CSEA HISTORY PROJECT

JEROME LEFKOWITZ INTERVIEW

4/13/05

INTERVIEWER: First question. Did the controversy around the establishment of the State bargaining units set the precedent for representation elections for local government units? Did we have to go out unit by unit to win representation or were there some voluntary recognitions?

MR. LEFKOWITZ: There were a lot of voluntary recognitions, but the State case did not set a precedent. The issue was always what unit was the most appropriate for CSEA, or any other union, to represent. And PERB ruled in the State case that State representation was sui generis, and they would not follow that precedent, the unit structure for the State case in local government cases because local governments were much smaller. Therefore, they would have different configurations.

But many of the units, probably most, were granted by recognition of CSEA because, in most areas of the state, CSEA was the only organization there ready to seek representation.

INTERVIEWER: They were already there?

MR. LEFKOWITZ: They were there, a majority of employees had belonged to CSEA either for social reasons or because of CSEA's promotion of insurances, although a lot of people did not think of CSEA as primarily being a union to represent them.

As a matter of fact, in the first case that PERG had was a State case, that went to the Court of Appeals on an appeal by CSEA from a decision of PERB, and Chief Judge Fuld said that he and two other members of the court were members of CSEA for insurance purposes. Did we want them to recuse themselves? And neither CSEA nor AFSCME, the opponent of CSEA in those days, or PERB itself wanted them to recuse themselves, so we just went on with the case.

INTERVIEWER: So that

kind of leads into his next question which is and you touched on it, what advantages did CSEA have in gaining recognition in representation battles in the early years of the Taylor Law?

You touched on the fact that, a lot of people were already members of CSEA. I guess you called it associate members for purposes of getting the insurance.

MR. LEFKOWITZ: They were not associate members. They were full members because that was the only membership CSEA had at that time and a vast proportion of State and municipal government employees were members of CSEA, whether because of insurance or not. That gave CSEA an advantage. It was the only union that could claim a majority of employees in whatever unit would be set for Greene County, or Hamburg, or anywhere around the state, except for teachers in school districts.

INTERVIEWER: Okay.

MR. LEFKOWITZ: For teachers there were two other players. The AFT and NEA were both players for teachers. But for

local governments AFSCME was a player in the New New York City proper and in some of the suburban communities it was a player. It was also a player near Rochester and near Buffalo, but that's about it. Everything else was CSEA, or perhaps a local organization that was created on an AD HOC basis, if people did not want CSEA, but there weren't very many of those.

INTERVIEWER: Switching gears here, what can you tell us about what you saw in terms of the various Governors' relations with public employees on a personal and global basis? This goes back to Rockefeller. Did you notice any nuances in the relationship and how they treated their public employees as bosses?

MR. LEFKOWITZ: I think that Rockefeller was very supportive of the Taylor Law and of representation of local government employees. He was the major introducer of the

Taylor Law. He placed his prestige on the line in supporting it in the face of opposition from most of the AFL-CIO unions and from almost all of the local governments.

The supporters of the Taylor Law were the Governor and CSEA, and the Governor was very eager that the Taylor Law succeed. He invested the prestige of his office in supporting it and in supporting PERB's work.

I don't think he was much involved in any kind of direct fashion with respect to local government. But he was very supportive of the process that was put into place by the Taylor Law. He encouraged PERB to act independently in part because he was advised by his major labor law advisor, Vic Borela, that the success of the law would depend upon the perception and actuality of PERB being independent.

After him came Governor Wilson, who

was there only for a short time, and he continued the same basic policy.

The same was true about Governor Carey.

When we got to Governor Cuomo things began to change a little because the Taylor Law was old hat and Governors Cuomo and Pataki were not indentified with the enactment of the Taylor Law and its success. People weren't as excited or concerned about it because it was a going proposition The major change was that Governor Cuomo would, in some instances, attempt to intervene with the procedural operation of the Taylor Law for political purposes.

