



ILLINOIS PUBLIC PENSION FUND ASSOCIATION

An Association of Police and Fire Pension Funds

PENSION TRUSTEE NEWSLETTER

LEADING PUBLIC PENSION FUNDS THROUGH THE 21ST CENTURY

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SUPREME COURT CLARIFIES SCOPE OF REVIEW IN DISABILITY CASES

Generally, in pension disability cases, there are two basic issues that a police or firefighters' pension board needs to decide. First, is the pension applicant disabled for service in the police or fire department? Second, if so, was the disability caused by or did it result from the performance of an act of duty. If a pension applicant appeals a pension board's disability decision to the reviewing courts, whether the board's decision is affirmed or reversed, may well depend on the standard of review that the court applies.

The applicable standard of review determines the extent of deference afforded by the court to the pension board's decision.¹ The appropriate standard depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact.² Rulings as to a question of law are governed by a *de novo* standard of review and the court is free to substitute its judgment for that of the administrative agency.³ In contrast, rulings on questions of fact will only be reversed if the decision is against

the manifest weight of the evidence.⁴ This is a highly deferential standard of review. A mixed question of law and fact is reviewed under the clearly erroneous standard, which is somewhere in between the previous two standards.⁵ No matter what standard of review is applied, the pension applicant bears the burden of proof, and the pension claim will be denied if the police officer or firefighter fails to sustain that burden.⁶

The issues as to whether the pension applicant was in fact disabled and whether the disability was caused by an act of duty were historically governed by the manifest weight of the evidence standard of review. Under that standard, if there is any evidence in the record to support the board's decision, a reviewing court cannot reweigh the evidence or substitute its judgment for that of the board.⁷

Recently, however, some appellate court cases have held that the issue of whether a pension applicant qualifies for a disability pension involves a mixed question of law and fact and should be reviewed under the less deferential clearly erroneous

standard.⁸ The most recent case to come to this conclusion was *Marconi vs. Chicago Heights Police Pension Board*.⁹ However, on October 19, 2006, the Illinois Supreme Court reversed the appellate court's decision in *Marconi*.¹⁰

In this case, Marconi, a Chicago Heights police officer, was diagnosed with "major depression along with stress, related both to work and his outside life circumstances" in 1996. In early 1997 Marconi filed an application with the Chicago Heights Police Pension Board. In accordance with 40 ILCS5/3-115, the Board required the applicant to be examined by four physicians.¹¹

The circuit court confirmed the Pension Board's decision. The appellate court reversed and held that the Board erred in denying Marconi a disability in light of the medical evidence indicating the applicant was disabled. As indicated above, in reaching this decision, the reviewing court applied a clearly erroneous standard of review. The appellate court also ruled that section 3-115 as applied in this case, violated (Cont. on P.2)

Supreme Court Clarifies Scope of Review in Disability Cases (Cont. from P.1)

Marconi's right to due process.

The Supreme Court on review held that the question presented on appeal was whether the evidence in the record supported the Board's denial of a disability pension. This is a question of fact governed by the manifest weight of the evidence standard, not the clearly erroneous standard that the appellate court applied. The court then concluded that the Pension Board's decision that Marconi failed to establish his eligibility for a disability pension was not against the evidence. The court held that the Board could properly rely on the minority opinion of Dr. Harris that Marconi was not disabled. Since the medical evidence was conflicting, it was the Pension Board's function to determine the appropriate weight to be given the evidence. The Supreme Court re-affirmed that the manifest weight of the evidence standard is a very high threshold

to surmount.

As to the unconstitutionality of 40 ILCS5/3-115, the Supreme Court vacated the appellate court ruling. Citing a recent pension board decision,² the Supreme Court ruled that questions regarding the constitutionality of statutes should only be considered where the case cannot be determined on other grounds. Since the case could be determined under the manifest weight standard, it was unnecessary for the appellate court to address the constitutional issue.

The Supreme Court's decision in *Marconi* should make it easier for pension boards to have their disability pension affirmed by the courts.

¹ *AFM Messenger Service vs. Department of Employment Security*, 198 Ill.2d 380, 763 N.E.2d 272 (2001)

² *City of Belvidere vs. Illinois State Labor Relations Board*, 181 Ill.2d 191, 692 N.E.2d 295

(1998).

³ *Branson vs. Department of Revenue*, 168 Ill.2d 247, 659 N.E.2d 961 (1995).

⁴ *Robbins vs. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill.2d 533, 687 N.E.2d 39 (1977).

⁵ *City of Belvedere vs. Illinois State Labor Relations Board*, supra.

⁶ *Iwanski vs. Streamwood Police Pension Board*, 337 Ill.App.3d 210, ___ N.E.2d ___ (1992).

