THE POLITICS OF PENSION REFORM: NEW YORK STATE 1971-76

by

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ABSTRACT

This case study of pension reform politics examines the impact of a state pension commission, public employee unions, the legislature, the press and civic groups in New York in the 1970's. Contributions to the eight public retirement systems cost $1.5 billion in 1970, and doubled by 1974. The state established a commission to recommend reforms that would reduce pension costs of future employees. The pension commission's first reform proposal in 1973 was defeated by the determined opposition of a powerful coalition of public employee unions. Most legislators avoided this very controversial issue. In 1975 the newly elected governor tried to abolish the pension commission, which was a political embarrassment. He was forced to back down, after furious editorial attacks, and the release of a very damaging report by the pension commission which found severe underfunding of the New York City retirement systems. The pension commission again submitted a proposal in 1976. Its major features were the integration of pensions with Social Security benefits, higher age age service requirements for normal retirement, 3% salary contributions, a 3% cost-of-living escalator, and a uniform plan for all public employees. This proposal also re-

ceived little initial legislative support. At the end of the session, due to the interplay of public clamor, including well-timed newspaper editorials, and interest group lobbying; visions of New York City's default; partisan politics; and the fragmentation of union opposition; the legislature finally passed a comprehensive reform bill. New York became one of a very few places where attempt to reform pensions and cut benefits in any way were successful.

Name and Title of Thesis Supervisor: Prof. Robert Fogelson

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Introduction

In mid-January, 1973, the Permanent Commission on Public Employee Pension and Retirement Systems released its first report recommending a reduction in pension benefits provided under all public employee pension plans in the state of New York. The report called for the consolidation of all retirement plans encompassed by the state's eight retirement systems into one uniform plan. It also proposed to reduce the pension of a public employee paid out by state or local government by the amount the employee would receive from Social Security.

At the outset, the proposal received almost no support from state and local officials and others concerned with pensions. Leaders in the state legislature showed more wariness than interest. Public employee unions were particularly vehement in their opposition. They immediately joined together to fight the proposed changes. Even the Governor who had established the Commission in the first place two years earlier, with a view toward cutting the state's pension costs, did not give his support to the proposal. The so-called Kinzel plan, named for the Commission's chairman, never made it through the legislature in complete form. The original proposal called for comprehensive, permanent change. What passed the legislature was temporary and less broad.

Nevertheless a process had begun. Three years later, in the closing hours of its 1976 session, the state legis-

lature passed the Coordinated Escalator Retirement Act, CO-ESC, which included virtually all the policy changes that the Pension Commission had called for in its original CO-ESC proposal in January of that year. CO-ESC became law despite the furious opposition of public employee unions, despite the fact that powerful legislators friendly to the unions had no desire to let the bill pass as the 1976 session began, and despite the fact that there was a Democratic governor, New York's first in sixteen years, who one year earlier had tried to put the pension commission out of existence.

New York was not at all unique in its concern over, and scrutiny of, public employee pensions. An article in U.S. News and World Report, in July 1971, exemplified the worries about "skyrocketing pension costs" in many states and cities. Total outlays for public pensions, including federal ones, were expected to triple between 1971 and 1980. Many governments were paying 10% to 20% of their payroll for pension plans. Although New York City figured prominently in the article,"with the most liberal public or private pensions in the country," the article reported of government generosity in Chicago, Washington D.C., Philadelphia, and other places. One of the examples of expensive pensions was the celebrated case of Hamtramck, Michigan, where the city could pay neither employees, retirees nor creditors in 1970. That year, the city's pension costs were exactly half its $2 million deficit.[1]

The article also reported the growing alarm over unfunded

liabilities* -- $65 billion in the U.S. Civil Service; and hundreds of millions of dollars in many city and state systems. An article in Institutional Investor in June 1975 said that "The complacent view is rapidly evaporating" that pension funding problems would not hurt cities. In one of the article's examples, the unfunded liability of the Los Angeles police and firemen's pension plan was $1 billion, which the city was amortizing over 70 years -- twice the maximum allowable time under federal legislation for private pension funds. Other cities were not amortizing liabilities at all, because they could not find present cash to put aside for future costs.[2]

Both articles found fault with local administrations and legislatures for granting benefit increases to employees practically on demand, and for failing to adequately fund accrued liabilities.

National concern was further highlighted when the federal Employee Retirement Income Security Act of 1974, which enacted substantial new safeguards and regulations for corporate pension plans, also mandated a two-year Congressional study of public plans. It was expected at the time that the study would lead to new demands for federal regulation of state and local pension systems.[3]

This thesis is about the events during the six-year

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*Long term obligations to beneficiaries, which are not matched by accrued assets (as opposed to funded liabilities).

period that began with the establishment of the permanent commission, and ended with the enactment of CO-ESC. During this period, the Pension Commission issued its two major reform proposals, reported on the funding status and actuarial valuation of the five New York City retirement systems, and wrote memoranda to the Governor and legislature on bills that would affect public employee pensions. Actions of the Pension Commission are the pivot of the story because their effect was to catalyze public affairs and make public employee pensions a primary political issue in the 1970's.

There are a number of other important themes, brought out by events of this period. The ability of unions to bargain collectively, about any issue which affects the well-being of their members, is one such theme. The way state legislature makes decisions and sets policy is another. The influence of business interests and of the press in the making of public policy is an important topic. The use of numerical data and assumptions underlying that data, the subject of enormous conflict, is another theme. The impact of an enormous crisis, the default of New York City, on public pension policy is yet another. These themes are part of the history briefly outlined in the first two paragraphs, and yet do not capture all the factors which led to a particular route for pension reform. They are the departure point for several sets of research questions which this thesis attempts to address.

The first set of questions is about the pension commission itself. Whose interests was it intended to serve? What means did it use to bring about change? How did the commission contribute to actions taken by the press and by business groups?

The role of organized labor is a second theme. What were the real stakes for the public employee unions? How did the very diverse unions in the state which were affected by pension reform interact with one another? Why did they fail not only to win new pension benefits, but to prevent further conservative reform as well?

Turning to the state legislature, how did this body manage to pass controversial pension legislation? How did legislative caution and disapproval eventually change to support? How did political partisanship affect the legislative outcome?

How did New York City's financial crisis affect pension reform, and the influence of the pension commission itself? What information was used to support opposing viewpoints, and what conflicts arose of the use of data?

Finally, what, if any, implications are there in all this for the way pension policy is made? Whose interests are involved in setting pension policy? What did, or will, the Pension Commission's reforms actually achieve?

The chapters cover the following main topics: (1) establishment of a permanent state commission on public employee pensions and the release of that commission's first

reform proposal; (2) the response of public employee unions and the legislature to the Kinzel plan; (3) the enactment of the Pension Reform Act of 1973; (4) Governor Carey's attempt to abolish the Pension Commission, the breaking of New York City's fiscal crisis, and the growing interest in pensions by business and public interest groups in the state; and (5) the enactment of CO-ESC.

Footnotes -- Introduction

1. U.S. News & World Report, July 19, 1971.
2. Barbara A. Patocka, Institutional Investor, June 1975.
3. Ibid.

Chapter I.

The first public employee pension in New York, and in the nation, was initiated in 1857. It was a lump-sum payment for New York City policemen disabled in the line-of-duty. New York City firemen received the same benefit in 1866. In 1878 New York City granted the first pensions based only on service* to police and firemen. The police pension was half-pay after 25 years of service. Firemen were eligible for half-pay after 20 years of service. Other pension plans began in the 1890's for New York City health department employees, for teachers, and in 1911, for all city employees not otherwise covered. By 1916 there were so many plans, each with its own requirements and idiosyncrasies, that a mayor's Commission on Pensions called to examine them found "a tangled mess of conflicting provisions."[1]

At the state level events paralleled the development of pensions in New York City. The state set up a Commission on Pensions in 1918 to examine its pension affairs. As a result of the studies, both state and city began to reform their pensions systems and create actuarially based, consolidated ones, beginning in 1920.[2]

In 1971, there were eight retirement systems in New York. The state government administered three of them. These were the Employees' Retirement System, (founded in 1920)

*Years of employment, as distinguished from disability.

which provided for general* employees of the state and local governments outside of New York City; the Teachers' Retirement System, also founded in 1920, which included teachers and school administrators; and the Policemens' and Firemens' Retirement System, founded in 1966. The last-named separated those employees from the Employees' Retirement System.[3]

New York City's five systems were the Employees' Retirement System (1920), the Teachers' Retirement System (1917), the Board of Education Retirement System (providing for non-teaching employees of the Board of Education), the Police Pension Fund (1940), and the Fire Department Pension Fund (1940). In 1971 there were about 315,000 active members** and about 72,000 beneficiaries.*** In 1973-74 the state systems counted approximately 800,000 active members, and about 135,000 beneficieiries.[4]

Two of the state systems were directly under the state Comptroller, the Employees' Retirement System and the Policemens' and Firemens' Retirement System. The Teachers' System had a nine-member board with representatives chosen by teachers, school boards, school administrators, the Comptroller's office, and one banker. The New York City funds had boards composed of city officials and union leaders or representatives.

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*Usually means anyone other than teacher, policeman, or fireman.

**Current employees enrolled in one of the systems.

***Retirees and their dependents receiving benefits.

The Mayor was a member of three boards, the Comptroller of all five.[5]

Several aspects of these pension systems are notable, for the perspective they give on future events. One is the separatism among different kinds of employees, which goes back to the earliest pension plans. In New York, and in most states, teachers, policemen, and firemen had plans distinct from other employees. The first pensions were for police and firemen, by virtue of the dangerous, arduous nature of the occupations on one hand, and on the other, management's need for a young, able workforce. Teachers, the largest single occupational group of public employees, also had separate systems.

In time, within each retirement system there were further divisions among employees. In the NYC Employees Retirement System, sanitation workers, transit employees, transit and housing authority police, and corrections officers had separate, more advantageous plans than the other members. Many plans were for a specific subgroup, such as "Nassau County Park Police." In 1976 the New York State ERS had 16 plans, the state police and firemen 14, while the state teachers had only one "Career Pension Plan." The separation between New York City and all other state and local workers remained, but after the reforms of the 1920's brought local government employees in the state systems, state law forbid local governments to set up their own, duplicative systems.[6]

In 1971 there were two sources of retirement income

for most public employees. One was the state or city pension, financed by government and employee contributions to a fund set aside for this purpose. The other was Federal Social Security. New York systems had joined Social Security in the late 1950's. At the time, both pension and Social Security benefits were low, so the decision was made not to coordinate the two in any way.[7]

In addition, some employees were entitled to payments from special annuity funds, administered by their unions but financed by employer contributions. Payments depended on the number of days worked, or were a flat annual amount.

The size of the pension for a given employee depended on the number of years that employee had worked, his age at retirement, and his final or final-average pay*. The pension was calculated as a percentage of final salary times the number of years of service. For example, 2% of final salary for each of 25 years yields a pension of 50% of final pay. In this way, rates are designed to accomplish a specific level of wage replacement, for a certain number of years of service. There also are modifications of this formula, in many cases, for employees at different ages; particularly, for employees retiring at an early age. The exact numbers in the formula depend in all cases on the employee's occupational group or sub-group. The ultimate

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*Average pay in x consecutive years of highest earnings; Usually, final three years of employment.

cost of pensions to the government employer depends on how long the employee receives a pension, in addition to how large the pension is. This is determined by such factors as whether the employee leaves his job or dies before retirement, how long the employee lives after retirement, whether benefits continue after his death to other dependents, whether he is receiving a disability pension (much larger than a service pension). Investment income from the funds also affects the cost of pensions to government.

To complete this background information, we need a picture of the public employee unions which contributed to the development of pension plans, and which dominated events over the six-year period covered in this thesis. In 1971 there were 1,043,000 public employees in state and local government in New York. There were 37 unions of public employees in the state in 1972: 33 national or international unions with New York branches, and 4 which operated only in New York. Of the 37, 19 were AFL-CIO affiliates, 17 were independent, and 1 had dual affiliation. Most unions were divided into geographic and functional groups. Ten unions accounted for over 90% of all government employee union locals. Six of these were for state and local employees, with 624,000 employees in 1516 locals.[8]

In unions, as with retirement systems, New York City and "upstate" unions (includes suburban NYC, rural areas of the state, and smaller cities) were distinct from one

another. Although NYC union locals and councils belonged to larger state organizations, the NYC group often stood out as a dominant union in state politics, due to its size and/or strong tradition of political activism. About ten union organizations, including centralized groups, districts, and locals, were prominent in the struggle over pensions, due to the outspoken positions,and actions,of their leaders.

The Civil Service Employees Association (CSEA), an independent New York group representing over 200,000 state and local government general employees in 1971, was one of these. It was the largest union in the state, organized into six regional conferences. Its locals covered employees everywhere in the state except New York City.[9]

New York State United Teachers included upstate and suburban teachers (National Education Association affiliates), and the powerful New York City United Federation of Teachers (American Federation of Teachers, AFL-CIO). Membership was 200,000, the second largest in the state.[10]

The New York State Police Conference (independent, 45,000 members) included nine regional conferences of local Patrolmen's Benevolent Associations (PBA's), and four New York City PBA's. The four included the NYC PBA (city police, 30,000 members), and the Housing Authority, Transit Authority and Port Authority PBA's.[11]

District Council 37 (AFSCME* -- AFL-CIO), one of three

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*American Federation of State, County and Municipal Employees.

AFSCME councils in the state at the time, numbered 121,000 New York City workers including clerical workers, laborers, hospital workers, and many others. Transport Workers Local 100 (AFL-CIO) represented NYC transit authority operating employees. The New York State Fire Fighters Association (AFL-CIO, 28,000 members) included the NYC Uniformed Fire Fighters Assocaition, with 11,300 members; the NYC Uniformed Fire Officers Association; and all other firemen in the state, in 56 other locals. The NYC Uniformed Sanitationmen's Association (11,000 members) was a Teamsters affiliate. Another Teamsters group was Local 237 with Public Service Employee workers in the NYC metropolitan area.[12]

This listing excludes the majority of public employee unions and includes only a very few of the 2-3000 locals in New York. It includes the groups that took the lead in the fight against pension reform in the 1970's.

The reform effort of the 1970's was a reaction to the cost of public employee pensions. Prior to this period, the state legislature had passed numerous laws liberalizing pension benefits, throughout the 1960's. At the beginning of that decade, public employee wages and pension were considered to be neither high nor adequate, particularly compared to those in private industry. By the end of the decade the situation had changed considerably. Service requirements were reduced from 30 and 35 years to 20 and 25 years. Age requirements fell from age 65 to 55 and 50, or were eliminated.

The base pay for computing benefits changed from an average of the last three or five years of work, to last year's work or even last day's pay rate, for some employees.[13]

Actual wages had also increased to match or exceed those in private industry. State and city employment, and membership in public retirement systems, also increased.

Pension costs increased correspondingly. In 1961, New York City's five retirement systems cost about $237 million. In 1971, the city made $691 million in payments, an increase of 161%. Membership in the city's systems had increased by about half, while salary expenses had approximately doubled, over ten years. In 1968, state and local governments paid $448 million into the three state-administered retirement systems; in 1974 the three systems cost $1.046 billion.[14]

By the end of the decade of the 1960's, pensions were also clearly a central item in collective bargaining. The Taylor law which passed the state legislature in 1967 guaranteed for the first time that all public employees had the right to organize and bargain collectively. This strengthened unions' ability to bargain about all items, pensions among them. Pension benefit increases had also been neglected with to a certain extent replaced wage increases. In 1960, New York City instituted the Increased-Take-Home-Pay policy, under which the city paid all or part of the employee's salary contribution toward the pension. This had the effect of a tax-free wage increase. In other cases unions sacrificed

certain wage goals in order to be able to improve pensions under new contracts.[15]

Pensions were also important enough to be the subject of various labor actions. They were one of the items in the contract dispute which led to the 1966 transit strike in New York City. In the settlement, transit workers won the first half-pay, 20-years-of-service pension for public employees other than policemen or firemen. In 1971, the state legislature failed to move toward approving a pension contract agreed to by New York City and District Council 37 of AFSCME. Bridgetenders in the city went on strike in protest, leaving drawbridges open and causing immense traffic jams. They only returned to work when the city agreed to submit the legislation the following year. Later that year, firemen in New York City rejected a contract because they were not satisfied with a pension provision.[16]

In the mid- to late 1960's, the Rockefeller administration began to turn its attention to the size and type of public pensions in the state. In December 1965, Governor Rockefeller appointed a committee to conduct a comprehensive study of the State Employee's Retirement System. The committee's mandate noted that the pension legislation of the last five years or so had resulted in a complex, ill-structured and idiosyncratic retirement system. The committee was charged with developing a retirement system for the state that would be "simple, uniform, and equitable."

The report was to consider all the aspects of pension benefits, including age and service requirements, vesting,* death and disability benefits, and other items; the committee was also to deal with a number of perceived problems, including system inequities among members, inadequate benefits, multiplicity of plans, and duplication of benefits by different sources of retirement income.[17]

Rockefeller appointed a committee of five, headed by David Moore, Dean of the state school of labor relations at Cornell. The committee's other members were all to be important in the future controversies over the Kinzel plan. Milton Alpert was judge of the state Court of Claims in Albany, and a former Deputy Commissioner in the state Office of Local Government. Carl Stevenson was a vice-president of Eastman Kodak and director of employee benefit programs there. From the Administration, Malcom Wilson, Lieutenant governor, and Arthur Levitt, Comptroller, were members.

The Moore Committee was actually almost ready to issue its report in the winter of 1977, but then "had a curious but significant fate." The Taylor Law had just gone into effect, in April. The committee felt itself to be in an anomalous position. It was a committee set up to advise the governor, but it also would be commenting on something

*"Acquisition of a right, upon termination of employment, to a deferred benefit." Thus, an employee who leaves his job before he is eligible for retirement is entitled to receive a pension, when he achieves a normal retirement age. This is provided that he wored a minimum number of years to qualify. (pp. 36-37).

which would now be dealt with by collective bargaining. To avoid the appearance of in any way pre-empting collective bargaining, the committee decided to not refer to specific issues which were subject to negotiation at the time. In Tilove's interpretation, the committee's work had simply become irrelevant, because it had been based on one centrally-run, non-negotiable system.[18]

The final report was released in June, 1969. One section of it was on "guiding principles" for a retirement system. These principles stated the committee's views on coverage, that is, what risks should be covered by a retirement system, and on standards of evaluation of the effectiveness of a pension plan. It also discussed the impact of federal Social Security benefits, and of a constitutional provision which made membership in a public retirement systems an enforceable, contractual right. The report also presented a "model" retirement system which would fulfill all the criteria discussed. Another section of the report compared benefits under the NYS ERS with benefits provided by other states and by private corporations.

The Moore Committee defined the proper scope of coverage to be protection from the risks of old age, long-term disability, and premature death. Coverage should not be used as a panacea for low salaries, poor working conditions, or any other problems not directly related to the protection of of employees and their families during retirement.

For the evaluation of the effectiveness of retirement

system, the Committee concluded that several standards held. A retirement system"should be easily understood," there should be equity among employees, and "leapfrogging" should be thereby prevented. (Where there are plans within the retirement system that provide different benefits to various groups of employees, leapfrogging is defined as the setting of one group's maximum benefits as the minimum goal for the next group which bargains for benefits). A fourth standard was that the system should have the lowest possible cost. Also, benefits should be adequate.

The report was fairly specific about how an adequate benefit should be calculated. Adequacy should be based on the conceptions that normal retirement is between ages 60 and 70, that 30 years constitutes a full work career, and that 1.667% of salary credited for each year of service would be the general formula for computing benefits. 1.667% of salary per year of service, times 30 years, would produce 50% of salary. This was stricter than the 2% fraction, which results in 50% after only 25 years of service. The report did not provide any guidelines on how much an adequate benefit would actually be, only that an employee's total income package should be considered when judging adequacy, and that lower income employees should in some way be treated more favorably than high income employees.

The situation was complicated by a constitutional provision of 1938, which effectively guaranteed that a perman-

ently granted benefit could not be changed, except to improve it, for any member of a retirement system. The result of this provision was that many new pension laws were enacted temporarily, renewable yearly. This created a confusion of non-guaranteed pension benefits. The committee recommended that any new program should be permanently guaranteed. This would eliminate confusion and uncertainty about future benefits. The Committee presumed that closer scrutiny of pension plan design and therefore more rationality, would result.

The Committee report stated that established policy had been to keep Social Security and SERS pensions separate. The issue here was whether the state should pay for two separate sources of retirement income without correcting for "duplications" -- i.e., whether an employee would eventually receive too much retirement income according to some arbitrary standard. Current policy should continue, according to the committee, because the two programs complement one another. Social Security payments are supplemented by Congress and provide protection from inflation. On the other hand, the SERS is more adequately funded than Federal Social Security, therefore, it is also easier to administer the two separately. However, the report went on to say that duplication of benefits should be avoided. This it said should be done by controlling the SERS benefit, through limitation on number of years of creditable service, and certain other mechanisms.

The Moore report recommended three basic changes. First,

the state should establish a new retirement program for future state employees, in order to clear away the "clutter and patchwork" of the present. As part of this recommendation, any new benefits should be guaranteed, not temporarily renewable. The benefits provided by SERS should be held distinct from Social Security, but benefits from all sources should be used to evaluate adequacy, and duplication should be avoided. The system's objectives should be to provide coverage for the risks of old age, long term disability, and premature death. Benefits should be based on need, not on the causes of death or disability, or length of service. Finally, the system should provide protection from inflation.

The Moore report recommended that a permanent Advisory Commission on pensions be established, with nine members appointed by the governor, chaired by the state comptroller. This would succeed the Advisory Council on Pensions in Civil Service law.

Three other recommendations were for constitutional changes. One would be a mandate for actuarily sound, fully funded systems. Another would be to require immediate funding of all new benefits. The third would require any changes to be legislated as general law.

The Moore committee therefore dealt with a number of problems with state pension policy, but was not able to be definitive. The effect of the Constitutional provision, for example, was still problematic. What this provision really

meant was that there could never be less than two retirement plans for any given group of employees. A new plan would be added to all the other plans in existence. Each of the eight retirement systems would administer its old plans, plus the new one. While trying to clear away the old "clutter and patchwork," a new layer of benefits would be superimposed.

Another inconsistency was the intention to continue the separation of Social Security and SERS benefits, while somehow avoiding duplication at the same time. Although the Moore report did say that this could be done indirectly, by putting certain limits on SERS benefits, ultimately the only way to follow the second part of that recommendation would be to explicitly take account of the amounts received from Social Security. To design SERS benefits otherwise would in effect be guesswork, purporting to follow sound principles but not based on actual data.

