STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

JOHN F. SULLIVAN, as President of the Empire State Supervisors and Administrators Association; LARRAINE GEGERSON, Individually and as President of the Baldwin Supervisors Association,

Plaintiffs,

-against-

DAVID PATERSON, in his official capacity as Governor of the State of New York, and THOMAS P. DiNAPOLI, in his official capacity as the New York State Comptroller and Sole Trustee of the New York State and Local Retirement System, and the NEW YORK STATE TEACHERS' RETIREMENT SYSTEM,

Defendants,

RICHARD C. IANNUZZI, as President of the NEW YORK STATE UNITED TEACHERS,

Defendant-Intervenor.

DECISION AND ORDER/JUDGMENT

Index No.: 2460-10
RJI No.: 01-10-100064

(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

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O'CONNOR, J.:

Plaintiffs John F. Sullivan, as president of the Empire State Supervisors and Administrators Association ("ESSAA"), and Larraine Gegerson ("Gegerson"), individually and as president of the Baldwin Supervisors Association ("BSA"), commenced the instant action seeking, *inter alia*, a judgment declaring Chapter 45 of the Laws of 2010, which provides a temporary, early retirement incentive to certain members of the New York State Teachers' Retirement System ("TRS") and the New York State and Local Employees' Retirement System ("ERS"), unconstitutional as violative of the First and Fourteenth Amendments of the United States Constitution as well as Article 1, § 11 of the New York State Constitution. Plaintiffs argue that the legislation unconstitutionally limits eligibility for the early retirement incentive to members of the TRS and ERS who are employed in positions represented by collective bargaining units affiliated with New York State United Teachers

("NYSUT") (*see* L. 2010, ch. 45, § 3[e]). Plaintiffs contend that the legislation's exclusion of TRS and ERS members not represented by bargaining units affiliated with NYSUT, including Gegerson and those members represented by the ESSAA and BSA, from eligibility for the retirement incentive violates plaintiffs' equal protection rights and their right to freedom of association.

Plaintiffs now move for an order, pursuant to 3212, granting summary judgment in their favor "on the grounds that: (1) there are no genuine material issues of fact that warrant trial; (2) plaintiffs have shown through admissible evidence that they represent similarly situated individuals ineligible for a government benefit based only upon union affiliation, in violation of their constitutional rights; (3) defendants have offered no rational basis or compelling state interest to support the statutory criteria mandating NYSUT membership; [and] (4) the severability clause contained within the statute is clear and unambiguous." Defendants David Paterson ("Paterson"), in his official capacity as Governor of the State of New York, Thomas P. DiNapoli ("DiNapoli"), in his official capacity as the New York State Comptroller and sole trustee of the ERS, TRS (collectively "defendants"), and defendant-intervenor Richard C. Iannuzzi, as president of NYSUT ("defendant-intervenor" or "NYSUT"), oppose the motion and have cross-moved, pursuant to CPLR 3212, for summary judgment, *inter alia*, declaring Chapter 45 of the Laws of 2010 constitutional and valid, and dismissing the complaint.

Oral argument was held in connection with the motion and cross-motions on June 21, 2010. Post-argument submissions were received by the Court, with final submissions being made on June 28, 2010. The papers are now fully submitted, and all issues have been fully briefed.

FACTUAL BACKGROUND

In December 2009, legislation was enacted creating a new pension tier, Tier V, for New York

State public employees hired on or after January 1, 2010 ("Tier V legislation") (*see* L. 2009, ch. 504). As part of the Tier V legislation, the Legislature declared "its intent . . . to enact legislation, in conjunction with the executive, which would offer a three-month period during calendar year 2010, during which members of the collective bargaining unit of the New York State United Teachers ('NYSUT') within the New York state teachers retirement system and the New York state and local employees' retirement system who have reached fifty-five years of age and have accumulated twenty-five years of service as a member of either such retirement system, may retire early without penalty" (L. 2009, ch. 504, § 15). Chapter 504 was signed into law by Governor Paterson on December 10, 2009.