⁷ *Rhoads vs. City of Calumet City Police Pension Board*, 293 Ill.App.3d 1073, 689 N.E.2d 260 (1997); *Ryndak vs. River Grove Police Pension Board*, 248 Ill.App.3d 486, 618 N.E.2d 606 (1993).

⁸ *Knight vs. Village of Bartlett*, 338 Ill.App.3d 892, 788 N.E.2d 205 (2003); *Viriden vs. Board of Trustees*, 304 Ill.App.3d 330, 709 N.E.2d 986 (1999).

⁹ 361 Ill.App.3d 1, 836 N.E.2d 705 (2005).

¹⁰ *Marconi vs. Chicago Heights Police Pension Board*, ___ Ill.2d ___, ___ N.E.2d ___, 2006 Ill. LEXIS 1648 (2006).

¹¹ The statute only requires three physicians, but in this case the Board had the applicant examined by three psychiatrists and a psychologist.



IRS ISSUES PRIVATE LETTER RULING ON EMPLOYEE CONTRIBUTIONS TO RHS PLANS!

Just as we were going to press, a significant PLR was issued regarding the taxation of employee post-retirement healthcare plans using the RHS (IRC Section 115) model. At first read, it does not appear to affect the VEMA model. We intend to have a complete analysis available at www.ippfa.org in the near future.

It is advisable to consult with a competent benefit counsel on this subject if you have a Retirement Healthcare Plan. You may also call Donald Hook Technical Director of IPPFA Benefits @ 773-617-7615 to discuss how this may affect your jurisdiction or for a legal referral.

PENSION TENSION

A federal judge has refused to toss out a lawsuit accusing Harvey officials and Mayor Eric Kellogg of retaliation against a firefighter who helped cut pension payments to his double-dipping boss.

"The mayor should have been aware that retaliation against a public employee for speaking out on a matter of public concern would be unconstitutional," U.S. District Judge Charles Kocoras wrote in the Dec. 7 opinion.

Former Fire Capt. Frank Hauenschild filed the federal lawsuit two years ago alleging he was essentially forced to quit the department. Hauenschild, who sat on the department's pension board, was one of several firefighters who voted to cut the monthly pension benefits of fire department head William Bell.

"You guys are messing with my money," Bell allegedly told Hauenschild when he learned of the move. "When you mess with a man's money or his livelihood, that is serious."

Bell had been with the department 25 years and was chief when he was forced out by then-Mayor Nickolas Graves in 1996. He soon found a job as "community safety director" at School District 152 in Harvey and reported directly to Kellogg, who is assistant superintendent at the district.

After Kellogg was elected mayor in 2003, he

booted Graves' fire chief and installed Bell at the top of the department. When he returned to the department, Bell's \$1,700 monthly pension benefits, which came on top of a salary now approaching \$80,000, stopped flowing because state regulations prohibit firefighters from collecting pension benefits while working for the department where they earned the benefits.

Months later, a Harvey ordinance crafted by city attorney Bettie Lewis -- Kellogg's niece -- formally appointed Bell to the newly created job of "public safety fire administrator." At a December 2003 fire pension board meeting, Kellogg argued the job-title designation meant Bell should have his pension benefits reinstated.

"I understand exactly," said Kellogg, who is a member of the pension board, according to minutes of the meeting. "We are talking about a fire administrator versus a fire chief ... It will be a serious black eye to the city of Harvey to do anything less than giving Mr. Bell his due in terms of with this pension."

Other Southland towns, including Oak Forest, Lansing, Hickory Hills and Park Forest, have clashed with state regulators because of similar arrangements in which retired fire or police chiefs are rehired under new titles and try to collect both a salary and pension.

Kellogg cited those previous cases and also suggested racism could have led to Bell's arrangement within the predominantly white fire department being jeopardized. He was particularly galled that Bell, who is black, had been forced out by Graves, who is white, during Black History Month a decade ago.

The fire pension board -- made up of Kellogg, the city treasurer, clerk and four firefighters -- ultimately voted 4 to 3 to continue denying Bell his pension benefits. Hauenschild voted in favor of pulling the benefits, and under grilling from Kellogg, admitted he was the one who had first contacted a pension board lawyer about the issue.

Two days later, Bell moved Hauenschild off the traditional firefighter shift of 24 hours on/48 hours off and made him work normal five-day weeks handling administrative tasks. Hauenschild, who also is an attorney, complained the new schedule made his side job of practicing law impossible -- and quit after about a month.

In the still-pending federal lawsuit, attorneys for the city and Kellogg first tried unsuccessfully to have the case dismissed and then recently asked for a judgment in their favor. In a ruling paving the way for the case to go to trial, Judge Kocoras refused to decide the case in the city's favor and declared there were indications Hauenschild's First Amendment rights were violated.

