PUBLIC SECTOR LABOR & EMPLOYMENT
LAW REPORT

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Labor and Employment Issues To Watch For In 2006

As hard as it may seem to believe, 2006 is just days away. What will 2006 bring in terms of public sector labor relations? We will be addressing many cutting edge issues for 2006 at the Firm's February 2, 2006 annual public sector seminar (see page 2 for information on the conference and registration deadlines). Without revealing all, below are six issues — in no particular order — inquiring minds may want to track carefully in the New Year:

Retiree Health Insurance

Yes, this is an old standby. But there is always a new twist or two, and with baby boomers reaching retirement age the issue will only grow. Local 150's use of retiree benefits in its health insurance plan to organize employees (see below) is one new twist. The theoretical use of high deductible insurance plans coupled with Health Savings Accounts (HSAs) as a method to theoretically save for retirement is another. HSAs join longevity spikes, VEBAs, and post employment health (PEHP) plans, among other ideas, as attempts to address the issue.

The 500 pound gorilla lurking in the background, however, awaits those progressive employers that have promised to pay, in the future, for some or all of a retiree's health insurance costs when that person retires — as opposed to establishing PEHP or other pay-as-you go, defined contribution-type plans. It used to be employers booked that expense as it paid for the insurance of employees who retired. Very few employers set aside money to fund such future promises like they are required to do for pension funding.

Recent rule changes by the Government Accounting Standards Board, which will be phased in over the next few years, will require that the long-term cost of retiree health insurance plans *must* be measured and reported on an accrual basis (over an employee's working lifetime) using actuarial methods and assumptions, not unlike how employers currently report the long-term cost of an employee's pension benefit. How much money will employers have to record as costs on their balance sheets? Duluth, Minnesota ran the calculation and its liability *exceeds $178 million.* Benefits consulting firm Mercer Human Resources predicts that the national total unfunded retiree health insurance liability that will be placed on the books of public employers will *exceed $1 trillion dollars.* While employers are not obligated to fund these obligations, having those unfunded numbers sitting on the employer's books will not sit well with elected officials, the public, bondholders or other possible lenders.

Articles warning of retiree health insurance have appeared in our May 2005 newsletter (available at www.seyfarth.com), and recently in the New York Times and the Wall Street Journal. In addition, Seyfarth attorneys Ron Kramer and Mark Casciari recently published a law review article in the *Urban Lawyer*, addressing both the new rules and the next question: What legal pitfalls face employers who now want to reduce or eliminate their retiree health insurance programs. The answer, unfortunately, is not pleasant. Copies of the article are available upon request.

Public Safety Employee Benefits Act (PSEBA)

Numerous PSEBA claims are winding their way through internal employer claim procedures and the lower courts. The PSEBA is simply too vague. What is an "emergency"? What is the difference between "supplemental benefits," which are not covered, and "the basic group health insurance plan," which is? What if the employer offers multiple plans? Can an

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The editor of this newsletter is Annette Tyman, an attorney in the Labor and Employment Practice Group of Seyfarth Shaw LLP.

In this issue:

Seyfarth Shaw's Annual Public Sector Employment Law Seminar "Back to School"

Thursday, February 2, 2006

This year, we are trying something different!

In response to your collective requests, we are trying a new format, with several small "classroom-like" groups (hopefully, no more than 40 per group) and a more interactive format.

Who should attend:

Elected Officials, Managers, HR Professionals, Department Heads, University and College Presidents and Deans, School Superintendents and Principals, and any other management representatives responsible for your jurisdiction's labor and employment matters.

Time:

Registration: 8:00 a.m. – 8:45 a.m.
Program: 8:45 a.m. – 4:45 p.m.
Followed by our "Ask the Attorney" reception

Where:

Indian Lakes Resort
250 West Schick Road
Bloomingdale, Illinois
630.529.0200

Cost: $175 per attendee (including lunch)

Registration:

Please visit **www.seyfarth.com/events** for more information and to register for this event.

If you have any questions, please contact Melissa Workman at mworkman@seyfarth.com or 312.739.6645.