In accordance with its declaration of intent set forth in Chapter 504, the Legislature enacted Chapter 45 of the Laws of 2010.[1] Chapter 45, signed into law by the Governor on April 14, 2010, permits an "eligible employee" in Tier II, III, or IV of either the TRS or the ERS to retire within the specified 90-day open periods[2] without incurring a reduction of his or her retirement benefit that would otherwise be imposed upon the employee by Articles 11 or 15 of the Retirement and Social Security Law, if he or she has attained the age of 55 and has completed 25 or more years of creditable service (*see* L. 2010, ch. 45, § 5). The reductions in retirement benefits for an employee retiring with less than 30 years of creditable service, without the Chapter 45 retirement incentive, reach a maximum of 27% (*see* Affidavit of Stephen Allinger, ¶ 5).

[1] The Court notes in passing that following commencement of this action, the Legislature enacted Chapter 105 of the Laws of 2010. Chapter 105, signed into law by the Governor on June 2, 2010, provides for a temporary early retirement incentive for all TRS and ERS employees. That legislation, however, is not at issue herein.

[2] The open period for all participating employers, except community colleges and state-operated institutions of the State University of New York, is June 1, 2010 to August 31, 2010 (*see* L. 2010, ch. 45, § 3[g] & h]). The open period for SUNY community colleges and institutions may not extend beyond December 31, 2010 (*id.*).

"Eligible employee" is defined in the legislation as "a person who is a member of a retirement system, who is an employee of a participating employer and who holds a position represented by the recognized collective bargaining units affiliated with the New York state united teachers employee organization as certified by his or her employer, who makes an election under section five" (L. 2010, ch. 45, § 3[e]). "Participating employer," under the law, "means an educational employer, the state-operated institutions of the state university of New York, and a community college operating under a program of the state university of New York, which participates in a retirement system as defined in [the law], who employs members who hold positions represented by the recognized collective bargaining units affiliated with the New York state united teachers employee organization" (*id.* at § 3[c]). An "educational employer" includes, *inter alia*, "a school district" or "a board of cooperative educational services . . . who employ[s] members who hold positions represented by the recognized collective bargaining units affiliated with the New York state united teachers employee organization" who participate in the TRS and the ERS (*id.* at § 3[d]).

NYSUT is a statewide labor organization with over 1,200 local affiliated unions (Allinger Affidavit, at ¶ 2). The 1,200 unions affiliated with NYSUT represent more than 600,000 public and private sector employees and retirees in the State (*id.*). A majority of NYSUT's members are in-service or retired public school teachers and school-related professionals such as secretaries, nurses, and bus drivers (*id.*). Among the public employees represented by NYSUT's local affiliated unions are employees eligible for the temporary early retirement incentive provided by Chapter 45 of the Laws of 2010 (*id.* at ¶ 4).

ESSAA is a labor organization that represents approximately 3,000 professional school employees in over 170 bargaining units across New York State (Affidavit of John F. Sullivan, ¶ 1).

While the majority of ESSAA's members are employed in "administrative and supervisory tenure areas," there are members who are employed in "teacher tenure areas," including "academic teaching areas" and "special subject teacher tenure areas" such as school psychologists, guidance counselors, school social workers, and the like (*id.* at ¶ 2). ESSAA also has members who are employed in civil service positions related to facilities, technology, food services, and transportation (*id.* at ¶ 3). The public employees represented by ESSAA's local affiliated unions are members of either the TRS or the ERS (*id.* at ¶¶ 2 & 3). They are not, however, eligible for the Chapter 45 early retirement incentive.

