

Setting the Record Straight



PATROLMEN'S BENEVOLENT ASSOCIATION

40 Fulton Street New York, NY 10038 212-233-5531

Volume I, Number 2

March 16, 2007

The Myth of Pattern Bargaining

By PATRICK J. LYNCH

In our last column, we wrote about the folly of pattern bargaining and pointed to its sad legacy, particularly the inability of the NYPD to recruit and retain police officers, and its other effects, including the very real potential for an upswing in crime.

What does pattern bargaining really mean and what myths and realities are confused in its discussion? Frankly, the city, which tries to peddle the fiction of lockstep pattern bargaining to unions and arbitrators alike, has been far from a model of consistency when it invokes the term. The truth is, the concept is amorphous, molded and shaped to fit the city's needs and strategies in a particular round of bargaining. It is also contrary to the terms of the Taylor Law which emphasizes comparisons to other employees "performing similar services or requiring similar skills under similar working conditions."

The chameleon called pattern bargaining has existed in varied forms since it first appeared on the New York City labor scene. It is often used in the same breath as the term parity, which is purported to characterize the pay relationships among different bargaining groups. First, as the city uses the concept of parity, only basic maximum salaries (top salaries) are considered and have to be equivalent. As we know, there are many forms of monetary and benefit compensation. For example, in a prior PBA PERB arbitration, we showed that firefighters received higher salaries during the first five years of service, and have different longevity payments and different holiday pay. Also, firefighters get defibrillator pay and police officers don't. Then again, certain firefighters receive a greater annuity. In other words, only top salary is relevant to the city's construct; what happens in the first five or five and a half years is irrelevant. Also, significant pots of money that workers receive throughout their career, like longevity, holiday, annuity and defibrillator payments (to name just a few), are not considered. How can you even begin saying something is "equivalent" and invoking the term pattern or parity, when you have considered only one piece of the compensation puzzle?

Then, the city has sometimes described the concept of pattern as parity of cost or parity of benefit, two very distinct ideas. The first requires that total net cost (taking into account the demographics of particular groups) among various settlements be equivalent; the latter requires the benefit to be the same, regardless of cost. Under the city's conception of parity of benefit, if one group receives, for example, a \$100 wage increase all groups receive \$100 wage increases. Under parity of cost, the city contends that one group could receive a higher or lower benefit than another based on the "costs" associated with characteristics of that particular group, including its size.

There are historical examples of how the concept keeps changing as it evolves. In many rounds, there was a so-called uniformed differential, meaning uniformed forces received more than civilian workers, negating any claim of pattern. In those cases, the pattern was no pattern at all. In the Koch years, uniformed differentials were awarded in virtually every contract. In justifying this drawing of distinctions between different types of workers, the city said in a PBA arbitration (in a rare tip of the hat to the Taylor Law requirements) that civilian unions understood "the special nature of the work performed by the uniformed forces and their unique contribution to the health, welfare and safety of the public."

In 1990, the city ceased providing the so-called uniformed differential. In the 2000-2002 round, the uniformed differential returned, with certain unions (excluding the PBA and UFA) receiving about 1% above the civilian settlement. The PBA ultimately received an arbitration award that has been valued at more than 2 percentage points above the two-year contracts agreed to by other uniformed unions. In the 2002-2004 round, there was again a substantial deviation between the uniformed and civilian settlements. The civilians received a 0% and 3% increase over two years with a \$1,000 lump sum payment. The uniforms, benefiting from a PBA arbitration award, were able to secure a 5% and 5% raise over two years, marking the single greatest variance between civilian and uniformed settlements in recent memory, blunting any claim of pattern in that round.

Despite city claims, this "pattern" has been maintained over the history of labor bargaining in name only. There have been so many exceptions that in reality there have been no rigid "pattern" constraints at all. Even casual observers of the labor scene know that pattern bargaining has not existed at all since 2000. In the 2000-2002 round, there were various separate and distinct settlements. The 2002-2004 round produced its own set of different outcomes.

Even under the city's application of the "pattern," exceptions can be made when there are so-called external funding sources, even when those funding sources do not come to fruition. Labor Commissioner Jim Hanley testified that in the 1990-1991 round the UFT received an above-pattern increase in the guise of a pattern-conforming settlement. According to Hanley, even though "all of the funding never materialized... we had settled the contract anyway."

Exceptions to the so-called pattern have also been made when an agency has been unable successfully to recruit and retain personnel — an example is the settlement of a nurses' contract a number of years ago resulting in substantial pay increases.

