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General Counsel's Office

Submitted By:

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and

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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 significant 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 substantially 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 devotes the full-time services of one of its key partners, Doug Steele, as the in-house IAFF Legal Counsel, as well as two other in-house lawyers, Mike Keefe and Nicole Gonzalez, who are 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.

During 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, arbitrations, 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:

Derek George and Local 4140 v. Town of Ponce Inlet, Florida

In this Guardian Policy case authorized by General President Harold Schaitberger, the Hearing Officer for the Public Employees Relations Commission (PERC) in Florida issued a favorable decision. IAFF General Counsel Tom Woodley pursued unfair labor practice charges on behalf of Local 4140 and its President Derek George against the Town of Ponce Inlet asserting: 1) President George was unlawfully terminated in retaliation for his union leadership activities; 2) the Town unilaterally removed the union members who are Lieutenant and Firefighter/Driver Engineers from the bargaining unit; and 3) the Town refused to bargain over new policies affecting their terms and conditions of employment, and declared impasse in negotiations after only one bargaining session.

After an evidentiary hearing in August/September, 2017, and the filing of briefs, the PERC Hearing Officer issued a well-reasoned decision finding that the Town engaged in all of the unfair labor practices claimed by Local 4140 and President George.

With the leverage furnished by the PERC Hearing Officer's positive decision, an excellent settlement was achieved that provided full relief to remedy the Town's multiple unfair labor practices. Pursuant to the settlement, the Town has rescinded the termination of Local President Derek George and reinstated him to his job as Lieutenant, with all rights, compensation, benefits, leave, seniority and the right to work overtime and serve in acting positions. President George was paid all of his lost pay in the sum of $102,000 (inclusive of interest). In addition, the Town has credited him with the service time earned during the period of his discharge, and paid its employer contributions into the Retirement System Trust Fund. The Town also agreed that the Lieutenants and Driver/Engineers are included in the bargaining unit represented by the Local. Further, the Town has withdrawn its declaration of impasse, and rescinded its five policies that it unilaterally implemented.

The settlement also provided that the Town would pay $95,000 in attorneys' fees and litigation costs. This was a 90 percent recovery of the IAFF's fees/expenses incurred in pursuing this case to a successful outcome on behalf of Local 4140 and President Derek George. On February 15, 2018, IAFF General Counsel submitted a reimbursement check to the IAFF in the amount of $95,000.

Owen "Cliff" Snider v. City of South Pasadena, California

In this Guardian Policy case, the City of South Pasadena terminated Local 3657 President Cliff Snider, in retaliation for his union leadership activities. President Snider was enforcing the right to bargain over changes in working conditions, first by requesting to bargain, and later by filing an Unfair Labor Practice (ULP) charge over the City's refusal to bargain. After an earlier back injury, and while he was on paid sick leave, Snider participated in an 8-mile "Spartan Race". Chief Mario Rueda terminated Snider on the asserted grounds of dishonesty, abuse of sick leave, bad faith, and failure to notify a supervisor that he felt well enough to return to duty.

The City's action in discharging President Snider showed anti-union animus, given the undisputed timing in this case. On May 11 and 19, 2016, Snider and Local 3657 requested the City to bargain over the assignment of light duty. The City refused. Snider filed an ULP charge with the state PERB on June 8, 2016 regarding the City's refusal to bargain; seven days later, on June 16, the City began its investigation into Snider's conduct (participating in the Spartan Race that occurred four months earlier) and placed him on administrative leave. The PERB issued an ULP Complaint on September 28, 2016 alleging that the City improperly refused to bargain; five days later, the City proposed Snider for termination (which became effective on December 7, 2016).

IAFF General Counsel Woodley filed an ULP charge claiming that President Snider was terminated for exercising his union leadership activities in violation of the state's Meyers–Milias Brown Act.

An evidentiary hearing was conducted before the PERB Administrative Law Judge (ALJ) on January 22-23, 2018, and following the filing of briefs, the ALJ issued a favorable decision on April 10, 2018 finding that the City's termination of President Snider was unlawfully based on his union activity. Specifically, the ALJ found that the timing of the City's investigation and termination of Snider supported a finding of retaliation because the City hired its investigator less than a month after Snider began his protected conduct, and the formal investigation began less than one week after Snider filed the failure to bargain ULP charge. He further found that the City's timing in issuing the notice of intent to terminate, less than one week after the filing of the PERB Complaint involving the City's refusal to bargain, showed that "the City took steps toward terminating Snider's employment soon after significant developments" in the bargaining requests and related ULP filings, and that this "strongly supported" Snider's retaliation claim.

The PERB ALJ held that the City conducted a "cursory investigation" because the City's decision maker, Chief Mario Rueda, admitted in his testimony at the hearing that neither the investigator nor the City itself made any attempt to speak with Snider's physician, or review Snider's medical records, and that this was problematic because "understanding what activities, if any, Snider's doctor considered appropriate seems to be not only an obvious, but a critical component of the City's investigation." In addition, he found the "City's assertions that Snider committed a serious transgression rings hollow when it took no action to investigate those transgressions until months later."

Moreover, the ALJ concluded that the City engaged in disparate treatment and administered a disproportionate penalty in light of the City's past practice of handling disciplinary matters "in house" through informal discussion, especially in light of undisputed testimony that the City previously did not seek to discipline another employee for known abuse of sick leave.

Also, the PERB ALJ determined that the City failed to rebut the evidence of retaliation, noting that the City did not demonstrate that Snider engaged in misconduct that Chief Rueda alleged in the termination documents. Finally, the ALJ stressed that Chief Rueda did not dispute that Snider never denied or tried to conceal his participation in the Spartan Race, despite the City

having cited the alleged "concealment" as a reason for the termination.

In sum, as the hearing evidence demonstrated, the City was held accountable for violating President Snider's rights and committing an unfair labor practice by terminating him.

As a remedy, the ALJ ordered all the relief requested:

1. Rescind the termination
2. Expunge the disciplinary record;
3. Immediately reinstate President Snider to his position of Engineer:
4. Make Cliff Snider whole for all financial losses, including backpay, plus 7% interest; and
5. Post a notice for 30 days stating that the City's actions violated the law, and that it will cease and desist retaliating against President Snider because of his protected union activities.

The City has filed exceptions with the PERB. However, the well-reasoned and factually supported decision of the ALJ should be affirmed on appeal.

Richard Grizzard, Terry Bolton and IAFF Local 4517 v. City of Franklin, Virginia

This Guardian Policy court action was settled on favorable terms to the IAFF, Local 4517, and the two adversely impacted plaintiff Captains. This case was pursued in state court on behalf of IAFF union members Richard Grizzard and Terry Bolton, and Local 4517, challenging the policy of the City of Franklin, Virginia which prohibited Lieutenants and Captains from maintaining their union membership in the Local after they are promoted into those positions. The City asserted that the fire department officers are "managers" and they would have a conflict if they belonged to the same union as the rank-and-file fire fighters who they supervise on the job.

This court action was based on the Virginia right-to-work statute which provides, "***No person*** shall be required by an employer to abstain or refrain from membership in, or holding office in, ***any*** labor union or labor organization as a condition of employment or continuation of employment." Va. Code §40.1-61. Under this state law, supervisory employees should be able to join any union of their choosing, and public employers may not curtail this right because the employees' position is arguably of a supervisory nature.

The City's anti-union restriction against these IAFF members qualified under the Guardian Policy which safeguards the right to belong to and to support the union. A successful court action under Virginia law would also strengthen precedent reinforcing the rights of these members and other IAFF members similarly situated in Virginia, and in other states which have right-to-work laws.

After the City was served with the Court Complaint, Deputy Chief Mark Carr confronted Captain Terry Bolton about the suit. IAFF General Counsel Woodley warned the City Attorney, by letter, that this behavior would not be tolerated and would lead to a claim of unlawful retaliation if it continued. The intimidation stopped.

A very favorable Settlement Agreement was reached and filed with the Court. Specifically, the Franklin City Council rescinded its Personnel Policy 709 which prohibited Captains and Lieutenants from being members of IAFF Local 4517. The Settlement Agreement further states that the City shall permit its employees to maintain membership and/or hold office in a labor union. Moreover, the City and its officials will not discriminate or retaliate against employees for exercising their right to belong to and support a labor organization.

In addition, the City paid damages to Local 4517 in the amount of $1,408.00, for the purpose of compensating the Local for union dues payments that would have been made by plaintiffs Grizzard and Bolton but for the City's prohibition on membership in Local 4517. The City also paid attorneys' fees and costs in the amount of $8,500.00, which was reimbursed to the IAFF.

David Nowak v. Macomb Township, Michigan
and
Ryan Gierman v. Macomb Township, Michigan

Favorable settlements were achieved in these two related Guardian Policy cases that were proceeding to arbitration hearings against Macomb Township, Michigan. Local 5023 President David Nowak had been terminated because of retaliation against him for his union leadership activities. Pursuant to the settlement—and most importantly—Nowak was reinstated to his job on February 6, 2017. In addition, he received $14,500 in back pay damages as well as restoration of his sick and vacation leave banks (including leave he would have earned but for the termination), and service credit in his retirement account.

Local Vice President Ryan Gierman was also discharged by Macomb Township (shortly after Local President Nowak), for his union activities. Under the settlement, VP Gierman was returned to his job on February 1, 2017. He received $11,200 in back pay damages, and restoration of his sick and vacation leave banks (including leave he would have earned but for the termination), and service credit in his retirement account.

Steve Dorris v. City of McKinney, Texas

This Guardian Policy case was settled on positive terms. The court action was pursued over the termination of Captain Steve Dorris, the president of IAFF Local 2661 (McKinney, TX), as a result of his role in organizing a political advertisement put out by the Local.

On April 10, 2015, off-duty members of Local 2661 and their endorsed candidates for City Council took part in a photo shoot in front of a McKinney Fire Department truck that was parked in front of one of the Department's fire stations. The photos from this shoot were used in political advertising by Local 2661's PAC as well as one of the endorsed candidates, but nothing that would identify the equipment as belonging to McKinney Fire Department was visible. After the photos from the shoot were posted on Facebook, Fire Chief Danny Kistner asked the police department to conduct an administrative inquiry into whether any rule, policy, ordinance, or regulation had been violated.

