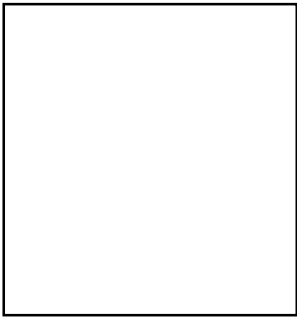




Letter from the President



It's time again to evaluate what is working for our organization and what is not. May 5th was a regularly scheduled meeting, which had very poor attendance. We have now tried two week nights and two week end dates for our 4 meetings. Based on attendance results, the weeknights do not work. We asked for your input and one of your recommendations is to have a speaker or some forum for education besides the organization's business.

Here are my thoughts in response. I would like to have a meeting schedule for the entire year by November, consisting of 4 meeting dates. There would be two "primary" membership meeting dates (one being the February conference) at which we host our meeting and have an educational presentation. The appropriate time for the second meeting would be our budget/election meeting in November. Our efforts can be concentrated on these two dates to bring forward an informative and worthwhile presentation as well as take care of the necessary business. The other

two dates would be "open" board meetings that would allow the Board of Directors to meet and tend to the necessary business of the NIAFPD. These meetings would be administrative in nature and would be a forum primarily for the Board to conduct business.

We currently are working on co-hosting a legislative finance day along with Senator Judy Biggert. The goal would be to continue to educate our legislators and build a stronger relationship for the Northern Alliance. We are striving to accomplish this for the November meeting. A more frequent newsletter correspondence and additional projects like the March Legislative day would support this proposed schedule. Most importantly, we need your help. Please take the time to participate in the functions & committees. Please call, write or e-mail me with your comments or suggestions on how to improve the quality of our time we share together.

Thank you,

Jack L. Mancione
President, NIAFPD
DWFPD@aol.com



Illinois Appellate Court Adheres to its Original Decision to Vacate Arbitrator's Award in a Well-Publicized Chicago Firefighters' Disciplinary Case

by Carolyn Welch Clifford, Ottosen Trevarthen Britz Kelly & Cooper, Ltd.

You probably recall the images on the local news report: Chicago firefighters at a retirement party in 1990 drinking alcohol, making offensive racial, gender and ethnic slurs, and some exposing their bare buttocks and genitals. Since a local Chicago news station made public this videotape discovered seven years after this party took place, the First District Illinois Appellate Court has made its latest ruling in a long, protracted dispute over the issue of the disciplinary measures imposed on the firefighters involved in *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, ___ Ill.App.3d ___, No. 1-99-2647 (First District, June 1, 2001).

The case arose out of the discharge or suspension of 28 employees of the Chicago Fire Department who took part in this unauthorized retirement party at a Chicago fire station. The videotape was first viewed by the Internal Affairs Division of the Chicago Fire Department in May of 1997, seven years after the party occurred. The director of the Internal Affairs Division did not notify his superiors of the existence of the tape until late November 1997, only after he learned that a local television news reporter had ob-

tained a copy of the videotape. At that point, the Chicago Fire Department commenced the disciplinary investigation process, which lead to the imposition of discharge and suspensions on the 28 employees in May of 1998. The director of the Internal Affairs Division was also fired.

Pursuant to the collective bargaining agreement between the City of Chicago and the firefighters' union, the union filed grievances on behalf of the 28 disciplined firefighters. At an arbitration hearing held in October 1998, the arbitrator was asked to determine whether the investigation and/or discipline imposed regarding the incident was untimely and should not stand pursuant to a provision in the collective bargaining agreement which provided that, "The Employer shall conduct disciplinary investigations when it receives complaints or has reason to believe an employee has failed to fulfill his responsibilities as an employee and just cause for discipline exists."

Legislative Update

by Charles Vaughn, Vaughn Consulting Services

The Northern Alliance and the IAFFD prove again that their combined strength is a valuable asset as I serve your interests and issues.

The session ended on May 31 with only a very few important agreements and with two of the biggest ones at the eleventh hour. Telecommunications and McCormick Place were completed after much stressful dealing, but little effort remained for anything but the budget.

The budget still probably reflects from money for grants (despite claims to the contrary), but we still do not know how or when the money can be liberated. Keep working your legislators on your requests, but delicately. One of our areas of greatest potential is a concept for a low-interest (or no-interest) loan fund for fire departments all over Illinois. The Governor and the legislative leadership are solidly behind this, but we still need our members to convey our requests to these leaders to make Rep. Moffit's "loan bill" a reality (especially the Republican senators and President Philip).

