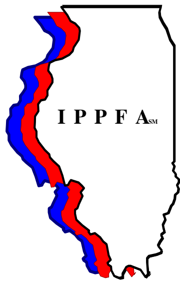

ILLINOIS PUBLIC PENSION FUND ASSOCIATION

An Association of Police and Fire Pension Funds

PENSION TRUSTEE NEWSLETTER

Leading Public Pension Funds Through the 21st Century

JANUARY 2008

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SUPREME COURT CLARIFIES STANDARD FOR MEDICAL EVIDENCE IN POLICE PENSION DISABILITY CASES

For the past several years there has been a split in the case law concerning the amount and type of medical evidence necessary for a police pension board to grant a disability pension. On November 1, 2007, the Illinois Supreme Court finally rendered a definitive decision on this issue.

The problem stemmed from the language contained in section 3-115 of the Illinois Pension Code, which provides:

Sec. 3-115. Certificate of disability. A disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to by the police officer if not under legal disability, or by a representative if the officer is under legal disability, and by the police surgeon (if there be one) and 3 practicing physicians selected by the board. The board may require other evidence of disability. Medical examination of police officer retired for disability shall be made at least once each year prior to attainment of age 50, as verification of the continuance of disability for services as a police officer. No examination shall be required after age 50. [40 ILCS 6/3-115]

From a literal interpretation, the above statute seems to require that: "a disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to .... by the police surgeon (if there be one) and 3 practicing physicians selected by the board". Under this (Cont. on P.2)

Supreme Court Clarifies Standard For Medical Evidence In Police Pension Disability Cases

(Cont. from P.1)

interpretation, if one of the pension board's physicians conducting an independent medical examination finds that the disability applicant is not disabled, the pension board cannot award any type of a disability pension; line of-duty or non-duty.

The above interpretation - that all three of the board's physicians had to certify as to the police officer's disability before a pension could be awarded, was rendered in a number of appellate court cases, including: Daily vs. Board of *Trustees of the Police Pension Fund of Springfield, 251 Ill.App.3d 119, 62 N.E.2d 986 (1993); Rizzo vs. Board of Trustees of the Evergreen Park Police Pension Fund, 338 Ill.App.3d 490, 788 N.E.2d 1196 (2003); Wade vs. North* Chicago *Police Pension Board, 395 Ill.App. 3d 224, 833 N. E. 2d 42 7, 434 (2005)* and *McKee vs. Board of Trustees of the Champaign Police Pension Fund, 367 Ill.App.3d 538, 855 N.E.2d 571 (2006).* In *Rizzo,* supra a petition for leave to appeal was filed as to this legal issue. However, the Illinois Supreme Court declined to take the case for review.

In 2004, the Third District Appellate Court issued a conflicting decision in *Coyne vs. Milan Police Pension Board, 347 Ill.App.3d 713, 807 N.E.2d 1276 (2004).* The *Coyne* case held that section 3-115 requires that the pension board's three examining physicians need only address the applicant's disability status. Even if one examining physician does not certify that the police officer is disabled, the applicant can still obtain a disability pension if the board finds the applicant disabled.

The meaning of section 3-115 was again addressed by the appellate court in *Turcol vs. Matteson Police Pension Board.* In that case, the applicant argued that section 3-115 was unconstitutional. The appellate court rejected that argument, and following *Rizzo, supra,* the reviewing court held that the pension board properly denied Turcol a disability pension because all three of the board's examining physicians did not certify that he was disabled. Turcol, *supra, No. 1-03-1188 (Rule 23 Order).*

The Supreme Court then granted leave to appeal in Turcol. However, after hearing oral argument, the Supreme Court issued an opinion dismissing the appeal and remanding the case back to the Appellate Court *finding that the leave to appeal was improvidently granted. Turcol vs. *Matteson Police Pension Board, 214* Ill.2d 521, *828 N.E.2d 277* (2005). The basis for this decision was that the interpretation of section 3-115 would require the court to review the constitutionality of the provision and that constitutional issues should be avoided, if at all possible. The Appellate Court, on remand, was instructed to decide if the pension board's decision was against the manifest weight of the evidence. The Appellate Court then affirmed the pension board's denial of the disability pension finding that it was not against the manifest weight of the evidence. This decision effectively ended the case.

While *Turcol* was pending in the supreme court, the Second District Appellate Court decided *Wade vs. City of North Chicago Police Pension Board, 359 Ill.App.3d 224, 833 N.E.2d 427 (2005) (Wade I).* Following Rizzo and *Daily,* the Second District found section 3-115 to be clear and to require that all three of the pension board's physicians must certify the applicant to be disabled before a disability pension can be granted. *Wade I, supra 819 N.E.2d at 1218.* Since one of the physicians retained by the North Chicago Police Pension Board did not certify that Officer Wade was disabled as required by section 3-115, the court ruled that the disability pension was properly denied.

A petition for leave to appeal was then filed in *Wade I.* The petition was denied by the Supreme Court. However, a supervisory order was entered in light of the Supreme Court's decision in Turcol, supra, requiring the Appellate Court to vacate its decision and to determine whether or not the Board's decision denying Wade a disability pension was against the manifest weight of the evidence.

The Second District, in conformance with the supreme court's supervisory order, rendered a new opinion. *Wade vs. City of North Chicago Police Pension Board, 359 Ill.App.3d 224, 833 N.E.2d 427 (2005) (Wade II).* This time around, the appellate ruled that the Board's decision denying the disability pension was against the manifest weight of the evidence. 833 N.E.2d at 434. Then the court once again reviewed section 3-115 and found that the Board correctly interpreted that section, so the decision denying the disability pension was again affirmed. Wade *II, supra, 833 N. E. 2d at 43 7.*

The case then proceeded to the Illinois Supreme Court for the second time. First, the Court reviewed the facts and determined that the Board's decision denying the disability pension was against the manifest weight of the evidence. Having made that determination, the Court then moved on to the interpretation of section 3-115. The Court began its analysis by reviewing the two opposing views in the Appellate Court cases construing section 3-115. The Court then found that the statutory language of section 3-115, pertaining to physician certification to be ambiguous. *(Wade, slip op.* pg. 20). Relying on cases decided under Article 4, pertaining to firefighter disability pensions, the Court found that the pension board, not the examining physician "is the ultimate arbiter of disability and consequent eligibility for pension benefits." Id. The Court concluded that the legislature would not have intended to require the concurrence of all three board-related physicians, because this would mean that one of the doctors and not the board could determine who is entitled to a disability pension. *(Wade, supra, slip op.* pg. 21). Following the majority decision in *Coyne, supra,* the Illinois Supreme Court now construes section 3-115 as requiring a police pension board to obtain three certificates or medical reports addressing the issue of disability, rather than unanimously determining disability.

