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Christmas Bonuses' And Other Wicked Fables

By RICHARD STEIER March 20, 2009

"Let me tell you about the very rich," Scott Fitzgerald wrote in his short story, "The Rich Boy." "They are different from you and me."

To which Ernest Hemingway later wrote in response, "Yes, they have more money."

This explains the phenomenon of Mayor Bloomberg, seeking re-election after antagonizing much of the population by getting the Term Limits Law amended for his own benefit without using a voter referendum, striving mightily to reduce compensation for future cops and firefighters at the same time that he is lobbying against tax increases on wealthy New Yorkers.

On his March 6 radio show, Mr. Bloomberg, who has proposed a sales tax increase that would most affect poorer residents, argued that it was bad policy to raise taxes on the wealthy because it would prompt some of them to leave the city and dissuade those who may be considering coming to live here.

Please Don't Annoy the Affluent

"The first rule of taxation is," he said, "you can't tax too much those that can move."

He did not say who wrote that rule, but Marie Antoinette wouldn't be a bad guess.

It's the sort of thinking that has helped bring our national economy to the state it's in: don't do anything that might upset the most-privileged in our society, no matter how much the alternatives work to the detriment of those further down the pecking order.

Yet it also runs counter to something the Mayor has said more than once during his seven-plus years in office, and sometimes to well-to-do audiences: that even if the cost of living is higher here, there's an energy and a unique climate for ideas that argue strongly for the city being the place you would want to settle and start a business if you're a person of ambition.

Which raises the question as to whether, if the city or state were to impose income-tax hikes aimed at those making $250,000 or more a year, he's primarily worried that we might drive out those getting paid well but not really earning it. Which ultimately wouldn't be quite the drag on the economy he fears, since it's entirely possible that persons with more drive will move into the luxury homes and apartments they vacate in search of a low-tax haven.

Two days after Mr. Bloomberg voiced his concerns that those persons of means less fickle than he is about the city's virtues might abandon it, the New York Post began a three day crusade against its version of undeserving slackers: retired cops and firefighters.

A Sunday feature on the sizable disability pensions some firefighters were receiving was followed the next day by an article on what the paper called "Christmas bonuses" for police and fire retirees in the form of $12,000-a-year Variable Supplements Fund payments each December. And the lead editorial in Tuesday's Post tied it all together under the headline, "Five-Alarm Payouts."

It referred to the VSF payments as "the legacy of a decades-old sweetheart deal," noted the Mayor was battling grimly in Albany to discontinue the practice for future cops and firefighters, and concluded by hoping "it's not too late to stop the coming pension tsunami from swamping the city *completely."*

Partly Based on a True Story

It was a remarkable performance in the service of Mr. Bloomberg, although as is sometimes the case with The Post, it was also at odds with the facts. Which brought to mind the observation by a fellow alumnus of the paper, Paul Schwartzman, that, "If journalism is the first rough draft of history, the Post is the first rough draft of journalism."

Start with the first two paragraphs of the March 9 VSF story:

"So-called 'Christmas bonuses' given to NYPD and FDNY retirees as pension 'sweeteners' topped $450 million last year and are poised to be an extra-sour burden on recession shocked city coffers.

"Deft bargaining by union officials 40 years ago won their retirees a share of the returns of their pension funds' investments—and in a later amendment to the deal, the unions masterfully negotiated a fixed-cash payment whether the funds experienced a boom or a bust."

It's an interesting concept: take a well known situation—the city's not in great shape and police and fire retirees receive cash payments in addition to their pensions—sprinkle in some likely-sounding but utterly false claims about the history of the VSF, and stir, hopefully bringing public discontent to a boil.

The truth, as is invariably the case, is quite a bit more complicated.

For one thing, the implication in those paragraphs is that the unions snookered the city to get the original benefit and then played a second mayoral administration for chumps so that their members got all the gravy while the only ones at risk were the taxpayers. It relies in part on caricatures of Mayor John Lindsay—under whose administration the VSF originated—as too generous to the unions, and of Ed Koch—who was there when the conversion to a defined benefit occurred—as a softie when it came to police and fire bargaining. Neither of those stereotypes has much relevance to what actually happened.

The original deal came about at the city's urging because the Lindsay administration wanted to be able to invest money from the Police and Fire Pension Funds in the stock market and needed the approval of the unions. The unions wanted an improvement in the formula used to calculate what percentage of salary would determine pension allowances for their members.

