INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AFL-CIO, CLC

STANDING STRONG

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General Counsel’s Report
GENERAL COUNSEL’S REPORT

General President Harold Schaitberger’s decision in 2000 to consolidate the previous Office of Legal Counsel into the General Counsel’s Office has continued to pay substantial dividends to the IAFF’s membership, as it has allowed the General Counsel’s Office, under the supervision of IAFF General Counsel Tom Woodley, to handle a dramatically increased number of requests for assistance from IAFF locals, and has ensured the full integration and coordination of all legal matters involving the IAFF. Pursuant to this consolidation, the General Counsel’s Office of Woodley & McGillivary continues to devote the full-time services of one of its key partners, Baldwin Robertson, as the in-house IAFF Legal Counsel, as well as two other in-house lawyers, Chris Franzoni and Donna McKinnon, who are associate attorneys with the firm. (A more detailed summary of the multiple services furnished by the Legal Counsel’s Office appears at the end of this report). Other partners and associate attorneys from Woodley & McGillivary work closely with IAFF representatives and the Legal Counsel’s Office to provide effective legal advice and services to the International and its affiliates.

In the two-year period since the last convention, Tom Woodley and other attorneys in the General Counsel’s Office have handled a number of court cases and other matters protecting the interests of the International and safeguarding the rights of our Local leaders and members.

In addition to establishing favorable court precedents and obtaining relief for adversely affected members, the IAFF has also been able to recover substantial court-awarded litigation fees and expenses against employers who have violated the law. This permits the recovered funds to be used again in the next deserving case approved by the General President.

GUARDIAN POLICY CASES

In 2001, General President Schaitberger introduced the Legal Guardian Policy which makes available, with the IAFF’s financial support, direct legal representation from the General Counsel’s Office in two categories of cases: 1) protecting union leaders and activists who have been subjected to retaliation for engaging in union-related activities or speaking out on matters of public concern affecting union members; and 2) cases expected to have a precedent-setting impact on other IAFF affiliates and members outside the particular affiliate which is directly involved.

The significant cases authorized by General President Schaitberger and handled by the General Counsel’s Office are as follows:

Jose Marti and Local 3638 v. Key Biscayne, Florida

This Guardian Policy case involved the termination of Local 3638 Secretary Jose Marti by the Village of Key Biscayne, Florida for allegedly failing to respond to a call for assistance.

Jose Marti has been an active leader and spokesperson for Local 3638 since its inception in 2004. He also had an exemplary, 20-year career, and held the position of Captain for 14 years. The Local and the Village were involved in contentious contract negotiations for over a year. Secretary Marti had been the most vocal Local representative during negotiations, and the Chief did not like the forceful points made by Marti during negotiation sessions.

On April 30, 2013, Captain Marti was on duty when another fire fighter answered a phone call from a local resident asking for assistance moving her father down the stairs. The fire fighter instructed the woman to call 9-1-1 for proper notification and dispatch. The facts subsequently revealed that the 9-1-1 call was mishandled by the dispatching center and, consequently, no alarm was sent to the fire department.

Ten days later in a bargaining session on May 9, 2013, the Fire Chief angrily stormed out of the room after exchanging harsh words with Marti. Three weeks later—and one month after the non-response incident—the Chief commenced an investigation and chose to place Marti on administrative leave, purportedly for failing to respond to a call for service. Based on the recommendation of the Chief, the Village Manager fired Marti.

Other fire fighters, who previously were disciplined for not responding to actual alarms, were not terminated. Instead, those fire fighters received only written warnings.

In arbitration, the Local challenged Marti’s termination under three articles of its labor contract: the real reason for his termination was his protected union activity; there was no “just cause” for his termination; and the extreme discipline was not progressive.

In a favorable decision, the Arbitrator decided that Secretary Marti was wrongfully terminated in violation of the parties’ labor contract because there was no “just cause” for firing him. The Arbitrator adopted General Counsel’s argument that the Village's conduct showed that Captain Marti’s conduct did not merit termination because the Village had not taken any corrective actions to prevent future, similar incidents. Moreover, the Arbitrator found that the Village's actions in waiting a month to place Marti on administrative leave revealed that his alleged transgression was not so serious as to warrant discharge. The Chief’s belated investigation and the resulting firing of Secretary Marti demonstrated that it was the Chief’s anger over an intervening bargaining session that really led to the termination of Marti.

As a remedy for the wrongful termination, the employer was ordered to reinstate Local Secretary Marti to his Captain's position, with full seniority and backpay for lost earnings and other benefits up to the date of his reinstatement.

Jose Marti was reinstated on February 3, 2014.

Local 3987, Lake Area Fire Fighters’ Association v. Gravois Fire Protection District, Missouri

This court action challenged the prolonged, bad faith bargaining by the Gravois Fire Protection District during negotiations with IAFF Local 3987.

The Local had been in the process of negotiating its first contract with the District for over three years. During this extended time, the District and its anti-union Board of Directors repeatedly delayed meeting with the Local, cancelled meetings at the last minute, refused to negotiate over traditional mandatory
bargaining subjects, failed to make counter-proposals, and walked out of meetings. Even when the District representative did meet for negotiations with the Local, there were multiple instances where the representative demonstrated a lack of authority to bargain on behalf of the District. During meetings, the parties would agree to certain terms only to have them later rejected by the District Board.

The Missouri Constitution explicitly provides employees with the “right to organize and to bargain collectively through a representative of their own choosing.” (Mo. Const. art. I, § 29.) A state court action was filed to enforce the Local’s bargaining rights. Following the initiation of this lawsuit, the District responded by requesting to reopen negotiations, and it agreed to abide by ground rules to correct its prior bad faith negotiation practices.

The parties then exchanged proposals on all subjects that the Local desired to negotiate over, and were able to finalize and sign a satisfactory agreement on February 19, 2014. With this resolution, the suit was voluntarily dismissed.

**Locals F-78, F-88, F-211, F-107 Wright-Patterson, Tinker, Hanscom and Warner-Robins AFB’s—Air Force Material Command**

The IAFF, representing Locals F-78, F-88, F-211, at Wright-Patterson, Tinker, and Hanscom Air Force Bases, and the Air Force Materiel Command (“AFMC”) reached a settlement agreement to resolve a grievance that had been scheduled to go to arbitration. The grievance concerned allegations by the Union that the Agency was violating the applicable collective bargaining agreement, as well as Department of Defense Instruction 6055.06 and NFPA 403, by staffing ARFF (crash) vehicles with less than three fire fighters.

This dispute has been a hard-fought battle for over five years. The Union went to a hearing in 2008 over a grievance, involving three of the four AFMC bases, on the same issue. That Arbitrator sustained the grievance and the Federal Labor Relations Authority (“FLRA”) upheld that decision. The Agency still failed to comply with the staffing requirements. An unfair labor practice was filed with the FLRA, and a grievance was also filed on behalf of the Local F-107 members at Warner Robins AFB.

In a settlement, the Agency agreed to assign three fire fighters to each ARFF vehicle at Robins, Tinker, and Wright-Patterson and to meet the gallonage (liquid suppression agent) requirement for the ARFF vehicles found in NFPA 403. At Hanscom, the Agency agreed to assign the number of fire fighters to the vehicles, specified in a contract between MASSPORT and the base. Additionally, the Agency agreed to provide monthly data reports to the Union at each of the four installations, including: the number of structural, emergency medical, and ARFF responses per installation and the total amount of time and resources allotted to each incident; the identification of any concurrent structural, emergency medical, and ARFF responses; and the date, day of the week, time of responses, and number of personnel responding. The gathering and reporting of this data will allow the Union to have better statistics to demonstrate in the future whether staffing levels are safe.

**Jamie Truett v. St. Tammany Parish Fire Protection District 12, Louisiana**

This Guardian Policy case involved adverse actions taken by the St. Tammany Parish against Local 4800's President Jamie Truett for exercising his First Amendment right to free association (engaging in union activities) under the U.S. Constitution. Truett commenced efforts to re-form a Local affiliate of the IAFF and was confronted on several occasions by the Fire Chief about starting a union. He was terminated purportedly because he failed to report the unauthorized use of a Paramedic Sprint Truck by another employee.

On appeal, the Civil Service Board overturned Truett's termination, demoting him to Captain and putting him on 90 days probation. Subsequently, the District placed Truett on yet another administrative leave and under investigation based on vague charges that he made derogatory statements about the Administration. Truett was again terminated, and he proceeded to exhaust his administrative remedies with respect to the termination prior to having that claim heard in federal court.

In mediation before a Federal Magistrate, and after three years of hard-fought litigation before the Civil Service Board and with multiple trial court settings, this case was finally settled on favorable terms. As part of the settlement, Jamie Truett recovered $150,000 in damages, which is about 35 percent more than his lost wages. He waived reinstatement to his former job because, for personal and professional reasons, he did not wish to return to the District’s fire department. The settlement also provided for his termination being changed to a voluntary resignation, and the disciplinary actions have been removed from his employment record. Substantial attorneys' fees and litigation expenses were also recovered as part of the settlement and reimbursed to the IAFF.