"It is hard to believe that the public would not be interested in a retired firefighter being newly appointed 'Fire

Administrator' and by virtue of the technicalities of his appointment, still collecting a pension," Kocoras wrote. "Hauenschild has offered sufficient evidence, at this point, from which a reasonable jury could conclude that the severity of the actions taken against him, almost immediately after his vote, were likely to deter protected speech."

City officials and lawyers on either side of the case did not return messages last week. Bell has insisted through an administrative appeal of the pension board's decision and his own federal lawsuit that his position as fire administrator means he shouldn't be considered a chief and is therefore eligible for benefits. In fact, Bell's firefighter son Jason last year flew through the department ranks -- skipping lieutenant, captain and deputy chief -- and was appointed chief by Kellogg, according to court papers.

"Again, everything we do is above board," Kellogg said in a deposition for the lawsuit. "We try to -- we operate with the highest degree of moral character and integrity."

Harvey has been slapped with dozens of federal lawsuits, most of them alleging police misconduct, since Kellogg's election. Just last week, a federal court jury awarded \$50,000 to a man who claimed he was wrongly arrested last year on the orders of a top-ranking police commander.

http://www.dailysouthtown.com/news/harvey/231293.dst_harvey_1217.article

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COURT PROVIDES GUIDANCE ON ADJUDICATING MENTAL DISABILITY PENSION CLAIMS INVOLVING FIREFIGHTERS

Until recently, firefighter pension fund boards had little guidance in evaluating a mental disability application of a firefighter. While there has been a plethora of case law involving police officers with mental disability claims, the only reported case in Illinois involving a firefighter was *Graves v. Pontiac Firefighters' Pension Board*, 281 Ill.App.3d 508 (4th Dist. 1996). However, in the recent decision of *Hammond v. The Firefighters Pension Fund of the City of Naperville*, Ill.App.3d, _____, 859 N.E.2d 1094 (2nd Dist. 2006), the Second District Court has now provided some guidance for firefighter pension fund boards in evaluating whether a mental disability is duty-related. In *Hammond*, the court upheld the Board's decision to award a firefighter a non-duty disability pension -- and deny a line-of-duty disability pension -- due to his psychological condition.

In early 2001, City of Naperville firefighter John Hammond experienced episodes of depression and anxiety, including lightheadedness, dry mouth, shortness of breath, chest discomfort, panic symptoms, and general loss of composure, all of which significantly affected his work performance. In September 2001, Hammond lost his compo-

sure following an incident with another firefighter, and then broke down in the presence of superior officers who approached him to discuss the incident. In early 2002, Hammond was reprimanded for an incident during his annual physical, which a nurse perceived as sexual harassment. Shortly thereafter, he reported experiencing symptoms of anxiety while delivering a baby on the job, and he expressed doubts regarding his ability to continue to perform his job.

During the period between January 2001 and June 2003, Hammond was referred to a psychiatrist and began to receive counseling from a licensed professional. He was placed on administrative leave, referred to a psychologist, and assigned to alternate duty. He then returned to full-time duty, but was soon reassigned to administrative duties and referred to another psychiatrist. On June 25, 2003, he applied to the Board for line-of-duty disability benefits.

Shortly after submitting his disability application, Hammond received two separate psychological evaluations from physicians who concluded he suffered from "very significant" depression, anxiety, and panic attacks. Two of the physicians linked Hammond's symptoms "very directly to the cumulative trauma, demand, and pressure of his

job as a fireman/paramedic." Hammond submitted these evaluations to support his application. Hammond was then evaluated by an independent psychologist appointed by the pension board, as well as by three Board-appointed independent psychiatrists, two of whom concluded that he was disabled. However, only two of the psychiatrists found Hammond's disability to be duty-related, while the psychologist and the third psychiatrist determined it was non-duty related.

At the end of the two-day hearing in December 2004, the Board voted to award Hammond a non-duty disability pension and deny his request for a line-of-duty disability pension. The Board directed its counsel to draft an order reflecting its decision. However, before the order was drafted, the Board mailed a memorandum to Hammond, apprising him of the amount of the non-duty disability pension benefit. In response, Hammond filed a complaint for administrative review on January 11, 2005. The Board's motion to dismiss the complaint on the grounds that it was premature was unsuccessful. Ultimately, on April 27, 2005, the Board adopted a detailed written Findings and Decision which was forwarded to Hammond. Upon receipt of the written

decision, Hammond filed a second complaint for administrative review. Since two complaints for administrative review had been filed based on the same Board's decision, the trial court consolidated the two proceedings, and granted the Board's motion to dismiss the second complaint. The trial court then affirmed the Board's decision to grant Hammond a non-duty disability pension. Subsequently, Hammond appealed both the trial court's dismissal of his first complaint for administrative review and its decision to uphold the Board's ruling.