Bills that passed include:

- **HB1** - A bill to allow driving with a one-ear headset.
- **HB161**- Use of flashing lights by volunteers on their autos going to a fire.
- **HB 180** - A bill setting tough penalties on someone placing our personnel in danger going to, or at, a fire or emergency site (Scott's law).
- **HB 250, 264, 266** – Madigan's pension bills for Chicago.
- **HB 279** - Emergency medical dispatcher training. This was softened to be sure that it did not require two dispatchers to be present, by agreement with I.M.L.



- **HB 1694** - Protects how 911 information may be used and how we can know where calls are originating from.
- **HB 2138** - A cleanup bill to clarify underground utility damage responsibilities.
- **HB 2247** - Defining how badges (including fire inspectors) may be used.
- **SB 1017** - Requires compensation for a fire district that is required to fill in and operate as a substitute for a down emergency response system.

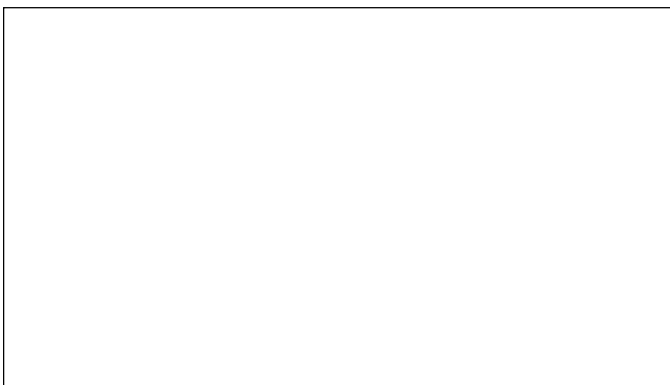
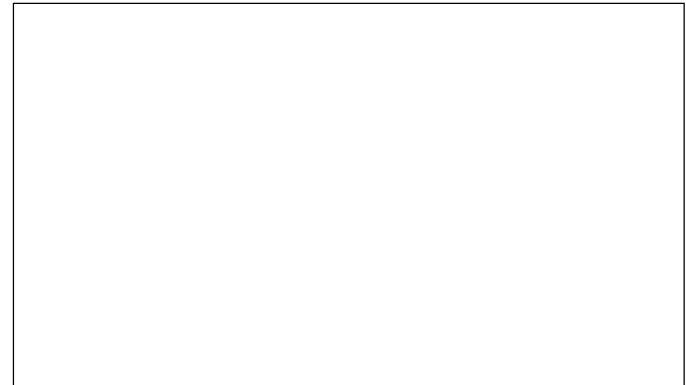
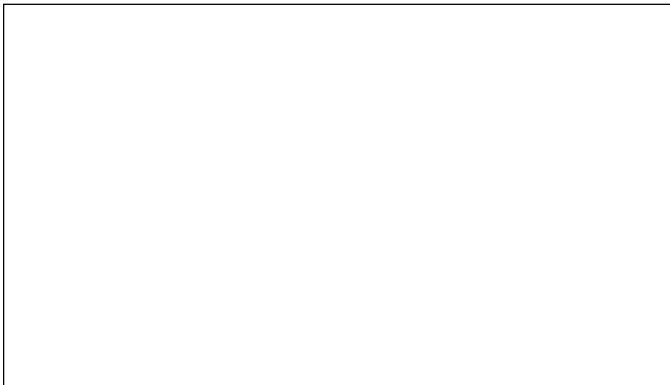
Bills still in the process for the Fall session include:

- **HB 1081** - Our bill to regulate open burning and enforce our ordinances.
- Bills on compensation for recruiting and keeping volunteers and enforcement of ordinances.
- Shells (HB 3304, 1466) for future use.

Bills that seem to have hit the wall:

- **SB 718 (and the same House Bill)** – Addressed promotion. Will not move this year.
- **HB 2221** - Volunteer firefighter leave of absence.
- **HB 28** - Changes for credit for military service and in age requirements.
- **HB 248** - Tax credits for volunteers.

All in all, a good year for the fire service. The best part is that very little happens in Springfield on fire issues unless leadership is convinced that our thoughts have been heard. Now they call us. It was again an honor to serve you.



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YOUR NEEDS AND BUDGET . . .**

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Medical Plan Renewals, What's the Trend?

by Blues Clues

It's that time of the year again. Your broker gives you a call and says that the good news is that the medical rates for your employee benefit plan are only going up 22% next year while increases for groups like yours are averaging 25% to 40%. You are probably thinking to yourself, why are we so lucky!

