Illinois Public Pensions

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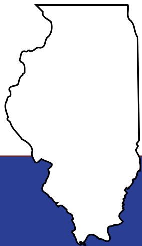

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Illinois Public Pensions

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"Clearly a Catastrophe"— Supreme Court's ruling on Catastrophic Injury Statute

by Robert K. Bush of Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C.

A recent Illinois Supreme Court decision will increase the costs of health insurance coverage for all governments which employ police and fire officers. Public entities may now need to provide free lifetime health benefits for some of the officers who are awarded "line of duty" disability pensions (as well as their spouses and minor children). As explained below, governments must now report them as covered individuals in the census transmitted to health insurance carriers or self-insurance health programs. It is likely but not certain that retirees who were denied this coverage from 1997 to the date of the court's decision can make valid claims.

In 1997, the Illinois General Assembly passed the "Illinois Public Safety Employee Benefits Act" which expanded the obligations of a municipality to police officers and firefighters killed or seriously injured in the line of duty. The legislation provided that:

(a) An employer who employs a full-time firefighter, or police officer who suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent of the injured employee until that child reaches the age of majority... and

(b) In order for the law enforcement, correctional or correctional probation officer, firefighter, spouse or dependent children to be eligible for insurance coverage under this Act, the injury or death must have occurred as a result of the officer's response to fresh pursuit, the officer or firefighter's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act. 820 ILCS 320/10

During the few years since the statute's passage, dis-

agreement arose over the meaning of the term "catastrophic injury" found in Section 10(a). In the case of Villarreal v. Village of Schaumburg, 325 Ill.App.3d 1157 (2001), the First District Appellate Court held that a "catastrophic injury" is one that is "financially ruinous" rendering a firefighter or police officer "incapable of engaging in any gainful employment." 325 Ill.App.3d at 1163.

However, in a second case, Krohe v. City of Bloomington 329 Ill.App.3d 1133 (2002), the Third District, with one judge dissenting, ruled that the term "catastrophic injury" was synonymous with an injury which afforded the employee being awarded a line of duty disability pension pursuant to the Illinois Pension Act. See: 40 ILCS 5/4110.

When a conflict exists between appellate courts, the Illinois Supreme Court often agrees to accept a case to resolve that conflict. That was true when the court decided to accept review of the Krohe v. City of Bloomington decision. In an opinion authored by Justice Thomas, the supreme court agreed with the employee and ruled that the term "catastrophic injury" meant any injury resulting in the granting of a line of duty disability under Section 4-110 of the Illinois Pension Code. In reaching its decision, the Illinois Supreme Court decided to ignore or reject several dictionary definitions presented to it by the city. In fact, the court cited these several definitions of "catastrophic" as evidence that the term was ambiguous because "reasonably well-informed persons" had submitted no less than six distinct definitions.

Having found the term "catastrophic injury" to be ambiguous, the court allowed that it was entitled to examine extrinsic evidence to determine the Legislature's intended meaning. There was one statement made by a single Illinois senator delivered during the Senate debate whether to override Governor Edgar's veto of House Bill 1347 where Senator Donahue stated, "I would like to say for the sake of the record what we mean by 'catastrophically injured.' What it means is that it is our intent to define catastrophically injured, as a police officer or firefighter who, due to injuries, has been forced to take a line of duty disability."

The Supreme Court acknowledged that this statement, taken alone, could not control the outcome of the case because it was made only after the Governor had vetoed the original bill and, therefore, played no role in the General Assembly's initial decision to enact the statute. Undaunted, the Supreme Court reached back further in time and found three other occasions during the House Bill 1347 debate where two representatives and a senator stated that the statute was to provide free health insurance for full-time law enforcement officers and firefighters "killed or disabled in the line of duty." None of these earlier statements revealed anything about the circumstances surrounding when a public safety officer was forced to take a line of duty disability pension. None of them elaborated on the severity of the injury required to grant a disability versus a definition of "catastrophic injury." As far as the Supreme Court was concerned, any injury sufficient to justify granting a line of duty disability pension was catastrophic enough to meet the standard of subsection (a).

