# STATE OF NEW YORK

6623--A

2023-2024 Regular Sessions

# IN ASSEMBLY

April 24, 2023

Introduced by M. of A. FITZPATRICK, TAGUE -- Multi-Sponsored by -- M. of A. MANKTELOW -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil service law, in relation to improper employer practices relating to the continuation of pay, vacation and health care benefits; to amend the education law, in relation to eligible employees for retirement plans; and to amend the civil service law, in relation to disputed agreements

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Paragraph (e) of subdivision 1 of section 209-a of the civil service law, as amended by chapter 244 of the laws of 2007, is amended to read as follows:

(e) to refuse to continue [~~all the~~] terms of an expired agreement **that relate to leaves of absence, active employees health insurance, holidays, salaries excluding step increases, and all other mandatory subjects of a bargaining agreement as defined by the public employment relations board case law prior to its conversion doctrine** until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article;

§ 2. Subdivision 3-a of section 390 of the education law, as added by chapter 18 of the laws of 2012, is amended to read as follows:

3-a. **(a)** Beginning July first, two thousand thirteen, the term eligible employees shall also mean any person excluded from or not encompassed within a negotiating unit within the meaning of article fourteen of the civil service law who would otherwise be entitled to receive a

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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benefit under the retirement and social security law or the education law initially hired on or after July first, two thousand thirteen with estimated annual wages of seventy-five thousand per annum or greater. Such estimate of annual wages to determine eligibility for the purposes of this subdivision shall be provided by the employer. For the purposes of this subdivision, a newly hired state employee whose immediate preceding employment was with another department, division, or agency of the state shall not be deemed to be an eligible employee.

**(b) Beginning January first, two thousand twenty-four, the term eligible employees shall also mean any person who would otherwise be entitled to receive a benefit under the retirement and social security law or the education law initially hired on or after January first, two thousand twenty-four who would otherwise be eligible for membership in the New York state and local employees' retirement system or the New York state teachers' retirement system. For the purpose of this paragraph, a newly hired state employee whose prior employment, immediately preceding such state employment, was with another department, division, or agency of the state shall not be deemed to be an eligible employee.**

§ 3. Section 209 of the civil service law is amended by adding a new subdivision 7 to read as follows:

**7. Notwithstanding any other provision of law to the contrary, for any dispute that is subject to the provisions of this section, the determination of the public arbitration panel on a disputed agreement shall not contain an increase in all compensation items subject to negotiation which is greater than two percent more than all compensation items subject to negotiation received by the employee organization in the agreement between the public employer and the employee organization immediately preceding the agreement being arbitrated.**

§ 4. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend Section 390 of the Education Law to broaden the definition of the term "eligible employees" as it applies to eligibility to join the State University of New York Optional Retirement Program (ORP), otherwise known as the Voluntary Defined Contribution Program (VDC). The definition would be expanded to include any person initially hired on or after January 1, 2024 who would otherwise be eligible for membership in the New York State Teachers' Retirement System (NYSTRS) or the New York State and Local Retirement System (NYSLRS). Currently only new employees with an annual salary of $75,000 or more and who are not represented by a collective bargaining unit must choose between joining the public retirement system (NYSTRS, NYSLRS) or the ORP/VDC. A newly hired state employee whose prior employment, immediately preceding such state employment, was with another department, division, or agency of the state shall not be deemed to be an eligible employee.

It is not possible to determine the total annual cost to the employers of members of the New York State Teachers' Retirement System since the number of newly hired employees who would choose to participate in the ORP/VDC each year cannot be estimated. This bill represents a fundamental change in the structure of public retirement benefits and would substantially impact their funding. The number of new entrants to the System could potentially decline each year if some newly hired employees opt to participate in the ORP/VDC. The System's outstanding liability under the defined benefit plan is funded over the average future remaining working lifetime of its members. Thus, if the System experiences a large decline in the number of new entrants each year, this funding period would decrease, resulting in potentially increasing costs to

employers. It is strongly recommended that a full actuarial analysis and report be completed to gauge all the potential costs and implications fully and more quantitatively before a structural change of this magnitude is undertaken.

Member data is from the System's most recent actuarial valuation files as of June 30, 2023, consisting of data provided by the employers to the Retirement System. The most recent data distributions and statistics can be found in the System's Annual Report for fiscal year ended June 30, 2023. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report as of June 30, 2023.

The source of this estimate is Fiscal Note 2024-4 dated January 29, 2024 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2024 Legislative Session. I, Richard A. Young, am the Chief Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.