# PRESENTATION

# TO THE

# JOINT BUDGET COMMITTEE

# OF THE

# NEW YORK STATE LEGISLATURE

**BY**

**RICHARD WELLS, PRESIDENT**

**OF THE**

**POLICE CONFERENCE OF NEW YORK, INC.**

**AND**

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**OF THE**

**NEW YORK STATE ASSOCIATION OF PBAs, Inc.**

GOOD AFTERNOON LADIES AND GENTLEMEN:

We are here today on behalf of the Police Conference of New York, Inc., a statewide Union of police officers consisting of more than 225 member local PBAs from Montauk Point to Buffalo, and all places in between, and the New York State Association of PBAs (formerly known as the Metropolitan Police Conference), an umbrella organization comprised of police labor unions and representing more than 45 thousand members. We represent the interests of police officers throughout the State of New York and we are deeply concerned about several aspects of the Governor's Budget Bills, particularly those parts that deal with Interest Arbitration and a Stable Contribution Rate Option for municipalities paying into the Police & Fire Retirement System. We oppose both pieces of legislation and we don't believe that either one belongs in a budget bill. Both pieces of legislation relate only indirectly, if at all, to the State's budget and both present important issues of public policy that should be studied and considered on their own merits rather than being hastily considered in the process of passing an on-time budget.

I will speak first about the Interest Arbitration provisions that concern us. These are contained in subpart Q of Senate Bill 2607, Assembly Bill 3007. In simplest terms, they require that after April 1, 2013, every Interest Arbitration Panel established pursuant to the Taylor Law make an initial determination as to whether the public employer involved is a "Distressed Public Employer", measured by only two criteria, the first being whether its average full value property tax rate is in the highest 25% of all municipalities in the State, and the second being if its Average Fund Balance percentage as compared to its overall budget for the past 5 years has been less than 5%. If the public employer is determined to be distressed by either of these two criteria, then the Arbitration Panel would be limited to awarding no more than a 2% raise for either of the two years involved in the Interest Arbitration, reduced by the amount of any increased cost that the public employer will incur of insurance, medical and hospitalization benefits provided for the bargaining unit in question that will exceed a 2% increase.

These provisions represent a virtual repeal of Interest Arbitration for the many bargaining units they would affect if enacted as they are, and I will talk more about that impact after a brief review of the history of Interest Arbitration in the State of New York.

In 1967, the Taylor Law was passed to replace the Conlin-Waglin Act which had failed to prevent crippling public sector strikes. Its purpose was to establish effective means for dealing with claims of public employees for equitable treatment, and in 1974, it was amended to provide binding interest arbitration for police and firefighters as a three year experiment. That experiment was extended every two years until 2009 when it was extended for four years, all without significant change. It has been an integral part of collective bargaining for police and firefighters throughout that time period, and it has worked very well. The system is not broken, and it does not need to be fixed.

Earlier in my remarks, I said that the Governor's proposals should be studied before they are enacted. In fact, Interest Arbitration has been studied, but the Governor's proposal ignores the results of that study. In 2009, the Cornell University School of Industrial and Labor Relations commissioned a study entitled "*The Long-Haul Effects of Interest Arbitration: the Case of New York's Taylor Law*" to be carried out by a committee headed by Thomas Kochan, a Professor of Management and Co-Director of the Institute for Work and Employment Research at the MIT Sloan School of Management. The mission of the study was to use experiences with Interest Arbitration for police and firefighters under New York

State's Taylor Law from 1974 to 2007 to examine the central debates about the effects of this form of arbitration on collective bargaining.

They reviewed not only New York State data, but also statistics from a national dataset that allowed them to compare the effects of Interest Arbitration in New York with the effects of mediation or fact finding or the absence of a bargaining statute on changes in police and firefighter wages over time in other states.

The study concluded that the New York State Police & Firefighter arbitration system has performed well over this 30 year span of time and has not lead to the results predicted by its post-war or contemporary critics. Strikes have been avoided. Only a small number of bargaining units in cities with particularly complex circumstances have experienced a high rate of dependence on arbitration. There is no evidence that on the whole, arbitration has had a chilling effect on negotiations. Arbitral awards are within fractions of a percentage of negotiated awards, sometimes slightly higher and sometimes slightly lower, and neither the presence nor the use of arbitration has led to an escalation of wages in New York beyond the wage levels negotiated by police and firefighters in other states without

arbitration. This study is available on-line at: DigitalCommons@ILR, and I would urge you all to review it.

