



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

NYS COPBA LEGISLATIVE
DEPARTMENT

C. Lu

VETO # 6726

JUL 30 2010

TO THE SENATE:

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

Senate Bill Number 5633-A, entitled:

"AN ACT to amend the retirement and social security law, in relation to the deferral of vacation days for certain members of the retirement system"

NOT APPROVED

This bill would amend the Retirement and Social Security Law ("RSSL") by adding a new RSSL § 89(1) to permit certain employees of the Department of Correctional Services ("DOCS") and the Office of Mental Health ("OMH"), including but not limited to Corrections Officers ("COs") and Security Hospital Treatment Assistants ("SHTAs"), to defer up to 5 vacation days per year and receive the value of those days in a lump-sum payment at the time of retirement. The value of such days would be calculated at the pay rate applicable to each such eligible employee at the time of his or her retirement.

Supporters of the bill assert that it would establish a new savings mechanism for COs and SHTAs, who generally get 4 to 5 weeks of vacation per year, and would reduce the need for overtime usage while some employees are on vacation. The bill's sponsors and supporters also contend that the bill is necessary to retain veteran COs within DOCS, which stands to lose in the near future a significant number of its most experienced officers to retirement. The sponsors state that by giving veteran COs an option to defer vacation days and take a cash payment for the value of such days when they retire from State service, the bill would provide an incentive to such officers to remain on the job and provide additional months of public protection at no additional cost.

I appreciate the sponsors' effort to address a workforce issue without, in their view, imposing additional costs on the State. Nonetheless, since I believe that effort is based on a faulty calculus, I am constrained to veto this bill.

The bill would increase costs for the State when eligible employees cash out their deferred vacation days. The bill is not limited to employees approaching or past retirement age, whose retention is at issue, but would in fact be applicable to over 20,000 State employees. For a new CO who works 25 years, the bill would in theory enable him or her to defer and cash out at retirement 125 deferred vacation days, the equivalent of almost one-half year's pay. Moreover, the bill would require that such deferred vacation days be paid out at the rate an employee is earning at the time of retirement. Assuming modest raises for most of the 20,000 employees who would be eligible for the deferred vacation benefit under this bill, the pay rate applicable to deferred vacation days would far exceed the rate applicable when the employees initially postponed their vacation days earlier in their careers.

Further, while proponents contend that it would cut down on overtime usage, that too is a dubious assertion. This would only be the case if DOCS regularly replaced COs on leave by use of overtime, rather than structuring its personnel usage to take such vacations into account. There is no evidence that the former is the case, and that the additional time worked as a result of this bill would result in a corresponding reduction in overtime.

In addition, a vacation deferral benefit like the one proposed in this bill should appropriately be the subject of bargaining under the Taylor Law. Vacation leave, the use of leave

and payment for such leave are all negotiable terms of employment. Indeed, current agreements between the Executive Branch and the unions that represent its employees already provide for the ability of employees to cash out up to 30 days of vacation accruals at retirement. The vacation deferral benefit, which is not a retirement benefit, should only be considered in the context of collective negotiations between each bargaining unit and the State, in the context of a complete package of employee benefits and compensation. It should not be granted, in isolation, via statute.

Finally, the bill also has a substantial technical flaw that would complicate its implementation. The bill does not prescribe what would happen to an employee's deferred vacation days if an employee transfers to a title not covered by the legislation or if an employee is terminated, resigns or dies prior to his or her retirement. The lack of clarity on this issue would likely produce uncertainty and litigation.

The bill is disapproved.