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Restrictions on Interest Arbitration in New York… Will the Legislative Proposals Advanced Ease the Financial Difficulties Facing our State's Governmental Sub-divisions?

Summary of Observations

- The proposed changes in New York' interest arbitration law, if passed, would constitute the most sweeping restrictions ever imposed upon public sector collective bargaining since the Taylor Law was passed in 1968;
- These legislative proposals which would restrict interest arbitration panels, in cases involving "distressed" governmental units from awarding wages increases of no more than 2% per annum, reduced further, in part, by that governmental unit's health care cost increases, will likely include a majority of the communities outside of New York City;
- The changes proposed by the Cuomo Administration have no support in the research conducted during the last 40 years which for the most part concludes that collectively bargained and interest arbitration awarded wage increases are virtually similar;
- In the last 3 plus years in New York State, police and fire have used interest arbitration to solve their bargaining problems only 33 times. There are more than 600 police and fire local unions in New York, and such usage speaks its own modest numbers. In the research we conducted reviewing interest arbitration decisions administered by and published on the New York State Public Employment Relations Board web site, less than a quarter of all interest arbitration awards we researched since 2010 granted wage increases of greater than 3% per year, and more than 50% of the awards were for 3% wage increases per year or less. Only one award averaged a return of more than 4% for each year.
- The more accurate explanation for high police and fire earnings in New York lay in the decisions made by agencies such as our state police and by our municipalities who are financially unable to add adequate numbers of police and fire to full time employment and instead rely upon hefty overtime payments that get distributed to smaller groups of emergency service workers that drive up their earnings;
- That this proposed curtailment of police and fire unions' 40 year right to collectively bargain will not provide any more mandate relief to financially strapped communities outside of New York City, any more than this Administration's Tier VI pension "relief" legislation or its highly criticized proposal this year to "smooth" or ease the amount of pension payments required of governmental entities outside of New York City;

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Restrictions on Interest Arbitration[1] in New York… Will the Legislative Proposals Advanced Ease the Financial Difficulties Facing our State's Governmental Sub-divisions?

Lee H. Adler & Ariel Kaplan[2]

Introduction

New York's recovery from the most recent economic downturn has been very slow, especially outside of New York City. There are some clear signs of an improving economy, but there remains a long way to go. Although the Governor and Legislature have delivered on-time state budgets the last two years, the resultant policies have not solved the economic difficulties imposed upon our local governments. These political entities continue to voice their shared concerns that state imposed economic mandates, such as Medicaid and increased pension costs, strangle their ability to grow let alone balance their budgets. Raising taxes to meet these exigencies has been sharply curtailed by the Legislature's 2011 passage of the 2% Property Tax Cap, and passage of Tier V and Tier VI pension "reform" has not lessened these governmental entities' distress. As a result, many government taxing communities and school districts from Erie to Westchester County are scrambling to maintain their fiscal solvency.

The state government, meanwhile, through deep K-12 and higher education cuts, tight spending restrictions, and attrition in employment numbers, has maintained a balanced budget. The state's ability to do so is in significant part accomplished by the multi-year reductions and/or freezing of local aid payments and the long-standing shift of significant portions of the country's highest Medicaid costs (on our counties) on New York's local governments. While the governor continues to promise "mandate relief" and economic

[1] Interest arbitration is a part of the Taylor Law mandated dispute resolution process wherein a public employer and public employee union, upon reaching impasse, select an impartial arbitrator who has the authority to mandatorily impose, subject to specific statutory criteria, a two year solution to those terms and conditions of public employment that the parties were unable to resolve through their negotiations. With a few exceptions, only uniformed public employees (and all public employees in New York City save for teachers) may avail themselves of this process.

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growth strategies to New York's struggling village, town, city, county, and school district entities, our local governments have experienced little of either[3].
Meanwhile, both local and state government employees have had their economic status and security shaken. Cuts in public education resulting from reductions in State Aid and the impact of the Property Tax Cap have resulted in thousands of layoffs of public school teachers and other school district employees. More than 75,000 state workers are entering their third consecutive year without a raise, with many of them actually experiencing an inflation adjusted decrease in annual salary or wages. New emergency service providers in police and fire throughout New York, as a result of different pieces (Tiers V and VI) of pension legislation passed in 2011 and 2012, will now be offered a smaller pension than their senior colleagues and mandatorily higher pension contributions, making this critical type of public service less attractive.