It used to be said that the only things that you could count on in life are death and taxes. It seems that another item should be added—double digit medical rate increases. Why is this happening and what can be done?

An oversimplified answer is, 'the claim costs are going up faster than insurance premiums'. The projected change in an insurance company's or self-funded plan's claim costs over a period of time is called *trend*.

Annual trend factors of 13% for PPO, 10% for HMO and 24% for Prescription Drugs are at the highest levels in a decade. The traditional pressures of cost shifting from Medicare and Medicaid programs to the private sector, expensive new technologies and an aging population are being exacerbated by increasing legislative mandates, court decisions, consumer backlash and tight labor markets. This is not your parent's cost of living increase.

Trend is the largest factor in the renewal formula. Other adjustments such as enrollment and demographic changes or plan design loads will fine tune a renewal, but trend is what drives the basic increase. It should be noted that trend factors are different from company to company depending on the actual claim experience of a block of business, the use of technology to control administration expenses and the access to managed care networks with significant discounts.

If the 12-month trend is 16% on a combined medical and drug basis, why are the increases in the 20% range? This is because an underwriter will project your claims 2 to 3 months in front of your anniversary date. Now, the trend factor is stretched out over a 14 to 15 month period.

Unfortunately, there are not many options for employers with less than 100 covered employees. There are fewer and fewer insurance companies due to mergers, acquisitions and companies pulling out of the market due to unprofitable results. In addition, the survivors have more selective and stringent requirements to qualify for their preferred rates. Yes, rates change after you accept the quote and apply for coverage.



The 13th Annual National Fire & Emergency Service Dinner



The 13th Annual National Fire & Emergency Service Dinner was held April 25 in Washington D.C. Lt. Governor Corrine Wood was in D.C. to bring the Scott Law to the Federal level and attended the service dinner along with our Illinois delegates (pictured above).

Representatives from the Northern Alliance, Illinois Fire Chiefs, State Fire Marshal's office, Illinois Fire Service Institute, & Chicago Fire Department were just some of the Organizations represented.

Thanks to VFIS, FEMA and all who support our cause!

Illinois Educational & Research Foundation Annual Scholarship Golf Outing

July 11, 2001

Indian Lakes Resort, Bloomingdale, IL

Illinois State Fair

August 10-19, 2001, Springfield, IL

Fire Prevention Week

October 7-13, 2001

Illinois Fire Safety Alliance Fire Prevention Week Luncheon

October 11, 2001, Nilis, IL

Illinois Fire Chiefs Association 51st Annual Conference

October 23-26, 2001, Peoria, IL

NIAFPD Conference

February 14-17, 2002

The Hyatt Regency Oak Brook, Oak Brook, IL

Look for Registration Information in November

Illinois Appellate Court . . .

Continued from page 2

The arbitrator agreed with the union, finding that the fire department was required to begin a disciplinary investigation “at the time” it learned of the alleged misconduct, and that the six and one-half month delay in the commencement of the investigation “was far beyond any reasonable time period allowed.” The arbitrator concluded that the disciplinary actions should be rescinded. The arbitrator further noted that he was required by the case of *American Federation of State County and Municipal Employees v. Department of Central Management Services*, 173 Ill.2d 299, 671 N.E.2d 668 (1996), (hereinafter, “*AFSCME*”) to take precautionary steps to ensure the misconduct at issue would not be repeated and to take into consideration pertinent public policy concerns. As to this issue, the arbitrator concluded that he was satisfied that the employees involved would not repeat the alleged misconduct and that steps had been or can be taken to ensure that. In support of this finding, the arbitrator noted that:

1. The employees involved were generally very long-term employees, and that since the incident, many had been promoted, “indicating their competence and capabilities as members of the Department.” Further, many of the employees had received commendations for their service, and there had been no pertinent discipline for the employees involved prior to this incident.
2. The employees had been “trained at considerable public expense and have amassed considerable experience at performing their craft.” The arbitrator felt that the public loses when long term and experienced employees are fired.
3. Because the city took very strong disciplinary action against the firefighters, the employees were sent a clear and unambiguous statement that they will be disciplined to the fullest extent should the conduct be repeated in the future.
4. The extensive local and national publicity on this incident was a public embarrassment to the firefighters and sent a strong message regarding the consequences of this type of conduct.
5. The city had already put in place mechanisms to prevent such misconduct from occurring in the future, such as ordering firefighters to re-familiarize themselves with the orders prohibiting substance abuse, discrimination, and sexual harassment.
6. The city had other avenues available to it to prevent racial, gender and ethnic offensive comments by employees in the future, such as training.