It was also notable that there were two separate concurring statements by the five members, upon delivery of the report to the Governor. Moore, Alpert and Stevenson concurred with all the report's recommendations and findngs. Levitt and Wilson, the only elected officials on the committee, concurred only with the general findings. The two officials did not think it appropriate that they recommend a commitment to particular numbers defining a benefit structure. They also stated their support for "... the most liberal retirement system consistent with the fiscal capacity ... of the state."[28]

Although the Moore report was not acted upon at the time of its release, it provided a number of guidelines such as the aims of a retirement system, and the specification of benefits. Future reform efforts were to build on these precedents.

The turning point in pension reform came in 1970-71. By 1970, members of the largest municipal union, District Council 37, were the only city employees who had not won certain benefits that were standard for other city workers. The basic plan for D.C. 37 members was retirement at age 55, with 25 years of service. The service fraction was 2.2% for each year of service, or 55% of final year's pay, and was scaled down for less than 25 years.[19]

City police and firemen could retire after twenty years, at half-pay. Sanitation men, and then transit employees, won twenty-year pensions. Within the NYC Employees Retirement System, which D.C. 37 members were in, sanitation, corrections and transit workers and housing police each negotiated separately for pensions with the city.[20]

In 1970, D.C. 37 negotiated a contract with the Lindsay administration for a twenty-year half-pay pension payable at age 55. The contract guaranteed 75% of pay after 30 years service, and 100% after 40 years. Estimated initial cost of the plan was $30 million.[21]

The city administration sent the contract to the legislature in Albany for ratification. Senator Marchi, a highly-respected Republican from NYC and chairman of the

Senate Committee on the City of New York introduced the bill. It was expected that the contract would have "clear sailing" in the legislature, as had every other negotiated agreement since before the advent of the Taylor Law.[22]

The contract sent shock waves through Albany. It proposed to erase the unwritten barrier between uniformed employees (who presumably had more physically-taxing and/or dangerous jobs) and the lower-paid, lower-status general city employees. Although there was traditionally a lot of favorable sentiment in the legislature for the police, for firemen and for teachers (whose union was possibly the most powerful in the state), there was no such favoritism toward general city workers.[23]

The issue of contract ratification also underscored antagonisms between Governor Rockefeller and Mayor Lindsay, and between the Rockefeller administration and Victor Gotbaum, the head of D.C. 37, a Lindsay supporter and a Democrat. Several administration officials saw the contract as a fiscal and political threat. Lieutenant Governor Malcolm Wilson urged Rockefeller to set up a permanent state commission to study and regulate public pension, as the Moore report had advised.[24]

Attention and alarm now focussed on New York City, and especially on the city's powerful public employee unions. Hostility increased between legislative leaders, Senate Majority Leader Earl Brydges in particular, and D.C. 37,

as the legislature showed no signs of ratifying the contract. Bridgetenders for drawbridges in New York City struck in protest for two days in June. Traffic in the city was jammed as commuters tried to get to work over fewer roads. The message from the striking workers was that suburbanites (i.e. Republicans) would suffer from their representatives' failure to act in Albany.[26]

Senator Brydges, a Republican from Binghamton, did not take kindly to this show of force. He killed the "Gotbaum bill," as the contract was known, and all other pending pension legislation, in retaliation. He then went to work for a bill to create a permanent pension commission, which passed in the last few hours of the legislative session that year. The commission was appropriated $250,000, with a mandate to submit an initial report to the legislature by January 15, 1972. The legislature passed other "hard line" pension legislation as well. One measure required all pension bills to have fiscal notes attached, outlining the cost to government of the proposal. Another required budgeting of increased pension expenses in the year incurred.[27]

New York thus followed the lead of several other states, including Massachusetts, Illinois, Wisconsin, Minnesota, Ohio, and Washington, in establishing a permanent public-employee pension commission. Some of these state commissions had existed for over a decade. The Illinois Public Employee Pension Laws Commission, made permanent in 1959 (and dating

back to 1945) included legislators and ordinary citizens among its members, and was active and influential in that state. The Massachesetts Retirement Law Commission, established in 1958, studied the Massachusetts system on an ongoing basis, and sponsored its own legislation. Other, adhoc commissions existed to study particular issues.[27]

But, where other state commissions had achieved the status of non-partisan advisory bodies whose opinions were widely respected, the New York pension commission began in an atmosphere of antagonism. It was created for the sole purpose of cutting pension costs, and was suspected of being a punishment to unions, for asking for "too much."[28]

The legislation setting up the commission also specified that the Governor had the power to appoint five commissioners, including one chairman, upon advice and consent of the Senate. This contrasted with the Moore report, which had recommended a nine-member panel with the Comptroller as chairman. Wilson had advised this modification, in order to ensure "objectivity." A nine-member commission would presumably have room for labor representatives. This had probably been the Moore committee's intention. At this time, however, Wilson preferred to have a smaller group which the Governor had the sole power to appoint. Actually, Rockefeller had no real interest in the commission or in working directly on pensions. Although the power to appoint was the Governor's, the commission was Wilson's project and he made the actual appointments.[29]

Wilson appointed Otto Kinzel, corporation counsel at Union Carbide, to chair the commission. Kinzel had been on public commissions before, though less controversial ones. He had been a member of the World's Fair Commission in 1963, where he had met and become friendly with Wilson, and he had chaired the New York State delegation to the White House Conference on Youth in 1970.[30]

Two other appointees were knowledgeable about pensions. Carl Stevenson had been a member of the Moore committee. Harold Conroy was former administrative director of the statewide pension systems. He was also the Commission's only Democrat.

James F. Murray was retiring as president of Associated Industries, a statewide lobbying group, and a manufacturer. John J. Burns was retiring as head of the state Office of Local Government. Wilson gave them both jobs on the Commission. The Commission then appointed an executive director, Dr. Joseph Metz. Metz was a political science professor from Long Island, a political conservative who had been active in local politics. Interested in working for the state, Metz had been directed to the Commission by Wilson.[31]

The Commission, with its director, first met in late November, 1971. The newly constituted commission had not quite two months in which to prepare its report to the Legislature and Governor. Probably for this reason, the report of January 15, 1972, to a great extent echoed the Moore Committee without being as definitive about some items. As

in the Moore report, the Kinzel report discussed guidelines for a retirement program, the importance of constitutional provisions, Social Security and the Taylor Law. But, for example, where the Moore committee related adequacy of benefits to a 30-year career, a normal retirement age of 60-70, and a service credit of 1.667% of salary, Kinzel only said the adequacy should be based on concepts of normal career length, appropriate retirement age, and a general formula for calculating benefits. The Commission left itself free to later determine the specific number and ranges it would assign to those concepts.[32]

Kinzel also reiterated an end to "special plans," as Moore had, but Kinzel then favored special plans for employees in "hazardous" jobs, which would cover at the very least policement and firemen. In another example, where Moore called for a standard of "lowest possible cost," Kinzel now termed this "taxpayer capacity."

The Kinzel Commission's only active recommendation at this time was for the postponement of legislative action on pending pension bills until the Commission had a chance to examine both the renewal of existing "temporary" benefits, and all new amendments for substantive change. Among the latter, the D.C. 37 contract was the outstanding item at this time.

During the 1972 legislative session, New York City unions and the city administration renewed the attempt to

enact the D.C. 37 contract. The city added a fiscal note to the bill, showing a projected initial cost of $35 million, and made it retroactive to July, 1970. The bill was introduced the first week in March.[33]

Also in March, union leaders formed a statewide coalition to push for ratification. It was headed by Ray Corbett, state AFL-CIO director, and included both public and private employee unions. According to Corbett, the Pension Commission was a fraud, designed to prevent passage of the D.C. 37 pension bill.[34]

Legislative response was not encouraging. Brydges, the powerful Senate leader, maintained that a pension moratoriom was indeed in force,and included the Gotbaum bill. Senator Marchi kept the bill in committee.[35]

The moratorium position received a blow when in April the legislature passed, and Rockefeller approved, an examption to the new law requiring current budgeting of pension benefits, for the City of Rochester. Rochester had negotiated new benefits for policemen and firemen before the law was passed, and did not intend to make an appropriation for the benefits applicable in fiscal year 1972. After this event, union leaders and city officials tried again to get the D,C, 37 bill moved, but were unsuccessful.[36]

The Legislature, under Republican leadership, demonstrated that its hard line on pensions, begun in 1971, still remained. With this encouragement, the Pension Commission

began work on a reform proposal for the state's retirement systems. In 1973, the Commission hired an actuarial consultant from the Martin Segal Company, Robert Tilove. Tilove designed a pension policy under which a career employee of state and local government was entitled to full replacement of disposable income at the time of retirement. A career employee was someone who had spent a full career in public employment -- in this case, defined as 30 years. Disposable income referred to net pay, after income-tax and Social Security deductions. The employee would also have to be age 65 at retirement to receive the full benefit.[37]

The report submitted to the governor and legislature at the end of January was a highly technical and well-documented work. It also made clear the Commission's judgments about the guidelines set down a year earlier. One set of specifics was that the normal retirement age of a "career employee" should be pushed up to 65, with 30 years of service. Secondly, retirement benefits should have two explicit components, Social Security and a pension paid by the state. Third, there was the underlying idea that the total retirement allowance should approximate 100% of pre-retirement take-home pay, or, equivalently, about 80% of final salary. This would be for the "career employee.[38]

The definition of the career employee concurred with the original conclusions of the Moore Committee, which Kinzel had echoed but not quite adopted in 1972. Kinzel also used

as references what he took to be existing standards for pension benefits elsewhere: Social Security sets age 65 as the normal age for receiving unreduced benefits, and in the majority of cases in private industry, age 65 was the normal retirement age, and benefits received at younger ages were often sharply reduced.

In calling for deliberate integration with Social Security, Kinzel took the Moore report a step further. The Moore report had in fact been contradictory in asserting that while the two systems should be kept distinct, all sources of income should be taken into account in evaluating adequacy. If this second goal is to be effectively carried out, integration is evidently the logical implementation of the idea.

According to the report, one result of existing guidelines and definitions was that many long-service employees retired with allowances greater than take-home pay. In a survey of the 1061 members of the SERS who retired with 30 or more years of service in 1972, Kinzel found that each one was receiving an allowance that exceeded take-home pay. Social Security provided 30-40% of the retirement allowance in these cases, and state pensions 60-70%. In its analysis of employee retirement in the state's systems, the Commission concluded that a pension which amounted to 80% of final pay would approximate net pay before retirement.

Using the above guideline and data, the Commission designed a "Uniform Public Employee Retirement Plan." A 30-year employee retiring at age 65 would receive 80% of final pay, or 100% of pre-tax income. Calculations would

be based on service credit fractions, the Social Security wage base,* years of service, age, and the final average salary base. Therefore employees with fewer years of service, retiring at younger ages, or with salaries exceeding the Social Security wage base, would not attain the 80% level of pay replacement.

There was another important component to the plan. Policemen and firemen in the state would have a separate, "special guaranteed retirement allowance." Standard retirement would be after 20 years of service. The normal service fraction for employees retiring before age 62 would be 2%. Employees retiring at 62 years of age or later would receive 3% credit per year of service up to 20 years, and 1% for each year of service thereafter. In this way, younger employees would be encouraged to work somewhat longer than 20 years, while older ones would be encouraged to leave upon attaining 20 years of service.

In contrast, service fractions for all other employees would not encourage employees to retire any earlier -- or any later -- than age 65. For employees retiring ages 62-65, service credit ranged from about 2.1% to 2 2/3% per year. For retirement at ages 55-61, the fractions were 1 1/3 to 1 2/3% per year. But after age 65, there was at least no decrease in the service fraction.

The Commission recommended that every pension plan in the state close to new members. Its proposal would then

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*The maximum salary which is included in the calculation of Social Security benefits and contributions (Tilove, p. 26)

be enacted to apply to all employees who began work for state or local government after July 1, 1973. The report was submitted complete with a section that comprised the proposal in bill form, appropriate for legislative introduction.

Kinzel unveiled the Commission's report and recommendations in a press conference in Albany on January 30. The proposal came largely as a surprise in Albany. Aside from private actuaries, the Commission had consulted almost no one who might conceivably have an interest in the proposal. Two administration officials, Wilson and Levitt, were the official senior advisors to the Commission and had regularly attended its meetings; and the Commission had received assistance from Levitt's actuaries and computers. Other than that, the Commission had not contacted legislators, unions, or anyone else who would not only be interested, but could have a great deal to do with the success or failure of the proposal.[39]

In an interview with the press on February 4, Wilson urged the Legislature to adopt Kinzel's full reform program. According to Wilson, its two most important features were probably the removal of pensions from collective bargaining, and the prohibition of local government funding of pension supplements not part of the existing retirement systems. This referred to the union annuity funds in New York City,* and the frequently made claims that payments to these funds were unconstitutional.[40]

Two days later, Rockefeller also urged the legislature's

"full support" of the Kinzel plan. He cited the findings of the recent Scott Commission report*, that pension costs in New York City, including Social Security payments, would reach almost $2 billion in fiscal 1980, triple the FY 1970 amount.

On February 7, Assemblyman Thomas Hanna, a freshman Republican from the town of Webster, near Rochester, introduced a bill to enact the provisions of the Kinzel plan. At the time he was the bill's only sponsor, although Hanna and Senator Fred Eckert, a supporter of the bill who would later sponsor the Senate version, issued a joint statement. The statement called for a halt to the acceleration of costs to the taxpayers from public employee pensions.[42]

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*State Study Commission of New York City.

Footnotes -- Chapter I

1. Robert Tilove, Public Employee Pension Funds, 1976, pp. 261-262.

2. Ibid., p. 267, 289.

3. Committee on Education and Labor, House of Representatives, Pension Task Force Report on Public Employee Retirement Systems, March 15, 1978, Appendix VIII.

4. Tilove, p. 265; U.S. Bureau of the Census, Finances of Employee-Retirement Systems of State and Local Governments in 1973-73; House Pension Task Force Report, Appendix VIII.

5. Charles R. Holcomb, Empire State Report (ESR), "The Pension Balloon is about to Burst," May 1975.

6. Tilove, pp. 274, 291, 296-297.

7. Holcomb, Empire State Report.

8. Newsday, March 2, 1973; N.Y.S. Department of Labor, Directory of Employee Organizations in New York State 1972, August 1973 ("Directory").

9. Knickerbocker News, January 31, 1973; Directory.

10. Directory.

11. Directory; NYT*, June 23, 1971.

12. Directory; DN*, March 4, 1972; NYT, June 23, 1971.

13. Economic Development Council of New York City, Inc., Pension Changes in NYC 1962-1972 (EDC).

14. U.S. Bureau of the Census, Finances of Employee-Retirement Systems, 1967-68, 1973-74.

15. Holcomb, ESR; Staten Island Register, April 12, 1973.

16. Holcomb, NYT, June 23, 1971.

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*NYT -- New York Times.

*DN -- New York Daily News.

17. The Governor's Committee to Study the State Employee's Retirement System, David G. Moore, Chairman, June, 1969, ("Moore Report"). Unless otherwise noted, all references to the Moore report are to this document.

18. Moore Report; Tilove, p. 292.

19. EDC, *Pension Changes in NYC 1962-1972*.

20. *Ibid*.

21. Tilove, p. 279; Buffalo *Evening News*, April 9, 1971.

22. Tilove, p. 280; John J. Corcoran, Interview, March 26, 1979.

23. Victor N. Farley, Interview, March 19, 1979.

24. *Ibid*.; Malcolm Wilson, Interview, February 28, 1979.

25. Corcoran, Interview.

26. Farley, Interview; New York State *Taxpayers*, Jan.-Feb. 1972; Tilove, p. 310.

27. Tilove, pp. 258, 322, 331-333.

28. DN, March 4, 1972.

29. Wilson, Interview.

30. Otto Kinzel, Interview, February 28, 1979.

31. *Ibid*.; Dr. Joseph Metz, Interview, February 28, 1979.

32. *Report of the Permanent Commission on Public Employee Pension and Retirement Systems*, January 15, 1972.

33. DN, March 4, 1972; *New York Legislative Record and Index, 1972*.

34. DN, March 4, 1972.

35. DN, March 8, 1972.

36. DN, April 6, 1972

37. Metz, Interview.

38. Report of the Permanent Commission on Public Employee Pension and Retirement Systems, January 30, 1973. Unless otherwise noted, all references in the text to the report findings are to this document.

39. NYT, January 31, 1973; Farley, Interview; Metz, Interview.

40. DN, February 5, 1973.

41. _Knickerbocker News_, February 16, 1973.

Chapter II.

Immediately after Kinzel released the pension reform plan, public employee unions in the state announced the formation of a coalition to "do whatever is necessary" to fight the reforms. The coalition, the New York State Conference of Public Employee Organizations, was an outgrowth of the consortium which a year earlier had lobbied unsuccessfully for the D.C. 37 bill. John DeLury, head of the N.Y.C. sanitation workers' union, was chairman, and remained prominently in the lead of the coalition activities. Victor Gotbaum was also one of the coalition's organizers and leaders. Fifteen unions representing half a million workers in the state immediately became members.[1]

This time, coalition organizers were unsuccessful in getting New York City policemen, firemen, and teachers' unions to join. These groups had learned that they would be better off if they stayed apart from other employee groups, and relied instead on their traditionally favored position with legislators. Also, personal and ideological conflict kept Albert Shanker, head of the NYC United Federation of Teachers, from joining an alliance formed by Voctor Gotbaum. At the time, coalition members only commented that these unions would also come to realize that their interests lay with the general alliance.[2]

The Civil Service Employees Association did not immediately join the Conference. When the Pension Commission

released its report, CSEA had attached the proposal for a uniform retirement plan as "lacking in credibility" to workers. Because CSEA was so large, it was important that it join the coalition. This took place within a week after the original announcement. The coalition's size jumped to 750,000 workers in 16 unions, well over half the public employees in New York. Unions agreed to contribute $20,000 each to the coalition.[3]

Gotbaum and Theodore Wenzl, CSEA's president, were co-chairmen of the Conference. Ellis Van Riper, an official of Transport Workers Union Local 100, was Treasurer. The Secretary of the coalition was Harold Melnick of the Superior Officers Council. Among the members of the Conference executive board were chief officers of the N.Y.S. Police Conference and representatives of state firefighters, NYC housing police, NYC corrections officers, NYC transit police, statewide nurses, Teamsters, and others. This diversity was a strength of the organization, showing solidarity and an ability to unite behind a particular cause. Alternatively, it was a weakness, foreshadowing problems.[4]

The Conference commissioned Program Planners, Inc., an actuarial consulting firm, to prepare an analysis of the Pension Commission's report and recommendations. The firm's head was Jack Bigel, a close ally of Gotbaum and DeLury and a frequent union consultant.

The report, which was completed February 28, was an

important tool for the unions in their attack on the Kinzel plan. It criticized the three basic ideas of Kinzel's recommendations: Integration of pension with Social Security; new age and service limitations; and the guaranteed replacement of pre-retirement take-home pay. Bigel's report also attacked many of the assumptions, calculations, and methods of the Pension Commission's report.[5]

One of Kinzel's major assertions was that the 1972 amendments to the Social Security program would radically change the nature of Social Security. These amendments introduced automatic escalation of the wage base, according to changes in the average covered wage. The Pension commission concluded that Social Security would become a pension program in its own right. Frequent escalation of the wage base, and periodic cost-of-living increases, would increase Social Security payments to levels where they would provide adequate income exclusive of local pension plans.

Bigel contended that Social Security benefits alone were in no way adequate. Also, major pension plans throughout the country were moving away from integration. In the Pension Commission's study, 33 of 50 state systems did not integrate. In a Bureau of Labor statistics study, 62% of 93 major retirement plans supplemented, but did not integrate pensions with Social Security. In 1958, and in 1972, 85% of the same plans were only supplemental. Bigel's report did not mention, however, that Kinzel spoke of Social Security

taking on a greater role in retirement income only after about 20 years, at which time the reform plan would start to take effect for most employees.

Regarding age and service requirements, the Conference report first of all said that 65 had never been the standard retirement age, at any time in the history of public pensions in New York. The present federal civil service, which the Pension Commission implied it was using as a standard, used a normal retirement age of 55. Furthermore, a service requirement of 30 years for a full pension ignored what the Bigel report called "changes in the nature of public service." This referred to job-related health and safety problems. Sanitation and transit workers had health problems, which management had not always been willing to recognize. Crime threatened the well-being of the police and prison guards, the latter being a much lower status group than the former. And, although the report didn't spell it out in so many words, hospitals and schools were also unsafe. The implications were especially important for teaching, that presumably safe, genteel profession. The idea that teachers would have to stay on for 30 and 40 years (although this was not uncommon in the past) under "battleground" conditions to collect maximum pensions was not an acceptable proposition to the unions.

The Conference report also debated the Kinzel plan's "guaranteed retirement allowance" of 80% of final pay, or

complete replacement of disposable income, even for employees fulfilling its stricter age and service requirements. Illustrating the Pension Commission's formulae with specific cases, the report found that the total pension, including Social Security, only came to 80%, not 100%, of pre-retirement disposable income, and three-fifths, not 80%, of final salary.

The major reason for the discrepancy according to the report, was that the Commission's own calculations were incorrect. For example, the Pension Commission had understated the working employee's disposable income before retirement, by using incorrect federal tax amounts. Therefore, the Commission's figures overstated the percent of income the new pension plan would replace. The Conference report claimed that the errors it found formed a pattern of understating disposable income and overstating retirement income under the proposed pension plan.

Regarding another one of the Kinzel plan's central recommendations, the union report objected to the proposal to take pensions out of collective bargaining, and to the argument that pensions by their very nature were set apart from wages and "other conditions of employment," as set down in the Taylor Law. The report argued that quite to the contrary, the courts and the National Labor Relations Board had clearly established that pensions were deferred compensation, and as such, within the proper scope of collective bargaining.

The Conference report criticized in detail much more of the Pension Commission's methodology and assumptions. One such assumption was that current employees would not suffer any pension reductions under the Pension Commission's recommended plan. In theory this was correct. But if the new plan eliminated temporary benefits as well, the loss of the Increased-Take-Home-Pay policy would mean a pay cut of 4 to 8% for affected workers. With regard to benefits for future employees under the proposed plan, the Conference report complained that there were no side-by-side comparisons in the Commission's report of amounts receivable under existing and proposed plans. The Conference report did develop these comparisons. It found that for various jobs in state and New York City government, the Uniform Retirement Plan would give 35%-60% less to workers who retired before age 62, and 30%-57% less for workers retiring above age 62, than existing plans for each employee. (The comparisons only looked at the state pensions, not Social Security). The report also debunked the "special" advantages given to policemen and firemen under the Uniform Retirement Plan. The maximum payable would be 70% of salary, at age 62. The plan would reduce pensions 52% below current levels for a 65/30 retiree, and 30%-38%, after 20 years of service depending on age, up to 62.