Subsequently, Chief Kistner sent Dorris notice of the Internal Affairs investigation. The charge alleged that, prior to the photo shoot, the Deputy City Manager and Assistant City Manager told Dorris that he was not allowed to use City equipment in photographs with Council candidates (according to Dorris, there was no such explicit order).

On July 16, 2015, President Dorris was terminated. The Notice of Disciplinary Action stated that Dorris "failed to follow an order given by the City Manager's office not to use City equipment for the purpose of endorsing candidates" in violation of the City's policy on insubordination. This insubordination issue boiled down to whether the Deputy and Assistant Managers were credible, or whether Dorris was credible, about their conversation before the photo shoot took place. (If this case did not eventually settle, it was uncertain whether a jury and the Judge would believe the two City's officials or Dorris).

This case was heavily litigated over two plus years. Mediation occurred in February, 2018 and the parties accepted the settlement proposal recommended by the Mediator. Steve Dorris elected to use his medical skills and certifications to continue working for his wife who has her own doctor's practice. As a result, he did not seek reinstatement to his former job during settlement negotiations. The settlement provided that Dorris recovered $211,963 in lost wages. In addition, his employment record was 'cleaned up' by the City effectively converting his termination to a resignation. Also, upon request, the City will provide a neutral reference with respect to his employment (giving only dates of employment and job title).

Lastly, the settlement included the recovery of attorneys' fees and out-of-pocket litigation expenses in the sum of $113,107, which represented about a 65 percent reimbursement to the IAFF in this extensively litigated Guardian Policy case. On May 9, 2018, a check in that amount was submitted to the IAFF.

Todd Gray v. City of Fulton, Missouri

This Guardian Policy case involved the demotion of Todd Gray from his Acting Captain position in the City of Fulton Fire Department because of his representation of Local 2945. He is the Vice President of the Local and had been actively involved in contract negotiations with the City. A Captain's position had been vacant, and as the Department member with the most experience, he was selected to act up in the role until the vacancy could be filled. However, he was removed from the role of Acting Captain for reasons related to his union activities.

On April 14, 2017, Fire Chief Farley asked Todd Gray into his office and stated that he had been ordered by the City's Administrator, Bill Johnson, to move Gray back to his old shift, and out of the Acting Captain's position. Chief Farley told Gray that City Administrator Johnson said he could not go to the City Council and explain that Gray was in charge of the shift "after all that happened with the Union contract in the past." Gray understood that the City Administrator was referring to the ongoing contract negotiations, which have been contentious and had not resulted in an signed agreement.

(In a related Guardian Policy matter, Local 2945 has been successfully litigating a case with respect to the City of Fulton's violations of its duty to bargain in good faith, as required under the State of Missouri Constitution and statutory law).

In preparing a First Amendment federal court action on behalf of Local Vice President Gray, he was given assistance in pursuing a grievance and exhausting his internal administrative remedies. The grievance set out the events that led to his removal from the Acting Captain's position, including the meeting and anti-union statements clearly demonstrating the City's culpability. The requested remedy was that Gray be restored to the Acting Captain position, and when the City filled that position, that Gray be promoted to Captain.

On September 29, 2017 the City avoided a suit and promoted Todd Gray to Captain.

Kevin Bray v. Town of Kernersville, North Carolina

A favorable settlement was reached in this Guardian Policy case pursued on behalf of Local 3448 activist Kevin Bray against the Town of Kernersville, North Carolina.

In April 2015, Local member Bray represented another member at a grievance as the union steward. At the grievance hearing, Bray raised certain matters that concerned him about the fire department: (1) department was not properly remediating mold issues in the fire stations; and (2) individuals, including persons who were in command of incidents, did not have adequate training.

Bray was fired shortly thereafter, on June 4, 2015. The notice of termination vaguely indicated that the asserted reason was a violation of the Town personnel policy, specifically the policy regarding participating "in any action that would in any way seriously disrupt the normal operation of the department, or causing disharmony or strife within the department."

After much litigation, the sworn deposition of the Town Manager was taken, and that deposition facilitated efforts to explore a settlement on positive terms.

In Mediation a settlement was reached on favorable terms to Kevin Bray. He did not wish to return to work in the Town of Kernersville Fire Department, so reinstatement was not sought. (He is satisfied with the current job he holds elsewhere).

Carol Calache v. City of Port Orange, Florida

This case involved actions taken against former Local President Carol Calache, including her disability/retirement separation from employment. She was Local 3118 President, and certain facts indicated that officials for the City of Port Orange targeted her for adverse action to ensure that she was separated from her employment with the City.

The grievance arose after Calache was injured in the line of duty. After allowing her to be on light duty for several months, consistent with City policy, in March 2015, the City removed Calache from light duty. Because she was not medically cleared to return to work, Calache exhausted all of her paid leave and, eventually, was in an unpaid status for approximately five months. While she was unpaid, she applied for a disability retirement under the City's rules. In late 2015, the City returned Calache to light duty. The day that her retirement application was granted, however, the City separated Calache from employment, contending that she had voluntarily retired.

After a hearing, Arbitrator Craig Overton rejected the Local's arguments in his award. It appears that the Arbitrator made up his mind early on in the process, determining that Calache's assertion that she could file for disability retirement and still receive a different job under the civil service rules was invalid. Having rejected the argument that the civil service rules required the City to look for a position for Calache that she could perform, the Arbitrator worked backwards to reject the rest of the arguments presented by the Local.

Village of North Riverside, Illinois v. IAFF Local 2714

In a favorable decision issued by the Appellate Court of Illinois, First Judicial District, the court upheld the ruling of the Illinois Labor Relations Board (ILRB) that the Village of North Riverside, Illinois committed unfair labor practices against IAFF Local 2714 when the Village improperly notified the Local that the parties' Collective Bargaining Agreement (CBA) was terminated. Specifically, the appellate court determined that, by giving notice that the CBA was eliminated, the employer unilaterally changed terms and conditions of employment while interest arbitration was pending, in violation of rights protected under the Illinois Labor Relations Act. The court also affirmed the ILRB's findings that the Village acted with anti-union animus because the Local exercised its right to pursue interest arbitration.

The Court of Appeals issued an earlier favorable decision upholding the ruling of the lower court which had dismissed the suit brought by the Village of North Riverside and its anti-union Mayor against IAFF Local 2714. The Village had planned to eliminate the Local, void its labor agreement, and privatize the fire services. The Village instituted the suit against the Local seeking a declaratory Judgment from the Circuit Court that it could lawfully implement its plan. The appellate court affirmed the lower court's decision that approved the General Counsel's motion to dismiss the Villages' suit on the grounds that the relationship and CBA between the union and the employer fell within the exclusive jurisdiction of the Illinois Labor Relations

Board—a much better forum to consider these employer/union issues. The Village did not pursue a further appeal to the state Supreme Court. The Court of Appeals ruling demonstrated that Illinois municipalities cannot unilaterally privatize their fire departments, contrary to the protective provisions outlined in the Illinois Labor Relations Act.

Local 198 v. Atlantic City, New Jersey

This Guardian Policy case involves Local 198 and Atlantic City's current financial crisis. In November, 2016, pursuant to the state's Municipal Stabilization and Recovery Act, Governor Christie designated Jeffrey Chiesa to serve as the receiver or "Designee" responsible for overseeing the takeover and operation of the Atlantic City government. Chiesa and his representatives/attorneys previously notified and met with, public sector unions, including Local 198 to discuss the severe proposals of the designee to change the terms and conditions of the fire fighters' employment. The changes included laying off up to 100 fire fighters, or almost one-half of the fire department. Pursuant to the approval of IAFF General President Harold Schaitberger under the Guardian Policy, the IAFF's General Counsel's office filed a state court action on behalf of Local 198 against the City and other defendants seeking a Temporary Restraining Order and Preliminary Injunction to prevent implementation of the changes, asserting violations of the New Jersey Constitution and other laws.

On March 17, 2017, Judge Mendez partially granted plaintiffs' motion for a temporary injunction, and enjoined all layoffs pending the outcome of this action. (The Court did permit certain changes regarding shift schedules, overtime/wages and benefits).

On July 6, 2017, however, the Designee informed the Court that he planned on decreasing the Fire Department to 148 members, and sought the Court's permission to terminate approximately 70 fire fighters effective September 21, 2017. On behalf of Local 198, IAFF General Counsel objected to the proposal, and provided statements from Fire Chief Scott Evans, Dr. Lori Moore-Merrell, and others that the appropriate department size was larger, and that no fire fighters should be terminated or it would have a substantial adverse impact on public safety of the City's residents and visitors.

On August 25, 2017, the Court issued a very favorable decision prohibiting any layoffs of Local 198 members. Although the Court concluded that the appropriate Department size is 180 fire fighters, the Judge enjoined any layoffs to achieve that staffing level. The Court ordered that any reductions in force can only occur through retirements and attrition. This decision ensures that no Atlantic City fire fighters will lose their jobs, and is a significant victory for the IAFF, Local 198 and the membership. Efforts are underway to settle the case with the administration of the newly elected Governor.

Local F-33—Navy Region Southwest

After a long-running battle on behalf of IAFF Local F-33 and its members against the Department of Navy, in arbitration and before the Federal Labor Relations Authority, this Guardian Policy case was settled on favorable terms. The case involved grievances/ arbitration challenging the Navy's violation of minimum staffing standards by cross-staffing at two of the locations represented by the Local.

The dispute proceeded to arbitration, and the hearing was held in January, 2014. Incredibly, the Arbitrator took 2 years and 9 months to finally issue a decision, despite repeated requests to do so. However, on September 4, 2016, the Arbitrator issued a favorable Award. She found that the Agency violated the minimum safety staffing requirements of the Department of Defense Instruction incorporated into the parties' Collective Bargaining Agreement (CBA) by reducing the ARFF vehicles to less than 3 fire fighters, without seeking or obtaining the requisite waiver from higher authority. The Arbitrator also referenced the "two in-two out" policy, noting there were not enough fire fighters to enter a burning plane and to remain outside. In addition, the Arbitrator found that the clear safety and staffing language of the CBA trumped the Agency's argument based on management's rights.