Gegerson is employed as a middle school science chairperson in the Baldwin Union Free School District and serves as the president of the BSA (Affidavit of Larraine Gegerson, ¶ 1). Although Gegerson is tenured as a teacher and is compensated based upon the teacher salary schedule plus a stipend, as a chairperson, she is represented by the BSA, an administrative bargaining unit that is separate from the Baldwin Teachers Association. The Baldwin Teachers Association is affiliated with NYSUT. The BSA is affiliated with the Council of Administrators and Supervisors, a local affiliate of ESSAA (*id.* at ¶ 7). BSA represented public employees, like Gegerson, are ineligible for the Chapter 45 early retirement incentive.

DISCUSSION

"Whether a [party] seeking relief is a proper party to request an adjudication is an aspect of justiciability which must be considered at the outset of any litigation" (*Dairylea Cooperative, Inc. v. Walkley*, 38 N.Y.2d 6, 9 [1975]; *see Soc'y of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 769 [1991]). Indeed, "[s]tanding is . . . a threshold requirement for a [party] seeking to challenge governmental action" (*New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211

[2004]), and requires that the party demonstrate, from the outset, a stake in the resolution of litigation (*see Matter of Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers, Local Union No. 6, AFL-CIO v. State of New York*, 280 A.D.2d 713, 714 [3d Dep't 2001]; *Matter of New York State Ass'n of Prof'l Land Surveyors v. State of New York Dep't of Labor*, 167 A.D.2d 735, 735 [3d Dep't 1990]). Notably, "[t]he burden of establishing standing to raise a claim is on the party seeking review" (*Soc'y of Plastics Indus. v. County of Suffolk*, *supra*, at 769).

In order to have standing to challenge a governmental action, an individual plaintiff must satisfy a two-part test. The plaintiff must first show an "injury in fact," meaning that he or she has "an actual legal stake in the matter in dispute" (*New York State Ass'n of Nurse Anesthetists v. Novello*, *supra*, at 211-212 [noting that "the injury must be more than conjectural"]). "Second, the injury a plaintiff asserts must fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision" (*id.*; *see Soc'y of Plastics Indus. v. County of Suffolk*, *supra*, at 773). To establish associational or organizational standing, an association or organization plaintiff must show that at least one of its members would have standing to sue; that the interests it asserts are germane to its purposes; and that neither the asserted claim nor the appropriate relief requires the participation of individual members (*see New York State Ass'n of Nurse Anesthetists v. Novello*, *supra*; *Soc'y of Plastics Indus. v. County of Suffolk*, *supra*, at 775). "These requirements ensure that the requisite injury is established and that the [association or] organization is the proper party to seek redress for that injury" (*Soc'y of Plastics Indus. v. County of Suffolk*, *supra*).

Paterson, DiNapoli, and NYSUT argue that the plaintiffs lack standing to bring their claim because they have failed to demonstrate an "injury in fact" with respect to Gegerson, individually,

or any member of the BSA.[3] Paterson, DiNapoli, and NYSUT further contend that plaintiffs have failed to show that at least one of ESSAA's members has standing to sue and that the case does not require the participation of individual members, noting that the affidavits proffered by plaintiffs "only assert membership in bargaining units affiliated with the [ESSAA], not membership in the plaintiff association" (Letter of Frederick K. Reich, Esq., dated June 24, 2010). While plaintiffs' have failed to set forth factual allegations of an evidentiary nature sufficient to establish Gegerson's individual standing or the associational standing of BSA,[4] plaintiffs have, through the affidavits of Angela Addesso, Paula Bienia, Ira Gurkin, Mimi Trudeau, and Stephanie Visca, demonstrated that the ESSAA has standing to bring this action.

Turning to the merits of the motion and cross-motions, the Court is mindful that summary judgment is a drastic remedy which should only be granted when there clearly are no triable issues of fact (*see Andre v. Pomeroy*, 35 N.Y.2d 361, 364 [1974]). It is well settled that "the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]; *see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *see also Bush v. St. Clare's Hosp.*, 82 N.Y.2d 738, 739 [1993]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d at 853).

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[3] According to NYSUT, plaintiffs have failed to show that Gegerson herself or that any one member of the BSA would avail himself or herself of the Chapter 45 early retirement incentive.

