



NEW JERSEY ASSOCIATION OF SCHOOL ADMINISTRATORS

An Analysis of the Judge's Ruling on the Suspension of the Retiree COLA

By: Mort Reinhart, NJASA Pension Consultant

On Friday, May 25, 2012, Judge Douglas Hurd of the New Jersey Superior Court, issued a ruling dismissing the suit that had been brought by a coalition of organizations representing educators and other public employees challenging the suspension of cost-of-living adjustments for current and future retirees. NJASA was part of the challenging coalition, representing the interests of its retired members.

The judge's ruling was made orally, and, at the time this article was prepared, no written decision had been handed down. It is expected that the judge will issue his decision in writing, whether it is the written oral presentation he gave or a formal written opinion.

In the explanation of his decision, the judge appeared to agree with the basic arguments presented on behalf of retirees: (1) they have a "non-forfeitable right" to the COLA as spelled out in the law and (2) the benefit is of a contractual nature. However, he stated that these rights were subordinate to a clause in the New Jersey Constitution that limits debt and appropriations, and, therefore, Chapter 78's suspension of the COLA was constitutional.

The attorneys representing retirees have indicated that they will appeal the Judge's ruling after reviewing the written record.

Without hearing Judge Hurd's oral decision or seeing any written decision, it is difficult to specifically determine what part of the State Constitution Judge Hurd was referencing in his presentation. However, a perusal of the State Constitution reveals that Article VIII, Section II, Subsection 2 contains language that would seem to be the basis for his decision. It states, "No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor." Whether that language, if it is the so-called Appropriation and Debt Limitations Clauses apparently referenced in the decision, is sufficient to over-ride the "non-forfeitable rights" as provided in Title 43:3C-9.5 is the question. Judge Hurd appears to say it is. Whether the next higher court hearing the appeal will agree is unknown.

The reports of the decision in the media have produced a number of inquiries regarding a statement that appeared in several newspapers indicating that the system is not expected to reach the level necessary for the State to reinstate the COLA until 2040. Where that number comes from is a mystery because the laws relating to the COLA reinstatement are complex, and it is not easy to draw any conclusion from them.

Several sections of Chapter 78, P.L. 2011 relate to the suspension and re-in statement of the COLA:

The first of these is Section 1 of the law, which amends Title 18:66-56. In Subsection (4)b, the new law establishes a new body which will oversee the TPAF after the funding of the TPAF reaches a **“Target Funded Ratio.”** (All systems will have identical committees.) That Committee, composed of Governor appointees and employee representatives, will apparently share responsibility with the elected TPAF Board of Trustees, the body that has always overseen the system. (The law is silent on how two bodies will apparently perform the same functions, although it appears that the Committee will usurp the responsibilities from the Board.) This new Committee shall have extraordinary powers. **It “shall have the discretionary authority for the system or for that part, as appropriate , to (1) modify the member contribution rate; formula for calculation of the final compensation; the fraction of compensation applied to service credited after the modification; age at which a member may be eligible for and the benefits for service or early retirement; and benefits provided for disability retirement; and (2) activate the application of the “Pension Adjustment Act,” for retirees for the period that the system or part is at or above the target funded ratio and modify the basis for the calculation of the adjustment and set the duration and extent of the activation. The committee shall give priority consideration to subparagraph (2) of the paragraph.”**

It does not sound as if the reinstatement of the Pension Adjustment Act (the basis for the COLA) is guaranteed, even if the system reaches the Target Funded Ratio.

The second section relating to the COLA is Section 27 of Chapter 78, which defines the Target Funded Ratio. It says “For the purpose of the Teachers’ Pension and Annuity Fund...the Judicial Retirement System...the Public Employees Retirement System...the Police and Firemen’s System....and the State Police Retirement System, ‘target funded ratio’ means a ratio of the actuarial value of assets to the actuarially determined accrued liabilities expressed as a percentage that shall be for State part of each system, and the local part of each system, if any, 75 percent in State fiscal year 2012 and increased in each fiscal year thereafter by equal increments for seven years, until the ratio reaches 80 percent at which it shall remain for all subsequent fiscal years.”

A translation to English indicates the following:

- ..there will be a new committee which will oversee all of the State’s separate pension systems;
- ..this committee will have extraordinary power to control the benefits of each system;
- ..reinstatement of the COLA will depend on how rapidly the funding of the system reaches 80 percent;
- ..the expected target of 80 percent cannot occur in fewer than eight years;
- ..the new committee is not required to reinstate the COLA, but it (the Committee) is to give the reinstatement “priority consideration.”

It is not a promising situation. And it does not guarantee that the COLA will be reinstated even if the funding target is reached, since the language states that “it shall remain for all subsequent years,” a phrase that seems open to interpretation.

Further complicating any estimate as to when the “target funded ratio” might be reached are two factors: when will the State begin to meet its full required actuarially determined contribution, and what will be the performance of the pension plan assets in future years. If the answer to both these factors is positive (i.e. the State meets its full obligations quickly and the financial markets return to the sustained growth of the 1980s and 1990s), then the target could be reached in the early 2020 decade. If the answer to one or both of them is negative (no full funding, no financial markets sustained growth), then trying to guess when the COLA reinstatement could occur, without a successful appeal of Judge Hurd’s ruling, is foolish.