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Legal and Legislative Update

Retirees Pensionable Salaries Improperly Calculated Reduced By Court

City of Countryside v. City of Countryside Police Pension Bd. of Trustees et al., 2018 IL App (1st) 171029

In an update from a case featured in our April 2017 newsletter, the First District Appellate Court has affirmed a lower court ruling invalidating what the City and DOI termed as pension "spikes" for a number of retired Countryside police officers.

The trouble began in 2002 when the FOP negotiated a contact with the city providing for longevity benefits. Per the negotiated CBA, qualifying officers would receive longevity bonuses of between $800-850 payable during a specific pay period designated by the officer. Labor counsel for the city signed a side letter with FOP's attorney providing the longevity bonus would be calculated as $800 or $850 times 26 pay periods as opposed to simply adding the longevity stipend to the retiring officer's salary attached to rank. The FOP contract was approved by city resolution however, the side letter was not included.

Approximately ten retiring officers took advantage of this calculation resulting in dramatically higher pensionable salaries than what they had ever received while still employed as police officers. Beginning in 2004, DOI examiners found fault with the method by which the pension board was calculating longevity pay. In 2010, both the city and pension board requested advisory opinions from the DOI. In both instances, the DOI responded that, while $850 in longevity pay would be pensionable, it was improper to multiply the longevity stipend by 26 pay periods.

In This Issue

1 Retirees Pensionable Salaries Improperly Calculated by Court

3 Illinois Supreme Court Strikes Down Attempt at Pension Reform

5 Denial of Line of Duty Disability for Arrest Injuries Upheld

7 Physician's Conclusion Police Job Description Was "Administrative in Nature" is Objectively Unreasonable

7 Oak Park Firefighters' Union Sues Over PSEBA Ordinance

8 Military Veteran Firefighter Granted Line of Duty Disability Based on PTSD

9 DOI Stops Issuing Advisory Opinions

10 Reimer & Dobrovolny PC News

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Aware of the DOI opinion, the city retained its own actuary to calculate the required pension levy without use of the side letter methodology. The city began funding the police pension fund using its lower actuarial methodology as opposed to the request from the pension board which continued to rely on the side letter manner of calculation.

In response to a lawsuit brought by the City against the pension board, FOP, and retired officers, numerous defense were raised. First, the Court dealt with the manner of calculation of the longevity pay. It noted, in addition to the DOI opinions, the Illinois Administrative Code provides longevity pay when paid in lump sum, should be prorated to determine the monthly equivalent of the bonus when computing salary for pension purposes.

Dealing with the side letter's manner of calculation as conflicting with the Administrative Code, the Court found the side letter was of no force or effect inasmuch as it was never approved by the city council. Moreover, the Court found the statute/administrative code required pensionable salary be determined as that attached to the officer's rank and included in the municipality's appropriations ordinance. In this case, no appropriation ordinance was enacted by the city calculating longevity bonuses as multiplied by 24 pay periods.

The retirees argued *laches* should apply to prevent the city from modifying their retirement benefits. *Laches* is a legal term preventing recovery where one party has unreasonably delayed in bringing an action and the other party has relied on this inaction/action to their detriment. Rejecting this defense, the Court noted the long standing Illinois principal application of *laches* is generally disfavored towards government bodies. In this case, the court found that doctrine appropriate because it deals with the illegal expenditure of public funds and the public interest in enforcing the Pension Code and ensuring proper funding is greater than the retiree's reliance.

Next, the Court disregarded the defense of estoppel. While the retirees agreed the city and FOP negotiated this benefit knowing full well the intent and cost, the Court found the retirees reliance on receipt of this benefit unjustified inasmuch as the Pension Code, DOI opinions, regulations, and lack of appropriations ordinance should have put them on notice this benefit was illegal.

The retirees also argued their benefits could not be changed because the city never sought administrative review within 35 days. Again overruling the retirees, the Court found the issue here rose to the level of a "systematic miscalculation" falling outside the scope of the Administrative Review Law and therefore, permitting review of the benefits long after the 35 day period had expired.

