

COLLECTIVE BARGAINING CONSIDERATIONS IN HIRING RETIRED TEACHERS*

By Glenn D. Waggoner

The new flexibility in law to hire retired teachers without a lengthy break in full-time service benefits everyone under the right circumstances. For a board of education, a veteran teacher with more to give students can continue in the classroom at less cost than before. And the teacher can pocket both retirement benefits and a paycheck, sharply boosting annual take-home pay.

The author submits, however, that employment of retirees must include the collective bargaining of “customized” employment terms for these teachers, using the authority of O.R.C. Sec. 4117.10 to bargain contrary to provisions of law which would otherwise apply to teacher employment.

To provide a context for this discussion, let's consider the fictional Jill Jones, a tenured and capable math teacher at Anytown High School. She is now completing 30 years of continuous service at Anytown Local. She is contemplating retirement, but would like to work a few more years. Anytown's board knows it may have trouble replacing the popular teacher, and would prefer to keep her. With the change in STRS law, Ms. Jones could retire in June, sit out the 60 day restriction on full-time re-employment, and return to the classroom in late August, as a full-fledged STRS retiree and a salaried classroom teacher. Before heading down this path, what groundrules should the Anytown board have in place with its teacher association?

Employment Security. By its nature, the hiring of a retiree is not a long-term situation. Although legally qualified, should a retiree get tenure again? If there is just cause for nonrenewal of a limited contract in the Negotiated Agreement, should this apply? No and no. From a board standpoint, the objective should be negotiated language providing for one or two year limited contracts for retirees, which expire automatically at the end of their terms. The board would want the ability to re-evaluate the arrangement on a year by year basis, and without the need for nonrenewal notices or due process. After all, the teacher is a retiree with benefits C not a new teacher embarking on a career and building an employment record.

Compensation. Ms. Jones will be a salaried teacher when returning as a retiree, but the Anytown board should expect to receive some savings just as it would if it hired a new teacher at the bottom of the salary column. Beyond that, compensation is wide open for discussion. Perhaps most preferable for a board would be negotiated language under which the board and retiree could agree, on a case by case basis, on the salary step for the retiree to be placed in the appropriate training column. Again because of the ability to bargain contrary to law, the retiree need not be credited with all prior years of service if bargained language provides otherwise. Upon initial placement, the retiree could advance for additional years of service as a retiree. There are other approaches, such as simply fixing a BA-0 step at which all retirees would be paid, regardless of training, prior years of service, or future service as a retiree. They would only receive negotiated increases at that step level. Reasonable bargainers on both sides should find a fair pay system that benefits the retiree while saving boards some money.

Option, Not Right. It should be considered a baseline condition that a board have the right to decide whether to hire a particular retiree; that it not be a bargaining unit right to retire and automatically be re-employed as a retiree. Ms. Jones notwithstanding, the Anytown board recognizes that after 30 years in the classroom, some teachers are ready for retirement and the school district is ready for a change.

Benefits. STRS provides a health insurance program for its retirees. Negotiated language should establish that retirees are ineligible for participation in the fringe benefit programs available to other teachers, with the possible exception that retirees may participate at their sole expense. Plan rules and requirements should be checked regarding employee participation. Leaves, Severance. Ms. Jones may get sick, or may need a day off for a legal matter or unexpected emergency. There is no reason not to make leave provisions of Negotiated Agreements generally applicable to retirees. Of course, Ms. Jones would typically have received severance pay and liquidated her sick leave balance upon retirement, and returns with zero sick leave days. She should be able to accumulate sick leave in the event the days are needed. But severance has been paid once and arguably under law cannot be paid twice. This should be confirmed in negotiated language.

RIF. As a philosophical matter, the Anytown board does not want the employment of a retiree to rock the career boat of other teachers in mid-career. Should a retiree be able to remain employed while a less senior teacher is sent packing by a reduction in force? Probably not. One approach is to negotiate language providing that retirees do not acquire bargaining unit seniority and do not have recall rights in the event they are subject to a reduction in force.

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Evaluation. Teacher evaluation procedures should apply to retirees. Even with teachers who have limited (or no) due process rights with respect to a decision not to re-employ them, it is sensible personnel management to maintain a complete record of retiree performance should any employment decision be called into question. Lapses in procedure happen, however, and re-employment of retirees should not be a remedy should evaluation procedures not be followed.

Supplementals. By statute, supplemental contracts must first be offered to certified staff before being offered to any noncertified persons not employed by a board of education. The Anytown Board may prefer to have retirees like Ms. Jones be eligible for supplemental contracts only at the discretion of the Superintendent, an item which can be addressed in negotiated language.

Supercede Law. A key component of a negotiated retiree employment package is language to supercede the laws that otherwise apply to teacher employment. These includes laws on salary schedule placement, and evaluation and nonrenewal of limited contract teachers. The Ohio Supreme Court has made it clear in teacher cases that statutory law will apply unless bargained language clearly expresses intent to supercede that law. This intent should be stated as clearly as possible in bargained language. Moreover, in connection with bargaining employment terms for retirees, the Anytown board will want to review its teacher Negotiated Agreement carefully. All of its terms will apply to the employment of Ms. Jones as a retiree unless bargained language expressly exempts retirees from coverage.

On timing, STRS interpretations of current law allow for the board and teacher to approve subsequent employment of the teacher as a retiree before the retirement decision is finalized.

Conclusion. Of course the foregoing is a general discussion of the considerations in the employment of retired teachers. Boards of education should have counsel closely involved in crafting negotiated terms such as those recommended here. Further developments in the law or STRS administrative interpretation should be closely monitored. Teachers like Ms. Jones can benefit from the retirement law changes by continuing their careers without interruption and with economic gain. Boards like Anytown's can keep experienced teaching talent with cost savings and flexibility as to duration. Students have an experienced, enthusiastic teacher. Everyone wins.

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