However, subsection (b) of the act requires a public safety officer to have been killed or injured as a result of several clearly public safety-type activities before entitlement to paid health insurance benefits is triggered. Under subsection (b), in order for the public safety official to be eligible for free lifetime health insurance coverage, the injury or death must have occurred, "as a result of the officer's response to fresh pursuit, the officer or firefighter's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another or during the investigation of a criminal act" 820 ILCS 320/10(b). In order for a public safety officer to be awarded an on-duty disability pension, the disability need not have been limited to such an activity.

The reason the Illinois Supreme Court did not make reference to subsection (b) of the PSEBA was because it stipulated that the plaintiff firefighter sustained his injuries while responding to an emergency. Under Krohe, if a public safety officer receives a duty disability pension, to be entitled to free health care, the injury must also have occurred under the limited circumstances described in subsection (b).

So what must the Illinois municipality do now with its "killed or disabled" police officers or firefighters in light of the Krohe decision? From a practical standpoint, there is "good news" and "bad news." The good news is that it doesn't take a rocket scientist to now determine what the statute means by "catastrophic injury" nor is it necessary to assess either the mechanism or result of a public safety officer's injury. Once it is determined that a firefighter or police officer gets an on-duty disability pension, then, there must be a second evaluation concerning the circumstances under which the injury arose, if the injury or death occurred in the officer's response to a fresh pursuit, the response to what is reasonably believed to be an emergency as a result of a criminal act by another or during the investigation of such a criminal act, then the officer, in addition to the other statutory benefits mandated by the Pension Code, the officer and/or his or her dependents also get free lifetime health insurance coverage. Regardless of how disabled (or not disabled) the employee may be, a positive assessment under both sections of the Act will be dispositive in determining the right to receive free health insurance.

The 'bad news" is the cost. Health insurance premiums are skyrocketing these days. If a municipality is required to include, for underwriting purposes, all those employees or their dependents who may be receiving this benefit, the price of health insurance will increase even more dramatically. In a time where family health insurance premiums can top $1,200 per month, a 40 year-old married firefighter will cost the village in excess of $1,000,000 in insurance premiums over a lifetime.

Now that the Supreme Court has issued its edict on the PSEBA definition of "catastrophic injury," it is up to Illinois municipalities to decide whether to lobby the Illinois legislature to provide a more restrictive meaning to this term if the current cost exposure is to be reduced. For years, plaintiffs' attorneys have taken pot shots at eliminating or curtailing certain sections of the Illinois Tort Immunity Ad after unfavorable decisions were rendered by Illinois courts. It is now incumbent upon Illinois municipalities to respond with righteous indignation and, if the desire exists, cause a change to the

statutory language so as to effectuate a more palatable obligation. The ball is in our court.

On a practical note, many municipalities will begin to receive claims from police and fire officers who have been awarded on-duty disability pensions and will claim reimbursement for past insurance premiums costs of the officer, a spouse and children. A rare but worst case claim can be made by an officer in that position or his or her health care providers, where there was no insurance purchased and significant health costs incurred.

Reprinted from Fall 2003 Local Government News, published by Ancel, Glink Diamond, Bush, Dicianni & Rolek, P.C. For additional information on this topic contact Rob Bush or Stewart Diamond at 312-782-7606.

Municipalities may seek administrative review at the hearing level, Circuit Court and Appellate Court

by Jenette M. Schwemler of Zukoski, Rogers, Flood & McArdle

A municipality has the right to seek administrative review in the circuit court of a pension board's determination of benefits in some instances. In *Karfs v. City of Belleville*, 770 N.E.2d 256 (5th Dist. 2002), the appellate court held that the City had standing to seek administrative review of a pension board's decision to the circuit court. However, since the City failed to request administrative review with in 35 days of the Board's decision, the City was not entitled to such a review.