Continuing to defend against the city on multiple fronts, the retirees next argued the pension protection provision of the Illinois Constitution precluded any adjustment to their previously granted benefits. While the Constitution provides pension benefits are a contractual relationship the benefits of which cannot be impaired or diminished, the Court found that because the benefits at issue in this case were not permissible by law, no such retiree right to the higher benefit existed by contract or law. "The retirees could only 'contract' for benefits allowed by law. Put simply, '[a] right cannot be protected if it does not exist."

Finally, the retirees argued the city's claims were barred by the 5 year statute of limitations. Like all of the other defenses put forth, the court rejected this claim finding a "continuing violation" meaning, the issuance of new monthly checks in an improper amount began a new five year limitation period with each payment.

The relief ordered by the circuit court was affirmed by the Appellate Court. In short, the order provides 1) the city does not have to fund the pension based on the calculations found in the side letter; 2) the pension board must recalculate the pensionable salaries of the individual defendants on a go forward basis and 3) award future benefits without reference to the side letter. It is important to note the city did not seek to "claw back" overpayments made to the retirees.

Given the sheer number of significant issues touched on in the Appellate Court's 46 page opinion, an appeal to the Illinois Supreme Court is possible. We will continue to monitor this case for further developments. ❖

Illinois Supreme Court Strikes Down Attempt at Pension Reform

Carmichael et al. v. Laborers' Retirement Board Employees Annuity and Benefit Fund of Chicago, et al., 2018 IL 122793

Once again, Article XIII, Section 5 of the Illinois Constitution known as the "Pension Protection Clause" operates to thwart the legislature's most recent attempt at pension reform. PA 97–651, effective January 5, 2012 amended Articles 8, 11 and 17 of the Illinois Pension Code. (hereinafter the "Act") Article 8 is the Municipal Employee's Annuity and Benefit Fund of Chicago ("MEABF"), Article 11 is the Laborers and Retirement Board Employee's Annuity and Benefit Fund of Chicago ("LABF"), and Article 11 is the Public School Teachers Pension and Retirement Fund of Chicago ("CTPF.")

Prior to PA 97-651, a teacher participating in CTPF who wanted to earn union service credit while employed with the private union while on leave of absence, was required to make statutory employee contributions to CTPF based upon the percentage of the teacher's salary earned from a labor organization. If this teacher's salary exceeded the salary he would have earned in his Chicago Board of Education position, but for the leave of absence, the labor organization was required to contribute to CTPF the employer's normal cost as set by CTPF.

Earning service credit for union service in the LABF and MEABF was different than CTPF. Participants could receive a leave of absence without pay during the time period that participant was employed full-time by a local labor organization that represented municipal employees. The employees' contributions were based on current salary with a labor organization, the participant could earn union service credit only if the participant does not receive credit in any pension plan established by the labor organization. To receive service credit the participant, or labor organization on the participant's behalf, was required to make all employee and employer contributions to the funds.

PA 97-651 made a number of changes to the Pension Code of which were the subject of this litigation. First, PA 97-651 eliminated a participant's right to contribute to the funds and earn union service credit for a leave of absence beginning after the effective date of the Act, January 5, 2012. Prior to the Act, there was no restriction on when the participant had to begin a leave of absence in order to contribute to the funds to obtain service credit. Second, the Act amended LABF and MEABF to provide that only a salary paid by one of the defined public employers could be used to calculate the "highest average annual salary" upon which participants' pensions were based. This Act amended LABF and MEABF Board's decade-long practice of calculating public employees' pensions using union salaries earned by the participants on leave of absence and upon which their contributions to the funds were based.

The Act added language to provide that the "final average salary" be calculated using the salary before the leave of absence and adding an adjustment for inflation based on the CPI. Thus, under the Act, when a participant had union service credit, his or her pension would not be based upon the salaries he or she actually earned and upon which he or she contributed to one of the funds in his or her last 10 years of service. Rather, the pension would be calculated based on salaries earned before the leave of absence began, plus an inflation adjustment. The pre-leave of absence salaries could be substantially less than the union salary the participant earned and upon which he or she contributed to the fund immediately prior to retirement.