[4] TRS noted at oral argument that Gegerson has more than 30 years of creditable service in the retirement system and, thus, could retire with no reduction to her retirement benefit and without availing herself of the Chapter 45 early retirement incentive. Plaintiffs do not dispute this contention. Nor have plaintiffs offered any additional factual evidence to establish BSA's standing in this action.

It is only when the moving party has established a right to judgment as a matter of law that the burden shifts to the party opposing the motion to establish, by admissible proof, the existence of a genuine issue of material fact (*see Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]). The Court will then view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference, and determine whether there is any triable issue of fact (*see Boston v. Dunham*, 274 A.D.2d 708, 709 [3d Dep't 2000]; *Boyce v. Vazquez*, 249 A.D.2d 724, 726 3d Dep't 1998]).

The Court begins its analysis by observing that "[l]egislative enactments carry an exceedingly strong presumption of constitutionality" (*Elmwood-Utica Houses, Inc. v. Buffalo Sewer Auth.*, 65 N.Y.2d 489, 495 [1985]; *see Matter of Klein (Hartnett)*, 78 N.Y.2d 662, 666 [1991]). "[W]hile this presumption is rebuttable," a plaintiff undertaking such a task "carries a heavy burden of demonstrating unconstitutionality beyond a reasonable doubt" (*Elmwood-Utica Houses, Inc. v. Buffalo Sewer Auth.*, *supra*; *see Maresca v. Cuomo*, 64 N.Y.2d 242, 250 [1984]). Notably, "not every difference in treatment violates the equal protection guarantee" (*Abrams v. Bronstein*, 33 N.Y.2d 488, 492 [1974]). Equal protection, however, "does require that, in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made" (*Rinaldi v. Yeager*, 384 U.S. 305, 309 [1966][internal quotation marks and further citations omitted]).

As a general rule, a classification that "is not based on an inherently suspect characteristic and does not impermissibly interfere with the exercise of a fundamental right . . . need only rationally further a legitimate state interest to be upheld as constitutional" (*Affronti v. Crosson*, 95 N.Y.2d 713, 718-719 [2001]). Under this standard, "the Legislature, in creating a classification, 'need not

actually articulate at any time the purpose or rationale supporting its classification'" (*Port Jefferson Health Care Facility v. Wing*, 94 N.Y.2d 284, 290 [1999][quoting *Heller v. Doe*, 509 U.S. 312, 320 [1993]). "'Instead, a classification must be upheld against an equal protection challenge if there is any *reasonably conceivable* state of facts that could provide a rational basis for the classification'" (*id.* [emphasis in original]).

"[I]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the [L]egislature" (*Federal Communications Comm'n v Beach Communications*, 508 U.S. 307, 315 [1993]), and "a court may even *hypothesize* the motivations of the . . . Legislature to discern any conceivable legitimate objective promoted by the provision under attack" (*Maresca v Cuomo*, *supra*, at 251 [quoted in *Port Jefferson Health Care Facility v. Wing*, *supra*, at 291][emphasis in original]). Moreover, "the State 'has no obligation to produce evidence to sustain the rationality of a statutory classification'" (*Port Jefferson Health Care Facility v. Wing*, *supra*, at 291 [quoting *Heller v. Doe*, *supra*]). Indeed, "[a] legislative choice is *not subject to courtroom factfinding* and may be based on *rational speculation* unsupported by evidence or empirical data" (*id.* [emphasis in original]). The burden, rather, "is on the one attacking the legislative arrangement to negat[e] every conceivable basis which might support it" (*Affronti v. Crosson*, *supra*, at 719 [internal quotation marks and citation omitted]).