City Actuary Proposed VSF

The matter went before an arbitrator, former United Nations Ambassador Arthur Goldberg, and during the discussions, the Chief City Actuary at the time, Jesse Feld, proposed as an alternative that the VSF be created, with funding to be provided only in years when the performance of stock investments topped that of the city's bond holdings by a specified percentage. The unions decided this was acceptable, and Mr. Goldberg incorporated it in his award. The funds were created by a state law passed in 1970 that made them retroactive to Oct. 1, 1968.

So much for the "sweetheart deal" described in the Post editorial. In fact, while the profits were good enough to provide "skims" into the VSF for the first two years of the funds' existence and an initial benefit of $40 per month for "service" retirees (those who receive disability pensions are ineligible for the VSFs, even if they worked the 20 years mandated to qualify for a full regular pension), an 11-year dry spell followed.

A Mutual Desire for Change

The lack of growth in the funds brought some restlessness within the police and fire ranks, which intensified when at one point fire officers were unable to receive benefits because there wasn't enough money in their union's fund in the early 1980s. Then a five-year stretch of robust stock-market performance swelled the VSF coffers, producing a climate in which both sides were looking to make a change.

By the time the Patrolmen's Benevolent Association was negotiating for a contract that would take effect retroactive to July 1, 1987, the VSF payouts had risen to $150 a month, but retirees and some active members were convinced that much more could be paid. The city and union trustees who oversaw the police and fire VSF funds were constrained by the recommendations of the City Actuary, who had to be certain that the funds would not have their reserves exhausted if the stock market suddenly tanked.

While this was frustrating to recipients, Mayor Koch found it exasperating that when the skims came, the retirees did well but the city could not take advantage of the boom times to pull out excess funds to improve services. He instructed his chief negotiator, Bob Linn, to seek a deal with the PBA that would pave the way for the city to have pre-determined costs in return for set payments, limiting what it would have to share during bull markets.

'Traded Uncertainty for Certainty'

A reminder of the way the market could turn came with the October 1987 crash, and probably helped convince the PBA that there was something to be said for a defined benefit payment even if it potentially surrendered a bigger share if the boom times came again. Then-union President Phil Caruso reached an agreement in May 1988 under which the city gained control of the PBA fund by agreeing to raise the annual benefit from $1,800 to $2,500, with $500 increases in each year to follow until a peak was reached of $12,000 in 2007. Mr. Linn said, "We were both willing to trade uncertainty for certainty."

Some other police and fire union leaders had reservations about the trade-in, for reasons that went beyond the city placing a different value on the shift for the PBA than for their members. Within the Uniformed Firefighters Association, a vocal group sprang up in a Bronx firehouse that laid out in detail why it believed the deal did not make financial sense for firefighters.

Mr. Linn predicted at the time that the city would realize its greatest savings from the trade-in over the long haul, and a decade later that prediction seemed to have been borne out with a vengeance. During Rudy Giuliani's second term as Mayor, it was estimated that the city's share of the pension funds' profits during the stock-market boom of the late 1990s was $4 billion greater than it would have been had the unions refused to make the conversion to a defined-benefit payment. There were those who joked that the city ought to erect statues of Mr. Linn and former Deputy Budget Director Howard Green—who put together the calculations for the trade-in—alongside Nathan Hale's at the west entrance of City Hall.

No Skims If Funds Were Flush

Mr. Green also had the foresight to get a key component into the VSF legislation that maximized city profits during the boom: a "sluice gate" provision under which it was only required to skim off profits from stock investments if the funds' liabilities exceeded their assets at the time.

Then the market cooled off at the beginning of this decade, and reached what Mr. Bloomberg has described as meltdown status over the past year. No longer does it seem that the unions got taken and the city made out like bandits, and the swing of the pendulum has served as a reminder that union leaders' decision to "trade uncertainty for certainty" was a pretty good one. Nobody would argue, however, that this amounts to a bonanza, unless they were trying to create a straw man for the Legislature to knock down by passing the Tier 5 pension proposal Governor Paterson put forward largely at the Mayor's request. And Mr. Bloomberg has found a willing accomplice in The Post.

"They have so much misinformation," UFA President Steve Cassidy said during a March 11 interview. "They're lumping apples and oranges."