Plaintiffs were nine retired or active employees, and a surviving spouse of the former employee, which were all participants in one of the three pension funds, which were also named as defendants. In addition, three labor unions

intervened as plaintiffs. The plaintiffs alleged, inter alia, that PA 97-651 unconstitutionally diminished and impaired their retirement system benefits in violation of Article XIII, Section 5 of the Illinois Constitution by 1) taking away the benefit of earning service credit for a future union leave of absence and 2) taking away the possibility of using a union salary to calculate the "highest average annual salary."

The State and Pension Funds filed a motion to dismiss the plaintiff's constitutional claims and the circuit court entered an order denying the State's motion to dismiss finding the right to earn union service credit was a retirement system benefit protected by the Pension Clause of the Illinois Constitution, even if the participant had not yet exercised option to take a leave of absence. The circuit court's order also denied the State's motion to dismiss on the question of involving the "highest annual salary calculations." The State filed a motion to reconsider the court's ruling on the constitutionality, which was denied. However, the Court granted the State's motion to reconsider the amendments governing the calculation of "highest average annual salary," and ultimately dismissed the plaintiff's claims challenging this aspect of the Act.

Plaintiffs ultimately filed an amended complaint including new counts requesting the Court declare the fund's practice, combined with the participant's contribution to the funds based upon their union salaries, rather than the lower salary of their former public jobs, created an enforceable contractual right and restricts the application of the "highest average annual salary" rules contained in the amendments. The Court found the relief sought was barred by the Court's earlier interpretation of the highest average annual salary rules, despite the fund's twenty-year practice to the contrary. The Court rejected the plaintiff's argument for prospective relief only. Plaintiffs' appealed all those rulings including the dismissal of their claims alleging that the change in the Act denying a union salary in the calculation of the highest average annual salary violated Pension Protection Clause of the Illinois Constitution.

Appeal was filed directly to the Illinois Supreme Court in light of the constitutional issues raised by the litigation. The first issue was the Act's elimination of union service credit or leaves of absence. Article XIII, Section 5 of the Illinois Constitution, known as the Pension Protection Clause provides as follows:

> "Membership in any pension or retirement system of the State, and any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable, contractual relationship, the benefits of which shall not be diminished or impaired."

The Court correctly recognized that if something qualified as a benefit under Article XIII, Section 5, it cannot be diminished or impaired. This includes pension benefits that flow directly from membership. Thus, once a person's rights become vested, any subsequent changes to the Pension Code, which would constitute a diminishment of the benefits and cannot be applied to that person. Here, it was undisputed that when plaintiffs began their employment and their rights vested, they had a statutory right to have time spent on leave of absence with their local labor organizations factored in their annuity calculations. Consequently, according to the Court, the only issue is whether there was any merit the State's argument that the right to receive service credit on a leave of absence from a public employer to work for a labor union is a "benefit" entitled to protection? The State raised various arguments, including public policy and statutory construction, to no avail. The Court held as follows:

> "Accordingly, we hold that the circuit court correctly determined Public Act 97-651 unconstitutional to the extent that it eliminated a pension benefit for current participants, the ability to earn union service credit previously bestowed by the legislation."

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The Court next turned to the issue of the calculation of highest average annual salary changes contained in the Act. Plaintiffs' argument was that the Act eliminated the possibility of using salary paid to participants by a union to calculate the highest general average salary. Plaintiffs, of course, contended this was a "diminishment" by eliminating higher base salary. The State argued that the Act did not change the meaning of the Pension Code because it always unambiguously required the "salary" to be used for calculating pensions was to be salary attached to the government position in which the employee actually worked. In order to resolve this issue, the Court engaged in statutory construction of the various provisions of the Illinois Pension Code.