**Prescott, Arizona—The Deaths of 19 IAFF Members**

On June 30, 2013, 19 IAFF members on the crew of the Granite Mountain Hotshots, who were employed by the Prescott, Arizona Fire Department, died in a wildland fire in the line of duty. The City later determined that the families of 13 of the deceased fire fighters were not eligible for the full range of benefits that will be paid to the other families because, according to the City, those 13 team members were “seasonal employees” of the City and not permanent members of the team.

The City’s determination means that the families of the alleged seasonal employees will not receive the same pension and lifetime health insurance benefits as the families of the permanent employees.

The IAFF General Counsel's Office has been in contact with the Professional Fire Fighters of Arizona and local attorneys who represent the families, providing pro bono (no fees charged) research and legal assistance in this matter.

**Andrews Air Force Base v. IAFF Local F-297**

In this dispute, the Arbitrator ruled in favor of IAFF Local F-297 and President Chester Lanehart with reference to the grievance...
filed by Andrews Air Force Base seeking to limit the Local President’s ability to communicate with unit members on the Base. The Arbitrator found that, as a civilian retiree, Local President Lanehart has the right to access Fire Station No. 2 (and the Union office) “without first coordinating with or obtaining permission from management.”

The Arbitrator denied the employer’s grievance and determined that the Agency was the losing party and, therefore, had to pay all of the fees and costs of the Arbitrator.

Dustin Kuntz, Jeremy Nottingham, Jason Keune and Frank Lee v. Vacaville Fire Protection District, California

In 2012, the four paid fire fighters of the Vacaville Fire Protection District organized and applied for an IAFF Charter. The Chief told Local President Nottingham that there would be “consequences” to the employees who joined in the unionization efforts. The Chief also mentioned to Local Secretary Dustin Kuntz that he had become a “‘typical paid employee who wants to get paid for every minute he is at work,’” and that he is just a “‘selfish union thug who wants to be paid for everything he does.”’

Later, the Chief called Local Treasurer Frank Lee into his office and told him that the minute he signed the union papers he would lose his Engineer’s badge. The Chief then issued a notice to all of the employees telling them that he was revising their work schedules. Previously, the employees worked 4 days of 10 hour shifts. Under the Chief’s new schedule, the employees began working 4 days of 13.5 hour shifts, with no change in pay.

After filing this Guardian Policy suit in federal Court, the Fire District restored the plaintiff fire fighters to their previous work schedule. Under the negotiated settlement, the four plaintiff union members received over $40,000 in backpay and damages. All the plaintiffs maintained the positions and pay levels that existed prior to the Chief’s anti-union conduct.

The settlement also provided for the recovery of attorneys’ fees and costs in the amount of $22,000, which amounted to a full reimbursement to the IAFF.

Duane Minnick v. Currituck County, North Carolina

Duane Minnick was terminated from his position with Currituck County’s Fire and Emergency Medical Services department after being active in the formation of Local 4633. Minnick was terminated purportedly for his unwillingness to “get along with” volunteer fire fighters affiliated with the department.

This case was aggressively litigated over three years, with all named defendants and numerous witnesses giving depositions in the case. Unfortunately, Minnick’s successor as President of Local 4633, testified in a manner that painted Minnick in an extremely negative light. She stated that Minnick was “rude” and “degrading” to volunteers on the scene of emergency responses.

The District Court Judge dismissed the case on the grounds that Minnick failed to demonstrate that he was terminated or suffered other adverse employment action as a result of official anti-union policy or custom of the County. On appeal, a court found that Minnick’s discharge was not substantially motivated by his First Amendment, free association activities.

City of Augusta, Maine v. Local 1650

In this Guardian Policy suit brought by the City of Augusta, Local 1650 sought to defend a favorable decision by the Maine Labor Relations Board and its interpretation of a statute that requires public employers to adhere to the status quo following the expiration of a collective bargaining agreement. In a favorable decision, the Superior Court upheld the Board’s decision in all respects. This case presented multiple issues of first impression, including the questions of whether future retiree health benefits for current employees are mandatory subjects of bargaining.

With respect to the first two contract provisions—payment for unused sick leave and clothing allowance—the Court upheld the Board’s reasoning that both payments were a form of compensation, and were therefore compulsory topics of bargaining. The Court also agreed with the Board’s decision regarding a provision requiring the City to pay 100 percent of health insurance premiums when a fire fighter retired with the required years of service. The Board decided (and the Superior Court agreed) that the health insurance premium payments were enforceable as part of the status quo as a future benefit for active employees.

On an appeal pursued by the City, the Maine Supreme Court issued a favorable decision affirming the rulings of the Board and the Superior Court holding that during negotiations for a successor agreement, the City of Augusta was obligated to continue in effect language in the expired labor agreement that provided retiree health insurance coverage paid by the City. This ruling is precedent-setting in that it is the first Maine Supreme Court decision interpreting the statute that mandates that grievance arbitration provisions must continue after expiration of a collective bargaining agreement for contract provisions subject to the “static status quo” doctrine. Under that doctrine, the employer is obligated to refrain from making unilateral changes to mandatory subjects of bargaining until the parties execute a successor agreement.

This is an important ruling for IAFF Locals throughout Maine, in that otherwise employers would be in a position to coerce bargaining concessions by unilaterally withdrawing important benefits during the pendency of bargaining over a new agreement.

Local 3510, Columbia County, Florida

This case involved the decision of Columbia County, Florida to privatize its EMS service. There was significant evidence that the County’s decision to privatize was in retaliation for the protected collective bargaining activities of Local 3510.

Although the Hearing Officer did find that one of the County Commissioners had anti-union animus, he discounted much of the Local’s evidence of retaliation, and instead concluded that the decision to privatize was based on financial and operational reasons, and not in retaliation for the Local’s bargaining activities. Later, the state PERC rejected the Local’s exceptions and granted deference to the Hearing Officer’s findings that the decision to privatize was caused by adverse economic conditions and not motivated by anti-union animus.
John Wright, et al. v. Frederick County, Virginia

This Guardian Policy matter was settled on positive terms for the members of IAFF Local 4145, Frederick County Professional Fire Fighters, Virginia. The issue involved the failure of the employer, the County of Frederick, to properly compensate fire fighters and fire marshals for the hours worked above their regularly scheduled hours but below the FLSA overtime threshold (referred to as “gap pay”). The claims were based on a law enacted by the Virginia state legislature which entitles fire fighters and law enforcement officers to gap pay for hours they work above and beyond their regular schedules.

Notice was given to the County with regard to this claim, as required by Virginia state law, and the County and its attorneys expressed an interest in exploring a settlement. The resulting settlement provided the fire fighter and fire marshal claimants with full backpay, and an additional 50% liquidated damages for these IAFF members. Since the settlement, the County has been in compliance with the gap pay legislation. In addition, there was a full recovery of attorneys’ fees and costs.

In July, 2012, General Counsel Tom Woodley sent a check payable to the IAFF in the amount of $19,263.42 for attorneys’ fees and expenses. This constitutes full reimbursement to the International and its EDF for the funds invested in this precedent-setting Guardian case.

IAFF Local 22, Philadelphia, Pennsylvania

In recent years, Local 22 has had to fight many battles with the City of Philadelphia and its Mayor, including the City’s adamant refusal to implement arbitration awards that were favorable to the Local and its members. In addition, under new leadership, the Local was exploring more economical and efficient ways of providing a range of legal services to the Local and the membership. IAFF General Counsel Tom Woodley provided assistance to Local 22 in these areas in an effort to place the Local on a solid footing in moving forward.

Guardian cases handled by IAFF Legal Counsel Sean McManus in Canada are as follows:

Local 803, Brandon, Manitoba

A resolution was achieved in this case regarding all discipline taken against Brandon Local 803 Executive Board members. The Local and the city were experiencing difficult negotiations for a new labor agreement. Local President Ritchie was given a five-day suspension and demoted for purportedly misrepresenting a bargaining proposal made by the city.

Two other Local officers were issued disciplinary letters when they told another fire fighter that he should withdraw his application for a Lieutenant’s opening because he was not eligible for that promotion under the labor agreement. In a subsequent settlement, all disciplinary actions taken against President Ritchie and the two Executive Board members were rescinded. In the case of President Ritchie, he was made whole and received full compensation for lost wages and benefits.

Local 4794, Rocky View County, Alberta

Local President Craig Halifax had been the chief spokesperson for Local 4794 as it attempted to bargain for a first labor agreement with the Rocky View County. During this period of bargaining, President Halifax initiated a number of complaints against the County before the Labour Relations Board as a result of the County’s persistent and long-standing efforts to not bargain with the Local. Against this backdrop, collective bargaining between the parties failed to produce a first labor agreement. An interest arbitration board was convened to address the outstanding items in dispute.

The arbitration board rendered its award on June 12, 2013. The following day, the County announced that it had decided to lay-off all 11 of its full-time fire fighters and rely strictly on part-time fire fighters to staff its platoons.

In response, the Local filed another unfair labour practice complaint in which it alleged that the County had a duty to disclose the upcoming lay-offs prior to the release of the interest arbitration award, so that the Local had an opportunity to make appropriate bargaining proposals to better protect the job security of the full-time fire fighters. The Local also alleged that it was a breach of the County’s duty to bargain in good faith to agree to wages for full-time fire fighters, and then lay-off all those fire fighters on the grounds that their wages are unaffordable.

