

Fleshed-Out Tier 6 Is Worse Than Outline, Labor Leaders Say

By MARK TOOR | THE CHIEF-LEADER | Monday, February 6, 2012

Uniformed union leaders said last week that as bothered as they had been by Governor Cuomo's Tier 6 pension proposal for future workers when he spoke of it in broad terms three weeks ago, a close examination of the plan in his proposed budget makes it look even more repugnant.

The proposal would among other drastic changes as of April 1 strip future cops and firefighters of disability-retirement coverage if they opted for the 401(k) option rather than the traditional defined-benefit plan. Other benefit reductions affecting them would also apply to the rest of the city and state workforces, including the exclusion of overtime in calculating their pension allowance. State workers would no longer be allowed to include other earnings ranging from unused sick and vacation leave and lump-sum payments that are pensionable for those already on the job.

Pay More If Market Slumps

While it had previously been reported that employee contributions to the pension systems under Tier 6 would increase from the standard 3-percent contribution to 4 to 6 percent based on salary level, the budget bill also stipulates that in cases in which pension earnings or other factors bring the employer contribution above seven percent, employees will be required to pay some of the increase. For future city workers, some discretion over how much of that burden they will bear will be determined by the city Budget Director, subject to the approval of his or her state counterpart. Conversely, in instances in which the annual employer contribution falls below 4 percent, there will be a reduction in employer contributions.

Stretch for Final Average Salary

Compounding the potential harm done to employee pension allowances is that

the final average salary would be based on a span of five consecutive years of an employee's best earnings, rather than the three-year average currently in effect. And the bill would exclude from that calculation any amount of wages in one year that exceeded the average for the other four by more than 8 percent. That would limit the pension value of a promotion that included a significant wage increase toward the end of an employee's career.

There is nothing in the bill's language that exempts cops and firefighters—who have long been afforded the right to a full pension after 20 years' service regardless of their age at retirement—from the provision that would make 65 the minimum retirement age for new state and city employees.

Uniformed Firefighters Association President Steve Cassidy said, "The public certainly doesn't want 65-year-old firemen to be pulling up at the scene of a fire."

DEA: Clear Up Ambiguities

Detectives Endowment association President Michael J. Palladino, who met Jan. 31 with Cuomo administration officials and Senate Majority Leader Dean Skelos—who also favors the proposal—said that the Governor's staff told him "Tier 6 would not change any of the thresholds for police officers in the city [now] under Tier 3 and for the state under Tier 5. But there has to be clarification of some of the language." He is also representing the interests of cops outside the city as president of the New York State Association of PBAs.

A spokesman for the Governor, Josh Vlasto, did not respond to an e-mail asking about the issue.

The 777-page budget bill devotes 91 pages to the pension proposal. That level of detail did not necessarily mean it was well-designed, union officials said.

"The thing has not been well-thought-out," said Lou Matarazzo, the DEA's Albany lobbyist. Among its ambiguities, he said, was whether a home-rule message was required from the City Council because several portions of it apply uniquely to the city. Complicating matters further is that pension provisions vary widely between the state and city workforces: where those hired by the state beginning in 2010 are under Tier 5, city cops and firefighters are under one version of Tier 3, other uniformed workers including correction officers are under another one, and most of the civilian workforce belongs to Tier 4. Newer members of the United Federation of Teachers belong to a variation of Tier 5 negotiated with Mayor Bloomberg three years ago that is significantly better for employees than the state version.

'Trying to Steamroll Bill'

Mr. Matarazzo and Mr. Palladino noted that previous creations of city pension tiers beginning with Tier 2 in 1973 occurred after special commissions had made recommendations, and the resulting legislation was considered separate from the state budget process.

Mr. Palladino said it was clear why Governor Cuomo had looked to break with tradition by not asking an independent panel to review the state's needs: he is banking on his own popularity and the political heat some legislators would face while running for re-election if they voted against his budget because they objected to the pension portion of it.

"That's kind of like trying to steamroll it into law," he said.

Adding to his apprehensions that this was a political power play was that Cuomo-administration officials were unable to give him an answer when he asked whether the projected savings of

\$113 billion over 30 years were based on a comparison to the pre-Tier 5 costs for state workers or on the present pension conditions. "These are astronomical savings," Mr. Palladino said, "but without verification I don't have a lot of confidence in these numbers."