The First District has held that a municipality who participated during the initial pension board hearing and the administrative review proceeding before the trial court had a right to appeal a trial court's decision regarding the administrative review of a pension board's determination of benefits. In *Peterson v. Board of Trustees of the Firemen's Pension Fund of the City of Des Plaines,* 281 N.E.2d 368 (1st Dist. 1971), Richard Peterson applied for a disability pension, claiming he was permanently disabled for service in the fire department, necessitating his retirement. The City appeared during the

hearing before the Board of Fire and Police Commissioners and took a position adverse to Peterson. Peterson sought administrative review in the circuit court, and the decision of the Board denying Peterson his pension was reversed. The Board chose not to appeal. However, the City of Des Plaines did appeal. Peterson moved to dismiss the appeal, claiming the City did not have the legal capacity to appeal from the judgment. Peterson contended that the City was not directly affected by the decision of the court compelling the Board to award him his pension. The appellate court held that the City Council is vested by statute with the duty to establish and administer a firemen's pension fund for the benefit of its firemen, and therefore, the City's interest was more substantial than that of an individual taxpayer, who cannot obtain review of an administrative decision. The appellate court reasoned that the number of firemen given disability pensions directly affects the duty of the City to provide its proportion of funds to enable the pension system to function. The City therefore had the right to appeal from the trial court's decision.

These cases hold that, in some cases, a municipality has the right to seek administrative review of a pension board's decision before the trial court and the appellate court.

But does a municipality have the right to participate in the initial hearing before the pension board? The answer is "maybe." O*n March 30, 2004, the First District appellate court, in Village of Stickney v. Board of Trustees of the Police Pension Fund of the Village of Stickney,* 2004 WL 626527 (2004) ruled that a municipality does not necessarily have a right to participate during a pension board hearing. However, a pension board has discretion in deciding whether to allow a party to participate, in whole or in part, in a proceeding before the board.

According to the First District, neither Peterson nor Karfs establishes a municipality's right to intervene at the administrative proceeding before the pension board. The court focused on what it viewed as a lack of authority in the Pension Code which would allow a municipality the right to intervene in the administrative proceeding.

The Village of Stickney, during the hearing before the pension board, attempted to cross-examine the partici-

pant, but was denied the opportunity. It argued that under *People ex rel. Klaeren v. Village of Lisle,* 781 N.E.2d 223 (Ill. 2003), it had a due process right to cross examine witnesses at a public hearing, including a public hearing before a pension board. The appellate court dismissed this argument, noting that municipalities cannot assert due process rights under the constitution. Interestingly, the court, later in the decision, stated that an administrative agency, such as a pension board, has the authority, under Klaeren, to limit the circumstances under which a party may be cross-examined.

Employer-sponsored retirement plans most important

by Darrell Oliver, Prudential Financial

Social Security is no longer most important retirement income for American workers.

As a true testament that employer-sponsored defined contribution plans such as 401(k) plans are expected to play an increasingly important role in retirement savings, six in ten American workers anticipate that their savings in these plans will be the single largest source of their future retirement income, according to a new study released by Prudential Financial, Inc. (NYSE: PRU). And yet, the same survey also found that many participants are not actively managing their money in these plans.

Notable findings from Prudential Financial's second annual study of participants of employer-sponsored retirement plans include:

Workers expect their employer-sponsored retirement plans to contribute twice as much to their future retirement income as Social Security.

Participants expect to rely much more on their own savings in retirement plans than Social Security. On average, participants expect their retirement plans to account for 54% of their total retirement income, more than twice as much as they would expect from Social Security (26%).

Employer-sponsored plans, already a critical tool for accumulating retirement savings, are expected to be the most important source of retirement income

Six in ten participants expect employer-sponsored plans to provide half or more of their total retirement income in the future, making it the single largest source of retirement funding.

