



Continuing education at OPEIU

Office and Professional Employees Local 11 was the host local for the annual West/Northwest Area Educational Conference held Oct. 30-Nov. 2 at the Benson Hotel in downtown Portland. The intense three-day conference drew 65 OPEIU members from the West Coast, Florida and Louisiana. Labor educators Art Wheaton and KC Wagner of the Worker Institute at Cornell University, and Mark McDermott led workshops on Bully Busting, Strategies for Conducting and Accessing Research, and Making the American Dream Work for Everyone. Portland labor attorney Michael Tedesco discussed social media and dealing with impasse. Also in attendance and leading workshops were OPEIU International President Michael Goodwin and Secretary-Treasurer Mary Mahoney. Local 11 members received certificates of completion from Goodwin (center, wearing name badge). They are from left to right: Matt DeVore, president; Rick Wilson, union rep; Mike Richards, executive secretary treasurer; Maureen Colvin, union rep, and Barbara Melton, vice president.

...Supremes hear PERS case

(From Page 1)

Hartman told the seven assembled justices that over the past 40 years, the Oregon Supreme Court has engaged in a clear pattern of decisions as to what constitutes a statutory contractual agreement — which is what PERS is to its recipients — and what can and cannot be added or taken away.

“The bill that changed the COLA for retirees is a full-scale assault on prior case decisions,” charged Hartman. “If this court applies its ‘standard analysis’ to our case, you will have to rule in our favor.”

Hartman contended that the COLA statute is clearly contractual in nature, tied to the general concept that a pension plan is a promise to pay recipients for services rendered. He noted a 1996 decision, the Oregon State Police Officers Association vs. State of Oregon, which involved sick leave benefits. The sick leave statute that was the centerpiece of that case is, said Hartman, structured similarly to the COLA statute involved in Moro.

Hartman walked the court through the 1971 bill that created PERS as we know it today, which included enacting the COLA language. The 1971 Legislature took great pains, Hartman pointed out, with some tweaking from the 1973 session, before landing on 2 percent as the annual COLA percentage rate.

“Those legislators were extremely careful to strike a balance between what was enough, in terms of the 2 percent COLA, and what would have been too much, in terms of PERS’ long-term financial health,” said Hartman. “We can’t parse out this piece here or that piece there; this is all part of the PERS retirement package.”

Justice Martha Walters noted that members of the Oregon Public Service Retirement Program (OPSRP), the third tier of PERS created by the 2003 Legis-

lature, can have some retirement numbers changed, and asked Hartman why not other PERS members? He responded that the legislation creating OPSRP specifically reserved that right for future sessions of the Oregon Legislature to make changes — but there’s no language allowing such leeway for PERS Tier 1 and 2 members in the law.

Attorney George Riemer, retired counsel for the Oregon State Bar Association, took on the issue of the out-of-state tax offset. When federal courts decided in the 1980s that states could not tax federal and in-state public retirees differently, Oregon added a 9.9 percent bump to Oregon PERS members’ benefits to offset the federal tax. The 2013 legislation eliminated that provision from Oregon PERS recipients who move out-of-state, with the idea that such recipients weren’t paying Oregon income taxes and therefore shouldn’t receive an “extra” tax offset. Riemer argued that the law contains no “expiration date” for out-of-state retirees to receive that money.

Three attorneys appeared for the respondents, who were arguing on behalf of state and local governments, who lobbied for the pension cuts to avoid increases in their employer contributions. The ensuing legislation reduced employer pension contributions by roughly \$800 million during the current two-year budget cycle.

Keith Cutler represented PERS. He was peppered by questions from various justices, and his responses continuously revolved back to one assertion: that while the concept of a retiree COLA was indeed contractual, the amount was not. The 2 percent figure was a ceiling, said Cutler, but not a guarantee. Cutler termed the COLA an “add-on” that was not related to benefits earned by retirees when they were working.

In an unusual situation, retired Oregon Supreme Court Justice Mick Gillette took a turn at the lectern, addressing his former colleagues. He pontificated that while the COLA issue may be a statutory contract, it was still a statute and therefore could be changed.

Longtime Hartman foil Bill Gary

was the respondents’ third speaker. Gary has argued the bulk of recent PERS-related cases against Hartman both in court and in front of legislative committees; his law firm represents a variety of local government clients. Some of his points actually contradicted

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Cutler, but Gary’s main contention was that the COLA amount has always been discretionary and that the burden of proof to prove otherwise was on the PERS Coalition and the plaintiffs.

During the rebuttal period, Hartman again reiterated that the COLA benefits were just like any other part of the PERS statutory

contract and cannot be separated. He disagreed with Cutler that COLA benefits were just an add-on and not related to years of service. He also noted that Oregon, by virtue of previous court decisions, is a “unilateral contract state” when it comes to PERS, not an “accrued benefits state.”

The hearing ended a little over two hours after it began,

What happens next? There is no set timeline for the court to render its verdict. Typically, decisions are announced between four and six months after oral arguments, which would be somewhere in the March to May 2015 range. Hartman believes the issues at hand in Moro are not complicated, which could possibly lead to a sooner-rather-than-later announcement.

Justice Jack Landau recused himself from the case because his son is an attorney employed by Gary’s legal firm. Therefore, Oregon Court of Appeals Chief Judge Rick Haselton sat in on the case and will be the seventh vote, along with Walters, Chief Justice Thomas Balmer and justices Richard Baldwin, David Brewer, Virginia Linder and Rives Kistler.

(Editor’s Note: Don Loving is communications director for Oregon AF-SCME Council 75.)

LERC to host Collective Bargaining Institute Dec. 7-12

The Labor Education and Research Center (LERC) at the University of Oregon will hold an Collective Bargaining Institute Dec. 7-12 at the Menucha Retreat Center in Corbett.

The course is designed for union staff and leaders who have a key role in labor negotiations. Participants will learn how to develop and carry out effective bargaining strategies, both at the table and in other arenas, focusing on what it takes to build bargaining power.

Enrollment is limited to 30 participants. For more information, contact Lynn Feekin at 541-346-2789 or email: feekin@uoregon.edu.

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