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4-6-2023

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## TO STRIKE OR NOT TO STRIKE: THE CALL FOR MANDATORY ADR IN PRIVATE TEACHING UNION DISPUTES

*Jessica Lalehzar*

In November of 2022, nearly 1,800 adjunct faculty members at The New School in New York City went on a three-week long strike.<sup>1</sup> The strike came after the university “failed to raise wages in pace with inflation,” prompting hundreds of students and faculty to walk out.<sup>2</sup> The strike became the United States’s longest ever by adjunct faculty, which compose 90% of the university’s faculty.<sup>3</sup> Many classes were cancelled as a result, leading to frustration among students and parents during a critical point in the semester.<sup>4</sup> The union representing adjunct faculty, the ACT-UAW Local 7902, faced difficulty in reaching a negotiation with the university regarding compensation, health insurance demands, and out of classroom support.<sup>5</sup> These stalled negotiations left professors and students in limbo, uncovering a deeper issue regarding private teaching union disputes.

Teachers unions are designed to fight for the rights of educators and act as a vessel for collective bargaining agreements between employees and employers.<sup>6</sup> In New York, the Taylor Law applies to most public state employees under union contracts.<sup>7</sup> The 1967 law guides disputes

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<sup>1</sup> Andrea Bossi, *Everything You Need to Know About the Strike at The New School, Home to Parsons School of Design*, FASHIONISTA (Jan. 3, 2023), <https://fashionista.com/2023/01/new-school-parsons-union-faculty-strike-contract-ratified> [<https://perma.cc/L2W2-RDD3>].

<sup>2</sup> *Id.*

<sup>3</sup> Kimiko de Freytas-Tamura, *Strike Ends at the New School and Parsons School of Design*, N.Y. TIMES (Dec. 13, 2022), <https://www.nytimes.com/2022/12/11/nyregion/new-school-nyc-adjunct-strike.html> [<https://perma.cc/X7FY-EW8G>].

<sup>4</sup> *Id.* (stating that parents were threatening to withhold payment of force their children to transfer to other institutions after students missed over 3 weeks of classes).

<sup>5</sup> *Id.*

<sup>6</sup> *Teachers Unions & Collective Bargaining*, LAWINFO, <https://www.lawinfo.com/resources/labor-law/teachers-unions-collective-bargaining.html> (last visited Mar. 4, 2023) [<https://perma.cc/YE3H-FKVY>].

<sup>7</sup> *New York State Public Employees’ Fair Employment Act — The Taylor Law*, N.Y. STATE, <https://oer.ny.gov/new-york-state-public-employees-fair-employment-act-taylor-law> (last visited Mar. 4, 2023) [<https://perma.cc/BM25-QHA7>].

between unions and employers.<sup>8</sup> The law mandates four impasse resolution systems where mediation is the required first step for contract disputes.<sup>9</sup> The law also prohibits strikes by public employees, aiming to resolve disputes through alternate dispute resolution methods.<sup>10</sup>

Private teaching unions, like ACT-UAW Local 7902, are guided by the National Labor Relations Act (“NLRA”), a federal law that grants private employees the right to form or join unions and engage in activities to address or improve working conditions.<sup>11</sup> The NLRA applies to employees in private universities, such as the adjunct faculty at The New School.<sup>12</sup> The National Labor Relations Board (“NLRB”) is an independent federal agency created to enforce the act, and is the entity that deals with union complaints and other violations.<sup>13</sup> The guidelines for conflict resolution are not as stringent as those promulgated by the Taylor Law. Since 2018, the NLRB has provided ADR as an option for employers in lieu of hearings before the NLRB.<sup>14</sup> Hearings typically come because of unfair labor practice complaints, which deal with illegality or violations against the union.<sup>15</sup> The hearing stage comes about after a union has filed a charge with the NLRB.<sup>16</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Teacher’s Unions/Collective Bargaining: State and Local Laws*, FINDLAW (June 20, 2016), <https://www.findlaw.com/education/teachers-rights/teacher-s-unions-collective-bargaining-state-and-local-laws.html#:~:text=The%20National%20Labor%20Relations%20Act,school%20districts%20and%20teachers'%20unions> [https://perma.cc/6FDC-PNNE].