Workers were three times (27%) more likely to increase their retirement plan contributions to make up for stock market declines and savings needs than to decrease contributions (9%).

- Since only 31% report contributing the maximum allowed to company plans, many other have the opportunity to also boost their savings.
- However, the majority (62%) still contributes the same percentage of their salary as in prior years.
- Importantly, almost six in ten American workers do not feel they are saving as much as they should.

The American worker is not paying much attention to his/her retirement plan.

- Despite the stated importance of employer sponsored retirement plans, most workers do not appear to be sufficiently monitoring or diversifying these investments. Many participants may be too hands-off with managing their retirement savings.
- Despite historical changes—the country at war, a deep stock market decline, and historical low interest rates—nearly 70% of employees made no asset reallocations to their employer sponsored retirement investments in the last 12 months.

Participants tend to use a small number of investment options.

- The majority (75%) use four or fewer investment options or are unsure how many options they use, suggesting potentially a significant under-utilization of the retirement plan options and raising serious questions about whether participants' portfolios are adequately diversified. Of concern, 27% use only one

to two investment options. Even among employees age 50-64, the same amount (27%) use but one to two investment options.

- Almost one in five participants (19%) cannot recall how many investment options within their plan they put their money in.

The decision of where to invest retirement savings is too often whimsical.

- About half of the participants' investment decisions seem to be advice- or research-based. 30% said they have followed professional advisors' recommendations, and 21% said they conduct their own research.

- But the remaining half of participants are based on rather shaky ground:
  - 14% picked investments with the best performance at the time;
  - 11% listened to co-workers or friends' suggestions;
  - 9% simply divided money among a number of options;
  - 8% took their best guess.

Prudential Financial's *Annual Retirement Perceptions Study* polled 1,000 Americans in July and August 2003 to explore issues critical to employer-sponsored defined contribution plans and retirement savings.

The study's participants are a national representative random sample of full-time employed men and women aged 21 to 64 who currently participate in 401(k), 403(b), 457, or other types of plans offered by their employers.

The margin of error is plus or minus three percentage points at the 95% confidence level.

*For more information, contact Darrell Oliver at 973-802-*9627.

Multi-state corporate reform initiative seeks to set national benchmark for mutual fund industry

In January, North Carolina Treasurer Richard Moore, New York State Comptroller Alan Hevesi and California Treasurer Phil Angelides announced the launching of a major initiative to protect investors and pensioners through a wide range of mutual fund reforms that they say could become the market standard for the entire mutual fund industry.

The standards concern mutual fund industry reporting, compensation, board structure and other business practices. See list of standards at the end of this article.

The aim of the Mutual Fund Protection Principles is to use the "power of the purse"—states' and pension funds' size and influence as large customers in the mutual fund marketplace—to spur mutual funds to comply with the Principles.

They said that compliance with the principles would be a significant factor in determining whether a mutual fund would have the right to do business with their respective states—as well as any other states that adopt the tough new guidelines.

In March, the California Public Employees' Retirement System (CalPERS)—the nation's largest public pension fund —adopted the initiative. This action brought the standards a step closer to becoming the market standard for the entire mutual fund industry.

"The CalPERS vote... sends a strong message: if you are a mutual fund that wishes to do business with California, we expect you to adhere to the highest standards of disclosure and business practices," said Angelides.

"We are committed to rooting out the bad actors and fraudulent practices that have shaken the mutual fund markets and harmed millions of families who have placed their savings in mutual funds."