After the union filed a petition to enforce the arbitration award in the circuit court, and the city filed a counter-petition to vacate it, the circuit court granted the union’s petition to enforce the award. This appeal to the appellate court followed, in which the issue became whether the lower court had erred in refusing to consider public policy as a ground for vacating the arbitration award entered in favor of the union. The city argued that the award violated the public policy favoring a safe and effective fire prevention system, and the appellate court agreed.

The court first acknowledged that the judicial review of an arbitration award is extremely limited. In general, the Illinois Uniform Arbitration Act (710 ILCS 5/12) reflected the legislature’s intent to provide finality for labor disputes submitted to arbitration. Under the Act, a court may only disturb an award in stances of “fraud,

corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration.” However, the court further explained that even if the arbitrator makes his award within the scope of his authority, a court may vacate the award “if it is repugnant to the established norms of public policy.”

In order to vacate an arbitration award under the “public policy exception,” a court is required to make a two-step analysis. First, the court must inquire “whether a well-defined and dominant public policy can be identified.” Second, if such policy can be found, then the court must “determine whether the arbitrator’s award, as reflected in his interpretation of the agreement, violated the public policy.” As to the first question, the court concluded that it is “unquestionable that an established public policy exists in Illinois favoring safe and effective fire protection services.”

The court pointed to such statutes, such as the Fire Protection District Act, in which the Illinois General Assembly pronounced that fire protection districts are fundamentally created “as a matter of legislative determination . . . in order to promote and protect the health, safety, welfare and convenience of the public,” and in the “public interest . . . [to] provide as nearly adequate protection from fire for lives and property within the districts as possible and regulate the prevention and control of fire therein.” (70 ILCS 705/1) The court also pointed to such statutes as the Illinois Fire Protection Training Act (50 ILCS 740/1 *et seq.*) and the entire Chapter 425 of the Illinois Compiled Statutes, entitled, “Fire Safety”, as further evidence of a well-defined public policy favoring safe and effective fire prevention services in Illinois.

Turning to the question of whether the arbitrator’s award violated public policy, the court first noted that the collective bargaining agreement contained no explicit provision detailing when investigations of infractions of Chicago Fire Department rules must begin within any specific time period. Citing language from the Illinois Supreme Court in a similar disciplinary case involving a DCFS worker, the court stated that, “As with any limitation, the nature of the conduct at issue must be considered before arbitrary time restrictions can be imposed.” (*AFSCME, supra*)

The court explained that although the arbitrator strictly followed the guidelines set forth in the *AFSCME* case by the Illinois Supreme Court, in which the arbitrator concluded that the firefighters were unlikely to repeat their offensive conduct in the future, the city had found enough reason to discharge 7 employees and suspend 21 employees for the incident after extensive investigation and disciplinary proceedings. Although the arbitrator cited six reasons why he was assured that the employees posed no further danger to the public, the arbitrator never considered the merits of the case. The court said:

Without considering the conduct contained in the videotape for evidentiary purposes, the arbitrator was unable to fashion an appropriate award. Failure to consider the merits of the allegations ignores the seriousness of the [sic] any possible lack of readiness of municipal firefighters who are on call 24-hours a day to respond to emergency situations within a few scant minutes. It cannot be doubted that firefighters who are ill-equipped to adequately perform their ascribed duties as the result of a state of intoxication including, but not limited to the operations of any kind

Illinois Appellate Court . . .

Continued from page 4

of vehicle, may have a substantial, detrimental impact on the health and safety of the citizens of the City of Chicago.

The court further noted portions of the record from the disciplinary hearings in which some of the firefighters involved in the incident denied any wrongdoing by their conduct. Some firefighters interviewed denied any knowledge of the Chicago Fire Department rules and regulations that prohibited firefighters from consuming alcohol while on duty. Although one lieutenant on duty the day of the party acknowledged that there was a keg in the fire station, he claimed to have no knowledge of the contents of it. Another lieutenant who had attended the party with his crew testified that in his opinion, the party did not violate any fire department rules and regulations "according to what's been tradition on our job for a good many years."

The court concluded that the arbitrator's order fails to show that any precautionary steps were taken to deter any future misconduct or to ensure that it would not be repeated. In fact, the arbitrator merely concluded, based on his own assumptions, that the firefighters would not partake in these offensive activities in the future. In short, the court found:

The arbitrator's award fails to promote the safety and welfare of the public in direct contravention of well-established public policy. We cannot say that the arbitrator was either within his authority in making a determination of timeliness based on the Agreement or that he was able to make a "rational" finding that the employees could be trusted to refrain from the offending conduct in the future: "[W]hen public policy is at issue, it is the court's responsibility to protect the public interest at stake. That is why courts will not give the drunken pilot the opportunity to fly a commercial airliner again even though no harm befell his passengers." (citing *AFSCME, supra*).