Where does that leave pension boards? The only change is that a physician's certificate or report cannot on its face be grounds to deny a disability pension. Pension boards will have to weigh all of the medical evidence. If the medical evidence is conflicting, a pension board can still accept a minority doctor's opinion, as long as the board in its decision, clearly states its reasoning for relying on that medical opinion and that medical opinion is reasonable and contains sufficient grounds to support the decision. See e.g., *Marconi vs. Chicago Heights Police Pension Board, 225 Ill.2d 497 (2006).*

CITY PAYS MILLIONS IN JUDGMENT IN FIREFIGHTERS PENSION LITIGATION

St. Louis, MO – September 27, 2007 –

St. Louis firefighters and retired firefighters can breathe a sigh of relief today after an infusion of more than $49.4 million into their pension fund. The transfer of funds from the City was the result of a Missouri Supreme Court ruling last March in favor of the Firemen's Retirement System of St. Louis (FRS). The ruling required the City of St. Louis to fully fund the retirement system, according to Dan Tobben, an attorney with Clayton-based law firm Danna McKitrick, who handled the case for FRS.

"We're very pleased that this matter of funding the firefighter's pension has come to a successful resolution. It sends a signal to all communities that they either properly fund the pension plans for municipal employees or face grievous consequences," Tobben said.

In the same opinion, the Supreme Court also ruled in favor of the Police Retirement System (PRS) of St. Louis. See **Neske, et al. v. City of St. Louis, et al.**, 218 S.W.3d 417 (Mo. 2007).

As a result of the Supreme Court Judgment, the St. Louis Board of Alderman passed an ordinance to authorize the St. Louis Municipal Finance Corporation to issue up to $155 million in bonds to fund the firefighter, police and municipal retirement systems.

Following the win in the Supreme Court by FRS, the trustees of the retirement system for City employees (ERS), other than police and firefighters, also hired Mr. Tobben to seek recovery from the City for underfunding ERS. ERS will also receive approximately 47 million dollars from the City as a result of this bond issue.

The Supreme Court ruling came as the culmination of a suit, originally filed in 2003, in which a St. Louis City Circuit Court judge ruled in 2005 that the City of St Louis had breached its obligation to pay $18.5 million into the firemen's pension fund for fiscal years 2004 and 2005.

"Cities in Missouri and Illinois need to follow their state law and municipal ordinances when it comes to properly funding their employee pension funds. This decision marks the end of the time when city governments could try to use pension funds as piggy banks for other projects," Tobben said.

Historical Background of Neske et al On March 13, 2007 the Missouri Supreme Court ruled in favor of the Firemen's Retirement System of St. Louis (FRS) in a lawsuit requiring the City of St. Louis to fully fund FRS, based on the amounts calculated by its actuary. In the same Opinion, the Court also ruled in favor of the Police Retirement System (PRS), which had also filed suit. (**Neske, et al. v. City of St. Louis, et al.**, 218 S.W.3d 417 (Mo. 1007).

The City appealed the trial court's ruling, citing provisions of the Hancock Amendment to the Missouri Constitution, as well as other constitutional provisions. The trial court noted that the City's position was unreasonable, stating: "To follow the City's logic, it could evade almost any debt by failing to timely appropriate money for it in the fiscal year when due, and then claim that it cannot be forced to pay it in succeeding years." The Supreme Court agreed, holding: "The City cannot evade its responsibilities to the PRS and FRS by refusing to pay them the amounts required and then arguing it has spent the monies elsewhere."

Much of the Missouri Supreme Court's decision dealt with whether Hancock Amendment to the State of Missouri's constitution applied (it does not) and on the definition of the word "shall" and whether it is mandatory or permissive according to the law. In essence, the Court said that "shall" has its normal meaning and the laws mean what they say.

"The statutes and ordinances relating to the PRS and the FRS, when taken as a whole, support the view that actuarial soundness is the principle at the heart of the PRS and the FRS funding provisions. Actuarial soundness requires the City to make its annual contribution of the actuarially-determined amounts certified by the PRS and the FRS boards of trustees."

Regarding the Hancock Amendment, the Court held that "where there is no mandate that the City take on a new responsibility, but only a continued responsibility for it to fund an existing activity according to a previously existing formula, there is no Hancock violation." The City did not challenge the accuracy of the actuaries' calculations or the accuracy of the amount certified by the trustees as the amount to be contributed.

"The firefighter's pension is critical to the men and women who put their lives on the line to protect the people who live in the City of St. Louis. For many of the firefighters, the pension is all they will have when they retire because most are not eligible for Social Security benefits. Unlike private pensions under ERISA, City firefighters' pensions are not insured by the federal government. To fail to adequately fund their pension is unconscionable considering these men and women spent their lives protecting the City, its residents and businesses, and their property," said Tobben, who represented FRS throughout this litigation.

States such as Illinois and New Jersey also are looking for ways to meet their obligations. The New York Times has reported that New Jersey is facing an estimated $18 billion in unfunded pension obligations and that Illinois is stretching its funding obligations because of very severe underfunding. Public officials are being sued and there have been criminal investigations in San Diego for concealing underfunding of city pensions.

"Government cannot continue to treat its employee pension fund obligations like matters subject to discretionary funding. Employees who qualify for a pension deserve better than that," Tobben said. "The City knew, or should have known, it was obligated to fully fund its pensions. This ruling would not have been necessary if the City had continued to meet its obligation to contribute to the pension funds rather than provoking this litigation."

Issue: Illinois Police Officers And Fire Fighters: How Good Are Their Pensions?

A response presented by the Illinois Public Pension Fund Association

James M. Banovetz recently co-authored a policy statement for the *NIU Center for Governmental Studies.* We are dismayed that a man of Dr. Banovetz's credentials, without citing any independent research, has presented a paper which is a complete restatement of the biased report published in February, 2007 entitled, "*Fiscal Analysis of the Downstate Police, Fire, and IMRF Pension Systems"* prepared by the Illinois Municipal League (IML). The Illinois Public Pension Fund Association (IPPFA) has already responded to this report in its April, 2007 study entitled "*Fiscal Analysis of the Downstate Police, Fire, and IMRF Pension Systems- A Critical Commentary"* .

In the interest of clarity, the pertinent conclusions reached in the IPPFA response are once again presented in rebuttal to the stated IML position.

1. The Illinois Public Pension Fund Association (IPPFA) finds this report to be incomplete and misleading as to the information presented for the Downstate Police and Fire systems.

