

A Public Safety Law Firm

RDL

REIMER DOBROVOLNY & LABARDI PC

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Legal and Legislative Update

Fire Consolidation Board Begins Asset Transfer

In our last newsletter, we reported the announcement by the Firefighters' Pension Investment Fund (FPIF) advising all Article 4 funds of their asset transfer date. As you may recall, assets will be transferred in three stages on either October 1, 2021, November 1, 2021, December 1, 2021, or January 4, 2022. With the October 1 transfer date nearly upon us, there has been a great deal of activity for those funds over the last quarter.

First, by this time all October 1 funds should have approved and executed the draft resolution appointing authorized agents. During this process and as a guidepost to future transfer date funds, it was determined individuals appointed as authorized agents should also be signers on the fund's custody account. Following these preliminary documents, October 1 funds were asked to execute a letter of direction (LOD) giving authority to share information with FPIF and, ultimately, transfer their assets upon receipt of the

In This Issue...

- 1 Fire Consolidation Update
- 2 Police Consolidation Update
- 3 Consolidation Lawsuit Summary
- 3 COVID Relief Funds – Hands Off, Pensions
- 4 Transfer of IMRF Time to Article 3
- 5 Governor Extends Remote Attendance
- 5 PSEBA coverage further defined
- 6 PSEBA benefits end at Medicare eligibility
- 6 Reciprocity for Firefighters hired after December 31, 2011
- 7 Transfer of Chicago PD Time to Article 3
- 7 Employment of Board Members
- 8 RDL Welcomes New Partner
- 9 RDL News

transferable asset list. An important change to these LODs was made by RDL attorneys splitting the single LOD into two separate LODs. The first LOD authorized information sharing while the second LOD authorized transfer of the assets after receipt and review of the transferable asset list by the fund. Without this change, the funds were being asked to approve transfer of assets appearing on a list that had yet to be generated or reviewed by the local fund. This has already proven valuable as some funds have identified errors in the transferable asset list received from FPIF.

Funds that did not timely complete the LODs were moved to a February 2022 transfer date. Correspondence to these funds from FPIF also informed them they are considered in violation of the Pension Code and reported the same to the Department of Insurance.

October 1 transfer date funds have also been sent paperwork to open the electronic portal between the local fund and Northern Trust as custodian for FPIF. This will allow money to flow both to and from FPIF.

Finally, at this point October 1 funds should have adopted or at least discussed how they will continue to pay benefits and other expenses post-consolidation. **“Discussion/adoption of Cash Management Policy”** should be added to agendas for funds that have not yet addressed this issue inasmuch as **this policy must be adopted prior to receipt of the certified asset list which will occur approximately two weeks prior to your fund’s transfer date.** Local firefighter pension funds should formulate, adopt, and implement a written cash management policy prior to their funds transfer date. While the FPIF has provided guidelines for a cash management policy on its website (<https://ifpif.org/policies-publications/>), each fund’s needs are unique. The FPIF guidelines suggest keeping at least three months benefits and

expenses in a local account. It should also be noted, local funds will not be able to call on assets transferred to FPIF for 60 days following the initial transfer of assets. According to the policy adopted by FPIF, following this initial period, local funds may request cash on a monthly basis. Local funds should consult with their accountants, treasurer, and payroll administrator to create and adopt a policy best suited to their needs. Once these details are worked out, your RDL attorney will be happy to assist in making recommended changes to any template cash management policy.

As we go deeper into this never before attempted process, please do not hesitate to contact your RDL attorney with any questions.❖

Police Officers’ Pension Investment Fund Update

Since our last newsletter, the Illinois Police Officers’ Pension Investment Fund (IPOPIF) has hired Steve Yoon as an Investment Officer. Mr. Yoon most recently served as Investment Officer for the Municipal Employees’ Annuity and Benefit Fund of Chicago (MEABF).

IPOPIF is also in the process of RFPs for transition asset manager, CPA services, passive investment management, and actuarial services.