<sup>11</sup> *Frequently Asked Questions — NLRB*, NAT’L LAB. REL. BD., <https://www.nlr.gov/resources/faq/nlr#:~:text=The%20NLRA%20is%20a%20federal,from%20engaging%20in%20these%20activities> (last visited Mar. 4, 2023) [https://perma.cc/PYB8-AAZG].

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Allen Smith, J.D., *NLRB Expands Alternative Dispute Resolution Program*, SHRM (Aug. 17, 2018), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/labor-relations-nlr-alternative-dispute-resolution.aspx> [https://perma.cc/TQ7V-YDTY].

<sup>15</sup> *About NLRB*, NAT’L LAB. REL. BD., <https://www.nlr.gov/about-nlr/what-we-do/decide-cases> (last visited Mar. 4, 2023) [https://perma.cc/6Z9Y-AWTF].

<sup>16</sup> *About NLRB — What’s the Law?*, NAT’L LAB. REL. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/whats-law> (last visited Mar. 4, 2023) [https://perma.cc/L2D6-RFEQ].

Despite the NLRB's efforts to implement ADR, the program has its limitations. The current program is voluntary and applies only where unfair labor practice cases are pending before the board.<sup>17</sup> In the case of The New School, no charge related to the contract dispute was filed, so the option to enter into this program was not triggered.<sup>18</sup> Entry into the ADR program is also contingent on both sides voluntarily entering and cooperating under the terms of the mediation session.<sup>19</sup> In a system where employer-union relations might be strained, it may be hard to achieve voluntary participation. This stands in stark contrast to the terms of the Taylor Law, where mediation is mandated the moment impasse is reached, no matter what either side desires.<sup>20</sup> The program is severely limited by these terms and hinders the introduction of ADR methods earlier in the dispute process, such as in the strike and negotiation stage where impasse is typically faced.

In enacting the Taylor Law, New York State recognized mediation's wide range of benefits. Mediation allows for the quick and inexpensive resolution of a host of disputes and is praised for mutually satisfactory outcomes and preserving ongoing relationships.<sup>21</sup> In the context of teaching unions and employers, a desire to preserve ongoing work relationships is necessary, as both parties are entirely dependent on each other.<sup>22</sup> Agreements are comprehensive and customizable, an important factor in compensation and benefits discussions.<sup>23</sup> Without guidelines mandating ADR at the beginning stages of disputes, private union workers and employers alike

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<sup>17</sup> NAT'L LAB. REL. BD., *supra* note 15.

<sup>18</sup> Emily Donnelly-Higgins, *Part-time Faculty Union Files complaint with National Labor Relations Board*, NEW SCH. FREE PRESS (Dec. 9, 2022), <https://www.newschoolfreepress.com/2022/12/09/part-time-faculty-union-files-complaint-with-national-labor-relations-board/> [<https://perma.cc/U87T-AAAY4>] (discussing that the union filed an unfair labor practice charge with the NLRB in response to the university's request for employees to fill out weekly surveys attesting to having performed work duties).

<sup>19</sup> *NLRB Launches Pilot of Proactive Alternative Dispute Resolution Program*, NAT'L LAB. REL. BD. (July 10, 2018), <https://www.nlr.gov/news-outreach/news-story/nlr-launches-pilot-of-proactive-alternative-dispute-resolution-program> [<https://perma.cc/BE9X-BXDJ>].

<sup>20</sup> N.Y. STATE, *supra* note 7.

<sup>21</sup> *Advantages of Mediation*, U.S. OFF. SPECIAL COUNS., <https://osc.gov/Services/Pages/ADR-Advantages.aspx> (last visited Mar. 4, 2023) [<https://perma.cc/YEA9-ED3X>].

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

will suffer at the hands of impasse. The damaging effects of prolonged strikes, especially in the context of private universities, are clear after the events that transpired at The New School. Students and universities hope that, moving forward, disputes are dealt with in a more efficient manner.<sup>24</sup>

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<sup>24</sup> Freytas-Tamura, *supra* note 3.