HLERK

DECEMBER, 2004

HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN

MONTHLY TICKLER

CONSUMER PRICE INDEX

Percent Changes As Reported by the Bureau of Labor Statistics
For the month of October, 2004
Urban Wage Earners & Clerical

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Monthly	**0.4**	**0.5**
12 Month	**2.7**	**2.7**
St. Louis-6 Month	**2.6**	**2.6**
12 Month	**3.9**	**4.0**
U.S.-Monthly	**0.5**	**0.6**
12 Month	**3.2**	**3.2**

November CPI Figures will be released December 15, 2004.
Visit the CPI at http://stats.bls.gov/eag/eag.us.htm

Reminders/Notes

- **We are pleased to announce that Shayne Aldridge has accepted a position as an adjunct faculty member in the Educational Administration Department of SIU-Edwardsville to teach School Law. In addition, Bennett Rodick and Jay Kraning will address the IAASE Winter meeting in Springfield next January 27 and 28.**
- **Send a copy of the newspaper publication of your statement of affairs with certification to your Regional Superintendent by December 15th.**
- **Determine dates for bi-annual review of executive session minutes (typically January and July).**
- **HLERK congratulates Dr. Fran Karanovich of Macomb CUSD No. 185 on receiving the IASA award for Superintendent of the Year. It is our privilege to work with Dr. Karanovich.**

Illinois Appellate Court Interprets RIF/Recall School Code Provisions Regarding Educational Support Personnel--In *Cook v. Board of Education of Eldorado Community Unit School District No.4*, 2004 WL 2554585 (Nov. 5, 2004), the Illinois Appellate Court overturned a school district's dismissal of a teacher's aide due to reduction-in-force ("RIF") and found that the school district may have illegally created separate categories for different types of teacher's aides.

In *Cook*, a teacher's aide who had entered into a settlement agreement with the district for alleged employment discrimination was placed in a library aide position instead of her previous teacher's aide position. Subsequently, her library position was a part of the district's announced reduction in force.

Cook was the least senior library aide (due to her recent transfer) and was dismissed because the district did not place her on the separate seniority list the district maintained for teachers' aides. Cook then sued the school district asking the Court to order the district to either combine the two seniority lists or place her on both lists.

The trial court dismissed the lawsuit but the appellate court overturned the decision and found that the school district may have illegally categorized the aide. The case has been sent back to the trial court for further proceedings.

3030 Salt Creek Lane • Suite 202 • Arlington Heights, Illinois 60005 • Phone 847-670-9000 • Fax 847-670-7334
3048 Spring Mill Drive • Springfield, Illinois 62704 • Phone 217-546-9200 • Fax 217-546-0800

While the Court recognized that school districts have discretion in establishing ESP categories, it found, in this case, that the discretion had been abused. The Court found that job duties for the teacher's aide and library aide positions were similar, the collective bargaining agreement appeared to treat all full-time aides as one category of employee, and the salary schedule contained one classification called "aides."

The Court then held, "[w]hile we agree that the statute gives school boards the discretion to define categories of positions, we do not think it gives them the discretion to define categories of positions differently for layoff and recall purposes than for other purposes. Either all full-time aides are one category of employee or they are not. If the district does treat aides as one category, the statute imposes a nondiscretionary duty on the school board to place [employees] on seniority lists for all full-time aides positions, whether they are maintained as a single or separate list."

School districts should carefully consider their ESP lists in light of *Cook* and the upcoming February 1st deadline for posting seniority lists.

Please contact Shayne Aldridge with questions concerning the Cook decision or to request a complimentary copy.

Seventh Circuit Appellate Court Rules on School Employment Issues--In the past month, the federal appellate court governing Illinois school districts has rendered two important decisions affecting the rights of school employees.

First, in *Cigan v. Chippewa Falls School District*, 2004 WL 2483132 (Nov. 5, 2004), the Seventh Circuit Court of Appeals found that a physical education teacher with 30 years of experience was not constructively discharged from her position and that there was no evidence that the school district regarded her as disabled.

The teacher claimed that she was forced to retire after she was constructively discharged in violation of the Americans with Disabilities Act ("ADA"). The teacher suffered from arthritis, bursitis, degenerating spinal discs, scoliosis, and spondylitis. Because of these ailments, she began taking more time off, coming in late, and requiring other teachers to cover her duties. The district allowed her to take frequent breaks, and provided chairs for her, as well as other assistance to keep teaching.

These accommodations were not sufficient, however, for the teacher. After the school district and the teacher could not agree on appropriate accommodations, the superintendent notified her that the district would not renew her contract at the end of the school year. She retired instead.

The Court first held that she was not "constructively" discharged. In so holding, the Court found that she was not turned away from her job nor was she subjected to unendurable working conditions. Further, the discharge was not complete because the superintendent's recommendation may not have been accepted by the Board of Education. The Court refused to equate the initiation of discharge proceedings with an accomplished discharge.

With regard to the disability claim, the Court held that she was not "disabled" under the ADA because she admitted that she could carry out the normal tasks of life. Further, the Court found that, even though the district knew about her condition and tried to accommodate her, she offered no reason for the Court to conclude that the principal at the school knew or even cared about the effect her condition had on "major life activities."