Using data from the NYS Employees' Retirement System for the year ending March 31, 1970, the union report found

an average total retirement income of $5253, 72% of final salary for the 6828 retirees of that year. The report also found that 1.02% of the New York City retirement systems' members would be eligible for retirement benefits at 100% or more of net salary. According to the union, these figures meant that the incidence of benefits in excess of final salary was infrequent, contrary to implications in the Commission's report. Another criticism was that the Commission relied solely on outside sources for its figures on how much pensions were going to cost. The Conference report then tore apart the findings of those sources, principally a study done by Prof. Raymond Horton for Citizens Union, a nonpartison civic group in N.Y.C. That sudy showed pension costs in New York City reaching $3 billion by 1982. This estimate was vastly overstated, due to technical errors such as not including compound interest, the union report claimed. In addition, all studies used interest rates that were too low, when a higher interest assumption which was closer to reality would save the city $500 million in one year alone, in contributions to the five actuarially funded retirement systems. The report did not address the findings of another study commissioned by the State Study Commission for New York City (Scott Commission) and prepared by Prof. Bernard Jump in conjunction with Syracue University. That study projected costs of almost $2 billion by fiscal year 1980, assuming moderate salary increases.

Finally, the unions claimed that the Commission neg-

lected "historical background" in the design of the Uniform Retirement Plan, and in its comparisons of public and private pensions. Industry pensions had been almost nonexistent throughout most of the history of public pensions. The Pension Commission was comparing a "mature" system with one in its "infancy," and using as a model a class of institutions which was "derelict" in its responsibility to employees. Also, adopting the Uniform Retirement Plan would set up a "two-tier" civil service, with newly hired employees in the lower tier. This was also unprecedented, the report claimed, and would cause racial conflict and poor morale. The concept of benefit "tiers" would reappear later in the legislative deliberations on pension policy.

The report was released on February 28. Earlier that month, a number of labor representatives had attempted to get consideration of "special deals" through aides of Governor Rockefeller and the Republican legislative leaders. Leaders of statewide organizations, including the NYC Central Labor Council, the state AFL-CIO, and others, had advanced these offers, which would include the D.C. 37 contract for half-pay after 20 years at age 55. In return, unions would drop their blanket opposition to pension reform.[6]

Rockefeller rejected the offers. At this point, he still insisted on thorough re-design of pensions, which would preclude setting up new pension plans for particular groups of workers. He also continued to oppose the Gotbaum settle-

ment.

There was some irony in this rejection. Rockefeller had been instrumental in securing the increases in pension benefits that would purportedly lead to fiscal disaster for state and local governments, if not curtailed. This role went back at least as far as 1959, when Rockefeller and Levitt devised ITHP for NYC employees in order to effect a tax-free wage increase. It continued at least until 1966, when the state employees career pension plan became noncontributory under temporary legislation. Presumably, if only Rockefeller would go along with a contract that had been negotiated in 1970, and that had been a major victory for low-status workers, he would then be free to overhaul the system. Nevertheless, the Governor evidently had decided to back the reform intentions of his pension commission, in this instance.

Union representatives also met with Lieutenant Governor Wilson, whose reputation was that of "friend to labor." Wilson also refused to compromise. At one point, the labor group accused Wilson of abandoning his former friends and allies. Wilson contended that the unions were ignoring the fact that reform really was necessary. He said that pension increases were "bleeding" treasuries dry. Thus, both top officials in the state were pressuring labor to accept pension reform.[7]

Paralleling events at the executive level, activity on the pension reform issue centered around the legislature.

Although the Administration had been quick to urge acceptance of the Kinzel plan, legislators approached it warily. At a meeting of the Republican-led Assembly Governmental Employees Committee, Kinzel discussed the Uniform Retirement Plan. Seymour Posner, a Bronx Democrat and a long-time champion of labor causes, engaged Kinzel in a "running debate" on the plan. Posner contradicted the claim that workers frequently got pensions equal to 100% or more of spendable income.[8]

The Black and Puerto Rican Legislative Caucus said the plan would set up a racially discriminatory "two-tier" system. The chairman of the caucus, Assemblyman Samuel Wright (Democrat of Brooklyn) called the Kinzel proposal a "'blueprint for racial conflict and massive, brutal discrimination.'" Since "nearly half of all new (public) employees are from minority groups," the plan would effectively put minority workers overwhelmingly in the lower "tier".
The opposition of the caucus was so strong that the chief lobbyist for D.C. 37 later approached the caucus at the request of the legislative leadership, to ask them not to delay the state budget for this one issue. Despite the unions' own opposition to the Kinzel plan, they judged that a failure to enact a new budget on time would delay delivery of existing social welfare benefits, hurting people who could least afford it.[9]

Republican leaders, including standing-committee chair-

men, kept away from personal commitment either way. At first no one in the Senate was even willing to sponsor the bill, which the press by now was calling "the hottest item of the 1973 session. The bill came in under Rules Committee sponsorship in the Senate about one week after its Assembly introduction. Several days later, Senator Fred Eckert introduced an identical bill. Like Assemblyman Hanna, Eckert was a freshman Republican, from Greece, a town near Rochester, and not far from Hanna's district. Efficiency in government, and in particular, reducing the high costs of pensions, had been a key issue in Eckert's election campaign. He attributed much of the reason for his victory over the incumbent to this one issue. Eckert's opponent had voted for all the pension improvement measures of the 1960's. Eckert also felt that his campaign had made people aware of the importance of pensions. Eckert's sponsorship re-emphasized the unwillingness of any of the more senior legislators to support the measure. As one union leader said, no one else would have had the guts. Most members of the Republican majority were waiting to see what would happen in the public hearings scheduled for early March, before commenting on the bill.[10]

On March 1, the two legislative committees with uris-diction over pension bills, Senate Civil Service and Pensions, and Assembly Governmental Employees, held a joint hearing. Attendance was high. It included union leaders from all over the state, country representatives, mayors, legislators,

business and taxpayer groups, and the Pension Commission. Press coverage was considerable. This was the first public hearing on the subject of public employee pension reform since the establishment of the Pension Commission in 1971.[11]

Kinzel and Metz both appeared at the hearing to explain and defend the Commission's proposal. One of their emphases was on the tremendous cost savings which would lead to lower percentages of payroll spent on pensions. Members questioned Kinzel for over three hours. Democratic Legislators again attacked various aspects of the plan. Eckert spoke in support, also concentrating on prospective cost savings. Business group representatives were generally supportive. The Empire State Chamber of Commerce spoke in favor, although the plan was still "more generous" than industry. Associated Industries, although without having studied specific propositions of the bill, supported the concept.[12]

Unions showed up in force at the hearing. Top union leaders condemned the bill -- Ray Corbett, DeLury, Albert Shanker, Dr. Wenzl. Wenzl decried the Administrations' heavy hand in the proposal, saying that its sponsors didn't even understand it because the Governor's office had drafted the bill. He may have been referring to the assistance of Wilson and Levitt's aides to the Pension Commission. Certainly authorship of the bill was the Commission's, not the sponsors, as with any program bill.* Wenzl also spoke about

*Legislation submitted by an administrative agency, usually to accomplish some major program of that agency, i.e. governor's program bill, Attorney General's, Department of Environmental Conservation, etc.

abuses among high-ranking employees that the Pension Commission did not address; for example, officials who retire on good pensions and then work for the state as consultants.[13]

After testimony had gone on for seven hours, largely in opposition to the bill, above all from the many union representatives, it was clear that the Kinzel plan could not pass in its original form. The committee chairman, Senator Schermerhorn and Assemblyman Suchin, said they would not support the original bill, but would propose revisions based on testimoney. Suchin questioned labor representatives closely on acceptable alternatives which would also reduce the acceleration of pension costs, to "prod them into coming up with some proposals."[14]

The chairmen had to schedule another hearing, which was held on Thursday and again lasted all day. Strong union opposition to the Kinzel plan continued. However, another interesting thing had also happened. Many unions had denounced the plan, but had then asked for special treatment or exclusions for their employees, in any plan that did pass. This was especially true of police and firefighter organizations. Another group like this was the Security Unit Employees Council 82, AFL-CIO, representing 8000 corrections officers and park police. Before the hearing, the union had said that the age and service requirements for general members in the Kinzel plan were a "life sentence for corrections officers." At the hearing, the union asked that prison guards be granted

the same "special" terms as police under the new plan.[15]

Another incident was Levitt's slight deviation from the Administration position, with the suggestion that perhaps collective bargaining could continue, but on some sort of "coalition" basis among groups of employers and employees.[16]

A small but real division had opened up within the union camp, and within the Administration as well. These paved the way for the design of a modified reform proposal. After the second hearing, Rockefeller, Anderson and Duryea agreed to set up an informal task force to devise a plan that they could get through the Legislature. Charles Holcomb of the Gannet News Service reported that the Republicans intended to pass a weakened reform measure, and use it as "a Republican issue, to be passed primarily with Republican votes and used in 1974 as a campaign issue." He also said that the modified bill would retain principal aspects of the original. These included closing down existing plans; creating a new uniform statewide plan to be administered by each retirement system, for workers beginning July 1, 1973; taking Social Security benefits into consideration in designing state pensions; reducing benefits for workers retiring prior to age 65; and ending pension negotiations between unions and individual employers. Possible changes in the original included giving prison guards 20-year retirement; protecting firemen on special shifts from a 180-day minimum requirement for service credit for any given year; preventing pensioners from earning government salaries as consultants; and providing

cost-of-living increases to retirees.[17]

Unions continued the intense campaign to defeat the plan entirely, and to influence any prospective agreement. They argued against the Pension Commission's report, using Program Planners' statistics. They emphasized that current employees would lose out, contrary to what the Commission said. In one incident, during talks with Wilson and Anderson, some union staff members were so vehement that they completely antagonized the Republicans, who later sent word that those individuals should not participate in any more meetings.[18]

At this point, toward the end of March, a different set of negotiations became an important part of the pension fight. These were the contract talks between the Civil Service Employees Association and the administration. Until the third week in March, Melvin Osterman, the state Director of Employee Relations, had been handling the negotiations. The Governor now intervened. In a private meeting with Dr. Wenzl, he asked CSEA to abandon the coalition and to support a uniform retirement plan for public employees in the new contract. In return, Rockefeller would see to it that the temporary, non-contributory feature in the state employees' retirement plan became permanent. The temporary benefit was one of state's strongest points of leverage at the time. Although press reports that the administration was using the issue of renewal of these temporary benefits as a kind of threat to the unions probably exaggerated the

issue, a permanent non-contributory feature would put CSEA members ahead of all other public employees in the state, regarding that one item.[19]

In the announcement of a settlement with CSEA on April 10, the Administration claimed that it fulfilled the Kinzel reform recommendations. The contract would raise the normal retirement age for non-safety employees from 55 to 62, define final average salary as the average of the three highest earnings years, and impose a maximum benefit of 60% of final average salary on the first $12,000 of earnings, and 50% of salary in excess of $12,000. As part of the agreement, the Administration would work to get these terms extended to all public employees. The implementing legislation would also prohibit any pension improvements prior to April 1, 1976. And, although pension would still be collectively bargaining "coalition negotiations" would take the place of separate agreements between every government employer and its employees' unions.[20]

Coalition bargaining was supposed to counteract "leap-frogging." It was a way for the Administration to avoid a ban on collective bargaining, which would be a political disastrous step that was probably illegal as well, but not completely back down from the fight against leapfrogging. The problem with it was that no one knew what it was or how to implement it. The theory was that a coalition of unions -- for example, all the police organizations in the state --

would sit down with employer representatives. How this would work out in practice was unclear. Would the P.B.A. from a small upstate town join with the N.Y.C. P.B.A., and would that town's officials sit down with the City administration to bargain over pensions? Despite these uncertainties, further development of the proposal did occur later in the year.[21]

At the end of April, Osterman and his staff were working on a bill to implement the CSEA contract. May 4 was the target date for introduction. Provisions of the bill would include a moratorium on pension improvements prior to April 1, 1976; coalition negotiations for pensions; and three new retirement systems. One would be for teachers, one for police and firemen, and one for all other employees. The Pension Commission would have a mandate to invent a way to implement coalition bargaining. One idea was that the unions would submit pension proposal to the Commissions. The Commission would then conduct hearings and submit recommendations to the 1976 Legislature. Possibly, the unions could be put into bargaining regions -- such as one region for New York City, and one for all other areas.[22]

The Administration did not actually submit its proposal until May 14. It extended terms of the CSEA agreement to all other workers, including a 20-year pension for police, firemen, sanitation workers and corrections officers, equal to 40% of salary, or 60% after 25 years. Transit workers

and all other employees would have to work to age 62, and complete 30 years of service, to get 60% of final salary. The Pension Commission would have to submit a proposal for coalition bargaining by December 1, 1974. The other part of the Administration's bill contained the negotiated pay raises for CSEA workers. The bill did not contain any suggestions at all on what form coalition bargaining might take, despite the ideas and rumors reported at the end of April.[23]

Supporters of pension reform criticized the Administration's agreement with CSEA. Senator Eckert contradicted the Governor's assertion that the terms of the CSEA agreement were consistent with the Pension Commission's recommendations and that they "substantially achieve(d)" major reform objectives. According to Eckert, the Governor had "abandoned the fight for meaningful pension reform." He was particularly concerned that the Governor's proposal did not integrate Social Security with pensions. Similarly, Senator Schermerhorn criticized the administration for failing to remove pensions from collective bargaining. He said that a coalition would put all public employees into a "pension bloc" with enormous political power. Assemblyman Suchin noted that this was a "partial rejection by the Governor and staff of the original recommendations."[24]

From a different perspective, unions also attacked the agreement. At a press conference in Albany, DeLury stated that the Public Employee Conference would continue to fight

against any new, reduced pension program, Kinzel's or any other. Unions strongly denounced the proposal for extending the terms negotiated by one union to all other workers. Albert Shanker, of the N.Y.C. United Federation of Teachers, called CSEA "an inept company union."

Conference members did not in fact find CSEA's "defection" surprising, since they did not consider CSEA to be a "real" trade union in the more militant tradition of the N.Y.C. public employee unions.[25]

The Public Employee Conference now included 29 unions, or virtually every union representing public employees in New York, (according to data from the N.Y. State Department of Labor, Directory of Employee Organizations), with the possible exception of CSEA. New York City teachers, police and firemen had evidently put aside their differences with the coalition, for the moment.

Members of the Pension Commission first discussed the contract with Osterman, who travelled to the Commission's New York office at their request. The Commission then took the unusual step of commenting on the contract in advance of receiving formal notice of the implementing legislation. This, the Commission stated in a short report, was due to the seriousness of the impact of such a contract, if it were to be implemented. Actually the Commission's nine page statement was released to the Legislature on May 7 -- two weeks after the original announcement, and three days after the

scheduled release of the Governor's bill, which the Administration did not submit until May 14.[26]

In the statement, the Commission first outlined its own proposal again, emphasizing the importance of "full integration with Social Security benefits." The Commission approved of the pension provisions of the contract settlement, raising the normal retirement age, redefining final average salary, and the others, but said that "the proposal does not meet the test of adequacy, uniformity and taxpayer capacity... It preserves countless inconsistencies, inequities, special provisions and excessively generous benefits of current plans..." The Commission's main criticism was that continuing Social Security supplementation of pensions does not take into account "the revolutionary changes made in the 1972 Social Security program and the implications of these changes 30 years hence..." Therefore, the Commission said, the state would still be providing "excessively generous' pensions that amount to more income than pre-retirement take-home pay. The statement also objected to permitting normal retirement at age 62, since Social Security did not provide full benefits until age 65.

Regarding coalition bargaining, the Commission reiterated its position that public employee pensions should not be subject to collective bargaining. Coalition negotiation was a "new concept," and the Commission had "serious reservations as to how this procedure would apply to some 3000 public em-

ployers throughout the State...", particularly, "whether or not the process would be effective in halting the leapfrogging syndrome..." Newspapers widely quoted the assertion that the CSEA settlement, if passed, would "effectively doom" the possibility for "meaningful reform." Also on May 7, state workers voted their acceptance of the three-year CSEA contract. The contract included $156 million in pay increases, as well as a three-year pension moratorium, and reduced pension benefit. The pay increases would have to be implemented by incorporation into the supplemental budget, before the May 30 deadline.[27]

The day of the bill's introduction, Rockefeller held a press conference to defend the agreement with CSEA. He said that he had written the bill in its present form, attaching the wider pension reforms to the CSEA contract, because the legislature had taken no action on pension reform for the past two months, and the Kinzel bill clearly had no chance of passage. He also implied that the CSEA might go out on strike if the Legislature failed to ratify the bill. Meanwhile, legislators said that they had waited for the Governor to conclude the agreement with CSEA, at his request.[28]

The Legislature now had three major pension reform bills to consider, the Kinzel plan, one sponsored by Senator Schermerhorn along the lines of the Kinzel bill but more generous to corrections employees, and the Governor's. Legislators immediately began working toward a fourth, having

been forced into action, but unable to ratify any of the existing bills because of relentless pressure from the unions. The two Republican leaders had no public position on reform. Anderson was under pressure from his Binghamton constituents to cut pension costs, and was in a relatively strong position to direct a Senate vote. Duryea on the other hand, faced an impasse in the Assembly. He had only 78 majority votes, with 76 needed to pass a bill. Three New York City Republicans were from marginal districts, and in danger of losing their seats should they anger the public employee unions. The Democratic minority leader , Stanley Steingut (from New York City), had said he would "vigorously oppose" attempts to impose terms of the CSEA contract on all workers.[29]

Over the weekend following the introduction of the Governor's bill, legislative leaders and aides planned a compromise. In addition to the four top-ranking legislators, Anderson, Duryea, Steingut, and Senator Joseph Zaretski (Minority Leader), union leaders influenced the bill's content. DeLury, Shanker, Bigel and others worked along with the legislators.[30]

The leaders' bill ratified the CSEA contract and put a three-year freeze on public employee pension improvements, beginning July 1. Duryea, under pressure from Democrats and unions, deleted the omnibus provisions extending the CSEA pension provisions to all public employees. The unions also obtained an amendment protecting all existing temporary

benefits, and any new ones that might be negotiated with the New York City administration prior to July 1. The compromise bill passed both houses on May 23, 113-26 in the Assembly, and 39-18 in the Senate.[31]

The leaders' bill was clearly much weaker than the Governor's own modification of the Kinzel recommendations. Rockefeller protested that the bill was inadequate, since the reforms did not apply to New York City employees. Wenzl also protested that his agreement with the State was based on the understanding that reforms would apply to all public employees. The union coalition urged Rockefeller to sign, referring to the Governor's possible try for a fifth term.

The Governor was in a difficult position. The current proposal was a far cry from the universal reform recommendations of the Pension Commission. It also violated his own agreement with Wenzl. He began prodding the Republican leaders to develop another strategy that had a better chance of accomplishing real reform. On the 26th, Duryea and Anderson accepted a compromise which would in effect delay consideration of a reform package until a special summer session of the legislature. Under the strategy, the legislature would first close all the public employee retirement systems to new employees. It would establish a 7-member select committee, with minority labor representation, to consider pension reform proposals, conduct public hearings, and make recommendations to the Governor and legislature prior to the special session.

The crucial section however, was to extend cost-of-living pension increases, and ITHP benefits, both applicable mainly to New York City employees, only until August 31, instead of the usual one-year extensions of these temporary benefits. The Governor, tongue-in-cheek, called this "an incentive for action."[33]

Union leaders lobbied all day against the new measure, unsuccessfully. Dozens of union officials watched from the spectator's gallery as the Senate voted along partison lines to approve the bill, late at night on the 26th. Tension was high in the chamber. One of the members called the union spectators "vultures looking down." Tonight's vote ended unions' jubilation of less than a week earlier, at the passage of legislation which killed major pension reform.

On May 31, the Governor signed into law Chapters 382 and 383 of the Laws of 1973, ratifying CSEA's contract with the state, and creating the Select Committee.[34]

The Select Committee was a vehicle for producing an acceptable reform proposal which would stand a chance of passage in the Special Session. The Pension Commission had completely antagonized unions and therefore scared the legislators. Its opponents perceived the Commission as a group dominated by the spokesmen and values of private industry. The Pension Commission had never held public hearings or otherwise solicited a range of opinions. The Kinzel plan had received fierce criticism at the joint committee hearings. In contrast, the Select Committee would hold hearings; had labor spokesmen; and was appointed by legislative leaders.

The members were almost all from downstate. The only problem was the limited time, perhaps inadequate, which the Committee would have to prepare recommendations, and which the legislature would have to review them. It seemed that the administration intended to force some more definitive action before the outcry died away. The three-year pension moratorium was also a strategic move. It relieved legislators of the need to consider pensions for the duration of CSEA's contract, and undercut union prospects for ignoring coalition bargaining (if that policy were ever to become a reality).

The CSEA negotiations was the other key to events at this point, particularly after the Kinzel bill clearly would not pass. Whether or not the Governor had requested leaders to delay, the legislature did not take action on pension reform until after the settlement. After the Legislature had produced its version of a contract/pension reform package, which gave in to NYC unions on virtually every ground, the Governor again took the initiative in working with Republican leaders to put together a fifth and final proposal at the regular session.

A Special Session would have certain advantages. Pension reform would be virtually the only topic discussed. Legislators would have to focus their full attention on the problem. The public's attention would also be on the reform issue, a gamble that "taxpayers" would outnumber labor supporters. The Governor would be in a stronger position, since he no longer needed to bargain with the Legislature in order to pass a new state budget.

Footnotes -- Chapter II

1. John J. Corcoran, Interview, March 26, 1979; Albany Times-Union, February 7, 1973.
2. Corcoran, Interview; N.Y. Daily News, February 2, 1973.
3. Corcoran, Interview; Albany Times-Union, February 7, 1973.
4. The New York State Conference of Public Employee Organizations; An Analysis of the Recommendations of the Permanent Commission..., February 28, 1973 ("Program Planners" Report).
5. Ibid. Unless otherwise noted, all references in the text to the union report are to this document.
6. DN*, February 28, 1973.
7. Albany Times-Union, April 1, 1973.
8. Albany Times-Union, February 15, 1973.
9. DN, February 16, 1973; Corcoran, Interview.
10. New York Legislative Record and Index 1973; Senator Fred J. Ackert, Interview, March 12, 1979; Knickerbocker News, February 16, 1973; Buffalo Evening News, March 2, 1973.
11. Dr. Joseph Metz, Interview, February 28, 1979.
12. NYT*, March 2, 1973.
13. Albany Times-Union, March 2, 1973.
14. NYT, March 2, 1973.
15. Albany Times-Union, March 2, 1973.
16. Albany Times-Union, March 11, 1973.
17. Binghamton Press, March 9, 1973.
18. DN, March 15, 1973.

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*DN -- Ney York Daily News.

*NYT -- New York Times.

19. Knickerbocker News, March 21, 1973; the Daily Item (Port Chester), February 16, 1973.

20. Permanent Commission on Public Employee Pension and Retirement Systems, memorandum, To the Members of the Legislature, May 7, 1973.