After a hearing, the Labour Board ruled in favor of Local 4794, finding that the County committed an unfair labour practice and failed to bargain in good faith by not disclosing in a timely manner its decision to layoff all full-time fire fighters.

On March 24, 2014, the parties reached a settlement which provided for the reinstatement of 8 of 11 full-time fire fighters. The remaining 3 fire fighters were placed on a preferential recall list. The existing labor agreement was extended to June 30, 2015, and a compressed time-frame was established for the parties to reach a new agreement.

Local 3139, Clarington, Ontario

The Clarington department is a composite department with approximately 60 IAFF members and 125 volunteers. A contingent of those volunteers work full-time at the nearby nuclear facility and are members of the Power Workers’ Union (PWU). There are long-standing issues between IAFF members and the volunteers with regard to which work is full-time work.

Local 3139 President Dan Worrall contacted the PWU steward at the facility to raise his concerns about the Clarington volunteers (PWU members) performing work of the full-time fire fighters. President Worrall also spoke to approximately 10 volunteers from the PWU bargaining unit to educate them about the work that should be done by full-time IAFF members and also to advise that he had called their union representative. A harassment complaint was filed with the Clarington Fire Department by several of the volunteers contacted by President Worrall. In the context of the resulting investigation, President Worrall issued a letter of regret explaining that his conduct was not intended to intimidate or
coerce the volunteers into not responding to emergency calls. In spite of that letter, the employer imposed a four-day suspension.

With the assistance of IAFF Vice President Fred LeBlanc, a settlement was reached. The settlement contained a confidentiality article, but Local 3139 was pleased with the outcome.

Local 1627, Truro, Nova Scotia

This Guardian Policy case on behalf of Local 1627 and against the Town of Truro involved the issue of the Town’s demand to remove the Local’s nominee from the upcoming interest Arbitration Board because of alleged bias. The neutral arbitrator rejected the Town’s argument and the Local’s proposed representative remained on the Board.

Local 3940, Bradford, Ontario

This matter centered around internal union charges brought by Brent Heppell, President of the Central York, Ontario Local against “two-hatters” and IAFF members who worked in the Bradford, ON fire department. President Heppell had asked Local 3940 President Ken Sikkema (Bradford, ON) to assist him in obtaining evidence to support his charges. In a meeting with Sikkema at a Bradford station, Heppell walked around the station and photographed bunker gear. Later, at the union trial board, President Sikkema gave testimony and was asked about how the photographs were obtained.

After three of the two-hatters resigned their volunteer positions at Bradford, the Town suspended Sikkema for three days due to his alleged assistance in the trial board proceeding. In addition, the Town filed a grievance against Local 3940 seeking a cease and desist declaration and damages in the amount of more than $60,000 which the Town claimed were the replacement costs for the resignation of the three two-hatter volunteers.

In a decision by an Arbitrator, the Town’s grievance was dismissed on the grounds that the union members have the right to participate in internal union matters under the IAFF’s Constitution and By-Laws. However, the Arbitrator did uphold the three-day suspension of President Sikkema on other grounds.

Other Court actions which are pending under the Guardian Policy include:

Detroit Bankruptcy Case (reductions in pensions, health insurance, and other benefits); Local F-33, Navy Region Southwest (arbitration over staffing reductions); Scott McNew and Patrick Martin v. Borough of Chambersburg, PA (firing and suspension of Local officers for union activities); Cheatham v. Gordon, AZ (suit seeking to eliminate union release time); Local F-282 (precedent-setting case regarding denied per diem pay); Lisa Davis-Christ v. City of Greenville, NC (adverse action against Local officer for free speech activities); Rural Metro Bankruptcy (possible adverse impact on members’ contractual rights and claims); Local 36, Washington, DC (challenge to PERB decision that work hours are non-negotiable); Monarch Fire Protection District v. Local 2665, MO (precedent-setting case where in which employer is challenging evergreen clause in labor contract); David Lee v. IAFF Local 2981 and City of Moraine, OH (former employee suing employer and union over physical examination); IAFF and AFT v. Governor Bentley and State of Alabama (prohibition against dues deduction if funds used for political activities); Brad Aragon v. Stratmoor Hills Fire Protection District, CO (firing of Local President for forming a union); Rhode Island Pension Litigation (precedent-setting dispute over pension cuts); Insolvency of Pension Plan, Johnston, RI (employer’s litigation threats to place pension plan in bankruptcy); Local A-32, NC (action challenging taxation of disability retirement benefits); John Vidrine v. St. Landry Fire Protection District, LA (harassment and termination of Local President for protected activities); Sara Fox v. Leland Fire/Rescue, NC (firing of Local President for protected activities); Robert Alvarado v. Washington, DC (disciplinary suspension for union activities); Firemen’s Retirement System and Local 73 v. City of St. Louis (suit seeking to protect pensions from City’s reductions); Jason King v. Tangipahoa Parish, Amite, LA (retaliation against Local President for union leadership role); Todd Candelaria v. City of Tolleson, AZ (disciplinary action against Local President for union leadership role); Local 256, New Westminster, British Columbia (harassment of Local’s President due to union representation); Local 1053, City of Fredericton, New Brunswick (suspension of Local President for union activities); Local 122, City of Corner Brook, NF (discipline against Local’s Executive Board members for political activities); Local 3804, Innisfil, Ontario (discipline of Local President for opposing volunteers); Local 2779, Cape Breton, Sydney, Nova Scotia (suspension of Local President for exercising free speech).

CASES HANDLED UNDER THE INTERNATIONAL’S FLSA POLICY

The International has had a longstanding FLSA overtime policy under which, with the approval of the General President, a local affiliate can be given a $10,000 grant to pay for initial litigation expenditures in pursuing a court action to enforce the overtime rights of its members, with IAFF General Counsel Tom Woodley serving as lead counsel. When these FLSA cases are favorably concluded through a court decision or a settlement, the $10,000 grants are reimbursed to the International and are utilized again for future overtime actions. Cased handled under this Policy include:

Juan Achan, et al. v. City of Los Angeles, California

This FLSA case originally involved over 300 paramedic and dispatcher members of Local 112 claiming that they were entitled to overtime compensation after working 40 hours per workweek under Section 207(a) of the law. In the past, the City of Los Angeles treated the paramedics and dispatchers as employees engaged in fire suppression activities under the Section 207(k) exemption, and only gave them FLSA overtime pay after working 204 hours in a 27-day work period. After a favorable ruling from the Federal Judge regarding the City’s liability to the paramedics, their claims were settled in mediation, and the backpay and related damages were distributed to those IAFF members about six years ago.
More recently, the District Court granted General Counsel Woodley’s summary judgment motion finding that the dispatchers and aeromedical technicians deserved overtime pay based on the 40-hour workweek standard. Among other things, the Court determined that the dispatchers did not have the requisite “responsibility” to perform fire suppression functions in order for the City to apply the Section 207(k) overtime exemption covering fire fighters. Although most of the dispatchers were cross-trained fire fighters, their job was dispatching, they did not respond to emergency scenes, and did not fight fires or rescue persons.

The City of Los Angeles, over the years, has been a serial violator of the FLSA pay requirements. Based on this track record, the Court awarded the maximum three-year period for recovering backpay, finding that the City’s violations of the FLSA were “willful”. In addition, the Court doubled the dispatchers’ monetary recovery, by awarding 100 percent in supplemental liquidated damages equal to the withheld overtime compensation because the City failed to show it acted in good faith.

Unhappy with these rulings, the City appealed. On March 18, 2014, the U.S. Court of Appeals affirmed, in all respects, the District Judge’s decisions on liability and full make-whole relief, including the third year of backpay and the additional equal amount of liquidated damages. The appellate court also rejected the City’s contentions that it should be able to use past partial backpay, finding that the City’s violations of the FLSA were liquidated damages equal to the withheld overtime compensation by awarding 100 percent in supplemental payments for working on a holiday in its calculation of overtime pay. A positive reply was received from the City attorney. The City acknowledged both violations of the FLSA and the MOU. The unlawful practices have ceased, and the City has corrected its pay practices to come into compliance with the FLSA.

**John Klinefelter, et al. v. City of Clearwater, Florida**

This overtime case on behalf of 159 current and former Clearwater fire fighters and members of Local 1158 involved the question of whether the City was improperly offsetting certain payments for working on a holiday in its calculation of overtime due the fire fighters. Although typically overtime payments for hours worked on a holiday are permitted to be used as offsets to lower the amount of overtime owed under the FLSA, because the factual information here indicated that the City provided the same holiday payments regardless of whether the employee works on the holiday or not, the City was not permitted to offset these payments against the overtime owed to the fire fighters. After extensive negotiations, a favorable settlement was achieved. As part of the settlement, the City has ceased its unlawful overtime pay practice. Consequently, with the elimination of the set-off for idle holiday pay, the fire fighters who work on a holiday will no longer receive less pay than those who do not work on a holiday. The plaintiff union members recovered $94,578.51 in backpay, plus an additional $17,021.49 in liquidated damages. The settlement also provided for the recovery of attorneys’ fees and costs. Accordingly, on October 16, 2013, IAFF General Counsel Tom Woodley sent a check to General President Harold Schaitberger reimbursing the IAFF for the $10,000 FLSA grant approved in support of these members.