The gravamen of plaintiffs' equal protection claim is that Chapter 45 of the Laws of 2010 premises eligibility for the early retirement incentive not on any rational basis, but rather on being a member of a bargaining unit affiliated with one particular union, NYSUT. Plaintiffs contend that as a result: (1) similarly situated individuals performing identical functions who are represented by a bargaining unit not affiliated with NYSUT, or who are unrepresented by any union, are ineligible

for the retirement incentive, and (2) members of the TRS and ERS are treated differently based solely on the bargaining unit to which they belong. According to plaintiffs, "this identical issue" was litigated in *Schneider v. Ambach* (135 A.D.2d 284 [3d Dep't 1988]), and found to be unconstitutional. Plaintiffs argue that *Schneider v. Ambach* is controlling, and requires invalidation of the NYSUT eligibility requirement. The Court disagrees.

In *Schneider v. Ambach*, the classification at issue was set forth in a regulation governing eligibility for excellence in teaching ("EIT") salary supplements. While the Appellate Division, Third Department held that discriminating between classes of educators who perform substantially identical functions solely on the basis of membership in a particular bargaining unit was an unconstitutional denial of equal protection, the court did so on narrow and specific grounds. Of particular significance to the court in *Ambach* was the fact that the record "[wa]s devoid of any functional, economic, or geographic basis for discriminating between plaintiffs and other supervisory and administrative professionals who [were] similarly situated in all material respects, except for the latters' inclusion in teachers' organization bargaining units" (135 A.D.2d at 288). Furthermore, the defendant in *Ambach* failed to demonstrate that the distinction between similarly situated educators bore any rational connection to the primary objectives of the EIT legislation to relieve the economic hardship of underpaid educators without increasing the financial burden on school districts (*id.* at 288-289).

Moreover, in rejecting the defendant's attempt to justify the conceded difference in treatment of educators based solely on administrative inconvenience or feasibility in collective bargaining,[5]

[5] The defendant in *Ambach* argued that without the distinction drawn by the regulations, school districts would be unduly burdened and the intent of the EIT legislation would be frustrated by requiring the distribution of EIT funds to be the subject of bargaining with multiple employee organizations (*see* 135 A.D.2d at 289).

the *Ambach* court stated: "[w]e may assume, without deciding, that such administrative convenience could have furnished a valid basis for a *legislative* judgment restricting EIT eligibility to educational administrators in teachers' collective bargaining units" (*id.* at 290). The court further observed that "it could justify an administrative determination to the same effect if based upon an express legislative direction to defendant to consider the impact on collective bargaining in setting standards for eligibility" (*id.*).

Notwithstanding plaintiffs' claims to the contrary, *Schneider v. Ambach* is, in the Court's opinion, clearly distinguishable from this case, and is not controlling. First, the challenge in *Ambach* was addressed to an agency regulatory provision; it was not, as here, directed at a legislative enactment. Second, the court in *Ambach* found, *inter alia*, that the rationale advanced by the defendant for the bargaining unit classification, i.e., administrative convenience, had no factual foundation in the record.[6] In this case, defendants and NYSUT have set forth a factual basis, beyond just administrative convenience, for treating TRS and ERS members belonging to bargaining units affiliated with NYSUT for purposes of Chapter 45 differently than those members who do not. Third, even if administrative convenience is the sole reason for the classification, the *Ambach* court recognized that such convenience could serve as a valid basis "for a *legislative* judgment" restricting eligibility for a governmental benefit to public employees affiliated with a particular bargaining unit (*id.* [emphasis in original]).

The record in this case, unlike the record in *Ambach*, demonstrates that Chapter 45 was

[6] The court noted, *inter alia*, that there was nothing in the language or the legislative history of the EIT statutes suggesting that administrative convenience of school districts in collective bargaining over who would be eligible for EIT salary supplements was a legislative consideration, let alone an objective in enacting the law. Nor was there a reason, based on the facts of the case, to assume that the Legislature intended to give the defendant, whose field of expertise and responsibility is educational policy, the discretion to set EIT eligibility standards on the basis of public sector collective bargaining policy factors.

enacted as part of the Tier V legislation package as a cost-savings measure to provide financial relief to fiscally-burdened local governments and the State through workforce reductions. The record further shows that it was not irrational or illogical to limit eligibility for the Chapter 45 temporary, early retirement incentive to TRS and ERS employees who are represented by bargaining units affiliated with NYSUT in order to achieve the cost-savings contemplated by the Legislature when it passed the Tier V legislation.