21. Victor N. Farley, Interview, March 19, 1979.

22. DN, April 29, 1973.

23. DN, May 15, 1973.

24. Albany Times-Union, April 13, 1973; NYT, April 15, 1973.

25. DN, May 15, 1973; Albany Times-Union, April 13, 1973; Corcoran, Interview.

26. Albany Times-Union, May 9, 1973; Pension Commission memorandum, op. cit; May 7, 1973. Unless otherwise noted, references in the text to the Commission's statement refer to this document.

27. DN, May 8, 1973.

28. Albany Times-Union, April 15, 1973; DN, May 15, 1973.

29. NYT, May 16, 1973; DN, May 23, 1973.

30. DN, May 24, 1973.

31. Ibid.

32. Ibid.

33. NYT, May 26, 1973.

34. NYT, May 27, 1973; Laws of the State of New York, 1973.

Chapter III

The Senate Majority Leader and the Assembly Speaker each named three members to the Select Committee. Anderson appointed Senator John Dunne, a Long Islander, Senator Frederick Meyerson of Brooklyn, and Samuel Cantor. Duryea appointed Assemblyman Clark Bell, a critic of the unions, Julius Mintz, and Professor Walter Eisenberg of Brooklyn. Meyerson and Eisenberg were the Committee's union representation.[1]

The members met with Kinzel during the second week in June. He reiterated the Commission's coninued support for the original uniform retirement plan. The Committee that week then chose as its chairman Judge Milton Alpert, who had been a member of the Moore committee. Committee members also met with Osterman, to hear the Governor's point of view. The Legislature also provided the Committee with several general counsel, and Rockefeller directed four of his closest aides, including Osterman, to work with the panel.[2]

The Committee held seven public hearings, June 20 through June 29. Five were in New York City, one in Rochester and one in Albany. The Committee initially solicited testimony from mayors and county administrators, including the Big Six mayors*, in order to find out about the effects of pen-

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*New York City, Yonkers, Buffalo, Rochester, Syracuse and Albany.

sions on local government budgets. It also invited the candidates for the New York City mayoralty to attend.[3]

Many familiar figures testified at the hearings. Osterman and Kinzel gave the initial testimony at the opening hearing. Each upheld his respective, and by now, familiar position. Only one of the mayoral candidates accepted the invitation to testify, Congressman Badillo. The two legislators in the race, Assemblyman Blumenthal and Senator Marchi, were more cautious. They said they preferred to look at the Select Committee findings first.[4]

Deputy Mayor Edward Hamilton represented Mayor Lindsay. Hamilton demonstrated the city administration's continued loyalty to the unions, criticizing the two major reform proposals and blaming the Legislature for passing expensive pension "extras" over the years. He also used the occasion to urge the Committee to support the Gotbaum bill, the pension agreement negotiated between the City and D.C. 37. The city administration thereby avoided jeopardizing its standing with public employee unions, and defended its own record.[5]

Top union officials spoke at the hearings. Dr. Wenzl testified, mostly to point out how poor the retirees of state Employees Retirement System really were. He said the average "zero option"* retirement allowance was $3489 in 1971

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*Options may be elected in order to continue payments, to a dependent, after the retiree's death. If an option is chosen, this reduces the pension from its maximum amount.

and $4100 in 1972, with an average system pension of $2000 and Social Security payments of $1922 to $2100 annually.[6]

Officials from the Conference of Public Employee Organizations also testified. Van Riper of the Transport Workers Union was one of the more interesting of these. He said that the unions had worked with the legislative leaders to produce a "reasonable, realistic compromise," but "got screwed." The Governor's compromise bill with the leadership was "the knife in our back." Van Riper also quoted statistics purporting to show the relatively modest pensions that transit workers received: Average maximum benefits of $8200 in 1972, an average retirement age of over 59 years, and about 27 years of service on the average.[7]

Bigel also presented data on current levels of benefits for different workers, which reforms would presumably cut back: $5830 for state policemen and firemen, and $6592 for state teachers with 30 years of service. Albert Shanker defended the retirement allowances of NYC teachers, whom he said made average contributions of $25,210 toward their pensions and received average maximum allowances of 84% of salary. Shanker also said that corporate interests and the newspapers which depend on them, were behind the drive for reform. He called the CSEA a "weak organization," with "terrible" and "incompetent" leadership.[8]

DeLury said that the two-month extension of temporary benefits was "blackmail" of public employees. If the new

plan caused employees to lose any existing benefits, unions would restore them through wages or some other means, DeLury told the Committee. Victor Gotbaum defended the D.C. 37 contract once again. He said that the pensions called for in the contract would be less costly than other similar plans, due to the way they would be funded, although he did not specify what this was. Accusations that the contract specified full salary after 40 years service were inaccurate, although statistically, a few retirees might obtain it. Gotbaum also accused Rockefeller of refusing to go along with a Marchi compromise for contract ratification. This was important because it would mean that the Governor, rather than the Legislature, was responsible for the failure to ratify the agreement.[9]

Gotbaum also said that "leapfrogging" was nonsense. In the private sector, using the terms of another union's agreement as a minimum bargaining base is called good professional collective bargaining, but in the public sector it becomes a "leapfrogging syndrome."

Employee representatives from all over the state spoke as well, urging continuation of present benefits for future employees, and for present employees, the extension of temporary benefits, or their permanent codification.

Speakers from employer groups, citizens groups or research organizations -- the groups had various names but all belonged in the reform camp -- favored some form of re-

duced benefits. Citizens Union was one of those which claimed it had "no axe to grind," and criticized the Pension Commission for not holding hearings or soliciting a wide range of views in the design of its recommendations. The organization was concerned about the high and increasing costs of pensions, and cited the results of its own report, the same one that Program Planners had criticized so strongly. Citizens Union also found fault with data on the cost of pensions, and said that neither the City nor the Pension Commission seemed to have accurate data.[10]

The Select Committee duly delivered its findings to the Governor and Legislature on July 15, having had two weeks to go through the testimony and documents and produce a report. The Committee members agreed that "steps should be taken to reduce future costs" of pensions, but beyond that statement the labor minority, Meyerson and Eisenberg, parted company with the rest.[11]

The majority's major recommendation was, like Kinzel, for uniform "retirement, disability and death benefits structures," while "those employed in emergency or hazardous occupations" would have separate plans, also uniformly applied throughout the state. The main reason for this, the committee said, was to eliminate leapfrogging, i.e. oneupsmanship among unions. The committee recommended a continuation of policemen's and firemen's 20-year and 25-year half-pay plans. However plans for new employees should base pensions on a three-year final average salary, and limit the total retire-

ment allowance which any individual could receive. The plan for general employees, like the CSEA agreement, would have higher age and service requirements than at present. Within this group, the committee suggested that the Legislature consider teachers separately, in view of the "professionalism" and other aspects of the job. Employees in "hazardous" occupations should receive more liberal benefits than "general" employees.

Heart disability benefits should be uniform statewide; the Legislature should extend some temporary benefits as always, but should consider making some of them permanent. The Committee's statement noted that in the CSEA agreement most temporary benefits became permanent for N.Y.S.E.R.S. members.

Prof. Eisenberg disagreed with the majority finding that two alternatives existed for decreasing future pension costs, which were either to end temporary benefits for current employees, or reduce benefits from their current levels for future employees. According to Eisenberg, a study of alternatives should begin with some questions about pension policy, for example: Will pension savings cause unions to look for ways to recapture benefits elsewhere, such as wages? Are there alternative sources of savings on pensions? Are any current benefits excessive, and how do you determine whether a benefit is excessive? Do benefits now meet the needs of retirees?

To a great extent these questions restated a number of union concerns. For example, Eisenberg said that pensions had actually decreased as a percentage of the New York City budget, while other costs had risen. Social welfare costs had a far more dramatic impact on the operating budget, increasing to over one-quarter of the total, while pensions declined to below 7%. State pension costs were also under 7% of total operating expenditures. Therefore, reducing pensions would not have much of an impact on the budget. Eisenberg recommended another method of savings, that of allowing increased interest assumptions of 5% and 5.5% on pension funds, a move justified by ongoing improvements in public pension investment portfolios. Secondly, Eisenberg recommended that the Legislature make all future pensions contributory, in order to give employees "a direct, refundable and interest-earning stake in the pension system he enters," and to reduce the government's share of the contribution. He also called on the Legislature to continue existing, liberal plans for N.Y.C. sanitationmen and transit employees, "and others similarly situated" -- presumably, housing police and transit police, and corrections officers.

Eisenberg disagreed with the majority that the pension calculation should use a three-year final average salary base. Instead, he had a scheme for using final salary but requiring three years at grade for that to apply, in order to prevent last-minute promotions which had the sole purpose

of increasing the pension.

In other recommendations, the Committee majority felt that Social Security integration was not currently feasible although the members recognized the "substantial changes" made by the 1972 amendments to the Federal Social Security Act. They would only say that "consideration should be given in developing benefit patterns" for future public employees, to the benefits those employees would receive from Social Security. Nor would the majority make any recommendations regarding coalition bargaining or the removal of pensions from collective bargaining. Eisenberg, in contrast, stated very strongly this position that pensions must be restored to the "status of a subject for required employer negotiation." He reasoned that this has been true in the private sector for 25 years, and had been a state requirement officially since the Taylor Law. Collective bargaining was also an interim step before Legislative approval -- implying that it guarded against the Legislature's well-known irresponsibility. Eisenberg also said that bargaining coalitions do form in New York City, according to the needs of the different employee groups in various situations. This flexible, efficient process would end if new laws established permanent, inflexible coalitions.

Eisenberg also disagreed with the recommendation to extend the terms of the CSEA "second tier" to "all other employees." CSEA got a contract for its own members by nego-

tiating on their behalf. For the state to impose the same terms on other public employees "is to make a mockery of the collective negotiation process in thepublic sector." He said that two-tier benefit structures were unprecedented, and destructive to employee relationships. The majority statement presented examples of "so-called two-tier" pension systems in the 1940's; and to the existence of the eight actuarial systems themselves. There was and is nothing exceptional about having more than one "tier" of benefits, in the majority view.

In support of its general goal of reducing future pension costs, the committee majority cited data that it had showing rising annual costs of pensions throughout the state, and also noted the state Constitutional provision protecting current members of retirement systems from benefit reductions (Article V, Section 7). In Eisenberg's view, the data and testimony before the Committee simply did not support many of the majority's conclusions. Senator Meyerson, in another dissenting statement, first concurred with Eisenberg's findings, but went on to say that the committee had nowhere near enough time and staff to carefully consider the information available, nor did the Legislature. The process was a farce. The Governor was trying to "stampede" a decision through as quickly as possible. This, Meyerson said, was a strange contrast to Rockefeller's "giveaway" of tax dollars in 1966, when certain pension systems were made non-contributory "in

an obvious attempt to curry favor with certain ... unions."

Two other majority recommendations were that the State adequately update supplementary pension payments for retirees, to match the rise in the cost of living; and to expand the Pension Commission so that it reflects "all appropriate interests."

The Select Committee report, not surprisingly, contained nothing particularly new or radical. It was to be expected that the Committee would make some statement in favor of some broad reforms. The Committee also added support for some conciliatory itens such as the permanency of benefits, and pension supplements. There was no way to make any really detailed examination of budgetary impacts of pensions -- the Committee had to take the word of the many local government officials who spoke of the budgetary problems that pensions, in particular, were causing. The Committee's work also derived some more respectability from the presence of labor spokesmen, although the findings of the two camps differed greatly. Also the minority received an official platform for its views that the Pension Commission failed to provide.

The Committee majority stayed away from the two most dangerous subjects, Social Security integration and collective bargaining. To make a decision either way would have automatically tainted its other recommendations in the eyes of one or the other group. The Majority's recommendations were very close to the Governor's original proposal, with

some additions and modifications of details. Thus, the Committee essentially endorsed the earlier compromise.

The Pension Commission lost no time in commenting on the Select Committee report. In a memorandum to the Governor and Legislature dated July 19, Kinzel commended the Committee for its correct articulation of the problem of "runaway annual costs of public pensions to taxpayers at every level of government." Despite this, the Committee "has failed to recommend an adequate solution." The very item that the Committee had not addressed, integration with Social Security, was the only adequate solution. In this memorandum, the Commission no longer mentioned the "leapfrogging" problem or ending collective bargaining of pensions. The most crucial part of reform evidentlywas now the Social Security isse:

> Neither the Select Committee nor the sponsors of the 1973 legislation appear to be cognizant of the escalating benefits in future Social Security payments. Employees hired after July 1, 1973, retiring 30 years from now (2003), would receive anticipated payments of $14,580 a year, according to HEW estimates. (For a married couple, maximum benefits would be $22,870.) For these employees hired five years from now (1978) and retiring 30 years later (2998), the anticipated yearly payments would be $18,300. (For a married couple, maximum benefits would be $27,450.)

By not taking Social Security increases into account, and by recommending the continuation of benefits scaled among different classes of employees, "the Select Committee, in effect, has endorsed the status quo." Employees would con-

tinue to retire on pensions exceeding take-home pay. Kinzel again urged the Legislature to enact more "fundamental" reform.[12]

Union coalition members immediately decried the committee's findings. This was not only because of the lesser benefits proposed, but also for the effect the proposals were having on the united front of organized labor. The N.Y.C. P.B.A. president, Robert McKiernan, had testified that "'(t)he single most important consideration to a policeman... is that he not be equated with a garbageman, or any other city employee, with the exception of the firefighter .'" Police and fire organizations in effect split with the rest of the coalition, gratified by the Committee's decision to recognize their members as "emergency" employees who were entitled to better pensions than the rest of the workforce.

The only change the Committee had recommended was the computation of pensions based on an average salary of the three highest-pay consecutive years, instead of on final year's salary including overtime. Officials from the New York City PBA and United Firefighters Association (UFA) said they would "negotiate" this provision with the Legislature. The Metropolitan Conference of Police Associations (55,000 member officers) reported its satisfaction with the Committee's proposal.[14]

Police and fire union officials were in Albany at the opening of the special session on July 25, to maintain these

separate, higher benefits. The officials by now appeared to accept the three-year saverage salary base. According to Robert McKiernan, the new salary base would only reduce the average benefit by 5.5% -- and besides, in 20 years, by the time officers started retiring, they could again change the benefits. There was no explanation as to why McKiernan's figures differed so much from Walter Eisenberg's claim of a 14.1% reduction in police and firemen's (and sanitationmen's) pensions under the reform plan. Eisenberg's main point, in fact, had been that emergency workers would suffer the greatest losses. Although the data used is not available for analysis, it may have been to McKiernan's political advantage to go with the lower estimate -- the Select Committee had recommended no other changes in benefits, and police and fire representatives would probably find it impossible to convince the legislature to remove even that change. It would be better to assure the membership, and the diehard reformers, that changes did not affect their organizations greatly.[15]

McKiernan also announced that the PBA and UFA, by supporting separate positions for their members, would be breaking "parity" with sanitation workers. In the late 1960's, sanitation workers had won new status, as members of the "uniformed forces" along with police and fire officers. Their pension benefits as well, stayed in line with those of police and firemen. "Parity" also meant that other employee groups

pegged their benefits to those unions', although at lower levels. This action therefore would upset the hierarchy, and disrupt the normal pension bargaining process.[16]

Cognizant of these changes, John DeLury called the Alpert committee's report a "political report, not a pension report," designed "with the sole purpose of fractionalizing the united opposition to maintain a barely adequate retirement benefit structure." He said that unions would retaliate in the elections, using their "campaign war chest" against legislators who voted to reduce pension benefits. Public employees were twenty per cent of the voting population in New York, DeLury said, and the Conference of Public Employee Organizations represented half of those workers. The Conference officially rejected the Select Committee recommendations.[17]

Other union leaders spoke of the "indecent haste" with which the committee had completed its report (although the June, 1973 legislation had made haste inevitable); and again warned of racial conflict and demoralization among workers, which would lead to strikes. Albert Shanker said that NYC and his union had negotiated their current benefits in 1969. The government had an obligation to live up to the terms of the agreement. Changes in the benefits now, especially without negotiation, would be "outrageous and illegal."[18]

At the same time, taxpayer and industry groups were the mainstay of the pension reform effort. The publicly

stated, highly emphasized concern of these groups was that "skyrocketing" pension costs threatened to bankrupt state and local governments. Associated Industries, in a letter to legislators just prior to the session, warned of "municipal bankruptcy," and cited increases in payroll costs from 10.9% to 22.5% of payroll in 8 years, for NYS ERS. They used Kinzel's figures on Social Security payment estimates, to prove that pensions would be more than adequate if merged with Social Security. A New York Times editorial at the same time said that prior reform efforts had "wilted before the heat of union pressure," while rises in pension costs exceeded those of any other cost in government including education and welfare. Benefits also exceeded those in private industry, the editorial said.[19]

The unstated fear of the private reform groups was that workers in private industry would demand benefits equivalent to the more liberal ones of civil servants. Unions had actually cited this as an ulterior motive of the reformers, early in the regular session. They did not continue to use this argument; it may have been too threatening an ideology to use: Legislators might have started agreeing with reformers. Unions concentrated throughout the session on proving the unfairness and inadequacy of the reform proposals. In a later year, in opposition to a more ambitious Pension Commission proposal, unions would attempt to show that NYC/NYS benefits were actually inferior to total benefits provided

by a number of large, private-employer plans, including such corporations as IBM and Citibank.[20]

In the legislature, Senator Anderson masterminded the 86-page bill packaging pension reforms applicable to different employee groups. The changes followed the Alpert Committee recommendations almost to the letter, to the extent of making certain changes where the Committee had had no specific recommendations but did provide guidelines. For example, employees in "hazardous" occupations (sanitation, transit and corrections) would only receive 2% service credit for 20 years of service, instead of the current half-pay at 20 years. Transit workers would also have to be at least age 55. Only at 25 years could these employees get half pay. These measures reduced those employees' benefits with respect to "emergency" workers.[21]

For teachers and general employees, the bill raised the normal retirement age to 62, from 55. But teachers could retire at age 55 with no reduction in benefits, provided they had worked for 30 years. General employees could retire at age 55 with reduced benefits.[22]

The legislation imposed a maximum benefit on policement and firemen, in that it would not credit any service after 30 years. Previously there had been no maximum. The maximum benefit for all other workers, except teachers, was defined as 60% of salary up to $12,500, plus 50% of the remainder if there were any. Previously, only general employees outside

of NYC had had a benefits limitation, of 75% of salary. Teachers continued to have no maximum. The significance of the $12,500 figure was that it was the current Social Security wage base. Thus the bill made a minimal concession to integration although it would immediately become out-of-date when the wage base increased.[23]

The only change applying to all employees was the new three-year average salary base, where in most cases the final year's salary had applied, and for some workers, the last day's salary rate.

In one of the few positive notes for employees, the bill proposed to increase pension supplements for pre-1958 retirees. These employees were ineligible for Social Security since New York State and City had not participated in Social Security until that year.

The pension reform bill was on members' desks in the legislative chambers at 3 P.M. on July 26, the first bill of the special session. Governor Rockefeller delivered a Massage of Necessity to both houses, a legal device to enable a vote on the bill without the mandatory three-day "aging" period which was ordinarily supposed to give members time to peruse legislation. (This system always broke down anyway during the last week or so of the normal session, when the legislature would pass the majority of bills.) In the Senate debate on the pension bill went on for three hours; for four hours in the Assembly. Democrats argued along the

familiar lines of discrimination against minorities, bad morale in the ranks, and strikes. Meyerson was among the more outspoken members in the Senate. Democrats attempted amendments to increase interest rate assumptions to 5%, which Republicans defeated. Democratic leaders in both houses called the bill "an illusion of reform," which would have a minimal effect on government fiscal problems around the state. Supporters said that the changes would save $600 million in state and local contributions in the next ten years (Kinzel had said his plan would save $750 million).[24]

The Legislature passed the bill in votes that generally followed partisan lines, 37-22 in the Senate at about 10 P.M., and 88-55 in the Assembly, at 11:30 P.M. The special session adjourned Tuesday, July 31.

Controversy did not end after adjournment. Business groups said the changes were "inadequate," and a New York Times editorial practically dismissed the legislation as being hardly "reform" or a "plan." In agreement, ironically, with Democrats, the editorial said that savings would be modest, certainly at first. The Times did allow that the action contrasted with the "disgraceful neglect" of pension reform during the regular session. But, the reform was still only a "bare minimum," which "inordinately strong" unions were already threatening to undermine.[25]

DeLury said that NYC unions were planning a strategy to alleviate financial losses due to pension reform. First

they would bargain for noncontributory pensions for all city workers, and possibly ask for increased fringe benefits. "We will shortly demonstrate the impact of coalition bargaining -- and I mean impact," DeLury said.[26]

NYC officials said that the bill could cost the city more money than it saved, because it credited pensions to part-time workers for the fist time. Savings could amount to $10 million in the first year (of which $6 million would reduce tax levies); and could cost $15 million, for coverage of a $200 million payroll of part-time employees.[27]

A week later the _Times_ had considered its position some more. An editorial entitled "Pension Hodgepodge" said that the reforms were not uniform or fair, but manipulated unions against one another "in cynical fashion." The Governor was behind the strategy to divide and weaken labor, the _Times_ said, in particular with the aim of holding back D.C. 37, the union of the City's lowest paid workers, in order to let CSEA, "his favorite union in the state service," move ahead.[28]

This was a curious variation on the _Times_' usual theme, especially in comparison with its editorial of only a week earlier. But the article made an important point about the reforms: They preserved and reinforced the complicated hierarchy of benefits assigned according to job characteristics and union political power. It is interesting to contrast the changes made with the more stringent but far more

uniform Kinzel Commission recommendations. Certainly, Commission members, some of them, looked on private industry as a model and had little liking for the militant New York City unions. But the Kinzel plan based benefit structures on what it termed "management objectives." This meant that retirement benefits were not a reward for service for employees in arduous or dangerous jobs. On the other hand, pensions may provide early retirement for policemen and firemen because the job demands younger employees. It is questionable whether even this management objective should affect the pension benefit structure in any way, the Commission said. But given that has done so for a long time, it may remain, but ideally extends to no other employees.[29]

The Governor had finally succeeded in imposing a measure of his will on the Legislature. He had fulfilled his pledge to CSEA. If he had not managed to look as if he were really backing the Pension Commission, at least he had not totally abandoned pension reform -- and private industry demands. Should he choose to run again, Rockefeller could look like a fiscal conservative. The effect on organized labor was not so clear. He had isolated police and fire unions, always jealous of their special position, from their less privileged counterparts in the coalition. He had quashed D.C. 37's efforts to bring its members closer to the level of benefits enjoyed by all other city workers. But the coalition remained active and strong in numbers, and determined

to fight further reforms or to repeal the new ones. Significantly, the rest of the New York City unions (besides police and fire) seemed to be staying together. A concerted effort by the coalition could conceivably block future efforts to reform pensions, or even to implement the new law, through legal action.