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employee who is granted PSEBA benefits ever cease being catastrophically injured? How can an employer find that out, especially if the employee has reached the age where the pension board no longer does exams? Does the *Krohe* decision that "catastrophic" means receipt of a disability pension also mean that an occupational disease pension does not qualify as catastrophic?

Expect a few published appellate court decisions in the next 12 to 24 months. In the meantime, employers should keep a close eye on whether legislative attempts to redefine "catastrophic" gain headway. If Springfield cannot recognize the need for a definition for "catastrophic," there is little hope for any rational legislation this coming year.

Springfield

Speaking of Springfield . . . Each year of late has seen a host of legislation impacting labor and employment, and there is no reason to believe 2006 will be any different. While municipal employers try to define catastrophic under the PSEBA, educational employers likely will be trying to revise the restrictive changes to their pension systems that inadvertently may interfere with legitimate pay increases and promotions. Labor may work on clarifying the Fire Department Promotion Act (FDPA), and no doubt will be pulling out a few surprises no public employer representative had ever thought of before.

IUOE Local 150

Probably the fastest growing public sector union in the state, Local 150 finds itself in the enviable position of being able to sell its own, arguably less expensive health insurance plan which provides some sort of retiree insurance benefit that is attractive to employees. In our experience, the health insurance plan rarely comes close to what many municipalities offer in terms of benefits, and the retiree benefit can be limited at any time (and would go away for current employees, at least, if the employees ever decertified or the employer negotiated itself out of the plan). Employees ultimately get what they pay for.

As for employers there are several problems. Some of them are: 1) the Local 150 Fund allegedly will not accept employers that require employees to pay a portion of premiums; 2) legally, with limited exceptions the Local 150 Fund is not in a position to accept all of an employer's employees; 3) splitting off employees into a separate plan, even if it saves the employer money for that group of employees, may negatively impact insurance costs for the remaining employees; and 4) agreeing to the insurance destroys the internal insurance parity interest arbitrators love, making it difficult to insist on uniformity with the remaining bargaining units.

Despite these problems, Local 150 is using its insurance to organize employees in droves, and employers must decide how to address the insurance issue when it arises — and it will. **Beware:** Local 150 will organize anyone, from public works to white collar to police. Also, with the Teamsters and SEIU no longer part of the AFL-CIO, which limits raids among member unions, arguably employees represented by those unions are fair game for organizing by Local 150. Whether Local 150 will engage in labor relations cannibalism is anyone's guess.

Village of Libertyville

Assuming the decision is appealed (see page 6), the ILRB may learn that it does not have final say over the Public Labor Relations Act. Of course, the IAFF may get the FDPA amended to expressly make promotions to the first rank outside of the bargaining unit a mandatory subject of bargaining (which is what *Libertyville* requires) and, the FDPA could be extended to police if those unions have their way.

Also, the ILRB's new open-mindedness about overturning longstanding precedent may lead to challenges to other issues long considered resolved. More litigation before the ILRB, rather than less, is expected.

Inflation

Inflation this year, given gas price increases, looks to be unusually high. Even though we hope this is an aberration, it may have an impact on bargaining — both in terms of pay increases and the willingness of unions to enter into long-term agreements. Time will tell.

Ronald J. Kramer

Schools May Be Liable For Student's Sexual Harassment of Teacher

The District Court for Puerto Rico recently joined courts in two other jurisdictions to hold that a school, department of education and city government may be held liable for a student's sexual harassment of a teacher. *Plaza-Torres v. Ray et al.*, Docket No. 02-1216, (D.P.R. July 5, 2005).

Ms. Torres was employed by the Department of Education in Puerto Rico from 1998 until her resignation on February 16, 2001. During this time, she worked at the Petra Román Vigo School from October 2000 to February 16, 2001. Ms. Torres alleged that when she began working at the Petra Román Vigo School she felt intimidated by the comments of sexual connotation made by two students, Dávila and Vera. Despite her complaints, Ms. Torres alleged that neither the school nor the Department of Education took any actions to prevent sexual harassment by the students. Ms. Torres filed a lawsuit against the school, her super-

visor, Ivette García-Figuero, the Department of Education and the Commonwealth of Puerto Rico for the failure to take appropriate remedial measures to correct the situation of sexual harassment/hostile work environment at the school. In essence, she alleged that her supervisor failed to take remedial action after being informed of the ongoing harassment.