While the Governor and the Legislature have collaborated in the ways described, the Comptroller of New York has mandated extraordinary pension contribution increases directed to these governmental entities. The pension trustees of the New York State Teachers Retirement System (NYSTRS) have done the same to hundreds of our school districts. The explanation for these increases has mostly to do with the heavy losses the various pension funds suffered in the Wall Street-based fiscal crisis of 2007-08 and its continuing aftermath. Regardless of how it might be explained, the same governmental subdivisions described earlier have had to find a way to pay for these higher pension costs from shrinking or stagnant revenues which now coexist with the 2% curb on their ability to tax. This unmistakable intra-governmental tension requires some kind of response from the state, and that brings us to the Governor's 2013 Budget Message.

The governor's budget proposes at least two forms of assistance to local governments. One, a "smoothing of pension costs," allow local government entities (including school districts) facing skyrocketing pension contribution cost increases to "smooth" or level off the percentage of increases to a smaller, manageable amount. They accomplish this by borrowing the difference between the Comptroller's/NYSTRS' financial demand and the "smoothing statute's" percentage of required payment from the very same pension fund that they are paying into for their employees. Although seemingly a good short-term solution, the proposal's critics[4] worry that the pension funds solvency may be harmed. These critics believe that "smoothing" could cause short-term harm to the solvency of the pension system and later, when the "current" rates come down, some governments will end up paying higher premiums than they should.

The second Administration proposal, the subject of this paper, is to alter New York State's 38 year old interest arbitration provisions in our Taylor Law. This process is

[3] New York has capped the amount of Medicaid increases payable by local governments, starting in 2012, but that has only lessened (and eventually eliminated) the increase in growth of payments, not the actual payments owed. It has also launched a serious reform effort with innovative policy suggestions directed at curbing and even decreasing Medicaid expenditures in New York. Whether these efforts will be successful and provide relief to our local governmental entities remains to be seen.

[4] There are both Conservative (EJ McMahon, Empire Center) and Center (Syracuse's mayor and the Comptroller himself have expressed concern about this legislative idea) critics of this proposal, along with numerous union officials.

triggered when police or fire unions outside of New York City[5] reach impasse in bargaining with their "distressed" governmental employers. The changes proposed restrict the ability of statutory interest arbitration panels to award wage increases of greater than 2% per annum when bargaining with so-called "distressed communities"[6]. Further, any such awarded wage increase is further reduced by nearly all of the health care cost increases experienced by the "distressed" governmental entities. Informal estimates by police and fire officials indicate that a majority of governmental entities outside of New York City that negotiate police and fire contracts are "distressed" or can be so construed by artful budgeting.

The mechanics of the restrictive provisions are straightforward. As soon as the "distressed" public employer and police or fire unit fail to agree on a wage increase that is not more than 2% after nearly all health care cost increases are factored in, the governmental unit can declare impasse, unilaterally halt bargaining, jointly pick an interest arbitration panel, and let that panel impose a new wage agreement that fits the restrictions created by the new statute. Not only would the 38 year history of the breadth of interest arbitration be curtailed, but meaningful collective bargaining would be effectively halted in these communities. No "distressed" community would have any incentive to agree with their police or fire units in view of the attractiveness afforded the "new interest arbitration" schematic.

The key question in all of this for New York's citizens is whether these legislative changes would actually benefit our "distressed communities." What is wrong with the present interest arbitration procedure in New York that requires these changes? In order to answer this question, we need to examine what has taken place in interest arbitration since the Taylor Law was amended in 1974 instituting this dispute resolution procedure.

