was facing a severe fiscal crisis. The City was required by law to balance its budget, and had lost approximately $24.2 million in state aid. Baltimore "was already suffering from the sluggish economy and poor financial management." Consequently, it not only "abandoned previously negotiated pay raises but also affected other nonsalary cost savings." *Id*. at 1020. Such measures failed. Baltimore was therefore forced to resort to such measures as layoffs, job abolishments, and early retirements. In Baltimore, “personnel costs constitute such a large percentage of its expenditures (for example, 91.8% of the Police Department budget and 82.5% of the Public School budget)." *Id*. After the State of Maryland proposed "an eleventh-hour, second round of cuts in state aid ... totaling approximately $13.3 million," Baltimore then used a furlough plan to reduce salaries "only in order to maintain its budget in balance and avoid further layoffs...." *Id*. at 1020.

The furlough plan was challenged, and the case made its way to the Fourth Circuit. As a threshold matter, the Court rejected the argument that the fiscal crisis should have been resolved with taxes:

> It is not enough to reason, as did the district court, that "[t]he City could have shifted the burden from another governmental program," or that "it *could have* raised taxes." *Id*. (emphases added). Were these the proper criteria, no impairment of a governmental contract could ever survive constitutional scrutiny, for these courses are always open, no matter how unwise they may be. Our task is rather to ensure through the "necessity and reasonableness" inquiry that states neither "consider impairing the obligations of [their] own contracts on a par with other policy alternatives" or "impose a drastic impairment when an evident and more moderate course would serve its purposes equally well," *United States Trust*, *431 U.S. at 30-31, 97 S.Ct. al 1522*, nor act unreasonably "in light of the surrounding circumstances," *id. at 31, 97 S.Ct at 1522*.

In upholding the wage freeze, the Fourth Circuit held:

> The authority of the states to impair contracts, to be sure, must be constrained in some meaningful way. The Contract Clause, however, does not require the courts — even where public contracts have been impaired — to sit as superlegislatures, determining, for example, whether it would have been more appropriate instead for Baltimore to close its schools for a week, an option actually considered but rejected, or to reduce funding to the arts, as appellees argue should have been done. Not only are we ill-equipped even to consider the evidence that would be relevant to such conflicting policy alternatives; we have no objective standards against which to assess the merit of the multitude of

> alternatives. While the Court today presumably would not accept in the public contract context the absoluteness of Justice Frankfurter's response to a similar request in a private contract context that the Court reject a governor's and legislature's determination that the state's public welfare required further suspension of mortgage foreclosures (or at least not the implication of his response), his essential point is relevant in both contexts: "Merely to enumerate the elements that have to be considered [in determining whether the public welfare decision was reasonable] shows that the place for determining their weight and their significance is the legislature not the judiciary." *East New York Sav. Bank v. Hahn*, 326 U.S. 230, 66 S.Ct. 69, 71, 90 L.Ed. 34 (1945).

In short, a court reviewing a statutory wage freeze will likely defer to legislative findings of a fiscal emergency. If it can be shown that other less intrusive interventions were tried without success to protect the public, the Legislation will be upheld. Such less intrusive interventions that have already been tried during the current crisis are: state tax increases of more than $8 billion, including a personal income tax increase and a new wage tax in the Metropolitan Transportation Region; reductions in state aid to school districts; elimination of the Empire Zone tax credit program; delays in state aid payments to school districts; delays of income tax refunds and layoffs of public employees. Consequently, a court reviewing a wage freeze in 2010 should be able to paraphrase the Second Circuit as follows:

> *Our holding can be summarized simply: An emergency exists [throughout the State] that furnishes a proper occasion for the state [...] to impose a wage freeze to "protect the vital interests of the community," and the existence of the emergency "cannot be regarded as a subterfuge or as lacking in adequate basis." Nor can the wage freeze be regarded as unreasonable or unnecessary to achieve the important public purpose of stabilizing [the financial position of the State and its political subdivisions].*

Buffalo Teachers, 464 F.3d at 373.[6]

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[6] It should be noted decisions in other states have ruled to the contrary. *University of Hawaii Professional Assembly v. Cayetano*, 183 F.3d 1096 (9th Cir. 1999); *Sonoma County Organization of Public Employees v. County of Sonoma*, 591 P.2d 1, 23 Cal.3d 296 (1979); *Calstrom v. State*, 103 Wash.2d 391, 694 P.2d 1 (Wash 1985);

B. Taylor Law Implications

Efforts at annulling statutory wage freezes as violative of the Taylor Law have fared no better than Contract Clause claims. While the Taylor Law undoubtedly confers a statutory right to bargain collectively, that right "may be circumscribed by a proper exercise of the police power, such as here, to maintain a stable economic environment." *Committee of Interns v. City of NY*, 87 Misc.2d 504 (Sup.Ct. N.Y. Co. 1976). Wage freezes on contractual increments have, consequently, been held a lawful means of responding to a financial crisis. *See, e.g., Mutual Aid Association v. City of Yonkers*, 60 A.D.2d 856, 401 N.Y.S.2d 98 (2d Dep't 1978) (petitioners' claim that any suspension of contractual increments by the Financial Emergency Act would be unconstitutional is without merit. The suspension does not violate their right to organize and bargain collectively, as contained in Section 17 or Article I of the State Constitution and the Taylor Law (citations omitted)).

As held by the Second Department in *Board of Education, Yonkers City School District v. Cassidy*, 59 A.D.2d 180, 399 N.Y.S.2d 20 (2d Dep't 1977):

> Respondents contend, finally, that under the Taylor Law it is clear that the public policy of the State is to require public employers to bargain collectively with their employees and to encourage arbitration as a means to resolve disputes…
>
> But respondents fail to cite authority which supports making this public policy superior to the policy reflected in the [wage freeze legislation] of helping cities to avoid bankruptcy and to remain solvent.

As with Contract Clause challenges, a challenge under the Taylor Law can be defeated by a factual record demonstrating that the exercise of the State's police power is necessary to protect the public from the fiscal crisis. In order to meet its intended purpose, a wage freeze

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AFSCME/Iowa Council 61 v. State, 484 N.W.2d 390 (Iowa 1992); *Mass C.C.v. Commonwealth of Mass*, 649 N.E.2d 708, 420 Mass. 126 (1995). Those cases are not binding on a New York Court and not as well reasoned as the New York cases.

statute should expressly suspend the Triborough Law as it relates to increments and lane movements and insure that these increases would not simply roll over or be deferred during the period of the freeze and all become due the year the freeze is lifted.[7] For example, employee on step 4 at the time of a two year freeze will move to step 5 after the freeze is over, as opposed to skipping to step 7).

CONCLUSION

Temporary wage freezes are lawful under New York and Federal Law provided that they are supported with appropriate legislative findings and tailored in a reasonable manner to protect the public.

[7]In a case related to *City of Buffalo*, the Fourth Department held that when the control board lifted the wage freeze, employees were entitled to move up the corresponding number of steps for the time that had passed during the freeze. In order to avoid this result, the statute would have to expressly state that no increments can be advanced as a result of the freeze. *Meegan v. Brown*, 63 A.D.3d 1673, 881 N.Y.S.2d 273 (4th Dept. 2009).