As a remedy, the Arbitrator ordered the Navy Command to staff the ARFF vehicles according to the minimum required staffing at both North Island and Clemente Island locations, and if the Navy still wishes to cross-staff, it must adhere to the requirement of justifying and obtaining a waiver from the Department of Defense, with proper notification to the Union.

James Dumas v. St. Tammany Fire Protection District, Louisiana

This Guardian Policy case was settled in January, 2018 on favorable terms. The action was brought in federal court claiming that former Local 4950 Vice President James Dumas was suspended by the Fire Protection District for exercising his First Amendment rights of free speech and free association (union activity).

After initial litigation efforts, the Fire District filed a motion to dismiss the court action. On May 12, 2017, the District Court issued an Order that denied most of the defendants' dismissal motion. In the meantime, Local 4950 reported that James Dumas was placed on administrative leave based on allegations that he sexually harassed a newly hired female employee. Shortly thereafter, Dumas elected to resign his position with the Fire District. In view of these circumstances, it made sense to stop attorneys' fees and expenses in June, 2017, and instead focus efforts on settling this court action and closing this Guardian Policy case.

After considerable back and forth in negotiations, in January, 2018, the Fire District agreed to settlement terms favorable to Dumas and (indirectly) the members of Local 4950. Specifically, Dumas received $2,500 which was full backpay for his five-shift suspension. His suspension was rescinded. In addition, all documents related to his suspension were removed from the District's files. The District and its officials shall not refer to the suspension and related

procedures for any purpose in the future. If Dumas should request, the District will provide him with a neutral employment reference.

With respect to the remaining Local 4950 members, the Settlement Agreement expressly states that the District will adhere to a policy of not discriminating or retaliating against District fire fighters and Union members for exercising their rights of free speech and free association protected by the First Amendment to the U.S. Constitution. Finally, the District paid $12,500 in attorneys' fees and costs.

Todd Candelaria v. City of Tolleson, Arizona

In this case, Local 3449 President Todd Candelaria was suspended for five shifts, and certain facts indicated that this adverse action was due to his union activities. The Local faced a difficult anti-union environment in the City of Tolleson, Arizona.

In June 2013, Local 3449 held a meeting at which the membership voted in favor of pursuing a meet-and-confer ordinance in the City. On July 16, 2013, the City opened an investigation to determine whether "a hostile work environment existed at the Tolleson Fire Department," including Candelaria's alleged comments that non-union fire personnel should not be allowed to respond to the tragic Prescott/Yarnell Hill fire, where 19 fire fighters died.

The investigation was carried out by the City's Chief of Police, Larry Rodriguez. At the initial meeting, according to Rodriguez's report, Fire Chief Good stated "the City of Tolleson does not recognize the union and any union activity that affects anyone adversely, particularly while on the job, is prohibited while on duty." Chief Good said that a non-union member of the department felt harassed and was considering resigning. The fire fighter whose complaints initiated the investigation, alleged he was treated differently by Candeleria because he was not in the union.

Thereafter, the City accused Candelaria of creating a hostile work environment and making threats to fire department members. The City suspended Candelaria for five shifts.

In a subsequent court action, the Judge granted the City's motion for summary judgment dismissing the suit. The Court of Appeals affirmed the lower court's ruling and held that Todd Candelaria did not engage in protected free speech on matters of public concern when he spoke out against non-union fire fighters joining the fire relief efforts during the Yarnell fire. The court determined that this was an individual disagreement about a personnel decision made by the fire chief that it did not rise to the level of public concern protected by the First Amendment's right of free speech.

Robert Alvarado v. Washington, DC Fire & Emergency Medical Services

This long-pending and hard fought Guardian Policy case arose from repeated retaliation against Local 36 spokesperson and member, Lieutenant Robert Alvarado, by the Washington, DC Fire and Emergency Medical Services ("DCFEMS") and former Fire Chief Kenneth Ellerbe. Alvarado has been employed by DCFEMS since April 2000 with an excellent employment record.

In November 2011, Chief Ellerbe visited a fire station and Alvarado and others expressed concerns about the wisdom of the Fire Chief's proposed 3-3-3 shift plan. Lt. Alvarado raised other issues with the Fire Chief, including the non-working generator on 13 Truck, the need for NFPA 1975-compliant station wear, and the misuse of government funds.

Shortly thereafter, Alvarado provided an interview to Fox5 television regarding Ellerbe's changes in the uniform policy. At the same time, a walk-in patient was experiencing a significant cardiac event when he arrived at the fire station and was ultimately transported to the hospital by a paramedic. Although Alvarado was charged with failing to stop Fox5 from taping—and allegedly violating the patient's privacy—it was not possible for him to stop Fox5 from taping. Chief Ellerbe suspended Alvarado for 240 hours due to the incident.

Other incidents involved Chief Ellerbe trying to ban the previously used "DCFD" patch and logo. In February 2012, Chief Ellerbe suspended Alvarado for an additional 24-hour shift and demoted him from Lieutenant to Sergeant due to insubordination for wearing "logo noncompliant gear".

Subsequently, Chief Ellerbe demoted Alvarado from Sergeant to Fire Fighter for allegedly improperly working overtime.

Alvarado appealed the disciplinary actions to the District of Columbia Office of Employee Appeals. On February 2, 2015, the Senior Administrative Law Judge overturned the demotion from Lieutenant to Sergeant, reversed the combined 264 hours of suspensions, and awarded him all lost pay and benefits. The DCFEMS did not appeal the Judge's decision.

The DC Government then decided to no longer contest its liability on the merits of these disciplinary cases. Accordingly, Local 36 representative Robert Alvarado was reinstated to his original position as a Lieutenant. In addition, he was reimbursed for all of his lost pay retroactive to July 1, 2012, totaling over $100,000, and the restoration of all lost benefits and rights.

Justin Balderston v. City of Aurora, Colorado

This case involved retaliatory conduct taken by the City of Aurora against former Local President Justin Balderston. President Balderston was fined three shifts' pay due to his alleged "failure to cooperate in an investigation," related to his action in representing a bargaining unit member of the Local.

Shortly after becoming Local President, Justin Balderston began interviewing fire fighters regarding allegations of racial harassment made by one fire fighter against another. He engaged in these interviews in order to provide representation to the fire fighter under investigation for alleged harassing activities.

An HR representative of the City interviewed Balderston regarding the allegations of racial harassment in the Department. The Local's attorney attended the meeting and properly advised Balderston not to answer questions about his actions taken in his role as Local President and to only answer questions regarding his actions as a fire fighter for the City. He answered the few questions that did not touch on his duties as Local President and declined to answer the remainder of the questions.

Fire Chief Ray Garcia issued Balderston a disciplinary order finding that he failed to cooperate in an official investigation, and fined him the equivalent of three shifts' pay for the alleged violations.

A federal court action was instituted on behalf of Balderston. Inquiring into an employee's participation in a labor organization or the activities of the organization would have a "chilling effect" with regard to exercising the union officer's free association rights, in violation of the First Amendment. The only basis for the discipline was that Balderston engaged in an investigation of allegations against an employee that he was representing as Local President, and then refused to answer questions related to his union activities. In addition to his Constitutional claim, Balderston also had a viable claim in court for union retaliation in violation of the Colorado Firefighter Safety Act enacted in 2013.

Pursuant to a positive settlement with the City, former Local 1290 President Justin Balderston received twice the amount of his lost pay. In addition, the disciplinary action taken against him has been placed in a sealed record, and not to be used or relied upon in the future. The settlement agreement also stated that the City will not retaliate against any Local 1290 leaders and members when they exercise their rights protected under Colorado law and the federal and state Constitutions.

Finally, the settlement provided for the recovery of $36,000 in attorneys' fees and litigation expenses, which constituted about 85 percent of the fees and expenses paid by the IAFF in this Guardian Policy case.

IAFF Local 3249, Camden, New Jersey—Gloucester Township Emergency Medical Services Alliance

A favorable settlement was also reached in this Guardian Policy case. IAFF Local 3249 (Camden, New Jersey) successfully organized the employees working at the private employer Gloucester Township Emergency Medical Service Alliance ("GTEMS"). The settlement followed the filing of Unfair Labor Practice charges with the National Labor Relations Board

("NLRB") challenging the GTEMS' misconduct against the Union and its members, in violation of the National Labor Relations Act ("NLRA").

In October 2014, the NLRB held an election to determine if Local 3249 would be selected as the EMS employees' bargaining representative. On November 5, 2014, the NLRB announced that the eligible workers had voted against unionization by a margin of 2 votes. Local 3249 challenged these results and filed an ULP charge against GTEMS for intimidating and threatening employees in exercising their rights under the NLRA. The NLRB's Regional office determined that the election process was tainted by the employer's unlawful actions, and it directed the holding of a second election.

GTEMS management then began making additional threats against the employees that they would face reprisals—including demotion and dismissal—if the workers voted for union representation. Notwithstanding the anti-union and coercive atmosphere created by the employer, in that second election held on August 21, 2015, the employees voted in favor of representation by IAFF Local 3249.

After certification by the NLRB, the employer committed further unfair labor practices by unilaterally eliminating the positions of Captain and Lieutenants and transferring that work outside of the bargaining unit to so-called newly created supervisory positions, without notifying and bargaining with Local 3249.

A very good settlement was achieved with the NLRB requiring remedial relief and compliance with the NLRA by GTEMS and its officials. In part, the settlement required GTEMS to post NLRB Notices for 60 days at its employment facilities, and also email a copy of the Notice to all employees, stating that GTEMS and its management officials: (1) will not prevent the employees from joining or assisting a union and choosing a representative to bargain on their behalf; (2) will not refuse to bargain in good faith with IAFF Local 3249, (3) will not unilaterally remove or eliminate job classifications; and (4) will create three or more new Unit positions titled Field Training Officer.