The assembly member who sponsored Chapter 45 noted in his memorandum in support of the legislation that "[l]anguage expressing the intent to enact a 55/25 early retirement option for employees . . . who are members of TRS and ERS and who are in bargaining units represented by NYSUT was – included as part of Chapter 504 of the laws of 2009" and that Chapter 45 "implements that intent." The sponsor also indicated that the "temporary retirement option will provide budgetary flexibility to school districts, SUNY and community colleges while averting layoffs at the same time." While the sponsor recognized that the "estimated annual cost to employers[ ] of TRS members is $13.2 million" and further that "[f]or every 100 employees in ERS who participate in this incentive, there would be a cost of $260,000 to the State and $360,000 to participating employers," the record discloses that the Tier V legislation package, which includes the Chapter 45 retirement incentive, will provide the State and its localities with $35 billion in savings over a 30-year period (Affidavit of James DeWan, ¶ 23).

In its statement in support of Chapter 45, the New York State School Boards Association ("NYSSBA") noted that "[t]he early retirement incentive . . . would provide great benefit to school districts during a great fiscal crisis." According to the NYSSBA, "[b]y offering an early retirement incentive without a reduction in benefits, seasoned educators can get an early start on retirement

while creating job opportunities for new teachers," which in turn "will lower employer contribution rates, eventually creating cost savings for school districts." NYSSBA further indicated that the Chapter 45 legislation "will also help districts weather the current fiscal crisis by cutting salaries of replacement employees and by allowing districts to decrease staff by attrition instead of layoffs."[7] Furthermore, while the School Administrators Association of New York State ("SAANYS") advocated for an expansion of the Chapter 45 early retirement incentive to all TRS and ERS members, SAANYS acknowledged, in its position statement to the Legislature, the goal of the Tier V legislation to address "long-term fiscal concerns for New York State" and recognized the "cost savings and cost containment rationale for making the program available to NYSUT represented employees."

Moreover, the Chapter 45 early retirement incentive was addressed during a floor debate in the Assembly prior to the legislation's enactment. Not only is the focus of the retirement incentive on teachers evident from the discussions, the ability of school districts to achieve cost-savings by, among other things, replacing older, higher-salaried teachers with younger, entry-level teachers was cited frequently by supporters of the legislation. Although an opponent argued that the early retirement incentive provided for in Chapter 45 should not be limited only to employees represented by NYSUT affiliated bargaining units, such argument was rejected by the Assembly and ultimately rejected by the Legislature when it passed the Tier V Legislation and subsequently enacted Chapter 45 with the NYSUT bargaining unit classification.

[7] There is evidence in the record indicating that school districts throughout the State of New York are currently proposing the elimination of nearly 14,000 teaching positions and nearly 1,400 school related professional positions, including teacher aides, bus drivers, custodians, and similar titles (*see* Affidavit of Mark Chaykin, dated May 20, 2010, ¶ 14)

Finally, while Budget Examiner James DeWan ("DeWan")[8] avers in his sworn affidavit that early retirement incentives such as the incentive provided in Chapter 45 impose costs on the retirement system and thereby costs on the employers who participate, he maintains that "[t]o the extent . . . such incentive encourages high-salaried employees to leave public employment, there is an offsetting and immediate savings either because the position remains vacant or is filled by a lower salaried employee" (DeWan Affidavit, at ¶ 30). DeWan explains that early retirement incentives in the public school context can be particularly effective when targeted at teachers (i.e., individuals who provide direct classroom instruction) because a high-salaried teacher who accepts an early retirement incentive will often be replaced by a new, entry-level teacher at a lower salary (*id.* at ¶ 31). In contrast, he notes that an outgoing administrator will typically be replaced by an individual closer in rank and, therefore, comparable in salary.