The Defendants moved to dismiss the lawsuit, arguing that Title VII does not recognize a cause of action for sexual harassment by a student against a teacher. The court held that the Supreme Court and the First Circuit Court had *established employer liability* for sexual harassment/hostile work environment in the following circumstances:

1. Teacher-on-student harassment, *Gebser v. Lago Vista Ind. School Dist.*, 524 U.S. 274, 292 (1998);

2. Student-on-student harassment, *Davis v. Monroe County Board of Education*, 526 U.S. 629, 654 (1999);

3. Supervisor-on-employee harassment, *Burlington Inc. v. Ellerth*, 524 U.S. 742, 759 (1998); *Farager v. City of Boca Raton*, 524 U.S. 775, 780 (1998);

4. Employee-on-employee harassment, *Lipsett v. University of Puerto Rico*, F.2d 881, 901 (1st Cir. 1988); and

5. Non-employee- (e.g., customer or client) on-employee harassment, *Rodriguez-Hernandez v. Miranda-Vélez*, 132 F.3d 848, 854 (1st Cir. 1998).

The court held that the applicable standard was the one utilized in customer-on-employee harassment cases as recognized in the First Circuit's decision in *Rodriguez-Hernandez*, 132 F.3d at 854, as well as in the Eastern District of New York case, *Perez*, slip opinion at 6. Under this standard, an employer/school is liable "if an official representing that institution knew, or in the exercise of reasonable care, should have known of the harassment's occurrence, unless that official can show that he or she took appropriate steps to halt it." *Lipsett*, 864 F.2d at 901; EEOC Guideline, 29 C.F.R. § 1604.11(e).

As the court in *Torres* observed, courts in other circuits have likewise concluded that a teacher may sue for harassment by a student. In particular, the Court of Appeals for the Seventh Circuit and the Eastern District Court of New York have recognized such a cause of action. *Schroeder v. Hamilton School District*, 282 F.2d 946 (7th Cir. 2002); *Lovell v. Comsewogue School District*, 214 F. Supp. 2d 319 (E.D.N.Y. 2002).

In both of these cases, the plaintiffs were teachers suing their respective school districts under the Equal Protection Clause for not taking the appropriate measures to prevent harassment from students on the basis of their sexual orientation. Both courts held that a cause of action for student-on-teacher harassment is actionable under the Equal Protection Clause. *Schroeder*, 282 F.3d at 956; *Lovell*, 214 F. Supp. 2d at 323. More importantly, in *Schroeder*, the Seventh Circuit stated that "were this a Title VII case, the defendants could be liable to Schroeder if he demonstrated that they knew he was being harassed and failed to take reasonable measures to try and prevent it." Based on these precedents, the Court concluded that Ms. Torres properly brought a cause of action under Title VII against the co-defendants, Department of Education, and the Commonwealth of Puerto Rico for the sexual harassment suffered on account of the actions of her students.

In the aftermath of this decision, school boards, departments of education and local governments should be taking proactive steps to prevent liability from student-on-teacher harassment in the same manner as they should be doing for employee-on-employee and student-on-student harassment. Such steps include: 1) training supervisors, managers and other officials on how to recognize and respond to sexual harassment; 2) training teachers and other staff on how to make complaints when they witness or are subjected to such harassment; 3) adopting policies for students and staff defining harassment and explaining the consequences for both students and teachers who engage in such conduct.

Annette Tyman

Dual Function Firefighter/Paramedics Entitled to Overtime, Federal Court Finds

On August 22, 2005, the Court of Appeals for the Ninth Circuit held that the City of Los Angeles' "dual function" firefighter/paramedics were entitled to overtime because the employees did not have the actual responsibility to engage in fire prevention while working as paramedics on paramedic ambulances. *Cleveland v. City of Los Angeles*, Case No. 03-55505 (9th Cir. Aug. 22, 2005).