Sarah Fox v. Leland Fire/Rescue and John Grimes, North Carolina

After four (4) years of hard-fought litigation in this Guardian Policy case—before the federal District Court, up on an appeal, and then back on remand to the lower court—a fair and reasonable settlement was reached.

Local 4733 President Sara Fox initially filed a charge with the EEOC asserting gender discrimination in the fire department. After her termination, she filed an additional charge with the EEOC claiming she was fired in retaliation for submitting her earlier charge of gender discrimination. The EEOC investigated and concluded that her employer likely terminated her for submitting the earlier gender discrimination charge, but the agency declined to pursue the case to litigation. Based on the EEOC's finding and supplemental factual information made available, Fox had a reasonable basis to pursue her claim in federal court asserting that she was

subjected to unlawful discrimination.

After years of heavy litigation, a fair and reasonable settlement was reached in mediation. Sara Fox did not want to be reinstated to her former job in the Leland Fire Department because she had a better, higher paying EMS job that she wanted to keep. Under the settlement, she received satisfactory relief. The resolution of this case provided protections to other union members in the exercise of their rights.

Chris Frazier v. City of Kokomo, Indiana

This court action, handled under the Guardian Policy, was settled on a very favorable basis. The case concerned the suspension of Chris Frazier, the president of IAFF Local 396 (Kokomo, IN), who wrote a letter to the editor regarding numerous public safety issues in the run up to the town's mayoral election.

Local 396 has had a contentious relationship with Kokomo Mayor Greg Goodnight, including a history of layoffs and difficult contract negotiations. As a result of this strained relationship, there have been several attempts to discipline President Frazier for alleged violations of the social media policy, none of which have been justified or previously implemented.

Mayor Goodnight was up for re-election for his third term in November 2015. A week before the election, President Frazier submitted a letter to the editor to both local newspapers, on behalf of his membership, regarding public safety issues in the fire department. He also posted the same letter on Local 396's Facebook page. The letter was published in the Kokomo Tribune.

After the election was over and Mayor Goodnight was re-elected, Fire Chief Nicholas Glover filed a complaint against President Frazier, accusing him of making false statements and disparaging the Kokomo Fire Department. He was also charged with violating the City's social media policy, and discussing Department business outside the Department. President Frazier was suspended without pay for five (5) shifts.

In a court-mediated settlement, President Chris Frazier received almost three (3) times his lost wages caused by the disciplinary action. Also, anti-union Mayor Goodnight, the City, and the Fire Chief are prohibited from retaliating against President Frazier for exercising his constitutional rights of free speech and free association and for leading and supporting IAFF Local 396. Moreover, the City shall not refer to or rely upon the disciplinary action in any future matters, including considering a promotion.

In addition, the Settlement Agreement required the City to pay $25,000 in attorneys' fees and litigation expenses, which constituted almost 80 percent of the fees and expenses incurred in pursuing this court action to a successful conclusion under the IAFF's Guardian Policy. On January 26, 2017, IAFF General Counsel Tom Woodley sent General President Schaitberger a check in this amount reimbursing the International for the fees and litigation costs incurred in support of Local 396 and President Frazier.

Vincent Lyons, et al. v. Town of Port Chester, New York

In this case, the Village of Port Chester had voted in May 2016 to eliminate its professional fire department, and to continue with an all-volunteer fire service. In June 2016, Local 1971 members filed an unfair labor practice charge with the New York Public Employment Relations Board ("PERB") and filed a retaliation complaint with the New York Public Employee Safety and Health ("PESH") department. The eight Local members alleged in the PERB charge that the Village had committed an unfair labor practice by transferring bargaining unit work away from the professional fire fighters. The Local members alleged in the PESH retaliation complaint that the Village laid them off due to their protected activity—their filing a complaint with PESH relating to unsafe practices observed at a fire in February 2016. PESH issued safety and health citations against the Village in June 2016, which the Village then appealed.

Over the next 20 months, extensive hearings were held before the PERB and before the PESH. The Village filed a motion to dismiss the PESH retaliation complaint. After briefing from all parties, the New York Industrial Board of Appeals denied the Village's motion to dismiss.

Because of these positive developments, the cases were in a better position for settlement. As a result, a negotiated settlement was achieved that compensates the Local's members with lost wages and benefits based on the amount of time the individual members were out of work before finding new employment as paid, career fire fighters.

Five of the members found jobs as professional fire fighters in nearby fire departments in approximately three to four months, and they received either $5,000 or $10,000 in the settlement. Of the other three members, two are still looking for jobs as professional fire fighters, and one found a job as a professional fire fighter after approximately 17 months. As a result, those three individuals received between $80,000 and $100,000 each in the settlement. Neutral employment references from the Village will assist the two Local members who have not found employment as they continue to seek positions as professional fire fighters.

Richard Villaneuva v. City of Fountain, Colorado

In this heavily litigated court action, in mediation on February 8, 2017, this Guardian Policy case was settled on reasonable terms. Richard Villanueva was a Vice President of Local 4369, and he was terminated by the City of Fountain, Colorado on the asserted grounds that he twice failed to pass his retesting for his EMT certification. Evidence existed that his discharge was primarily due to unlawful retaliation against him for his union activities in violation of his free association and free speech rights protected under the First Amendment.

The mediated settlement provided that Villanueva received twice his backpay taking into account his offsetting interim earnings that he received after he was separated. The City agreed to seal all records related to his termination, and to provide a neutral letter of reference. In addition, the

settlement agreement protects Local 4369 members from retaliation when they exercise their rights under federal and state law.

The settlement also provided for the recovery of $98,000 in attorneys' fees and expenses incurred in litigating this case for almost two years (over 70 percent of the fees and costs).

Reinstatement was not a realistic possibility in this case. There was no dispute that Villanueva failed the two EMT exams given to him by the Physician Advisor. While it was unfair that he was tested, the fact that he failed meant that the Physician Advisor would not qualify him to serve under his supervision, which is required by the State of Colorado. After his discharge in June, 2015, Villanueva lost his existing state EMT license when it expired and he failed to recertify in mid-2016.

Local 2078, Red Wing, Minnesota

On July 25, 2016, the Arbitrator issued a "split decision" in this case. In part, the Arbitrator decided to nullify several terms of discipline imposed by the City because they interfered with rights of Local 2078 President Peter Hanlin to engage in union activities that are protected under the state's public employee labor relations law.

There was factual support for the claim that President Hanlin was given excessive punishment in retaliation for his role in the union and on a Labor Management Committee with representatives from the City and the Local. Hanlin was disciplined for off-color statements he made over the fire department's PA system regarding a Fire Captain. He and two others were joking about a Captain who was known for calling out sick prior to mandatory training days, and they were speculating about whether or not the Captain in question would again call out sick. When it became known that the Captain did in fact take sick leave, and therefore would not be attending the next day's training, Hanlin called him "a piece of sh**" in a joking fashion.

For his statement, Hanlin was disciplined with a written reprimand, a 24-hour suspension, and an order to seek anger management counseling. The Local believed that his discipline was excessive because of a recent deterioration in the relationship between the Local and the City and because he participated in union activity by filing two grievances.

As reflected in the arbitration decision, the Arbitrator was offended by Peter Hanlin's use of foul language over the PA system, which he concluded was tantamount to accusing a Captain of the fraudulent use of sick leave to avoid training. He made the factual findings needed for him to reduce the penalty, but he nevertheless found that the City's discipline was appropriate and not arbitrary. However, the Arbitrator did determine that portions of the disciplinary letter issued to President Hanlin had to be stricken because they interfered with his statutory right under state law to fully engage in union activities, and to represent the membership.

Sean Tafoya v. Falcon Fire Protection District, Colorado

This case was settled on positive terms. Local 4502 President Sean Tafoya was terminated on September 6, 2014. At that time, the Local was convinced that the firing of Tafoya was because of his union leadership. While the reasons given by the Falcon Fire Protection District for discharging Tafoya were contradictory and illogical, aside from general anti-union statements that pre-dated the discipline, there was not significant evidence uncovered during the litigation that revealed a retaliatory motive that led to his termination.

The day before the trial was set to begin on December 5, 2016, the parties reached a reasonable settlement and Sean Tafoya was very satisfied with the positive terms of the settlement. Because he secured a more desirable job in another fire department as a Lieutenant, with higher pay, he did not wish to return to his previous job. The resolution of this case reinforces the constitutional and state law rights of free speech and free association, and the right to participate in and support IAFF Local 4502, free from retaliation or discrimination against union leaders and members for exercising these rights.

Rural Metro Bankruptcy Case—IAFF Local I-60

This Bankruptcy Court proceeding involved the private ambulance operator Rural/Metro Corp.. Five proofs of claims were filed with the Court on behalf of Local I-60 and its members, including a Contract Claim, Longevity Pay Claim, Pension Grievance Claim, Time Card Claim, and Uniform Pricing Claim.

These claims also involved matters before the NLRB, a federal appellate court, and an Arbitration Award. The members' claims were protected and preserved in the Bankruptcy Court proceedings.

Local 2882 v. City of Strongsville, Ohio

This case involved an arbitration challenge to the non-promotion of the Local 2882 Vice President Matt Kasza and Trustee Tom Sullivan for anti-union reasons. Arbitrator Colman Lalka ruled against the Local on the grounds that the Local's collective bargaining agreement (CBA) did not make promotion decisions of the Civil Service Commission subject to the grievance/arbitration process as the Local's CBA is currently written. Thus, the Arbitrator did not reach the merits of the claims.

In Ohio, as in other states, the scope of judicial review of an arbitrator's decision is extremely limited. The courts will almost always uphold the decision unless the arbitrator clearly exceeded his/her authority, engaged in fraud or corruption, or had an obvious conflict of interest. Here, the Local did not have arguments to pursue court review on these narrow grounds. This does not mean that the Union did not have a reasonable claim on the merits or its position that the City's promotion decisions were anti-union. It just means that the arbitrator's award was not so far

outside the bounds of reason that the Local could argue that the arbitrator exceeded his power, engaged in corruption, etc.