Another problem with the city's application of the concept is that it penalizes the units that are relatively more productive because, being so productive, they have little to trade for extra compensation, and the city solely and arbitrarily decides what productivity it chooses to credit. New York City police officers in the main work an 8-hour-and-35-minute tour and 2088 hours per year, figures that put them at the top of hours worked for police officers nationwide. New York City teachers, by contrast, who worked a relatively shorter day in the classroom as compared to teachers in other jurisdictions, were able to trade minutes of extra time for extra money. Because police officers already log hours that put them at the top of the profession, that vehicle could not be considered as an option for getting extra pay for police officers. Similarly, even though police officers continue to achieve record-breaking crime reductions, while picking up new responsibilities in circumstances where there are thousands of fewer officers, the city refuses to consider rewarding those forms of real productivity. By contrast, the city continues to reward our hard-working sanitation workers by paying them extra for variances in certain operational practices.

The city's discredited pattern-bargaining scheme is propped up by other contrivances and artifices. For example, few labor practitioners can make sense of the city's system of costing contracts. Recent costings, like "charging" police unions for 10-tour rescheduling — a benefit given up a decade earlier — has left everyone mystified. Other issues like the method of present-valuing certain collective bargaining benefits, the date used for fixing unit size, the value/cost of spins — to name a few — have been the subjects of extensive discussion and debate, leaving the city standing alone among government entities in how it costs collective bargaining agreements.

Another deceit encouraged by the city misleads municipal workers by suggesting that unions may benefit from a "me-too" or a re-opener clause in the event that another union receives more in bargaining. The language included in certain recent agreements purports to allow the settled agreements to be reopened if another uniformed group has an adjustment made to their salary "outside of the collective bargaining or arbitration process." Of course, this language excludes the re-opener based on the primary avenues used by unions to secure compensation increases and is thus worthless. Other so-called reopening clauses have similar limitations. And, notwithstanding what is said, parity or "me-too" clauses or clauses that require one union to receive what another receives in bargaining are illegal.

Pattern bargaining is propped up by persistent acts and episodes of bad-faith bargaining by the city. In round after round, the city refuses to negotiate any agreement that does not contain at least the veneer of pattern, lock step bargaining on terms that the city dictates. There are no negotiations — it's take it or leave it.

As demonstrated in this column, so-called pattern bargaining is a construct or artifice used by the city in its various forms to achieve its goals and objectives in bargaining. Its definition changes to fit the city's needs and its public perception is aided by other artifices and acts of deceit by the city, including a unique and malleable system of costing and sham re-opener clauses. Other jurisdictions, when queried about whether they practice lockstep pattern bargaining (as the city defines it), reply that they have never heard of that term or practice.

Should deceit and dishonesty be the bedrock of our city's system of bargaining? We renew our call for a transparent, market-based system of bargaining where collective bargaining is conducted as contemplated by the framers of the Taylor Law. Public employees deserve better than our current system of bargaining.



For The Record

Every time we publish a letter-to-the-editor or run one of these ads in The Chief, the editor replies in either an editorial or "editor's reply" usually filled with the same inconsistencies, half-truths and biased conclusions that inspired us to start running these ads in the first place.

Rather than respond immediately, one by one, to each of the newspaper's "responses," we decided to save our rebuttals for this feature of our monthly page. So, for the record...

In a lead editorial running in the same issue that our first installment appeared, this newspaper decried the PBA's "unrelenting attacks on the integrity of public institutions such as OCB and PERB." In our response, we acknowledged having attacked OCB's integrity, citing a report to Mayor Giuliani by the Task Force on New York City Police / Community Relations that called the process a "joke" and a "stacked deck" against the unions. The editor's reply defended the agency by citing two decisions, several years apart, in which OCB "ruled in favor of the police unions and against Mayors Bloomberg and Giuliani." Two decisions, as opposed to scores against us and other unions, and we're supposed to admire the agency's credibility?

As for the assertion that we attacked PERB's credibility, we challenged this newspaper to cite one instance. The lame response was, "If claiming that PERB violated an agreement not to submit the names of certain arbitrators for consideration is not attacking the agency's credibility, we're not sure what is." Obviously, then, they're not sure what is. Formally disagreeing with one claim or action by one employee of an agency does not equate with attacking the credibility of the entire agency. In fact, PERB's newly nominated chairman, Jerome Lefkowitz, was recently quoted in this very newspaper — under the headline, "New PERB Head Disputes City in PBA Arbitration" — supporting the PBA's position that the PERB employee had "no authority to act" to resolve issues raised by the PBA's appeal of the employee's actions in fashioning the disputed list of potential public arbitrators. Would The Chief now argue that Mr. Lefkowitz has challenged the integrity of the agency of which he has been named chairman?

The June 14 filing deadline to participate in the World Trade Center Disability program is rapidly approaching. Any police officer who worked 40 hours or more at the WTC site, Fresh Kills landfill, the New York City Morgue or the temporary morgues on barges traveling between the west side of Manhattan and the Fresh Kills landfill should file a notice of participation *even if he or she is not ill*. Doing so will protect your ability to claim a WTC-related line-of-duty injury and permit you to file for accident disability and death benefits. To date, only 7,897 members have filed Notices of Participation with the Police Pension Fund.