2. Funding of public retirement programs is required by statute for <u>all systems</u> in the State; and, all of the State systems, including the IMRF, use an independent actuary to determine the funding requirements based upon statutory guidelines. The IMRF is free to choose its own independent actuary as are the State administered systems. Furthermore, the Police statute provides that it is the independent Pension Board's responsibility—not the municipality's— to determine the amount of the reserves needed to meet the actuarial requirements.

3. Since Unfunded Actuarial Liabilities are essentially actuarial calculations based upon assumptions regarding future events and a chosen actuarial cost method, a comparison among pension funds is a useless exercise unless all pension funds in the comparison use the same set of actuarial assumptions and actuarial cost methods. This is clearly not the case in the State. **Thus, the table comparison on Page 10 of the IML report is a misleading attempt to compare "per capita funding comparisons" where no comparison should be made.**

4. The IML report states that "the unfunded liabilities…ultimately represent the total deficit of the fund for which no money has been set aside… [and that]…the unfunded liability has more than doubled between 2000 and 2004." "During this period of growing unfunded liability, the funded ratio of the aggregate downstate police funds declined 10.3% from 72.7% funded in 1987 to 62.4% funded in 2004…" **Again we find the statement misleading.**

   The "funding ratio" is **<u>never used</u>** to determine the solvency of a pension fund. The solvency of the pension fund is measured more by the solvency of the sponsor than by a ratio of pension assets to liabilities

5. The Illinois Department of Professional and Financial Regulation (IDPFR) annually calculates the required contribution to fund the public safety plans. These calculations are often not used to determine the tax levies by the municipalities who choose to retain independent actuaries for these calculations. These independent actuarial calculations almost exclusively produce lower municipal contribution requirements than the calculations provided by the IDPFR.

6. Despite the ability to select an independent actuary, many municipalities choose not to follow the recommendations of the actuaries that they select. **<u>It is quite self-serving now to present a comparison of "actuarial liabilities", determined under a stated basis which is rejected by many municipalities, and compare that to an asset base which is completely biased as contributions are exclusively controlled by these municipalities.</u>**

7. In 1993, the funding statute was modified to change the method of amortization of unfunded actuarial liabilities. Studies by IDPFR staff at that time calculated that this change in methodology would result in the following outcome: **<u>If every actuarial assumption used in funding were exactly realized (a virtually impossible scenario), then the unfunded actuarial liability would increase 300% in 12-years (simply because of the lower payments) and then would begin its decline to 0% by 2033.</u>**

8. The IML report notes that "after several years of high investment returns in the late 1990's, there was a significant decline between 2000 and 2002. However investment returns were more than adequate between the years 1987 and 2004....The funds should have therefore experienced a net investment gain over this seventeen-year period, positively impacting the funding level."

   Given the warnings of expected large increases in unfunded liabilities which were provided in 1993 to the municipalities by the IDPFR, the foregoing statement is completely misleading and borders on deception.

9. We are not unsympathetic to the burden passed on to taxpayers for properly funding the municipal pension programs. Strong management requires a recognition that pension funding should occur while the pensions are being earned and not passed off to future generations of taxpayers.

   It is unseemly for these same (Cont. on P.6)

FUNDING POSTRETIREMENT HEALTH BENEFITS THROUGH A VEBA

Employers that are now obligated to provide health care to retirees are facing considerable new challenges due to increasing medical costs, demographic changes and new accounting rules that require both private and public employers to report their retiree health obligations. While there are many potential solutions to this problem, one in particular has been used with support from both employers and retirees: the voluntary employees' beneficiary association (VEBA) trust. A VEBA allows employers to prefund their retiree health costs, which can significantly reduce or in some instances eliminate their retiree medical obligations, without eliminating retirees' benefits. The VEBA trust therefore provides employers with a financial solution to the retiree health crisis while ensuring that retirees continue to receive the benefits they expect.

Paying for retiree health coverage has always been an expensive undertaking for employers. Today the cost of that obligation has reached epic figures, due in large part to rapidly rising health care costs, changing demographics and retirees simply living longer. But when the Financial Accounting Standards Board began requiring private companies to book their liability for future retiree medical costs, many large, stalwart companies with household names went into the red overnight. Credit ratings plummeted and some companies were even forced into bankruptcy. Public employers are now also required to take on this liability. As a result, many large cities and states have begun reporting tens of billions of dollars in unfunded retiree health obligations. Many employers, both private and public, have therefore looked to alternative ways of lowering and even eliminating their obligations to provide retiree health coverage.

Many private employers with unionized workforces have historically been obligated to provide retiree health insurance under their collective bargaining agreements. With the new accounting rules, these obligations have had a devastating impact on employers' balance sheets. And public employers have long provided lifetime medical benefits for employees, with some states even requiring such employers to do so.

In addition, employees often rely heavily on the promise of retiree health coverage in their retirement planning. Employers with these obligations therefore face significant challenges. They must reduce their retiree health costs but are often under immense pressure at the bargaining table to continue providing the retiree benefits that employees expect.

In response, a number of employers have successfully used a vehicle known as a VEBA to prefund retiree medical costs and eliminate their obligation to provide retiree health insurance in the future.

VEBA Trusts

A VEBA is a tax-exempt entity (usually a trust) that is part of a plan for providing medical, dental, prescription drug, accident, life insurance and other qualified benefits to its members or their dependents.

There are three basic methods for prefunding retiree medical costs through a VEBA. The first is an *individual account plan.* This method is essentially a defined contribution health savings account. The contributions go into an employee's own individual account, and the amount that is later available for distribution is simply the total amount of contributions plus earnings.

The second method is a *commingled trust.* This method is more akin to a defined benefit plan. Contributions go into a pooled account at a set level for each participating employee. The benefit is a maximum monthly amount that pays for retiree medical premiums or other qualified expenses. This amount may fluctuate depending on the investment experience of the fund.

The third type is a *hybrid plan* in which a defined contribution (often a one-time, lump-sum employer contribution) goes into a commingled trust, and the amount later available for distribution depends on the investment experience of the trust. In this structure, however, the trust provides and pays for the retirees' health care coverage under a traditional health plan, unlike the commingled trust structure in which a fixed monthly dollar amount is paid to reimburse employees for qualified expenses.

All three of these structures take advantage of tax breaks under the Internal Revenue Code. Most use a VEBA to achieve the intended tax status. Other public sector plans are structured as reserve accounts belonging to the employer. The plan features, nevertheless, are largely the same.