To learn more about California reform efforts visit http://www.treasurer.ca.gov/Corporate_Reform/index.htm

California Treasurer's Office investment standards

The California State Treasurer's Office has adopted as a minimum requirement that all firms doing business with the office must comply with the Standards. A list of companies in compliance is available on the Treasurer's website at www.treasurer.ca.gov/ Corporate_Reform, and will be updated regularly. The Investment Protection Standards include, but are not limited to, the following:

- Severing the link between compensation for analysts and investment banking.
- Completely separating research and investment banking, including physical separation. Research will not report directly or indirectly to or through investment banking.
- Requiring that research have its own dedicated legal and compliance staff.
- Requiring firms to create and enforce firewalls reasonably designed to prohibit all communications between research and investment banking.
- Prohibiting research from participating in efforts to solicit investment-banking business. Analysts may not participate in "pitches" or investment banking sponsored road shows.
- Prohibiting investment banking input into analyst compensation.
- Establishing written criteria (exclusive of investment banking input) to be used for compensation decisions.
- Compensating analysts in significant part based on the quality and accuracy of their work.
- Investment banking shall have no input into an analyst's evaluation.
- Decisions concerning compensation shall be documented.
- Creating a review committee to approve all research recommendations.
- The review committee will review all changes in rat-

ings, if any, and material changes in price targets, if any, contained in the firm's research reports.

- The review committee will conduct periodic reviews of research reports to determine whether changes in ratings or price targets, if any, should be considered.
- The review committee will monitor the overall quality and accuracy of the firm's research reports.
- Requiring that upon discontinuation of research coverage of a company, firms will disclose the coverage termination and the rationale for such termination.
- Prohibiting investment banking input into company-specific coverage decisions (i.e., whether or not to initiate or terminate coverage of a particular company in research reports furnished by the firm).
- Disclosing in research reports whether the firm has received or is entitled to receive any compensation from a covered company over the past 12 months.
- Each quarter, firms shall publish on their websites a chart showing their analysts' performance, including each analyst's name, ratings, price targets, and earnings per share forecasts for each covered company, as well as an explanation of the firm's rating system.
- Establishing a monitoring process to ensure compliance with the principles.
- Each firm shall conduct an annual review to provide reasonable assurance that the firm is in compliance.
- The State Treasurer reserves the right to request an independent audit or confirmation of compliance with these standards.

Documenting benefits coverage for all workers

by William J. Wiatrowski, Bureau of Labor Statistics

BLS data on employee benefits have, until recently, focused on subsets of the economy. As a result, aggregate data for all civilian and private industry workers could only be obtained in a piecemeal fashion. This article makes these data available for the first time in a single place.

Over the period from 1989 to 2003, the percentage of workers participating in many employer-provided benefits plans—from medical care and life insurance to retirement plans and paid vacation time—slowly declined. BLS data on the availability of benefits throughout this period provide an overview of trends in this important component of compensation, which constitutes nearly 30 percent of employer compensation costs.[1]

Among workers in both private industry and state and local governments—referred to hereafter as civilian workers—the percent of full-time employees with medical care coverage declined from 83 percent in 1989-90 to 68 percent in 1998-99.[2] For full-time workers in the private sector, medical care coverage declined by 24 percentage points over a somewhat longer period,[3] from 80 percent in 1989-90 to 56 percent in 2003. Trends in retirement benefits also show declining coverage since the late 1980s, although less so than for medical care. Among full-time civilian workers, retirement coverage declined from 68 percent in 1989-90 to 62 percent in 1998-99. For those in the private sector, retirement coverage remained about the same, with roughly 60 percent of full-time workers participating in such plans.

Perhaps the overriding trend in benefits over the past 25 years is toward more employee responsibility for their benefits. Evidence of this phenomenon includes the availability of choices among medical care plans, the requirement that employees help to fund the cost of their medical care plans, and the requirement that employees contribute to their retirement plans and make investment decisions. BLS benefits data help to document all of these trends.

