

Third Circuit Upholds EEOC Regulatory Exemption To ADEA Permitting Employers To Coordinate Retiree Health Insurance Benefits With Medicare or Other Government Health Benefit, Correcting the Impact of its earlier *Erie* Decision

By Richard B. Galtman

Historically, collective bargaining agreements between public school districts and public school teachers, from time to time, have included “early retirement incentive” provisions. Many of these provisions commonly have included the continuation or maintenance of health insurance benefits for the retiree and/or his dependents until the retiree reached Medicare eligibility (age 65). However, in 2000, the legality of cutting off continued medical benefits for retirees at their Medicare eligibility age was called into question by the U.S. Court of Appeals for the Third Circuit in *Erie County Retirees Association v. County of Erie*. In *Erie*, the Third Circuit held that the ADEA (Age Discrimination in Employment Act) prohibited the reduction or termination of retiree health benefits based upon age and Medicare eligibility is age dependent. The Third Circuit held that the ADEA required employers to offer pre- and post-Medicare eligible retirees health benefits of equal type and value.

As a result of *Erie*, many school districts determined that their early retirement incentive provisions were arguably discriminatory, and thus, illegal under the ADEA if they contained an age related cutoff. As a result, numerous school districts throughout the Commonwealth were forced to negotiate modifications to their existing early retirement incentive provisions. The overall net effect of these changes was that school districts often proposed less generous health insurance benefits to retirees upon retirement.

In response to the *Erie* decision, in July 2003, the Equal Employment Opportunity Commission (EEOC) drafted a proposed amendment to its regulations that would permit employers to lawfully coordinate retiree health benefit plans with eligibility for Medicare and state healthcare benefits under the ADEA. However, in February 2005, in *AARP v. EEOC*, the AARP filed a federal lawsuit in the Eastern District of Pennsylvania challenging the legality of the new rule along with a motion for preliminary injunction. In March of 2005, the District Court held that the regulation was contrary to the ADEA and permanently enjoined the EEOC from publishing or otherwise implementing the challenged regulation. In September 2005, on EEOC’s motion for relief from judgment, the District Court reversed itself and granted summary judgment in favor of the EEOC. On June 4, 2007, the Third Circuit Court of Appeals affirmed the District Court’s ruling upholding the EEOC regulation as a valid exercise of the EEOC’s rule-making authority under the ADEA and lawful action under the Administrative Procedures Act (APA). (*AARP v. EEOC*, _____ F. 3d. _____ (3rd Cir. 2007))

As the EEOC’s regulatory exemption to the ADEA was in direct response to *Erie* and was specifically upheld as valid by the same Circuit Court of Appeals as *Erie*, this case necessarily supersedes the prohibitive impact of *Erie* on this issue in the Third Circuit. What this means for Pennsylvania employers and for school districts throughout the Commonwealth is that their early retirement provisions may lawfully call for the alteration, reduction or elimination of the employer-provided health insurance benefits upon a retiree reaching eligibility for Medicare health benefits or State sponsored retiree health benefits.

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