The best option for the Local was to negotiate better language in the Local's CBA that would provide a reasonable basis to assert that decisions of the Civil Service Commission involving promotional eligibility are subject to the grievance/arbitration process in the CBA.

Jason Morris v. City of Eureka Springs, Arkansas

This federal court action settled on fair and reasonable terms. The City of Eureka Springs terminated Jason Morris, President of Local 4708, for allegedly failing to carry out his assigned duty to maintain the fire department's SCBA—resulting in a serious injury to a fire fighter at a fire—significant facts pointed to retaliation for his union activities.

Jason Morris was elected President in 2008 when the Local was organized, and he held this position until his termination in October 2015. From the time Local 4708 was established until March 2015, the Local maintained a good working relationship with the Department and its Fire Chief. However, this has not been the case since Randy Ates, a former fire fighter on Morris's shift, was appointed Fire Chief in March 2015.

In April 2015, shortly after his appointment, Chief Ates announced policies that would limit overtime and the City would no longer purchase duty boots and belts, instead requiring employees to purchase their own equipment. When President Morris explained to Chief Ates that the new overtime policy would be in violation of overtime laws, Chief Ates stated that he didn't care and that the union is weak and irrelevant.

In the past, Assistant Chief Dransfield had been in charge of maintaining the Department's SCBA equipment, keeping equipment records, and sending out the air-packs for an annual inspection. When he left the Department, this responsibility was never reassigned. On October 2, 2015, Chief Ates called Morris into a meeting where he stated that Morris had been in charge of the SCBA equipment, and he neglected to properly test the equipment. Chief Ates then terminated Morris.

The timing of Morris' discharge, and other evidence of anti-union hostility, indicated that Morris was terminated because of his union activity in violation of his First Amendment right of freedom of association. Accordingly, a federal court action was filed.

After considerable negotiations, a favorable settlement was reached. Morris had found a higher paying job shortly after his termination. He and his wife both wanted him to keep that job, therefore, reinstatement to the Eureka Springs fire department was not demanded. Morris did recover in the settlement the maximum amount of backpay and lost benefits to which he would have been entitled—$11,000. In addition, his discharge was rescinded by the City, references to his termination in the City's employment records have been sealed and will not be disclosed. Most importantly, the settlement agreement provides that there shall be no discrimination or

retaliation against the employees in the fire department because they exercise their constitutional rights of free speech and freedom of association to engage in union activities. Finally, the settlement provided for the recovery of $34,000 in attorneys' fees and expenses incurred during the 16 months that this court action was litigated. This represents about a two-thirds reimbursement to the IAFF.

Jonathan Herlocker and Local 4867, Haines City, Florida

On the day of a hearing before the Florida Public Employee Relations Commission, this case settled on terms that provided full relief to Local 4867 and its President Jonathan Herlocker for unfair labor practices committed by the City of Haines. President Herlocker was suspended by the City for two shifts because he emailed a request to bargain to the City Manager. President Herlocker had a reasonable claim that he was subjected to retaliation for exercising his protected associational rights under Florida Law.

In March 2016, President Herlocker learned that the City was in the process of changing its sick and vacation policy. He emailed the City's bargaining team, which included copying City Manager Evans and the Human Resources Director, requesting to bargain over the change. Assistant Chief McCutcheon then placed Herlocker on administrative leave, and gave him a written reprimand and a two-shift suspension without pay due to "repeated incidents of insubordinate behavior and failure to follow written instruction given by a supervisor." The "written instruction" was the requests by the City Manager and Human Resources Director not to copy them on grievances.

Following the filing of unfair labor practice charges with the Florida Public Employee Relations Commission, a hearing was scheduled to begin on August 30, 2016. Before the commencement of the hearing, the City indicated it was willing to settle the dispute. As a result of negotiations, the resulting settlement provided all the relief sought by Local 4867 and President Herlocker. The City agreed to provide Herlocker with full backpay, making him whole for the two-day suspension. In addition, the disciplinary letter placed in his personnel file was rescinded, and it will not be relied upon by the City in the future. A joint statement was agreed to indicating that the City will respect the right of the Local leaders and members to engage in union activities protected by the state's collective bargaining law and the First Amendment to the U.S. Constitution.

Ben Hughes v. Horry County, South Carolina

In this Guardian matter, Local 4345 President Ben Hughes was severed from his job in Horry County, South Carolina. The facts surrounding his separation were unfair—he was ten minutes late for work several months earlier, and he was offered a resignation/severance package of pay and no County opposition to unemployment compensation, or else he would be fired. He decided to agree with the resignation, accept the severance package, and sign a release of any possible claims against the County.

In view of these changed circumstances, it was prudent to reach a settlement. The County agreed to pay Hughes $27,000. Because Hughes received $8,862 from the IAFF Justice Fund following his severance, consistent with his agreement, that amount has been returned to the Justice Fund.

Monarch Fire Protection District v. Professional Fire Fighters of Eastern Missouri, IAFF Local 2665, Missouri

On July 26, 2016, the Missouri Court of Appeals issued a favorable decision in this precedent-setting case that General President Harold Schaitberger approved for representation under the IAFF's Guardian Policy. The Monarch Fire Protection District ("District"), with an anti-union Tea Party Chairman on its Board of Directors, pursued this suit against the Professional Fire Fighters of Eastern Missouri (IAFF Local 2665) and three of its representatives seeking a court ruling that the evergreen clause in the parties' labor agreement — which exists in a number of Local affiliate contracts in Missouri — was unlawful and unenforceable.

The entire labor contract, including the evergreen provision, was agreed to by the earlier members of the District's Board and adopted as a District ordinance. Thereafter, the composition of the Board changed, and the majority was openly anti-union. The parties began negotiations on a successor contract, and after multiple negotiation sessions, it became apparent that the new Board was intent on effectively eliminating the union by denying Local 2665 a successor agreement.

In addition to its stance in negotiations, the District Board instituted this suit in state court seeking a ruling that the evergreen provision in the parties' existing contract is void and unenforceable as against public policy. On behalf of Local 2665, IAFF General Counsel asserted that Missouri law provides that a fire district Board is a perpetual entity whose obligations do not change because its members have changed. Such Boards have been granted the power under state law to enter into contracts. The Monarch Fire Protection Board knowingly entered into the contract with Local 2665 that included an evergreen provision, and the District should honor that contract.

The Circuit Court issued its final ruling, rejecting each of the District's contentions. On July 26, 2016, the Missouri Court of Appeals issued its favorable decision finding that the contract was not an unlawful contract of indefinite duration. The Court stressed that Article I, section 29 of the Missouri Constitution provides that "employees shall have the right to organize and to bargain collectively through representatives of their own choosing". Notably, the Court had little patience for the District's additional arguments — that the contract impermissibly delegated legislative powers and could be repudiated each time new Board members were elected — emphasizing that the District "built its argument on a faulty base," and then sought to "raise this house of cards to unsustainable heights."

In sum, this Court of Appeals ruling is not only a good one for Local 2665 in this particular case, it also sets a positive precedent upholding the validity of the evergreen clause that is contained in a number of other labor contracts with other employers in the state of Missouri.

Guardian Policy Cases in Canada

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

Local 529, Sault Ste. Marie, Ontario

This Guardian Policy case involved a challenge to the discipline of a one-day suspension of Local 529 President Richard Bishop for his union-related activities. The City and Fire Chief were implementing reduced staffing. The underlying dispute developed because President Bishop had sent three emails, in his capacity as the Local President, to the Mayor and City Council members, with copies to several media outlets. The three emails expressed concern about the fire department's delayed dispatch to a motor vehicle accident in which a child had life threatening injuries, objections to a letter from the Chief Administrative Officer to Council regarding a health and safety Order from the Ministry of Labour, and a delayed response from the fire department in a vehicular accident involving the extrication of an occupant. The employer disciplined President Bishop for allegedly "deliberately or recklessly misrepresenting the truth".

The three emails from President Bishop involved good faith communications about issues of concern re the union and its membership, and not personal concerns of an individual union official. As such, they constituted protected union activities, and Local 529 had a reasonable case to challenge the discipline imposed on President Bishop through the grievance/arbitration process.

This case settled in mediation on favorable terms. The discipline was removed from President Bishop's file and he received the day's pay. A non-disciplinary "letter of expectation" was sent to President Bishop which simply states what the law provides about the parameters of union free speech. In addition, nine other grievances were resolved, all of which had been submitted during the anti-union Chiefs brief two-year tenure.

Local 1517, Vernon, British Columbia

In this Guardian case, Local 1517 President Brent Bond was disciplined in the form of a warning letter when he texted an off-color message to the Chief about a call in 2013, which was examined in the context of a 2016 investigation into allegations of bullying and harassment in the Vernon Fire Department. Bond forwarded the text in his capacity as Local President in an effort to show the dysfunction in the workplace and the members' frustration concerning recent changes in deployment procedures. President Bond also received a one-day suspension regarding an unrelated incident involving allegations that he bullied and harassed a Captain with respect to the

belief that the Captain had disclosed internal, confidential union information to the Chief. A third disciplinary action involved a four-day suspension with a demotion from Captain to fire fighter which could be as long as six months. The Local has noted that these situations arose in the context of President Bond's capacity as local union leader.

A settlement was achieved in mediation which removed and/or substantially reduced the adverse actions. The settlement also contains a confidentiality provision.

Local 3139, Clarington, Ontario

In addition to being a captain in the fire department in Clarington, Bob McCutcheon served as an IAFF/OPFFA advocate. In that role, he represented both his home Local as well as other IAFF/OPFFA Locals in the province. His duties in this role involve preparing briefs and representing the interests of Locals at mediation and interest arbitration. It was as a result of this advocacy work that he was investigated by his employer and ultimately issued a letter of discipline which suspended him for a total of four shifts without pay. The employer's discipline letter identified two areas of concern: (i) abuse of sick leave; and (ii) improper use of duty exchanges. A grievance was filed. An arbitrator was agreed to and a one day mediation was set with the arbitrator to attempt to settle the grievance. A positive settlement was reached; however, confidentiality provisions do not permit disclosure of the terms of the settlement.

