

School Districts Practice Information Memo

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NYSUT-ONLY EARLY RETIREMENT INCENTIVE UNANIMOUSLY UPHeld BY APPELLATE DIVISION, THIRD DEPARTMENT

On January 20, 2011, the Appellate Division, Third Department, held that the early retirement incentive that was offered only to employees in positions represented by bargaining units affiliated with the New York State United Teachers ("NYSUT") is constitutional, and affirmed the dismissal of a challenge to the legislation creating the incentive. This information memo describes the background to this litigation and summarizes the rationale for the Appellate Division's decision.

On April 14, 2010, former Governor David A. Paterson signed into law an early retirement incentive for employees in positions represented by collective bargaining units affiliated with NYSUT who belonged to either the New York State Employees Retirement System ("ERS") or the New York State Teachers Retirement System ("TRS"), were at least 55 years of age, and had attained at least 25 years of creditable service ("55/25 Legislation"). The 55/25 legislation allowed eligible employees to retire without the reduction in retirement benefits that would normally apply to retirement system members who are on Tiers 2, 3, or 4 who do not have 30 years of service.

Two days after the 55/25 Legislation was signed into law, on April 16, 2010, the Empire State Supervisors and Administrators Association ("ESSAA"), a union that represents primarily administrators and supervisors in public school districts, and the Baldwin Supervisors Association ("BSA"), a local affiliate of the ESSAA, initiated a court proceeding challenging the 55/25 Legislation. Specifically, the ESSAA and BSA alleged that the 55/25 Legislation violated the First and Fourteenth Amendments of the United States Constitution, as well as Article 1, Section 11 of the New York State Constitution, by limiting eligibility only to individuals who are employed in positions represented by collective bargaining units affiliated with NYSUT. The ESSAA and BSA argued that the 55/25 Legislation violated their rights to equal protection and freedom of association.

In a decision dated July 23, 2010, the Supreme Court of Albany County ("Supreme Court") upheld the constitutionality of the 55/25 Legislation. The ESSAA and BSA appealed the Supreme Court's decision to the Appellate Division, Third Department. The Appellate Division held oral argument in November of 2010.

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In a unanimous decision, the Appellate Division affirmed the Supreme Court's decision upholding the constitutionality of the 55/25 Legislation. In the decision, the Appellate Division held that a rational basis existed for drawing a distinction between employees in NYSUT-affiliated bargaining units and employees not in NYSUT-affiliated bargaining units for purposes of eligibility for the retirement incentive. Specifically, the Appellate Division accepted the argument advanced by NYSUT and the State that replacing administrators and supervisors (who were the vast majority of the employees in ESSAA and BSA bargaining units) is not as financially advantageous from a cost-savings perspective as replacing older classroom teachers, because supervisors and administrators are usually replaced by individuals closer in seniority (and salary) to the incumbents, while older classroom teachers are usually replaced by newer teachers who can be paid significantly less than the incumbents. Accordingly, the Appellate Division found the proffered financial basis for the distinction rational.

The Appellate Division also rejected the argument that the 55/25 Legislation unconstitutionally treats similarly situated employees differently, such as school district psychologists, who may or may not be in NYSUT bargaining units, "depending solely on location and/or historical happenstance." The Appellate Division held that this apparent distinction does not warrant overturning the 55/25 Legislation since Legislative determinations need not be made with "mathematical nicety" and "a distinction need not be perfect to survive rational basis review."

The ESSAA and BSA have 30 days from the date of the Appellate Division's decision to decide if they will apply for permission to appeal to the New York Court of Appeals.

For those teachers who retired under the 55/25 Legislation, TRS has indicated that payment of the unreduced retirement benefit to eligible members who retired pursuant to the 55/25 Legislation will be subject to the final outcome of any appellate process. Accordingly, those teachers who retired under the 55/25 Legislation still must wait and see whether the Appellate Division's decision is appealed, and if so, whether the Court of Appeals accepts the appeal and affirms the two lower courts' decisions upholding its constitutionality.

**If you have any questions about the Appellate Division's decision,
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