The court first addressed the issue regarding jurisdiction of the trial court. The court considered whether the initial memorandum sent to Hammond informing him of the pension benefit amount prior to issuance of the formal Findings and Decision was sufficient to trigger the thirty-five day limitation period to seek administrative review under the Administrative Review Law (735 ILCS 5/3-103). The court found that the memo initially sent to Hammond was sufficiently clear to inform him that it was not intended to serve as a "full expression" of the Board's decision and that a formal, complete written decision was to follow. Consequently, the court held that the written Findings issued on April 27, 2005, triggered the thirty-five day limitation period, (Cont. on P.6)

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<i>Thomas Wood</i>	<i>Maywood Police Department</i>	<i>October, 2006</i>
<i>Jeremy Chambers</i>	<i>Cahokia Police Department</i>	<i>April, 2006</i>
<i>Stephen Zourkas</i>	<i>Niles Police Department</i>	<i>April, 2005</i>
<i>Daniel Figgins</i>	<i>St. Charles Police Department</i>	<i>April, 2005</i>
<i>Cristy Tindall</i>	<i>Peoria Police Department</i>	<i>December, 2004</i>
<i>Jonathan Walsh</i>	<i>Joliet Police Department</i>	<i>August, 2004</i>
<i>William Rolniak</i>	<i>Riverdale Police Department</i>	<i>April, 2004</i>
<i>Eric DeWitt</i>	<i>Matteson Police Department</i>	<i>February, 2003</i>

The IPPFA Remembrance Fund provides financial support to the families of firefighters and police officers from IPPFA member pension funds killed in the line of duty. Money for the Remembrance Fund is raised by fund-raising activities and charitable donations. The Remembrance Fund is a 501 (c) (3) and donations are tax deductible. You can help us in our fund-raising activities by making a request for a donation from your union, employee organization, individual members of your pension fund or any concerned individual. Make donations payable to: IPPFA Remembrance Fund

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Court Provides Guidance On Adjudicating Mental Disability Pension Claims Involving Firefighters

(Cont. from P.4)

not the prior memorandum sent to Hammond that simply apprised him of the amount of the pension benefits.

In reviewing the Board's decision to deny a line-of-duty disability pension, the court examined the evidence presented at the original hearing, and found that the Board's decision to award a non-duty disability pension and deny a line-of-duty disability pension was not clearly erroneous. The court reviewed the decision in Graves which had held that a firefighters' "general job dissatisfaction or job stress arising from the inability to handle general duties does not give rise to a duty-related disability pension." In Graves, the court indicated that even where general aspects of a firefighter's duties cause or contribute to a psychological disability, "stress or depression resulting from general employment functions inherent in the occupation and common to all firefighters [is] not the equivalent of the specific acts of duty contemplated by the statute."

However, the problem with Graves is that it relied on case law involving police officers' claims for mental disability pensions which apply a different definition of "act of duty" for purposes of analyzing the duty-relatedness of a disability claim. In *Jensen v. East Dundee Fire Protection District Firefighters' Pension Fund Board of Trustees*, 362 Ill.App.3d 197 (2nd Dist.

2005), the Second District made it clear that "act of duty" for a firefighter is different than that of a police officer. Using the definition found in Section 6-110 of the Illinois Pension Code, "act of duty" means "[a]ny act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person." (40 ILCS 5/6-110)

The court pointed out that there was conflicting evidence as to the cause of Hammond's psychological condition. The court opined that even if it were possible for Hammond to receive a line-of-duty disability pension for a disability caused by general occupational pressures (contrary to Graves), the Board's decision was still not clearly erroneous in light of the evidence. While the court noted that Hammond may have experienced severe job related stress, it also pointed to evidence that showed his job related stress may have triggered or exacerbated pre-existing symptoms or may have simply stemmed from his personality. The court explained that:

Although plaintiff may have experienced severe stress on the job, the Board apparently was persuaded by evidence that plaintiff's duties

merely triggered symptoms of one or more disorders rooted in nonoccupational sources. There was evidence that plaintiff's inability to function as a firefighter resulted from features of his personality, including poor interpersonal skills and excessive sensitivity to criticism or disapproval from authority figures, and that other personal problems – marital difficulties and the death of plaintiff's parents – contributed to plaintiff's occupational problems. In other words, although plaintiff may have suffered acute stress in certain occupational situations, the underlying causes were external to, and independent of, his duties as a firefighter/paramedic. As such, the Board's decision to deny plaintiff a line-of-duty disability pension was not clearly erroneous.

tal disability claims. The decision provides some framework in sorting through the evidence in determining at what point the inherent stress of firefighting will trigger a line-of-duty disability pension.