The Last Four Decades of Interest Arbitration Outcomes Do Not Differ From Collectively Bargained Over Results

There is considerable literature that explains the pros and cons of interest arbitration. Conservative critics have noted that salary increases for the police and fire units that are able to invoke interest arbitration have increased more quickly throughout the state than other public employees[7] who may not utilize interest arbitration. Economists have sharp disagreements about the figures used in **Taylor Made,** but, regardless, those who suggest that police and fire are receiving higher earnings than other public-sector workers fail to grasp or consider how many public employers have substantially reduced head counts in police and fire departments. This has resulted in those departments that have the same or even a higher number of emergency calls (nearly all of our fire and police departments)

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[5] Apparently, New York City fire and police impasse resolutions are not restricted in the governor's proposal.

[6] Although the criteria defining "distressed communities" may make sense in the abstract, interviews conducted prior to writing this briefing revealed that the criteria is such that with slight manipulation of budgetary figures a worried village or city can become a "distressed" one and thus avoid by statute its responsibilities to provide its police and fire a fair and adequate wage increase.

[7] See, for example, **Taylor Made**, 2004 Empire Center, http://www.empirecenter.org/Special-Reports/2007/10/TaylorMadeReport.cfm, pages 9-13, pdf version

compensating a smaller number of workers with higher earnings (not wages) by overtime payments.

Proponents of interest arbitration completed a review of interest arbitration outcomes as part of the 40 year anniversary of the Taylor Law in 2008.[8] The authors, Professor Thomas Kochan, Sloan School of Management at MIT, and Cornell ILR Professor David Lipsky, in a writing entitled **The Long Haul Effects of Interest Arbitration, The Case of New York's Taylor Law**, collected and carefully compared[9] collectively negotiated outcomes with those accomplished through interest arbitration. Relying on a considerably more in-depth database than the 2004 Empire Center study, the authors also supplemented their data with interviews of fire and police unions and officials of the New York State Conference of Mayors, the New York City Office of Labor Relations, PERB, and other municipalities. The authors convincingly document that interest arbitration outcomes through at least 2007 are consistent with what researchers have discovered over the last four decades.

Their two key findings were that parties who reached impasse were approximately 15% more likely to resort to interest arbitration than during earlier periods of interest arbitration, but that mediated results between the parties were still possible after choosing interest arbitration. They most importantly found that:

"there were no significant effects of the change to interest arbitration on wages and no differences in the rates of wage increases granted by arbitrators compared to those negotiated voluntarily by the parties."[10]

Review of all published[11] New York state interest arbitration decisions since 2010[12] confirms what these researchers found over the preceding forty years. Bringing the Kochan report up to date, at least with reference to New York, we found that interest arbitration is still resorted to sparingly. Fire unions' have used this process 5 times and police, who have five times as many local unions as do the fire fighters, have used the process 28 times since 2010.

The raises awarded in the past three years have been quite modest. A detailed chart follows this paragraph, but in sum we note that even when wage increases exceeded 3%, in only one case over these years has that figure been as high as 5%. Most of the wage increases awarded have fallen in the range of 2-3%, with 2011 being an exception. Specifically, the **percentages below the category "3% wage increases and above"** include, for 2010, 63% of all awards; for 2011, 46% of all awards; for 2012, 63% of all awards; and for the handful of cases so far in 2013, 50% are below the "3% and above"

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[8] Available at http://digitalcommons.ilr.cornell.edu/ilrreview/vol63/iss4/1;

[9] Professor Kochan of MIT and Professor Lipsky had more than a year of time to undertake this research with scores of research helpers, neither of which was available in the preparation of this Briefing Paper.