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By contrast, in *Baird v. Board of Education for Warren Community Unit School District No. 205*, No. 03-3630 (November 12, 2004), the Appellate Court found that a board of education denied procedural due process in the course of terminating the employment of its superintendent for performance reasons. At the time of termination the superintendent was in the middle of a multi-year contract.

The superintendent rejected participation in the hearing the Board of Education offered him claiming it did not satisfy his due process rights due to the absence of full "trial-type" procedures.

The Appellate Court agreed and found the dismissal in violation of the due process rights of the superintendent. The Court specifically found that a post-termination remedy in state court for breach of contract did not suffice to eliminate the need for a full trial-type hearing prior to the dismissal. The Court so held because the breach of contract claim could not be sufficiently prompt nor allow for reinstatement.

The District is seeking rehearing in *Baird.* Look to the *Tickler* for updates on this important litigation.

Please contact Rob Swain with questions regarding the Cigan and Baird decisions or to request a complimentary copy.

Freedom of Information Act Requires Disclosure of Superintendent's Evaluation--A trial court in Peoria County has ruled in *Copley Press, Inc., et al. v. Board of Education for Peoria School District No. 150*, 04 MR 266 (November 5, 2004) that the letters and evaluation provided to the former superintendent addressing the Board's reasons for placing her on administrative leave with the intent of buying out her contract were *not* exempt under the *Illinois Freedom of Information Act* ("FOIA").

After a review of the documents, the court found that nothing in the documents constituted a "personal matter" nor "personal information." Further, the court opined that simply placing such documents in a personnel file does not make a document exempt under FOIA.

For a complimentary copy of the Order or for information regarding our firm's model policy on the Illinois Freedom of Information Act, please contact Stephanie Jones.

Municipalities Require Developers to Pay "Lag Time Fees" to School Districts-- The Village of Port Barrington recently enacted an ordinance requiring developers to pay "lag time fees" to Wauconda Community Unit School District 118 as a condition of annexation. The City of Woodstock has passed a similar measure that will benefit Woodstock Community Unit School District 200.

Port Barrington and Woodstock thus became the latest municipalities to join a small but growing number of cities and villages to require developers to help rapidly growing school districts with the operating costs of new students as well as the costs of providing new school buildings. Such fees can provide an important new source of revenue for school districts in rapidly developing areas where new residential subdivisions are causing increases in enrollment.

Most school districts are familiar with "impact fees," the fees paid by developers to school districts to help cover the costs of acquiring land for new schools. The Illinois legislature recently amended the Illinois Municipal Code to allow such fees also to be used for the costs of building new schools. Such fees, which are authorized by Section 11-12-5 of the Municipal Code, cannot be used for operating costs. But new

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residential development can cause revenue shortfalls on the operations side as well.

When land that was previously vacant is developed for residential purposes, the value of the property increases and the assessed valuation for property tax purposes may triple or quadruple. Eventually the school district will receive increased revenue from the higher property taxes paid by the owners of those homes. However, school districts receiving students from new residential subdivisions face an immediate revenue shortfall because of the delay that occurs in receiving the increased property taxes.

Because of the time it takes a county to reassess property and levy, extend, collect and distribute taxes, a school district is not likely to receive the increased taxes for at least one year and sometimes almost two years after the children living in the new homes begin attending school.

When a developer is seeking to annex land to a municipality, Section 11-15.1-2 of the Municipal Code authorizes a municipality to require payment of "lag time fees" to the local school district to compensate for the revenue lost as a result of the "lag time" in receiving higher property taxes. The payment of these fees must be included as a term in the annexation agreement and as a condition of annexation.

Please contact Dean Krone with questions regarding the Lag Time ordinance process and its application to your school district.

IDEA Reauthorization Complete!--In a long awaited development both houses of Congress have approved an IDEA reauthorization bill and President Bush has now signed the legislation. The law includes major changes affecting school districts including broadened disciplinary authority, changes in the definition of specific learning disability, modified attorneys' fees, definitions of highly qualified special education teacher, due process provisions and increased funding.

HLERK is studying the new legislation and will conduct seminars early in 2005 to acquaint the school community with the new law and its practical implementation.

Alex R. Update--The Seventh Circuit's major special education decision in *Alex R. v. Forrestville Valley CUSD No. 221* (August, *Tickler*) has been the subject of a *petition for certiorari* to the United States Supreme Court. The case was successfully defended by **Nancy Krent** and **Rob Swain**. We are pleased to report that the Supreme Court has now denied the petition and the *Alex R*. decision is now final and binding on all Illinois school districts.

Please contact Nancy Krent or Rob Swain with questions about Alex R.

Happy Holidays from HLERK--As we end another year of service to the educational community, we want to take this moment to thank all of our clients and friends for their confidence in our firm. We especially wish to thank the many new school districts and cooperatives who joined our client family in 2004 and entrusted us with their legal needs.

2005 promises to be a challenging year for schools as IDEA is reauthorized, NCLBA continues to increase its impact on all school districts and the legislature addresses school funding. The *Tickler* will continue to update you on these developing issues and the new issues which the New Year will bring us all.

Finally, from all of us at HLERK, please accept our best wishes for a happy, safe and healthy Holiday Season. We look forward to working with you in 2005.

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