Carolyn Welch Clifford is a partner with Ottosen Britz Kelly Cooper & Gilbert, Ltd. in Wheaton. Ms. Clifford represents a variety of local governments, including firefighter pension funds and fire protection districts. Ms. Clifford is the editor of the firm's newsletter, *Legal Insights*, and is a frequent contributor to several fire service publications including *The Fire Call* and *The Fire Guard*. Currently, Ms. Clifford serves as a trustee for the Barrington Public Library District. Ms. Clifford received her B.S. and J.D. from the University of Illinois in Urbana-Champaign. Ms. Clifford represented the Board of Trustees of the Naperville Firefighters' Pension Fund in the Hammond case.

The decision is significant from the standpoint that now firefighter pension funds have some guidance on how to properly apply the "act of duty" standard applicable to firefighters in evaluating men-

PENSIONS BETTING ON HEDGE FUNDS: ILLINOIS TEACHERS' PLAN TO INVEST \$1 BILLION

Jan. 26 -- Underfunded and mired in a kickback scandal, the state-run pension for Illinois teachers has settled on a new plan to help resolve its fiscal woes: Sink almost a billion dollars into hedge funds.

In coming years, the \$39 billion Teachers' Retirement System will join as many as 40 percent of the nation's public pensions in these complicated and lightly regulated investment partnerships.

The decision to embrace hedge funds raises a host of concerns, starting with fundamental doubts about their suitability for the nest eggs of elementary and secondary school employees, according to experts who follow them. Their high fees and the difficulty of monitoring their secretive trading activity also present significant hurdles.

Yet the move into hedge funds reflects the times. With lawmakers unwilling to financially support the pension system, pressure to boost returns is mounting. The Teachers' fund and smaller state plans have achieved considerable success with investments far removed from the ultrasafe Treasury bills that were standard in the past.

The next logical step is hedge funds, private pools of capital that permit their managers to keep a hefty share of investment gains. Foundations, college endowments

and corporate pensions that took the plunge sooner have produced mostly encouraging, and sometimes eye-popping, results. Today a total of \$1.33 trillion is invested, and the temptation to join the crowd is becoming irresistible.

"When it comes to hedge funds, public retirement systems are grabbing their surfboards and saying, 'Surf's up!'" exclaimed state Sen. Jeff Schoenberg (D-Evanston), who is co-chairman of a state oversight panel.

The Illinois State Board of Investments dove into hedge funds 18 months ago with no problems so far, said William Atwood, executive director of the \$12 billion pension for state workers, judges and legislators. "The only reason we would change it is if it wasn't working out, and it's working out."

At the same time, the \$15 billion State University Retirement System for Illinois' higher-education employees has steered clear, mostly because of difficulties in tracking hedge fund trading activity, said Dan Slack, its executive director. "When they tell us to 'Just trust us...,'" he said, "that makes us as a public fund very nervous."

Even some hedge fund boosters doubt that kindergarten teachers belong in the same financial pool as the nation's wealthiest sharpies.

When market conditions change, state pension officials will have their hands

full ensuring "the hedge fund is doing what they say they are doing," warned Charles Gradante, managing principal at the Hennessee Group financial advisory firm. "They can be blue one day, and green the next."

To a degree, hedge funds set their own rules, exploiting inefficiencies in the marketplace unencumbered by the registration and reporting requirements of conventional mutual funds. The Teachers' Retirement System understands the risks embedded in these fast-moving investments, and it is well-equipped to monitor them, according to spokeswoman Eva Goltermann. "We go in with eyes wide open."

The decision to enter hedge funds came Dec. 8 as part of a sweeping revision of its investment strategy. Among other changes, Teachers' is cutting its exposure to U.S. stocks while boosting bonds and foreign stocks. The goal, as always, is to generate higher returns with less overall risk.

The big money shift comes in the midst of a scandal centered on Stuart Levine, a former Teachers' director who pleaded guilty to federal charges of shaking down firms that were seeking investment business from the fund.

Another top political insider, Antoin "Tony" Rezko, has pleaded not guilty to federal charges stemming from the same kickback scheme, which U.S. Atty. Patrick Fitzgerald described as "pay-to-play politics on steroids."

Since the scandal erupted in 2005, the Teachers' Retirement System has imposed new "checks and balances" to prevent insiders from soliciting kickbacks in exchange for influencing its investment decisions, Goltermann said. "Now there's a lot more scrutiny, I assure you."