He was much more concerned about getting PERB appointees to be loyal to Cuomo than had his three predecessors. I'm trying to recall instances of his actual direct intervention or attempted intervention in decisions and I cannot recall any of those.

INTERVIEWER: Okay.

MR. LEFKOWITZ: It was probably just a matter of patronage.

INTERVIEWER: What about in a

more boss/employee type relationship?

Did you notice any striking differences between the four or five Governors that you dealt with?

Where we're going is that somebody had mentioned...

I don't know, it was somebody who was perhaps named Bryce?

MR. LEFKOWITZ: Jack Rice?

INTERVIEWER: Yes, Jack Rice had mentioned how Rocky was in one of the offices and one of his employee's was on his way to the Final Four of the NCAA tournament at the time. And Rocky said "How come you're not on a plane to go see your kid play in the championship game?"

"Well, you know, Governor, I have nine other kids. I can't afford it on the salary you pay me, ET CETERA (laughter).

And the Governor said: "Well, you know what? I have a plane that's headed down there.Why don't you gather up your nine other kids and...

MR. LEFKOWITZ: Okay. That story did not come from me.

MR. LEFKOWITZ: I do not know that story.

INTERVIEWER: But did you notice as a boss were there more tensions, say, between Cuomo and the public work force versus Rocky and the public work force? Did Rocky maybe take care of his people a little bit more, in your opinion?

MR. LEFKOWITZ: Well, the story that you tell was typical of Rockefeller and it wasn't a matter of how he treated public employees generally. It's how he treated individuals who he knew, and their exceptions. If he knew you, he would bestow certain kinds of largess out of his personal funds.

INTERVIEWER: Uh-huh.

MR. LEFKOWITZ: He'd pay some of his own people bonuses out of personal funds because the State didn't provide for bonuses.

INTERVIEWER: Yeah.

MR. LEFKOWITZ: So that was a different kind of a situation. With respect to the treatment of employees, I think that the

difference from Governor to Governor was not particularly an attitude towards employees as such, but rather a reaction to the State's fiscal climate.

When things were difficult employees were disgruntled and local governments were unhappy. And the Governor, whoever he was, was pressed on both sides. When things were doing well for the State, the Governors were prepared to spend some more money on employees benefits. Who's gonna worry about a rainy day to come tomorrow? It was just the political judgments and the actual fiscal constraints that were the factor rather than, as far as I can see, any ideological bent.

INTERVIEWER: It wasn't personality or ideology. It was the circumstances of the...

MR. LEFKOWITZ: As far as I can tell, the resentments of CSEA or other unions were greater in periods of financial problems because the Governors could less well afford to grant benefits that union's wanted under those circumstances. I don't recall any significant difference that I can

attribute to ideology among them.

INTERVIEWER: Okay. All right. Back to the Taylor Law. In the early years of the Taylor Law, it seemed that there were still a number of strikes by public employees, perhaps seeking to test the law. Can you tell us about some of the significant ones that you remember and how they were addressed by PERB?

MR. LEFKOWITZ: Let me begin by explaining the number of strikes. Before the Taylor Law was passed, there had been an average of two or three strikes a year. The numbers jumped immediately. That was predicted by some of the academicians. They were saying that what would happen was that the Taylor Law would encourage representation.

Instead of having a half dozen unions in New York City and two unions in the State, CSEA and Council 50 of AFSCME, and a few in the Buffalo and Rochester areas, you're gonna have unions all over the place and there are gonna be

a lot more negotiations and a lot more strikes.

That was true. We averaged about 20 strikes a year for the first seven or eight years. We hit a maximum of about 34, 35 strikes one year. But inside of ten years we were dropping to one or two strikes a year.