'That's Scoppetta's Team'

The story about firefighters retiring with huge disability pensions, he contended, created a false impression that his members were winding up with retirement allowances that exceeded their salaries. The top five people on the list of disability pensions, Mr. Cassidy noted, were among the department's most-senior people, not only in terms of service but by rank.

"The Post is referring to staff chiefs as firefighters," he said. "They're [Commissioner] Nick Scoppetta's management team."

And that article and one last month about a rise in the percentage of fire retirees who qualified for disability pensions between 2004 and 2007 made it sound like the system was being gamed when the actual cause was what the UFA leader called "hopefully a once-in a lifetime catastrophic event."

"The Post and those at City Hall seem to want to pretend that 9/11 never happened," Mr. Cassidy said. "It seems clear that City Hall is interested in a new pension tier system and the Mayor has tried to demonize firefighters to help get it."

In addition to the verified lung damage suffered by 10,000 firefighters who were part of the response teams during the post-9/11 recovery and clean-up operations at the World Trade Center site, he noted, "We responded to more emergencies in the last five years than ever before. This is an incredibly physical job."

That helps explain why even prior to 9/11, better than 60 percent of the firefighting force was retiring on disability pensions, reflecting both the physical grind and the accumulation of toxins in their lungs from fighting fires and the build-up of diesel fumes from their trucks inside the firehouses.

Warns of Aging Force

The situation will worsen, Mr. Cassidy said, if the Tier 5 bill is passed, requiring future firefighters to serve 25 years before qualifying for a full pension, and leaving them unable to collect at that point if they are younger than 50.

The great majority of those who spend more than 20 years on the job, he said, are officers, and even those among them who are still responding to fire scenes are not carrying the 100- plus pounds of gear borne by line Firefighters.

"The roofman carries 130 pounds of gear, and in many situations they are required to go up aerial ladders doing it," he said. "It is and remains a young man's job, but a lot of the realities have disappeared as City Hall pushes for a new pension tier."

His counterpart at the PBA, Pat Lynch, didn't even mention the physical liabilities of the potential change, instead focusing on how it would hurt the Police Department's ability to recruit. (Mr. Bloomberg, whose agreement with the union last summer brought starting salary—which had been $25,100 at the start of 2008—to slightly more than $40,000, is clearly hoping that would-be cops are unaware of the money they would lose if the VSF was eliminated for future hires.)

'Not Source of City's Problem'

"Furthermore," Mr. Lynch said in a statement, "the Variable Supplement Fund has long been self-funded and still is today. It does not cost the city a dime. Our pension is not the source of the city's fiscal problem and should not be looked to as the solution."

Mr. Cassidy is concerned enough about the impact that a steady stream of stories in the tabloids and editorials in all three city dailies have had on Albany legislators that last week he placed a full-page ad in The Capitol, a newspaper distributed there, pointing out the hazards of firefighting and defending the pensions his members receive. He also noted that his retirees who qualify for pension cost-of-living adjustments have them reduced by the amount they receive in VSF payments.

"I am very concerned," he said about the prospect that the bill could get caught up in a tidal wave of Bloomberg-orchestrated publicity about the drawbacks of the current pension and VSF systems. "I believe that many of the elected officials don't fully understand what firefighters do day in and day out."

Given the desire of both The Post and the Mayor to highlight the city's hundreds of millions in annual costs resulting from the VSF, last week's article had one curious omission: the fact that firefighters who retired last year could have received payments worth several times the $12,000 maximum.

A DROP From Mayor's Narrative

That little sweetener resulted from Deferred Retirement Option Plan legislation passed in 2002 under which firefighters from that point on who continued working after marking their 20th year on the job could "bank" the VSF payment for each year they would have received it had they retired. In other words, someone who would have been eligible to collect the bonus in December 2002, when it was $9,500, but continued working by last December would have accumulated $76,500 in his VSF "DROP" account.

It would have been a bit awkward for the administration to point this out to The Post, however. For one thing, the DROP program was set up because Mr. Scoppetta was concerned about retaining experienced staff after the FDNY's top command under his predecessor was devastated by the loss of veteran officers on 9/11.

For another, this "Christmas bonus" multiplied for as long as the affected 20-year veterans stay active was ushered through the Legislature at Mr. Bloomberg's request.

He would undoubtedly agree with Mr. Fitzgerald and Mr. Hemingway that what you leave out of a story is as important as what you put in.