Facts

The case was brought as a class action by 119 "dual function" or "cross-trained" firefighters/paramedics. Plaintiffs were fully trained and certified in both fire suppression and advanced life support paramedics. Plaintiffs were scheduled as if they were firefighters-working nine 24-hour shifts every 27 days. Plaintiffs were assigned to paramedic ambulances and were responsible for providing medical care, transporting patients to hospitals, maintaining the ambulances and completing related paperwork.

Importantly, the ambulances were not designed to provide fire protection services. They did not carry water, hoses, pumps, ladders, fire-suppression breathing equipment, or any specialized extrication equipment other than a crow bar and a lock cutter. The paramedics did not wear fire protection gear and did not assist with fire suppression. Paramedics were only assigned to a fire scene if there was need for advanced life support services. There was no evidence that any of the plaintiffs were ever ordered to provide fire suppression duties. They could volunteer to perform fire suppression duties, but if they did not, they were not subject to discipline.

The Decision

When plaintiffs filed their complaint the Fair Labor Standards Act (FLSA) did not define who qualified for the exemption available for employees in fire protection positions.[1] However, the Department of Labor had issued regulations, setting out a four part test for determining whether an employee is engaged in a "fire protection activity." The regulations stated that a city paramedic or ambulance worker could qualify for the exemption if the employee is an "integral part" of the agency's fire protection activities. The regulations also provide that an employee who spends more than twenty percent of his or her working time in activities unrelated to fire suppression may not be considered exempt under the fire protection exemption.

Three months after plaintiffs filed their complaint, Congress enacted an amendment to the FLSA which provided a definition for employees in fire protection activities. Under the revised statute, an employee is engaged in fire protection activities if he or she has "the legal authority and responsibility to engage in fire suppression…" 29 U.S.C. § 203(y)(1).

At trial, the District Court held that plaintiffs were not exempt under either the regulatory definition or the revised statute because: 1) plaintiffs do not have the responsibility to engage in fire suppression, prevention, control, or extinguishment, 2) they are not regularly sent to fire scenes, and 3) they spend more than 20 percent of their work hours on non-exempt work. Accordingly, the District Court found the City liable for back-wages for overtime and liquidated damages. The City was ordered to pay $5,131,514 in wages and liquidated damages and $116,550 in attorneys' fees.

The Court of Appeals affirmed. The Court stated that the case turned on whether the firefighter/paramedics had a responsibility to engage in fire prevention duties. Because the plaintiffs did not carry firefighting equipment, wear protective gear, regularly go to fire scenes, were not ordered to perform fire suppression duties and primarily provided medical services, the plaintiffs did not have the responsibility to engage in fire suppression, prevention, control, or extinguishment. The Court held that whether the old regulatory standard or the new statutory standard was applied, plaintiffs were not exempted under the FLSA.

Conclusion

Wage and hour collective actions are on the rise in all sectors of the economy, and they can be extremely expensive. Claims like the one brought against Los Angeles are becoming more frequent. For instance, the City of Houston last year settled a collective action brought by their paramedics for nearly $80 million. And in July 2005, the District Court in Kansas held that a paramedic could bring a collective action for unpaid overtime against Johnson County.

It is a rule of thumb for all employers, public or private, that if you want to exempt an employee under the FLSA, you better make sure that the employee's actual duties fit under an exemption. In the Los Angeles case, the Court found that training as a firefighter is not sufficient if the employees' duties do not involve a responsibility to engage in fire-suppression. It is therefore important for public employers to determine that firefighter/paramedics are *actually* sent to fire scenes and are available and required to engage in fire-suppression if the employer wishes to classify the employee as one who engages in fire protection activities.

Brian J. Hipp

Court Holds There Is No Right Under The FMLA To Be "Left Alone"

The Court of Appeals for the Third Circuit recently rejected an employee's demand to be "left alone" during his Family and Medical Leave Act (FMLA) approved sick leave. *Callison v. City of Philadelphia*, No. 04-2941, 2005 U.S. App. LEXIS 6770 (3rd Cir. Apr. 5, 2005). The Court concluded that the FMLA does not prohibit employers from enforcing policies aimed at protecting themselves against employees who abuse sick time. Indeed, as long as the policies do not diminish or conflict with the provisions of the FMLA, employees must adhere to the stated rules even if they are on an approved FMLA leave.

