

VETO MESSAGE - No. 1

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 1301, entitled:

"AN ACT to amend the civil service law, in relation to the negotiability of discipline affecting public employees"

NOT APPROVED

This bill - which is virtually identical to a bill that was vetoed last year - would make police discipline and disciplinary procedures mandatory subjects of collective bargaining negotiations statewide. The bill is intended to overrule a unanimous decision issued by the New York State Court of Appeals in 2006, which held that where the Legislature vested disciplinary power in a police commissioner or local governing body, discipline is a prohibited subject of collective bargaining.

At present, New York law treats the negotiability of police discipline and disciplinary procedures in two different ways. With respect to police in New York City, Westchester County and Rockland County, as well as the New York State Police, collective bargaining on these subjects has been held to be prohibited. In the rest of the state, unless a statute requires otherwise, collective bargaining on these subjects is mandatory. The proponents of this bill argue that this bill will bring uniformity to the current system, and will allow these employment-related issues to be resolved at the bargaining table.

Although the desire of the police unions to negotiate disciplinary issues is understandable, this bill both raises significant policy issues and has serious technical flaws, which together compel me to veto the bill.

As the Court of Appeals noted in its decision last year, New York State has a "policy favoring strong disciplinary authority for those in charge of police forces." Police departments are "quasi-military" institutions which require disciplined employees, and those instances where officers violate the public trust or otherwise run afoul of disciplinary provisions can have profound implications for public safety. Indeed, in his veto message last year, Governor Pataki stated that "decisions relating to the discipline of law enforcement officers should be made by publicly accountable officials."

The Superintendent of the State Police, the Mayor of the City of New York, the Westchester County Executive, the Conference of Mayors and Municipal Officials, and the Association of Towns all recommend veto of this bill, largely on the grounds that it will allow for essential law enforcement discipline decisions to be made by individuals outside the chain of command who are not responsible for public safety. In particular, in many instances impasses in negotiations over discipline would be subject to resolution in binding arbitration. In their view, this legislation will significantly disrupt their ability to maintain effective management of their police forces.

I fully recognize that police disciplinary decisions are subject to collective bargaining in municipalities in many areas of New York State, and the proponents of this bill assert that those police departments operate effectively and efficiently, and that the objections to the bill are overstated. Even if the policy arguments of the proponents are correct, however, this bill still cannot be approved because it has significant technical flaws.

First, the bill grants retroactive effect to expired collective bargaining agreements and interest arbitration awards, which could lead to the re-opening of numerous disciplinary cases that already have been decided, all of which would have to be relitigated. Second, the stated intent of this bill is to overturn the PBA v. PERB case, which dealt only with police disciplinary procedures, but the bill instead broadly defines "terms and conditions of employment" to cover both discipline and disciplinary procedures of all public employers.

Although I cannot support this bill in its present form, I agree that our current system - with collective bargaining of disciplinary procedures being mandated in some areas, and prohibited in others - makes little sense. I urge the police unions and municipal employers to work together to determine if there are alternative approaches that would be acceptable to both sides.

The bill is disapproved.

(signed) ELIOT SPITZER