OFFICE OF LEGISLATIVE RESEARCH
Objective Research for Connecticut's Legislature

ResearchReport

State Employee Collective Bargaining for Current Retirees

By: Lee Hansen, Principal Analyst

December 20, 2017 | 2017-R-0317

Issue

This report discusses whether the law allows a state employee union to collectively bargain over changes to the retirement benefits received by current retirees. The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered one.

Summary

It is unclear whether state employee unions may collectively bargain to change the retirement benefits received by current retirees. State statute does not specifically address the question and we were unable to identify any state or federal case law directly applicable to state employees.

Yet, in other contexts involving private-sector or municipal employee unions, various courts have ruled that retirees are no longer "employees" or members of a union's collective bargaining unit. In these cases, the courts have stated that unions have no obligation to bargain on behalf of current retirees. And if the unions voluntarily agree to represent retirees, their ability to negotiate reductions in retiree benefits may be limited because courts have found that unions may (1) face a conflict of interest in trying to simultaneously represent both active employees and current retirees if their interests vary too greatly and (2) need explicit consent or power of attorney before bargaining away vested rights. However, it appears that the extent to which a court might extend this reasoning to state employee unions and retirees has yet to be determined.

"Employees," "Bargaining Unit Members," and the Collective Bargaining Obligation

Pittsburgh Plate Glass

In *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., et al.* 404 U.S. 157 (1971) the U.S. Supreme Court established the premise that retirees were not considered "employees" or "bargaining unit members" under the federal National Labor Relations Act (NLRA). In this case, a private-sector union had negotiated a collective bargaining agreement that provided health insurance for the defendant glass company's retirees. When the company sought to unilaterally change the retiree's health benefits, the union brought a suit claiming an unfair labor practices violation, arguing that a change in the retirees' benefits was a mandatory bargaining subject under the NLRA which the company could not unilaterally impose.

In its decision, the Court stated that the NLRA's collective bargaining requirements only applied to "employees" who were members of a collective bargaining unit for which the union was the sole authorized bargaining representative. It found that retirees were not "employees" under the word's ordinary meaning or the act's intent. The Court also found that retirees could not be properly included in an active employees' bargaining unit because the active employees and retirees did not share a sufficiently broad community of interests. The Court stated that because retirees' interests extend only to retirement benefits, incorporating them into an active employees' bargaining unit could create "severe internal conflicts" that would disrupt the collective bargaining process and "impair the unit's ability to function."

Ultimately, the Court ruled that since the retirees were neither employees nor bargaining unit members covered by the NLRA, the company's refusal to bargain over the change to retirees' health benefits was not an unfair labor practice under the act. It also noted that since retirees were not bargaining unit members, the union had no statutory duty to represent them in negotiations.

Connecticut Cases

Although the NLRA does not cover state or municipal employees, Connecticut's State Board of Labor Relations (the quasi-judicial agency that interprets the collective bargaining laws for state and municipal employees) and courts have extended to municipal employees and retirees the *Pittsburgh Plate Glass* decision's premise that retirees are neither employees nor bargaining unit members.

In *Town of West Hartford and West Hartford Fire Fighters*, Decision No. 2667 (Sept. 1988), the board cited the *Pittsburgh Plate Glass* decision in ruling that the town's unilateral change to retiree health insurance benefits was not an illegal refusal to bargain in good faith under the state's Municipal Employees Relations Act (CGS § 7-467 et seq.) because the affected retirees were not employees or bargaining unit members covered by the act.

In a similar 2008 case, the board also stated that since an employer cannot be found to have committed a refusal to bargain over people who were not employees, a union likewise has no duty to represent non-bargaining unit, non-employees (*Town of Hamden and Locals 2863, 3042, 1303-052, 1303-115*, Decision No. 4343 (Oct. 2008)). The board's decision was subsequently appealed and upheld by the state's Appellate Court (*Locals 2863, 3042, 1303-052, and 1303-115 v. Town of Hamden*, 128 Conn. App. 741 (2011)). In its decision, the Appellate Court reiterated that under the *Pittsburgh Plate Glass* decision, "retirees who are no longer employees lose their status as bargaining unit members and are outside the scope of representational responsibility of their unions" (p. 747).

In *Garcia v. City of Hartford,* 292 Conn. 334 (2009), the state's Supreme Court also found that a municipal retiree was not an "employee." In this case, which centered on whether a retiree must exhaust a collective bargaining agreement's grievance procedures before bringing a lawsuit, the Court found that the meaning of "employee" under its common usage and labor law was limited to those who were employed and did not include retirees. Thus, since the agreement's grievance procedures only applied to employees, the plaintiff retiree would not have had access to them.

Option to Bargain for Retirees & Conflicts of Interest

While the *Pittsburgh Plate Glass* decision established that employers and unions have no legal obligation to collectively bargain on behalf of retirees, it also stated that "this does not mean that when a union bargains for retirees – which nothing in this opinion precludes if the employer agrees – the retirees are without protections. Under established contract principles, vested retirement rights may not be altered without the pensioner's consent" (404 U.S. at 181 n. 20). Thus, even though an employer and union may agree to bargain over retiree benefits, their ability to negotiate could be fairly limited and require direct approval from the retirees themselves (see also *Hauser v. Farwell, Ozmun, Kirk & Co.*, 299 F. Supp. 387 (D. Minn. 1969)), in which a court stated that a union cannot bargain away the accrued or vested rights of its members without explicit authority or a power of attorney from the individual members).

The extent to which a union may represent retirees also could be limited by its potential conflicts of interest in simultaneously representing both active employees and retirees. In *In re Century Brass Products, Inc. v. International Union et al.,* 795 F.2d 265 (2nd Cir. 1986), the Second Circuit Court

considered whether a union had a legal duty to represent its retirees within the context of a bankruptcy proceeding when the retirees' pension rights vitally affected the rights of active employees (i.e., unless the employer could renegotiate the retirees' benefits the active employees would lose their jobs).

Acknowledging that it may not always be appropriate for a union to represent retirees and active employees, the court specifically declined to adopt a *per se* rule making the union the appropriate party to represent retirees in a Chapter 11 bankruptcy proceeding. It ruled that "when the suitability of representation on account of a conflict of interest is raised the bankruptcy court should make a determination as to whether a conflict actually exists. If a conflict is found, a representative for the class of retirees should be appointed by the bankruptcy judge." In this particular case, the court found that a conflict existed between active employees who wanted to protect their jobs and retirees who wanted their benefits reduced as little as possible. The court found that the same union could not fairly represent two such divergent interests and ordered the bankruptcy court to appoint a separate representative for the retirees.

Applicability to Connecticut State Employees and Retirees

Although the cases discussed above seem to limit a union's ability to collectively bargain over current retirees' benefits, it does not appear that their applicability specifically to Connecticut's state employees has been determined. Collective bargaining for state employees is governed by Connecticut's State Employees' Relations Act (SERA, CGS § 5-270, et seq.), rather than federal law. And under SERA, collective bargaining negotiations concerning changes to the State Employees' Retirement System must be conducted between the state and a coalition committee that represents all state employee union members (commonly known as SEBAC – the State Employee Bargaining Agent Coalition).

The cases discussed above focus on either the federal NLRA (which governs private-sector collective bargaining), Connecticut's Municipal Employees Relations Act (which governs collective bargaining for the state's municipal employees), or the interaction between federal labor and bankruptcy laws. Since it appears that the question has not been specifically addressed under SERA, the extent to which a court might apply the precedents from the above cases (or others) to issues raised under SERA is unclear.

LH:bs