Footnotes -- Chapter III

1. N.Y. Daily News*, June 14, 1973.
2. DN, June 3, 1973 and June 17, 1973.
3. DN, June 13, 1973, and June 19, 1973.
4. DN, June 21, 1973.
5. DN, June 21, 1973.
6. State of New York Select Committee on Pensions. Hearing Transcript, June 21, 1973.
7. Select Committee Transcript, June 21, 1973.
8. New York Times , June 23, 1973; Select Committee Transcript, June 22, 1973.
9. Select Committee Transcript, June 22, 1973; NYT, June 23, 1973.
10. Select Committee Transcript, June 21, 1973.
11. Select Committee on Pensions, Report to the Governor and the Legislature, July 15, 1973. Unless otherwise noted, all references to the findings of this Committee, including dissent, are from this report.
12. N.Y. State Permanent Commission on Public Employee Pension and Retirement Systems, Memorandum to the Governor.
13. DN, June 26, 1973.
14. NYT, July 19, 1973.
15. NYT, July 26, 1973; Select Committee, Report.
16. NYT, July 26, 1973; Victor N. Farley, Interview, March 19, 1979.
17. NYT, July 19, 1973 and July 24, 1973.

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*DN -- New York Daily News.

*NYT -- New York Times.

18. NYT, July 23, 1973.

19. NYT, July 24, 1973 and July 25, 1973.

20. NYT, July 24, 1973.

21. NYT, July 26, July 27, 1973.

22. NYT July 27, 1973.

23. NYT, July , 1973.

24. NYT, July 27, 1973.

25. NYT, July 28, 1973.

26. NYT, July 28, 1973.

27. NYT, , 1973.

28. NYT, August 4, 1973.

29. Pension Commission, report to the Governor and Legislature, (plan for coalition negotiations), December 1, 1973.

Chapter IV

The 1974 elections produced a Democratic sweep of statewide offices in New York. Former Congressman Hugh Carey (Brooklyn), won the gubernatorial race (along with his running-mate, Mary Anne Krupsak of Buffalo), defeating Rockefeller's protégé, incumbent Governor Malcolm Wilson. Before, Carey, Rockefeller had served four terms as Governor. In the Legislature as well, Democrats gained new power, capturing the majority in the Assembly. This was the first time that Democrats held the majority in either house since 1965-1968, but before that, Democrats had been out of power in State legislature since the end of the Second World War. The former minority leader of many years standing, Brooklynite Stanley Steingut, became Assembly Speaker. Duryea switched places with Steingut and became Assembly Minority Leader. The Senate remained under the firm control of Warren Anderson.

Public employee unions had actively supported the Democratic candidates in the election. Unions, particularly New York City ones, expected that the new Administration would be far more accomodating to their needs than the previous one. A legislature with one Democratic-controlled house should also help to produce progress on union issues.

These were not unreasonable expectations. Unions in New York tend to identify with the Democratic party, and vice versa, and both receive their greatest support from downstate voters. Unions have far more impact in New York

City politics, than in the more sparsely populated upstate communities.

This reality is what Victor Gotbaum had in mind when he announced that New York City and D.C. 37 would again attempt to gain passage of the November, 1970 pension contract, despite the three-year pension moratorium. It was also the basis for one of Carey's first actions as Governor, the attempt to abolish the Permanent Commission on Pensions by eliminating its budget and repealing its enacting legislation.[2]

Neither of these attempts to benefit public employee unions were successful. Despite the "change in political climate," pension reform, instead of fading away, became an even stronger issue. The Pension Commission survived to follow through on its initial reform attempts. By 1976, unions were fighting even harder, not for new benefits, or even to regain what they had lost, but to prevent even greater pension losses. The immediate explanation for this involves the actions of the Legislature, the Kinzel Commission and the Rockefeller administration. In addition, three inter-related factors are crucial. These were the pressure put on government by private industry and citizens groups for reform; very thorough press coverage of pensions, including editorial comment; and government fiscal crisis, particularly that of New York City, which led to a new awareness of the problems that pensions cause. All of these continued the momentum for pension reform, through 1975 and the 1976 legislative

session. The 1976 session was important because the pension moratorium was expiring that year, as were the "Tier 2" pension plans created in 1973.

From 1972-1975, a number of groups did major studies of New York pensions. Two of these, released in late 1972, examined the growth in New York City pension costs from the perspective of private industry. The Economic Development Council of New York City, an industry-funded research organization, reported on changes in public employee pensions from 1960-1970. Its findings were based on a study of 216 state laws passed during that time, and of collective bargaining agreements. The Council detailed the benefits that different employee groups in N.Y.C. were entitled to, and concluded that pensions had "gone out of control" due to union leapfrogging. The report recommended that the city revise its current policy of widely varying benefits among different employee groups, and that it provide uniform benefits among all employees. It also said that city pension benefits greatly exceeded those in private industry, and that annual costs to the city were probably equivalent to 25% of payroll.[3]

The Task Force on N.Y.C. Pension Plans of the New York Chamber of Commerce also criticized the city for giving employees overgenerous pensions, particularly in the uniformed services. Policemen, firemen, transit workers, and others were eligible for "three-layer cake" benefits, consisting of the pension, Social Security, and a city-financed union annuity. Accelerating pension costs were "draining the city

of money and services," the report said, and the city should refrain from granting any new pension improvements for current employees. It should also set up a new, less generous system for all future employees.[4]

A third report in 1972 written for the state Fleischmann Commission* was on the NYC Teachers Retirement System. The authors, Frederick O'R. Hayes, former NYC bedget director, and Donna Shalala, a political scientist, examined the costs of the pension provisions in the city's 1969 contract. They criticized city officials for agreeing to the pension benefits without being aware of total future costs. The report generated a small controversy. A spokesman for Mayor Lindsay implied that the present Comptroller, Abraham Beame, was responsible for the contract. Beame, who hadn't been comptroller in 1969, was furious. School board members, who had agreed to the contract, said that they used police and fire-department contracts as guides on benefits. They also said that "high city officials" had provided the information on contract costs.[5]

Other reports predicted future increases in pension costs. One was Prof. Raymond Horton's study for Citizens Union, which that organization used to advocate public pension reform at the hearings in 1973 before the Select Committee on Pensions. Another 1973 report was issued by the

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*Established to study the quality, cost, and financing of public education in New York.

State Study Commission for N.Y.C. (Scott Commission), written by Prof. Bernard Jump, an economist at Syracuse University. Prof. Jump's report predicted "enormous" pension cost increases for the coming year of $299-317 million, or 37-39%. These would bring the total to $1.105 billion-$1.123 billion. By 1979-80, New York City retirement and Social Security costs would be in the range of $1.126-1.991 billion. Reasons for the increase were hiring of new workers, salary increases, and new pension benefits. The last-named item included new formulas for final pay, mandated Social Security increases, and the 1970 20-year plan for teachers, which Prof. Jump called "'one of the largest unconditional commitments of city funds in the history of American city government.'"[6]

Two years later, in the spring of 1975, the Scott Commission released another report written by Prof. Jump, with new estimations of 1980 pension costs using several sets of assumptions about salaries and employment. His findings will be discussed in greater detail with the events of the 1975 legislative session.[7]

A report begun in 1975 and completed in 1976 for the Mayor's "Management Advisory Board", produced detailed findings on the funding and actuarial assumptions of the New York City retirement funds. The discussion of this report also belongs with a later section on political developments.

Although this study and the others done under the aegis of state commissions are not "private" reports, they deserve

mention here because all these reports, and the circumstances which produced them, helped publicize the pension issue. They also demonstrate that a number of vocal groups were aware of pension costs and concerned enough about them to conduct research on the causes of cost increases, future costs, and on policies that would slow the increases.

Although most of the research centered on New York City, where the scale of the problem was so impressive, fiscal problems also affected smaller cities upstate. The state constitutional limit on real property taxation threatened the abilities of some local governments to pay for pensions after March 1974. Until this time, certain cities and school districts were accustomed to computing tax rates which in reality exceeded the Constitutional limit. A state law passed in 1969 allowed Rochester, Buffalo and Yonkers to exempt the costs of retirement benefits from the tax limitation (Local Finance Law, Section 11.00, (a) (42-a)). The rationale given in the law was that the "period of probable usefulness" of the pension expenditure exceeded the one-year term of the operating budget. In a decision in _Hurd v. the City of Buffalo_ (41 A.D. 2d 402), the state Court of Appeals reversed the decision of a lower court and declared this practice unconstitutional, insofar as it excluded the City of Buffalo's future annual payments for pension and retirement liabilities from the tax limitation in the Constitution (Article VIII, Sections 10 and 11). The court said that

the constitutional provisions "involve a unified and interdependent plan to control the taxing and debt-contracting power of local governments, and "specious devices to evade them would nullify their effect." Further, the court said that "no retirement or pension plan is actuarially valid unless the annual amortization reflects the current burden" of pension payments and reserves. Therefore, it is not appropriate to "shift to future generations" the current burden. The tax and debt-contracting limitations exist to prevent just that practice.[8]

In a dissenting opinion, one member of the court wrote that Section 11 authorizes exclusion from the limitation imposed in Section 10, by allowing statutory determination of a "period of probable usefulness." Since the legislature had determined in this case that the period for pensions shall be three years, the law was valid. The opinion implied a recognition of the reality that Buffalo and other cities and school districts could not meet annual costs within the tax limit without heavy service cuts or new taxing powers.[9]

The legislature then passed a law similar to the one declared unconstitutional in order to escape an immediate crisis. The new law also faced a court challenge on constitutional grounds.[10]

During 1974-75 Buffalo and Rochester both experienced severe problems in meeting pension obligations. At the time of the Hurd decision, Buffalo's pension contributions were

"nearly equal the city's annual tax revenues." In 1970, Rochester had negotiated a contract with city policemen and firemen which was to provide them with new retirement benefits beginning in April, 1972. Under law existing in 1970, those costs would not have to be accounted for in the budget until 1974. Since 1970, a new law required immediate budgeting of pension obligations (Section 430, Retirement and Social Security law). In 1972 Rochester was obliged to ask the legislature for an exemption for that fiscal year. This passed, over the objections of the Pension Commission, which saw it as an "undesirable precedent."

Throughout this entire period, the press in New York state provided thorough coverage of public employee pension issues. Certain papers and reporters followed pensions especially closely. The New York *Times* and the New York *News* published dozens of articles each year, in which they reported on alleged corrupt practices, outlined the costs of the city's retirement systems according to latest estimates and explained the various pension studies. They followed the work of the Pension Commission, reported in detail on legislative action on pensions, and provided a flood of coverage on the 1973 reforms.

In the Capital area, legislative reporters for the Albany *Times-Union* and the Knickerbocker *News* regularly covered pension politics. Charles Holcomb of the Gannett News Service Capital Bureau, an authority on pension issues,

was extremely influential. The Gannett chain owned many smaller newspapers around the state which printed his articles.

Rochester and Buffalo dailies, the Times-Union, the Democrat and Chronicle, and the Evening News (Buffalo) also covered pension issues. Both cities were having difficulties in paying their pension bills; pension reformers Senator Echert and Carl Stevenson were from Rochester and received coverage in the local press.

Virtually all the newspapers adopted the same attitude toward pensions. This was the perception that pensions were a unique problem for government. Pensions, as opposed to any other costs, were bankrupting government; pension plans for public employees were too generous and richer than private ones; and unions were grasping, greedy and too powerful.

These perceptions were especially clear on the editorial pages. For example, in 1973, a string of editorials accompanied reports on the Kinzel reform plan and on activities of the legislature and the Governor. Two Times editorials in February and April aimed their ire at New York City unions, and at city officials. Both the city and the unions were "reckless" in pushing pension costs to "astronomic heights," regardless of the "fiscal soundness" of government budgets. "Demagogic" unions engage in a "viciously competitive," "me-too scramble" to devise "new grabs," bu using the "coercive pressure of strikes." "Union-cowed" legislators avoid taking the initiative to provide "fundamental pension over-

haul."[12]

A Daily News editorial in July prior to the special legislative session advocated the Kinzel Commission's uniform retirement plan for pensions, integrated with Social Security and insulated from collective bargaining. "Bloated" unions "browbeat local officials" and have caused a "disastrous drain on the public purse," the editorial board said.[13]

The Buffalo Evening News, after the joint committee bearings in March, 1973, objected to the "cheap-shot negtives" that critics of pension reform used. Pension reform is intended to end "abuses" and "pension extravagance," but public employee pressure threatens it with "being gutted or left in limbo." The Kinzel proposal will "remove any temptation by elected office holders to give away the moon, with pension IOUs they won't be around to account for." And if legislators' "spines need stiffening," they can reflect on "bankrupt state and local governments."[14]

A Rochester Times-Union editorial in February 1973, right after the release of the Kinzel reform plan, called on legislators to "derail the gravy train of N.Y. public pensions." Again in June, an editorial outlined the developments of the session just ended. Although the Pension Commission had "recommended closing the current overly generous" systems, Rockefeller had "abandoned" its recommendations. The legislators had "bowed to pressure" from unions and "copped out" on pension reform at first, but afterwards "tried to redeem themselves with the taxpayers."[15]

The Rochester Democrat and Chronicle warned that "pension costs could scuttle our state," and if not reduced, "confiscatory tax levels or diminishing services" would result. State legislators weren't as concerned as they should be partly because "their own political and monetary profit is involved." All employees deserve a "fair pension" but the system now allows "overblown pension benefits for tiddlywink jobs." Although "civil servants for many years were underpaid and abused, the remedy for that is fair salaries and good working conditions," not "excessive pensions."[16]

Members of the Pension Commission, particularly the Chairman, Otto Kinzel, attempted to establish good working relationships with the press. Kinzel kept in close touch with a number of reporters and editorial writers, and "educated" them about pensions. Certain reporters and papers were more important. The editorial staff of the Times and News, were highly sympathetic to the reformers; and a number of individual reporters were also very useful.[17]

The effects of press coverage, research reports, lobbying, and government fiscal problems all contributed to the continuing importance of pension reform in state politics. This was especially crucial in the early part of 1975. Governor Carey's first budget proposal, submitted to the Legislature at the end of January, eliminated the appropriation for the Pension Commission. The Governor also submitted a bill (introduced as a budget bill in both houses; Seymour

Fesner sponsored a similar bill in the Assembly) to repeal the act which created the Commission (Article 27, Executive Law). If the Commission's appropriation were not restored, and included in the state budget (which had to pass by March 31 to begin the new state fiscal year, or July 1 for the supplemental budget), the commission would effectively cease operations. If the bill to abolish it passed, the commission would go out of existence.[18]

The Pension Commission in many ways had been a thorn in the side to Democrats. It advocated changes and forced consideration of issues which did not normally concern them, and angered their union supporters. Democrats also looked on the Commission as a Rockefeller institution, with a purpose and nature alien to a Democrat administration. New York City legislators were in an especially awkward position. They could ill afford to offend unions which represented many of their constituents and were active in election campaigns. The Kinzel Commission forced them to take sides on an issue that purported to save "taxpayers" millions of dollars. Legislators could hardly be against "pension reform," but to be for it would be to side with upstate conservatives who normally stood for everything New York City Democrats were against.

The Governor explained that the Commission's work was completed, since the enactment of the 1973 reforms. Designated staff in his office could handle pension affairs in the future. These statements plainly contradicted the

raison-d'être of the Commission, which had been to set up a permanent body to report on pensions and deliver opinions independently of the Governor's office or the Legislature.[17]

Carey apparently underestimated the support among both politicians and the public, and the Commission's own ability to mobilize its supporters. Kinzel immediately contacted his friends in the press "to build a counterfire," and asked Steingut and Anderson for their support. Senator Anderson had already criticized the Governor's action in a press release, in which he said that Carey's action was a "political favor" to labor unions. Carey had forgotten his promise to taxpayers, Anderson said, but not to Gotbaum.[20]

The "counterfire" in the press was considerable. It included extensive coverage of the Administration's attempt to abolish the Commission and of subsequent legislative developments. Several editorials denounced the attempt and ascribed ignoble motives to it. The Buffalo Evening News spoke of "the notably mush-in-mouth tone" that Carey adopted toward "further public employee pension grabs," after NYC unions supported his candidacy. The reasoning that the Commission had completed its work "indicates either a woeful ignorance of the facts, or else a convenient alibi for kow-towing to the downstate power combine." "(T)he prime payoff" is to be the abolition of a commission which has obstructed the unions' "pension-grab extravaganza": "a terrible public disservice."[21]

A _Daily News_ article around the same time adopted an even greater tone of outrage. Calling the Governor's proposal "The Great Pension Heist," the _News_ said:

> It is becoming increasingly -- and disgustingly -- clear that members of the State Legislature are willing accomplices in Gov. Hugh Carey's plan to give public employee raiders free access to the public treasury.
>
> Carey's part of the scheme was to snip the wires to the burglar alarm -- the State Pension Commission -- by cutting off the panel's finds.
>
> We though it suspicious at the time that the lawmakers failed to echo Commission Chairman Otto Kinzel's outcry over the Governor's transparent sellout to his civil-service friends. Now the reason for their clam-up is apparent.
>
> No sooner had the governor given the signal than a flood of bills granting fatter retirement goodies to favored public servants poured into legislative hoppers. From a politician's standpoint, CAREY AND HIS COHORTS -- have devised an ingeniously stealthy plan to commit what could be the perfect crime. By simply axing the commission's budget line, the governor gave the legislators an opportunity to abolish the commission merely by doing nothing.
>
> Thus they can accomplish their purpose without leaving any record-vote fingerprints the public could use to identify the culprits.
>
> For the caper to succeed, all that Carey & Co. need is for New Yorkers to remain blissfully sleeping while the brazen payoff of the union bosses is carried out. They must be smirking and gloating over the so-far torpid reaction.
>
> Even the release of a report, commissioned by the Kinzel group, which showed that New York City alone now pays out $1.2 billion -- about one-tenth of its entire budget -- for pension benefits failed to arouse the snoozing citizenry.
>
> The people had better soon wake up, screaming. Unless they do, the State Pension Commission will die by default -- and with it their only defense

against further pension grabs.

> The deadline, taxpayers, is -- appropriately enough -- April 1. So start hollering, folks, before the Albany Hill mob makes fools of us all.[22]

The News' metaphors of a gang of thieves, to refer to unions and legislators, with the taxpayers their sleeping victims, was very picturesque. It was also accompanied by a news photo of Carey that, together with the article, does conjure up the image of a frowning gangster. The editorial was not entirely accurate. To formally abolish the Commission, the Legislature would also have to pass one of the bills repealing Article 27. Secondly, the Legislature was not quite as quiet as the article supposes. One reason for this was the report mentioned in the editorial, which the Commission released in the midst of the controversy over its existence. In the report entitled Financing the Public Pension Systems-Actuarial Assumption and Funding Policies, the Commission warned that the five NYC actuarial retirement systems were so poorly funded that they could run out of reserves for making current pension payments. This severe underfunding, the report said, was due to recently-enacted benefits increases, which instantly created unfunded supplemental liabilities; and to the city's tendency to "cheat" on its contributions to the funds. The Commission's study found that the percentages of funded liability associated with active members had fallen by very large amounts in three of the city's retirement systems between 1967 and

1973. For the Employee's Retirement System, this percentage fell from 50% to 13%, in the Teachers' Retirement System, 40% to 9%; and in the Board of Education system, 44% to 15%. The policemen's and firemen's systems were 16% and 19% funded, falling from 23% and 20% respectively. Aside from a deficiency in city contributions, the report also blamed the use of certain actuarial assumptions which were extremely outdated and therefore underestimated the necessary contribtuions.[23]

The Commission, which had been working on this report since the previous fall, released its findings at a very opportune time. One interesting thing about the report was that none of the information regarding actuarial assumptions was new -- it had all been reported year after year by the city actuary in his reports to the retirement boards of the different systems. The boards had consistently chosen not to act on the information. The difference here was that the city actuary was not an independent entity conducting his own campaign for pension reform. The Commission was a political body, engaged in fighting not only to survive, at the moment, but continually, to impress its vision of pension reform on the state. Government officials couldn't exactly sit back and say that they had heard it all before, and dismiss it; nor could the unions, who also had representatives on the boards.[24]

Another interesting point was that the data and conclusions in the report went practically unquestioned at the

time. One exception to this was the response of Deputy Mayor James Cavanaugh, who said that the retirement systems' assets of $7-8 billion would last at least 25 years. The report did go into some detail on how the outdated assumptions differed from modern experience, and on the "fiscal gimmickry" that city officials used to reduce annual contributions still further. For example, the pension funds earned a rate of interest on their assets which was higher than the official actuarial rate. The city would calculate the "excess" interest earned and reduce its contributions by that amount. In 1975, the city subtracted the "excess" for two years in advance from its contributions for one year. This practice did not take into account actuarial losses.[25]

But the Commission presented very limited explanation of its own assumptions for calculating liabilities and levels of fundedness. Abrupt reductions in levels of funding such as the Commission found -- to one-fifth and one-quarter of levels of only four years earlier -- would seemingly require greater explanation. Despite such deficiencies, the report proved effective in creating doubts about what the real status of the city's pension funds might be.

