

# LEGALINSIGHTS

FOR FIRE PROTECTION DISTRICTS

OTTOSEN BRITZ KELLY COOPER GILBERT & DINOLFO, LTD.

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## New minimum manning rulings impact collective bargaining process

by Thomas J. Gilbert

Recent rulings by the Illinois Labor Relations Board (“ILRB”) declaring that minimum manning is a mandatory subject of bargaining for firefighter bargaining units will have substantial impact on the collective bargaining process. Prior to these rulings, labor arbitrators ruled that minimum manning was permissive and not mandatory, and therefore, was beyond the jurisdiction of interest arbitration.

In general, minimum manning is a requirement imposed in a collective bargaining agreement addressing the obligations of the employer to staff a given shift with a pre-established minimum of employees. Such a requirement commits the employer to continue to employ sufficient members of the bargaining unit to maintain staffing levels on each shift as required by the agreement. Under the rulings in the Oak Lawn case (Oak Lawn Professional Fire Fighters and Village of Oak Lawn, Case No. S-CA-09-007 (ILRB State Panel)) and Streamwood Case (Village of Streamwood and International Association of Fire Fighters, Case No. S-DR-11-00 (ILRB General Counsel)), parties are now required to bargain over this issue and submit the matter to binding interest arbitration, if they are unable to reach an agreement.

Under the Illinois Public Labor Relations Act (5 ILCS 315), the parties are required to “bargain collectively”

with respect to wages, hours and terms and conditions of employment. Section 4 of the Act specifically relieves the employer of the obligation to bargain over matters of inherent managerial policy. Section 14 of the Act provides that firefighters and paramedics are not permitted to strike, but instead do have the right to interest arbitration upon impasse. Section 14 of the Act specifically exempts from consideration by the arbitrator in an interest arbitration any dispute about the total number of employees employed by the department, but Section 14 is silent as to fire department minimum manning.

A similar Section 14 provision with regard to police arbitration authority exempts minimum manning as well as the total number of employees employed by the department. The Act specifically states minimum manning is not a mandatory subject of bargaining for police officers, but does not contain similar language for firefighters. Thus, in both the Oak Lawn and Streamwood rulings, the ILRB has read that distinction as the basis for its conclusion that minimum manning is a mandatory topic of collective bargaining for firefighters.

The economic impact of minimum manning on a fire department can be significant. If the department is operating at the minimum level established in

## Fire district procurement issues: Steps for a successful RFP process

by Joseph Miller, III and  
Meganne Britton

Unlike their municipal counterparts, fire protection districts are not required to participate in a formal sealed bid process for the acquisition of fire apparatus and equipment. The only exception to this rule applies to districts that have adopted an ordinance or rule that requires a sealed bid for purchases over a certain dollar amount. A bidding process can be intimidating for inexperienced districts so caution must be taken to ensure a proper bidding process that can survive any challenges by unsuccessful bidders. Most fire protection districts instead opt to solicit requests for proposals from prospective vendors to procure apparatus and equipment.

There are several recommended procedures to follow to ensure that the request for proposal (“RFP”) process is effective. First, the district must determine and define the service and / or product needed. A more specific RFP will generate fewer questions from potential vendors. Furthermore, requesting specific details will ensure that the proposals submitted to the district are tailored to its precise service and product requirements. Additionally, the request for proposal should include an overview of the district and any specific service needs.

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## New minimum manning rulings

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the contract, all absences, whether due to vacation, sick or Kelly days, may have to be filled by overtime, resulting in a significant expense to the department. In the past, employers engaged in the bargaining process have been able to extract substantial benefits in bargaining for granting minimum manning. In some units, the employer has retained the right to continue with part-time employees and contract employees, or has even gained concessions with regard to economic issues. The recent ILRB rulings may serve to diminish the ability of a department to receive concessions for agreeing to minimum manning.

At this point, commentary with respect to the fairness of the recent rulings would be meaningless. Unless and until the state courts or the legislature overturn these ILRB rulings, we are obligated to include minimum manning as a mandatory subject of

**Fire departments are not required to establish minimum manning in their contracts, but they must discuss it during negotiations.**

bargaining. Fire departments are not required to establish minimum manning in their contracts, but they must discuss it during negotiations and risk the matter being determined by an arbitrator in binding interest arbitration. If during negotiations labor is insisting for the inclusion of mandatory minimum staffing, the following points should be considered:

1. Verify that the department's finances will permit the staffing level agreed upon in the event of a reduction in tax income. As we have learned over the past few years, we cannot assume that the EAV will increase or you will be successful in pursuing a referendum.
2. Insist that you will continue to utilize part-time or contract program employees whenever you meet the minimum number of bargaining unit employees per shift. Usually, you will be limited with regard to part-time and contract program employees, but attempt to ensure that you have sufficient manpower to provide the necessary services to the district or municipality.
3. Retain, if possible, the ability to allocate the work force between stations (for districts with more than one station) as management deems appropriate.
4. Avoid having a minimum requirement at each station.

