

## CIRCUIT COURT DECIDES PENSION SPIKE CASE

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A “pension spike” is normally referred to as a salary raise in order to increase retirement pension benefits. The Circuit Court of Cook County recently decided the case of LaMastus vs. Steger Police Pension Board et al., 01 CH 8813, and affirmed a pension board’s decision not to include a pension spike as a part of salary for pension purposes.

The facts in this case are as follows. Terry LaMastus was a police sergeant in the Village of Steger Police Department. As of September 25, 2002 he had twenty years creditable service and was fifty-one (51) years old. In June of 2000 the attorney representing LaMastus sent a letter to the Village of Steger indicating that LaMastus would retire if his salary was increased. Apparently wanting to bid adieu to Sgt. LaMastus, the Village drafted a retirement agreement under which the Village would increase LaMastus’s salary from the union negotiated rate of \$20.01 per hour to \$25.01 per hour, conditioned upon the fact that LaMastus would only work eight (8) hours under his new salary and then retire. LaMastus agreed and on September 26, 2000 he was given a 25% pay increase and received a salary of \$25.01 for that day. At the end of his shift he retired. LaMastus then applied for his retirement pension at his increased salary of \$25.01 per hour. Not having just arrived in town on the turnip truck, the Steger Pension Board had some misgivings as to this pension request. After holding a hearing, the Steger Police Pension Board granted LaMastus a pension at his old rate of pay, \$20.01 per hour rather than the increased “spiked” rate of \$25.01 per hour. LaMastus then sued the Pension Board.

When you do the math, the difference in the retirement pension between the regular rate of pay and the “spiked” rate was \$433.33 per month or \$5,200.00 per year. When you multiply this amount out over the expected span of his lifetime, LaMastus would receive an additional \$130,000.00 in pension benefits for which no contributions were paid. After LaMastus filed suit, the Steger Police Pension Board asked the IPPFA to file a friend of the court (amicus curiae) brief, given the importance of this case and we agreed to do so. The plaintiff’s attorney strenuously objected to our participation. When the trial judge granted our motion to file an amicus brief, he indicated that this case presented an issue of first impression in Illinois and he would welcome the input of the IPPFA.

In our amicus brief we pointed out that the Pension Code, at 40 ILCS 5/3-125.1, defines salary in the following way: “Salary” means the annual salary, including longevity, attached to the police officer’s rank, as established by the municipality’s appropriation ordinance, including any compensation for overtime which is included in the salary so established, but excluding any “overtime pay,” “holiday pay,” “bonus pay,” “merit pay,” or any other case benefit not included in the salary so established.

We also indicated to the court that under Department of Insurance regulations further defining salary, a one-time payment to induce or promote retirement is a non-recurring award under 50 Illinois Administrative Code §4402.40(b) and should not be considered as a part of salary.

We also brought to the Court’s attention the important public policy considerations regarding “pension spikes.” If a “pension spike” is allowed, an individual could collect thousands and even hundreds of thousands in retirement benefits when no contributions have been paid. Such arrangements or deals to retire could have a severe impact upon Illinois public pension funds, which would be forced to pay retirement pensions in excess of contribution amounts.

On August 12, 2002 the circuit court entered judgment in the Pension Board’s favor finding that its decision basing the retirement pension on the \$20.01 hourly rate was neither arbitrary and capricious nor against the manifest weight of the evidence. According to the court, the Pension Board properly determined that the \$5.00 per hour increase given to LaMastus his last day of work was not a part of salary under 40 ILCS 5-124.1.

In its written decision, the circuit court made a specific reference to the public police concerns of the IPPFA as to municipalities entering into separate agreements with employees to induce them into retiring. This case once again demonstrates the importance of the IPPFA’s involvement in legal issues affecting police and firefighter pension funds.