Political leaders, including Democrats, were already having second thoughts about the wisdom of abolishing the pension commission. The report provided the necessary excuse to delay action. Republican staff members of the Assembly Ways and Means Committee said that closing down

the Commission would be "a tragic mistake," and proposed to restore its budget allocation. Key Democrats in the legislature declined to continue to fight Republican efforts to retain the Commission. An aide to Assembly Speaker Steingut said that the latter was "in no mood to fight about the pension commission, not after reading the report." Duryea and Anderson meanwhile said they were attempting to get a $370,000 appropriation for the Commission.[26]

By the end of March, compromise agreements between the Republicans and Democrats supposedly settled the Pension Commission issue. Leaders held a "summit" conference on a number of items. The Pension Commission was reportedly the "top item of Anderson's final list." In what the Times referred to as a "classic case of political trading, bluffing, compromise and facesaving," the leaders agreed that the Commission would stay, but Kinzel would have to go. On its editorial page, the Times also offered its explanation of Carey's attempt to kill the Pension Commission, "at the behest of the union leaders who contributed so lavishly to his campaing fund." The present legislative compromise resulted because "union leaders have demanded Mr. Kinzel's scalp," in a "symbolic sacrifice" of the only well-known commission member. The other aim was to "cow the rest of the commission into the kind of sumissiveness the labor chiefs prefer."[27]

The agreement did actually turn out to be "symbolic,"

but not in the way the Times meant. Although Carey aides sounded out members of the Pension Commission for the chairmanship, the members unanimously said they wanted Kinzel to remain in his post. Kinzel himself refused to resign, despite pressure from the Governor's office. He said he intended to serve out his term until its expiration in 1979, in order to accomplish all the work that needed doing on pension reform.[28]

The Governor agreed in April to sign the budget bill which included the Commission's appropriation. There was some mention in the press of a new tactic, by which the Governor would try to expand the Commission and appoint pro-labor members. This did not happen either. Harold Conroy was reappointed when his term expired in the summer of 1975, and the Commission continued to have five members.[29]

One explanation that the press offered for the legislature's defense of the Kinzel Commission was that many members -- including Democrats -- appreciated having a buffer between themselves and the unions. But even more than this, many Republicans in particular, under Senator Anderson's leadership, now had a kind of proprietary attitude toward the Commission. A few years earlier the newly established Commission had yet to prove itself, and to convince anyone of the importance of pensions. It was inexperienced; it had not established ties with supporters in government and elsewhere, and it issued controversial reports calling on

legislators to do various unusual, unpopular things. Since then, the Commission had written memoranda on the floods of pension legislation (introduced despite the moratorium), and had issued research reports and work summaries. The Commission had established itself with the press and with a number of lobbying groups, as an independent-minded group. It had criticized actions of the Rockefeller administration on many occasions, and now tangled with Carey. Legislators were uncertain how to deal with worsening fiscal problems of local governments, including New York City, and the Commission pointed out a connection between pension costs and those problems.[30]

Even public employees were disturbed by the Commission's report on the NYC funds. An article in The Chief (a weekly civil service publication) detailed the charge that the systems were underfunded due in part to use of highly inaccurate assumptions. Although the Commission "may well be overstating the case" -- here the article cited Cavanaugh -- and trying to defeat any bids for new benefits, "employees are beginning to wonder if their pensions are in jeopardy."[31]

In March, the Jump study from Syracuse University (see page 4) added to the literature on New York City's pension costs. Bernard Jump's findings, based on research done at the Maxwell School of Citizenship and Public Affairs, included cost predictions through 1980 levels of funding; and retirement costs as a percentage of payroll for each system.

According to the report, NYC pensions cost $1.1 billion in 1974 (including Social Security contributions). By 1980 they would cost at least $.4 billion, (down from $1.5 billion in 1978), but probably closer to $2.1 billion. The minimum cost projection was based on optimistic assumptions that city employment would decline by 2% a year after 1975, and that salaries in 1975 would increase by 5% and then remain level. The more realistic assumptions were that employment and salaries would increase at annual rates of 2% and 6% after 1975; still below actual experience of the past decade. Under the latter assumptions, pensions would cost 23% to 35% of payroll, exclusive of payments to federal Social Security. Pensions now cost over 20% of payroll, Prof. Jump said, and 33% including Social Security.[32]

Prof. Jump also reported on the use of obsolete actuarial assumptions, which he said had been common knowledge for over ten years. His findings were very similar to Kinzel regarding outdated rates applying to deaths, turnover, salaries and retirement, and on changes in the law which allowed unsound fiscal practices.

Over the rest of the spring and summer, state and even national press covered New York pensions. In the state press, Charles Holcomb wrote a long piece for Empire State Report in which he explained how New York pensions became "underfunded" and "overcommitted." The article covered the pension liberalizations of the 1960's, which were passed

with the help and encouragement of Rockefeller and Levitt; the effects of the 1967 Taylor Law in strengthening unions; the D.C. 37 bill and the founding of the Kinzel Commission; and the current attention given to the NYC pension funds. Holcomb concluded that even if the next legislature were to enact major rejforms, there would be little immediate effect. Pension costs in the near future would continue to increase. He also said that the state-administered funds seemed safe, but no one knew what the status of the New York City funds really was, or what would happen if the city could not pay its obligations.[33]

In July the Times published the front-page article: "How a $13,000 Bus Driver Won a Pension of $15,600." There had been coverage before on pension abuses, although the News tended to emphasize them much more than the Times, but this time the Times made the most of its material. The NYC actuary had done a study of city transit authority workers who retired in 1974. The article emphasized the finding that 80 workers who retired that year worked enough overtime to increase their final-year earnings by more than 40% over their base pay (and most often, over 50%). Since pensions for transit workers were based on final years' salary, the authority had to increase its funding of those employees' pensions by a total of $ million. Five workers earned over $25,000 each in their final year, including overtime. One of these earned over $30,000, hence the headline. However,

you would have to read the article very carefully before you managed to infer that of 757 transit employees retiring in 1974, only 10% earned the gigantic overtime amounts that the article emphasized -- 75 out of 179 surface (bus) workers, and "only one percent" of 578 subway workers. The article did say that large amounts of avertime were built-in to the system, due to "long routes and operations involving two widely separated peak periods," work rules which allow senior men to pick runs, and very high absenteeism. Although the overtime amounts for surface workers is quite high, there was no comparison with levels of overtime among the bulk of the workforce which was not retiring.[34]

In the national press, Pensions and Investments, the trade magazine in the field, reported in April on the Kinzel and Jump studies of New York City pensions. The editorial deplored the "fiscal finagling" that drastically understated costs and left the systems underfunded. The article assigned the "ultimate responsbility" for this "breach of fiduciary duty" to the board of trustees. It also advocated the extension of the Employee Retirement Income Security Act (ERISA) to state and municipal funds.[35]

A finance column in U.S. News and World Report said that pension obligations were "pushing many U.S. cities uncomfortably close to financial chaos." It quoted NYC's chief actuary saying that N.Y.'s pension funds could reach "actuarial insolvency within ten years," and "actual insol-

vency" ten or fifteen years later, without corrective action. The article also looked at Los Angeles, where pension costs were 50% of police and fire department payrolls; New Orleans, which needed to double its annual contributions but couldn't afford to; Washington, D.C., where pensions were growing 4% faster than the city budget, and others.[36]

By the fall of 1975, New York City's financial crisis had become one of the most important subjects in local politics. New York City's financial problems had reached a turning point in the spring of 1975, when the banks refused to underwrite any more city securities. Although a detailed discussion of the causes and events of this crisis are well beyond the scope of the paper, a brief summary is necessary, to place the events of the coming year in perspective.

In June, 1975 the state legislature created the Municipal Assistance Corporation (MAC), to issue securities on the city's behalf, backed by the state's "moral obligation." The city was in "virtual receivership." In September 1975 the legislature created the Emergency Financial Control Board (EFCB), a seven-member group dominated by state appointees, with power over revenue estimates, and spending and borrowing decisions of all city agencies. The legislators also passed a financing package for the city consisting of the purchase of MAC bonds by conventional investors, City and state pension funds, and the state itself. In November, the city declared a moratorium on the payment of principal on $1.6

billion in city notes maturing after December 10. The federal government agreed to loan money on a short-term basis to make up for temporary expenditure-revenue "imbalances." The city was in a state of default -- different from bankruptcy only by definition. The theme of fiscal crisis became closely tied to pension reform in state politics.[37]

Pension reform activities began in several spheres, in anticipation of the 1976 legislative session. In the Legislature, the Assembly Committee on Governmental Employees held public hearings on several bills which would require employees to contribute 8% of their salaries toward pensions. In testimony opposing the bills, union representatives said that public employees had already agreed to sacrifice wage increases in view of the fiscal crises in state and local government. To force further losses on workers would be "totally insensitive" to the contributions already made. They also argued that employee contributions result in proportionately smaller savings to the employer, than the cost assumed by the employee.[38]

Contributory pensions would affect all classes of employees. Among those testifying were Barry Feinstein for the Conference of Public Employee Organizations, a CSEA representative, and members of NYC and upstate police and firemen's organizations. Kinzel also spoke, saying that while contributory pensions had some advantages, there were "alt-

ernate ways" to change the system. The Pension Commission was working at the time on a new proposal for introduction to the Legislature, that would again incorporate Social Security into pensions for maximum savings.[39]

In another development that would affect the legislature, Rochester's pensions again exceeded its Constitutional tax limitation, by $30 million. The city planned to ask the Legislature for a new local incometax, or a "special" state property tax in order to meet the obligation. The alternative would be to cut services, in other words, fire many workers. Senator Eckert's first response was that city officials would have to back his pension reform proposals before he would support any new taxes. Otherwise, he said, it would be like giving "booze to alcoholics."[40]

Local press coverage on pensions continued, including editorial opinion in favor of reform. In contrast, a column in a September issue of <u>The Chief</u> reported on the gloomy outlook for public employees. "The era of public-employee pension improvements is over," the article said, if the last legislative session were any indication. Dozens of pension bills had failed to make it out of committee or off the floor. Carey vetoed those that did reach him. The moratorium also carried over to labor legislation that did not concern pensions, such as confidentiality of police personnel records, police dispute arbitration, Taylor law strike penalties, and an agency shop bill. The Legislature and Governor to-

gether were upholding the moratorium and blocking union gains.[41]

The author also thought it likely that the Legislature would extend the 1973 moratorium, due to New York's "fiscal woes," and that the 1970 NYC-D.C. 37 agreement was unquestionably "doomed forever." Even with regard to collective bargaining, "it would not be surprising if the moratorium on negotiations were extended."[42]

A subsequent issue of the Chief reported an even more alarming possibility: The loss of Increased-Take-Home-Pay (ITHP). The Mayor had directed his Management Advisory Board to conduct "an intensive review" of the city's pension systems, with attention to potential underfunding. This, the article said, "could mean that he is eyeing the ITHP as a source of funds" for reducing the city's annual contributions. Ending ITHP would be the same as a 4 or 5% pay cut for employees.[43]

The New York News had already suggested, in its "Save the City" column, that the Mayor could eliminate ITHP. He could theoretically do so at any time for most city employees, since it wasn't a contract provision. For uniformed employees, the new contracts could end ITHP, especially since the city supposedly did not have to collectively bargain on pensions.[44]

Private reform groups also anticipated the upcoming legislative session. Citizens Public Expenditure Survey

(CPES) opened its reform campaign in November with a mass meeting in Albany. At the meeting, CPES and other groups created the"CPES Taxpayer Action Council" to coordinate and marshal support from taxpayer groups around the state. CPES said that the council would "counteract the ridiculous demands made on legislators by public employee unions and others who suffer from the delusion that the public till is always full." At least 20 groups had representatives at the meeting. A number of legislators also attended, during breaks from the special session which was meeting at the time. Kinzel was the featured speaker. He explained the Pension Commission's reform strategies and praised CPES for its role in saving the Commission.[45]

Later on in the winter of 1975, information began trickling in from the Pension Task Force of the Mayor's Management Advisory Board. Actually, the Emergency Financial Control Board had ordered the study in September, through Mayor Beame. The Task Force members were an interesting composite of corporate, union, and government interests. There were four corporate officers and one actuary in the group (from Metropolitan Life Insurance, Equitable Life, General Motors, and Union Carbide); three union associates (from Program Planners and the U.F.T.), two government actuaries (state and city) and a private actuarial consultant who had worked both with unions and with the Pension Commission. By December, it was clear that the Task Force would

not meet its December 31 deadline. The group had already displeased the EFCB by not submitting interim reports, as requested. Then the News wrote that it had learned that the Task Force report would establish serious underfunding in the city's retirement systems, using updated actuarial tables. Richard Shinn, chairman of the Advisory Board, denied that the Task Force had already reached this conclusion. The group did not complete its report until March, one year after the Pension Commission had released its controversial study. (Findings will be discussed fully in the next chapter in connection with legislative politics.)[46]

There was little prospect that pensions could be ignored in 1976. The Pension Commission was "stronger than ever." The Governor had failed to diminish its political power, due to the Senate's firm position, outcry in the press, lobbying by private groups, and Kinzel's well-timed self-defense. The Commission had not modified its view of the pension problem in any way, or of appropriate solutions. The "fiscal climate" created by N.Y.C.'s default and its $3 billion deficit meant a new political "climate," in Albany. Although Republicans had held the most powerful positions at the state level during the entire decade of the 1960's when the problem supposedly began, the change was especially striking for Democrats. Governor Carey now publicly advocated continued fiscal restraint as "the public policy of the state," where pensions were concerned. Although the

Assembly's Democratic leadership showed no interest in pensions at this time, the issue was by no means absent from the Assembly, as the fall hearings demonstrated. As the 1976 session approached, with the ending of the pension moratorium and the expiration of the "Tier 2" pension reforms, it remained to be seen what the effect of three years of pension politics would be: That is, whether any major reform proposals would emerge as viable legislation; whether unions would be able to limit any changes proposed; or whether the Legislature would find some way to postpone definitive action.[47]

Footnotes -- Chapter IV

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2. NYT*, January 28, 1975.

3. Economic Development Council of New York City, Inc., Pension Change in New York City 1962 - 1975, August, 1972.

4. NYT, ecember 8, 1972.

5. DN*, June 9, 1972.

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7. Bernard Jump, Financing Public Employee Retirement Programs in N.Y.C.: Trends Since 1965 and Projections to 1980, January 1975.

8. Hurd v. City of Buffalo, N.Y.S. Court of Appeals, (41 A.D. 2d 402), March 27, 1974.

9. Ibid.

10. Charles R. Holcomb, Empire State Report*, "The Pension Balloon is about to Burst," May 1975.

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14. Buffalo Evening News, March 5, 1973.

15. Rochester Times-Union, February 1, 1973.

16. Rochester Democrat and Chronicle, March, 1975 (date unavailable).

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*New York Daily News.

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17. Otto Kinzel, Interview, February 28, 1979.

18. NYT, February 1, 1975; Legislative Index Company, New York Legislative Record and Index, 1975.

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22. DN, February 16, 1975.

23. Pension Commission, Financing the Public Pension Systems. Part I: Actuarial Assumptions and Funding Policies, March, 1975.

24. Dr. Joseph Metz, Interview, February 29, 1979.

25. The Chief, April 4, 1975; Pension Commission Report, March 1975.

26. DN, March 19, 1975.

27. NYT, March 25 and March 27, 1975.

28. DN, March 28, 1975.

29. DN, April 3, 1975.

30. DN, March 28, 1975.

31. The Chief, April 4, 1975.

32. Bernard Jump, March 1975.

33. Holcomb, ESR.

34. NYT, July 27, 1975.

35. Pensions & Investments, "Action needed now on NYC's crisis," April 14, 1975.

36. U.S. News and World Report, "Who'll pay the billions for those generous pension plans?", August 25, 1975.

37. Roger Alcaly and David Mermelstein, editors, The Fiscal Crisis of American Cities, 1977, pp. 31-35.

38. The Chief, September, 1975.

39. Ibid.

40. Rochester Democrat and Chronicle, November 9, 1975.

41. The Chief, September 12, 1975.

42. Ibid.

43. The Chief, November 28, 1975.

44. DN, September 5, 1975.

45. CPES Taxpayers, December 1975.

46. Mayor's Management Task Force, Pensions, April 1976.

47. The Chief, September 12, 1975.

Chapter V

Over the winter, the Pension Commission completed a new pension reform plan, which was intended to replace the reforms enacted in 1973. These were due to expire June 30th. The new proposal retained underlying features of the earlier Kinzel plan. It was a uniform plan for all public employees with 30 years of service, retiring at age 65, and entitled to full replacement of take-home pay. It reduced the state pension in proportion to Social Security payments. It also kept policemen and firemen in a separate plan with no age restriction, and a shorter minimum term of service than other employees.[1]

The new plan demonstrated the effect of the strong criticism that the earlier proposal had received. The Social Security offset in the new plan was 50%, not 100%, of the amount of the payment. The state pension would increase up to 3% annually, depending on the employee's age at retirement. Employees would contribute 3% of annual salary to the pension system.

The proposal, called the Coordinated-Escalator Retirement Plan (CO-ESC), (referring to integration and to the 3% escalator) also called for the elimination of Increased-Take-Home-Pay, and of payments to the special union annuity funds. These were to save $170 million and $25 million annually, respectively. The Commission said that the new plan would be beneficial to long-service employees because benefits

would surpass those payable under present systems at age 73, due to the escalator.[2]

The public announcement of the new plan, on March 9, was rather late, in comparison with previous years, and came with as little advance notice. Kinzel spoke at a press conference in Albany, at which he emphasized the costs of pensions statewide. He said that expected savings from the plan would total $2 billion in the next ten years, for all eight retirement systems.[3]

This time, the Commission took the initiative in holding hearings on its proposal in New York City, Albany, and Rochester. Pension Commission members were surprised by the criticism the proposal received from business and civic groups, and local government officials, all of whom supported pension reform. The complaint was that CO-ESC was still too generous, and still more liberal than private sector plans. At a New York City hearing, speakers included City Council President Paul O'Dwyer (reportedly thinking of running for the U.S. Senate), the mayors of Yonkers and Larchmont, and several legislators. They generally praised the Kinzel proposal, and the Commission, for having had the courage to submit it despite the certain denunciation it would receive from unions.[4]

In Albany, the vice-president of Citizens Public Expenditure Survey called CO-ESC a "minimal step in the right direction." A representative from General Electric called

it a "faint signal of reform" to businesses that their taxes would not increase much, due to pensions. In Rochester, school board members and local government officials complained variously that the proposed rate of employee contribution was too low; that pensions accounted for about 20% of property taxes, and that pensions cost too much generally. They also approved of integration with Social Security. A spokesman for an industry organization said that CO-ESC benefits exceeded those of private employees in the Rochester area. Commission members were particularly surprised by the lack of enthusiasm from CPES, one of its closet supporters.[5]

Labor groups in the state renewed their opposition to pension reform, as embodied in CO-ESC. Before the hearings began, Jack Bigel, the union pension consultant, denounced CO-ESC as "totally regressive." He said that the 3% cost-of-living escalator was a fraud. CO-ESC benefits would exceed those of current plans when retirees were about 75 years old, he said, but according to mortality tables "our people start dying at age 73." The Pension Commission "will reward you if you thwart their expectation of an early death," Bigel said.[6]

At the start of the hearings in mid-March, Victor Gotbaum announced that all New York City unions would boycott the hearings. "We will not dignify hearings held by big-business men with a contempt for working men," he said. The boycott

included his own union District Council 37 of AFSCME, sanitation and transit workers' unions, and the police and firefighter organizations. Gotbaum said that unions objected to the Pension Commission's failure to consult them during the development of the plan. Union leaders also wanted to avoid being seen as losers by the rank-and-file. It seemed to the leaders at this point that they would have nothing to gain by going against the majority; that some changes were inevitable due to the "fiscal climate." In addition, they said, changes would only affect 10% of employees. In any case, "a loser should never be visible." At the same time, Kinzel commented that unions were realizing that lesser pensions were preferable to layoffs, so it was better to have cash in hand to pay salaries.[7]

Some public employee groups from outside New York City did send representatives to the four hearings. Bernard Ryan of the Civil Service Employees Association was the only critic of the Kinzel proposal at the first hearing in New York City. He told the Commission that CSEA members regarded the proposal as a "serious threat" because it was an attempt to take away collectively bargained benefits. He said that CSEA had won non-contributory pensions, 1960-1965, in lieu of pay increases.

In Albany, the New York State Retired Teachers, the New York State Permanent Firemen's Association, and New York State United Teachers sent representatives, all of whom

criticized CO-ESC. The Pension Commission "cares little about the human dignity of working people," one said. A pension consultant for the teachers' group said that CO-ESC hit them particularly hard. Many teachers would have to work longer than 30 years to reach age 65, and pay increased contributions for reduced benefits.[9]

Another kind of testimony came from the Retired Public Employees Association, representing a generation of public employees whose working careers preceded the "Rockefeller raises." These retirees had been in a fully contributory system, and received a maximum of 35% of pay. They received a cash supplement, renewed periodically by the legislature, which they now asked be made a permanent benefit. Kinzel responded that reform was the Commission's only target, and that supplementation was a separate topic.[10]

The Mayor of Rochester, who had been having trouble paying the city's pension bills, criticized the proposal in a way that made it ambiguous as to whether or not he supported reform. He questioned the estimated savings from the plan. Recent cutbacks had left senior employees in most jobs; and the 3% escalator could negate savings, he said. Also, the 3% salary contribution could be inadequate since so many employees retired with only 20 or 25 years of service.[11]

Kinzel commented that participation in the hearings by some employee groups was a good sign, since it showed their interest in the issue even though they criticized the

proposal. Public Employee Conference unions had boycotted all four hearings, although they did send observers.[12]

Although unions did not immediately develop a strategy to fight CO-ESC, they were not resigned to giving in. To some extent, union officials felt that Assembly Democrats would block any reform bills. They also thought that the Pension Task Force Report (Shinn Report), soon to be released, would vindicate their claims that the NYC pension systems were adequately funded. This would reduce the urgency of pension reform.[13]

The unions also commissioned Jack Bigel to conduct an analysis of the CO-ESC proposal. The report, dated March 22, was a key part of the labor strategy. It included various issues relevant to the ongoing struggle over pensions, not only the specific elements of Co-ESC but also sections on wages and pensions in other cities and states, on U.S. Civil Service pensions, and on private sector pensions. The report claimed that the commission had failed to analyze the cost implications of the 3% escalator, and had not reported on savings already accrued since 1973. The analysis also asserted that the New York City pension systems were as well funded as other large plans, in better shape than many corporate ones, federal Civil Service, or Social Security.[14]

The three basic aspects of the proposal which Bigel criticized were, as before, integration with Social Security, the elimination of special temporary benefits, and stricter

age and service requirements for unreduced benefits. Program Planners again argued that integration was not a common practice among pension plans, and becoming less so. The report cited the Bureau of Labor statistics survey of 100 pension plans, in which 85 out of 90 plans (for which there was complete data) did not integrate in 1974. 63 had never done so, and 22 had stopped since 1958. A 1975 Bankers Trust study of industrial retirement plans had concluded that the trend among industry was to eliminate integration, or to reduce the offset portion in order to effect cost-of-living increases. Program Planners did not, however, provide any further explanation of why so many pension funds had abandoned the practice, and why it would be an undesirable practice for system administrators, as it evidently was.

Regarding the recommendation for ending ITHP and payments to union annuity funds, both affecting New York City employees, Bigel argued that this resulted from the fallacious assumption that private corporations seldom support more than one source of retirement income. On the contrary, the report claimed, corporations often support two or three programs, including the pension fund, Social Security, and savings or stock purchace plans. One such example was the Bankers Trust Savings Incentive Plan, in which employees could set aside up to 6% of pay in a fund that would collect 81/4% interest annually.[16]

The Program Planners report also asserted that all em-

ployee benefits were arrived at through collective bargaining, pursuant to a benefit package. The benefit package consisted of wages; fringe benefits such as sick leave and vacations; working conditions, including seniority and overtime rules; and pension programs. This view directly conflicted with the Pension Commission ideology. The Commission had stated in its original report in January 1972, that the sole purpose of pensions was to provide adequate income during retirement, consistent with state fiscal capacity. Following from this, questions of wages or working conditions were unrelated, and should be dealt with separately. Pensions should not be used to remedy problems in those areas. The Commission thus had advocated a kind of ideal state of affairs which conflicted with collective bargaining practice.

