

D. Dietrich response to questions regarding OPEB

- I think it is acceptable to award the benefit to teachers based upon “age” instead of “years of service;” although, I do not think that was the intent when the language was first developed. The use of the word “seniority” typically relates to service to the employer and not the age of the employee. While I believe that was the intent, it is my understanding that the School District has given the benefit to the more senior (by age) employees if there are more than the allowed number of employees seeking the benefit. That would not constitute age discrimination and as we have communicated earlier, the providing of a retirement benefit is an exception to the age discrimination statute.
- The question regarding a reduced benefit if an employee was not eligible for the retirement benefit in the first year of application but becomes the first eligible person in the next year but at a reduced level, is a much more challenging question. It could be argued that the employee relied upon the benefit at a certain level when making application in the first year but then did not qualify for the benefit in that year which would mean the employee would receive a lesser benefit when being eligible in the next succeeding year. The argument would focus on the reliance by the employee of receiving the higher level of benefit. The current case law would allow the School Board to reduce the benefit and not be subject to legal challenge by the employee because the School Board has the right to change the benefit at any time. There are still a number of cases pending on this retirement benefit issue so I need to review it further.
- The third question concerns limiting the benefit to pay for qualified medical expenses or insurance premiums with an outside provider. This is designed to encourage retiring employees to not take COBRA benefits and stay in the School District insurance plan. I am very uncomfortable suggesting that you will only provide the retirement benefit if the employee agrees not to take the School District insurance benefit under COBRA. This seems to be using the retirement benefit as a way to entice an employee to give up their right under law to extend the health insurance benefit for at least 18 months. I need to think some more about whether this would be acceptable under the federal law.