**Kurt Becker (Local 2665) v. University City, Missouri**

In this FLSA matter, University City, Missouri was violating the FLSA by improperly averaging the number of hours worked across work periods instead of paying employees for the actual hours worked in each separate period. The fire fighters typically work 48 hours followed by 96 hours off. The FLSA work period adopted under Section 207(k) for these union members is 28 days.

The Department of Labor has stated that employers are not permitted to average the number of hours across multiple work periods. Normally, for most employees, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned. When the City averaged the amount of overtime across three work periods, it violated the overtime requirements of the FLSA as they apply to fire fighters.

Furthermore, the City ceased counting hours of leave as hours of work under the FLSA. Although the FLSA itself does not require leave hours to be treated as hours of work, this was a violation of a Memorandum of Understanding (MOU) between the City and Local 2665, which is a separate legal violation from the FLSA issue.

A demand letter was sent by IAFF General Counsel Woodley to the City to see if the issues could be resolved without the need to pursue costly litigation. A positive reply was received from the City attorney. The City acknowledged both violations of the FLSA and the MOU. The unlawful practices have ceased, and the fire fighters have been paid their backpay.

**Kenneth Griffith v. City of Spencer, Oklahoma**

This FLSA overtime case was resolved on positive terms. The City of Spencer adopted a 27-day work period in the collective bargaining agreement. However, the agreement’s provision that fire fighters will be paid overtime for work beyond 216 hours in a 27-day cycle is contrary to the FLSA, which requires that overtime be paid after a threshold of 204 hours for a 27-day cycle. Failure to pay the overtime premium for work beyond the 204-hour threshold is a violation even though the Local agreed to the terms set forth in the labor agreement, since an employee’s rights under the FLSA cannot be waived in an agreement.

Under Section 207(e) of the FLSA, employers are required to include all remuneration for employment in the regular rate for the purpose of computing overtime compensation, with some exceptions. EMT incentive pay is a premium payment that must be included in the regular rate of pay for the purpose of calculating overtime. Based on the pay data provided, the City had not been including EMT incentive pay in the regular rate for overtime purposes. This practice violated the FLSA.

In the favorable settlement, approved by the federal District Court, these plaintiff IAFF members received all of their unpaid overtime compensation, plus an additional 50 percent in liquidated damages. In addition, the City has corrected its pay practices to come into compliance with the FLSA. On September 18, 2012, General President Schaitberger was sent a check reimbursing the International for the $10,000 FLSA grant approved in support of these members’ claims.
**Troy Poynton v. City of Waterbury, Connecticut**

This FLSA overtime case was filed against the City of Waterbury, CT on behalf of the members of IAFF Local 1339, including the fire fighters, dispatchers and employees in the Bureau of Fire Prevention. The City was violating the FLSA by failing to include educational incentive pay and special assignment pay in the regular rate for the purpose of calculating their overtime compensation. In addition, the City improperly classified the dispatchers, the fire code inspectors, and the fire and arson investigators under the Section 207(k) fire fighter overtime exemption. Because these employees do not have the legal authority and responsibility to engage in fire suppression activities, they should not be covered under the limited Section 207(k) overtime exemption applicable to fire suppression personnel. Instead, they should receive overtime compensation after working 40 hours per work week.

This overtime suit was settled on favorable terms in mediation. The plaintiff members received their backpay in the sum of $143,500, plus additional liquidated damages of $143,500. The City has corrected the FLSA violations. In addition, the plaintiffs recovered their attorneys’ fees and litigation costs as part of the settlement.

A check for $10,000 was forwarded to the International fully reimbursing the organization for the FLSA grant approved in this case.

**David Raisor, et al. v. City of Georgetown, Kentucky**

This overtime court action brought on behalf of IAFF members of Local 3681, and against the City of Georgetown, Kentucky, was settled on favorable terms. The pay issues involved the failure of the City to include state incentive pay, and other elements of pay, in the regular rate of pay of these fire fighters, upon which their overtime compensation should be calculated. As a result of this failure, these members have been denied their proper amount of overtime compensation.

The 59 plaintiff fire fighters collectively received $380,000 which constitutes 100 percent of the backpay that each member is owed. The IAFF was reimbursed for the $10,000 grant made to the Local in this matter.

**John Adkerson v. USA**

In this FLSA overtime court action, the General Counsel’s Office represented dispatchers and members of the IAFF at Wright Patterson and Tinker Air Force bases. The suit was filed as long ago as February 2010, and has been actively litigated since then. The claim was that these dispatchers should have received overtime pay after working 40 hours per week (as non-fire fighters), rather than after 53 hours per week under the FLSA’s Section 207(k) exception. Supplemental claims involved holiday pay, night differential pay and Sunday premium pay pursuant to 5 U.S.C. §5541, et seq... A positive settlement was achieved with the Federal Government. The plaintiff union members recovered full backpay, plus an additional 50 percent in liquidated damages in the total amount of $290,267. The resolution also included a fair and reasonable recovery of out-of-pocket litigation expenses and fees. General Counsel Woodley sent a check payable to the IAFF in the amount of $10,000 as full reimbursement of the FLSA Policy grant authorized in support of these members and their successful pursuit of their claims.

**Other pending FLSA cases being handled by the IAFF General Counsel’s Office include:**

**Steve Balistrieri v. Menlo Park Fire Protection District, CA** (failure to pay for travel time between stations as hours worked, and not including annual vacation leave payouts in regular rate of pay); **John Misewicz v. City of Memphis, TN** (compensability of mandatory off-duty, paramedic training time); **Robert Carmichael v. City of Winchester, KY** (failure to include elements of pay in overtime rate); **Mark Blankenship v. Lexington Fayette Urban County Government, KY** (failure to include elements of pay in overtime rate); **Christopher Tompson v. Fairfax County, VA** (refusal to treat Captains as non-exempt and entitled to FLSA overtime).

**CASES HANDLED UNDER THE IAFF AMICUS POLICY**

Under the International’s Amicus Policy, the IAFF will file a brief (known as a “friend-of-the-court” brief) in cases that are likely to have a significant future impact on the affiliate involved in the matter, as well as other affiliates. Matters handled by the General Counsel’s office under this Policy include:

**The Case of Harris v. Quinn before the U.S. Supreme Court**

This is a very important case now pending before the U.S. Supreme Court, which anti-union groups hope will produce a ruling from the high court that would severely impair the existing rights and protections of public sector unions and their members.

This suit was filed in federal district court by the anti-union organization known as the National Right to Work Legal Defense Foundation against the State of Illinois (and indirectly SEIU) making a constitutional challenge to the state’s law that allows in-home health care providers to Medicaid recipients to accept, and financially support, a union as their exclusive representative. The Right to Work group lost in the lower federal courts, but persuaded the Supreme Court to accept the case for further review.

The suit started out with the narrow claim that the health care workers were uniquely situated and that it was unconstitutional to “compel” them to pay a fair-share, agency fee to the union that was required by Illinois state law to represent them. However, in its brief to the Supreme Court, the Right to Work attorneys have broadened their attack by seeking reconsideration of the constitutionality of all agency fees paid to public sector unions. Specifically, the Court is being asked to overturn a 37-year old precedent established by the Supreme Court (in the case of Abood v. Detroit Bd. of Educ.) which held that state collective bargaining laws may authorize public sector unions and government employers to negotiate agency fee agreements, provided that such fees are used for bargaining/contractual/representation purposes and not used for political purposes.

In general, the law has permitted unions to collect dues from public employees who they are obligated to represent. Those
persons who object on constitutional free speech grounds do not have to contribute to a union's political advocacy or lobbying efforts, but they should be required to pay a “fair share” agency fee for improvements in wages, hours, and other terms of employment that they enjoy with all of the workers represented by the union. In other words, those individuals who oppose the union should not be allowed to be “free-riders” and reap the benefits of collective bargaining and labor contracts at the expense of dues-paying union members.

Abolishing the representation and agency fee system that has been in place since 1977 in about half of the states that allow such arrangement would have devastating consequences for the entire mechanism of collective bargaining carefully founded on state law, as well as the labor-management contracts they produce. Broader-based public sector unions, like SEIU and AFSCME, which rely heavily on agency fee payments to financially support their representation obligations, would be particularly hard hit if the Right to Work group should succeed in its union-busting goal.

Recognizing the fundamental importance of this pending case, with the authorization General President Harold Schaitberger, the IAFF joined in an amicus brief filed with the Supreme Court, together with other public safety unions, urging the Court not to upend the long-established structure for public sector employers and unions with respect to representation, bargaining and appropriate agency fee payments.

Nissen v. Pierce County—IAFF Local 31, Tacoma, Washington

IAFF Local 31, Tacoma, Washington requested the IAFF's participation in an amicus brief filed with the Pierce County Prosecuting Attorney’s Association in a court action involving the state’s Public Records Act. This case has significant privacy implications regarding fire fighters’ personal cell phones, laptops, and other electronic records.