While benefit coverage declined throughout the 1990s, several measures of employer benefits costs reveal different trends. The proportion of employer compensation dollars spent on benefits (as opposed to wages), for example, has remained relatively stable at about 28 percent of compensation costs throughout the decade. This may suggest that the benefits that are currently provided are more costly than they have been in the past. In fact, benefit cost increases outpaced wage cost increases during the early 1990s, but moderated in the latter part

of the decade. Since 2000, benefit costs have once again outpaced wage costs. Several factors influence these benefit cost data. For example, employer costs for health care benefits rose at very high rates in the early 1990s, but moderated substantially in the middle part of the decade. In addition, costs for defined benefit pensions fluctuated with changes in investment performance. Finally, many benefit costs, such as those for time off, defined contribution, and life insurance plans, are directly related to wage changes—as wages increase, the cost of the benefit increases proportionally.[4]

Notes

[1] Data from the BLS survey of Employer Costs for Employee Compensation indicate that 28.6 percent of employer compensation costs in December 2003 went toward benefits, with the remaining cost attributed to wages. See Employer Costs for Employee Compensation—December 2003, USDL: 04-288 (U.S. Department of Labor), February 26, 2004.

[2] This article uses the terms "participation" and "coverage" interchangeably to refer to workers currently enrolled in a benefit plan, having met all eligibility requirements and other conditions of enrollment, such as agreeing to pay any required plan costs.

[3] Because survey coverage changed from year to year, private sector data are available from 1989-90 to 2003, while civilian worker data are available from 1989-90 to 1998-99. As tables 1 to 5 in this article show, data for some years are available only for full-time workers, while for other years, they are available for all workers but not separately for full-time workers.

[4] For more information on costs of employee benefits, see Employment Cost Index—March 2004, USDL 04-751 (U.S. Department of Labor), April 29, 2004; available at http://www.bls.gov/ncs/ect/sp/ecnr0049.pdf.

For the full report, including data tables, please visit http://www.bls.gov/opub/cwc/print/cm20040518ar01p1.htm

William J. Wiatrowski is Assistant Commissioner, Office of Safety, Health and Working Conditions, Bureau of Labor Statistics. Excerpted from the U.S. Department of Labor Bureau of Labor Statistics report originally posted May 26, 2004.

RECOMMENDED PRACTICE: GFOA adopts new recommended practice on Investment Policies Governing Assets in a Deferred Compensation Plan (2004)

Investment policies governing assets in a deferred compensation plan

Background. Many governments offer a deferred compensation plan to their employees. In operating these plans, governments act as fiduciaries. Because deferred compensation plans shift investment risk to the plan participant, GFOA recommends that governments provide employee education about the management of the investment risk.

Some governments have established an investment policy that governs assets in the deferred compensation plan. Such an investment policy offers a number of advantages to the government and its plan participants:

- Investment policies are a clear demonstration of fiduciaries' due diligence;
- They are a communication tool for conveying investment goals and priorities to interested parties; and
- They strengthen the internal controls of the government and the plan.

Like any financial policy, a deferred compensation investment policy is a governing document in which the governing board and other key stakeholders formally set broad policy parameters. Detailed guidance about implementation of the investment program may be contained in the investment policy or other documents, such as investment procedure manuals and agreements with third parties.

Recommendation

The Government Finance Officers Association (GFOA) recommends that state and local entities establish and adhere to a formal investment policy governing assets in

a deferred compensation plan, and that it be approved by the plan sponsor. Such a policy should be viewed as a long-term governing document.

The development of the investment policy must be made within the framework of the legal restrictions set forth in state and/or local statutes as well as those established by common law and fiduciary standards. Within this context, GFOA recommends that the investment policy contain the following elements:

- Statement of purpose—this statement articulates the rationale for having the policy, as well as the investment for the plan;
- Roles and responsibilities—this identifies the roles and responsibilities of key decision makers, including the governing board, the chief executive officer, the recordkeeper, and other external investment professionals;
- Standard of care—this identifies the standard of prudence that the decision makers are expected to meet in carrying out their responsibilities (e.g., prudent person or prudent expert), including the selection and retention of investment managers.
- Scope of investment options:
    - The policy establishes a broad range of investment options so that plan participants can develop a portfolio suited to individual preferences and risk tolerance;
    - The options range from low risk/low return to high risk/high return;
    - The plan sponsor addresses the duplication among investment options.
- Reporting and monitoring:
    - The policy defines the frequency and manner in which external and internal parties report investment results;
    - Performance of an individual investment option or fund is measured against a peer group and/or a market index;

- Regulatory compliance, including disclosure of pending investigations, is monitored;
- Changes in the staffing and organization of the underlying investment funds are reviewed;
- Changes in investment style and investment process are tracked;
- Cost of investment options is monitored.