Employers can use VEBAs to shift retiree health costs in two different ways. The benefits that are paid by the VEBA depend heavily on the investment experience of the trust. Employers are thus able to shift the risk of paying for retiree health costs to the trust itself. And, as discussed below, employers may require that all contributions come from mandatory employee contributions. This practice shifts the liability of providing retiree health coverage to employees.

Tax Advantages

VEBAs have several tax advantages. If a VEBA is properly structured under Section 501 (c) (9) of the Code:

- Contributions are not taxable to employees-even if they are made by payroll deduction.

(Cont. on P.8)

Issue: Illinois Police Officers And Fire Fighters: How Good Are Their Pensions?

(Cont. from P.4)

municipalities to raise issues which were anticipated and to attempt to blame the system for performing exactly as anticipated and rather hypocritical to be presenting statistics using the IDPFR results for comparative purposes when the municipalities appear to be primarily responsible for these results.

10. We disagree that the fiscal problems being experienced by the problematic state-funded plans are also in existence within the Downstate Police and Fire Pension Systems. On average the State funded plans are approximately 60% funded, while the Downstate Police and Fire plans are close to 70% funded.

"Facts" without support

Dr. Banovetz, however, is not satisfied with simply reiterating the positions espoused by the IML. He then proceeds to present unsupported and undocumented conclusions on other issues.

"Illinois' outstate police and firefighters' pensions are generous when compared to the pension systems offered by other states"—

Not according to the well publicized 2004 study of "State Police" plans by *Workplace Economics, Inc.* which listed at least 18 other state police pension plans with better retirement formulas than the outstate plans.

"Illinois also has the only public pension system in the nation which calculates individual police and fire pensions based either on an annualization of the amount of the last paycheck or the individual's highest annual pay, whichever is greater"—

Misleading at best, as at least two states (New Jersey and Indiana) use salary paid during the final year of service prior to retirement.

Dr. Banovetz makes a suggestion which is particularly disturbing and shows a complete lack of understanding of the actuarial process and the profession. In commenting on the tax cap dilemma facing many municipalities, Dr. Banovetz suggests that to solve this problem municipalities have to *"use actuarial assumptions that would enable them to meet their statutory obligations to finance pensions and still keep their rates of property tax increases within statutory tax cap limitations, but not enough to keep their funds properly financed."*

This is not an available option which would be presented by any competent professional actuary to any municipality. The Code of Professional Conduct adopted by every major actuarial organization specifically prohibits an actuary to engage in any manner in this type of subterfuge.

Police and fire unions *"acknowledge their fund's fiscal plight,…'but are not unsympathetic to the burden passed on to taxpayers for properly funding the municipal pension programs', but assert that 'managing a municipality is a difficult task requiring tradeoffs with the budget'."*

The full quotation is as follows:

"We are not unsympathetic to the burden passed on to taxpayers for properly funding the municipal pension programs. Managing a municipality is a difficult task requiring trade-offs within the budget. However, strong management requires a recognition that pension funding should occur while the pensions are being earned and not passed off to future generations of taxpayers. The system for proper funding of municipal pension plans was altered in 1993 when the contribution methodology was changed at the behest of the municipalities to lower their current costs. It is now unseemly for these same municipalities to raise issues which were anticipated and to attempt to blame the system for performing exactly as anticipated." (emphasis added)

Opinions without substance

Despite offering no citations for the above conclusions, Dr. Banovetz then proceeds to offer his opinions as to a proper solution to this "pension crisis".

What should be done to improve the funds' financial health?

Ultimately Illinois Governor Rod Blagojevich put the matter most succinctly in his 2003 annual budget address to the General Assembly when he argued. "Unless we reform the way we fund our pensions…we will never eliminate the structural deficit that takes money away from education, from healthcare, from law enforcement, from parks and from everything we care about."

Dr. Banovetz's "solution" to Governor Blagojevich's challenge is that "No further benefit enhancements should be considered for municipal police and fire pension funds until the legislature has taken meaningful action to make the funds more fiscally sound ."

Governor Blagojevich and the legislature however appear to disagree with Dr. Banovetz, for on August 28, 2007, Public Act 95-0530 was signed into law. This statute amended 40 ILCS 5-3/125 to provide "that the annual property tax levied for pension purposes shall be forwarded directly to the treasurer of the board within 30 business days after receipt by the county. Effective immediately."

Nonetheless, this statutory change, although quite welcome, simply begs the question. **Why was this legislation necessary?** The answer is, obviously, that many municipalities feel it is their absolute right to withhold amounts collected from taxpayers for the specific purpose of funding police and firefighter pension funds for prolonged periods of time rather than releasing these funds to the Trustees for investment (Cont. on P.7)

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(Cont. From P. 6)

and disbursement to pensioners and beneficiaries.

We suggest that rather than proffering a limitation on benefit enhancements, Dr. Banovetz should instead focus on urging the municipalities and the courts to comply with the current statutes which would enhance the solvency of the outstate funds.

Dr. Banovetz continues—

Unions would be well advised to avoid the kinds of "double speak" which has characterized their support of the DROP proposal.

In what is clearly an incorrect citation , Dr. Banovetz indicates that the unions would not advance and fight for the [DROP] proposal unless it was attractive to their membership (meaning that they expected many of their members would take advantage of the added benefits). We challenge Dr. Banovetz to present any substantiated study or independent research paper which supports his uninformed statement. To our knowledge there are none.

Unfortunately, in our opinion, Dr. Banovetz has succumbed to fallacious, unsupported arguments presented by the Illinois Municipal League as facts, in an attempt to shift blame to the Illinois Legislature for causing the underfunded status of the outstate retirement plans; when the true culprits appear to be the municipalities themselves.

We are disappointed in Dr. Banovetz.

ENDNOTES

1. Dr. Banovetz cites this treatise in his footnote 12 plainly as an "undated paper prepared by the Illinois Public Pension Fund Association commenting on the IML report and titled, simply, 'Introduction'." The full report is available on the Illinois Public Pension Fund Association website www.ippfa.org under Legislative Summary: Alert.

2. http://www.leoff.wa.gov/boardStudies/documents/AgendaItem6-FinalAverageSalaryAppendixA-InitialConsideration.pdf

3. *Ibid*

4. http://www.actuary.org/pdf/prof/code_of_conduct.pdf. See particularly Precept 1 with annotations: "An Actuary shall act honestly, with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession."

5. "*Fiscal Analysis of the Downstate Police, Fire, and IMRF Pension Systems-A Critical Commentary",* IPPFA, (April, 2007) p.9

6. P.A. 95-0530: http://www.ilga.gov/legislation/billstatus.asp?DocNum=65&GAID=9&GA=95&DocTypeID=SB&LegID=27276&SessionID=51 Synopsis As Introduced.