After engaging in exhaustive analysis of the various definitions contained in the Pension Code, the Court found that such interpretation suggested by the State would lead to absurd result. The Court stated "[It] would arguably create an absurd result to interpret the statutory scheme as it existed prior to PA 97-651 to exclude the union salary from the calculation of the "highest average annual salary for any four consecutive years in the last 10 years of service." The Court concluded as follows:

> "The amendments effected by PA 97–651 necessarily change the law and thereby diminished plaintiff's retirement system benefits in violation of the Pension Protection Clause of the Illinois Constitution. The circuit court therefore erred in granting the State's motion to dismiss the counts of plaintiff's complaints that raise this issue."

The third aspect of this case that will be only briefly noted, is the Court's determination that the term "pension plan" in Section 8–226(c)(3) is ambiguous and must be liberally construed in favor of the rights of the pensioners so as to apply to a "defined benefit plan" only and <u>not</u> to a "defined contribution plan."

Clearly, a victory here under the Pension Protection Clause of Article XIII, Section 5 of the Illinois Constitution. This is just the latest in a series of victories for public employees who have been protected by the provisions of the Pension Protection Clause. We must be cautious so as not to spike the football in the end zone. Within weeks of the issuance of the Court's opinion in this case, several local papers have raised the hue and cry for the amendment or repeal of the Pension Protection provisions of the Illinois Constitution. We must remain vigilant. Stay tuned. ❖

Denial of Line of Duty Disability for Arrest Injuries Upheld

Kropp v. Bd. of Trustees of the Kildeer Police Pension Fund et al., 2018 IL App (2d) 180277-U

The Kildeer Police Pension Board denied Officer Kropp's application for a disability pension. Kropp's initial disability application requested a line of duty disability pension arising out of injuries to his cervical spine he alleged occurred when he arrested an intoxicated woman who resisted being placed in Plaintiff's squad car. During this incident, the officer was kicked in the chin and chest by the individual being placed into custody. The Plaintiff reported feeling dazed and felt a sensation of pain shooting down his back and into his left hand.

Immediately following the incident, Plaintiff sought treatment at the emergency room. X-rays taken at the emergency room found a prior cervical fusion but were otherwise normal. He was diagnosed with cervical strain, prescribed pain medication, and released.

During the pendency of his disability application, Plaintiff was terminated by the police department. Subsequent to his termination, Plaintiff sought to amend his disability application to include a claim for "not in the line of duty" disability benefits. This claim stemmed from what the Plaintiff alleged were additional disabling conditions unrelated to the line of duty incident identified in his original application. At hearing before the pension board, Plaintiff's request to amend was denied by voice vote. No reasoning or writing was approved at the

time of denial. However, in its written decision and order approved some time later, the pension board found it did not have jurisdiction to consider Plaintiff's not in the line of duty claim because he was no longer a police officer when the claim was made.

Voluminous evidence was admitted at the hearing on Plaintiff's disability application. Included in the evidence were surveillance videos depicting Plaintiff performing physical activities he had informed his doctor's he was unable to do. Narrative reports from the private investigators who took the videos describing their contents were also included in the record before the pension board. The videos and reports were introduced into evidence without objection.

In addition to the video and medical evidence from Plaintiff, the pension board appointed three doctors to perform independent medical evaluations. Two of the pension board doctors found Plaintiff not disabled. The third pension board doctor found Plaintiff disabled but as a result of his prior cervical fusion and not the on-duty incident.

Ultimately, the pension board found Plaintiff failed to prove he was disabled due to a cervical spine condition. The board relied on the x-rays showing a normal spine taken at the emergency room immediately following the on-duty incident as well as subsequent MRI and findings of the pension board IMEs.

Plaintiff submitted three grounds for reversal on review. He argued the pension board's reliance on the video surveillance evidence and denial of his request to amend his application deprived him of due process of law. Plaintiff also argued the board's decision he was not disabled was against the manifest weight of the evidence.

First addressing the due process arguments, the Court found no issue with the pension board's denial of Plaintiff's request to amend his disability application. The Appellate Court noted the firmly established law that in order to seek a pension, an applicant must file an application while still employed as a police officer. In this case, there was no question the request to amend the application to include a claim for a not in the line of duty disability came after Plaintiff had been terminated. While Plaintiff also argued the pension board failed to articulate its reasoning for the denial at the time of the vote, the Court found no requirement it do so and noted the reasons for denial were incorporated into the final written decision and order approved by the pension board.

