

VETO MESSAGE - No. 37

TO THE SENATE:

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

Senate Bill Number 4920, entitled:

"AN ACT to amend the civil service law, in relation to binding arbitration for court clerks and uniformed court officers of the unified court system"

NOT APPROVED

This bill would allow public employees in the Ninth judicial district negotiating unit, Nassau and Suffolk County negotiating units, and the New York City negotiating units for court reporters, court officers, and senior court officers of District Attorneys' offices in New York City to avail themselves of binding interest arbitration procedures to revolve impasses in collective bargaining with the Office of Court Administration, in accordance with Civil Service Law Section 209(4).

Binding interest arbitration allows parties to labor negotiations to have the terms and conditions of their employment determined by an arbitration panel composed of representatives of the parties and an outside neutral arbitrator. The worthy rationale for this procedure is to insure labor peace and continuity of service for professions central to public safety and security, such as police and firefighters. For the previous three decades, bills such as this one have gradually expanded the reach of binding arbitration to more and more public employees, as additional groups have sought to analogize themselves to those initially covered.

While binding arbitration has its benefits, it imposes costs as well. In particular, arbitrators tend to grant higher awards than are achievable through the collective bargaining process, and thereby increase costs to government and taxpayers. Further, arbitration removes decision-making in labor matters from elected officials, and vests it in the hands of third parties. Those familiar with the process differ as to how attuned to local conditions members of arbitration panels can be, but in any case they are not accountable to the electorate for decisions that can have a profound impact on governance, and on the public fisc. Finally, the mere existence of arbitration as an option can deter productive negotiation, to the extent employees believe they will get a better deal from the arbitration panel in the event of an impasse.

In light of these considerations, I believe any further expansion of the arbitration process should be greatly constrained, and subject to certain limiting principles. While I appreciate the important work done by the employees at issue, I do not believe that binding arbitration is warranted in these circumstances, for the following reasons.

First, this bill would go outside the boundaries to which arbitration has thus far been confined - public safety and public transportation employees. The group covered by this bill includes, among others, court reporters and court clerks, who perform tasks wholly unlike those

performed by the individuals who currently benefit from statutory binding arbitration rights. To expand access to arbitration in this manner would broaden its scope beyond anything granted thus far.

Second, this bill would extend binding arbitration to downstate employees, while excluding those similarly situated elsewhere. Such piecemeal extensions of this procedure generally should be avoided, but are particularly unwarranted here, where units with different procedures would be negotiating with the same employer. The inevitable result will be either that some employees will believe they are treated unfairly, or that they too will seek further extensions of binding arbitration for themselves.

Finally, this bill contains significant technical defects. In particular, the bill does not state what event shall trigger arbitration, leaving it entirely unclear when this process is to take place. Indeed, Governor Pataki cited such technical concerns in his two vetoes of this legislation.

Proponents argue that the bill is necessary because of difficulties in reaching contract agreements with the Office of Court Administration (OCA), while OCA contradicts those assertions. Needless to say, it is virtually impossible to judge between these views, or to decide who has been reasonable in negotiations. More importantly, however, I cannot extend binding arbitration simply on the basis of one side's assertion that the other has been obstructionist, or that negotiations have not produced satisfactory results.

The bill is disapproved.

(signed) ELIOT SPITZER

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