The record indicates that virtually all of the classroom teachers and teaching assistants employed by the State's public school districts outside of New York City are members of bargaining units affiliated with NYSUT (*see* Chaykin Affidavit, at ¶¶ 3 & 4). NYSUT affiliated locals represent more than 195,000 teachers and teaching assistants in all but four of the State's public school districts, comprising 79% of NYSUT's membership in public schools (*id.* at 4).[9] The record further indicates that the salary schedules of such employees are generally lower than those for school administrators and supervisors (*id.* at 6).

[8] In his role as a budget examiner for the State Division of Budget, DeWan is responsible for issues related to the retirement benefits of public employees (DeWan Affidavi, at ¶ 1). He "was deeply involved in the evaluating, drafting and negotiating of Chapter 504 of the Laws of 2009, the 'Tier V' legislation," and "also participated in drafting Chapter 45 of the Laws of 2010" (*id.* at ¶ 2).

[9] The record indicates that the four remaining districts collectively employ less than 100 teachers and related teaching titles (*see* Chaykin Affidavit, at ¶ 5).

On the record before the Court and the facts of this case and applying the legal standards relevant to an equal protection review, this Court finds that it was rational for the Legislature to limit eligibility for participation in the Chapter 45 early retirement incentive based upon membership in a bargaining unit affiliated with NYSUT in order to achieve the fiscal impact that was the impetus for the legislation. NYSUT affiliated locals are a reasonable proxy for teachers. Targeting teachers for the Chapter 45 retirement incentive, through a classification based upon bargaining unit, is a legitimate means of achieving the cost-savings envisioned by Legislature when it enacted the Tier V legislation. Under these circumstances, Chapter 45 of the Laws of 2010 is valid and constitutional, and plaintiffs' equal protection claim must fail.

Plaintiffs' claim that Chapter 45 violates their right to freedom association also fails. Notwithstanding their conclusory and speculative assertions to the contrary, plaintiffs have not shown that ESSAA and its affiliated bargaining units will lose members to bargaining units affiliated with the "State favored" NYSUT in order for those members to retire early, receive valuable financial benefits, and avoid pension reductions. Furthermore, the limitation on eligibility for Chapter 45 retirement benefits is not the type of "political patronage" or "government-sanctioned favoritism based on association" that was found to violate the First Amendment in *Rutan v. Republican Party of Illinois* (497 U.S. 62 [1990]).

Moreover, the remaining authority cited by the plaintiffs to support their argument that Chapter 45 infringes upon their fundamental right to free association involve attempts by states to hinder organizations by some affirmative prohibition upon, or intrusion into, their activities (*see Matter of Bauch v. City of New York*, 21 N.Y.2d 599, 608 n. 5 [1968]). Other than alleging political favoritism, plaintiffs have not demonstrated that the exclusion of their members from the Chapter

45 early retirement incentive directly or indirectly prohibits or intrudes into their activities in violation of their rights to freedom of association. Therefore, Chapter 45 of the Laws of 2010 is not infirm on First Amendment grounds.

CONCLUSION

Based upon the foregoing, the Court finds that the plaintiffs have failed to establish, as a matter of law, entitlement to summary judgment in their favor. Therefore, plaintiffs' motion is denied. The Court further finds that the defendants and defendant-intervenor have sustained their burdens of showing entitlement to summary judgment as a matter of law on the cross-motions. As such, their cross-motions are granted.

The parties' remaining arguments have been considered and found to be without merit, or have been rendered moot or academic in light of the foregoing determination.

Accordingly, it is hereby

ORDERED AND ADJUDGED, that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED AND ADJUDGED, that defendants' and defendant-intervenor's cross-motions for summary judgment are granted; and it is further

DECLARED AND ADJUDGED, that Chapter 45 of the Laws of 2010 is constitutional and valid; and it is further

ORDERED AND ADJUDGED, that plaintiffs' complaint is dismissed.

