

# LEGAL BRIEFS

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## US Supreme Court Weighs in on Duration of Retiree Health Insurance in Collective Bargaining Agreements...

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changed with the recent decision. What has changed is a longstanding presumption that, unless clearly specified in the collective bargaining agreement, retiree health insurance contributions towards premiums are fixed for life at the rate contained within the collective bargaining agreement at the time of retirement. The theory applied by the courts used to be that the parties to a collective bargaining agreement intended for retiree benefits to remain at a fixed rate for life in consideration for giving up other benefits, such as higher salaries, while serving as active employees. According to the supreme court, such an intention will have to be demonstrated through outside evidence if it is not clearly spelled out

in the language of the agreement.

According to the Supreme Court's decision, the federal rule is now that if the duration of retiree benefits is not clearly spelled out within a contract and the intent of the parties to have the contribution levels remain fixed cannot be proven to a court's satisfaction, retirees may be subjected to negotiated changes in contribution amounts contained in collective bargaining agreements that are negotiated by active members of the bargaining unit after their effective dates of retirement. In other words, if you retired in 2005 and the collective bargaining agreement at the time provided for 100 percent coverage by the district, but didn't

set forth that this level would be maintained for life, and your former bargaining unit negotiated a decrease in the district's contribution to 90 percent starting in the 2015/2016 school year, you may be suddenly paying 10 percent towards your health insurance.

Before anyone panics, it is not entirely clear how this decision will impact collective bargaining in New York. SAANYS has always applied the traditional contract law in victories on the retiree health insurance front, so an analysis on any future cases will not significantly change. The supreme court also held that, if the contract language is unclear, a piece of outside evidence the courts should consider is the industry standard on the topic. In New York public sector education, the standard is that retiree health insurance contributions are fixed for life at the rate specified in the collective bargaining agreement at the time of retirement. Finally, it is unclear whether New York's courts will even adopt the supreme court's ruling that current bargaining unit members can negotiate changes that will impact retirees because the

law in this state is very clear that retirees are not considered bargaining unit members and have no power during negotiations.

SAANYS will keep a close watch on this topic and will update you on this

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important area of law as it develops. In the meantime, there are several things you can do to prevent or minimize the impact of this ruling on your unit's current and future retirees:

1. Make sure your collective bargaining agreement's provisions concerning retiree health insurance are clear and unambiguous, especially concerning the duration of the benefit. If it is not, or if you have any questions, SAANYS lawyers and negotiators are here to help interpret and negotiate any clarifications during future negotiations.
2. Keep detailed notes during negotiations. It is always suggested that

someone be designated the official note taker during negotiations. These notes should be maintained by the unit leadership, passed down through the years, and not destroyed. SAANYS has encountered many times where such notes would have cleared up an issue from a historical perspective, both in collective bargaining and in contract grievances on a wide variety of issues.

3. If your employing district either threatens or actually makes a change to retiree health insurance contributions, it is imperative that you notify the SAANYS Legal Department immediately. There are very limited timeframes in which to commence an action against a school district and nobody wants to see someone negatively impacted for the rest of his or her life because the issue wasn't raised in a timely manner.

As always, the SAANYS Legal Department is here to provide clarification and guidance if there are any questions or concerns. ■

## SLO to Realize

Sponsor Opinion piece by Cynthia E. Gallagher, APPR Coordinator, Educational Vistas, Inc.

Governor Cuomo recently proposed revisions to current teacher evaluation requirements that would change the way educators are being evaluated. His plan is to eliminate the local component, to create a 50/50 point distribution between the observation and the state growth components. These changes are likely in response to an average of 94 percent of teachers being rated effective or highly effective in the past two school years. Clearly, these results do not meet the intentions of Chapter 103 of the Laws of 2010, which intended that teacher ratings would be more evenly dispersed in order to be a "significant factor for employment decisions."

Much of the public debate regarding the proposed changes has focused on the impact on teachers in grades 4-8 for whom a state growth score is available. Another critical conversation must focus

on Student Learning Objectives (SLOs). The majority of teachers do not receive a NYSED determined growth score and for those teachers, SLOs may comprise 50 percent of the composite score. The current state of SLOs may not be up to that task.

What educators have been slow to realize is that not much is known about SLOs. Little research is available on the relationship between SLOs and student achievement or on correlations to other component/composite scores. The salient question is: do SLOs correlate to the state growth score assigned to teachers in grades 4-8? Assessments used by K-2 and high school teachers vary greatly, consisting primarily of commercial or district developed assessments. Demonstrating consistency or comparability between state growth scores and SLOs is difficult.

If the proposed changes become a reality, districts will need to ensure comparability and equity of SLOs across grades, content areas, and buildings. Decisions regarding type and level for SLOs (individual, group, building, targeted, or tiered) will be critical. As New York places greater emphasis on SLOs, consistent procedures for approving SLOs and target setting methodologies will be important. The rigor and reliability of assessments used becomes central to local discussions.

Further, it will be critical

for districts to have a way to dependably maintain and track the many tasks needed for high quality SLO development. What is needed is a comprehensive management process that will accurately link student and teacher information, calculate SLOs, and use data over multiple years to confirm consistency, reliability, and validity. ■

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