



New York State Correctional Officers & Police Benevolent Association, Inc.

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TO: All Arbitration Eligible Members

FROM: Larry Flanagan, Jr., President 

RE: Executive Assembly Motion
Arbitration Process

DATE: April 9, 2007

Attached you will find both an opinion letter from William Sheehan, Esq. and the Executive Assembly motion which was defeated on April 4, 2007, in regards to the binding arbitration process.

If you have any questions, please contact me.

Thank you.

MOTION SHEET

Motion:

To move that NYSCOPBA in the upcoming Arbitration not agree to any givebacks (anything outside compensation) without first bringing it back to the membership and subject to the membership approval. This could be done by a call for a Special Meeting EA with the general membership invited, or by a membership referendum.

Motion Made by: Vinnie Blasio

Motion Seconded by: Joe Miano

Motion Passed/**Defeated**: Yes 18 - No 62 -1 Abstain

Date: April 4, 2007



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April 2, 2007

Larry Flanagan, Jr.
President
NYSCOPBA
102 Hackett Blvd.
Albany, NY 12209

Re: Motion made by Vinny Blasio re: Interest Arbitration proceedings

Dear Larry:

I reviewed the motion submitted by Vinny Blasio regarding the next interest arbitration proceeding. The motion would prohibit NYSCOPBA from agreeing to any "give-backs" without first bringing them back to the membership for their approval.

I have serious concerns with how this would work in actual practice. Those concerns pertain to both the practical aspects of the proposal and to its potential for diminishing the amount of a compensatory award. My explanation of these concerns follows.

I see this motion as impractical because the binding arbitration process doesn't lend itself to bringing proposals back to the membership for a vote. The whole idea of binding arbitration is to empower the three-member panel with the authority to make a binding decision. The panel members must have the authority to make decisions right there in the room. For NYSCOPBA's panel member to have to say, when in executive session, that he has to take an issue back to the membership for a vote would have a chilling effect on the panel's operations and would tend to diminish the stature of NYSCOPBA's panel member in the eyes of the other two panel members, especially the neutral arbitrator. Simply put, if the neutral arbitrator believes that NYSCOPBA's panel member doesn't have full authority, he will tend to look more toward the State's panel member as the person with whom he has to align himself to get an award done.

Another practical problem with the proposal is determining exactly which issues are "directly related to compensation" and which are not. The Taylor Law does not provide a definition of the term, and there is no process, short of filing an improper practice charge at PERB, where you can obtain a clarification. When NYSCOPBA's panel member is confronted in executive session with a proposal that might be considered compensatory but might not be, he should not be

burdened with the fear that if he votes on the proposal without having brought it back for a membership vote, he will have violated NYSCOPBA policy. Realistically, the panel member has to use his own best judgment, experience and powers of persuasion to come out of the room with the best possible award. To try to involve the membership in that process is doomed to failure.

Another concern on practicality deals with the nature of the executive sessions themselves. The discussions that occur in these sessions involve give-and-take, debate, argument and all of the natural conflicts that you would expect when three people with different perspectives and different constituencies try to hammer out an arbitration award that at least two of them, if not all three, must agree to. In that process, proposals are typically brought up and discussed not on their own merits, but as part of a package. Thus, even if NYSCOPBA's panel member identified a proposal as clearly a non-compensatory give-back, bringing it back to the membership for a vote would only be meaningful if he could identify the complete compensation package it was linked with. (Obviously, any give-back submitted to the membership standing alone would always be voted down.) A membership vote on the entire package is contrary to the concept of binding arbitration. The other two panel members will have little patience with such an unorthodox and cumbersome maneuver. I doubt that the panel chairman would even permit it. And even assuming that the panel was willing to suspend its deliberations for weeks or months while the entire NYSCOPBA membership voted, there's no guarantee that the panel's discussions and dynamics wouldn't change in the meantime, essentially rendering the vote meaningless.

For these reasons, the process contemplated in the motion wouldn't work in practice and would only produce delay, confusion and uncertainty.

Perhaps most importantly, tying the hands of NYSCOPBA's panel member in this way could produce a lesser compensation package. If the neutral arbitrator knows that NYSCOPBA's panel member can't even vote or consider certain issues, that arbitrator may choose to simply disregard those issues and form an alliance with the State's panel member for a lesser increase in compensation than would have been considered had the other issues been on the table. This would not be in the best interests of the membership.

Finally, Larry, I think it's important to remember that the vast majority of public employees who have access to interest arbitration, including all local police and firefighters, have arbitration on all issues, not just compensation. Only NYSCOPBA and a few other bargaining units in the state have a bifurcated process that distinguishes between compensatory and non-compensatory issues. In other words, what you have is more the exception than the rule. It is better described as a legislative anomaly than as a carefully designed resolution process. And it's often difficult to draw the line between compensatory and non-compensatory issues. But the way to deal with this problem is not to essentially abandon the arbitration process by sending everything back to the membership. The way arbitration worked for NYSCOPBA the last time was no different than how it works for virtually every other bargaining unit in New York State having interest

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arbitration. And none of those bargaining units send proposals back for membership votes while the executive sessions are underway. It doesn't work for them and it won't work for you.

One final thought. Everyone agreed that NYSCOPBA's purpose for getting binding arbitration was to break the cycle of pattern bargaining and get a law enforcement contract. And it is very clear that NYSCOPBA did that in the March, 2006 award. And you will continue to do so in future awards. While the intention of this motion may be good, it will only prevent NYSCOPBA from delivering the best possible arbitration award to the membership.

I will be happy to discuss this further with you or to answer any questions you may have.

Very truly yours,

A handwritten signature in cursive script that reads "Bill Sheehan".

William F. Sheehan
WFS/dac