7. The IPPFA response in Endnote No. 5 above makes no mention of the DROP program. Perhaps Dr. Banovetz is referring to the article "Deferred Retirement Option Plans (DROP Plans)", by Arthur H. Tepfer and Carol V. Calhoun, Esq., *Pension & Benefits Week*, (10/13/1998), ©1998 Research Institute of America

Funding Postretirement Health Benefits Through a VEBA

(Cont. from P.5)

The Internal Revenue Service (IRS) has recently stated, however, that payroll deduction must be mandatory for all eligible employees (e.g., those in a bargaining unit). In other words, eligible employees cannot be given a choice between receiving cash compensation and making contributions to the VEBA. This requirement is typically met by requiring employee contributions through a collective bargaining agreement.

- Assets and investments of the trust grow tax free.
- Payments from the trust are not taxed if they are used to pay for or provide taxqualified benefits like medical and dental insurance or prescription drugs.

There are few, if any, tax shelters that compare to VEBAs. Unlike pensions, where the contributions and earnings are eventually taxed when paid, VEBA money is never taxed at all if it is used for qualified benefits.

VEBA Tax Requirements

The tax advantages of VEBAs do not come without limitations. For the most part, however, the requirements are not onerous:

- The VEBA must be established by an employee organization. This can be an unincorporated association of all covered employees, a union or a municipality.
- Membership must be voluntary. This does not prohibit the parties from requiring contributions and membership of all employees through collective bargaining.
- The VEBA must provide qualified benefits such as medical, dental, prescription drug, life insurance and accident benefits.
- The VEBA can only pay for qualified benefits. The VEBA cannot pay cash to anyone. It cannot return contributions to employees. Employees cannot have a choice of receiving cash instead of VEBA benefits.
- IRS has recently made it clear that nondependent beneficiaries cannot receive tax-free distributions from a VEBA. A VEBA can only make tax-free distributions on behalf of the participant, his or her spouse and dependents.
- Private employers may only deduct one year's worth of expected claims and expenses for nonunion employees in any year, making prefunding unattractive for nonunion private sector employers.

VEBA Administration

The Code includes requirements for administration of VEBA's. VEBA administration can be outsourced for individual account plans. Several vendors offer administrative services for postretirement medical accounts. They include organizations such as the Public Employees Benefit Services Corporation, Nationwide and the International City/County Management Association. From an employer and an employee standpoint, they operate in a similar fashion to Section 401(k) plans or Section 457 deferred compensation accounts.

The VEBA must be controlled by the membership. This can be done either through voting of the membership or by trustees, at least some of whom are designated by the membership.

Commingled trusts are typically run similar to pension funds. The funds are managed by professional money managers. The trust should be audited annually. Actuarial evaluations should also be conducted annually to determine appropriate funding and benefit levels. Legal review is also required to ensure tax-qualified status. Administrative expenses may be paid by the trust.

Finally, the trust must notify IRS that it is seeking status as a VEBA. The notice must be filed within 15 months after the end of the month in which the VEBA was organized.

Who May Be Eligible?

VEBA membership must consist of individuals who become entitled to participate by reason of their being employees and whose membership is defined by objective standards that constitute an employment-related common bond. This can include:

- Current employees
- Former employees
- Retirees
- Members of a bargaining unit
- Employees promoted or transferred out of a bargaining unit
- Nonunion administrative staff
- Surviving spouses
- Dependents.

And membership can be restricted. Restrictions can be based on any objective criteria related to employment such as:

- Geographic proximity
- Minimum period of service
- Job classification/ fulltime status
- Maximum compensation level
- Bargained/nonbargained.

Contributions and Funding

(Cont. on P.13)

LEGISLATIVE UPDATE

Transfer of Creditable Service from Article 3 Police Pension Fund to Article 7. IMRF

(40 ILCS 5/3-110.8)
Sec. 3-110.8. Transfer to IMRF.

(a) Until January 1, 2008, any active member of the Illinois Municipal Retirement Fund who has less than 8 years of creditable service in a police pension fund under this Article, may apply for transfer of his or her creditable service accumulated in that fund to the Illinois Municipal Retirement Fund. The creditable service shall be transferred upon payment by the police pension fund to the Illinois Municipal Retirement Fund of an amount equal to:

(1) the amounts accumulated to the credit of the applicant on the books of the fund on the date of transfer; and

(2) employer contributions in an amount equal to the amount determined under subparagraph (1); and

(3) any interest paid by the applicant in order to reinstate service. Participation in this Fund shall terminate on the date of transfer.

(b) Until January 1, 2008, any member under subsection (a) may reinstate service which was terminated by receipt of a refund, by payment to the police pension fund of the amount of the refund with interest thereon at the rate of 6% per year, compounded annually, from the date of refund to the date of payment.

(40 ILCS 517-139.12 new)

Sec. 7-139.12. Transfer from Article 3. Until January 1. 2008, a Person may transfer to the Illinois Municipal Retirement Systems up to 8 years of creditable service accumulated under Article 3 of **this Code upon** payment to the Fund of an amount to be determined by the board, equal to (I) the difference between the amount of employee and employer contributions transferred to the Fund under Section 3-110.8 and the amounts that would have been contributed had such contributions been made at the rates applicable to an employee under this Article, plus (ii) interest thereon at the effective rate for each year, compounded annually, from the date of service to the date of payment.

Synopsis:

Section 3-110.8 allows the transfer of creditable service time accumulated in an Article 3 police pension fund to the Article 7 pension fund, IMRF. The individual must be an active member of IMRF, the Illinois Municipal Retirement Fund, have accumulated less than 8 years of creditable service in an Article 3 police pension fund and make written application to both his or her former Article 3 police pension fund and IMRF. **The Article 3 police pension fund and IMRF must receive the application for this transfer on or before Monday, December 31, 2007.**

If the individual needs to reinstate service in the Article 3 police pension fund, he or she must do so by paying the Article 3 police pension fund the amount of the refund with interest, calculated at the rate of 6% per year, compounded annually, from the date of refund to the date of payment. **It is the Public Pension Division's opinion that all creditable service time terminated by the receipt of a refund must be reinstated.**

The Article 3 police pension fund is required to pay to IMRF an amount equal to:

1)the individual's contributions accumulated to his or her credit in the Article 3 police pension fund on the date of transfer;
2)employer (municipality) contributions in an amount equal to the amount determined under 1); and
3)any interest paid by the individual in order to reinstate service in the Article 3 police pension fund

Participation in the Article 3 police pension fund shall terminate on the date of transfer.