Upon reconsideration on remand in June 2001 from the Illinois Supreme Court on the issue of "whether there exists an explicit, well defined, dominant public policy to which the arbitrator's decision ran contrary," and to consider a recent U.S. Supreme Court on a similar issue involving drug-using truck drivers in Ohio (*Eastern Associated Coal Corp. v. United Mine Workers*, 121 S.Ct. 462 (November 28, 2000)), the First District Appellate Court affirmed its decision. The court concluded that:

The conduct at issue in the present case was recorded on video-tape and reveals public safety workers in an on-going state of intoxication, some participants setting about to perform their duties by way of responding to an alarm for a fire. Nevertheless, the arbitrator ordered reinstatement and barred all discipline and sanctions without considering the merits of the case. Firefighters have the extraordinary responsibility for carrying out the well-stated public policy of safe and effective fire prevention. Firefighters must be prepared to respond immediately to emergency conditions at all times, and in all weather conditions, whenever the alarm bell in the firehouse sounds. For these reasons, and for all the reasons cited by our supreme court in *AFCSME II*, 173 Ill.2d 299 *et seq.*, we adhere to our original opinion as set forth above.



IFCSA Executive Support Personnel Certificate Program

The Illinois Fire Chiefs' Secretaries Association will be holding the Executive Support Personnel Certificate Program September 2001 through December 2001. The classes are held on Wednesdays. For more information contact Kathy Adams at the Lisle-Woodridge Fire Protection District 630-964-2233. The following is the class schedule:

Date	Subject/Location	Instructor
September 5	Fire Service Orientation I Lisle-Woodridge FD	Chief Tom Freeman
September 12	Fire Service Orientation II Lisle-Woodridge FD	Chief Tom Freeman
September 19	Fire Officer Management Orland FD	Chief Bob Buhs
September 26	Fire Behavior I Darien-Woodridge FD	Chief Mac McCastland
October 3	Fire Behavior FD Darien-Woodridge FD	Chief Mac McCastland
October 10	NO CLASS – FIRE PREVENTION WEEK	
October 17	Group Dynamics Pleasantview FD	Chief Pat Kenny
October 22	Written and Oral Communications Barrington FD	Joyce Strout
October 31	Fire Service Law & Statutes Algonquin-Lake in the Hills FD	Attorney John Kelly
November 7	Public Education Downers Grove F	Marsha Geisler
November 14	Haz Mat Orland FD	Lt. Ray Kay
November 19	Cause & Origin Fire Prevention Wauconda FD	Pat Kain
November 28	EMS Mundelein FD	Mundelein Paramedics
December 5	Technical Communication Downers Grove VOC	Ann Priorello

We Don't Know

by Chief Tim Deuschle, Addison Fire Protection District

State Senator Patrick O'Malley (R-18, Palos Park) announced in April he would seek the Republican gubernatorial nomination next year. Senator O'Malley served as a member of the Board of Trustees for the Palos Fire Protection District from 1985 to 1994, serving as Board President since 1987.

Senator O'Malley's experience as a fire district board member has been a tremendous asset in advancing fire district issues. He has been the Senate sponsor of various legislative initiatives including the sale of fire district real estate and clarifying the property tax extension rate when consolidating fire districts. In 1995, he was awarded the *Legislator of the Year Award* by the Northern Illinois Alliance of Fire Protection Districts.

In 1997, Senator O'Malley appeared in the informational video, *Meeting the Challenge*, which was produced by the Northern Illinois Alliance of Fire Protection Districts and the Illinois Association of Fire Protection Districts. Among the points made by Senator O'Malley in this video was the "efficiency" of fire protection districts since they normally cover a wider geographical area than municipal departments.

Senator O'Malley has also been a strong education advocate, having served on the Moraine Valley Community College Board of Trustees, and currently Vice Chairman of the Senate Education Committee. He has also worked continuously to curtail state and federal mandates on local government.

While there will doubtless be a number of other candidates seeking the Governor's Office as widely reported, his unique relationship to fire protection districts made his announcement particularly noteworthy in this publication.



Fire Guard is a quarterly publication of:

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Enjoy your Summer!

Currently there are no meetings
set for the month of August.

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YOUR FIRE GUARD NEWSLETTER!

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