



Retired Public Employees Association, Inc.

435 NEW KARNER ROAD • ALBANY, NY 12205 • (518) 869-2542 • FAX (518) 869-0631 e-mail: mail@rpea.org
Stanley Winter, President Michael B. Fitzgerald, Executive Director

September 14, 2011

The Honorable Thomas DiNapoli
NYS Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Comptroller DiNapoli:

The Retired Public Employee Association [RPEA] notes that the New York State Department of Civil Service has indicated that certain terms of recently negotiated collective bargaining agreements providing for an increase in the percentage or ratios of employee contributions for the statewide and the supplementary health benefit plans, [hereinafter "NYSHIP"] will be imposed on retirees effective October 1, 2011. This unilateral action presumably will affect individuals who retired on or after January 1, 1983 enrolled in NYSHIP.

In view of the absence of any law, rule or regulations providing for any change in the ratios or percentages of "employer contributions" for NYSHIP premiums made on behalf of individuals who retired on or after January 1, 1983, RPEA believes that the decision of the Department of Civil Service in this regard constitutes an ultra vires action by the Department and thus a legal nullity.

In support of RPEA's view in this regard, it notes that Civil Service Law §167.1.(a), "Contributions," provides, in pertinent part, as follows:

"The full cost of premium or subscription charges for the coverage of retired state employees who are enrolled in the statewide and the supplementary health benefit plans established pursuant to this article and who retired prior to January first, nineteen hundred eighty-three shall be paid by the state. Nine-tenths of the cost of premium or subscription charges for the coverage of state employees and retired state employees retiring on or after January first, nineteen hundred eighty-three who are enrolled in the statewide and supplementary health benefit plans shall be paid by the state. Three-quarters of the cost of premium or subscription charges for the coverage of dependents of such state employees and retired state employees shall be paid by the state...."

RPEA also notes that Civil Service Law §167.1.(b), in pertinent part, provides as follows:

“Effective January first, nineteen hundred eighty-nine, notwithstanding any other law, rule or regulation, and where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of this chapter so provides or where and to the extent the employee health insurance council so directs with respect to any other state employees and for retired state employees retiring on or after January first, nineteen hundred eighty-three, the state shall contribute nine-tenths of the cost of premiums or subscription charges for coverage of each such state employee or retired state employee who is enrolled in an optional benefit plan and three-fourths of such premium or subscription charges for dependents of such state employees or retired state employees enrolled in such optional benefit plan”

Suffice it to note that the terms and conditions of employment set out in a collective bargaining agreement negotiated pursuant to Article 14 of the Civil Service Law, the Taylor Law, control only with respect to active employee in the negotiating unit and any provisions addressing benefits upon retirement apply only to a then active employee upon his or her retirement during the life of that agreement.

Further, 4 NYCRR 73.3 essentially tracks the provisions of Civil Service Law §167.1(a) and (b).

In addition, attached is a copy of our letter to the Acting President of the NYS Civil Service Commission informing her of our position with respect to the proper “employer contribution” rates allowed by law and suggesting an appropriate Rule to be promulgated with respect to “employer contribution” rates for current retirees under Civil Service Law, §167.

Accordingly, RPEA respectfully requests that you continue deducting the “employee contributions” for retirees, or their survivors, participating in NYSHIP at the ratios or percentages of “employee contributions” now authorized by law pursuant to the authority vested in you by Civil Service Law §167.3 with respect to such deductions from the retirement allowance of a retiree or a duly filed written request of a survivor of a retiree.

Sincerely,

Alan Dorn
Executive Director

Attachments



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Proposed Rule amendment to 4 NYCRR 73.3 with respect to state officers and employees retiring on or after October 1, 2011 and state officers and employees retiring on or before September 30, 2011, as follows:

1. Except as otherwise provided by a collective bargaining agreement between the state and an employee organization negotiated pursuant to Article 14 of the Civil Service Law, eighty-eight percent of the cost of premium or subscription charges for the coverage of state employees retiring on or after October first, two thousand eleven who are enrolled in the statewide and supplementary health insurance plans shall be paid by the state. Seventy-three percent of the cost of premium or subscription charges for the coverage of dependents of such state employees retiring on or after October first, two thousand eleven shall be paid by the state. The state shall contribute toward the premium or subscription charges for the coverage of each state employee retiring on or after October first, two thousand eleven who is enrolled in an optional benefit plan and for the dependents of such state employee or retired state employee the same dollar amount which would be paid by the state for the premium or subscription charges for the coverage of such state employee or retired state employee and his or her dependents if he or she were enrolled in the statewide and the supplementary health insurance plans, but not in excess of the premium or subscription charges for the coverage of such retired state employee and his or her dependents under such optional benefit plan. For the purposes of this subdivision, employees of the state colleges of agriculture, home economics, industrial labor relations, and veterinary medicine, the state agricultural experiment station at Geneva, and any other institution or agency under the management and control of Cornell university as the representative of the board of trustees of the state university of New York, and employees of the state college of ceramics under the management and control of Alfred university as the representative of the board of trustees of the state university of New York, shall be deemed to be state employees whose salaries or compensation are paid directly by the state.

2. Except as otherwise provided by a collective bargaining agreement between the state and an employee organization negotiated pursuant to Article 14 of the Civil Service Law, nine-tenths of the cost of premium or subscription charges for the coverage of state employees retiring on or before September thirtieth, two thousand eleven who are enrolled in the statewide and supplementary health insurance plans shall be paid by the state. Three-quarters of the cost of premium or subscription charges for the coverage of dependents of such state employees retiring on or before September thirtieth, two thousand eleven shall be paid by the state. The state shall contribute toward the premium or subscription charges for the coverage of each state employee retiring on or after October first, two thousand eleven who is enrolled in an optional benefit plan and for the dependents of such state employee or retired state employee the same dollar amount which would be paid by the state for the premium or subscription charges for the coverage of such state employee or retired state employee and his or her dependents if he or she were enrolled in the statewide and the supplementary health insurance plans, but not in excess of the premium or subscription charges for the coverage of such retired state employee and his or her dependents under such optional benefit plan. For

the purposes of this subdivision, employees of the state colleges of agriculture, home economics, industrial labor relations, and veterinary medicine, the state agricultural experiment station at Geneva, and any other institution or agency under the management and control of Cornell university as the representative of the board of trustees of the state university of New York, and employees of the state college of ceramics under the management and control of Alfred university as the representative of the board of trustees of the state university of New York, shall be deemed to be state employees whose salaries or compensation are paid directly by the state.