INTERVIEWER: Back down to the way it was prior --

MR. LEFKOWITZ: Yes. What happened was people had learned to negotiate. The unions had never negotiated. Municipal governments had never negotiated. They had to learn by experience what it means to negotiate and how to avoid strikes. On top of this PERB was learning. PERB was developing a core of mediators and fact-finders who learned more and more about negotiation as they went along, and were able to do a better job of conciliation. So by the time we had the next turndown of the economy, and people expected major problems, the problems didn't come because of the new professionalism in the staffs of the CSEA, in its collective bargaining specialists as they were called then. The professionalism on the part of

the municipal governments, and the professionalism on the part of the neutrals all contribute to meeting the problem.

And also the unions learned that they had a much more effective weapon than strikes. They had and opportunity, and a real ability, to put pressure on their employers through political action. Political action was a much more effective tool than the strike so the unions tended to switch their tactics.

Now, your question about some of the memorable strikes?

INTERVIEWER: Going on in your head.

MR. LEFKOWITZ: Yes. The first of the memorable strikes was an AFSCME strike in connection with the State representation case. PERB had decided there would be the five units and CSEA was appealing. It was taking too much time for AFSCME, and AFSCME was concerned that maybe the State would support CSEA on the unit determination issue so that my intitial determination would be overturned, either by the courts or, perhaps even by PERB.

So they struck several children's health facilities around the state.

That became a disaster for the State, and the State brought disciplinary charges against the employees and wouldn't withdraw them. The strike was terminated and the penalties were imposed and that left a message. But I think that AFSCME felt it got its money's worth from the strike despite the penalties.

INTERVIEWER: Why is that? Why do you feel that they got their money's worth?

MR. LEFKOWITZ: They probably felt that they got their money's worth because the State did not intervene in support CSEA's case even though it was as much the loser, as CSEA. It was a breakup of the unit recognized by the Governor. My judgment is that the State did not intervene less because of the strike and more because of the advice that Rockefeller was getting from Vic Borela that PERB's decision against the State was good for him.

"It's probably the best thing that could happen to you because you want the law to succeed and if you want it to succeed you have

to let PERB be independent." It created a moment of great unhappiness for the Governor's secretary, Marshall, who was very strongly in favor of the single unit and had fashioned that original single unit recognition. He had been, in effect, negotiating with CSEA before the Taylor Law and was greatly discomforted by the leadership of AFSCME Council 50.

So I have some doubts that the strike really was a significant factor in what happened, but the strike was there and AFSCME was punished. AFSCME may have calculated that it was worth the punishment but it became more aware of the reality of the prospect of penalties for striking.

INTERVIEWER: The penalties, we're talking the two-days-for-one-pay?

MR. LEFKOWITZ: No, no, not the two-day-for-one-pay penalty. That came later. These were the penalties of the dues checkoff suspension which particularly hurt large unions

such as AFSCME, CSEA, UFT. This was a very expensive penalty because it was very difficult to collect dues without checkoff, so it was a penalty that hit the union in the pocketbook.

INTERVIEWER: And aside from the AFSCME strikes at the health care facilities dealing with children, were there any other memorable early strikes?

MR. LEFKOWITZ: Yes. The first strike took place the week that the Taylor Law became effective. It was a strike in New York City Board of Education. In the past there had been other strikes by the teachers in New York City but there were never any penalties imposed, and so UFT was persuaded that they could manage to avoid them this time, too.

The New York City Board of Education did not bring charges against the union but the Taylor Law called for PERB to bring charges on its own if the employer did not and PERB, being committed to what it could do to sustain the law and being challenged when it was three days old brought those charges and UFT,

New York City branch of AFT, was penalized from six months to a year with a loss of dues checkoff and that was a major significant point in making the law successful.

There are a couple of other strikes of interest. One of the most interesting ones was a strike of teachers in Lakeland School District in the Peekskill area and a simultaneous strike somewhere in Rockland County, maybe Ramapo, I'm not sure.