Plaintiff Glenda Nissen, a citizen of Pierce County, demanded all of the County prosecutor’s personal cell phone records, including billing and text message records. While not required to do so by law, the Pierce County prosecutor authorized the release of work-related personal cell phone records.

The trial court found that text messages and phone records of the Pierce County prosecutor were not public records and fell within exceptions to disclosure law. Nissen appealed to the Washington State Court of Appeals, arguing that the court should hold that if public employees—including fire fighters—utilize their private cell phones for work-related calls or text messages, or make a personal call while on duty, then the employees’ phone records and messages must be disclosed as public records. Under this theory, public employees would violate the law if they ever use a personal phone for a work-related conversation or text message and fail to retain the records.

In light of the numerous potential detriments to the privacy and constitutional interests of fire fighters, the IAFF agreed to join in the amicus brief in support of Pierce County.

Westphal v. City of Petersburg, Florida

This case involves the interpretation and application of Florida's Workers’ Compensation Laws. Westphal, a fire fighter for the City of St. Petersburg, injured his back while responding to a call. The injuries were severe, resulting in nerve damage, and requiring Westphal to undergo spine surgery as well as other medical treatments. The City acknowledged the injury and paid Westphal temporary disability benefits while he was out of work. Florida law limits temporary total disability benefits to 104 weeks. At the expiration of 104 weeks, Westphal continued to be unable to work and applied for permanent total disability benefits. His claim for permanent benefits was denied by the Judge of Compensation Claims due to a determination that he had not yet reached “maximum medical improvement” making it “too speculative” to determine whether he would still be totally disabled once he reached maximum medical improvement status.

The Judge’s decision was appealed to a three-judge panel of the Court of Appeals of Florida, First District. The panel concluded that the gap in benefits created by the current state legislation unconstitutionally denied employees a right to seek redress for injuries in violation of Article I, section 21 of the Florida Constitution.

All of the Judges on the First District Court of Appeals reheard the case. The en banc court concluded that it was not necessary to find the statutory provision unconstitutional, and instead reconsidered a previous opinion to prevent the creation of a gap in benefit coverage. While this decision still supported Westphal being eligible to receive permanent disability benefits, it leaves in place the capped 104-week entitlement period.

The Florida Supreme Court has agreed to hear the case, and the IAFF filed an amicus brief supporting Westphal. The outcome of this court action will have a significant impact on IAFF members under the Florida Workers’ Compensation Law.

Watkins v. City of Montgomery, Alabama

This FLSA overtime case was handled by a local attorney against the City of Montgomery, Alabama. The International filed an amicus brief in support of the fire suppression lieutenants who are appealing an adverse jury verdict that they are exempt from the FLSA under the “executive” employee exemption. Although it will be difficult for the lieutenants to successfully overturn the jury’s verdict on appeal, nonetheless, IAFF’s amicus brief explained that fire lieutenants, unlike managers in an office setting, have as their primary job duty fighting fires and that in furtherance of this duty, they enter burning buildings, rescue citizens and, suffer injuries at rates similar to fire fighters at lower ranks. In the lower court, the City successfully argued that the fire suppression lieutenants fell under the so-called “executive” exemption from the FLSA’s overtime protections.

Oregon State Association—Court Challenge to Legislation Altering Pension Benefits

The IAFF is submitting an amicus brief to the Oregon Supreme Court in this case challenging recent legislation that will alter the benefits provided by the Oregon Public Employees Retirement System (“PERS”).

The Oregon legislature recently enacted legislation altering COLA benefits payable through PERS. The legislation makes three specific changes impacting COLA. First, it reduces the
The Oregon Supreme Court has previously held that the state retirement system was intended to be, and is, a contract between the state and its employees and that annual COLAs are part of that contract. Unlike the analysis of federal Contract Clause claims under the U.S. Constitution, the Oregon Supreme Court has yet to decide whether it requires an impairment to be “substantial” to support a claim of a violation of the state’s Constitution. The changes enacted by the Oregon legislature permanently change the COLA benefits of both active and retired employees. As the Oregon Supreme Court has previously found that COLAs are part of the PERS contract the state has with its employees, this permanent change should be found to constitute an unconstitutional impairment of the contract. Even if the Oregon Supreme Court now decides that the impairment must be substantial to constitute a violation, the changes here should satisfy that requirement.

As PERS is the retirement system for the majority of fire fighters in Oregon, the changes to COLA benefits will significantly impact a number of the IAFF’s members.

### CASES HANDLED UNDER THE IAFF’S FRONT LINE POLICY

The International’s Front Line Policy provides legal assistance and representation by the IAFF General Counsel’s Office to members and their families where a member has been killed or seriously injured in the line-of-duty as a result of defective products or the negligence of a third-party. The following case was handled under this Policy:

**Regina Galloway, et al. v. E-One, Inc. and Hall-Mark Fire Apparatus, Texas**

After extensive litigation, these Front Line cases were settled on reasonable terms. The suits were brought by Regina Galloway (mother of deceased Cory Galloway), and injured fire fighters Robert King, James Sanders, and Gary Tyson against E-One, Inc. and Hall-Mark Fire Apparatus — Texas, related to the training incident that occurred in Kilgore, Texas on January 25, 2009. Fire fighters Cory Galloway and Kyle Perkins were killed when they were ejected from the bucket of the aerial platform truck. The plaintiffs recovered $520,000 from E-One, Inc. and Hall-Mark Fire Apparatus. Viewed in light of the jury verdict in the related case of Perkins v. E-One, Inc., which was tried earlier in Gregg County, Texas, this settlement recovery was favorable and resulted in Mrs. Galloway and Messrs. King, Sanders, and Tyson receiving more proceeds than they would likely have received had this case proceeded to a jury verdict.

General Counsel Tom Woodley submitted a check payable to the IAFF in the sum of $10,000, as full reimbursement to the organization for the grant authorized to defray initial litigation expenses.

### OTHER CASES HANDLED BY THE GENERAL COUNSEL’S OFFICE

The IAFF General Counsel’s Office is also responsible for representing and protecting the International and its officers in the event allegations or claims are made against them in a court action or before a state or federal agency. Since the last c Convention, those matters are as follows:

**Robert Mansfield v. IAFF and Local 3159, Massachusetts**

In this case, Robert Mansfield, a former employee of the Fire Department in the Town of Halifax, sued both the International and Local 3159 in Massachusetts Superior Court. Mansfield alleged that the IAFF and the Local breached the collective bargaining agreement and Massachusetts state law by failing to represent him in a grievance against the Town.

The Superior Court granted the International’s motion to dismiss the suit. In the decision, the Court agreed with the arguments of IAFF General Counsel Tom Woodley and found that the claims against the International were meritless as Mansfield failed to file a fair representation claim with the state’s Division of Labor Relations and because the Local, and not the International, was the exclusive representative for the employees.

Although Mansfield filed an appeal of the lower court’s decision, the appellate court dismissed his appeal.

**Michael Pruitt v. IAFF and Local 4331, Texas**

In this court action, Michael Pruitt, the former Fire Chief for the City of Longview, Texas, sued the International, Local 4331, and several officers of the Local alleging that the IAFF and the other defendants aided and abetted the City in discriminating against him on the basis of race. Pruitt also brought related claims for intentional infliction of emotional distress, breach of fiduciary duty, and tortuous interference with employment relations.

The trial court agreed with the IAFF’s position and found that the Court lacked jurisdiction over Pruitt’s claims because he failed to exhaust administrative remedies, and further that the common law causes of action were preempted by the statutory race discrimination claim. Pruitt then appealed that decision.

After a hearing, the Texas Court of Appeals upheld the trial court’s dismissal of Pruitt’s Complaint against the International, Local 4331, and the individual defendants.

**Shelly Lacy v. IAFF and Local 3906, Ohio**

The Ohio State Employment Relations Board (SERB) dismissed the Unfair Labor Practice (ULP) charge filed by member Shelly Lacy in which she claimed breach of the duty of fair representation. While the ULP was primarily aimed at Local 3906 and its former President, Ms. Lacy was also attempting to include the IAFF as a charged party.

In his response, General Counsel provided information detailing how the Local and International are legally autonomous from one another, and that the International could not be held vicariously liable for the alleged actions or omissions of Local 3906 or any of
its officers. The IAFF also explained how the charges filed by Ms. Lacy were untimely, and how she had failed to satisfy the International’s internal procedures regarding claims of misconduct. The SERB specifically mentioned both of these points in its decision dismissing all of Ms. Lacy’s charges.

**Kenneth Ceglia v. IAFF and Local 112, Nevada**

This case was a negligence, personal injury suit brought in local state court in Nevada. The suit stems from a car accident involving Kenneth Ceglia and James Perry in Douglas County. Perry, who died as a result of the accident, was an active-retired member of IAFF Local 112. Perry was engaged by Local 112 to edit its magazine. At the time of the accident, Perry was on his way to the Local’s Christmas party. The plaintiffs have alleged that Perry was acting within the scope of his employment for Local 112 and the IAFF, and that as a result they are both vicariously liable for his actions. The plaintiffs also alleged that Local 112 and the IAFF were negligent for failing to require Perry to maintain adequate insurance. Because there was no employer-employee relationship between the IAFF and Perry, General Counsel Woodley persuaded the plaintiffs’ attorney to voluntarily dismiss the IAFF as a defendant from this court action.