[10] Kochan, at page 569

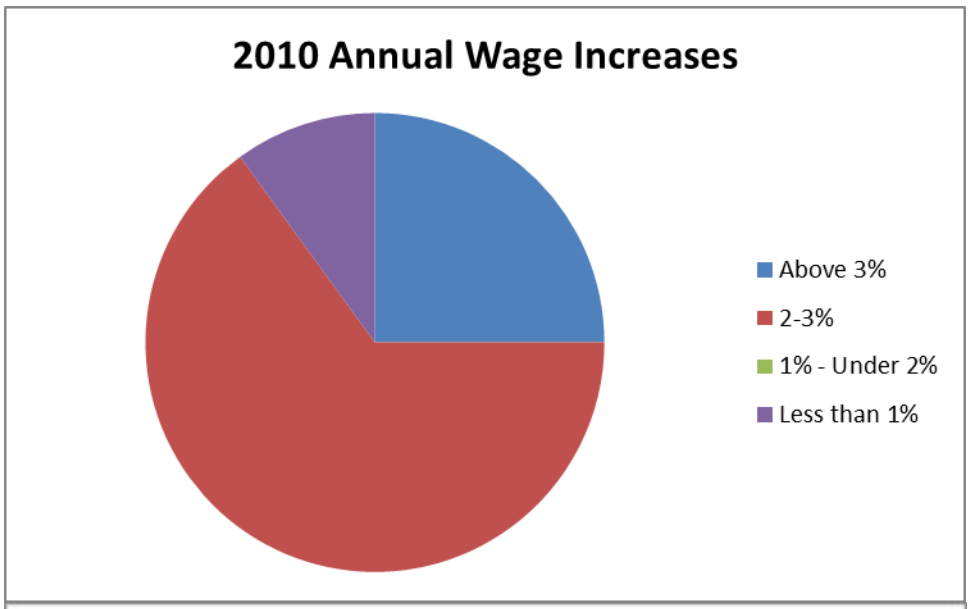
[11] Research undertaken to support the observations and findings of this Report reviewed interest arbitration decisions published on PERB's web page since 2008.

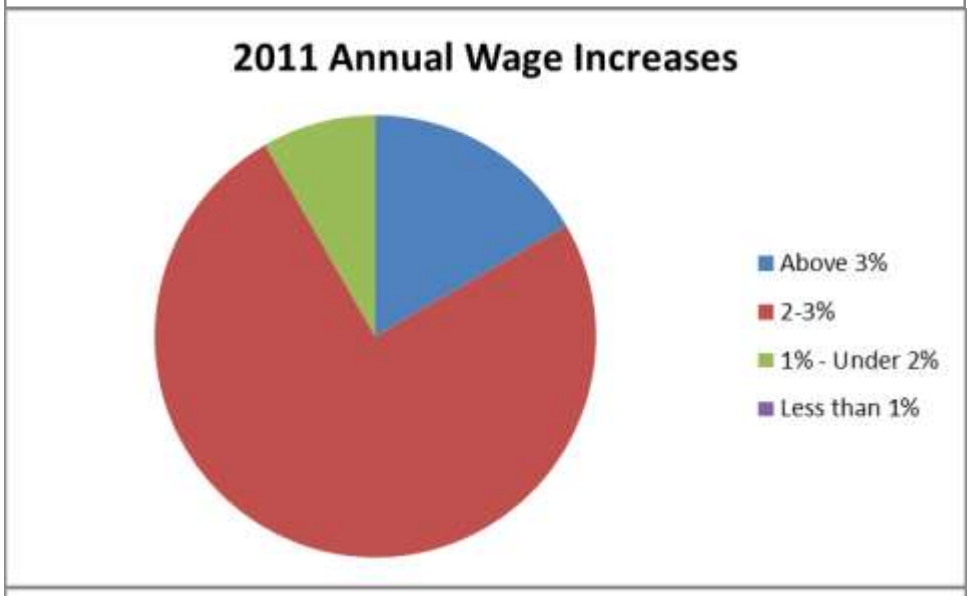
[12] We started with 2010 because when we reviewed the 2007-09 interest arbitration decisions, a majority covered the time period prior to the onset of our nation's financial crisis.