Any additional updates may be found on the Fund’s website at <https://www.ipopif.org/> One final reminder; please recall Reimer Dobrovolny & LaBardi PC serve as general counsel for the IPOPIF. ❖

Consolidation Lawsuit Summary

Arlington Heights Police Pension Fund, et al. v. Governor Jay Robert “J.B.” Pritzker, et al.
Kane Co. Case No. 2021 CH 55

As reported in prior RDL newsletters, on February 23, 2021, a lawsuit was filed in Kane County challenging the Pension Consolidation Act. Since our last newsletter, several rulings have come from the Circuit Court. First, on September 10, 2021, the Court denied the Plaintiffs’ motion for temporary restraining order and preliminary injunction. The Court’s order found, “Plaintiffs have presented a fair question as to the existence of a right in need of protection and a likelihood of success on their claims” but the two Plaintiff funds subject to transfer of assets to the FPIF did not establish a risk of irreparable injury resulting in denial of injunctive relief.

Next, on September 17, 2021, the Court entered an order granting in part and denying in part the Defendants’ motion to dismiss. Specifically, the Court granted Defendants’ motion to dismiss the Plaintiff pension funds for lack of standing. The Court also dismissed Count II of the Complaint for failure to state a cause of action under the Contracts Clause. The Court denied the motion to dismiss the Governor and Director of the Illinois Finance Authority as named Defendants and also denied dismissal as to Court I under the Pension Protection Clause and Count III under the Takings Clause.

Additional dates were set the later giving the Defendants until October 15 to respond to Plaintiffs’ Motion for Summary Judgment. In the meantime, the remaining non-pension fund Plaintiffs filed a Motion for Class certification on September 21, 2021. At the time of this writing, the Court had not yet addressed that Motion.

Updates may be checked at the [Kane County Circuit Clerk](#) under No. 21-CH-000055.

As a reminder, RDL serves as general legal counsel for the Consolidated Police Board and some of the Plaintiff pension boards. As such, RDL is conflicted out and is not involved in any fashion in this litigation nor can we give legal opinion on the same. ❖

COVID Relief Funds – Hands Off, Pensions

The Board of Trustees for Harvey Firefighters’ Pension Fund sued the City of Harvey, seeking to force the State of Illinois to divert money from Harvey’s portion of the coronavirus relief funds issued by the federal government to the underfunded pension for firefighters and police officers. This lawsuit was not the first time Harvey was sued by the pension boards.

Previously, in 2018, the pension funds sought to compel Harvey to pay funds from the city’s sales tax revenue to the pensions. As a result, a settlement agreement was reached, under which a portion of the money collected from sales taxes would go to the pension funds.

However, the settlement agreement reached in 2018 did not apply to federal relief dollars, at least according to one Cook County judge. Ruling that the federal statute, under which the COVID relief funds were provided, prohibited the relief funds from being used to pay pension liabilities, the Court ruled in favor of the City of Harvey. ❖

Even More Confusion on Transfer of Prior Law Enforcement IMRF Time to Article 3

[P.A. 102-0113](#)

As reported in our last newsletter, on May 29, 2021, the Illinois Senate approved House Bill 126 which opens a window to transfer prior IMRF time to Article 3 Pension Funds. That Bill was subsequently signed by Governor Pritzker and became effective July 23, 2021. Under the Bill, an active Article 3 participant may apply to IMRF to transfer previous time served as a sheriff's law enforcement employee, person employed by a participating municipality to perform police duties, or law enforcement officer employed on a full-time basis by a forest preserve district. Unlike some prior IMRF opportunities, this Bill does not apply to any prior IMRF service but rather, is limited to those categories stated above. If a current member of an Article 3 fund falls into one of those categories, they must make application to IMRF within 6 months of the effective date of the Act, on or before January 23, 2022. There is no limit to the amount of creditable service that may be transferred from IMRF to the current Article 3 fund.