Section 7-139.12 prescribes the amount an individual is required to pay to IMRF as the difference between the amount transferred from the Article 3 police pension fund and the amount the individual would have contributed as a participant of IMRF, plus interest on the difference at the effective rate for each year, compounded annually, from the date of service to the (Cont. on P. 10)

Legislative Update

(Cont. From P. 9)

date of payment. If the individual has 8 or more years of creditable service time in an Article 3 police pension fund, he or she is not eligible to transfer his or her creditable service time to IMRF.

For further details and an explanation of the Article 7 responsibilities and procedures, including the determination of the amount of creditable service time that will be credited in IMRF, in accordance with Section 7-139, paragraph 10, please contact IMRF at 1-800-ASK-IMRF (1 -800-275-4673) or visit their website at www.imrf.org.

Transfer of Creditable Service from Article 3 Police Pension Fund to Article 14, SERS

(40 ILCS 5/3-110.6)
Sec. 3-110.6. Transfer to Article 14 System.

(a) Any active member of the State Employees' Retirement System who is a State policeman, an investigator for the Secretary of State, a conservation police officer, an investigator for the Office of the State's Attorneys Appellate Prosecutor, or a controlled substance inspector may apply for transfer of some or all of his or her creditable service accumulated in any police pension fund under this Article to the State Employees' Retirement System in accordance with Section 14-110. The creditable service shall be transferred only upon payment by the police pension fund to the State Employees' Retirement System of an amount equal to:

(1) the amounts accumulated to the credit of the applicant for the service to be transferred on the books of the fund on the date of transfer; and

(2) employer contributions in an amount equal to the amount determined under subparagraph (1); and

(3) any interest paid by the applicant in order to reinstate service to be transferred. Participation in the police pension fund with respect to the service to be transferred shall terminate on the date of transfer.

(b) Any person applying to transfer service under this Section may reinstate service that was terminated by receipt of a refund, by paying to the police pension fund the amount of the refund with interest thereon at the rate of 6% per year, compounded annually, from the date of refund to the date of payment.

(40 ILCS 5/14-110)
Sec. 14-110. Alternative retirement annuity.

(h) Subject to the limitation in subsection (i), a State policeman, conservation police officer, or investigator for the Secretary of State may elect to establish eligible creditable service for up to 5 years of service as a police officer under Article 3, a policeman under Article 5, a sheriffs law enforcement employee under Article 7, a member of the county police department under Article 9. or a police officer under Article 15 by filing a written election with the Board and Paying to the System an amount to be determined by the Board, equal to (i) the difference between the amount of employee and employer contributions transferred to the System under Section 3110.6, 5-236, 7-139.8, 9-121.10. or 15-134.4 and the amounts that would have been contributed had such contributions been made at the rates applicable to State policemen, plus (ii) interest thereon at the effective rate for each year, compounded annually, from the date of service to the date of payment.

Synopsis:

Section 3-110.6 allows the transfer of creditable service time accumulated in an Article 3 police pension fund to the State Employees' Retirement System, or SERS. An individual must be a qualified, active member of SERS in order to be eligible for this transfer provision.

The Article 3 police pension fund is required to pay to SERS an amount equal to:

1) the individual's contributions for the service to be transferred, accumulated to his or her credit in the Article 3 police pension fund on the date of transfer;
2) employer (municipality) contributions in an amount equal to the amount determined under 1); and
3) any interest paid by the individual in order to reinstate service to be transferred.

(Cont. on P.11)

Legislative Update

(Cont. from P. 10)

With respect to the service credits to be transferred, participation in the Article 3 police pension fund shall terminate on the date of transfer.

If the individual needs to reinstate service in the Article 3 police pension fund, he or she must do so by paying the Article 3 police pension fund the amount of the refund with interest, calculated at the rate of 6% per year, compounded annually, from the date of refund to the date of payment.

Section 14-110 (h) prescribes the amount the individual is required to pay to SERS as the difference between the amount transferred from the Article 3 police pension fund and the amount the individual would have contributed as a participant in SERS, plus interest on the difference at the effective rate for each year, compounded annually, from the date of service to the date of payment. The participant may transfer some or all of his creditable service up to 5 years.

For further details and an explanation of the Article 14 responsibilities and procedures, including the determination of the amount of creditable service time that will be credited in SERS, in accordance with Section 14-110 (h), please contact Joe Maggio at 217-785-7157.

Financing

(40 ILCS 5/3-125) (from Ch. 108 1/2, par. 3-125)

Sec. 3-125. Financing. The city council or the board of trustees of the municipality shall annually levy a tax upon all the taxable property of the municipality at the rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of police officers, and revenues available from other sources, will equal a sum sufficient to meet the annual requirements of the police pension fund. The annual requirements to be provided by such tax levy are equal to (1) the normal cost of the pension fund for the year involved, plus (2) the amount necessary to amortize the fund's unfunded accrued liabilities as provided in Section 3-127. The tax shall be levied and collected in the same manner as the general taxes of the municipality, and in addition to all other taxes now or hereafter authorized to be levied upon all property within the municipality, and shall be in addition to the amount authorized to be levied for general purposes as provided by Section 8-3-1 of the Illinois Municipal Code, approved May 29, 1961, as amended. The tax shall be forwarded directly to the treasurer of the board within 30 business days after receipt by the county.

The police pension fund shall consist of the following moneys which shall be set apart by the treasurer of the municipality:

(1) All moneys derived from the taxes levied hereunder;

(2) Contributions by police officers under Section 3-125.1;

(3) All moneys accumulated by the municipality under any previous legislation establishing a fund for the benefit of disabled or retired police officers;

(4) Donations, gifts or other transfers authorized by this Article.

Synopsis:

Section 3-125 states that the county has no more than 30 days after its receipt of the tax levy money to forward the money directly to the treasurer of the Article 3 police pension fund.

Transfer of Creditable Service from Article 3 Police Pension Fund to Article 9, County Employees' and Officers' Annuity and Benefit Fund - Counties Over 500,000 Inhabitants

40 ILCS 5/3 - 110.9 (new) and 40 ILCS 5/9 - 121.17 (new)

Sec. 3-110.9. Transfer to Article 9.

(a) Until 6 months after the effective date of this amendatory Act of the 95th General. Assembly, any active member of a pension fund established under Article 9 of this Code may apply for transfer of up to 6 years of his or her creditable

(Cont. on P. 12)

Legislative Update

(Cont. from P. 11)

service accumulated in any police pension fund under this Article to the Article 9 fund. Such creditable service shall be transferred only upon Payment by such police pension fund to the Article 9 fund of an amount equal to:

(1) the amounts accumulated to the credit of the applicant on the books of the fund on the date of transfer: and

(2) employer contributions in an amount equal to the amount determined under subparagraph (11: and

(3) any interest Paid by the applicant in order to reinstate service. Participation in-the police pension fund shall terminate on the date of transfer.