Steve Fry, Kirkland Lake Professional Fire Fighters' Association, IAFF Local 573, Ontario

In this case, Local 573 President Fry grieved the denial of overtime pay for members attending a training seminar. Within a week of the filing, the Chief responded by informing the Local that it could no longer use the Fire Hall for any union business. A grievance was filed challenging the Chief's decision to revoke the Local's privileges at the Fire Hall. The Chief also rescinded permission for the Local's VP to attend the Ontario Professional Firefighters' Association Health and Safety seminar, following the filing of a health and safety complaint by the VP. In addition, President Fry was improperly denied a promotion to Platoon Chief because of his union activities.

Negotiations between the parties resulted in a resolution of part of the grievances. At that time, attorney Sean McManus successfully advocated and confirmed that President Fry would be retroactively promoted to Platoon Chief. The issue of the corresponding backpay was deferred to be considered by the arbitrator in the context of the contract issues that are before the Interest Arbitration Board.

Local 181, Regina, Saskatchewan

This Guardian Policy case was resolved. Under the Local's labor agreement, employees are entitled to engage in shift trades on the approval of the Captain at the station. In addition to shift trades for personal reasons, shift trades have historically been used to allow Local Executive Board members to perform their duties for the Local, with the full knowledge of the employer. As with the vast majority of locals across Canada, the use of shift exchanges is the only method Executive Board members have to get out of the workplace to conduct union business.

Under the contract, the Chief can suspend shift trade privileges if an employee is "abusing" those privileges. In 2015, the then Chief invoked this discretion to suspend the shift trade privileges of five Board members for the sole reason that the quantum of shift trades for union business has been, in the Chief's view, excessive.

The important points of the settlement are that the suspension of shift trade privileges are rescinded as are any subsequent restrictions imposed on shift trades. Further, the parties will return to the *status quo* which existed prior to the suspension of privileges—i.e., unlimited shift trades for union purposes.

Local 1222, Corner Brook, New Foundland

In this Guardian Policy case, acting Local 1222 President Peter Daniels made comments in a local newspaper regarding the status of the Corner Brook Fire Department's out-of-town response capabilities arising from the removal of an aging pumper from service. The City took the position that some of the comments were false, malicious and misleading. As a result, it imposed a two-day suspension and a reprimand letter on acting President Daniels. This matter arose in the context of the City downsizing staffing in the fire department over the last several years.

The record showed that acting President Daniels was disciplined for participating in union affairs and attempting to protect the union's interests. A grievance was pursued to arbitration.

Just prior to the arbitration hearing, and with the assistance of IAFF Vice President David Burry, a good settlement was achieved. While the terms of the settlement are confidential, acting President Daniels was satisfied with the resolution of his claims which sought to clear his personnel file of references to the discipline, and to recover his two days of backpay.

Local 1182, Thorold, Ontario

This matter was settled on favorable terms on behalf of IAFF Local 1182 in Thorold, Ontario. The dispute arose when, after an interest arbitration award between the parties, the Mayor of Thorold made comments to the press that threatened job losses within the Fire Department, and

generally were disparaging of the Local. Following these statements, a councillor also made comments that, in the Local's view, were incorrect and required a response. President Honsberger requested a meeting with the Mayor, which was not granted. He then sent out a number of emails to councillors in order to correct the misinformation that had been reported in the press.

The employer's CAO responded to President Honsberger's emails with an email in which he stated: "You will now stop these emails. Discussions will occur in person. If you elect to disregard this request, it will be treated as insubordination".

Under the threat of being disciplined for insubordination, President Honsberger refrained from sending further emails to the Mayor and councillors. A grievance was filed and set for arbitration. Prior to the commencement of the arbitration hearing, the parties engaged in discussions which resulted in a positive settlement. The settlement sets out a process for discussing issues which arise in the future, but does not prevent the Local from contacting the Mayor and councillors if no progress is being made with the identified labor relations representatives of the employer.

Other Court Actions Which Are Pending under the IAFF Guardian Policy include:

Hunter Smith v. City of Memphis, Tennessee (unilateral reduction in pension benefits); **Garrett Hall v. Summit Fire District, Arizona** (Local representative discharged due to PTSD); **Local 2945 v. City of Fulton, Missouri** (employer's refusal to bargain); **Jay Cryer v. City of Dyersburg, Tennessee** (pension reductions for vested employees); **Local 5067 v. Jackson Hole, Wyoming and Local 5068 v. Campbell County, Wyoming** (employers refusing to bargain); **Nate Mott and Local 5121 v. Millville Volunteer Fire Company, Sussex County, Delaware** (retaliatory termination of Local President and other unfair labor practices); **Howard "Carl" Johnson v. Southwest Weld Fire Protection District, Colorado** (discharge of firefighter who organized Local 5161); **Local 2227 v. Lehigh-Northhampton Airport Authority, PA** (contracting out jobs); **Michael Harper v. Emergency Services District 5, Travis County, Texas** (termination of Local President for union activities); **Edward Montague and Local 1329 v. City of Arlington, Texas** (discriminatory actions against union member due to referendum); **Eric Johnson and Local 1102 v. City of Hialeah, Florida** (retaliatory discipline against Local President); **Joshua Keller v. City of Cleveland, Tennessee** (fire fighter fired without due process); **Andrew Garcia, Local 4848 and Local 975 v. City of Austin, Texas** (retaliatory refusal to hire Local President in merger of fire departments); **Local 2612 v. Sedgwick County, Kansas** (employer unilateral imposition of labor contract); **Pulliam v. Local 975 and City of Austin, Texas** (taxpayers' suit challenging union release time in labor contract**); Local 2879 and Lonnie Thomas v. Ocean City-Wright Fire Control District, Florida** (retaliatory discipline and termination of Local President).

Cases Handled under the International's FLSA Enforcement Policy

The International has 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 pursing 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:

Gerard Morrison v. Fairfax County, Virginia—Captains

A favorable settlement was achieved in mediation in this FLSA court enforcement action. This is the precedent-setting case in which the U.S. Court of Appeals issued a positive decision that the Captains employed in Fairfax County, Virginia are covered under the overtime provisions of the FLSA. Specifically, the appellate court examined the duties and responsibilities of the Captains, and determined that they were not "executive" (managerial/supervisory) or "administrative" employees exempt from the FLSA's overtime pay protections. Rather, under the statute and applicable regulations of the Department of Labor, the Court concluded that the Captains are **first responders** having the primary duty of fire fighting and rescue services, like their crew of fire fighters.

At the General Counsel's request (and as later directed by the Court of Appeals), the Department of Labor filed an *amicus* brief in this case. The agency's *amicus* brief interpreted its regulations in a way that was consistent with the position advocated on behalf of these members of IAFF Local 2068.

The Captains in this case are typical of Captains and similar fire officers employed in fire departments elsewhere. Accordingly, this unanimous decision of the federal appellate court will serve as an important precedent to secure FLSA coverage for Captains and IAFF members now being unlawfully denied FLSA overtime compensation.

In mediation before a U.S. Magistrate Judge, the parties reached a favorable settlement that provided that the 175 plaintiff Captains shared in the recovery of $7.85 million in backpay, liquidated damages and reimbursed attorneys' fees and litigation expenses.

Consistent with the approval of General President Schaitberger to handle a case under the International's FLSA Policy, a check was sent to the IAFF reimbursing the $10,000 grant authorized to defray the initial expenses incurred in support of these Union members.

Mark Blankenship, et al. v. Lexington-Fayette Urban County Government, Kentucky

After 11 years of litigation, this overtime enforcement suit in state court was settled on favorable terms on behalf of 430 members of Local 526, and against the Lexington-Fayette Urban County Government. Like other previous cases brought under Kentucky state law, this wage and hour suit alleged that the Lexington government unlawfully failed to include state incentive and other pay elements in the fire fighters' regular rate of pay for the purpose of calculating and paying overtime compensation under state law and implied contract. In addition to the statutory claim, this suit also involved a contract claim asserting that the various written policies of the employer, taken together, constituted an actionable contract, with a 15-year statute of limitations for recovering backpay.

This case had been up on appeal to the state Supreme Court twice, and the Court of Appeals three times.

After extensive negotiations and mediation, which involved the mediation team of Local 526 leaders and representative plaintiffs, a positive settlement was achieved. That settlement was approved by the 430 plaintiff members, the Lexington government, and in an Order of the Fayette Circuit Court as "fair, reasonable, appropriate, and in accordance with law."

Under the Settlement Agreement, the Lexington government paid a total of $15 million. The Agreement indicated that $14,588,311.18 was for backpay and liquidated damages, $411,688.82 was for the recovery of attorneys' fees and out-of-pocket expenses incurred in the many years that this case was litigated.

On June 28, 2017, IAFF General Counsel sent a check reimbursing the IAFF for the $10,000 grant approved under the FLSA Enforcement Policy.

Keston Abe v. City of Los Angeles—Non-Rotational, EMS Ambulance Employees

Consistent with the IAFF's FLSA Enforcement Policy, the final settlement of this overtime suit was implemented, and the plaintiff members of Local 112 were paid in October, 2017. In order for a municipal government employer to apply the fire fighter Section 207(k) exemption (and only pay overtime after employees work 212 hours in a 28-day work period), the employees must have the actual ***responsibility*** to engage in fire suppression. If fire department employees do not have the responsibility to extinguish fires, they are entitled to overtime compensation after working 40 hours per workweek.

In the Los Angeles Fire Department, Non-Rotational EMS Ambulance employees are not responsible for suppressing fires. Nevertheless, for decades, the City refused to pay these Local

112 members overtime compensation after they worked 40 hours a week.

After extensive litigation over 18 months, in mediation, the parties reached a settlement which provided a full recovery of the maximum three (3) years of withheld overtime pay, additional liquidated damages, and the reimbursement of attorneys' fees and out-of-pocket litigation expenses. The total amount of the settlement was $4.8 million for the 260 plaintiff non-rotational paramedics. That sum is broken out into $3 million in backpay, and $1.8 million in liquidated damages, fees, and costs.

The City Council, the Mayor, and the District Court approved the settlement in September, and these Non-rotational EMS Ambulance employees were paid their recovery in October, 2017.