Plaintiff argued the requested amendment related to conditions arising out of the original application and therefore should be heard under the "relation-back" doctrine. However, the Appellate Court found the "relation-back" doctrine does not apply to administrative proceedings. For these reasons the Court found the pension board properly denied Plaintiff's request to amend his application.

Turning to the video evidence, the Court rejected Plaintiff's argument they were improperly admitted into evidence and should not have been relied upon by the pension board. First, it was noted Plaintiff did not object to their admission into evidence at the hearing. As such, Plaintiff waived any claim they were improperly before the pension board. Moreover, the Court found the videos did not constitute inadmissible hearsay inasmuch as the acts captured on the video constitute admissions (that Plaintiff was not disabled) of a party opponent- an exception to the hearsay rule and the investigation reports provided sufficient foundation. In short, the Court found no due process violation.

As for the underlying pension board determination Plaintiff was not disabled, the Court found ample evidence in the record in support of this decision. In addition to the medical evidence, the board properly found Plaintiff not creditable based on the video evidence and his filing of grievance seeking reinstatement as a policeman at the same time he was seeking a disability pension. As such, the Appellate Court upheld the pension board's denial of Plaintiff's disability request. ❖

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Physician's Conclusion Police Job Description Was "Administrative in Nature" is Objectively Unreasonable

Ashmore v. Bd. of Trustees of the Bloomington Police Pension Fd., 2018 IL App (4th) 180196

A police officer applied for a line-of-duty disability pension, arising from a fall that occurred while pushing a vehicle out of the snow. The police officer claimed he was injured as a result of an "act of duty" and was therefore entitled to a line-of-duty disability pension benefit.

In assessing his claim for line-of-duty disability pension benefits, the Pension Board found persuasive the sole physician who, after carefully reviewing the duty requirements, concluded applicant was not disabled. In addition, the Pension Board noted there were discrepancies regarding applicant's testimony about proposed treatments and details of the initial dispatch call.

The Pension Board concluded applicant was not disabled and denied his disability claim. Because the Pension Board concluded applicant was not disabled, it did not consider whether his claim arose from an "act of duty." The trial court affirmed the decision of the Pension Board.

In reviewing the Pension Board's decision, the Appellate Court overturned the Pension Board and granted applicant a line-of-duty disability pension benefit. In its analysis, the Court found the Pension Board erred in relying upon the sole physician's report. The Court noted the sole physician's report was not credible because it failed to consider relevant, material evidence under the circumstances of the case - namely, applicant's job as "administrative in nature" was objectively unreasonable. As such, the Pension Board's findings were against the manifest weight of the evidence.

Secondly, the Court concluded the Pension Board's finding applicant was less than credible was immaterial to the instant matter. Even if the Pension Board's findings were true, because the areas of applicant's testimony had minimal or no materiality regarding the question of disability, the Pension Board's conclusion were still against the manifest weight of the evidence.

Finally, in the interests of judicial economy, the Court also determined applicant was disabled as the result of an "act of duty." The Court found applicant's pushing a vehicle out of the snow was in accordance with his duty to keep the roadway clear of obstructions and allow tenants to enter and exit their residences. Accordingly, applicant is entitled to line-of-duty disability pension benefits.

Oak Park Firefighters' Union Sues Over PSEBA Ordinance

In our July 2017 newsletter, we reported on a Fourth District Appellate Court decision concerning whether a non-home-rule municipality could establish local administrative proceedings to determine eligibility for benefits under PSEBA. The Court in *Englum v. The City of Charleston* upheld the city's PSEBA ordinance providing for proceedings to establish entitlement to PSEBA benefits. Since the ruling in that case, many municipalities have adopted ordinances purporting to govern application and eligibility for PSEBA benefits.