They were long strikes, two, three weeks, and the teachers were staying out but they were without money, and so the Ramapo teachers became strike-breakers in Lakeland and the teachers from Lakeland became strike-breakers in Ramapo (laughter) diminishing the effectiveness of the strike. The head of AFT and UFT, Schenker, was apoplectic.

The only other strike that I'll mention now was the strike in New York City, it was a strike of AFSCME and sanitation workers and the City had never imposed penalties.

INTERVIEWER: When was this, approximately? Was this the mid-seventies?

MR. LEFKOWITZ: Probably the early seventies because the law had been amended to include the two-for-one penalty. That amendment took place after the second UFT strike which was -- and went into effect in, I think, 1969, but this strike was memorable because when the strike took place, Rockefeller did impose the Taylor Law penalty but despite being very much encouraged to take more sever action to break the unions that struck, he refused to do that. He was running against -- I think it was Nixon, but it could have been Goldwater, at the time for the Republican nomination.

And the Republican National primary voters in the last primary, California, voted heavily against him because they felt he was not sticking to his guns. It was probably Goldwater because he lost the primary,in California and the conventional wisdom was that he lost it because of his

separation and divorce from his first wife. But, his own take on it was he lost it because he had not come down hard enough on the strikers.

INTERVIEWER: Okay.

MR. LEFKOWITZ: Yes, those are some of the memorable strikes because of their impact either on the Taylor Law or their general impact on society.

INTERVIEWER: This -- now what was the Easter strike? Was that before the Taylor Law? Is that one of the things that led to it?

MR. LEFKOWITZ: What was that?

INTERVIEWER: Where CSEA struck. Do you remember CSEA members ever actually going out on strike?

MR. LEFKOWITZ: I remember CSEA members going on strike several times against local governments.

INTERVIEWER: Okay.

MR. LEFKOWITZ: There were a couple of minor State strikes in given

locations which were interesting because PERB then had to bring charges against CSEA, and did so. But when it imposed a penalty, it limited them to the facilities in which the striking employees working in the negotiating units that struck. The question was would PERB impose a penalty on CSEA statewide.

INTERVIEWER: Right.

MR. LEFKOWITZ: But I don't recall anything called an Easter strike.

INTERVIEWER: All right. Okay. Just two more to go. For a long time CSEA and other unions continued to make a legislative issue out of Taylor Law reform, particularly the strike penalties.

Why do you think the issue of Taylor Law reform has actually gone away over the years?

MR. LEFKOWITZ: I think one, they didn't see any likelihood of getting the strike legalized and it became a decreasingly important political issue for organizing purposes.

It remained an issue for organizing purposes from the organizations that were trying to decertify CSEA, to try and show

the enemies as -- as this terrible employees, but it was not a terribly realistic scenario. Even AFSCME and UFt, which were the leaders of this position, backed down.

It became obvious that if you get the strike, it doesn't mean anything unless you can win a strike or you can credibly threaten a successful strike. And in the private sector, with the right to strike, organizing was diminishing, which by this time the public sector in New York State was 90 percent organized and the unions could organize more if they were willing to take the tiny remaining government's employees and expend the money of representing them.

The political weapon was sufficiently effective, so much more effective than the right to strike that it became gradually a non-issue.

INTERVIEWER: Okay. That's what we thought you were gonna say.

MR. LEFKOWITZ: One thing more on that aspect. AFSCME and the NEA combined together into an organization to lobby in Washington for a bill to include

state and municipal local governments under the Wagner Act, the National Labor Relations Act, with the right to strike, et cetera.

I was asked to write an article about that in connection with my role at that time with PERB which was a member of ALMA, the Association of Labor Mediation Agencies, throughout the country, and I pointed out that if you come under the Wagner Act, then everything is negotiable.