[1] The FLSA, 29 U.S.C. § 201, et sec., provides exemptions for executive, administrative, professional, and outside sale employees 29 U.S.C. § 213(a). These classes of employees are not entitled to overtime under the law. Fire protection and law enforcement employees are entitled to overtime, but "for those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required . . . until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28." 29 CFR § 553.230(a).

At issue was whether the employer's sick leave policy interfered with the employee's rights under the FMLA. The policy required employees on leave for their own illness to report whenever the employee left their home during regular business hours. The employees were permitted to attend to personal needs related to their illness provided they contacted the employer's "Sick Control Hotline" before leaving and when returning home. The policy also put employees on notice that they could be contacted via telephone or home visits by a sick leave investigator to ensure the employees were actually at home during their time off.

The Plaintiff in this case suffered from stress related anxiety disorders. The Plaintiff sought and was approved for a FMLA leave of absence. During three separate investigative contacts, the employee was not at home and failed to contact the Hotline in violation of the company's sick leave policy. As such, the employee was subjected to three progressive disciplinary actions including: 1) a written warning; 2) a one-day suspension; and 3) a three-day suspension. The suspensions were served upon the Plaintiff's return to work after his leave of absence ended.

The Plaintiff alleged the disciplinary actions interfered with his rights under the FMLA. The Third Circuit agreed with the lower court's reasoning that the purpose of FMLA was not compromised by the employer's sick leave policy because it did not prevent or discourage employees from taking FMLA leave.

Instead, the Court found the policy "simply ensure[d] that employees [did] not abuse their FMLA leave." Because nothing in the FMLA prevents employers from ensuring that employees on sick leave do not abuse their time off, the Court refused to invalidate the employer's policy. As such, the Court concluded that the Plaintiff's discipline for failing to comply with the policy did not interfere with his FMLA rights.

As this case demonstrates, employees do not have some sort of an "unapproachable" status when they are on an FMLA approved sick leave. Instead, employees must remain in compliance with an employer's sick leave policy, as long as the policy does not conflict with the rights conferred under the FMLA. Therefore, after ensuring their policies comport to the provisions of the FMLA, Illinois' public employers should consistently apply them to all employees regardless of their leave status.

Annette Tyman

Supreme Court Lets Controversial Comp Time Decision Stand

The Supreme Court denied review of the Court of Appeals for the Sixth Circuit's decision finding that the City of Cleveland, Ohio violated the FLSA when it refused to let more than 1,300 police officers take compensatory time off (comp time) because doing so would require Cleveland to pay overtime to substitute officers. *City of Cleveland v. Beck*, 125 S. Ct. 2930 (2005).

Under the Department of Labor's regulations interpreting the FLSA, municipalities must grant comp time requests "within a reasonable period . . . if the use of compensatory time does not unduly disrupt [] operations." 29 U.S.C. § 207(o)(5). In its decision, the Sixth Circuit ruled that Cleveland did not establish that the cost of allowing the officers to take comp time would "unduly disrupt operations." *Beck v. City of Cleveland*, 390 F.3d 912 (6th Cir. 2004). The Sixth Circuit reasoned that Cleveland's alleged disruption went to the fiscal impact of comp time — not to the disruption of operations. *Id.*

The Court of Appeals for the Seventh Circuit, which encompasses Illinois, Wisconsin, and Indiana, has yet to rule on this issue. However, one of the Seventh Circuit's district courts has ruled that municipalities must grant comp time even if doing so means that it must pay substitutes overtime. *Debraska v. City of Milwaukee*, 131 F.Supp.2d 1032, 1037 (E.D. Wis. 2000). Under the current state of the law, municipalities in Illinois face considerable risk if they refuse to grant comp time requests on the basis that doing so would require them to pay substitutes overtime.

