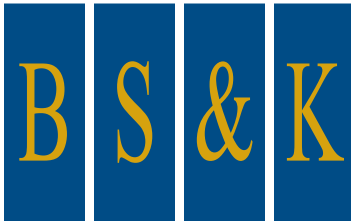

School Districts Practice Information Memo

August 2010

Bond, Schoeneck & King, PLLC

New York

Albany ▪ 518-533-3000
Buffalo ▪ 716-566-2800
Ithaca ▪ 607-330-4000
Long Island ▪ 516-267-6300
New York City ▪ 646-253-2300
Oswego ▪ 315-343-9116
Rochester ▪ 585-362-4700
Syracuse ▪ 315-218-8000
Utica ▪ 315-738-1223

Florida

Naples ▪ 239-659-3800

Kansas

Overland Park ▪ 913-234-4400

COURT UPHOLDS 55/25 EARLY RETIREMENT INCENTIVE: APPEAL FILED

On July 23, 2010, the Supreme Court of Albany County upheld the constitutionality of Chapter 45 of the Laws of 2010. Chapter 45, which was signed into law by Governor David Paterson on April 14, 2010, creates an early retirement incentive for employees in positions represented by collective bargaining units affiliated with the New York State United Teachers ("NYSUT") who belong to either the New York State Employees' Retirement System ("ERS") or the New York State Teachers' Retirement System ("TRS"), are at least 55 years of age, and have attained at least 25 years of creditable service ("55/25 Legislation"). The 55/25 Legislation allows 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, and 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 primarily represents 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 the July 23, 2010 decision, the Court rejected the challenge to the 55/25 Legislation, finding that it was not irrational or illogical of the Legislature to limit eligibility only to employees in positions represented by bargaining units affiliated with NYSUT. The Court accepted the argument of the State and NYSUT that "early retirement incentives in the public school context can be particularly effective when targeted at teachers (i.e. individuals who provide direct classroom instruction) because a high-salaried teacher who accepts an early retirement incentive will often be replaced by a new, entry-level teacher at a lower salary" while in contrast "an outgoing administrator will typically be replaced by an individual closer in

BS&K publications are for clients and friends of the firm and are not a substitute for professional counseling or advice. For information about our firm, practice areas and attorneys, visit our interactive web site, www.bsk.com.

Attorney Advertising
© 2010 Bond, Schoeneck & King, PLLC
All Rights Reserved

Printed on recycled paper

rank and, therefore, comparable in salary." According to the Court, as NYSUT represents virtually all of the classroom teachers and teaching assistants employed in public schools across New York State, it was rational for the Legislature to limit eligibility to employees in bargaining units affiliated with NYSUT because "NYSUT affiliated locals are a reasonable proxy for teachers."

The Court recognized the fact that there are four public school districts in which NYSUT does not represent teachers and related teaching titles. If the plaintiffs in this case had been teachers at one or more of those public school districts who would have been eligible for the incentive but for their union affiliation, it is not clear whether the outcome would have been the same. It is possible that eligible employees in the same type of position supposedly targeted by the 55/25 Legislation (classroom teachers), who were excluded from the incentive simply because they were not in NYSUT bargaining units, might have had an easier time establishing that the NYSUT-only restriction was not rational. In that context, the Court could not have focused solely on the teacher vs. administrator distinction, and the argument that "NYSUT affiliated locals are a reasonable proxy for teachers" would likely be much less persuasive. However, because the plaintiffs in this case were unions that primarily represented administrators and supervisors, the Court did not reach the issue of whether it was rational to exclude the few eligible teachers who are not part of NYSUT bargaining units.

Within several days of the Court's decision upholding the 55/25 Legislation, the ESSAA and BSA filed a Notice of Appeal. Accordingly, the fate of the 55/25 Legislation has not yet been conclusively determined. TRS recently released a statement that it will continue to implement Chapter 45 as written, but that "the payment of the unreduced retirement benefit to eligible members who retired pursuant to Chapter 45 will be subject to the final outcome of any appellate process."

If the appellate court ultimately finds Chapter 45 to be unconstitutional, it is possible that individuals who have retired under its provisions may have their pensions reduced to reflect the penalty for retiring prior to attaining 30 years of service. However, it is also possible that the appellate court could eliminate the NYSUT-only restriction on eligibility, which would cure the unconstitutionality of the 55/25 Legislation while at the same time not causing a reduction in the pensions of individuals who retired in reliance upon the 55/25 Legislation.

If you have any questions regarding the Court's recent decision or the 55/25 Legislation, please contact:

In Buffalo / Niagara Falls call 716-566-2800 or e-mail:
James J. Rooney jrooney@bsk.com

In the Capital District, call 518-533-3000 or e-mail:
John A. Miller jmiller@bsk.com

In Central New York, call 315-218-8000 or e-mail:
Subhash Viswanathan sviswanathan@bsk.com

On Long Island, call 516-267-6300 or e-mail:
Howard M. Miller hmiller@bsk.com

In New York City, call 646-253-2300 or e-mail:
Ernest R. Stolzer estolzer@bsk.com

In the Rochester Region, call 585-362-4700 or e-mail:
Edward P. Hourihan, Jr. ehourihan@bsk.com