The fund has faced questions about its investment decisions before. In the 1990s it came under fire for hiring a former employee at 25 times his previous salary who proceeded to lose \$266 million in less than two years. Though the losses were said to be offset by gains in other assets, the pension's reputation took a beating.

Likewise, during the economic malaise of 2001 and '02, the sluggish performance of Illinois' public pensions raised concerns even as hedge funds, which they did not hold, in notable cases outperformed the market. Some observers view the biggest downside of hedge funds to be "headline risk"--when losses that (Cont. on P.8)

Pensions Betting On Hedge Funds: Illinois Teachers' Plan To Invest \$1 Billion

(Cont. from P.7)

sophisticated investors would take in stride serve to alarm a skeptical public.

The \$7.5 billion pension for San Diego County public employees felt the heat last summer when the collapse of hedge fund Amaranth Advisors in less than a month cost it \$85 million of its initial \$175 million investment. Since then, more than half the loss has been repaid, and other investments have performed adequately, but it remains under fire for failing to get its money out before the crash.

So far, the Teachers' Retirement System has not picked its hedge fund managers, and some observers suspect it will have a hard time finding the best. Accepting the money of public pensions can expose hedge funds to Freedom of Information Act requests from nosy competitors. It also binds them to restrictive laws such as the Illinois statute banning investments in Sudan.

Although the flow of money into hedge funds has slowed post-Amaranth as the stock market has surged, top managers can afford to discriminate.

"Successful hedge fund operators can basically pick and choose who they want as clients," explained Howard Pohl, principal at Chicago's Becker, Burke Associates financial

advisers. "If they have to disclose their investment portfolio, the hedge fund guy says, 'I don't need you.'"

For public pension managers, hedge funds demand stepped-up oversight, and the San Diego experience has raised doubts about whether public officials in charge are up to the task. In 2003, Teachers' considered making a hedge fund allocation but dropped the plan partly because it would have required too much attention from its staff.

Watchdogs such as Laurence Msall of Chicago's Civic Federation say the state should mandate stronger qualifications for those appointed to its pension boards. "As you move beyond publicly traded securities, it requires a greater level of financial expertise," Msall said.

One approach to boosting due diligence is a "fund of funds," in which a lead manager selects the rest. The pension for state employees, judges and legislators took that route in allocating the 5 percent of its assets earmarked for hedge funds. But that option typically layers on fees as well.

It remains to be seen if Teachers' will follow the same strategy. Under goals established

Dec. 8, it intends to move cautiously into hedge funds, investing over the course of one to three years and limiting its exposure to 2.5 percent of assets, Goltermann said. That's far below the 10 percent recommended by outside consultants who advocated revamping the state fund's portfolio in the first place.

"TRS wanted to take it slowly and get its feet wet," said Goltermann. "As it stands now, we have the internal staff to manage that allocation."

As at many other pensions, so-called alternative investments have turned in some of the best performances lately. At Teachers', private-equity stakes in firms not listed on public markets returned 27.41 percent before fees in the 12 months ended Sept. 30, while real estate holdings returned 20.63 percent, well ahead of the overall 12.2 percent gain.

Still, no matter how well Teachers' performs, its investments stand virtually no chance of making up its shortfall. After decades of stingy contributions from the state, coupled with rising benefits, Illinois' public pensions are among the nation's worst funded.

The Teachers' fund, which holds just 62 percent of the money needed to meet its pro-

jected obligations, was forced to liquidate \$1.2 billion in assets last year to pay benefits rather than reinvesting the proceeds.

Pohl, the Chicago financial consultant, sees the problem growing no matter what investment objectives the pension funds pursue.

"Illinois is a laughingstock," he said. "It doesn't matter if you invest in hedge funds or wrought iron fences, you've got to throw some money in the kitty."

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WHY DEFERRED COMPENSATION? WHY START NOW?

What is an eligible Deferred Compensation 457 Plan? Simply stated, it is a better way to save. Eligible Deferred Compensation, under Section 457 of the Internal Revenue Code, is a tax favored supplemental retirement savings program offered to employees of state and local governmental entities.

Deferred Compensation Plans provide: Tax savings on every dollar you contribute; Automatic savings through payroll deduction; and, Tax deferred savings on your investments.

How does it work?

You elect to save a portion of your income. Generally, contributions are deducted from your gross pay before federal, state and local income taxes are withheld. This means your tax savings are immediate. The contributions you make are invested as you direct. Investment

earnings on your contributions are not taxed as they accumulate in the plan. At retirement or separation from service, you can elect to receive your account balance in a lump sum, as a series of payments, or defer payment to a later date, in accordance with the plan's terms. Income taxes are generally paid only as you receive distributions.

Why is this a smart way to save for retirement?