Notwithstanding this very positive report on New York's Interest Arbitration System, the Governor's Budget proposals would eviscerate that system. The simplistic "Either/Or Test" for "Distressed" Status based on tax rate and Average Fund Balance would bring huge numbers of municipalities in the State of New York within the ambit of the bill. According to information provided by the Comptroller's Office, 437 of the municipalities in the State of New York outside of the City of New York would be considered "distressed" by application of the criteria set forth in the Governor's proposal. 53 of our 61 cities excluding New York City, or 86% of them, including Buffalo, Rochester, Syracuse, Binghamton, Utica and Albany, would qualify as distressed.

Those same numbers for Counties outside of New York City, Towns and Villages would be as follows:

Of 57 Counties, 32 would be distressed, representing 56%;

Of 932 Towns, 143 would be distressed, representing 15.5%; and

Of 556 Villages, 209 would be distressed, representing 37.8%.

Even worse, those municipalities close to being on the Distressed List by either aspect of the test could easily put themselves on the list, either by raising their tax rate or by reducing their fund balance, both of which are matters entirely within their control. This is hardly conduct that we should be encouraging our elected officials to undertake.

The impact of meeting either of these two criteria and being classified as a "Distressed Employer" would be devastating to the process of Interest Arbitration. The limitation imposed of 2% for each year of the award is bad enough on its face, but when reduced by the employer's increased costs of health insurance in excess of a 2% increase, that 2% wage increase would be reduced to 1% or even zero in many cases, for we are all familiar with the current trends in the costs of health care and health insurance and we all know that every employer's cost of health insurance goes up significantly more than 2% every year.

This bill would literally transfer the burden of health insurance cost increases to the police officers and firefighters of the many municipalities that this bill would affect and virtually wipe out the rights they currently have in Interest Arbitration. Under these criteria, it would not make sense for any affected police or fire bargaining unit to pursue Interest Arbitration, for before it ever started, the

results of the process would be capped at a rate so low as to render the process futile. We see no reason why police and fire should be singled out for such unfair treatment.

The data generated by the Comptroller's Office also tells a further part of this story, for it demonstrates how poor a measure of a municipality's true financial circumstances either of the Governor's two criteria alone would be. According to the Comptroller's data for the year 2012, a tax rate in excess of $6.57 would put a municipality in the top 25% of all municipalities and therefore would qualify it as a "Distressed Municipality". Yet many municipalities qualifying for distressed status by tax rate don't even come close to qualifying by the 5% Fund Balance criteria.

For example:

1. The City of Buffalo has a tax rate of $11.92, or almost twice the tax rate criteria, yet it has an Average Fund Balance of 33 1/3%, which is 3 times higher than the rate recommended by the Comptroller.
2. The City of Oneonta has a tax rate of $8.60, yet an Average Fund Balance of 74.5%.
3. The County of Chenango has a tax rate of $10.47, yet an Average Fund Balance of 33.4%.

4. The Town of Birdsall in Allegany County has a tax rate of $7.01, but an Average Fund Balance of 92.6%.
5. The Village of Lions Falls in Lewis County has a tax rate of $7.98, yet an Average Fund Balance of 251.7%.

The same is true in the other direction, as well.

1. The City of Glen Cove has an Average Fund Balance of -4.6%, yet would not qualify for distressed status by tax rate.
2. The County of Rockland has a .2% Average Fund Balance, yet a tax rate of only $1.17.
3. The County of Suffolk has a -3.3% Average Fund Balance, yet a tax rate of $.28.
4. The Town of Colonie has an Average Fund Balance of -38.1%, yet a tax rate of only $2.09.
5. The Village of Island Park in Nassau County has an Average Fund Balance of -4.9%, yet a tax rate of only $3.82.

These examples demonstrate that neither the tax rate nor the Average Fund Balance criteria alone is a meaningful indicator of a municipality's financial stress level.

Our current system of Interest Arbitration for police and firefighters works very well and yields awards extremely close to negotiated awards. Interest Arbitrators are required by the Taylor Law to take into account the municipalities' ability to pay, and they do so. There have been many Interest Arbitration awards rendered in this State awarding one or more zeros in cases where the municipality has been able to demonstrate its lack of ability to pay.

While we are opposed to the Governor's recommendation in applying these harsh numbers to binding arbitration, we are not foreclosed from alternative ideas, and are ready, willing, and able to discuss them.

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The next piece of the Governor's Budget Legislation that we oppose he refers to as the "Stable Rate Pension Contribution Option" set forth in S2605, A3005. This legislation would allow local governments and school districts to lock in long-term rate pension contributions and thereby reduce their current contribution rate, effectively borrowing against the future lower contribution rates they will have as our economy improves. The Governor's Legislation outlines a program with very specific parameters which, if approved by the Comptroller, would go into effect. The program includes a time period of 25 years and the contribution rates to be charged, which would be 12% for ERS, 12.5% for teachers and 18.5% for police and fire. The program even specifies the amounts by which the Comptroller could, in his discretion, deviate from those numbers, both as to the contribution rate and as to the time period. Although the legislation provides that it would only come into existence if the Comptroller approved it, we believe nevertheless that this legislation infringes on the Comptroller's Constitutional authority and discretion in two important respects.

