

A taste of the un-COLA?

Why former Ohio teachers are still fighting for benefits the state legislature awarded almost 30 years ago

A battle has been waged over the Ohio State Teachers Retirement Board's benefits calculations for teachers not currently working for the district. Hundreds of plan participants who no longer teach in the Ohio schools - but whose retirement funds remain with the \$48 billion Ohio State Teachers Retirement System of Ohio-feel they have been cheated of cost of living adjustments promised them. The case, *Smith vs. STRB*, centers on two changes made by the State Teachers Retirement Board. In 1994, the STRB decreased the rate of interest applicable to retirement accounts from 7.76% to 6% and also altered its accounting of COLA benefits the Ohio General Assembly granted nearly 30 years ago to all active participants as of 1970.

Every participant in the Ohio STRS plan, whether currently working in the district or not, has her benefit calculated using two different formulae. The retirement benefit is then accorded via the formula resulting in the larger benefit. The "salary-based" formula is calculated by taking a percentage of the member's final average salary and multiplying it by the number of years of service. The "money purchase formula" consists of an annuity component and a pension. The annuity is figured by converting the participant's total contributions and compound interest up to her retirement date into monthly payments over her life based upon a mortality table and a rate of interest fixed by STRS. The pension portion is computed by converting an equal amount of employer contributions and compound interest into monthly payments.

The changes affected only the participants who retire under the STRS money purchase formula-mainly teachers no longer employed by the district. The problem, according to the teachers, is with the COLA accounting. The STRB reduced the original baseline benefit payable under the purchase money formula by the present value of the additional COLA benefit. "In effect, the board was pre-charging the beneficiary for COLA increases the legislature clearly intended to be additions to the baseline retirement benefit," says Tom Wagner, an attorney with *Chattman, Gaines & Stern* in Cleveland, Ohio, who represents the teachers appealing the *Smith* case. "It destroys the purpose of the cost of living adjustment," he says.

Teachers sue

The teachers sued the retirement board in 1995 claiming that the responsibility the legislature placed on the STRB to pay COLA was mandatory and could not be reduced or eliminated by charging the recipients for it. The STRB argued that the employer's contribution rate had already reached the statutory maximum of 14% and that the calculations made were intended to keep overall total retirement benefits paid out within the budget mandated by the legislature. The beneficiaries pointed out

that they could lobby the legislature for an increase in the employer's contribution ceiling. In February 1998, an appeals court agreed with the participants, stating that the COLA adjustment was, indeed, mandated by the legislature and that the board did not have the discretion to reduce benefits to fund the COLA.

The Court of Appeals for the 10th circuit sent the case back to the trial court in the Franklin County Court of Common Pleas to reconsider its decision. The trial court has yet to set a date for a re-hearing.

"We started to worry that the plaintiffs were not following up with the court and, in spite of the fact that we felt we had a good legal argument on remand [defending the board's treatment of the COLA adjustment], we decided to comply with the Court of Appeals ruling in advance," says Cynthia Hvizdos, counsel for the STRB. The STRB rescinded the rule deducting the COLA cost effective last March and directed their actuary to stop deducting the COLA cost as of December 1998. Adjustments were made instead to the rate of interest granted and the board reduced the rate further, from 6% to 5%, "which was permissible under the Court of Appeals ruling," says Hvizdos.

"We take issue with the board's interpretation of the ruling," says Wagner, arguing that "they are trying to do through the back door that which they are not permitted to do through the front door." Plaintiffs will argue that the change in the interest rate was made only to get around the court's decision that the board couldn't deduct the cost of COLA. Wagner says the move amounts to the same thing and just deducts the cost from a different place in the equation. "A private plan would never be allowed under ERISA to manipulate its accounting in this way," Wagner says. "Unfortunately, public plans are not covered under ERISA." Both sides vow to continue the court battle when the trial court takes the case up on remand.

-Robin Glenn