Experts agree it is one of the best because: Contributing through payroll savings creates forced savings; Savings are more affordable due to current tax relief; and, Earnings compound at a faster rate due to the tax-deferred growth. The following chart illustrates the difference between a taxable savings program and a deferred compensation program

Building your nest egg - An example of the importance of starting as

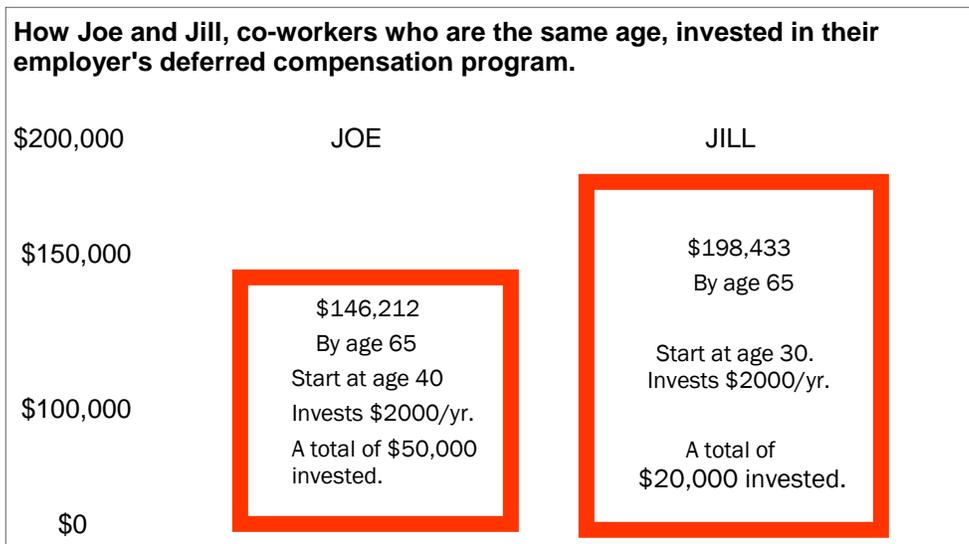
early as possible!

Jill and Joe, co-workers, are both the same age. Jill started investing in her deferred compensation program at age 30, invested \$2,000 each year for 10 years, until she was 40, and then stopped investing completely. Joe waited until he was 40 to begin investing in his deferred compensation program. He invested \$2,000 each year until he was 65, 15 years longer than Jill invested. Assuming they both earned 8% annually on their investment, whom do you think was better off at age 65?

If you guessed Jill, who began investing earlier, you are correct. She invested only \$20,000 over a period of 10 years, but her account grew to nearly \$200,000 by retirement. Joe, who invested a total of \$50,000 over a period of 25 years, ended up with less than \$150,000!

The above example is hypothetical and is for the purposes of illustrating the impact of tax-deferred compounding only. Assumed rate of return of 8% does not reflect the actual return of any specific investment and is not intended to imply or guarantee future results. Regular investing does not guarantee a profit or protect against a loss in a declining market. Because the value of your investment will fluctuate with market conditions you should consider your ability to continue investing during periods of low price levels.

The most effective way to assure long term financial security, aside from your pension, is to begin saving immediately.



CERTIFIED TRUSTEE PROGRAM

The administration of a public pension fund is a very complex task. This four-part educational program is designed to increase a trustee's basic knowledge of fiduciary responsibility, fundamentals of investing, funding and actuarial concepts, medical and disability issues, administration of pension benefits, and legal and ethical issues. Illinois statutes hold the pension fund trustee to the standard of a "prudent expert", but give little direction how a trustee should obtain a fundamental understanding of important legal and administrative tasks. To meet these needs, IPPFA, an Association of Police and Fire Pension Funds, partnered with Northern Illinois University in 1999 to offer the public pension fund TRUSTEE CERTIFICATION PROGRAM.

IPPFA and NIU are currently scheduling modules for the next program. Learn from professionals that have many years of experience in public pension fund administration and management. This 32-hour program is broken down into (four) eight-hour modules, taught over a fourteen-week period.