This article is not intended to create alarm, only to raise awareness of this new ILRB decree that may impact the collective bargaining process. Many agreements have provided for minimum manning without resulting in hardship to the department. You may, however, expect that during negotiations the minimum manning issue will be raised with more frequency and be met with less compromise than in previous collective bargaining processes. ■

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## Successful RFP process

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Second, the district must determine how it will distribute, publicize and receive its request for proposals. It is important to distribute or make the RFP available to many vendors in order for the bidding process to be competitive. To reach as many qualified vendors as possible, the district should consider posting the RFP on its website, advertising the RFP in local newspapers, and mailing the RFP to selected vendors.

Third, a good RFP will clearly outline the proper format for obtaining proposals, listing all documents required and the sequence in which they must be submitted from vendors. At a minimum, requested documents should include a vendor profile, qualifications and experience, technical requirements for the project, detailed financial information on the service or product, guarantees and warranties provided by the vendor, and comprehensive project management specifications. Unless detailed information is submitted in an organized manner, it will be difficult for the district to determine if a vendor has the qualifications to provide the necessary service or product.

Fourth, the district should include their evaluation criteria in the RFP. By providing vendors with a thorough understanding of the criteria required for the product or service, a district will receive proposals tailored to its specific needs. In addition, documentation on the evaluation process will go a long way to defeat any challenges to the district's decision.

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## Change in PEDA and PSEBA benefits after Nowak decision

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by Meganne Britton

**I**n a case of first impression, on December 27, 2010, the First District Illinois Appellate Court held in *Nowak v. City of Country Club Hills*, \_\_\_ Ill.App.3d \_\_\_, 2010 WL 5487539 (1st Dist. 2010), that an employee who suffered a career ending injury was able to recover reimbursement for his health insurance benefits under Section 10(a) of the Public Safety Employee Benefits Act (PSEBA) (820 ILCS 320/10) from the date of his injury despite his receipt of benefits under the Public Employee Disability Act (PEDA) (5 ILCS 345/1).

In August of 2005, Officer Don Nowak was injured, and permanently disabled, while making an arrest. Officer Nowak was paid 100% of his salary for a year after the injury pursuant to PEDA; however, his healthcare premiums continued to be deducted from his salary. Before Nowak was awarded a line-of-duty disability pension in October 2008, he continued to pay his healthcare premiums. After Nowak was awarded the

disability pension, the City paid 100% of his health care premiums.

Nowak filed suit against the City seeking reimbursement for his health care premiums, totaling about \$8,000, from the date of his injury up until his disability pension award. The circuit court ruled in favor of the City finding that PSEBA did not authorize the retroactive payment of health insurance premiums prior to the pension board's decision. Nowak appealed the circuit court's decision. The appellate court reversed the circuit court's decision finding that there was no time limit for collection or an explicit provision in PSEBA that prohibited the retroactive payment of premiums. The court determined that PSEBA benefits were not dependent upon or limited by other benefits afforded by PEDA or any other statute. Furthermore, the court held that benefits under PEDA Section 1(b) and PSEBA Section 10(a) could be granted simultaneously without offending the purpose of either statute.

Despite the City's argument that ruling in favor of Officer Nowak would create "obvious practical problems" and "obvious budget difficulties," the appellate court held that the City's interpretation of the statutes would run counter to the purpose of PSEBA. Instead, under the appellate court's decision, an employee who has suffered a career-ending injury is entitled to payment of his portion of health insurance premiums from the date of his injury, not from the time that the employee is found to be eligible for a disability pension.

At this time, it is unclear whether review by the Illinois Supreme Court will be sought by the City. If a petition is filed and granted, the appellate court's decision could be subject to review and possible reversal by the Illinois Supreme Court. Until that time, employers are advised to determine whether a line-of-duty injury is "catastrophic" soon after the injury occurs in order to establish if PSEBA insurance benefits will begin during the PEDA time period. ■

## Attorney Notes

■ In January 2011, **John H. Kelly** spent a week in New Orleans, Louisiana, repairing and renovating a historic church damaged as a result of Hurricane Katrina. This was John's fifth year volunteering for Camp Restore, a ministry of the Southern District Lutheran Church - Missouri Synod.