**Joe Conway v. IAFF (U.S. Department of Labor)**

In this matter, former IAFF Vice President Joe Conway filed a formal Complaint with the U.S. Department of Labor contesting his defeat in the 5th District election conducted at the IAFF Convention on July 26, 2012. In addition, Joe Conway submitted an appeal to the International General President, challenging the credentials of certain delegates and the results of the election. In a decision issued on September, 12, 2012, General President Harold Schaitberger concluded that, as General President, he lacked the authority under the IAFF Constitution and By-Laws to decide the “appeal” and modify, reject or overturn final Convention action, such as the acceptance of credentials and the election results that were accepted by the delegates. Mr. Conway appealed the General President’s decision to the Executive Board. At its meeting in February, 2013, the IAFF Executive Board affirmed the decision of the General President.

The U.S. Department of Labor conducted an investigation and reached preliminary findings regarding violations of its regulations by a handful of local affiliates regarding the nomination and election of Convention delegates and proxies. After several discussions and meetings, the IAFF entered into a “Compliance Agreement” with Department of Labor (DOL). The resolution involved a new, DOL-supervised election for the office of IAFF 5th District Vice President, to be held between Tom Thornberg and Joe Conway.

In its findings, DOL determined that certain Locals in the District did not elect their delegates in accordance with the strict regulations established by DOL and distributed by the IAFF prior to the 2012 IAFF Convention. Those regulations include requirements that notice of elections for convention delegates be sent by mail to the last known home address of each member, and be sent at least 15 days prior to the date of the local union’s election. In a few locals, DOL also found that the voting for delegates that took place was not conducted by secret ballot. Significantly, the DOL did not find any violations by the International with respect to the legal and administrative guidance provided to Locals months before the Convention; the credentialing process by the Convention Credentials Committee; the work of the Convention Elections Committee; the IAFF staffing of the elections at Convention; or the tabulation of votes. Instead, as noted, the DOL essentially focused on certain Local affiliates and what can be viewed as “technical” non-compliance with the DOL’s nomination/election requirements for selecting Convention delegates and proxies.

In the course of DOL’s investigation, it independently verified and re-counted the ballots in the 5th District Vice President’s election at Convention and it found no error in the counting of the ballots in that race. The IAFF asserted in response to the DOL that the agency’s requirements are not realistic for many small Locals where members clearly receive adequate notice of nominations and elections based on posted notices at stations, emails to members, and word of mouth. Nevertheless, rather than undergo the additional cost and distraction of litigating this issue in federal court, IAFF General President Harold Schaitberger chose to agree with DOL on a new, supervised election process. Consistent with the voluntary agreement with the Department of Labor, ballots were submitted by July 29, 2013, and were picked up by the IAFF Elections Committee and the Department of Labor the following day. Observers appointed by the two candidates, as well as DOL representatives and Election Committee members, attended the vote counting process. The ballots were tabulated three separate times, and the results were certified by DOL as follows:

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Thornberg</td>
<td>3,184</td>
</tr>
<tr>
<td>Joe Conway</td>
<td>2,722</td>
</tr>
</tbody>
</table>

No election objections or complaints were filed with the Department of Labor. Tom Thornberg was sworn in as the 5th District Vice President on August 13, 2013. On September 5, 2013, DOL issued a final determination closing this matter.

**Juan Romero and OPEIU Local 2 v. IAFF**

This case was a grievance pursued by OPEIU Local 2 against the International. It involved Juan Romero, a research associate employed by the IAFF and assigned to the Pension Resources Department, who was issued a written reprimand after he bypassed his immediate supervisor, department Director Ron Saathoff, and submitted the results of his pension analysis directly to Chief of Staff Pete Gorman and AGP Lori Merrell-Moore. OPEIU Local 2 and Mr. Romero pursued his grievance to arbitration.

Under Section 7.05 of the labor agreement between OPEIU Local 2 and the IAFF, the records of any disciplinary action must be expunged from an employee’s personnel file 18 months after the discipline was issued. In compliance with this contractual provision, the International removed the reprimand issued to Mr. Romero on October 17, 2013, and so informed him. Prior to the
scheduled arbitration hearing, the IAFF requested the Arbitrator to dismiss the grievance on the grounds it was moot—asserting that the reprimand had been removed from Mr. Romero’s personnel file in accordance with the OPEIU contract; the removal is treated as if the reprimand had never existed; there was no longer a live case or controversy; and there was no further relief to be granted the grievant.

The Arbitrator agreed with the IAFF’s position, and dismissed the case.

GUARDIAN POLICY OPINION LETTERS

When Guardian Policy applications are submitted by affiliates through their District Vice Presidents, the IAFF General Counsel’s office examines the facts and applicable law, and makes appropriate recommendations to General President Schaitberger. Such recommendations and opinion letters were submitted in the following matters:

- **Local 1813, Borough of Chambersburg, PA** (Suspension of Local President for transmitting letter to union members); **Local 4799, Dripping Springs, TX** (Discharge of former Local President); **Local F-297, Andrews AFB** (Limiting of Local President’s contacts with members); **Local 244, Albuquerque, NM** (Suspension of Local President for alleged improper use of official time); **Local 4027 Springdale, OH** (Termination of Local Secretary for insubordination); **Local 2193, Pinellas Park, FL** (Suspension of Local President for political activity on duty); **Local 287, Long Beach, NY** (Settled disciplinary grievances re Local officers); **Local 4547, North Lyon County, MN** (Disciplining of Local President); **Local 1280, Endicott, NY** (Termination of Local President); **Local 41, Mason, IA** (Fire Department regulation prohibiting contact with City officials without prior permission of the Chief); **Local F-287, Fort Lee, VA** (Removal of Local President for lack of EMT Instructor certification); **Local 4332, Dighton, MA** (Possible disciplinary action against Local President); **Local 4857, Harford County, MD** (Rescinded disciplinary action against Local President); **Local 244, Albuquerque, NM** (City’s threat to discipline state association President if she runs for state legislature); **Local F-313, Joint Base New Jersey Federal Fire Fighters** (Proposed discipline of Local President); **Local 1813, Borough of Chambersburg, PA** (Discipline of Local President who asked members not to volunteer); **Local 973, Wapakoneta, OH** (Demotion of union member); **Local 4847, Harford, County, MD** (Letter of counseling issued to Local President); **Local A-21, Michigan PFFU** (Captains and fire fighters issues in same bargaining unit); **Local 1262, Anderson, IN** (Labor agreement upheld in state court); **Local 4847, Harford County, MD** (Terminated Local President pursuing grievance procedures); **Local 786, Stamford, CT** (Denial of promotion to Local President); **Local 3483, Coweta, OK** ( Arbitrability should be negotiated as an issue for the arbitrator); **Local 2233, Wilton, CT** (Proposed discipline against Local President); **Local 249, Canton, OH** (Suspension of Local President resolved); **Local 4714, Jefferson Parish Third District Volunteer Fire Department, LA** (Termination of Local President); **Local 1660, Tualatin Valley, OR** (Termination of Local’s shop steward); **Local 3148, Midlothian, IL** (ULP’s filed with State Board regarding anti-union conduct); **Local 3987, Gravois Mills, MD** (Discharge of Local Vice President for work slowdown); **Local 4068, Pahrump Valley, NV** (Arbitration for discipline against Local Secretary-Treasurer); **Local 4872, Southern York County, PA** (ULP for dismissal of two Local members); **Local 4, Des Moines, Iowa** (Transfer of Local President); **Local 4327, Snowmass, CO** (Dismissal of Local Treasurer for ADA complaint); **Local 73, St. Louis, MO** (New hires signing Benefits Acknowledgment Form); **Local 4847, Harford County, MD** (NLRB complaint and arbitration for discharge of Local President); **Local 2928, Town of Palm Beach, FL** (Action against Local Vice President not yet legally actionable); **Local 3987, Lake Area Fire Fighters Association, MO** (Bad faith bargaining by employer); **Local 1867, Greenville, NC** (Local Vice President placed on probation); **Local 3249, Camden County, NJ** (Pursing challenges to discipline of EMS employees through arbitration or state court); **Local 4197, Douglas County, WA** (Termination of Local President); **Local 3638, Key Biscayne, FL** (Discharge of Local’s Secretary); **Local 3091, Burlington County, NJ** (Proposed adverse action against Local officer); **Local 4087, Hazel Crest, IL** (Discipline of Local President); **Local 4327, Snowmass, CO** (Claims under Americans with Disabilities Act); **Local 2665, Professional Fire Fighters of Eastern Missouri** (Enforcement of contractual evergreen clause); **Local F-282, Navy Region Northwest** (Denied per diem payments for re-assignments); **Local 4247, City of St. Mary Ester, FL** (Termination of Local President); **Local 1457, Newton, IA** (Threats of retaliation for vote of ‘no confidence’ in Chief); **Local 4971, MacArthur Airport, NY** (Displacement of Local officer from chief’s position); **Local 3449, United Valley, AZ** (Suspension of Local President for union leadership role).