Once the application is approved by IMRF, it will send the applicant's contributions with interest, an amount representing employer contributions equal to that amount, and any interest paid by the applicant to re-instate service to the Article 3 fund. Any former IMRF member who took a refund of contributions must reinstate their service by payment to IMRF of an amount equal to their refund plus interest at the actuarially assumed rate. Any reinstatement of refund payment must be made to IMRF within 90 days of notification by IMRF of the cost of such reinstatement.

An active member may choose to transfer their prior IMRF time to their current Article 3 fund upon payment of the difference between the IMRF transfer amount and the amount that would have been contributed had it been made at the Article 3 contribution rate plus interest at the actuarially assumed rate from the date of service to the date of payment. It is important to note this payment must also be made to the Article 3 fund no later than 6 months after the effective date of the Act, on or before January 23, 2022.

There remains some uncertainty on how to properly implement transfers under this new legislation. Since reporting on this Bill in our last newsletter, some questions have been reoccurring. The first is the interest rate to use for payment to the Article 3 Fund. The statute provides it should use "interest at the actuarially assumed rate". The Department of Insurance has confused the matter by advising in an unsigned email 6% should be used. This is incorrect. Funds should use the assumed rate of return from their most recently adopted actuary study.

The other issue we have seen re-occurring concerns what type of IMRF service is eligible for transfer. This issue is largely for IMRF to determine whether the member's service in that Fund is eligible for transfer to Article 3. However, we have been informed by IMRF that in making this determination, they are considering 1) whether the IMRF service was as a sworn law-enforcement officer and 2) whether the municipality for which the member worked had an Article 3 fund at the time of service. For those members whose applications for service transfer are denied, it is our understanding IMRF is issuing determination letters which can be appealed by the member.

One issue remaining unchanged is time is of the essence. The Act contemplates the same 6 month period to both make application to IMRF to transfer

and complete the transfer to the Article 3 fund along with payment of the additional amounts. This must all be accomplished on or before January 23, 2022. Any member interested in this option should begin the process as soon as possible. ❖

Governor Again Extends Remote Attendance Options

As we have all become aware over the course of the pandemic, permanent amendments to the Open Meetings Act have been enacted in response to the necessity to hold public meetings during the ongoing Coronavirus pandemic.

On September 17, 2021, Governor Pritzker signed the most recent Gubernatorial Disaster Proclamation which remains in effect through October 17, 2021. Those who have been following this issue will note the Governor has been issuing 30-day disaster proclamations in succession since March 2020. While recent proclamations have eliminated the finding attendance at the regular meeting location is “not feasible”, this finding may still be made by pension board presidents. As a reminder, the “feasibility” portion of the OMA in this context pertains to how the public attends/participates. If a pension board continues to find in-person attendance at the regular meeting location “not feasible”, that finding should be included on the agenda and the public should be given the opportunity to attend and comment via whatever remote means the public body employs.

As a refresher, the recent amendments to the Open Meetings Act allow a public body the option to hold meetings via phone, video, or other electronic means without the physical presence of a quorum under the following conditions:

- 1) The Governor or Illinois Department of Public Health has issued a disaster declaration covering all or part of the jurisdiction of the public body.
- 2) The head of the public body determines an in-person meeting is not practical or prudent because of a disaster.
- 3) All members of the public body participating in the meeting must verify they can hear one another and all discussion or testimony.
- 4) Members of the public present at the regular meeting location can hear all discussion or testimony and all votes taken unless attendance at the regular meeting location is not feasible due to the disaster. If in-person attendance by the public is not feasible, the public body must provide alternative means for the public to hear the meetings such as using a telephone or web-based link.
- 5) At least one member of the public body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless not feasible because of the disaster.
- 6) All votes must be conducted by roll call of each member.
- 7) Notice must continue to be posted at least 48 hours’ in advance of the meeting.
- 8) The public body must keep a verbatim record in the form of an audio or video recording of meetings held in this manner.