Bigel analyzed CO-ESC age and service requirements by comparing CO-ESC and current benefits under several sets of assumptions. At one extreme, assuming that employees would work long enough to obtain the largest possible pension (age 65 for some employees), Program Planners found initial reductions from current levels ranging from 22% less for policemen and firemen, to 47% for clerks; 34% less for transit workers, 37% for teachers, and 46% for sanitation workers.

At the other extreme, retirement at the earliest possible date (age 55 for most employees, 22 for police and fire), initial reductions were 35% for policemen and firemen, 40% for clerks, 46% for teachers, 51% for transit workers, and

53% for sanitation workers. These reductions jumped to 60%, 63%, and 64%, respectively, for police, clerks and teachers at age 62, due to the Social Security offset beginning at that age.

The report also illustrated the effects of CO-ESC on employees whose age and service characteristics at retirement were in between the two extremes. Most employees would be in this category. This section showed benefits received over time, including the effects of the 3% annual escalator. For general employees retiring at ages 62-65, assuming 25 years of service and $15,000 final pay, CO-ESC benefits would initially be at least $2500 less than current plans, and approach the higher benefits at ages 80-88. For policemen and firemen retiring at age 45 with 24 years of service, the CO-ESC benefit would begin about $3000 lower; exceed current levels at ages 55-62, decrease at age 62, and again approach current benefits at age 65-70. CO-ESC would never equal current benefits for police/fire with 23 years of service; but with 25 years of service would exceed present benefits by increasing amounts, after age 55.

Program Planners concluded from the data that CO-ESC would entail reductions of 22% to 63% compared to current pensions; with benefits contingent on increased service amounts of five, ten and twenty years; and therefore was "absolutely contrary to the needs of employees." For all employees, total lifetime benefits under CO-ESC would never

exceed current amounts, except at ages 100-107.

Thus even for a "career employee" as defined by the Pension Commission (age 65, 30 years of service), the CO-ESC annual pensions would exceed existing ones only later in the employee's retirement life, often at the cost of greatly increased terms of service. The comparisons also emphasized the vast difference between the Commission's conception of adequate age and service requirements, and current practice. While it may not sound unreasonable that policemen and firemen should work until age 55, or for 25 years, these would mean five to ten years more on the job. For example, a policeman starting at age 25, to get the maximum benefit would have to retire at age 55 after 30 years of service. This was 40-50% greater than standard current practice.

In these comparisons, the report made no mention of the Social Security portion of the employee's retirement income, comparing only the state pension amounts. The Pension Commission had in its calculations always totaled the two to arrive at realistic income figures. The Program planners report did not explain, or even refer to, the fact that they had done this.

Two other controversial issues discussed were the adequacy of funding of NYC plans, and projected savings from pension reform. On the former topic, the Commission had been misleading, the report said, and had barely addressed the second.

Kinzel's statement that the city systems were underfunded by $6 billion was completely incorrect, the report said. The $6 billion was an unfunded liability, to be amortized over time, like a home mortgage. The report didn't mention that one reason for the existence of a large unfunded liability was the failure to make adequate payments on the "mortgage," particularly when coupled with retroactive benefits increases that escalate the amount to be funded. The report did show various indicators of financial health. These included cash flow sufficiency, and a 51% asset-liability ratio for all city systems.

The Pension Commission had projected $2 billion in savings for 10 years, statewide. The report projected the cumulative cost of government over that time to be $262 billion-$411 billion. At most, the pension savings would reduce costs of government by about .75%, and by .5% under the less conservative estimate. The report did not discuss any changes in pensions as a percentage of payroll.

The report also discussed the fiscal crisis, a topic that until now reformers had appropriated for their own arguments. "NYC employees have literally saved the city from the chaos of default," the report said, through "extraordinary sacrifices." Employees had waived certain work rules* ($33 million value); and deferred a scheduled 6% wage increase

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*The report didn't mention that some of these were highly controversial, such as reduced summer hours.

($180 million). 40,000 jobs were lost through attrition ($848 million). Employees had agreed to reduced take-home pay ($106 million) as a concession to the federal government in exchange for a loan program; and they had helped to get a special revenue package for the city through the state legislature ($330 million). Most important, public employees had committed $2.5 billion from the pension funds to finance city government, by buying MAC bonds, a most ironic situation.

In this section, the report also incorporated a comparison of wages in the 26 largest U.S. cities. The comparison used both absolute amounts, and wages adjusted for the cost of living in each city. Although average monthly pay of non-teaching municipal employees in NYC was $1064 (as of October, 1974), eighth out of 26, adjusted for the cost of living the NYC average wage fell to sixteenth place.

The report attempted to counteract the popular conception of city employees as the villains of the fiscal crisis, although it didn't really debate the notion of city employees as the cause of the crisis. It also addressed something that had been at least tacitly a part of pensions reform ideology: That NYC wages, as well as pensions, were far higher than in other cities.

In April, new findings on New York City pensions had a mixed impact, mostly negative, on the unions' anti-reform effort. The Pension Task Force finally reported to the Management Advisory Board and the EFCB. To some extent,

the Shinn report vindicated unions claims on the adequacy of funding in the city systems. It therefore contradicted the Kinzel Commission's findings of severe problems. Funded ratios for the five NYC systems were 40% (teachers), 41% (police), 42% (fire), 45% (ERS), and 48% (Board of Education), totaling 43%.[15]

The three union representatives on the Task Force disagreed with the majority's formulation of assets (which excluded two year's appropriations due and unpaid). The report therefore included a second set of funded ratios, ranging from 49% (fire) to 60% (Board of Education), and averaging 53%. This was much closer to the figure reported by Program Planners.

On the other hand, the Shinn Report reiterated in great detail claims made in various other reports (Kinzel, 1975; Jump, 1975) that the pension systems used assumptions which differed greatly from actual experience. The Task Force conducted its own valuation of the systems, modifying practically all the actuarial assumptions. Some of the changes were substantial. There were recommended increases of 600% and 2500% in the rates of accidental disablement in the police and fire systems; and 150% and 110% higher ordinary disability rates in those two systems. It recommended one-third increase in the service retirement rate for police, and one-third less for firemen. The report also doubled the service retirement rates for sanitation and transit clerks.

A majority of the Task Force members agreed on pay increase assumptions of 4-4½% per year. This included average promotion increases of 1-1½% annually over an individual's working career, plus a 3% general wage advancement for all workers. Two labor representatives disagreed with this formulation. They said that a 2-2½% assumption was more accurate, based on annual average general increase of only 1%. Their reasoning was partly based on recent events, including Carey's wage freeze for state workers, and increased attrition, which they said would reduce the number of promotional increases.

The Task Force valuation did not use new mortality tables, although the report said that there was as much as a 10% variation from recent experience. The study also used a 5½% interest rate, up from 4%, which unions had advocated at least as far back as 1973, at the Select Committee hearings on the first Kinzel proposal. The task force also used, and recommended, an alternate funding method (i.e. method of calculating the amounts due over the pay-back period).

The Shinn report was much less dramatic and accusatory than the 1975 Pension Commission report on the NYC systems. It explained much more carefully how current experience differed from assumptions in use, and which assumptions needed changing. The impression it gave was that there was less finagling with figures than previous studies had implied.

But the report's final recommendations were not that

dissimilar from prior findings. Although the systems were not now underfunded, the city should increase its contributions by $208 million annually to avoid future underfunding, the Task Force concluded. Most of the increase was to come from member contributions. That is, employees would no longer receive benefits such as automatic heart disability payments, or Increased-Take-Home-Pay. Workers hired after 1973 would receive pensions based on a three-year final-average salary, offset by half of the amount received from Social Security.

The Shinn Report, while it was reassuring on the subject of the funding status of the city systems, and presented more complete data on plan valuation (rather than vague warnings), also recommended changes that were at least as severe as those supported by the Pension Commission and other reformers.

Recognizing this, a union representative on the Task Force, Anthony Gajda (vice-president of Program Planners), partially repudiated its findings. He said that the recommendation to completely end ITHP was contrary to the agreement reached the previous November among unions, Governor Carey, the Municipal Assistance Corporation, and the city. Unions had agreed to a 50% cut in ITHP, as of April 1, 1976 (to a maximum of 2½% of pay), with the understanding that the other half would remain. Gajda also repeated the assertion that a 2½% wage increase assumption was more realistic. This made a critical difference. Under this assumption,

no additional contributions were necessary, he said.[16]

Despite this and other disagreements, the report had succeeded in obtaining a measure of consensus between unions and reformers on some aspects of pensions. This was a problem for the unions. They could no longer unilaterally discredit all reform by claiming that it was the product of "big-business" men, designed solely to rob the workingman of his rightful benefits. There was an increased element of non-partison "public interest" in pension reform.

In the meantime, the CO-ESC proposal was not progressing in the Legislature. At the outset, Warren Anderson had said that the March 9 Kinzel report was an "outstanding public service," and CO-ESC deserving of "serious and sympathetic consideration." In the Assembly, Stanley Steingut had only said that he needed more time to study the proposal before commenting, as did Governor Carey. Carey also commented that it would be difficult to mandate a contributory plan when at the same time he was refusing pay increases to state workers.[17]

In reality, both Republican and Democrat leaders had reacted in a similar way. In the words of an Assembly staff person assigned to work on the proposal, it was a "technical and administrative boondoggle." An Anderson aide saw it as a proposal that was desirable in theory but a "turkey" in practice.[18]

Staff analysts found a number of problems in the pro-

posal. First, it was complicated to understand. The Social Security offset in particular would be difficult to administer. This allegedly could not be reduced to a uniformly applicable formula, but would require individual actuarial computation in each case. The same problem applied to the 3% escalator: "No one really knows how it works." The excalator would also be very expensive to provide for police and firemen, after 22 years of service regardless of age. The proposal did provide that the new plan should not apply if it were more expensive than existing ones. In this case, CO-ESC could conceivably never cover police and fire pensions.

Legislative analysts also found that the CO-ESC formulation of disability retirement would in effect prevent anyone from qualifying for those benefits. Partially disabled employees would stay on the job instead of retiring. Management would have no way to get rid of these employees other than disciplinary action, which is damaging for labor relations, and undertaken very reluctantly.[20]

In addition to the official, technical reasons for delaying CO-ESC, unions were depending on Steingut to prevent the proposal from getting anywhere in the Assembly.[21]

Once again, Senator Eckert was the strongest legislative supporter of pension reform. He and Assemblyman Hanna had sponsored reform bills in February, before the release of CO-ESC. In April Eckert introduced a bill to enact CO-ESC, modifying the 1973 legislation (Article 11 of the Retirement and Social Security Law). There was also an assembly version,

with Rules committee sponsorship. Eckert's bill was referred to the Senate Civil Service Committee and stayed there. The second week of May, a legislative columnist for the Albany Times-Union wrote, "it now appears certain that such reforms are dead in this election year." The 1976 legislature would probably extend current benefits another year, since legislators would otherwise face union displeasure at the polls, the writer predicted. The press accused Senator Schermerhorn, Civil Service committee chairman, of bowing to the pressure of legislative leaders, and behind them union lobbyists, to keep Eckert's bill in committee. In response, Schermerhorn said that he was preparing his own version of a pension reform bill. It would create a separate plan for police, fire, and corrections employees. He would "let both bills out when the time comes," the Senator said. Schermerhorn's announcement of a bill came as a surprise, but it didn't lead to any more action on pensions. Pension Commission reforms were again at a standstill.[22]

One reason for this may have been that another controversial pension issue was already claiming the legislature's attention. Evidently alarmed by the recent reports recommending an end to the "heart bill" for policemen and firemen, Senator John Marchi (Republican-Conservative, Staten Island) was pushing a bill which would make these benefits permanent. The heart bill had a controversial past. It provided that a policeman or fireman with heart disease could qualify for

retirement on three-quarters pay, on the presumption that the disease was work-related. According to the Daily News, Rockefeller, Harriman* and Dewey* had vetoed similar legislation 13 times altogether. N.Y.C. Mayors Lindsay, Wagner and Beame had opposed it. Finally in 1969 a "temporary" provision became law, covering police and fire officers outside of New York City. In 1970, amid heavy lobbying by the PBA, the UFA and the Police Conference of New York State, the legislature passed a bill covering New York City, which Rockefeller signed. The New York City Council had refused to pass a home-rule message**, so the bill was written to change the General Municipal Law rather than the NYC Administrative Code. The Legislature had renewed the "temporary" provisions annually. The 1973 extension had been for three years, matching the period of the moratorium on collective bargaining for pensions.[23]

Police and fire unions were out in force to lobby for Marchi's bill. The Senate passed it by a large majority in April, amid publicity and protest. A New York City police surgeon said that the bill's intentions were fraudulent. Policemen should have healthier hearts than most people, due to physical exertion on the job, he said. Further, high-ranking police officials received disability pensions, but

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*NYS Governors. Dewey 1942-44, 1946- ; Harriman 1955-58.

**Required by law for amendments to NYC Administrative Code.

ordinary officers didn't. The Times said that there was a "virtual epidemic of service-connected heart disease" after the New York City heart bill was enacted.[24]

Two weeks later, the Assembly passed the beart bill, again by a wide margin, despite "strong objections" from Mayor Beame, members of the Shinn Task Force, and the Pension Commission. The EFCB, and the State Civil Service and Insurance Departments notified the governor of their opposition. Beame urged Governor Carey to veto the bill. He said it violated the concept of home rule, and would encourage unions to seek "special" legislation for any benefits they hadn't won at the bargaining table.[25]

United Firefighters President Edwin Jennings defended the bill in a special column in the Daily News. He cited various statistics demonstrating the dangers employees faced: Death rate in the line-of-duty was seven times greater among firefighters than in any other city occupation; injuries tripled 1970-1975, after budget cuts reduced the number of men responding to calls; one-quarter of all heart attacks among firemen occured at the scene of a fire. 35 states have heart legislation to protect disabled workers, Jennings said.[26]

Governor Carey vetoed the bill late in May. He did not refer to any of the arguments against it, but said only that he would deal with "broad reform" of pensions, not piecemeal changes.[27]

By the middle of May, the press was becoming restive over the Legislature's inaction on the Pension Commission proposal. Senator Schermerhorn allegedly had planned to bring a pension reform bill before the Republican Senate Civil Service Caucus, but Anderson had prevented him from doing so. One reason given was that the Republicans wanted to delay until Beame made a final decision on NYC's participation in Social Security, dispite the fact that the Mayor had two years to decide. In March, Mayor Beame had notified the federal government that the City of New York would withdraw from Social Security. This began a two-year notice period, before the city could actually withdraw. The Mayor said this move would cut the city budget by $200 million annually, not including increased costs to replace lost benefits.[28]

The Daily News issued one of its pithy editorials, entitled "Mice, Men -- and Legislators." Legislative leaders were determinedly avoiding pensions "like children afraid of the dark," the News said, "hoping that a big bad bugaboo will go away." Anderson and Steingut "have cravenly folded under" the "enormous union pressure" against reform. In slightly more dignified language, the Times prevailed on the Governor and Legislative leaders to stop evading the issue, and to "act quickly," before pension obligations of "hundreds of millions of dollars" drove cities into bankruptcy.[29]

In the beginning of June, yet another report precipi-

tated a small tempest. In the summer of 1975, Mayor Beame had established a Temporary Commission on City Finances, to recommend ways the city could save money. Former State Supreme Court Justice Owen McGivern headed the Commission. Raymond Horton (author of the 1973 Citizens Union study) was staff director. The Commission's research focused on fringe benefits for city employees. In the report released in early June, the Commission said that fringe and leave benefits cost two-thirds of average base pay, or $10,616 worth of benefits on the average, compared to $16,091 average pay. Therefore the total average cost per employee was $26,707.[30]

A few of the study's recommendations were about pensions. The Commission reiterated earlier arguments that the Legislature should not extend ITHP or the heart bill, and that the city should not include union annuity contributions in its new contracts.

Although most of the recommendations related to benefits other than pensions, the report added to the conflict between labor and reformers. It also came at an awkward time for the city administration. Contract negotiations for most city workers were imminent. Although the Times commented that the report gave the city needed ammunition for austerity in the new contracts, it clearly embarrassed city officials.[31]

It also angered unions. Victor Gotbaum denounced the report and said that Horton was "an inveterate liar" and

"anti-labor." Gotbaum was at the time involved in an exchange with members of Congress over compensation levels of NYC workers. Senator Proxmire (chairman of Senate Ways and Means) had issued a report which said that NYC workers had the best pay and benefits of any city employees. Gotbaum had released figures of D.C. 37 workers which contradicted the Senator's report. Members of the city's congressional delegation had in turn accused Gotbaum of using misleading figures.[32]

Almost two weeks after the McGivern Commission report, D.C. 37 issued a rebuttal, claiming that the Commission had "misrepresented" costs. In one example, the report had used maximum salary, rather than the average, to calculate pension costs. In another, the report had overestimated Social Security costs by using a percentage of the (Social Security) maximum base pay. The maximum base was much higher than the average pay of D.C. 37 members, the union said.[33]

While in New York City attention focussed on the interchange over municipal workers wages and benefits, Senator Eckert had introduced the CO-ESC proposal on June 10, with 18 multi-sponsors*. It was modified to allow "Tier 2" benefits to remain. He said at the time that it would pass on the floor, but Anderson would not let it out of committee

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*Bills introduced by individuals have a prime sponsor; may have co-sponsors (listed with the prime sponsor); and multi-sponsors (listed in alphabetical order following the prime sponsor).

for a vote. He also said that most legislators were "just looking for a way out" with regard to pension reform. The danger now for pension reformers was that the leaders and Carey, would stall until just before the June 30 deadline, when they would extend the "Tier 2" plan for another year. By next year, pension reform could conceivably be a less popular issue.[34]

In mid-June, the legislature recessed for a week to allow NYC legislators to work on their primary petitions for the coming election. Senator Eckert, with the encouragement and financial backing of Rochester-area businessmen, decided to use that week to campaign as well, not for election, but for pension reform. He would spend several days in the New York City area, where reform was more controversial, and the rest of the time upstate. If he could publicize the issue enough, and particularly, convince editorial writers to support him in a concentrated campaign, legislative leaders would have to respond to the "crisis" thereby created.[35]

On Tuesday, June 15, Eckert publicly opened his campaign with a press conference in New York City. He told the conference that Carey, Anderson and Steingut were planning to postpone pension reform because they didn't want opposition from civil service unions in an election year. "(I)f we had adoped the reforms five years ago we wouldn't be laying off police and firemen across the state," he said. With Eckert at the press conference were William Thomas,

who headed the Shinn pension study; Owen McGivern; and Otto Kinzel, who also spoke. Eckert had met with members of the Pension Commission the day before, for a briefing on technical aspects of CO-ESC.[36]

Tuesday morning, Eckert and his assistant, Richard Stowe, a law student, presented their case before the Daily News editorial board. Eckert argued that a massive push of public opinion could get the legislature to do the "right thing," since they had to act anyway. The board was skeptical. Previous editorials had had no effect. Eckert said that this time, editorial backing would give him the ability to force a Senate vote. Once the Senate passed the bill (which he regarded as a foregone conclusion), the Assembly would have to follow suit. Republicans and upstate Democrats would almost certainly have no choice about voting for reform.[37]

Echert and Stowe continued to Newsday (a daily paper oriented toward the suburban Long Island counties of Nassau and Suffolk). They found the board receptive to their presentation. The editorial page editor asked Ackert to write a full page article on pension reform.[38]

On Wednesday morning, the News had a lead editorial blasting the "reluctant, union-cowed State Legislature" for "hiding, ducking for cover,... and desperately manufacturing excuses to avoid resolving an issue that should have been settled three years ago." That day Eckert saw the edit-

orial writers for the Wall Street Journal, and Times staff. Editorial staff for the left-oriented New York Post, a paper which had barely covered pensions at all, told Eckert that he would have to check first with their publisher, before they would see him. Evidently realizing that they were not likely to be on his side, Eckert did not pursue the issue.[39]

On Thursday and Friday, Eckert was in Rockland County*, Syracuse and Buffalo holding press conferences, with radio and television coverage in each place. Friday night, he was back in Rochester, the campaign over. A barrage of editorials and feature articles appeared, around the state. Newsday ran Eckert's article in the Sunday edition. Other papers had requested and printed Eckert's article. The Wall Street Journal wrote that the legislature had "one last chance" "to tackle the pension problem." The Journal explained it as a wider political issue: "Elected officials did with pensions what they were simultaneously doing with the public debt," during the 1960's. Mail and calls flowed into the Legislature, and on Monday, leaders met to decide what to do.[40]

The Republican caucus agreed to discuss Eckert's bill. Anderson said that the Senate would probably pass it, and that the Assembly would amend it to extend "temporary" benefits. The next day, Eckert's June 10th reform bill passed

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*Suburban outpost of NYC metropolitan region.

the Senate, 42-13. The bill established a third "tier" of pension benefits.[41]

Democrats attacked the bill as an "election-year fake." Manfred Ohrenstien, Senate Minority Leader (Brooklyn), said that the new plan would "create havoc" and provide minimal savings. Albert Blumenthal, Assembly Majority Leader, said that the plan would actually increase costs due to the cost-of-living escalator.[42]

But Republicans were saying that they had gained a political edge over Democrats by taking the initiative. If the Assembly refused to act now, upstate Republican contenders could use this as an issue in the coming elections, against their Democratic counterparts.[43]

Assembly Democrats were in an "unwelcome public spotlight." The Democratic conference met to devise a strategy. One of Steingut's top aides told members that CO-ESC was a "sham" which wouldn't save any money, but that the Assembly had to respond to the public "clamor." When Eckert's bill had passed the Senate, the Senator still used Kinzel's figure of $2 billion in savings. Subsequently, Dr. Metz, executive director of the Pension Commission, had said that $1.6 billion was a better estimate, due to the changes in the bill, particularly, retention of "Tier 2" benefits. Steingut's staff said that even that figure depended on the elimination of ITHP and of union annuity fund payments. Democrats complained that Governor Carey had not participated at all in political

strategy. He had not come up with a proposal of his own or found a face-saving way out of the current situation.[44]

Donald Wollett, head of the state Office of Employee Relations, then reported to Carey, recommending a weaker version of CO-ESC. It did not include a salary contribution. It continued 20-year half-pay pensions for police and firemen. On the 26th, Carey finally offered a bill to the legislature. It resembled the Senate version, except at Steingut's instigation it provided for a new 14-member state pension commission. Members would be one salaried chairman, four public employee representatives, four representing the "public interest," and four from public employers. Republicans received copies of the bill that afternoon, and appeared to accept most of it. At 3 A.M. the following morning, the Governor's bill passed the Assembly, 120-29, in an "unruly" session in which pro-reform legislators fought the amendment to change the Pension Commission and oust Kinzel.[45]

Another difference in the Assembly bill was that it did not allow police and firemen to receive the 3% annual increase until age 62. The Senate bill had allowed the escalator after 22 years of service. The purpose of the change, the News reported, was to punish police and fire unions for their consistent support for Republican and Conservative Party candidates, including their backing of Lt. Gov. Wilson against Carey. This contrasted with the technical explanation given by Assembly staff, that the escalator

would be very expensive starting at very early ages.[46]

Eckert praised the Assembly bill, except for the amendment to reconstitute and expand the Pension Commission, and said he would put it through the Senate. Senator leadership told Eckert they would not agree to the reduction in benefits for police and firemen. Members were by now impatient for the unusually long session to end. Each side accused the other of sabotage. Democrats thought the Senate was trying to evade action but put the blame on them; the Senate looked suspiciously on the Assembly's modifications of the bill. Pension reform publicity had made members in both parties extremely nervous. The Legislature was also divided over whether to recess or to adjourn for good.[47]

Late the next night, Anderson and Steingut reached tentative agreement. Steingut conceded on both points. The present Commission would stay, and policemen and firemen could receive the escalation upon retirement. In return, Anderson would allow passage of some stalled Senate bills, each of which was "extremely important to a freshman Democratic assemblyman." This would anger the Senate rank-and-file, because it would help marginal Democrats in the elections. Anderson's counsel also suggested the appointment of special observers to the Pension Commission, to represent public employees. They would be entitled to attend Commission meetings but not to vote. The press reported that this was designed to pacify union leaders Gotbaum and Albert Shanker.[48]

On June 28, three Democratic assemblymen introduced a bill with the agreed-on provisions. Stephen Greco, chairman of the Governmental Employees committee was prime sponsor. A powerful Rochester Democrat, Thomas Frey, was one of the co-sponsors. 27 other assemblymen multi-sponsored the bill, including 18 Democrats, 15* from upstate (including large Rochester and Buffalo contingents), and 3 from New York City. Eckert introduced the Senate version of the same bill, with 19 co-sponsors. Another bill, under Rules Committee sponsorship, made some technical corrections of the main bill. Both bills passed June 29th. The legislature recessed at 7 A.M. on June 30, after what the Daily News called "one of the longest most chaotic sessions ever."

