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Op-Ed Contributors

How to Avoid Another Transit Strike

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NEW YORK CITY'S transit workers are back on the job, having cut a deal with the Metropolitan Transportation Authority that gives the union what it wanted on raises and pensions and gives the authority what it wanted on health care. The city, meanwhile, lost an estimated $1 billion during a frigid holiday shopping week that saw seven million commuters stranded.

There's a better way than this to get a contract, and we can institute it simply by building on existing New York state law.

The labor law that governs public service employees in New York is the Taylor Law. It prohibits strikes but grants workers the right to unionize, requires employers to negotiate terms and conditions of employment with unions, and sets forth procedures by which disputes can be resolved.

In 1985, Gov. Mario Cuomo signed an amendment to the Taylor Law that specifically addressed transit negotiations, offering a binding arbitration procedure to break deadlocked talks.

Binding arbitration was to take effect either when the State Public Employment Relations Board officially declared an impasse or when both negotiating parties requested it. At that point, a three-person arbitration panel would step in. It would determine an agreement, taking into consideration the public interest, the compensation of the employees in comparison to similar workers, the employer's ability to pay the requested upgrades, and the possible impact on fares and services.

Arbitration, therefore, was established precisely to resolve the kind of stalemate that led to the recent three-day strike. But, each for its own reasons, the transportation authority and the union decided not to follow the procedure. Within the union, an insurgent segment bent on striking threatened a power struggle. Within the authority, the reasoning was more complicated, hinging on the authority's eagerness to raise the retirement age for new transit employees to 62 from 55.

Tiered retirement benefit plans have been in effect for other public employees since at least 1972. Establishing a tiered system for transit workers, however, would require legislative action, and this could not take place without the union's acquiescence, which was not forthcoming in the negotiations.

Because the pension issue is reserved for the legislature, it is not a matter for binding arbitration. This meant that any settlement forged by an arbitration panel would include decisions on wages, benefits and rules, but not on pensions. That, in turn, would deprive the authority of the opportunity to use these other issues to bargain for the pension change it sought. Unwilling to give up that leverage, the authority did not want to trigger arbitration.

Binding arbitration, therefore, proved toothless - not because it didn't work, but because both sides were able to duck it. It never had a chance to be tried.

We were both on Gov. Hugh Carey's staff assigned to deal with New York City's last illegal transit strike, in April 1980. The feeling then was that a future strike was too costly to risk, but that the Taylor Law's penalties and fines did not provide sufficient deterrence. The same convictions are being expressed today.

In place of punitive measures that don't work, we offer a simple solution: make binding arbitration mandatory, rather than something the parties may choose to initiate at will. Yes, this means changing the Taylor Law yet again, and that is just what we propose. A small change could make a big difference. Here's how our proposal would work:

Six weeks before the end of a contract agreement - or earlier, if a mediator or the Public Employment Relations Board so orders - binding arbitration would be invoked automatically. A panel would be selected using the same criteria as today, and arbitration would begin two weeks later. Using the same decision-making criteria as under the existing law, the panel would issue its decision by the expiration date of the agreement. Of course, the parties could reach a voluntary agreement on all or some of the issues before the expiration of the agreement.

As is the case now, the panel's decision would be binding on both parties, and either party could enforce the decision in court if the other side resisted implementation.

Such a change would make a strike unnecessary, because a contract would be in place by the expiration of the existing agreement, whether reached through negotiation or imposed by neutral arbitrators. The change would also ensure that public service employees who provide vital services, in return for accepting that they may not strike, will get a resolution process that allows for a full hearing and a fair judgment of their case.

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