(b) Until 6 months after the effective date of this amendatory Act of the 95th General Assembly, any active member of an Article 9 fund may reinstate service that was terminated by receipt of a refund, by Payment to the police pension fund of the amount of the refund with interest thereon at the rate of 6% Per year, compounded annually, from the date of refund to the date of Payment.

(40 ILCS 5/9-121.17 new)

Sec. 9-121.17. Transfer from Article 3. Until 6 months after the effective date, an employee may transfer to this Fund up to 6 years of creditable service accumulated under Article 3 of this Code, upon payment to this Fund of (1) the amount by which the employee and employer contributions that would have been required if the employee had participated in this Fund during, the period for which credit is being transferred, plus interest, exceeds the amounts actually transferred from the Article 3 fund to this Fund, plus (2) interest on the amount determined under item (1) at the rate of 6% per year, compounded annually, from the date of the transfer to the date of Payment.

Synopsis:

The only Article 9 pension fund established in Illinois at this time is the County Employees' and Officers' Annuity and Benefit Fund of Cook County, This synopsis refers only to that fund, although other Article 9 funds may be established in the future and will also be subject to this provision.

Section 3-110.9 (new) allows an active member of the County Employees' and Officers' Annuity and Benefit Fund of Cook County to transfer up to 6 years creditable service time accumulated in an Article 3 police pension fund to the County Employees' and Officers' Annuity and Benefit Fund of Cook County. The individual must make written application to both the former Article 3 police pension fund and the County Employees' and Officers' Annuity and Benefit Fund of Cook County. **The application must be received by both the Article 3 police pension fund and the County Employees' and Officers' Annuity and Benefit Fund of Cook County on or before Wednesday, February 27, 2008.**

If the individual needs to reinstate service in the Article 3 police pension fund, he or she must do so by paying the Article 3 police pension fund the amount of the refund with interest at the rate of 6% per year, compounded annually, from the date of refund to the date of payment.

The Article 3 police pension fund is required to pay to the County Employees' and Officers' Annuity and Benefit Fund of Cook County an amount equal to:

1) the individual's contributions accumulated to his or her credit in the Article 3 police pension fund on the date of transfer;
2) employer (municipality) contributions in an amount equal to the amount determined under 1); and
3) any interest paid by the individual in order to reinstate service in the Article 3 police pension fund.

Participation in the Article 3 police pension fund shall terminate on the date of transfer.

For further details and an explanation of the Article 9 responsibilities and procedures, including the determination of the amount of creditable service time that will be credited in County Employees' and Officers' Annuity and Benefit Fund of Cook County, in accordance with Section 9-121.17, please contact County Employees' and Officers' Annuity and Benefit Fund of Cook County at 312-603-1200

Funding Postretirement Health Benefits Through a VEBA

(Cont. from P.8)

VEBAs may be funded by either mandatory employee contributions, employer contributions or a combination of both. But IRS has recently issued guidance stating that all employee contributions must be mandatory. That is, participants cannot have the choice to receive cash in lieu of contributing to the VEBA, and participants also cannot have the ability to later opt out of making contributions to the VEBA. This requirement is usually met when a VEBA is established pursuant to a collective bargaining agreement that sets the contribution amount.

Contribution amounts can be based on any formula, such as a percentage of pay or a fixed dollar amount per period of time such as per hour worked, per pay period, per month or per year. One-time contributions can also be required, such as upon retirement.

There are no limits on the funding of collectively bargained VEBAs. But employers may not deduct more than the *qualified cost* of nonbargained VEBA's This is generally the cost of providing benefits during the taxable year. As a practical matter, this limit does not apply to public employers.

Some VEBA plans (primarily in the public sector) are funded in whole or in part through unused sick days or other compensable time. The value of unused sick days or other time is contributed to the trust by the employer on an annual basis or on a one-time basis at retirement. Under the same principle previously discussed, with regard to mandatory employee contributions, individual employees may not be given a choice between taking cash for their sick days or benefit time or contributing them to the trust. The treatment of sick days and benefit time should be specified in the plan document. It should be noted that compensatory time off that is provided to public employees in lieu of overtime under the Fair Labor Standards Act cannot be used in this manner.

Contribution Elections

As previously stated, an employee's choice to take cash on the check or put it into a VEBA must be eliminated to avoid taxation. In essence, IRS says that if the employee has enough control over the money, it is constructively received, and the employee will have to pay tax now.

Most plans mandate that all employees contribute a set amount in order to avoid tax problems. This is often set in collective bargaining to assure that the individual employees are not exercising choice over the money.

What Benefits Can a VEBA Provide?

A VEBA may provide life, sickness or accident benefits, or other "welfare" benefits. The following are some benefits that a VEBA can provide:

- Pay part or all of the premium for employer-provided retiree medical insurance
- Reimburse employees for covered benefits such as private insurance, Medicare supplements, vision, dental or prescription drug expenses
- Provide life insurance, as long as it is provided under an insurance contract and is not self-funded. Some plans, known as voluntary employee medical accounts (VEMAs) provide this benefit
- Provide accidental death and dismemberment insurance
- Provide supplemental unemployment benefits
- Provide vacation benefits Pay severance benefits
- Fund education and training programs
- Provide child-care facilities Provide legal services.
- Some of the benefits that a VEBA cannot provide are as follows:
- Pension or similar benefits Savings accounts or loans
- Cash refunds
- Travel expenses
- Homeowners or casualty insurance.

Conditions for Receiving Benefits

Benefit entitlement may be limited to any nondiscriminatory criteria. This could include:

- Elligibility for pension benefits
- Minimum age requirements
- Minimum service requirements
- Current employment status.

Benefits also may be provided at different levels depending on factors such as years of service, amount of contributions or length of time for which contributions were made, eligible dependents, status as a surviving spouse or dependent, Medicare eligibility or availability of other benefits.

The Benefit Promise

It is very important that any VEBA plan specifically identify the liabilities that it is undertaking. In individual account plans, the employee is simply entitled to any benefits that he or she can purchase with his or her account.