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PSEBA Covers Injuries that Occur “During the Investigation of a Criminal Act”

[Talerico v. Village of Clarendon Hills, 2021 IL App \(2d\) 200318.pdf](#)

PSEBA Benefits End with Medicare Eligibility

This case addresses when benefits are payable under the Public Safety Employee Benefits Act “PSEBA”. The Act requires an employer to pay health insurance benefits if a cop or firefighter received a “catastrophic injury” in the line of duty. Prior case law has determined receipt of a line-of-duty disability pension means the person had a “catastrophic injury”. But PSEBA requires more; the injury must have occurred as the result of: 1). the officer's response to fresh pursuit, 2). the officer or firefighter's response to what is reasonably believed to be an emergency, 3). an unlawful act perpetrated by another, 4). or during the investigation of a criminal act.

In this case, Talerico was a police officer working patrol duty on day shift. He was also the duty evidence technician. During his shift, officers responded to a home invasion. As soon as officers arrived on scene they addressed immediate concerns - they assisted the victim, searched the residence, and searched the area for the offender. Once these initial duties were complete, the scene needed to be processed for evidence. Talerico went back to the station to get his evidence collection equipment. He returned to the residence shortly thereafter to collect evidence. As he was removing his equipment from his squad, he slipped and injured himself, which lead to the disability in this case. The employer objected to his claim for PSEBA benefits. Initially, the Circuit Court ruled only injuries sustained in “emergency” situations qualified for PSEBA benefits. Talerico appealed, and the matter was overturned. The Appellate Court ruled the emergency standard was not applicable to the fourth standard as it requires only that the injury occur “during the investigation of a criminal act”. ❖

[McCaffrey v. Village of Hoffman Estates, 2021 IL App \(1st\) 200395.pdf](#)

McCaffrey was a police officer who was injured in the line-of-duty in 2002. He received PSEBA benefits, which covered his health insurance as well as his wife and child. Approximately 15 years later, his wife and child became Medicare eligible based on disability, but opted out of Medicare. This created an issue because §10(a)(1) of PSEBA states: “*Health insurance benefits payable from any other source shall reduce benefits payable under this Section*”. The McCaffreys argued the Village was responsible to keep paying their health insurance benefit. They reasoned that because they opted out of Medicare, the benefits were not “payable” as defined in the statute. However, the Courts disagreed. The Circuit Court found, and the Appellate Court affirmed, since the McCaffreys were eligible for Medicare, the Village was no longer bound to provide their insurance under PSEBA. In making its decision, the Appellate Court also cited to a 2012 ruling in the case of *Pyle v. City of Granite City*, which held PSEBA benefits were not mandatory for the injured employee after they become Medicare eligible at age 65. ❖

Reciprocity for Firefighters Hired on or after December 31, 2010

[P.A. 102-0081](#) - amending: 40 ILCS 5/4-109.3

Effective July 9, 2021, firefighters hired after December 31, 2010 are eligible for reciprocity if (1) within 21 months after being hired or 21 months from July 9, 2021, whichever is later, notify their newest employer, all previous employers, and the

Public Pension Division of the Illinois Department of Insurance, of their intent to receive reciprocal benefits, and (2) make the required contributions with applicable interest.

This may sound duplicative of the existing statute on reciprocity but there is one important distinction – for firefighters first entering after December 31, 2010, they now have 21 months to notify of this election from their date of hire **or** the effective date of the Act **whichever is later**. That means some firefighters who may have missed a prior window to make this election now have at least until April 9, 2023. This act is explicitly retroactive. ❖

Portability of Chicago Police Pension to Downstate Article 3

[P.A. 102-0342](#) - amending: 40 ILCS 5/3-110

Effective August 13, 2021, an Article 3 (downstate police pension fund) police officer who had previous service as a Chicago police officer may transfer up to 5 years of service to their Article 3 pension providing (1) the police officer was certified at the time employed by the Chicago Police Department, (2) they apply in writing prior to December 31, 2023, (3) they supply satisfactory evidence of the employment, (4) they complete 10 years of service in the Article 3 fund and (4) pay into the Article 3 fund the amount the police officer would have contributed if they had been a regular contributor during such time period plus an amount determined by the board equal to the municipality's normal cost, plus interest at the actuarially assumed rate calculated from the last date of hire.