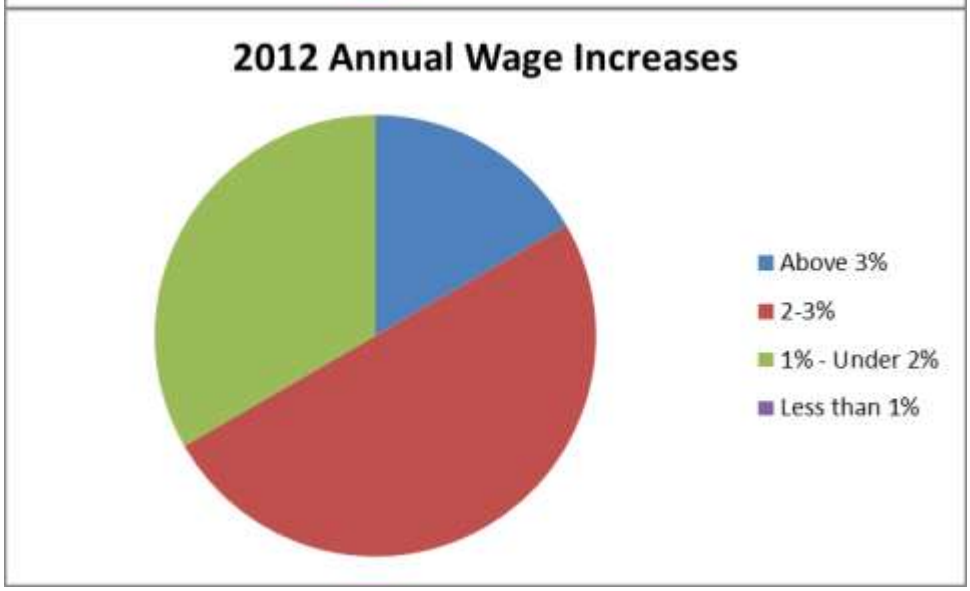
category. There were only 10 awards[13] that averaged wage increases above 3%, but only one of the 33 awards averaged above 4%, and that single award covered the years of 2007-08. Thus, less than a quarter of all interest arbitration awards we researched since 2010 granted wage increases of greater than 3% for the years 2009-13, and more than 50% of the awards were for 3% wage increases or less. These results are expressed below by the accompanying charts.

2010	
Annual Wage Raises:	
Above 3%	25%
2-3%	65%
1% - Under 2%	0%
Less than 1%	10%
2011	
Annual Wage Raises:	
Above 3%	15.38%
2-3%	69.23%
1% - Under 2%	7.69%
Less than 1%	0.00%
2012	
Annual Wage Raises:	
Above 3%	16.67%
2-3%	50.00%
1% - Under 2%	33.33%
Less than 1%	0.00%
2013	
Annual Wage Raises:	
Above 3%	50%
2-3%	50%
1% - Under 2%	0%
Less than 1%	0%

[13] Three of these 10 awards covered years 2006-08.


2010 Annual Wage Increases
Above 3%
2-3%
1% - Under 2%
Less than 1%


2011 Annual Wage Increases
Above 3%
2-3%
1% - Under 2%
Less than 1%


2012 Annual Wage Increases
Above 3%
2-3%
1% - Under 2%
Less than 1%

The More Accurate Explanation for High Earnings for Public Safety Personnel

Reviewing the last few years in the city of Albany helps to understand the limited role of interest arbitration on the actual level of earnings by police and firefighters. There, the mayor supports the Cuomo legislative restrictions limiting interest arbitration and collective bargaining. Its fire department and fire fighters reached impasse and went to interest arbitration in 2011 and the award made was a 2% wage increase for years 2010 and 2011. We surmise that this modest award was not onerous because the mayor then negotiated a 4 year deal with its police force, offering them the same 2% raises for 2010 and 2011; the same increases won by the fire union, but bumped that figure up to 3.0% for 2012 and 3.5% for 2013[14].
Further, from conversations with public officials in Albany, we learned that the fire department currently is short at least 15 and the police approximately 10 emergency service responders. The city met these shortages, in part, by budgeting in 2012 a whopping $5.8[15] million dollars for overtime. Confronting those numbers, Albany Chief of Police Steven Krokoff, a member of the mayor's leadership team, was quoted thusly in the Albany paper:

"Krokoff also said that overtime is not necessarily a bad thing when it allows the department to deploy more officers at specific times and places — like bar-centric North Pearl Street on Saturday nights — without having to hire enough police officers to permanently maintain those levels even when not needed. "It represents cost savings to the taxpayer," Krokoff said. "And it's sound fiscal and human resources management."[16]

Rising police costs not attributable to interest arbitration may also be found in our state police units. There, several of the last cadet classes that recruit our state police officers have not occurred, apparently for budgetary reasons, leaving them hundreds of officers short. Often, these shortages are "corrected" by commanding officers throughout the state directing that rank and file members work overtime. In the second week of February, 2013, Gannett Newspapers reported[17] that our state police, due to significant earnings increases, in part from overtime payments, now comprise 14% of all New York employees who make more than $100,000 per year!

