



NYSPELRA Newsletter: February 2004

AMENDED STATE BUDGET INCLUDES A LOCAL GOVERNMENT/SCHOOL DISTRICT EARLY RETIREMENT INCENTIVE

The Governor has submitted several initiatives to the Legislature to amend a State budget bill, A. 9556/S. 6056, including one that would offer local governments and school districts, among others, the opportunity to offer an early retirement incentive to those employees who are members of the Employees' Retirement System, the Teachers' Retirement System and several New York City retirement systems. The State is not included, nor are police or firefighters who never have been. The incentive is Part MM of the amended bill. Use a search engine for either "nys assembly" or "nys senate" to secure information about the status of any bill. Both allow a search of bill status and permit a download of a bill's text and the introductory memo that was submitted by its sponsor(s). Should the memo not be available on one web site, search on the other.

The bill is similar to what was made available in 2002 as Part A of the incentive, but the Part B 55/25 option is not included, whereby those at least 55 years of age with at least 25 years of service could elect to retire without any early retirement penalty that might otherwise apply and without any targeting by local government officials. Several unions oppose the incentive. The amended bill includes these provisions:

- a local option to offer the incentive to targeted positions through the adoption of a local law by August 31, 2004 or, for what the bill defines as an educational employer, the adoption of a resolution by July 26, 2004, to offer 1 month of additional retirement system service credit for each year of credited service, up to a maximum of 3 additional years of service credit to those electing to retire within a window to be set by the employer offering the incentive of at least 30, but not more than 90 days during 2004. Educational employers include school districts and BOCES.
- a requirement that a plan be produced to show a savings to be obtained by offering the incentive; and
- an option to amortize over 5 years the cost of the incentive, probably between 60 to 70% of a retiring employee's final average salary.

One organization representing municipalities has suggested that the bill be again amended to allow municipalities to adopt the incentive through the adoption of a resolution, not a local law, and to allow an authorization to finance any amortization by bonding. For municipalities and school districts participating in the Employees' Retirement System, the bill anticipates a 5-year amortization of the incentive cost through the System at an 8% interest rate.

DESIGN AN ANNUAL CONFERENCE PROGRAM

At the upcoming July Annual Conference, NYSPELRA member Maureen Seidel will present a session dealing with employer obligations under the federal Fair Labor

Standards Act (FLSA). The law establishes minimum wage, overtime, and child labor requirements for any public sector employer. A member with any particular FLSA issue, having an interest in assuring that it is addressed, should forward a request by e-mail or fax to either Elayne Gold or Joyce Tarantino.

PROPOSALS TO REDUCE THE 2004 PENSION BILL

The Governor has offered several proposals contained in the State budget that would reduce the December 2004 State and local government pension payments that are required to be paid to either the Employees' Retirement System or the Police and Fire Retirement System, or both, as the case may be. The State Comptroller has also offered several alternatives to achieve the same result. The Comptroller has reacted to the Governor's proposals, indicating that several are unconstitutional. The Attorney General has offered a spontaneous reaction in the course of an Albany meeting in late February that perhaps his office should offer an opinion of whether what the Governor has proposed is constitutional. To date, the State Legislature has not acted. Those local governmental officials with an interest in their municipality's upcoming pension bill should contact their State legislators to convey reactions. Editor's note: A statutory directive to the State Comptroller of how pension system assets should be valued or at what level the participating employer contribution rate should be set would be unconstitutional. Those local governmental officials with a reaction regarding any pension reform proposal should contact their legislators with a focus on that which may be constitutional, not that which might seem appealing. Since the Governor's proposals are included in budget bills, any potential relief from the impact of this year's upcoming pension bill awaits the passage of the budget, and perhaps longer, should a lawsuit over the constitutionality of a pension reform be pursued by the Comptroller.

A NEGOTIATED BENEFIT FOR MORE SENIOR WORKERS THAT ADVERSELY IMPACTS THOSE LESS SENIOR IS NOT ILLEGAL AGE DISCRIMINATION

The U. S. Supreme Court has ruled that a negotiated senior worker benefit that adversely affects less senior workers is not a violation of the federal age discrimination law. The Age Discrimination in Employment Act (ADEA) generally prohibits employment decisions that discriminate against those protected under the statute. Those protected are individuals age 40 and older. An employer and a union agreed to grandfather eventual retiree health insurance benefits for employees 50 and older, but eliminate the benefit for those workers under age 50 when they eventually might retire. Several employees aged 40 to 49, covered by the statute, complained to the agency with enforcement authority, the Equal Employment Opportunity Commission, which agreed with the complainants. When settlement discussions failed, the younger employees sued and the agency joined them in an amicus brief. The litigation reached the Supreme Court and it held that the ADEA was not enacted to protect younger workers against an employer's preferential treatment of older workers at their expense. The Court cited the legislative history and numerous Supreme Court and nearly unanimous appellate federal court decisions that had held that the enactment of the ADEA was motivated by an intent to protect older workers against preferential treatment for younger individuals. *General Dynamics Land Systems v. Cline*, decided on February 24. Editor's note: The State's Human Rights Law also contains a prohibition against employment discrimination found to be motivated by the age of an individual. Unlike the ADEA, however, the State law contains prohibitions against

discrimination against those 18 years of age or older. While some State statutes permit age discrimination in particular situations for hiring or mandatory retirement, appellate State courts have treated those statutes as exceptions to the Human Rights Law prohibition. It is submitted that if the facts in Cline were to be addressed in litigation before a State court under the Human Rights Law, the outcome would be totally contrary to that reached by the U.S. Supreme Court.

PERB DECISIONS

The following are summaries of decisions, which have been issued by either the Public Employment Relations Board (PERB) or its staff. Any summary that might be of interest should be reviewed as to the facts and circumstances of the case, in the event your editor may have not correctly summarized it. In addition, any decision reported below that can be appealed to the Board should be researched to ascertain its subsequent disposition, if in fact an appeal was actually made, and further researched to determine if a court appeal occurred. E-mail your editor, John Galligan, at galli14@earthlink.net for a copy of any decision summarized. Check the PERB web site www.perb.state.ny.us at which summaries of decisions issued since 1986 can be obtained and forms can be downloaded.

- a union member under interrogation in a criminal investigation by his or her employer has a right to union representation upon request. January 28 ALJ decision in City of Rochester. Editor's note: An appeal is pending.
- a demand that a full-time employee be allowed to become a part-timer is not a mandatory subject. June 26 ALJ decision in Town of Colonie; and
- whether and when to create a position or to fill one is an employer prerogative that is not a mandatory subject. June 26 ALJ decision in Town of Colonie.