First, the Legislature is Constitutionally prohibited from assigning administrative duties to the Comptroller. I am not a lawyer, but I have been advised by my counsel that the Comptroller of the State of New York is a Constitutional office, the powers and duties of which are set forth in Article, V, §1 of the New York State Constitution. He has further advised me that that section of the State Constitution specifically prohibits the Legislature from assigning any administrative duties to the Comptroller, with minor exceptions.

Our Courts have strictly interpreted these Constitutional limitations on the Legislature's ability to direct the activities of the Comptroller. In 1996, in Blue Cross and Blue Shield of Central New York vs. McCall, the Court of Appeals rejected legislation which directed the Comptroller to audit a private insurance company. In 1990, in Matter of New York Public Interest Research Group vs. the New York State Thruway Authority, the Court of Appeals held a State statute purporting to require the Comptroller to review a proposed toll hike by the New York State Thruway Authority to be an unconstitutional infringement on the Comptroller's discretionary powers. In 1977, the Court of Appeals decided Patterson vs. Carey holding unconstitutional a statute rescinding an increase of tolls on the Southern State Parkway unless reviewed by the State Comptroller,

holding it to be an unconstitutional infringement on the Comptroller's discretionary powers.

If those legislative acts unduly infringed on the Comptroller's discretionary powers, then so would the Governor's proposed Stable Rate Pension Contribution option. This legislation could impede the Comptroller's independence and discretion because it puts him in the position of having to say yea or nay to a given set of parameters. The Comptroller as the sole trustee of the New York State Retirement System has full authority to adopt and implement any payment options he deems appropriate. Several such programs already exist, including a 5-year "Smoothing Program". If the Comptroller feels that some form of payment option is appropriate, then he is free to do so himself, and we don't believe that the Governor or the Legislature should interfere with him in that regard. We believe that this Legislation would violate Article V, §1 of the Constitution by interfering with the discretion of the Comptroller.

We also believe that this Legislation would unconstitutionally diminish or impair the benefits of membership in the Retirement System in violation of Article V, §7 of the New York State Constitution. Article V, §7 of the Constitution states that:

> "After July 1, 1940, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

Numerous attempts by the New York State Legislature to direct or manipulate the Comptroller in his management of the funds of the Retirement System have been rejected by the Courts on the grounds that they violated Article V, §7. Legislation requiring the Comptroller to purchase New York City MAC Bonds during New York City's fiscal crisis was rejected by the Court of Appeals in Scaglione vs. Levitt in 1975. Legislation requiring the Comptroller to use the Projected Unit Credit Method of actuarially valuing funds of the Retirement System and in calculating employer contributions for a given year on that basis was rejected in McDermott vs. Regan in 1993. Legislation requiring the Comptroller to credit public employers with $230 million dollars towards certain required obligation payments from the Supplemental Reserve Fund was rejected in McCall vs. State in 1996. The Police Conference of New York, Inc. participated

directly in all three of those Court cases, and we strongly approve of the resulting rule that the Comptroller is the sole trustee of the New York State Pension System and that neither the Governor nor the Legislature can direct or control him in those activities.

How the Comptroller calculates and collects the monies necessary to pay the Constitutionally-protected benefits of membership in the Retirement System is a matter entirely within his discretion, and this Bill would interfere with it. The current contribution rate for the Police and Fire Retirement System is 28%, but if this Legislation were adopted and this plan were enacted, the rate would drop to 18.5%, a decrease of over 33 1/3%. If the Comptroller determines that it is appropriate to offer municipalities some form of payment option that would provide a greater stability of payments yet would still fully fund the obligations of the Retirement System, then he is entitled to determine each and every aspect of any such plan, including the time period it would cover, the contribution rates that would be involved, the amounts by which either could change and every other detail. The deficiencies in this proposal are not cured by the fact that it allows the Comptroller to adopt it or not adopt it.

The security of our pensions is a matter of vital concern to every police officer in the State of New York, and we oppose any legislation that could possibly jeopardize that security. We place great importance on the Constitutional provisions that empower the Comptroller and protect those benefits, and we will oppose any legislation that we believe weakens them. We believe that this aspect of the Governor's Budget Bill is just such a piece of legislation, and we oppose it for all of those reasons.

Thank you for your time and attention, and I will be glad to answer any questions that any of you may have.