The cost of the program is \$650.00 per participant. Class size is limited; register as soon as possible. For more information, contact the **IPPFA, 40 DuPage Court, Suite 304, Elgin IL 60120 or telephone 847-608-6014 / Fax 847-608-6019**

PLACE NIU MULTI UNIVERSITY CENTER 1010 JORIE BOULEVARD, OAK BROOK, IL

TIME 8:00 AM – 4:00 PM (EACH MODULE)

MODULE 1 AUGUST 23, 2007

Fiduciary Fundamentals

Fiduciary duties of public pension fund trustee
fundamentals of pension fund investing

MODULE 2 SEPTEMBER 20, 2007

Actuarial/medical

Basic funding concepts
Understanding medical and disability issues

MODULE 3 NOVEMBER 1, 2007

Investments

Fundamentals of fixed income investing
Fundamentals of equity investing

MODULE 4 NOVEMBER 29, 2007

Legal / administrative practices

Legal issues and ethics for pension fund trustees
Understanding the administration of pension
benefits

These Dates Are Subject To Change

CERTIFIED TRUSTEE PROGRAM REGISTRATION FORM

Name _____ Police / Fire Department _____

Address _____ City, Zip _____

Phone Number (____) _____ E-mail _____

The fee includes all handout materials, textbooks and classroom instruction. This course must be taken in its entirety and is not available in individual modules. Each participant must successfully complete module one before selecting any of the three remaining modules and also must complete the four modules of instruction within a twelve month period. Enclose a check for \$650.00 payable to the IPPFA Trustee Certification Program with this form. The Illinois Department of Insurance has approved this fee as a "necessary pension fund expense" under the Illinois Pension Code. © 1999 / IPPFA

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IPPFA SEMINAR March 30, 2007

Grizzly Jack's Grand Bear Resort , Route 178, Utica, IL (3 Miles South of I 80)

Topics of Discussion:

- | | |
|--------------------------------------|---------------------------------|
| LEGAL UPDATE | POOLED INVESTMENT PRODUCTS |
| CREDITABLE SERVICE TOWARD PENSIONS | SUDAN INVESTMENT RULE UPDATE |
| AUTHORITY / RULES AND REGULATIONS | PROCEEDURES FOR PENSION FUNDS |
| WINDFALL ELIMINATION PROVISION (WEP) | GOVERNMENT PENSION OFFSET (GPO) |
| MILITARY ISSUES, etc. | |

COMPLIMENTARY LUNCHEON

Information and Registration Form at www.ippfa.org
 Go to Trustee Education / March 30 Seminar

2007 IPPFA Annual Training Conference
 Springfield, Illinois
 October 9 - 12, 2007

Headquarters Hotel
 Hilton Springfield

700 East Adams Street
 Springfield, Illinois 62701-1601

Tel: 217-789-1530

IPPFA - April 2007

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SUDAN DECISION

FOR A VARIETY OF COMPLEX LEGAL REASONS, THE COURT RENDERED THE FOLLOWING DECISION CONCERNING THE SUDAN ACT.

This is the last two pages of the court decision. Because of the lengthy decision we are not able to print the whole decision. You can find the whole decision here: <http://www.usaengage.org/MBR0088-USAEngage/default/email%20attachments/20070223sudandecision.pdf>

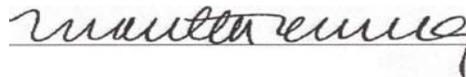
Permanent Injunction

Plaintiffs are entitled to a permanent injunction barring enforcement of the Illinois Sudan Act. They have succeeded on the merits with regard to their Supremacy Clause and Foreign Affairs Clause challenges to the amendment to the Deposit of State Moneys Act and with their Foreign Commerce Clause challenge to the amendments to the Illinois Pension Code. Plaintiffs have also established the other requirements for a permanent injunction. First, the restrictions on the ability of banks to accept Illinois deposits and the pension funds' ability to invest in many equities and mutual funds unquestionably constitutes irreparable injury. Second, the plaintiffs have no adequate remedy at law. Defendants are state officials who have sovereign immunity from suits for damages. See *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1997). Finally, the balance of equities, both with regard to the defendants and the public, favors entry of an injunction. As the Seventh Circuit has held, "there can be no irreparable harm to a [government entity] when it is prevented from enforcing an unconstitutional statute." *Joelner v. Village of Washington Park*, 378 F.3d 613,620 (7thCir. 2004). Moreover, "the public interest is served by any abatement of unconstitutional activity." *Decker v. US. Dept. of Labor*, 473 F. Supp. 770, 776 (E.D. Wis. 1979).

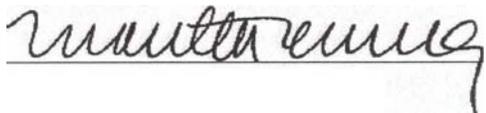
CONCLUSION

The Clerk is directed to substitute Alexi Giannoulis for Judy Baar Topinka as a defendant. For the reasons stated above, the Clerk is directed to enter judgment in favor of the plaintiffs, permanently enjoining the defendants from enforcing the Illinois Sudan Act. Plaintiffs' motion for preliminary injunction is terminated as moot [docket no. 26-1].

Date: February 23, 2007



MATTHEW F. KENNELLY United States District Judge



Date: February 23, 2007

MATTHEW F. KENNELLY United States District Judge