

Lawsuits: No retreat on state retiree health care rise

CSEA, PEF, others file suit on state insurance hike for pensioners

By JIMMY VIELKIND, Capitol bureau

Published 10:26 p.m., Wednesday, December 28, 2011

ALBANY — Public employee unions are suing over the state's decision to increase the health care contributions for current retirees, claiming the 2 percent increases that took effect in October are unconstitutional.

The [Retired Public Employees Association](#) filed a similar lawsuit in state court earlier this month. Late Wednesday, the [Public Employees Federation](#), [Civil Service Employees Association](#), [United University Professions](#) and other unions representing law enforcement and correction officers filed parallel suits in federal court in Albany, claiming health care for retirees is a form of deferred compensation guaranteed by the contract under which the employees retired.

They argue the state has no right to unilaterally alter the benefits because the U.S. Constitution forbids states from "impairing the obligation of contracts."

"What the Cuomo administration is trying to do is pull the rug out from under state retirees, many of whom planned their retirements based on when they felt they could afford to retire," said PEF President [Ken Brynien](#). "These decisions were based on a promise and expectation of what their health insurance costs would be. Changing the rules after the fact is outright wrong."

A spokesman for Gov. [Andrew Cuomo](#) said higher health costs have previously been passed along to retired workers, and this boost should be similarly acceptable.

The latest round of changes came to light after the administration settled labor contracts with the two largest state unions, PEF and CSEA. The agreements brought the employee share of the health insurance premium from 10 percent to 12 percent for individual and 25 percent to 27 percent for family plans. Those in the higher pay grades, at roughly \$40,000 or more, pay an even greater share.

On average, a retiree covered under the [Empire Plan](#) would pay about \$150 more annually for individual coverage and about \$460 more for family coverage, the unions estimated.

The unions are not disputing that the higher rates will apply to future retirees. Because current retirees are not represented by any of the unions and they are not currently on the payroll, it's unclear what laws or rules — beyond tradition — prevent the governor from raising their share of health insurance costs.

Denyce Duncan Lacey, a spokeswoman for UUP, said its contract explicitly covers retired members. It sent a separate news release announcing a suit.

"The state's action to unilaterally raise the level of contributions retirees pay for their health insurance is unconstitutional, arbitrary and capricious, and amounts to a breach of our contract," UUP President [Phil Smith](#) said.

In its court papers, PEF argues health insurance benefits are "deferred compensation" and extend according to a provision in the Civil Service Law. The papers note the 10 percent individual contribution level was instituted in the early 1980s, and took effect for employees retiring after Jan. 1, 1983. It did not apply to employees who had already retired, and "thus, retirement health insurance contribution rates were fixed and vested at the time of retirement and in the contract under which they retired."

The unions collectively represent well over 100,000 state employees, and each suit named several retired members as plaintiffs and argued for class-action status. The exact number of retired state workers was not immediately known, but the RPEA claims over 40,000 members, roughly 3,000 of whom live in the Capital Region.

The suits name the state, Cuomo, Comptroller [Tom DiNapoli](#), as well as officials in the Department of Civil Service and other administration officials as defendants. [Jennifer Givner](#), a spokeswoman for Attorney General [Eric Schneiderman](#), who defends the state in lawsuits, declined to comment.

Cuomo spokesman [Josh Vlasto](#) said while percentages have hitherto remained the same, higher premiums and co-payments are passed along to retirees as the health plan for existing employees is re-negotiated with insurers. Also, the law changed in 2009 to push some costs for [Medicare](#) premiums to retirees although they had previously been paid exclusively by the state.

"The law clearly allows the administration to apply the terms of a new contract to retirees, and it has been well-known standard practice to do so," Vlasto said.

Reach Vielkind at 454-5081 or jvielkind@timesunion.com.

Read more: <http://www.timesunion.com/local/article/Lawsuits-No-retreat-on-state-retiree-health-care-2429800.php#ixzz1hyfU1Q2m>