

Cuomo's Tier 6 Hustle: Short Ration for Heroes

By RICHARD STEIER | Posted: Monday, March 26, 2012 3:00 pm

On the long list of pejorative phrases that union leaders have uttered about Governor Cuomo during his 15 months in office, you're unlikely to find "politically stupid."

Yet midway through what one union official last week called "A political Mr. Potato Head" of a Tier 6 pension bill, there looms a provision that, in a time of war, whacks military veterans harder than any other employee group when it comes to a change in their contributions.

Those persons already working in state or municipal government who interrupt that service to perform military duty are permitted, once they return to their regular jobs, to "buy back" pension credit for the missed time at the rate of 3 percent of the salary they had been making plus 5-percent interest.

The Tier 6 bill, which takes effect April 1, doubles the salary hit, to 6 percent. While interest will no longer be charged, affected employees will not necessarily be getting a break on that front, since the higher contribution rate will be based not on what they would have been making when they departed for military service but what their salary was a year before they decided to buy back the pension credit. Those not certain they're going to remain in government long enough to qualify for a pension sometimes don't make such buy-backs until years later, meaning they could get clipped for a good deal more money than the waived interest charge would entail.

No Way to Run for President

It's never smart to gouge military vets, and when you're a guy who hopes his big pension breakthrough is just what he needs to seal the deal for his case to become the nation's Commander-in-Chief, it smacks of big-time idiocy.

Perhaps that's why Mr. Cuomo's spokesman, Josh Vlasto, when asked in an e-mail what the rationale was for socking vets at a contribution rate that is otherwise being applied only to those employees making more than \$100,000, initially responded, "I don't think this is accurate."

Pressed further, he asked whether I was "talking just about cops or the entire system?" Told that the provision applied to future military veterans in all jobs, he offered no further response. The suspicion is that someone on the second floor of the Capitol Building in Albany was doing some variation on "homina, homina, homina."

"There's a lot of different clerical errors," was the supposition offered by Peter Abbate, the chairman of the Assembly's Committee on Government Employees. "That's what happens when you rush and you do things too quickly." He said it was likely that this portion of the bill would be amended so that the charge for veterans would be based on "whatever salary bracket they're in," meaning many

would likely wind up back at the 3-percent level that is the basic pension contribution rate for those making up to \$45,000, or some intermediate step below the 6-percent level.

A call for comment to Terrance C. Holliday, who heads Mayor Bloomberg's Office of Veterans Affairs, was referred to mayoral spokeswoman Evelyn Erskine, who declined to respond on the issue.

Uniformed Fire Officers Association President Al Hagan, told of the doubling of the buy-back amount, was among the union officials who were hearing of it for the first time from a reporter, who had been contacted about it by Norman Rosenfeld, a former Deputy Director of the New York City Employees Retirement System who is now a pension consultant for Transport Workers Union Local 100.

"We're awaiting analysis of the bill," Mr. Hagan said, "but if that's true, it is disappointing that they would leave the people fighting for our country in that way. That is wrong."

'A Political Win Without Much Thinking'

"The more you read this bill, the worse it gets," said State Sen. Diane Savino. "It is obvious that to get a political win, not a whole lot of thought went into drafting this. Some fixes have to be made, but I'm not sure how." Referring to the committee she used to chair when Democrats briefly held the majority in the Senate, she said, "It'll be like a full-employment project for the Civil Service and Pensions Committee staff."

The hit on the vets was merely the most-egregious inequity. There were others just as peculiar.

For nearly three years, or ever since then-Gov. David Paterson vetoed an extender of Tier 2 legislation for cops and firefighters that his predecessors had routinely approved every two years since the early 1980s, the police and fire unions have been striving to regain benefits that disappeared for their new members, including the three-quarters, tax-free disability pension; the previous death-benefit rights, and the right to an automatic disability pension in cases where they were forced to retire due to illnesses connected to the heart and lungs, and diseases including cancer, hepatitis, AIDS and tuberculosis, that were presumed to have resulted from their job duties. They have also lobbied fervently for restoration of the right for those members under Tier 3 to retire after 20 years on full pension, rather than the 22-year mandate that it has carried.

Mr. Cuomo's bill did not address most of those issues, although it did saddle future correction officers and sanitation workers with the same 22-year pension provision notwithstanding their unions having agreed a couple of decades ago to higher contribution rates than even those mandated under Tier 6 in return for securing the 20-year pension. It keeps the Tier 3 disability pension, equaling 50 percent of final average salary, on the same terms that apply for those who work long enough to retire at full pension.

That provision would seem inadequate to the police and fire unions even if their future members were being compared only to colleagues already on the job who are entitled to a tax-free disability pension worth 75 percent of final average salary. What is particularly galling to them is that members of the Emergency Medical Service retained the right to the “three-quarters” disability pension by going unmentioned in the Tier 6 language governing the benefit.

Lobbyist’s Mixed Success

This created a ticklish situation for Bob Ungar, who is the Albany lobbyist for both the EMS unions and the Uniformed Firefighters Association. He made the point that the EMS unions have been making contributions to the pension system of 9.25 percent of salary until now in return for the full disability pension and the right to retire at full pension after 25 years, and that they figured to have to pay at least an additional 1 percent of salary under the new setup.