A police officer would not be eligible for additional service credits in Article 3 for any service for which they are eligible to receive benefits under Article 5 (Chicago) of the Pension Code. ❖

Suggested Agenda Items for

January (or 1st Quarter)

- Approval of annual COLA increases.
- Semi-annual review of closed executive session minutes to determine if needs to remain confidential.
- Determine need for election of beneficiary and active Trustees and/or re-appointment of appointed Trustees – request for re-appointment of appointed Trustees.
- Schedule annual examinations for disabled firefighters/police officers under age 50.
- Annual verifications of eligibility for beneficiaries.
- Review/update contracts with vendors (accountants, actuaries, attorneys, investment managers/advisors or consultants).
- Obtain predatory lending certification forms from Illinois regulated banks.

Prohibition on Employment for Board Members

[P.A. 102-0603](#) - new: 40 ILCS 5/1-109.5

Effective January 1, 2022, Board members of a pension fund, investment board, or retirement system may not be employed by their respective board at any time during his or service and for a period of 12 months after they cease board membership.

However, if a senior administrative staff position becomes vacant, and no executive member is willing to accept the position, a board member may temporarily serve as an interim member of the senior administrative staff if:

(1) A senior administrative staff position is vacant, and the board is in the process of conducting a public search to fill the vacancy;

- (2) A majority of the board votes to designate the board member to fulfill the vacancy;
- (3) The designated board member receives no compensation or benefits;
- (4) The designated board member serves for a period of less than six months; and
- (5) The designated board member vacates their position while serving as interim senior staff member. ❖

RDL Welcomes New Partner Vince Mancini

We are delighted to announce the addition of Vince Mancini as a partner with Reimer Dobrovolny & LaBardi P.C. With 24 years of legal experience, Vince provides his clients with a diverse skill set for preventing and solving most legal problems. A former law clerk with the Illinois Appellate Court and felony prosecutor in DuPage County, his practice centers on both trial work and appellate litigation. This experience helps Vince's clients avoid and/or resolve conflicts before litigation; yet, when a lawsuit ensues, he transitions to a strong advocate for his client's best interests having conducted more than 90 jury and bench trials in both civil and criminal matters, in addition to dozens of evidentiary hearings, arbitrations/mediations, hearings for temporary restraining orders/injunctions, and pre-judgment attachment proceedings. Also, Vince conducted more than 40 appeals in state and federal court, having presented oral arguments before the Illinois Supreme Court, the Illinois Appellate Court, First and Second Districts, and the 7th Circuit Court of Appeals.

Vince's passion is taking care of his clients. He has a diverse experience in many areas of law including employment and discrimination matters, non-compete/non-solicitation disputes, business divorces, dissolutions and accounting proceedings, construction defect, mechanic's lien and breach of contract claims, Uniform Commercial Code and banking matters, probate litigation, and municipal proceedings. Vince's practice includes estate planning, financial restructuring, and transactions, including property purchases and business/asset acquisitions. He continues to expand his practice to

best assist his clients, who include individuals, mid-sized businesses, municipalities, and financial institutions. His pragmatic and no non-sense approach is a great asset to his clients.

Vince is a graduate of Illinois Benedictine College and Chicago-Kent College of Law. He is admitted to practice in Illinois, the United States Supreme Court, the United States Court of Appeals, 7th Circuit, and the Northern and Central Districts of Illinois, including the Trial Bar. He looks forward to assisting you through any legal challenges you or your business may face.

REIMER DOBROVOLNY & LABARDI PC NEWS

- RDL partners Rick Reimer & Brian LaBardi presented at the IPPFA Illinois Pension Conference held both virtually and in person in Oak Brook from September 29-October 1, 2021.
- RDL partner Brian LaBardi will present at the IPFA Spring Pension Seminar November 5, 2021.

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This publication constitutes advertising material. Information contained herein should not be considered legal advice.

Legal and Legislative Update is published periodically. Questions may be directed to:

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