■ **OTTOSEN BRITZ** is pleased to announce that **Donald R. Tyer** has joined the firm as an associate. Don is an accomplished litigator who, as a prosecutor in the Lake County State's Attorney's Office, successfully tried numerous cases to verdict. Prior to becoming an attorney, Don was an educator; as

a public high school teacher and charter school assistant principal. He received his undergraduate degree in Education from the University of Illinois at Urbana-Champaign, and his law degree, *cum laude*, from the John Marshall Law School. Don will represent school districts and other units of local government from the Naperville office.

■ **Carolyn Welch Clifford** has been invited to speak at the National Association of Public Pension Attorneys (NAPPA) Legal Education Conference to be held in June 2011, in Seattle, Washington.

■ **Shawn P. Flaherty** addressed the "Ethics and Gift Ban Act" and "Recent Pension Decisions of Interest" and **Ericka J. Thomas** discussed "Correcting Pension Board Mistakes" at two recent pension seminars held at the College of Lake County on October 15, 2010 and at Glenside Fire Protection District on November 12, 2010. Shawn assisted in designing the seminar program to aid pension fund trustees in meeting the new educational requirements established in August 2009, under the Illinois Pension Code.

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## Attorney Notes

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■ Several **OTTOSEN BRITZ** attorneys will present at the Northern Illinois Alliance of Fire Protection Districts Annual Conference to be held February 3 - 6, 2011, in Oak Brook, Illinois. **Karl Ottosen** will speak on "Easy Understanding of Your Levy, Budget & Financial Reports." **Bob Britz** will address "Managing Open Meetings Act and Freedom of Information Issues." **Tom Gilbert, David Zafiratos, Ericka Thomas, and Bill Thomas** will participate in a "Mock Hearing." **Joe Miller and Ericka Thomas** will speak on "Legal Updates for Fire Commissioners (Hire / Promotion / Discipline)." **Shawn Flaherty** will discuss the "Top Ten Ethical and Fiduciary Dilemmas for Public Pension Fund Trustees." Shawn also will speak on "Smart Investment Strategies for Fire Districts and their Pension Funds." **Carolyn Clifford** will address "Good Governance ...Your Role as a Board Member." In addition, Carolyn will report on "Health & Wellness Issues in Hiring and Employment of Firefighters: Avoiding the Disability Pension." **Tim Hoppa** will speak on "Disciplinary Issues in the Electronic Age." ■

## Successful RFP process

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The district will also need to establish a timeline for distribution and collection of the RFP and responses. Specifically, the RFP should contain distribution and collection dates and locations and a filing deadline.

The timeline should clearly state the time period for questions and answers, the date and time deadline for submitting proposals, and information on the interview procedure, if interviews are part of the RFP process. A timeline will keep the process organized and focused.

It is important to remember that fire districts which opt to engage in a formal bidding process must follow all applicable Illinois laws. For example, it is considered a bribe, a class two felony, if an official receives personal advantages in exchange for influence in the performance of any act related to the function of a public official or employee. (720 ILCS 5/33-1(e))

Further, units of local government cannot include in the bidding process any contractors who have been banned by law from bidding on public contracts due to bid rigging or bid rotating viola-

tions. All bidding contractors must be required to sign a notarized certification of their eligibility to participate in the public bidding process.

**Public officials commit a criminal felony offense when they knowingly disclose terms of sealed bids prior to the formal opening of the sealed bids.**

Public officials commit a criminal felony offense when they knowingly disclose terms of sealed bids prior to the formal opening of the sealed bids. (720 ILCS 5/33-5) As such, public officials should be reminded before every formal bid process that awarding a contract to a bidder because of a personal advantage may be a criminal offense such as official misconduct. In order to avoid legal problems, it is recommended that districts contact their local legal counsel as they go through either a formal bidding process or the more streamlined RFP process. ■

Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.'s newsletter, *Legal Insights for Fire Protection Districts*, is issued periodically to keep clients and other interested parties informed of legal developments that may affect or otherwise be of interest to its readers. Due to the general nature of its contents, the comments herein do not constitute legal advice and should not be regarded as a substitute for detailed advice regarding a specific set of facts. Questions regarding any items should be directed to:

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