Molly Eastman

ILRB Issues Long-Dreaded Libertyville Decision

On November 28, 2005, the Illinois Labor Relations Board (ILRB) finally issued its written decision explaining its August 2005 bench decision regarding *Village of Libertyville*, Case No. S-CA-05-045. *Village of Libertyville* addressed a matter of first impression: whether, in light of the Fire Department Promotion Act, fire department promotions to the rank immediately outside of a bargaining unit are mandatory subjects of bargaining. In *Village of Franklin Park*, 8 PERI 2039 (IL SLRB 1992), *aff'd*, 265 Ill. App. 3d 997, 838 N.E.2d 1144 (1994), the then Illinois State Labor Relations Board had found that employers had *no duty to bargain* over promotions to ranks outside of the bargaining unit.

Village of Franklin Park had been the law of the State since 1992, and was well known to the firefighter unions when they lobbied for the passage of the Fire Department Promotion Act, 50 ILCS 742 (FDPA), in 2003. The FDPA sets forth extensive, detailed minimum guidelines for promotions to firefighter ranks *regardless* of whether those ranks are within a bargaining unit. Nowhere, however, does the FDPA or even its legislative history provide that, contrary to *Village of Franklin Park*, promotions to firefighter ranks outside of a bargaining unit would be "mandatory" subjects of bargaining.

The FDPA does provide, however, that the FDPA is to serve as "a minimum standard" and "shall be construed to *authorize and not to limit*" bargaining. Most considered this language necessary to permit bargaining over issues covered by the FDPA provided, of course, the issue was otherwise a mandatory subject of bargaining. Thus when its firefighters demanded to bargain over the rank of lieutenant, the Village of Libertyville refused in light of *Village of Franklin Park*.

The ILRB General Counsel, in a non-precedential declaratory ruling, and then an ILRB Administrative Law Judge *both* recognized that the FDPA did not overrule *Village of Franklin Park*, for nothing within the FDPA required or mandated bargaining over positions outside of a bargaining unit. In the ILRB decision, ILRB Member Hernandez agreed, properly recognizing that "had the Illinois legislature intended to make bargaining over promotions to non-unit positions a mandatory subject of bargaining, it could have done so by using the well-known phrase 'mandatory subject of bargaining.'"

Unfortunately, Member Hernandez expressed his views in a dissenting opinion. The majority of the ILRB decided to ignore its own General Counsel's opinion and overrule the ALJ to find that "the FDPA establishes that promotions to non-unit positions immediately above the highest rank included in a fire department bargaining unit are mandatorily negotiable." Why? According to the majority: 1) its ruling is supported by the plain language of the statute; and 2) the FDPA would be "divest[ed]" "of any meaning or purpose" were promotions to the first rank outside of a bargaining unit not mandatory.

This decision is ripe for appeal, and it is anticipated that the Village of Libertyville will do just that. Given that this was one decision that many thought even a labor-friendly board would side with employers on, *Libertyville* may be a harbinger of what is to come.

Ronald J. Kramer

Seventh Circuit Holds that Plaintiffs Need Not Allege "Adverse Employment Action" in Retaliation Suits

In *Washington v. Ill. Dep't of Revenue*, 2005 U.S. App. LEXIS 17977 (7th Cir. Aug. 22, 2005), the Court of Appeals for the Seventh Circuit allowed an employee to proceed with a retaliation claim against her employer for changing her working hours from 7:00 a.m. - 3:00 p.m. to 9:00 a.m. - 5:00 p.m. in the wake of a discrimination suit. According to the complaint, Ms. Washington maintained a 7:00 a.m. - 3:00 p.m. work schedule for 16 years. The earlier hours enabled her to care for her son, who suffered from Downs Syndrome. Ms. Washington alleged that the Department of Revenue ended the arrangement after learning that she filed unrelated race discrimination charges with state and federal officials.