In recent filing, the Oak Park fighters' union local has filed suit against the village over the requirements of its PSEBA ordinance. The ordinance defines "catastrophic injury" as an injury, "which permanently prevents an individual from performing any gainful work." Recall that, under the PSEBA statute, a first responder must establish they are 1) catastrophically injury 2) as the result of response to what was reasonably believed to be an emergency. The statute does not include a definition of "catastrophic injury" but the Illinois Supreme Court has held it means any injury for which the first responder received a line of duty disability pension benefit from the pension board. Using the Supreme Court definition, the definition adopted by the village ordinance would appear to be more restrictive.

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In addition to the "catastrophic injury" definition, the lawsuit also takes issue with the PSEBA ordinance requirement firefighters file their PSEBA claims within 30 days of filing a pension claim and requires voluminous documentary support accompany the application for PSEBA.

Oak Park's is not the only ordinance purporting to adopt more stringent requirements to qualify for PSEBA benefits. This litigation will be closely watched inasmuch as it has the potential to have a far reaching impact on both municipalities and first responders. ❖

Military Veteran Firefighter Granted Line of Duty Disability Based on PTSD

Prawdzik v. Bd. of Trustees of the Homer Township Fire Prot. Dist. Pension Fd., 2018 IL App (3d) 170024-U

Firefighter Prawdzik was a Homer Township Fire Protection District firefighter who also served as a combat medic in the Air National Guard. Firefighter Prawdzik was deployed to Afghanistan in 2008. While serving his tour of duty in Afghanistan, Firefighter Prawdzik was shot approximately 10 times, experienced about 10 rocket/IED attacks, and on one occasion, was trapped upside-down in a military convoy vehicle following an IED attack. As a result of that attack, he was diagnosed with traumatic brain injury.

Plaintiff returned from Afghanistan in 2009 and resumed working as a firefighter. As a result of his combat experience overseas, Prawdzik suffered from a variety of symptoms tied to PTSD. He sought continuing treatment from the VA for his PTSD. The VA determined his PTSD was related to his military service and award him disability benefits due to PTSD, traumatic brain injury, and tinnitus. During this time, he continued to work as a firefighter.

In 2011, Plaintiff informed the District he suffered from PTSD. Specifically, he noted one of the triggers of his PTSD symptoms was the similarity between military vehicles and the fire engine he drove for the District. The District placed Prawdzik on administrative leave and ordered a fitness for duty evaluation. The doctor performing the fitness for duty evaluation noted that sitting in the cab of a fire truck triggers Plaintiff's PTSD symptoms. However, he also noted Prawdzik had suffered from PTSD for the prior two years which did not appear to affect his work as a firefighter. The doctor found him conditionally fit for duty.

In November of 2014, Prawdzik was dispatched to an emergency call. On the way back from the call, the fire truck Prawdzik was driving was having difficulty shifting. While attempting to fix the problem, Prawdzik mistakenly cut power to the vehicle while traveling at 45 mph. This caused him to have a panic attack because it reminded him of the instance in Afghanistan when his truck was hit by an IED. Two days after this incident, Prawdzik reported he was having PTSD symptoms and asked to go home. He never returned to full and unrestricted duty but had been working full and unrestricted duty in the three years prior to the November 2014 incident.

Prawdzik applied to the pension board for a disability. The pension board had Plaintiff evaluated by three physicians. Dr. Reff found Plaintiff disabled finding his current disability "would be considered an aggravation of his pre-existing psychiatric condition, more likely than not, caused by the incident that occurred on November 7, 2014." Dr. Weine also found Prawdzik disabled opining this was due to "exposure to stress as a firefighter/EMS… initially caused by his combat exposure in Afghanistan but …exacerbated by the stress of firefighter work." Finally, Dr. Frank found Plaintiff disabled and that, as long as he "continues to drive the firefighting/paramedic vehicles required for his employment, he will continue to have aggravation of his PTSD." However, Dr. Frank found cause of the disability was Prawdzik's combat exposure and not the November 2014 incident, although that aggravated the PTSD.

The pension board awarded Prawdzik a not in the line of duty disability finding his PTSD did not incur in or result from an act of duty or the cumulative effects of an act of duty. The board relied on Dr. Frank's opinion that Prawdzik's PTSD was not caused by the November 2014 incident.

