

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

HLERK Attorneys Honored By Peers--We are pleased to announce that several HLERK attorneys have been recognized for excellence by their peers. HLERK founding partners **Terry Hodges, Mike Loizzi, Stan Eisenhammer** and **Bennett Rodick** have been named Illinois

"Leading Lawyers" by their peers in *Leading Lawyers Magazine* while our partner **Nancy Krent** has been recognized by her peers as an Illinois "Super Lawyer." HLERK appreciates this recognition of excellence by our peers. Visit www.hlerk.com for *vitae of all of our attorneys.*

Illinois Appellate Court Rules That Working Cash Abatements May Be Made Only to Education Fund--In a major ruling potentially impacting many school districts, the Illinois Appellate Court (Second District) recently held that a school district's permanent transfer of money from the working cash fund through

"abatement" pursuant to Article 20 of the *School Code* may be made *only* to the district's educational fund.

In *G.I.S. Venture v. Novak*, No. 2-07-0934 (2/06/2009), a school district adopted a resolution to provide for the issuance of working cash fund bonds, *Continued on Page 2*

Illinois Appellate Court Limits "Recall" Rights of "RIF'd" Educational Support Employees--In a major victory for Illinois school districts, the Illinois Appellate Court (Fifth District), in *Knight v. Board of Education of Bethalto Community Unit School District No. 8*, denied a custodian who had been dismissed due to a reduction-in-force ("RIF") recall to the employee's preferred custodial position.

In *Knight*, successfully defended by HLERK's **Stan Eisenhammer** and **Stephanie Jones**, a RIF'd maintenance worker filed a lawsuit claiming the district violated Section 10-23.5 of the *School Code*, which governs reduction-in-force of educational support employees, when it allowed other, more senior, non-RIF'd employees to transfer into a coveted day custodial position sought by the Plaintiff before they eventually recalled the plaintiff back into a night position.

The Circuit Court of Madison County granted the Plaintiff's Motion for Summary Judgment, holding that the RIF'd employee was entitled to the *first* available position regardless of the seniority of other employees. On February 6, 2009, the Appellate Court for the Fifth District reversed the circuit court holding instead that the district had the right to transfer its non-*Continued on Page 2*

Consumer Price Index

Percent change for the month of **January, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.8	0.9
12 Mth	-0.5	-0.6
St. Louis-6 Mth	0.4	0.2
12 Mth	2.5	2.6
U.S. Mthly	0.4	0.4
12 Mth	0.0	-0.5

February CPI figures will be released March 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- **Remember your statutory and CBA deadlines for reductions-in-force or dismissal of certificated or educational support employees. Contact Ellen Rothenberg or Tina Christofalos with your evaluation, dismissal or RIF inquiries.**
- **Review the necessity for administrative reclassifications or nonrenewal of employment contracts and take any necessary action prior to April 1, 2009.**
- **The April 7 election is just around the corner. To assist local governments in calculation of timelines and requirements, the Illinois State Board of Elections has published on its website the 2009 edition of its Election and Campaign Finance Calendar at <http://www.elections.il.gov/Downloads/ElectionInformation/PDF/09Calendar.pdf>**

Offices:
Arlington Hts. 847-670-9000
Springfield 217-546-9200
Belleville 618-355-7850

Sex Harassment Claims Allowed Under Title IX and Section 1983--The Supreme Court of the United States recently opened a second door for sex discrimination claims against school districts. In *Fitzgerald v. Barnstable School Committee*, parents of a kindergartner sued the school district for its administrators' failure to adequately address the ongoing sexual harassment suffered by their daughter at the hands of a third grade student on a school bus and at school.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, has been the traditional avenue of attack against school districts that have allegedly excluded, discriminated against, or denied benefits to individuals on the basis of sex. Significantly, under Title IX, suits could be brought against school districts, but *not* against individuals.

In *Fitzgerald*, however, the parents also brought a claim under 42 U.S.C. § 1983, which is a more general statute

prohibiting state deprivation of civil rights. The Supreme Court ruled that claims of sex discrimination could be brought under *both* Title IX and Section 1983. The Court based its conclusion on the fact that Title IX and Section 1983 differ in terms of the remedies available, the scope of coverage, and the applicable legal standard. The Court reasoned that these differences meant Congress intended both options to be available to individuals bringing claims of sex discrimination.

The Court's decision means that lawsuits against districts *and* "school officials, teachers, and other individuals" may proceed. Moreover, the case reinforces the importance of having sound district policies and practices, as Section 1983 claims are only viable if "the harassment was the result of [school district] custom, policy, or practice."

For further information on the impact of this decision on your school district, please contact Nancy Krent.

Interfund Transfers Cont.

issued and sold said bonds, and subsequently transferred the net proceeds of the bond issue from the working cash fund to its operations and maintenance fund. Appealing the trial court's grant of summary judgment in favor of the school district, the taxpayer-plaintiffs argued that permanent interfund transfers from working cash may be made *only* to the education fund and, thus, the money transferred from the working cash fund to the operations and maintenance fund was not a proper permanent transfer.

Rejecting the school district's argument that in a prior case, *In re Application of Walgenbach*, 104 Ill. 2d 121 (1984), the Illinois Supreme Court had authorized permanent transfers of working cash fund assets to other funds of the school district's choosing, the appellate court asserted that "the only permanent interfund trans-

fers explicitly authorized by the [School Code] are transfers of earned interest from the investment of the working cash fund (105 ILCS 5/20-5 (West 1998)) and the transfer of the working cash fund assets to the educational fund upon the abolishment of the working cash fund (105 ILCS 5/20-8 (West 1998))."

School districts should contact their bond counsel and local legal counsel to discuss how this decision may impact the transfer and use of any outstanding or planned working cash bond issues or working cash fund abatements.

For further information about this decision's impact on your school district or your school finance questions generally, contact Heather Brickman or Stan Eisenhammer. We will follow the progress of this litigation in *The Extra Mile*.

RIF Cont.

RIF'd employees before it recalled a RIF'd employee into a position. The court limited the statute to its exact language which does not create an entitlement of a RIF'd employee to a specific position.

The opinion of the appellate court is a "Rule 23" opinion, which means it is not precedential in other cases.

As school districts enter the employee RIF and dismissal "season" the appellate court decisions in Knight and Wood v. North Wamac (January, 2009, Extra Mile) create new issues for school districts to consider. Please contact Ellen Rothenberg or Tina Christofalos with your employee RIF or dismissal inquiries.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
3048 Spring Mill Drive . Springfield, Illinois 62704
23 Public Square . Suite 260 . Belleville, Illinois 62220