This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being forwarded to the Attorney General. A copy of the Decision and Order/Judgment together with all supporting papers on the motions are being forwarded to the

Office of the Albany County Clerk for filing. The signing of this Decision and Order/Judgment and delivery of a copy of the same to the County Clerk, shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule relating to filing, entry, and notice of entry of the original Decision and Order.

SO ORDERED, ADJUDGED, AND DECLARED.

ENTER.

Dated: July 23, 2010
Albany, New York

Kimberly A. O'Connor

HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice

Papers Considered:

1. Order to Show Cause (McNamara, J.), dated April 16, 2010; Affirmation of Robert Saperstein, Esq., dated April 15, 2010, with Exhibits 1, 1a-4, & A annexed; Plaintiffs' Memorandum of Law, dated April 15, 2010;
2. Affidavit of James DeWan, sworn to May 19, 2010, with Exhibits 1-7 annexed; Affidavit of David Weinstein, Esq., sworn to May 19, 2010, with Exhibit 1 annexed; Defendants' Memorandum of Law, dated May 20, 2010;
3. Affirmation of Wayne Schneider, Esq., dated May 19, 2010, with unmarked exhibit annexed;
4. Affidavit of Mark Chaykin, sworn to May 20, 2010, with Exhibit A annexed; Affidavit of Stephen Allinger, sworn to May 20, 2010, with Exhibits A-E annexed; Defendant-Intervenor's Memorandum of Law, dated May 20, 2010;
5. Notice of Motion, dated June 1, 2010; Affirmation of Robert Saperstein, Esq., dated June 1, 2010, with Exhibits 1 & 2 annexed; Plaintiffs' Memorandum of Law, dated April 15, 2010;
6. Notice of Cross-Motion, dated June 18, 2010; Affirmation of David L. Cochran, Esq., dated June 18, 2010, with Exhibits A-D annexed; Affidavit of James DeWan, sworn to May 19, 2010, with Exhibits 1-7 annexed; Affidavit of David Weinstein, Esq., sworn to May 19, 2010, with Exhibit 1 annexed; Defendants' Memorandum of Law, dated June 18, 2010;
7. Notice of Cross-Motion, dated June 16, 2010; Affirmation of Wayne Schneider, Esq., dated June 16, 2010, with Exhibits A-F annexed; Affidavit of Richard A. Young, sworn to June 14, 2010; Defendant's Memorandum of Law, dated June 16, 2010, with one unmarked exhibit annexed;

8. Notice of Cross Motion, dated June 18, 2010; Affirmation of Frederick K. Reich, Esq., dated June 18, 2010, with Exhibits A-C annexed; Affidavit of Mark Chaykin, sworn to June 18, 2010, with Exhibit A annexed; Defendant-Intervenor's Memorandum of Law, dated June 18, 2010;
9. Affirmation of Robert Saperstein, Esq., dated June 20, 2010, with Exhibits 1 & 2 annexed; Plaintiffs' Memorandum of Law, dated June 20, 2010;
10. Letter of David L. Cochran, Esq., dated June 4, 2010;
11. Letter of Michael A. Starvaggi, Esq., dated June 7, 2010;
12. Letter of Wayne Schneider, dated June 7, 2010;
13. Affidavit of Angela Addesso, sworn to June 22, 2010;
14. Affidavit of Paula Bienia, sworn to June 22, 2010;
15. Affidavit of Ira Gurkin, sworn to June 22, 2010;
16. Affidavit of Mimi Trudeau, sworn to June 22, 2010;
17. Affidavit of Stephanie Visca, sworn to June 22, 2010;
18. Affirmation of Rosemarie C. Hewig, Esq., dated June 22, 2010;
19. Letter of Frederick K. Reich, Esq., dated June 24, 2010;
20. ~~Letter of David L. Cochran, Esq., dated June 24, 2010; *and*~~
21. Letter of Robert Saperstein, Esq., dated June 24, 2010.