Although CO-ESC had undergone some transformations and rewriting, the basic provisions remained substantially unchanged. These included integration with Social Security; 3% salary contributions; a cost-of-living escalator of up to 3%; and actuarial reductions for retirement at less than specified service amounts and/or ages. It was a uniform plan for all public employees in the state. According to the fiscal note accompanying the new law, CO-ESC would save New York retirement systems $1.4761 billion over the next ten years.[50]

Among reformers there were doubts about various provisions of CO-ESC. Senator Eckert had not wanted to keep police and firemen in a separate plan allowing earlier retire-

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*The Legislative Index lists a Manhatten Dem.-Lib. whose name is very similar to a Buffalo Dem., probably an error.

ment. A number of reformers, including Eckert, had thought the contributory factor unnecessary, or even detrimental. It could lead to pressure for wage increases to make up for lost income. Legislative aides, and administration officials thought the bill was too complicated, and administratively unworkable. Governor Carey had agreed to the bill with the understanding that the technical problems would be ironed out. The bill would not be immediately applicable, so there were as much as five years to make needed changes. The Governor, in his statement approving the bill on July 27, said that he would convene a task force composed of administration and pension system officials, to study the "administrative implications of these bills" and recommend remedial legislation.[51]

The New York City actuary, Jonathan Schwartz, called the new law an "absolute monstrosity." He said it would reduce attrition and increase the city's expense budget. This would upset the city's EFCB-mandated austerity plan. The effect of a reduction in the cost of pensions as a percentage of payroll would be minimal since the city could not afford to hire many new workers. Schwartz also warned that it would be difficult and expensive to administer the Social Security offset. For this reason private industry had already turned to simpler methods for effecting pension savings, he said.[52]

One of the more remarkable things about CO-ESC was the apparent abrupt turn-around of the bill at the end of session. It may have been the case that members slowly became interested inthe bill, as one Senate aide suggested, and it was also true that Eckert had found 18 multi-sponsors for a modified version of the Pension Commission proposal, by June 10. But in the Assembly there is no evidence of support for the bill before Eckert's trip. Assembly leaders, and Governor Carey, then agreed to compromise with Senate Republicans. The Assembly strategy at the end of June was to put upstate Democrats on the bill. Two influential upstate Democrats introduced the bill. The majority leader, Blumenthal, was on the bill, as was a Democratic assemblywoman from Staten Island (a politically conservative area of New York City).[53]

The situation to some extent resembled descriptions of two aspects of legislative activity. One observer wrote in 1948 (on the New York legislature) that "the Legislature is naturally as dilatory as most lawmaking groups and stalls during the early part of the session, then embarks on a mad rush before adjournment." A more recent work analyzed the legislature's handling of very controversial issues.

> "The governor and the leaders are often confronted with popular demands for reform legislation, hotly pursued by large sectors of the public, and opposed with equal heat by other sectors of the population. It is very often in the political interest of the governor and the leaders to evade involvement in such controversies altogether, or at least to delay involvement in them as long as possible. Such tactics, however, do not always

> make the problems disappear. On the contrary, the longer the delay, the stronger the clamor tends to grow, the more interest groups line up for and against the proposal, and an atmosphere develops in which some legislator or group of legislators, or the minority party itself, finds the situation ripe for the introduction of some legislative solution of the contested issue, and the governor and the legislature are forced to deal with the problem.
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> ...
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> The leaders are still in a position to exert strong influence over the outcome, but their influence is no longer totally decisive, since in these cases many legislators feel free to choose between party loyalty and the demands of their own constituencies, and even to follow their own personal ideological or sometimes religious preferences."

If the leaders in both houses had intended to stall until the last possible moment, and then rush through an extension of Article 11 (Tier 2 benefits), then they had certainly lost control over the situation by the end of June. The fact that each party controlled one house further complicated the situation. Neither one wanted to be in a position where the other held a political edge, particularly in an election year. Caution and evasion may have been intended to let the other party step -- or misstep -- first.[54]

The other notable aspect of the passage of CO-ESC was the unions' almost total failure to prevent action on the bill and to keep from losing ground. Unions had been taken by surprise when a pension reform bill was first reported from committee. Gotbaum, one of the prime movers this year, did not begin lobbying until May, relatively late in the session.

In June, when the Speaker put upstate Democrats on a pension reform bill, the unions felt betrayed. After a floor vote on one of the Assembly bills, one union lobbyist furiously confronted Steingut and accused him of going back on his word. Steingut was by this time impervious to the unions' claims.[53]

Unions had also split up into the usual groups. Police and fire unions had pressed very strongly one issue that benefitted theirmembers alone, the heart bill. State teachers won a number of allegedly expensive changes in pension laws. Legislators had also made a last attempt to preserve special benefits, by temporarily reopening the generous Legislative and Executive Pension Plan. After session ended in June, The Chief reported on the "pension disaster" that had taken place: "The legislature and Governor Carey have perpetrated the most grievous wrong on public employees in the history of civil service in this state."[56]

The Pension Commission at this time experienced a vindication of its efforts over the years. The press had again been a crucial ally. State and city fiscal problems had dramatized the flaws of deficit finance. The Governor and Legislature had presumably recognized the worth of the Commission's central recommendations. A New York City study group with union representation had confirmed Pension Commission recommendations through an independent analysis (Shinn Report). Otto Kinzel, the independent-minded chairman

who had at times offended unions and Administration alike, remained in his post. (He was not replaced until late 1978.) Although reformers from the business sector and from local governments outside New York City had complained that CO-ESC was still too expensive, the Pension Commission had showed that it could make use of strategy designed to lessen the opposition to reform, if not so much by unions, then by legislators and the Governor's office. And most important, the strong support by one legislator, and the tremendous publicity, had made the legislative leaders and Governor realize that it could be to their advantage to enact pension reform.

Footnotes -- Chapter V

1. Pension Commission, Recommendations for a New Pension Plan for Public Employees: the 1976 Coordinated Escalator Retirement Plan, March, 1976.

2. N.Y. Daily News*, March 10, 1976; N.Y. Times*, March 10, 1976.

3. DN, March 10, 1976.

4. New York Post, March 16, 1975; Albany (unidentified newspaper), March 9, 1976.

5. NYT, March 19, 1976; Rochester Times-Union, March 24, 1976.

6. NYT, March 10, 1976.

7. DN, March 15, 16 and 19, 1976.

8. N.Y. Post, March 16, 1976; NYT, March 16, 1976.

9. NYT, March 19, 1976.

10. Albany (unidentified newspaper), March 19, 1976.

11. Rochester Times-Union, March 24, 1976.

12. NYT, March 19, 1976.

13. Norman Adler, Interview, February 28, 1979; NYT, March , 1976.

14. Program Planners Inc., Analysis of the Report of the Permanent Commission on Public Employee Pension and Retirement Systems, March 22, 1976. Unless otherwise noted, all references in the text to the Program Planners report are to this document.

15. Mayor's Management Advisory Board, Pensions, April 1976. Unless otherwise noted, all references in the text to the Shinn report are to this document.

16. Civil Service Leader, April 26, 1976.

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*NYT -- New York Times

*DN -- New York Daily News

17. NYT, March 10, 1976.

18. Chris Hill, Interview, March 12, 1979; Victor N. Farley, Interview, March 19, 1979.

19. *Ibid.*

20. Hill, Interview.

21. Adler, Interview.

22. Legislative Index Company, Albany N.Y., *New York Legislative Record and Index*, 1976; Albany *Times-Union*, May 12, 1976; DN, May 13, 1976.

23. DN, March 11 and 13, April 12, 1976.

24. DN, April 12, 1976; NYT April 21, 1976.

25. DN, April 28, 1976; NYT, May 22, 1976.

26. DN, May 18, 1976.

27. NYT, May 22, 1976.

28. NYT, March 23, 1976; DN, May 18, 1976.

29. DN, May 14, 1976; NYT, May 17, 1976.

30. NYT, June 3, 1976.

31. NYT, June 3 and 4, 1976.

32. NYT, June 3, 1976.

33. NYT, June 15, 1976.

34. *New York Legislative Record and Index 1976*; Rochester *Times-Union*, June 10, 1976; DN, June 16, 1976.

35. Senator Fred J. Eckert, Interview, March 12, 1979.

36. DN, June 16, 1976; Senator Eckert, Interview.

37. Senator Eckert, Interview.

38. Ibid.

39. DN, June 16, 1976; Senator Eckert, Interview.

40. Wall Street Journal, June 21, 1976; Senator Eckert,

41. NYT, June 22, 1976; DN, June 23, 1976.

42. NYT, June 23, 1976.

43. Ibid.

44. DN, June 24, 1976.

45. DN, June 27, 1976; NYT, June 28, 1976.

46. DN, June 29, 1976.

47. NYT, June 29, 1976.

48. DN, June 29, 1976; NYT, June 29, 1976.

49. New York Legislative Record and Index; DN, July 1, 1976.

50. McKinney's Session Laws, New York, 1976, Chapter 890.

51. Senator Eckert, Interview; Victor N. Farley, Interview; Chris Hill, Interview; McKinney's Session Laws, Governor's Statement, Chapters 890, 891, July 27, 1976.

52. NYT, July 4, 1976.

53. Farley, Interview; Adler, Interview; New York Legislative Record and Index 1976.

54. Warren Moscow, Politics in the Empire State, p. 194; Alan Hevesi, Legislative Politics in New York State, pp. 208-209.

55. Norman Adler, Interview.

56. DN, July 1, 1976; The Chief, August 20, 1976.

Conclusion

In the early 1970's, groups in business and industry and a few government officials, became concerned about the huge costs of New York public employee pensions. During the previous decade, these groups had watched the expansion of government employment and services, and the concurrent growth of pension obligations, with increasing alarm. Group after group issued its study of pensions -- NYC Chamber of Commerce, NYC Economic Development Council, City Club, Citiznes Union, and a number of ad-hoc government study commissions. They found unfunded liabilities of billions of dollars, pensions costing 20-30% of payroll, 216 laws passed in the state legislature which increased benefits on a piecemeal basis, noncontributory pensions, and annuities for some employee groups paid for only by government contributions.

Matters came to a head in the late spring of 1971, amid a dispute over new pension benefits between a suddenly fiscally conservative state legislature, and a large, militant NYC union representing the "underdogs" of public workers: Non-teaching, non-uniformed employees. A new state commission was set up, called the <u>permanent</u> commission on public employee pension and retirement systems, to make it clear that from now on there would be an official watchdog over local governments, to check their inclinations to grant new benefits. The new commission first defined its goals to be the achievement of uniform, adequate, non-excessive

pensions. Uniform pensions would bring all public employees down to a common level, eliminating unions' constant attempts to exceed each others' benefits. Adequate, non-excessive pensions would provide replacement of after-tax income to employees who spent a working lifetime in government -- and reduce pensions for employees who retired still young enough to earn a living elsewhere.

One of the interesting things about pension reform was that it never seemed to succeed very well, at first. On two separate occasions, in 1973 and 1976, the Pension Commission submitted major reform proposals to the state legislature, and both times met with rebuffs -- subtle and not-so-sublte ones -- from the Governor's office, from legislative leaders, and certainly from unions. The law which finally passed in 1973 -- after considerable evasion of the issue -- fell far short of the Commission's plan for comprehensive, lasting change.

New York was not at all unique, either in the perception of problems of great magnitude, or the inexplicable failure to do anything about them. In a very few places, pension reform happened as thoroughly or drastically as, for example, in Oakland, Cal. , where voters approved a referendum to reduce pensions for current workers in 1976.

But in 1976, after endless stalling and uncertainty, New York finally got a strong pension reform law, which contained substantially the same provisions the Pension

Commission had recommended earlier that year. The new reform law followed the same underlying principles embodied in the Commission's tougher 1973 proposal, but its projected savings were 25% less, due to changes in application.

This thesis has attempted to discover the nature of the forces for and against pension reform in New York; why -- or whether -- pension reform eventually succeeded; and what implications there are for public policy. The major subjects included in this analysis were the pension commission, organized labor, the state legislature, and the press. Other topics were the NYC fiscal crisis, the private reform groups, and conflicts over data.

The Pension Commission was set up as an official forum for the reform ideology of the private sector. One element of this ideology was that the pension problem was a problem of cost. The major culprits were public employee unions, particularly the large, militant NYC ones. The solution was to counterbalance the unions' influence, by providing permanent "taxpayer" representation before city government and the state legislature where there had been none before. The new commission excluded even nominal representation of union interests. To ensure "taxpayer" representation, three commission appointees were businessmen, in addition to two former government officials. The commission's two "senior advisors" from the administration, Levitt and Wilson, were also instrumental in setting up and guiding the commission,

especially Lieutenant Governor Wilson. Despite the importance both these officials had had in helping public employees obtain new benefits during the '60's, -- even in 1969, disclaiming any drastic need for reform (in the Moore report) -- by 1971 both were strongly pre-reform.

The rational ideal of pension reform excluded ideas not connected to reducing pension costs. This meant, for example, fundamental conflict between the reformers' position that pensions exist solely to provide retirement income; and the labor position that pensions are deferred compensation, and as such are considered together with wages, fringe benefits, and working conditions. It also led to a certain blindness, as when Kinzel attributed to labor leaders a concern about layoffs, in the beginning of the fight over CO-ESC. Union leaders had mentioned nothing of the kind, but rather were concerned with maintaining a politically advantageous position. The Commission also did not consider the <u>in</u>adequacy of pensions for some employees. There was no initial follow-up, for example, of the Moore committee recommendation that pensions should protect retirees from inflation, or any reference to the problems of retirees who preceded the "Rockefeller increases" of the 1960's.

The Commission's method of operation preserved its special view of the world and gave the Commission an even stronger elitist character. The Commission used private consultants to develop proposals in the primary stages,

then conducted an internal review. Legislative members and staff, and unions were aggrieved at this secretive procedure. Legislators resented proposals which were sprung on them and which they were then expected to support. They also found numerous "technical" problems, particularly with CO-ESC, and strongly doubted whether this program could ever be put into practice.

In this way the Commission prevented its strict views from being watered down by ideological compromise, and also alienated various sectors of the political world.

On the other hand the Commission was able to cultivate considerable support for its reform program from the state press and from private interest groups. These became significant forces in their own right.

In NYC, the Times and News were strongly pre-reform. Thomas Poster of the News was the single most prolific pension reporter in the state. Several newspapers in Rochester and Albany, and Charles Holcomb of the Gannett chain provided fairly constant reportage of pensions. The considerable power of the press was demonstrated in particular on two occasions. One was in 1975 when editorials and articles attacked Carey's attempt to abolish the Pension Commission; the other was in 1976 when newspapers stepped in at a crucial moment to force legislative leaders into action.

Private-industry-related and civic groups provided citizen support for the Commission's reforms. CPES, itself

a coalition of smaller groups, lobbied heavily both for the Commission's continued existence in 1975, and to keep CO-ESC alive in 1976. Although in 1976 many groups were displeased with CO-ESC because of the very provisions that made it more palatable to legislators, the Commission was the strongest official forum for pension reform and continued to receive support for its work.

If the Pension Commission is the major protagonist in the process of pension reform, then organized labor is the antagonist. Public employee unions presumably exist to achieve better living standards for their members. The major means for doing this is the attainment of political power, which has several elements: The respects that rank-and-file members have for union leadership; the union's position of authority relative to other unions; and the right to collectively bargain the terms of employment.

Although employee organizations had bargained with government before the advent of official sanctions, unions in New York reacted angrily to the idea that pensions were unique, and should not be collectively bargained along with other conditions of employment. This rationalist formula would deny unions a measure of political power, and therefore threaten the entire structure of bargaining.

A second major attribute of public employee unions in the state was that they formed a complex hierarchy based on occupation, size of membership, militancy, and geographic

location. Policemen, firemen and teachers were the most favored occupational groups, with the oldest and most advantageous traditions of pension benefits. Other uniformed employees sought similar status, often with considerable success. General employees also sought to improve their pension status. The two large unions, CSEA and D.C. 37, succeeded up to a point, but during the 1970's each found obstacles to new gains: CSEA its own lack of militancy, and D.C. 37, the very militancy which brought it into conflict with the governor and conservative legislators.

The public employee coalition organized to defeat pension reform worked for a while, as unions with different positions in the hierarchy stayed together. Their prolonged opposition to pension reform was extremely effective, especially in 1973. But eventually, various groups began trying to preserve special benefits. CSEA split off from the coalition in return for a promise of noncontributory pensions. Policemen and firemen gave up their determined opposition to pension reform when they were assured of continued special benefits. Corrections officers attempted, and were able, to gain status similar to police officers. Many unions therefore gave in to what they saw as the coming reality of reform, by attempting to preserve whatever possible for their own members. The only ones that stayed firmly opposed were those for whom pension reform was clearly disadvantageous.

A third characteristic of labor organizations was that they did not expect a sustained, successful counterbalance to their power in pension affairs. Unions continued to see the Pension Commission as an illegitimate, industry-oriented group wrongly ensconced in the executive branch of government, not as an agency entrusted with protecting the public. This contributed to the belief of some unions in 1976 that they could prevent reformers' new encroachments on pensions, despite the publicity about pensions, the new "fiscal climate," and the Commission's own increased sophistication.

The New York state legislature did not initiate pension reform proposals, but ultimately proved to be responsive to the reform movement. The legislative leadership did not immediately give any support to the Kinzel reforms in 1973. The press denounced this as a failure to deal properly with the issue, but there was nothing unusual in this delay of a plan that proposed so many radical changes. The Pension Commission's tactics contributed to the legislature's natural caution.

Various strategies delayed consideration of pension reform and made it more politically acceptable. The three-year moratorium enabled legislators to virtually ignore pensions for a time, during which the Commission could invent coalition bargaining, legislators would have an excuse to give unions for not providing new benefits, and the pension reform movement might even fade. The Select Committee pur-

ported to show democratic policy making, by including in its deliberations everyone whom the Pension Commission had neglected: Legislators, local officials, unions, civic groups. It achieved legislative acceptance of a weak version of pension reform.

Partisanship in the legislature was important but not critical. Republicans and Democrats were equally averse to offending public employee unions. Republicans however, were firm supporters of upstate police and firemen's interests, while Democrats also sided with other, NYC public employee unions. Eventually, legislators also came to appreciate the Pension Commission as a buffer between themselves and unions, when they perceived that increased public employee benefits would not necessarily gain them votes.

Partisanship was more relevant to legislative strategy in 1976, when leaders of both parties clearly thought that pension refrom would be an important election issue. Republicans hoped to gain an edge over Democrats; Democrats used the issue in order to help marginal members.

But only a vocal minority really pushed pension reform. A very few legislators adopted it as a key issue and forced its consideration, with the crucial help of outside lobbyists and publicity. New York City's fiscal crisis gave impetus to pension reform 1975-76, by encouraging even greater lobbying and publicity. It also weakened unions, who received much of the blame for the crisis and accepted measures such as wage-increase deferrals, and purchases of city notes by

pension funds. But it still did not convince legislative leaders to embrace major reform. For most of 1976 they were still prepared to delay reform if possible.

In five years the Pension Commission succeeded in becoming a strong force in public pensions, achieving its goal of counterbalancing unions, at least at the legislative level. Its reforms achieved a presumably uniform system for most public employees in the state. It also designed the first state pension plan with a formal cost-of-living adjustment.

On the minus side, in terms of public policy, the Commission remained at the end of that period without labor representation, except for nonvoting special observers. Although reformers mostly approved of this, it detracted from the Commissions' supposed nonpartisan character. The Commission did not deal with the needs of the poorest public employees -- those whose wages are low even in the final years of service, and those whose pensions may be inadequate. The most expensive public pensions stayed that way, relative to other workers -- that is, police and firemen's benefits -- and there was some question as to whether CO-ESC would ever apply to these employees.

A number of issues remained unresolved. First, how much money would be saved by pension reform could not really be known. Questions of the administration of Social Security integration, and of the escalator, were not resolved. There could be no immediate proof that Social Security would have

the predicted impact on retirement income. Conflicts over data remained. Although the Shinn report came closer than any other to resolving uncertainties about the funding of the NYC pension systems, there was still some doubt about how well funded those systems were or should be, and about some actuarial assumptions. Questions remained about how public employee pensions compared to private ones, since despite the Shinn report there were many complaints that CO-ESC was too generous. Public employee unions did not indicate any intentions of withdrawing from the fight, and letting CO-ESC remain the pension policy of the future.

In a subject where the existence of profound antagonism between opposing forces is inevitable, as is true of pension reform, it is not possible to assert that there is some middle ground where the opponents can meet and achieve something more advantageous than they are able to under full-scale conflict. But, having achieved farly secure status as an agency capable of enacting some of its goals, the Pension Commission could probably turn its attention to aspects of pensions that are not solely related to costs and to countering unions' powers in local and state government, and exchange some of its ideological purity for some greater representation of those concerned with pension policy.

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