He and Mr. Cassidy are among the union officials who have pointed out that by far the largest portion of any savings that would result wouldn't be realized for at least 20 years. Since the short-term savings for the city and state are minimal, they both argued that politics rather than budgetary needs are what has led the Governor to seek an unorthodox, accelerated legislative process.

'Know People Are Living Longer'

"We recognize that people are living longer and their concerns about what impact that could have are legitimate," Mr. Cassidy said. "If [future workers] have to pay a little bit more, I'm on board for those discussions."

Mr. Palladino argued that the national economic slump and the way in which poor stock-market returns over several years had driven up pension costs have helped create the optimal political climate for scaling back pension rights, one that could change in the near future as the economy rebounds and improved investment earnings curtail the trend toward steadily increased employer contributions.

"Legislators not only here but across the country are trying to take advantage of a perfect storm," he said. "The window is closing a little bit and they're feeling, 'Let's push this through before the storm moves out to sea.' But especially since we're not going to realize any immediate savings, let's slow down a little bit and commission a study."

Mr. Cassidy said that for firefighters, the existing pension system (because a judge has frozen FDNY hiring, all active Firefighters are part of Tier 2, since no new Firefighters have been appointed since Tier 3 took effect for city cops and firefighters in July 2009) is sufficiently generous that it alleviates his members' concerns about severe financial hardship

for them and their families if they suffer a disabling or fatal injury.

Not Happy With Tier 3

The Governor's proposal would not alter the Tier 3 disability or death benefits, but Mr. Cassidy considers those inadequate, with the accident-disability pension being reduced from 75 percent of salary to 50 percent as the biggest problem for future hires and the death-benefit, while more difficult to quantify because of a mix of factors used under Tier 3, also expected to be inferior. And the lack of any disability coverage for those who opt instead for the 401(k) feature is particularly outrageous, he said.

Referring to a Firefighter who recently suffered severe burns battling a blaze in the Crown Heights section of Brooklyn, he said, "The guy who went out the window on fire from Rescue 2, does any New Yorker really believe that any firefighter doesn't deserve to have a disability benefit or a death benefit? You had a police officer shot and killed in the 75th Precinct a month ago, you had another police officer shot and seriously wounded just the other day. You need a pension that allows us to do our job without asking, 'What if?'"

It might seem obvious that cops and firefighters because of the dangerous nature of their jobs would shun the 401(k) plan because of the lack of a disability benefit. But some union officials and legislators contend that Mr. Cuomo has designed the pension proposal in a way that will prod even people in those jobs to choose the 401(k) because contributions are voluntary and the employer would put in at least 4 percent and as much as 7 percent. In contrast, those choosing the traditional pension would have to contribute at least 4 percent of their salaries—which would be difficult for some of them—and receive a lesser match from employers.

'Do They Want Us to Gamble?'

"Do they want the police officers or firefighters to gamble on the stock market?" Mr. Matarazzo asked.

State Sen. Diane Savino, the former head of the Senate's Committee on Civil

Service and Pensions, predicted that some first-responders would take that gamble notwithstanding the financial risks if they become disabled. "I'm not sure you wouldn't have some 22-year-old cop who says, 'Well, I'm pretty smart, my friend's a financial planner, so I'm going with a 401(k),'"

she remarked.

Union officials questioned the rationale offered in favor of the 401(k): that its portability should employees quit public service makes it a desirable plan for those expecting to leave for the private sector at some point. They noted that the civil service was intended to encourage employees to spend their careers in government, and a decent pension was a prime inducement for them to do so. They also pointed out that under the Governor's bill, someone who chose the 401(k) option at the start of his or her service and then decided to make a career in government would not have the option of converting to the regular defined-benefit pension.

'Destabilize the Pension System'

Ms. Savino, whose district covering a generous chunk of Staten Island and a slice of western Brooklyn includes a large contingent of government employees, predicted the 401(k) plan would "completely destabilize the pension system," in part because the Tier 6 defined-pension benefit is so much worse than what now exists. "You have to work longer, you have to contribute more and you get less of a benefit," she said. "And if there are fewer people going into the [defined-benefit] system, who is going to fund the pensions of the employees who are now working?"

But while Mr. Cuomo is pushing the bill hard, union officials said they believe they can convince legislators that as designed it is poisonous for future workers and bad for the quality of the workforce, while offering minimal short-term benefit to the city or state.

"The way it's written does not serve the public well," Mr. Cassidy contended.

"I think it's up to the unions now to make our arguments and our stand against it," Mr. Palladino said.