The IAFF was reimbursed for the $10,000 grant approved to defray initial litigation expenses in this case, pursuant to the International's FLSA Enforcement Policy.

Troy Adams v. City of New Haven, Connecticut

This FLSA overtime case, also handled under the IAFF's FLSA Policy, involved violations resulting from regular rate calculations for IAFF Local 825 members employed by the City of New Haven, Connecticut. The City's FLSA violations stem from how it calculated a fire fighter's regular rate for payments of overtime. Based on the pay data provided, the City was not including any additional payments such as longevity, certification, education, haz-mat, or acting pay when calculating the regular rate for overtime purposes. Instead, the City was paying overtime compensation only at 1.5 times each fire fighter's hourly wage rate. The City's failure to include these additional elements of pay in the regular rate short-changed these members on their overtime compensation, in violation of the FLSA.

A settlement was reached on terms that are very favorable to these IAFF members. Specifically, the plaintiff fire fighters received $471,570 in backpay under the maximum three-year recovery period. In addition, the members also shared in $330,099 in liquidated damages because the facts revealed that the City's FLSA violations were not based on good faith or reasonable grounds. An additional amount of compensation will be paid by the City for its pension contributions based on the withheld overtime pay.

Finally, this positive settlement included the recovery of attorneys' fees and litigation expenses in representing these members in this court enforcement action. On August 29, 2016, a check was sent to the International as reimbursement for the $10,000 FLSA grant made in support of these members.

IAFF Local I-79 and Centerra/G4S Government Solutions Company (Wackenhut), Moffett Field, California

Pursuant to favorable Arbitration Awards, and a federal court Judgment, this private sector employer paid the full amount of FLSA backpay, equal liquidated damages, interest, and recovered attorneys' fees and litigation expenses.

In this overtime case, approved by IAFF General President Schaitberger for handling under the International's FLSA Enforcement Policy, the Arbitrator issued a favorable Award with respect to the Company's liability for refusing to pay statutory and contractual overtime owed to the members of IAFF Local I-79. The employer, Centerra Company (a subsidiary company of Wackenhut) refused to comply with the Award, and sued the Local seeking to set aside the decision.

This case was unusual because it alleged that the private Company violated the Collective Bargaining Agreement (CBA) which incorporated the employer's obligation to comply with all federal and state laws, including the FLSA. The Company had been wrongfully applying the FLSA Section 207(k) overtime exemption which, of course, applies solely to fire fighters employed by a public agency. The Arbitrator determined that the Company violated Section 207(a) by failing to pay overtime compensation after the fire fighters worked 40 hours per workweek.

In a supplemental decision, the Arbitrator awarded the total amount of relief sought, consisting of the maximum of three years of backpay, equal liquidated damages, interest, and attorneys' fees and costs.

Subsequently, the Company filed suit in federal District Court seeking to overturn the Arbitration Award. The parties filed cross-motions for summary judgment and supporting briefs, and a hearing was held.

On March 20, 2017, the District Court entered Judgment against the Company, enforcing the Arbitration Awards. The parties then reached a Settlement Agreement providing for the full recovery of all backpay, equal liquidated damages, interest, and attorneys' fees and out-of-pocket litigation expenses, on behalf of the 39 members of IAFF I-79. The total recovery was $5,598.999.50. IAFF General Counsel sent a check to General President Schaitberger reimbursing the International in the amount of $1,412.84, the portion of the FLSA grant utilized in this case pursuant to the International's FLSA Enforcement Policy.

James Carson, et al. v. City of Los Angeles—EMS Captains

In this FLSA overtime case, the District Court issued a favorable decision finding that the plaintiff EMS Captains were entitled to overtime pay for hours worked in excess of 40 hours in a workweek. The Court rejected the City's argument that these Captains were exempt from the

FLSA's overtime pay protections as managerial employees. In addition to recovering backpay for the unlawfully withheld overtime pay, this court ruling meant that going forward, EMS Captains will continue to earn time and one-half overtime pay for overtime hours worked in excess of 40 hours in a workweek. Because these EMS Captains performed medical functions, and did not have the responsibility to engage in fire suppression activities, these EMS officers were not subjected to the limited fire fighter exemption under Section 207(k) of the FLSA.

In February, 2017, pursuant to the Judgment of the Court, the 16 plaintiff members were paid $439,823.90 in backpay and interest.

On January 31, 2017, IAFF General Counsel Woodley sent a check to General President Schaitberger reimbursing the International for the $10,000 grant approved to defray initial litigation costs under the IAFF's FLSA Enforcement Policy.

Anthony Battaglini, et al. v. County of Arlington, Virginia—Captains

This FLSA court enforcement action was settled on positive terms. The suit in federal court was filed in December, 2016 on behalf of 21 Captains and members of IAFF Local 2800, who are employed by Arlington County, Virginia. Although the County had considered them exempt from the FLSA overtime protections as managerial employees, they are similarly situated to the Fairfax County Captains, and therefore they were entitled to FLSA overtime compensation. In the Fairfax County case that we handled, the U.S. Court of Appeals decided that the Captains employed in Fairfax County, Virginia are covered under the overtime provisions of the FLSA. Specifically, the appellate court examined the duties and responsibilities of the Captains, and determined that they were not "executive" (managerial/supervisory) or "administrative" employees exempt from the FLSA's overtime pay protections. Rather, under the statute and applicable regulations of the Department of Labor, the Court concluded that the Captains are **first responders** having the primary duty of fire fighting and rescue services, like their crew of fire fighters. This favorable court precedent applied to the Captains employed by Arlington.

The court-approved settlement provided that these 21 IAFF members recovered $1,004,721.03 in backpay and liquidated damages, plus reimbursed attorneys' fees and litigation expenses in the amount of $62,000. These Captains are now covered under the FLSA and are receiving overtime pay on an ongoing basis.

On July 20, 2017, IAFF General Counsel forwarded a check to the IAFF in the amount of $10,000 reimbursing the organization for the financial grant approved for these members and Local 2800, pursuant to the IAFF's FLSA Enforcement Policy.

Barry Links v. City of San Diego—Helicopter Rescue Medics

This overtime pay case is also being pursued in federal court under the International's FLSA Enforcement Policy on behalf of members of Local 145 who are employed as Helicopter Rescue Medics (HRMs) by the City of San Diego. The City had been unlawfully treating the HRMs as fire fighters under the FLSA's Section 207(k) limited overtime exception and only paid them overtime for hours worked above 212 in a 28-day work period. However, because the HRMs performed medical care duties and do not have the actual ***responsibility*** to engage in fire suppression activities, they should be paid overtime compensation after working 40 hours in a workweek.

A favorable settlement was reached with the City, and it is expected to be soon approved by the federal District Court. The six plaintiff HRMs will recover the maximum three (3) years of backpay and equal liquidated damages in the total sum of $250,000. The City of San Diego is now complying with the FLSA and paying these Local 145 members overtime compensation after they work 40 hours per 7-day workweek.

David Burwell v. City of Los Angeles—SCBA Maintenance Employees

This is also a settled FLSA overtime court action on behalf of Local 112 members who are tasked with the job duties, among other things, of maintaining and supplying breathing apparatus in the fire department. Like the paramedics and dispatchers who previously won their FLSA cases against the City of Los Angeles, these members do not have the requisite "responsibility" to engage in fire suppression functions and, therefore, should not be subject to the fire fighter Section 207(k) overtime exemption, and deprived of overtime compensation until they work over 204 hours in a 27-day work period. Rather, they deserve overtime pay after working 40 hours in a workweek.

As in the other cases, the City finally began paying these employees overtime based on the 40-hour workweek standard in June, 2015. However, the City refused to provide these members with make-whole compensatory relief owed to them. Under the pressure of this court enforcement action, and pursuant to extensive negotiations, the City agreed to pay these members the maximum of three (3) years of backpay allowed under the FLSA, and full liquidated damages equal to the backpay. The seven (7) plaintiff IAFF members shared in the total recovery of $444,140.06. Attorneys' fees and out-of-pocket litigation costs incurred were also included as part of the settlement.

On September 1, 2016, IAFF General Counsel Tom Woodley sent General President Schaitberger a $10,000 check payable to the International reimbursing the IAFF for the FLSA grant approved for initial litigation expenses incurred in this case.

Andrew Sailer v. City of Williston, ND

This FLSA case involved EMS personnel represented by IAFF Local 3743 who reportedly were not engaged in fire protection activities under the FLSA overtime provisions. Prior to instituting this court action, it was indicated that these employees did not receive any training in fire suppression, and were not permitted to perform any fire related functions. Based on this information, these employees did not satisfy the definition of employees engaged in fire protection activities under the FLSA, and thus should not be covered under the Section 207(k) partial overtime exemption applicable to fire fighters.

In pursuing discovery (obtaining documents from the City and taking depositions), it was disclosed that a number of the plaintiffs actually did receive training and certifications in fire fighting. More troubling, the information obtained during discovery in the suit actually showed that these plaintiffs would drive a pumper to fire scenes and get involved in furnishing the water needed to extinguish fires.

The federal Judge granted summary judgment to the City, finding that plaintiffs were not only cross-trained and certified in fire protection functions, but they performed necessary fire suppression activities by driving pumpers to fire scenes and becoming involved with other fire fighters in utilizing the water supply to douse fires. In light of these facts, the Court determined that the City was properly applying the Section 207(k) fire fighter overtime exemption.

Clifford Anderson v. City of Los Angeles—Fire Inspectors

Recently, a final settlement was reached in this FLSA overtime case which provided full relief on behalf of the members of IAFF Local 112 who are fire inspectors employed in the City of Los Angeles fire department. Until July, 2015, the City treated these members as if they were engaged in fire suppression functions under the limited Section 207(k) overtime exemption, only paying them overtime compensation after they worked 204 hours in a 27-day work period. Beginning in July, 2015, the City recognized it was not in compliance with the FLSA, and it started paying the inspectors overtime after they worked in excess of 40-hours in a work week. However, the City refused to pay backpay and other relief for the time they were unlawfully deprived of the overtime compensation owed to these members.