SECOND LEGAL OPINION LETTERS

The International has a Second Legal Opinion Policy under which an affiliate can ask the IAFF for a second legal opinion letter from the General Counsel’s office. This independent opinion examines the facts, applicable law, and the merits of a situation, enabling the affiliate to make a more informed decision as to whether it is worthwhile and cost-effective to go forward with possible litigation. Second legal opinion letters were prepared in the following matters:

- **Local 3568, West De Moines, IA** (Department- imposed immunization and medical testing requirements); **Professional Fire Fighters of New Hampshire** (Potential appeal of lower court’s ruling regarding employee pension contributions); **Local 22, Philadelphia, PA** (Interest arbitration award involving wage increases); **Local 4131, Escambia County, FL** (Compliance of County’s leave policy with the FMLA); **Local 1141, City of Brook Park, OH** (City’s appeal of SERB’s decision finding City committed ULP by unilaterally implementing contract); **Professional Fire Fighters of Arizona** (Proposed bill changing overtime); **Local 1349, Mobile, AL** (Discharge based on a positive drug test); **Local 36, Washington, DC** (Installation of security cameras on vehicles without first bargaining); **Local 73, St. Louis, MO** (Legal challenge to Ordinance changing pension system); **Local F-78, Hanscom AFB, NH** (Exceptions to arbitration award); **Locals in Oklahoma** (Potential court challenge to new pension legislation); **Professional Firefighters Association of New Jersey**
(Potential appeal of lower court’s ruling involving new pension law); **Tennessee Professional Fire Fighters Association** (Coverage of state law regarding dues deductions); **Tennessee Professional Fire Fighters Association** (Potential court challenge to bill restricting campaign contributions); **Local 42, Kansas City, MO** (FLSA suit filed by paramedic); **Local 2266, St. Pete Beach, FL** (Freeze of defined benefits pension plan); **Local 1673, City of Deerfield Beach, FL** (City’s proposal to require retirees to contribute toward their health insurance premiums); **Local 2498, Williamsburg, VA** (Firefighter not eligible for LODD benefits); **Local F-33, San Clemente Island, CA** (Switching fire department from civilian to military personnel); **Local 2801, Suffolk VA** (Termination of Battalion Chief); **Local 3473, Downey, CA** (City Charter Amendment requiring super majority vote of City Council); **Local I-61, Burbank Airport, CA** (Termination of Local President and filing of ULP charge); **Local 1323, Moorhead, MN** (Pay claims of retirees); **Local 639, Parma, OH** (Upholding arbitration award reinstating member); **Local 454, Gadsden, AL** (Suit challenging pension changes); **Local 2156, North Royalton, OH** (Enforcement of arbitration award); **Local 152, Springfield, MO** ("Illness and Injury Notification” and “Disclosure” requirements of employer); **Local 3290, Gautier, MS** (Holiday Pay); **Local 4737, Sunland Park, NM** (Renegotiation of labor contract); **Local 270, Florence, AL** (Local President denied promotion to Deputy Chief); **Local 266, City of Mansfield, OH** (Restrictions on communications with City officials); **Local 2692, City of Oneida, NY** (Volunteer department not entitled to tax revenue); **Local 4610, Professional Emergency Management Service of New Jersey** (Appealability of three denied ULP’s by NLRB); **Local 1696, United Fire Authority, UT** (Medical policies under HIPAA); **Local 2269, Dyersburg, TN** (Potential violations of pension plan); **Local 416, Indianapolis, IN** (Entitlement to sick and vacation leave payout upon separation); **Local 1557, Sterling Heights, MI** (Suspension of union member); **Local 38, Covington, KY** (ULP for City’s termination of MOU); **Local 3945, Independence Fire District, KY** (Recognition of Local); **Local 3290, Gautier, MS** (Holiday pay issues); **Local 1374, Jefferson Parish, LA** (Pending suit regarding inflated health insurance premium); **Local 964, Baltimore, MD** (Use of FMLA leave); **Local 2180, Chula Vista, CA** (Local’s duty of fair representation); **Local A-32, Professional Fire Fighters and Paramedics of North Carolina** (Taxability of disability retirement benefits); **Federal Fire Fighters** (Staffing levels under federal budget sequestration); **Local 788, Camden, New Jersey** (Appeal of court ruling vacating arbitration award); **Local 2392, Truro Township, OH** (Township resolution restricting political activity); **Local 706, Ashland KY** (Member’s discrimination against Local); **Local 2718, Nahant, MA** (Duty of fair representation claim); **Local 2665, Maryland Heights, MO** (Termination of union member); **Local 135, Wichita, KS** (EEO claim of union member denied promotion); **Local 2801, Suffolk, VA** (Duty of fair representation); **Local F-33, San Clemente, CA** (Military personnel displacing fire fighters staffing); **Local 2881, California Department of Forestry, CA** (Valley Center Fire District contracting out fire services to Indian Reservation); **Local 1836, Berea, OH** (Application to set aside Conciliator’s award); **Local 4068, Pahrump, NV** (Appeal of lower court’s decision vacating arbitration award); **Local F-33, San Clemente Island, CA** (Staffing part of fire department with military personnel); **Local 1651, North Kingstown, RI** (Litigation over employer’s unilateral changes during contract negotiations); **District 16, Federal Fire Fighters** (Furlough of Department of Defense fire fighters); **Local 135, Wichita, KS** (EEO claim regarding denied promotion); **Local 344, Detroit, MI** (Legality of station ‘brown outs’); **Local 454, Gadsden, AL** (Appealing adverse pension decision of lower court); **Local 215, Milwaukee, WI** (Seniority status of members returning from layoff); **Local 493, Phoenix, AZ** (Lawsuit challenging “pension spiking”); **Local 3574, Volusia County, FL** (Taxes to support Fire Department); **Local 287, Long Beach, NY** (Contracting out ambulance services); **Local 4087, Hazel Crest, IL** (Discipline of Local President); **Local 4327, Snowmass, CO** (Claims under Americans with Disabilities Act); **Local 2665, Professional Fire Fighters of Eastern Missouri** (Enforcement of contractual evergreen clause); **Local F-282, Navy Region Northwest** (Denied per diem payments for re-assignments); **Local 3633, St. Mary’s City, OH** (City’s court challenge to arbitration award); **Professional Fire Fighters Association of New Jersey** (Taxation of annuity payments to retirees); **Local 3031, Nevada, MO** (Claim under Americans with Disabilities Act); **Local 1715, Cumberland, MD** (Enforcement of contract); **Local 3217, Metropolitan Washington Airport Authority** (Promotion practices and retaliation claims); **Local F-282, Naval Region Northwest** (Per diem payments); **Local 270, Florence, AL** (Challenging denial of promotion); **Local 3372, Central Coventry, RI** (Fire District in court receivership); **Local 2607, Cedar Rapids Airport, Iowa** (Employer’s non-compliance with arbitration award); **Local 179, Hutchinson, KS** (Americans with Disabilities Act claim); **Local 2, Chicago, IL** (Proposed court action to overturn arbitration award); **Local 805, Martinsburg, WV** (Compensation in DOL apprentice program); **Local 152, Springfield, MO** (Compensation on a salary/hourly basis); **Local 372, Long Beach, CA** (Application of HITECH Act regarding electronic records); **Local 276, Sheridan, WY** (Mandatory step increases); **Local 900, Boulder, CO** (Classification of Wildland fire fighters positions); **Local 2618, Joplin, MO** (Reduction in disability benefits); **Local 3473, Downey, CA** (Retaliation for members’ no-confidence vote); **Local 2607, Cedar Rapids Airport, IA** (Employer’s non-compliance with Arbitrator’s decision); **Local 1499, Rock Springs, WY** (Employer’s failure to comply with Arbitrator’s Award); **Local 613, Bozeman, MT** (Unit clarification action); **Local 36, Washington, DC** (City’s unilateral issuance of soft-posting directive); **Local 1290, Aurora, CO** (Procedural due process rights); **Local 4095, Gorham Windham, ME** (Underpayment when fire fighters work holidays).