“We’re very grateful to maintain the benefit,” he said.

Asked about the discussions with the Cuomo administration about recouping the full disability benefit and other items for firefighters, Mr. Ungar pointed out that he only lobbies for the UFA and said any questions should be directed to its spokesman, Tom Butler. Mr. Butler had previously said questions about what had happened in Albany were best addressed by Mr. Ungar.

Mr. Hagan was less reticent. Echoing points previously made by his UFA counterpart, Steve Cassidy, he said, “Because of the nature of the work firefighters and police officers perform every day, this inferior disability piece has the potential to create a sense of worry we never had before. We have always thrown ourselves at the danger knowing if we were injured or killed, our families would be taken care of. I’m not sure that’s still there.”

Cited Burned Fireman

He and Mr. Cassidy have repeatedly invoked the case of Firefighter Rob Wiedmann, who after being badly burned fighting a Crown Heights fire in December, spent 95 days in the hospital until his release March 23. Had he come on the job in the last couple of years, he would have been in the position of getting the much-reduced disability benefit that took effect with the phasing out of Tier 2 rights.

Detectives Endowment Association President Mike Palladino has similar concerns, and he also pointed to the inequity of EMS workers having the full disability pension while new cops do not. “I don’t think they should be brought down to our level; we should be brought up to their level,” he said.

Another problem, he continued, is that under both Tier 3 and Tier 6, there is a Social Security offset that reduces the disability pension based on what is received in Social Security benefits; no offset exists under Tier 2.

Assemblyman Abbate said that even if EMS workers retained the full disability benefit simply by not being included among those workers who experienced a change, “they get the best deal out of everyone” of the city’s emergency-service workers. “It opens the door for everyone else to come back in looking for the same thing. I will predict before we leave [Albany] in June we will have a bill from the Police Department saying ‘since you kept it for EMS, we think we oughtta get this back.’”

‘A Real Mess’ Ahead

So many unions were likely to bang the drum for equal treatment in one respect or another, he continued, that Mr. Cuomo might find it difficult to just focus on one or two complaints over the remainder of the legislative session.

“Does he really want to bring back Tier 6 to add things or take things away from people?” Mr. Abbate asked.

“It’s gonna be a real mess.”

But some labor leaders are unlikely to be patient about fixing what they consider the injustices either created or left unaddressed by the bill. Foremost among them may be Patrolmen’s Benevolent Association President Pat Lynch.

Mr. Cassidy has made no secret about his displeasure with Tier 3 and his desire to abolish the worst of its provisions, but he is not yet facing serious pressure from within his union on the issue. That is because there are no Firefighters covered yet under either Tier 3 or Tier 6, since Fire Department hiring has been on hold since 2008 due to the court case in which U.S. District Judge Nicholas Garaufis found the FDNY and the city had discriminated against minority candidates on the last three tests for the position. The city is appealing that ruling, and although it is now conducting a new exam for the job, it is likely to be at least another year before the first Tier 6 Firefighters come on the job with pension-related grievances for the UFA leader to address.

PBA Leader Feeling Urgency

Mr. Lynch, on the other hand, is already in a pressure cooker: it is estimated that 3,000 of his members are covered by Tier 3 and expecting him to do something about it. Since his Tier 3/6 membership will only grow with time, the next PBA election in 2015 is unlikely to turn out well for him unless he can get them back the key pension benefits that were lost under the Paterson veto in June 2009.

One provision of the new law, revealed last week by Daily News Albany columnist Bill Hammond, permits both the Governor and the Mayor to grant pension improvements without the consent of their respective legislative bodies—provided the additional costs are paid for by the affected workers, similar to what exists for the EMS unions and previously existed for correction officers and

sanitation workers. The notable exceptions for this enhancement of executive discretion by eliminating the middle man concern city cops and firefighters.

As Mr. Hammond noted, this provision could produce work-related improvements, or it could be bartered for political support. Inasmuch as the numerous flaws and inequities under Tier 6 strongly suggest Mr. Cuomo sacrificed good government on the altar of a political launch from the idol-worshipping tabloid editorial pages and business groups, there are others besides Mr. Hammond who are deeply skeptical of this maneuver.

Temptation Too Great

“You don’t want politicians who are looking to cultivate support from certain unions being allowed on their own to improve benefits,” Senator Savino remarked.

One longtime union official, who argued that several key labor leaders allowed themselves to be hoodwinked by the Governor into believing he would protect their interests if they broke away from the rest of the public-employee unions and wound up idling the lobbying campaign against Tier 6 until it was too late to rev it up again, said that this experience and the sloppy way in which the legislation was slapped together should prompt the unions to seek a bill that would completely remove pensions from the legislative process by making them a mandatory subject of bargaining.

Ms. Savino, a former vice president of a District Council 37 local, laughed when this was mentioned, saying that she had raised that issue a year ago only to have it shot down by union leaders.

“The response I got from the [State] AFL-CIO was, ‘don’t even think about it,’” she said. “But that would be pension reform. What we got last week was nonsense.”