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[14] An Albany news story on February 27, 2013, indicated that a portion of the Albany police, their sergeants and detectives union, received in a recent arbitration decision that we did not review raises of 3% for each of the years 2010 and 2011. The arbitration panel called the city's position seeking a 2 year wage freeze "unrealistic and unreasonable". As we note elsewhere in this writing, this same city awarded another division of its police forces a 2% per year year wage increase for these same years prior to the publication of this award.

[15] $4.04 million for the Police Department and $1.8 million for the Fire Department.

[16] Albany Times Union, February 18, 2013, "Albany's $100G pay list grows", Jordan Evangelista

[17] Joseph Spector, February 17, 2013, published in Gannett Papers such as the Ithaca Journal, Elmira Star Gazette, etc;

In other communities, we see similar developments. In Ithaca last year, with its police and fire departments short approximately ten staff members, 90% of an overtime budget just over $1 million was used to deal with the shortage of public safety workers. Somewhat similarly, in Elmira, a city with 76 firefighters in 2001, and an overtime budget of $84,000, now finds itself short several fire fighters with a head count of 54 fire fighters and overtime expenditures of $299,000 in 2012 for the fire department.
It is likely that each of these communities has proceeded with this emergency worker shortage and huge overtime budget for budgetary and political reasons. They can point the finger at public safety workers who make in excess of $100,000 annually and, rather than explain how this came to pass, suggest that the current system is broken and that interest arbitration is somehow to blame. In fact, objective observers know that the underlying cause of this problem is in Albany and not at the interest arbitration table.

Conclusion

The Governor continues to disappoint a number of his local governmental supporters outside of New York City by failing to provide significant budgetary or mandate relief. Since this will be the third year where significant relief will not be possible, he offers a partial "solution" by proposing the most dramatic restrictions on collective bargaining in the history of New York. And, for inexplicable and unsupportable policy reasons, the governor's proposals are only directed at police and fire outside of New York City. Meanwhile, these proposals, if passed, would not amount to even a drop in the bucket of financial relief while being quite distressful to the tens of thousands of emergency workers impacted. Simply put, there is no research or credible explanation for the governor's radical proposals, and they evidence an approach that ensures that our local governmental subdivisions will not receive from Albany the mandate relief they so desperately need.

Sure, there is the more than 4% wage increase outcome that surprised many in Glens Falls last year, but there is a back story there, as the city member of the panel apparently agreed with the decision as no dissent, common in these 3 arbitrator panels, was filed. And, we know historically of a handful of cases on Long Island that also fall outside the 1-3% raises in tough times and the 3-4% raises that are awarded in better times. But the exceptions do not make the rule, and the Glens Falls case represents an outcome that stands all by itself in the last 3 plus years of interest arbitration in New York.

Finally, it is worth remembering that the New York City police are and were powerful enough to spend millions of dollars in the 1990s to convince the entire New York State Legislature and its Governor to give it the right to go through a different kind of interest arbitration process than it had for nearly 20 years in New York City. After succeeding, and going to interest arbitration several times under the same system as all other non-New York City police and fire unions, they only gained raises that followed the amount that other New York unions with much less power had won. The one time police received more than other New York City unions, in 2005, they were forced to lower their new members' starting salaries from more than $28,000 to $25,100.

No, it is not interest arbitration that is causing local governing units in New York financial distress. There is simply no convincing evidence of this, and our police and fire

unions should not have to pay the price for the financial difficulties that exist outside of New York City.

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