The Seventh Circuit's decision in the *Washington* case is important for a few reasons. First, it confirms that Title VII's anti-retaliation law described in Section-*2000e-2*(a) is broader than the anti-discrimination law outlined in Section-*2000e-3*(a). According to the opinion, Title VII not only prohibits employers from lowering an employee's salary or altering his or her workplace responsibilities, *it also precludes employers from taking other "significant" retaliatory acts inside or outside of the workplace.*

Second, *Washington* indicates that the test of whether an employer has taken a "significant" retaliatory action is not purely objective. In the case at hand, the Seventh Circuit conceded that the change of hours would not be "significant" for most employees. Nevertheless, the Court permitted the case to move forward because "Washington was *not* a normal employee, and [the department] knew it." If an employer responds to a complaint about its employment practices by setting out to "exploit a known vulnerability" and does so in a way that causes "significant . . . loss," it may be liable for retaliation.

Scott M. Paler

Seyfarth Shaw Attorneys' Public Sector Activities

Ron Kramer and **Mark Casciari** published an article entitled "Government Accounting Standards Board (GASB) Statement No. 45 Makes Public Employers Revisit Retiree Health Insurance," in the *Urban Lawyer*.

On August 29, 2005, **Mary Kay Klimesh** testified before the Illinois Education Excellence Task Force on behalf of the Illinois Council of School Attorneys addressing issues related to special education due process hearings.

On August 31, 2005, **Marc Jacobs** held a national teleconference on "Employee Record Retention: What to Keep to Avoid Employment Litigation," sponsored by Thompson Publishing.

On September 16, 2005, **Patti Hubbard** spoke at the National Employment Law Institute's 25th Annual Public Sector EEOC and Employment Conference in San Francisco. The topics included "Family and Medical Leave Act Developments" and "Developments Concerning The Interaction Between The ADA, FMLA, And Other Leave Laws."

On September 22, 2005, **Marc Jacobs** presented a program entitled "Managing A Crisis Before It Manages You" to the CFO Roundtable in Woodridge, Illinois.

On September 23, 2005, **Jill Leka** gave a presentation at the 92nd Annual Illinois Municipal League conference entitled "Collective Bargaining and Your Municipality."

On October 13, 2005, **Jim Powers** presented a full-day labor relations course for the Northeastern Illinois Public Safety Training Academy (NIFSTA) in connection with its Management IV training course for fire officers.

Jill Leka gave a presentation at the NPELRA Academy of Interest Arbitration in Galena, Illinois on October 23, 2005.

Jim Baird joined Illinois Labor Relations Board General Counsel Jacquelyn Zimmerman and FOP Attorney Gary Bailey in delivering a presentation to the Chicago-Kent School of Law's Annual Public Sector Symposium. The program was held on November 4, 2005 and the subject was "Recent Decisions of the Illinois Labor Relation's Board." **Ted Clark** participated in the same symposium on the subject of "Interest Arbitration."

Mary Kay Klimesh gave a presentation on the Individuals with Disabilities Education Improvement Act of 2004 at the Illinois Council of School Attorneys Annual Meeting on November 18, 2005.

Mark Lies, Mary Kay Klimesh, Cynthia Mooney and **Jim Powers** presented on the Basics of Emergency Contingency Planning at the 2005 Joint Annual Conference of the Illinois Association of School Boards, the Illinois Association of School Administrators, and the Illinois Association of School Business Officials on November 19, 2005.

On December 1, 2005 **Ed Bergmann**, **Marc Jacobs**, **Bob Smith, Yvette Heintzelman**, and **Jim Powers** presented at the Year End Labor Relations Update for the Illinois Public Employer Labor Relations Association (IPELRA) covering topics such as the new Department of Labor regulations, the AFL-CIO breakup, 2005 legislative developments and workers compensation, disability and pension issues.

Mary Kay Klimesh, **Cynthia Mooney**, and **Alyssa Burghardt** submitted a chapter to the Illinois Institute of Continuing Legal Education for publication addressing the Individuals with Disabilities Education Improvement Act of 2004.

Jim Baird will be speaking at the Annual Meeting of the Northern Alliance of Fire Protection Districts on February 18, 2006, in Oak Brook, Illinois on collective bargaining and the respective roles of Fire District Commissioners, District Trustees and Unions on disciplinary and promotional issues. **Jim** will also give the Keynote Address at the Annual Training Meeting and Conference of the National Public Employer Labor Relations Association on March 27, 2006, in Newport Beach, California.

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