With regard to commingled trusts, the parties should consider setting the benefit at a maximum fixed dollar amount. For example, the plan could state that it will provide up to $500 per month toward the cost of medical insurance premiums. This is contrasted with the open-ended promise of paying all or some percentage of the premium cost. Such a program could expose the trust to open-ended liability because health care costs are often

(Cont. on P. 14)

Funding Postretirement Health Benefits Through a VEBA

(Cont. on P.15)

Table

Individual Accounts

Pros	Cons
Ease of administration	Little benefit to those near retirement age
Withdrawals flexible to meet individual needs	Investment risk on the employee
Usually fully vested	
Portable	

Commingled Trust

Pros	Cons
Immediate benefit for those near retirement	Not portable
Investment risk on the trust	Vesting/eligibility requirements
Economies of scale	Higher administrative costs

unpredictable and uncontrollable. In the past, this type of arrangement has caused severe financial hardships for many private employers.

Regardless of how the plan is structured, it is strongly advised that the plan and trust reserve the right of the trustees to amend, modify or terminate benefits. Thus, participants must recognize that benefits could be paid at lower amounts (or not at all) if funding proves to be inadequate.

Individual Accounts or Commingled Trust?

The above table identifies the pros and cons of individual accounts and commingled trusts.

Other Considerations for Employers

The following are some issues that employers should consider with regard to VEBA trusts:

- A VEBA trust could increase the cost of insurance to the employer. This is because it could enable a higher proportion of employees to retire or retire at an earlier age and remain in the employer's retiree health plan. On average, the cost of retiree claims exceeds that of younger active employees by 200-300%.
- Unions are currently proposing VEBA plans as "employee pay all." It is only a matter of time before they seek employer contributions.
- VEBA plans can reduce payroll cost by enticing higher paid workers into retirement and replacing them with new hires with lower salaries.
- Employers should be cautious not to assume new liabilities for retiree health care costs. If they already have assumed such liabilities, they should seek ways to limit them such as retiree contributions or reduced benefits.

Considerations for Unions and Employees

The following are some issues for employees and unions to consider with regard to VEBA plans:

- Employees want and need assistance in paying for retiree medical insurance. VEBAs can provide an attractive benefit to employees and/or union members.
- Unions or nonunion employee associations can establish VEBAs without employer involvement or approval. However, cooperation in payroll deductions may be required to receive the full tax benefit.
- VEBAs can cover employees of more than one employer.

The Goodyear and General Motors (GM) Experience

Two recent agreements to establish VEBA trusts in the private sector illustrate the potential for employers to reduce or even eliminate their retiree health obligations by prefunding such obligations.

In December 2006, Goodyear and the United Steelworkers agreed to create a VEBA trust that will completely eliminate Goodyear's obligation to provide retiree medical benefits under prior collective bargaining agreements. The VEBA is intended to take the place of Goodyear's current postretirement medical benefit obligations. The VEBA, rather than Goodyear, will therefore be responsible for administering and paying retiree medical benefits in the future. The union agreed not to bargain over retiree medical benefits in any future negotiations.

The details concerning the Goodyear VEBA trust are as follows:

- Goodyear will contribute $1 billion into the VEBA ($700 million in cash and $300 million in any chosen combination of cash and stock).
- The first $1 of employee cost-of-living adjustments will be diverted to the VEBA, which will add an estimated $80 million to the trust.
- Goodyear will pay up to a total of $55 million in profit sharing into the trust for the years 2009 and 2010.
- Retirees will continue to pay a portion of their required health care premiums

The Goodyear arrangement was no doubt influenced by GM's agreement with the United Auto Workers in (Cont. on P. 15)

Funding Postretirement Health Benefits Through a VEBA

October 2005 to reduce GM's retiree health care costs by approximately $15 billion. The GM agreement involved a combination of retiree premium payments, increased deductibles and the creation of a VEBA trust. As with the Goodyear/United Steelworkers VEBA, the trust, rather than GM, will be responsible for administering and paying retiree medical benefits. The GM VEBA, however, is intended to subsidize the portion of its ongoing retiree health care costs that retirees' premiums will not cover. In other words, the VEBA will pick up the difference between the retirees' premium payments and the cost of the coverage.

The details concerning the General Motors VEBA trust are as follows:

- GM agreed to make three separate $1 billion contributions to the trust in 2006, 2007 and 2011.
- Active employees will defer $1 per hour of all future wage increases to the trust.
- Two cents per hour of all future active employee cost-of-living adjustments will be diverted to the trust.
- GM will make an unspecified amount of profit-sharing payments into the trust.
- Retirees will be required to contribute toward the cost of their health care premiums.

Union leaders are beginning to support these types of arrangements because they recognize that employers are no longer able to finance retiree health obligations on a pay-as-you-go basis. Rather than risk losing these benefits wholesale in a potential bankruptcy, unions are realizing the value of prefunding retiree obligations through VEBAs, which are protected from creditors if properly structured.

Conclusion

Employers that carry the obligation to provide retiree health coverage are facing immense challenges due to new accounting rules, changing demographics and a health care system with double-digit annual cost increases. Employees who rely on these benefits face greater risk that they will be lost or reduced in bankruptcy or future negotiations. One alternative that can decrease or even eliminate employer obligations and secure benefits for employees and retirees is the VEBA trust. By prefunding their retiree health costs and placing the obligation to provide retiree coverage in the hands of the trust, employers are able to improve their balance sheet, and employees and retirees have a source of funds to provide the benefits they expect. As such, VEBA plans are growing in popularity because they provide a win-win solution to the retiree medical funding crisis.

For information on ordering reprints of this article, call (888) 334-3327, option 4

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AG: PROBE OF STATE PENSION FUND WILL UNCOVER CORRUPTION

N.Y. Daily News

Sept 13, 2007

Attorney General Andrew Cuomo says New Yorkers will be startled by the extent of “pay-to-play" culture his expanding probe of state pension fund corruption will uncover. “Even for jaded cynics like us who think we've seen it all, it's going to be an eyeopener.” Cuomo revealed yesterday during an interview with the Daily News Editorial Board. The probe centers on lucrative fees paid to outside investment fund managers hired by the $150 billion pension fund during the tenure of former State Controller Alan Hevesi. Hevesi was forced from office in December after being convicted of using state workers to chauffeur his wife.

One focus of Cuomo's investigation is millions of dollars in placement fees that Hevesi political adviser Hank Morris collected from companies doing business with the fund. Cuomo would not detail where else the probe is leading. But he said when the investigation concludes, how to end decades of pay-to-play abuse “is going to be the policy question” confronting the state. Under the existing system, the controller is the sole trustee of the fund, with no oversight. Cuomo said Hevesi's successor, Tom DiNapoli, has been “cooperative” with the investigation.

Cuomo said his office is “breaking new ground” by conducting a public integrity case under the Martin Act—a statute giving him broad civil and criminal enforcement poser over securities trading. Cuomo's predecessor, Eliot Spitzer, used that statute to prosecute Wall Street abuses.

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