Investment policies should be reviewed annually, with more exhaustive reviews occurring as needed.

References

- GFOA Recommended Practice, Retirement and Financial Planning Services
- GFOA Recommended Practice, Pension Investment Policies
- A Public Employee's Guide to Retirement Planning (Second Edition)

Approved by the GFOA's Executive Board on March 26, 2004

Firefighter bill goes to Governor

The fire fighter survivor pension increase legislation has been sent to the Governor. The Illinois Municipal League estimated statewide cost of the benefit increases is 5.63% of payroll; it supported the legislation in exchange for an exemption from property tax caps for costs associated with benefit increases, an employee contribution of 1% of salary and a four-year moratorium before additional firefighter pension legislation can be introduced. New benefits:

- Surviving spouse annuity of 100% of the deceased fire fighter's pension, effective January 1, 2004, not eligible for automatic annual increase. Also applies to the surviving spouses of all retirees, regardless of the date of retirement or death. This provision is retroactive to include every surviving spouse.
- Incrementally increases minimum retirement, disability, and surviving spouse pensions beginning

January 1, 2004. Minimum annuities would gradually increase (by 3% annually) from $1,030 on January 1, 2004, to $1,159.27 on January 1, 2008.

- An immediate catch-up increase in each existing child annuity equal to 1/12th of 3% of the amount of the pension, multiplied by the number of months the benefit has been payable. From January 1, 2005 through January 1, 2008, all children's annuities would be increased by an additional 3% of the existing annuity annually. The benefit cannot exceed 75% of the firefighter's salary at retirement.
- Reciprocity between Article 4 funds and the ability to transfer IMRF service to an Article 4 fund.

Sticker shock! Public Pension Fund Compliance Fee

Are you feeling the sticker shock of Illinois Department of Insurance Public Pension Fund compliance fee? For 2004, the fee the Public Pension Fund Compliance Fee went from .00007 to .0002 of fund assets. The Village of Carol Stream Police Pension Fund paid the FY 2005 Compliance Fee under protest. The body of the letter that accompanied its fee payment follows:

> "This compliance fee constitutes a very substantial increase (320%) over the compliance fee that was paid last year. It is our understanding that this increase in the compliance fee comes about as a result of PA 93-92 – an Act concerning the State Budget. The Pension Fund pays this fee under protest, and we reserve the right to contest either judicially or otherwise the appropriateness and legality of this fee. It is our understanding that this and other fees (NPDES) newly generated by the State and its agencies were instituted to fund a significant shortfall in State revenue, as opposed to any increase regarding the costs of the State or its agencies in regulating particular activities. The fee was not increased as a result of any careful study of cost of the regulations but simply represent a policy decision

of the Governor and the Legislators as to where an easy source of additional funds could be found.

“It is our belief that, among other reasons, this fee is invalid because it bears no relationship whatever to the cost of regulation and that it is not a fee, but an illegal tax. We would caution you to not turn over any of these fees, or allow the amount of fees collected to be deducted from your agency’s direct funding from the State, and, instead suggest that you retain them within your agency until the validity of the fee can be determined.

“Again, this fee is being paid under protest and we have no choice but to pay it in this manner because a failure to make payment could result in the addition of penalties. We hope that your legal advisors will review this matter and determine whether you can sequester these funds in a trust account so that they will be easier to return if, as we suspect, a decision is reached finding the fee increase to be excessive, invalid and beyond the authority of the Agency or the Illinois Legislature to impose.”