Court Decisions Force OCB To Rule in PBA's Favor

In a ruling it issued reluctantly, after trying to dodge the issue through legal maneuvering, the city Office of Collective Bargaining finally put the lie to the fiction that the Municipal Labor Committee is the sole lawful bargaining agent for the PBA or other unions in health benefits negotiations.

The Feb. 26 decision, the result of an improper-practice (IP) petition brought by the PBA and SBA, ordered the city and its Office of Labor Relations to supply requested health benefit information directly to the petitioning unions and to "cease and desist from requiring...that requests for (the information) be submitted only through the Municipal Labor Committee..."

The decision is a significant victory for the PBA and SBA. After hearing the city and, remarkably, others in the union business maintain for years that the MLC holds the bargaining certificate on health benefits matters for all city unions, we have prevailed on our point that individual unions continue to hold their bargaining certificates in the health area.

We have spent far too much time and resources dispelling the fiction that the MLC and not the PBA has the ultimate power to negotiate health benefits for PBA members and confirming that whatever role the MLC does have in these matters occurs only with the unions' consent. This is mainly attributable to OCB's failure to put the fiction to bed immediately when the PBA filed a previous petition in 2000 and by mooting here a patently live issue.

We filed this recent petition in November 2003, after the city refused to provide requested documents because it took the position that the MLC bargains for all unions on health benefits issues. In its initial decision, OCB dismissed our petition, agreeing with the city's argument that the issue was moot because we had received the documents through the MLC. Fighting for the principle and not just the documents, we brought an article-78 proceeding in State Supreme Court, which ordered OCB to rule on the question of whether the city had properly responded to the document requests by providing the information through the MLC and not directly to the unions. The Appellate Division agreed.

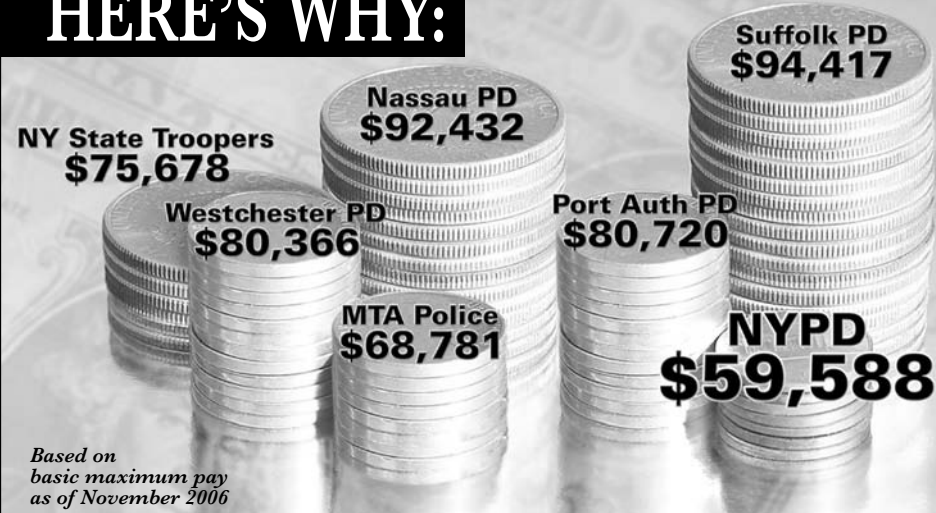
The appeals court decision rejected as arbitrary and capricious OCB's refusal, on mootness grounds, to determine the IP claim. According to the court, there was a controversy shown by "the city's repeated insistence that petitioners (the PBA and SBA), **the exclusive bargaining representatives for its members**, proceed through another entity that it often worked with only upon consent."

The issue was then remanded to OCB, and since the labor law was so clear on this and the appellate court made plain its views, now the agency's back was to the wall. It had no choice but to rule in the unions' favor, holding that "having been placed on notice concerning [the PBA's and SBA's] position concerning the status of the MLC vis-à-vis the information request, the city reasonably should not have assumed that the MLC was acting as the agent of the PBA and SBA for that purpose."

CAN'T HIRE ENOUGH NYC COPS?

CAN'T KEEP THE NYC COPS YOU HAVE ON THE JOB?

HERE'S WHY:



WHAT JOB WOULD YOU TAKE?

Pay our police fairly now for the health of the NYPD
And for the future of our City.



Patrolmen's Benevolent Association
of the City of New York

40 Fulton Street New York, NY 10038 212-233-5531 Patrick J. Lynch President



PATROLMEN'S BENEVOLENT ASSOCIATION

OF THE CITY OF NEW YORK

40 FULTON STREET NEW YORK, NY 10038 212-233-5531

Patrick J. Lynch President