In a split decision, the Appellate Court reversed the pension board and granted Prawdzik a line of duty disability. In overturning the pension board, the Court noted the act of duty need not be the sole or even primary cause of the disability. Rather, it is sufficient if the act of duty is an aggravating factor. A disability may be based on a line of duty aggravation of a pre-existing condition. The Plaintiff need only prove the duty-related incident is a causative factor contributing to the disability.
Applying these standards to Prawdzik, the Court found two of the three pension board doctors found the November 2014 incident aggravated the PTSD causing disability. While Dr. Frank did not specifically find the disability was caused by the November 2014 incident, she did opine driving fire trucks aggravated Prawdzik's PTSD contributing to his disability. The Court concluded the evidence established Prawdzik's PTSD was caused, at least in part, by his work duties of driving a fire truck and/or the incident of November 2014.

The Court distinguished the *Robbins* case relied on by the pension board suggesting that, in cases involving mental disabilities, the claimant must prove the act of duty is the *sole* cause of disability as opposed to merely a contributing cause. The Court found *Robbins* inapplicable inasmuch as it was a police case dealing with a much narrower definition of "act of duty". The Court held, "If a firefighter can show that some 'act of duty' (as defined by section 40 ILCS 5/6-110, which applies to firefighters rather than policemen) causally contributed to his disabling mental condition, he may recover a line of duty pension."

A dissenting opinion was filed by one justice who advised he would have found the record contained sufficient evidence to support the pension board conclusion the November 2014 incident did not contribute to Plaintiff's disability. Justice Schmidt also expressed concern the finding Prawdzik was entitled to a line of duty disability based on his PTSD may discourage other police and fire departments from hiring combat veterans. ❖

DOI Stops Issuing Advisory Opinions

Despite a statutory mandate providing, "The Division shall render advisory services to the pension funds on all matters pertaining to their operations", on November 1, 2018, the Department of Insurance unexpectedly announced it will cease issuing advisory opinions. The Siren from the Department directed pension funds to the "frequently asked questions" portion of its website and further suggested, "Questions specific to a pension fund should be addressed by the pension fund board of trustees".

This eliminates a valuable tool for pension funds. Case law has advised DOI opinions are to be given "substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Roselle Police Pension Bd. v. Village of Roselle*. The legal effect of an answer appearing in a "frequently asked questions" section on the DOI website is unclear at best. ❖

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Suggested Agenda Items for April (or 2nd Quarter)

- Review statutory asset allocation requirements and portfolio allocation prior to close of fiscal year.
- Election of active/retired/disabled Trustees.
- Review and/or modification of Board's investment policy.
- Authorize preparation of annual Department of Insurance Report.
- Authorize payment of annual Department of Insurance Compliance Fee.
- Status of independent audit report. (Due within 6 months of close of fiscal year).
- Review and/or modification of Board's Administrative Rules and Regulations.
- Annual filing of statement of economic interest statements for each Trustee.

REIMER & DOBROVOLNY PC News

- October 2-5, 2018, RD attorneys attended and presented at the IPPFA Fall Conference in Lake Geneva, Wisconsin.
- October 29-30, November 1, 8, 2018, RD partner Rick Reimer taught at the IPPFA certified trustee training seminar in Hoffman Estates.
- November 2, 2018, RD partner Brian LaBardi presented at the IPFA Fall Conference in Addison.
- November 14-16, 2018, RD partner Rick Reimer and attorney Mark McQueary attended the National Association of Police Organizations conference in Las Vegas, Nevada.
- November 30, 2018, RD attorneys attended the Illinois Public Sector Labor Law Conference at Chicago Kent School of Law.
- February 4-5, 2019, RD partner will attend the National Association of Police Organizations conference in Las Vegas, Nevada.
- March 4-5, 2019, RD partner Rick Reimer will teach at the IPPFA certified trustee training seminar in Naperville.
- April 29-May 3, 2019, RD attorneys will attend and present at the IPPFA Spring Conference in East Peoria.
- May 3, 2019, RD partner Brian LaBardi will present at the IPFA Spring Conference in Addison.

Legal and Legislative Update

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