**OTHER OPINION LETTERS**

**Local 3690, Sedona, AZ** (Deduction of sleep time from compensable hours); **Local 1460, Marietta, GA** (FLSA exempt status of station commanders); **Local 101 Duluth, MN** (Validity of new overtime policy under labor agreement); **Local 4361, Northwest Valley, AZ** (Claims of pay violations); **Local 3958, City of the Village, OK** (Compensatory time issues); **Local 1358, Bastrop, LA** (Pay and sick leave issues); **Local 4893, Vacaville, CA** (Compensation for training time); **Local 4818, Overland Park, KS** (Compensatory time under federal law); **Local 3357, Augusta-Richmond County, FL** (Change in overtime pay policies); **Local 2802, McAllen, TX** (Calculation of regular rate of pay); **Local 2801, Suffolk, VA** (Compensation due under state law); **Local 794, Newport News, VA** (Compensatory rights for...
obtaining instructor certifications); Local 3963, San Marcos, TX (Underpayment of members for overtime); Local 152, Springfield, MO (Regular rate calculation for overtime purposes); Local 3570, Cocoa Beach, FL (Salary or hourly pay to members); Local F-121, Naval District of Washington Fire and Emergency Services (Compensability of study time for paramedic course); Local 135, Wichita, KS (Payment for training time and compensatory time); Local 4345, Horry County, SC (Training time as compensable time); Local 3451, Middlesex County, NJ (Application of FLSA Section 7(k) exemption to Rutgers University lieutenants); Local 357, Evansville, IN (Compensability of on-call time for fire investigators); New Mexico Professional Fire Fighters Association (Compensability of training time); Local 4697, San Juan, Texas (FLSA regular rate calculation); Local 1270, Salinas City, CA (Overtime for travel time); Local 577, Seymour, Indiana (Comp time and sick leave buy-back policies); Local 995, Richmond, VA (Captains exempt under FLSA); Local 3920, Fulton County, GA (Pay calculations); Local 1460, Marietta, GA (Exemption of Captains from overtime pay); Local 2057, Orange County, FL (Overtime pay for transferring of gear); Local 4137, Plugerville, TX (Pay compensation of fire fighters); Local 3722, Enid, OK (Compensation of travel time); Local 215, Milwaukee, WI (Policy change regarding shift trades); Local 2974, Lake Havasu, AZ (Pay and scheduling practices); Local F-33, San Clemente, CA (Pay retention upon job transfers); Local 4818, Oakland Park, KS (Compensability of on-call time); Local 2298, Ada, OK (Pay Protections for probationary fire fighters); Local 4962, Grand Blanc, MI (Employer non-compliance with the FLSA); Local 55, Oakland, CA (Inclusion of haz-mat pay in overtime); Local 2149, Plano, TX (Compensation and premium payments); Local 4867, Haines City, FL (Pay elements excluded from regular pay rate); Local 3437, Williston, ND (Improper coverage of EMS employees under fire fighter overtime exemption).

FRONT LINE POLICY OPINION LETTERS

West Fertilizer Company Fire and Explosion, Dallas, TX (Fire and explosion at fertilizer plant in West Texas on April 17, 2013 that killed 15 persons, including a Captain in the Dallas Fire Department).

MISCELLANEOUS MATTERS

a) Working with other Union General Counsels

IAFF General Counsel Tom Woodley has participated in regular meetings of the General Counsels of major AFL-CIO affiliates involving the LCC’s Board of Directors and the Lawyers Advisory Panel.

b) Defending Against Attacks on Public Sector Unions and Their Members

A core group of General Counsels for major public sector unions continues to coordinate and develop legal strategies for possibly challenging anti-union laws proposed or enacted by state legislatures (AFT, AFSCME, SEIU, NEA, Laborers and Teamsters). General Counsel Woodley has exchanged research and legal analysis with these counsel and participated in multiple conferences regarding this subject. At the AFL-CIO’s monthly meetings of the Lawyers’ Advisory Panel (“LAP”) in Washington, D.C., much of the discussion and shared research/analysis have been focused on the significant concerns presented by proposed and/or passed laws in Wisconsin, Ohio, Florida, Oregon, Arizona, Alabama, Tennessee, Michigan, Missouri, and the orchestrated, anti-union campaigns to pass similar legislation in other states.

c) Consultations with Representatives of the U.S. Department of Labor

The General Counsel’s office has been commissioned by General President Schaitberger to consult with the Department of Labor with respect to needed regulatory changes involving: a) antiquated procedures regarding the nomination and election of delegates and proxies at union conventions involving the election of officers; and b) outdated FLSA regulations involving the FLSA’s “executive exemption” which excludes too many officers in the fire/EMS service from the overtime protections of the FLSA.

d) IAFF Pre-Convention Information and Guidelines

The IAFF General Counsel’s office has assisted the General Secretary-Treasurer’s office in providing Pre-Convention Information and guidance regarding various matters.

e) IAFF 2014 Convention

Attorneys from the IAFF General Counsel’s office will be assisting and advising the 2014 Convention Rules Committee, the Constitution and By-Laws Committee, the Policy Committee, and the Resolutions Committee.
OFFICE OF LEGAL COUNSEL

The General Counsel’s firm, Woodley & McGillivary, continues to devote the full-time services of one of its experienced partners, Baldwin Robertson, as the IAFF’s in-house Legal Counsel. Two associate attorneys with the firm, Chris Franzoni and Donna McKinnon, serve as in-house Assistant Legal Counsel on a full-time basis to handle the growing number of requests for legal guidance. Ms. McKinnon joined the Office of Legal Counsel in 2014. The Legal Counsel’s Office is also ably assisted by paralegal Pat Dunn, Secretary II Pam Hall, and Executive Secretary Stephanie Griffiths.

Since the 2012 Convention, the Legal Counsel’s Office has received and handled nearly 3,000 requests for assistance from IAFF affiliates and International officers. The affiliate requests, which were submitted by affiliate leaders with the permission of their District Vice Presidents (as required by Executive Board policy), dealt with a broad spectrum of matters ranging from internal union administration, union elections and parliamentary questions to labor-management relations, terms and conditions of employment, unfair labor practices, and duty of fair representation. Since the last cConvention, the Legal Counsel’s Office has also reviewed and updated the Constitution and by-laws of hundreds of affiliates to ensure their compliance with the IAFF Constitution.

In addition to providing individual assistance to IAFF affiliates, the Legal Counsel’s Office has assisted the IAFF General President and General Secretary-Treasurer on a variety of legal matters of concern to the International, including labor relations and personnel issues involving IAFF employees; contracts with outside parties; arbitrations and litigation affecting the International; organizing and jurisdictional disputes involving IAFF locals and other AFL-CIO affiliates; trademark/copyright protection issues; and appeals submitted to the General President’s office or the IAFF Executive Board pursuant to Article XVIII of the IAFF Constitution. Legal Counsel have also assisted IAFF General Counsel Tom Woodley in providing assistance to IAFF affiliates by the attorneys at Woodley & McGillivary under the IAFF’s Guardian Policy, the Front Line Policy, the Amicus Brief Policy and the FLSA Policy. Those matters are summarized elsewhere in the General Counsel’s Report.

Attorneys Robertson and Franzoni attended the 2012 AFL-CIO Lawyers Coordinating Committee (LCC) Annual Conference. Robertson also participated in a panel presentation on “Legal Strategies for Countering the Attacks on Public Sector Workers,” speaking specifically on attacks by municipalities and states on union dues deduction and political activities.

Publications. The Legal Department completed a new IAFF “Fitness for Duty Manual,” with the assistance of Pat Morrison, and Jim Brinkley from Health & Safety. This manual can also be found on the IAFF Legal Department web page. It is designed to provide some general guidance to affiliates who have questions about how employers may lawfully handle health-related problems with employees, including conducting medical examinations, occupational health testing, workers’ compensation, medical leave, disability-related legal claims, and other similar topics.

Legislation and Governmental Affairs. The Legal Department has continued to provide advice to the IAFF’s Governmental Affairs Department in its diligent efforts to promote statutory goals in Congress, as well as to pursue regulatory changes with the Department of Labor. Staff have met with representatives of the Wage & Hour Division, Solicitor of Labor, and the Office of Labor-Management Standards on behalf of the IAFF and affiliates.

Education & Training. Since last Convention in 2012, attorneys in the Legal Department have presented seminars at the IAFF Affiliate Leadership Training Summits (ALTS), the Ernest A. “Buddy” Mass Human Relations Conference, the IAFF’s Dominick F. Barbera EMS Conference, and the IAFF John P. Redmond Symposium. IAFF Legal Counsel Baldwin Robertson conducted presentations at the Affiliate Leadership Training Summit (ALTS) and at the 2013 ALTS, regarding classes on “Before the Lawyer Gets There,” “First Amendment,” and “Protecting Health Benefits.” Chris Franzoni conducted an information session on legal claims arising out of Line of Duty Deaths and Injuries. Robertson participated in the Labor-Management Initiative (LMI), conducting a class on “Recent Cases and Statutes in Employment Law.” At the 2013 Redmond Symposium, Robertson also participated in a presentation on the Affordable Care Act and EMS Delivery. At the 2014 ALTS, Legal Department attorneys presented classes on “Conducting Union Elections,” “First Amendment Law,” “Advanced FLSA,” “What to Do Before the Lawyer Gets There,” “Fitness For Duty Examinations,” and “Title VII and Consent Decrees.”

IAFF Foundation. The Legal Department assisted in the consolidation of the IAFF’s existing charitable foundations into a single 501(c)(3) charity—the IAFF Charitable Foundation. In particular, the Department is concluding the merger of the McCleman Scholarship Fund in to the IAFF Foundation. In addition, Assistant Legal Counsel Chris Franzoni has continued to aid the Foundation’s efforts to register and comply with state charitable solicitation laws, review contracts, assist with the 2011 fiscal year audit, register for sales and use tax exemptions, and provide responses to legal inquiries regarding the fundraising activities of the Foundation.

Executive Board Committees. General Counsel Tom Woodley and Legal Counsel Baldwin Robertson have also provided assistance to a number of IAFF Executive Board Committees, including the Legal Services Committee, the Constitution and By-Laws Committee, the Emergency Disputes Fund Committee, the Organizing and Field Services Committee, the Board’s ad-hoc Pre-Trial Review Boards, and the ad-hoc Article XIX Dispute Resolution Committee.