There is a very broad field of mandatory subjects of negotiation; health insurance, tenure and job protection, things like that. And while you have the right to strike, local legislation is subordinate to negotiation. That means that an employer, say New York State, or a school district, can put on the a demand to eliminate tenure. The union can say, oh, no, we've got tenure in the statute and we're not gonna give it up. But the employer than can retor: "That's our last offer. We've gone to impasse and can impose our last offer. If you don't like it, you can strike. But the tenure law

is pre-empted by the National Labor Relations Act. And if you lose the strike, you lose the strike."

INTERVIEWER: Yeah.

MR. LEFKOWITZ: The unions recognized that was a real possibility and that was the end of the effort to get coverage by the National Labor Relations Act.

INTERVIEWER: Interesting. Last question.

As you said as you look back on the Taylor Law from nearly 40 years of experience, what do you think are its strengths and weaknesses and what do you think might be appropriate reform to carry us forward?

MR. LEFKOWITZ: There are certain things that didn't work out as I expected, but they weren't either better or worse. I expected

some centralization of government in order to get larger units, but the Democratic commitment to more smaller local governments overcame whatever advantage the employers might have had with consolidation, so governments did not consolidate. I don't think either structure would be particulary more beneficial to society.

My one concern is that PERB has been very much politicized in the last four or five years. You can read the decisions and find a strong pro-management inclination now that they didn't have through the prior years.

I don't know whether that's the policy of Pataki and he's deliberatly appointed people with that in mind or whether he's just appointed people who have that as their own personal vision.

But I should point out that when PERB comes down with a pro-management decision it sticks with that decision even when the unions use it to their benefit so that it turns out to have a lot of beneficial ramifications for unions. PERB doesn't pick and choose in its application to a new theory and apply it in one case because it helps management but not in anothere where it would help unions.

They then apply it across the board, but the innovations take place almost always in pro-management. situations. Not always, but usually, they are intitiated as pro-management.

Also I see a significant failing in PERB now in that they jump to conclusions on facts without reading the record very carefully or reading their past decisions, and they come down with decisions that do not make sense.

This is not pro-union or pro-management. The impact of this is that there are fewer and fewer cases going to PERB. Unions are unhappy bringing cases to PERB now and try to avoid it, and for that matter so does management, because there's an unpredictability because of the way PERB reads records and reads past decisions, which goes beyond ideology.

For example, in a recent case PERB found that a charge was not timely and said that it lacks jurisdiction because it wasn't timely. Now, this is a technical point but an untimely charge does not deprive PERB of jurisdiction.

It's an affirmative defense. If the respondent pleads it PERB should dismiss the case because it's not timely. But, if PERB lacks jurisdiction it can be thrown out on PERB's own motion this confusion,if it's continued in the next decision, can lead to significant problems regardless of who files the charge, but it's the result of carelessness, not ideology.

INTERVIEWER: Now you -- you argue CSEA cases before PERB?

MR. LEFKOWITZ: I do.

INTERVIEWER: Is it ever personally frustrating to you to see the way it's become these days as.

MR. LEFKOWITZ: I do feel personal frustration.

INTERVIEWER: I was just asking, is it ever personally frustrating for you, having been there at the beginning, to see what it's like to deal with PERB today?

MR. LEFKOWITZ: Definitely. Well, I've invested a lot in PERB and it's frustrating

to me sometimes when I argue a case and get a decision that doesn't address the issues squarley because PERB has a preset idea of its own, but it's also frustrating to me as a follower of PERB, wholly apart from my role as a CSEA representative. I read all the PERB decisions and I get frustrated when I see a decision that I think is poorly drafted.

INTERVIEWER: Is there room for any further reform of the Taylor Law or --

MR. LEFKOWITZ: There can always be issues of reform. I think that the major concern is that, from the union point of view, and even from management's, is to see to it that we get a Board with competence and is not ideololical. That kind of lobbying effort, I think, will pay dividends in a better Taylor Law, more than any specific reform as to the content of the law.

INTERVIEWER: Gotcha. Thank you.

INTERVIEWER: Thanks a lot.

(Conclusion of interview of Jerome Lefkowitz.)