These inspectors perform on-site, annual inspections of commercial and industrial buildings, apartment buildings, schools, hospitals, and other structures that require inspections pursuant to fire code and fire life safety regulations. As fire inspectors, they are not assigned to fire engines or trucks, are not dispatched to structure fires with a suppression apparatus, and do not have in their duties any responsibility to suppress fires. Thus, these members deserved overtime pay after working 40 hours per week.

In the usual FLSA court action, plaintiff employees can recover only two years of backpay, and no additional liquidated damages in a case where they prevail against their employer. Here, the facts provided a strong basis for claiming that the City had not acted reasonably or in good faith,

and that it had "willfully" violated the inspectors' rights under the statute. Consequently, the City accepted the General Counsel's settlement proposal to recover the maximum of three (3) years of backpay, additional liquidated damages equal to their backpay, plus the reimbursement of attorneys' fees and litigation costs incurred in representing these members.

Under the settlement, these IAFF members shared in a recovery of backpay, liquidated damages and reimbursed attorney's fees and expenses of over $1.7 million. The District Court approved the settlement, and payments were distributed to these members in July, 2017.

Wells Wilson, et al. v. City of Alexandria, Virginia—Captains

This FLSA court enforcement action was settled on favorable terms, on behalf of the plaintiff members of IAFF Local 2141 who are Captains in the fire department of the City of Alexandria, Virginia.

As in the Fairfax County Captains' case that was litigated and settled earlier, these Captains had been treated as exempt, executive/supervisory personnel and denied FLSA overtime pay by the City. Under the Department of Labor's regulations and the precedent-setting decision of the federal Court of Appeals in the Fairfax County case, these Captains should be considered first responders like the members of their crews, and paid FLSA overtime compensation.

A settlement was reached which provided that these 35 IAFF members shared in a recovery of $1.1 million in backpay and liquidated damages. The City Council approved the settlement, as did the individual plaintiff union members. The federal District Court Judge issued an Order approving the settlement.

Domingo Albarran v. City of Los Angeles—Equipment Maintenance Employees

This FLSA court enforcement action was settled on excellent terms on behalf of seven (7) Heavy Rescue employees and members of Local 112. If fire department employees do not have the **responsibility** to extinguish fires, they are entitled under the FLSA to overtime compensation after working 40 hours per workweek. Here, the City was unlawfully applying the fire fighter exemption and paying these members FLSA overtime after they worked 204 hours in a 27-day work period.

In the Los Angeles Fire Department, the Heavy Rescue equipment maintenance workers are not responsible for suppressing fires. Nevertheless, the City refused to pay these Local members overtime compensation after they have worked 40 hours a week. Recently, the city belatedly audited the job duties of this group of employees (and several other groups) and finally recognized it was violating their FLSA rights; consequently, in July, 2015, the City began paying them overtime under the 40-hour weekly standard, on a current basis. However, the City refused

to make these employees whole for backpay and other relief allowed under the remedial provisions of the FLSA. Consequently, this court enforcement action became necessary.

A negotiated settlement was reached in this case which was approved by the City Council, the Mayor and the federal Court. The terms of the settlement included the maximum relief available in a FLSA court enforcement action—three (3) years of backpay for the unlawfully withheld overtime compensation, plus the payment of liquidated damages equal to the backpay. Under this settlement, the City paid the seven (7) plaintiffs a total of $590,550, plus the reimbursement of attorneys' fees and litigation expenses.

On August 22, 216, General Counsel Tom Woodley sent a check for $10,000 to the International fully reimbursing the IAFF for the grant approved by General President Schaitberger for initial litigation expenses under the IAFF's FLSA Policy.

Dan Gordon v. Los Angeles County—Arson/Fire Investigators

This court action was pursued under the IAFF's FLSA Enforcement Policy on behalf of the members of Local 1014 who are employed as Arson/Fire Investigators in the fire department of Los Angeles County. They have been treated under the limited overtime exemption applicable to fire fighters under Section 207(k) of the statute and only paid overtime after they work 182 hours in a 24-day work period. However, these Arson Investigators do not have *responsibility* for engaging in fire suppression, a statutory requirement to be covered under the fire fighter part of the Section 207(k) overtime exemption. They should receive overtime pay after working 147 hours in a 24-day work period under the law enforcement overtime standard applicable under Section 207(k) of the FLSA. Specifically, these employees have arrest powers and are trained in law enforcement techniques, and educated in law enforcement principles. As a result, under the Department of Labor regulations, these Arson Investigators qualify as employees engaged in law enforcement activities under Section 207(k).

Under the Court-approved settlement, the eight plaintiff members of Local 1014 have been paid a total of $260,131.72 for unpaid overtime compensation, and $130,924.28 in liquidated damages. Attorneys' fees and litigation costs were also part of the settlement, and on May 14, 2018 the IAFF was reimbursed the $10,000 grant approved under the FLSA Enforcement Policy in support of these IAFF members. The County has corrected its FLSA violations, and are paying these Arson Investigators in compliance with this federal wage and hour law.

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

John Sorrells v. Cobb County, Georgia (Captain not exempt from FLSA overtime pay); **Chad Riley v. Mission Support Alliance, Washington** (firefighters and Captains not receiving FLSA overtime); **Robert Milie v. City of Savannah, Georgia** (FLSA compensatory time violations);

Stan Smith v. Sand Springs, Oklahoma (local member terminated in retaliation for pursuing FLSA claims); **Jonathan McManus v. City of Ceres, California** (cash payments in lieu of medical benefits must be included in regular rate for calculating overtime pay).

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:

IAFF *Amicus* Brief in Supreme Court Case of *Janus v. AFSCME*

In a troubling development, the U.S. Supreme Court decided to hear the case of *Janus v. American Federation of State, County, and Municipal Employees,* once again jeopardizing the constitutionality of public-sector agency fees.

The suit in *Janus* was brought by the National Right to Work Committee and involves an attack on the Illinois agency-fee statute by a state employee who is not a union member. Like similar laws in other states, the statute requires that, if a public-sector employee chooses not to join his or her union and pay dues, then the employee must pay a fee to the union to cover the fair share of representation and collective-bargaining costs for all employees in the bargaining unit.

For 40 years, it has been settled that agency-fee laws are fully consistent with the First Amendment's guarantees of free speech and association, and thus constitutional. This was the Supreme Court's unanimous decision in *Abood v. Detroit Board of Education* (1977). The Court's rationale was based on a union's important status as the exclusive representative of bargaining-unit employees. The Court made two points clear: First, states have a strong interest in using collective-bargaining systems to foster labor peace, and this goal is easier to achieve if a public employer must collectively bargain with one exclusive representative rather than many. Second, states have an equally strong interest in eliminating the "free rider" problem that would arise if bargaining-unit employees could obtain the benefits of exclusive representation without paying for their costs. These considerations outweighed any First Amendment concerns. Over the years, the Court has repeatedly reaffirmed its decision in *Abood* four decades ago.

Now, in this *Janus* case, the challenger is asking the Supreme Court to revisit and overrule *Abood*. He argues that the Illinois statute violates his First Amendment rights of free speech and association by compelling him to subsidize the speech of the union, an entity he does not support. A decision in favor of the employee, and against the union, would uproot decades of constitutional law, and destabilize public-sector union financial arrangements across the country.

The Supreme Court heard an essentially identical challenge in 2016 in *Friedrichs v. California Teachers Association*. The Court was primed to rule—almost certainly against the union—but

deadlocked in a 4-4 split decision after Justice Scalia's death.

The Court's decision to hear *Janus* so soon after *Friedrichs*, unfortunately, suggests that the Court remains eager to rule on the merits of this issue. With the recent appointment of conservative Justice Gorsuch, the Court again has not only a full bench, but also likely an anti-union majority. An adverse ruling would effectively make "right-to-work" the law of the land where public sector employees are concerned.

In the fire service, the overwhelming majority of fire fighters in the collective bargaining context choose to become full-fledged, dues paying union members. In addition, the required accounting process for collecting agency fees is very burdensome, expensive, and fraught with the risk of legal challenges. For these reasons, the IAFF determined many years ago not to collect those fees. However, there are a number of IAFF local affiliates that do process and collect agency fees from non-members (for example, in Philadelphia; Kansas City, Missouri; Prince Georges County, Maryland; and Madison, Wisconsin).

Because of the importance of this *Janus* case, General President Harold Schaitberger authorized General Counsel Tom Woodley to submit an IAFF *amicus* brief with the Supreme Court in support of AFSCME and public sector unions. A decision is expected by June, 2018.

Bradley Westphal v. City of Petersburg, Florida

On June 9, 2016, the Supreme Court of Florida issued a favorable decision that it was an unconstitutional denial of access to the courts when the state legislature passed a law in 1993 that limited temporary total disability benefits to only 104 weeks. The IAFF filed an *amicus* brief in support of St. Petersburg fire fighter Bradley Westphal and members similarly situated.

Bradley Westphal, a fire fighter and paramedic, injured his back and knee while responding to a call. The City acknowledged the injury and paid Westphal temporary disability benefits while he was out of work. However, at the time, Florida law limited 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. This decision precluded Westphal from receiving *any* benefits, while at the same time requiring him to abide by doctors' orders not to work because of his condition.

The legislative cap on 104 weeks of temporary total disability benefits had the effect of creating a "gap in disability benefits" when no benefits are available to injured workers until such time as the worker's permanent impairment rating (known as the "maximum medical improvement") is determined.

Bradley Westphal pursued his case to the Florida Supreme Court arguing that the 104 week cap and resulting gap time in benefits were unconstitutional and grossly unfair. The high Court found that in 1993, the state legislature improperly reduced the availability of temporary total

disability benefits from 260 weeks to 104 weeks, a 60% reduction.

Because of the substantial, unfair impact upon Bradley Westphal and other injured workers, the state Supreme Court struck down this law as being contrary to the Florida Constitution which guarantees the right of access to the courts.

The Court determined that the proper remedy for this constitutional violation is the restoration of the pre-1994 statute that provided for up to 260 weeks of temporary total disability benefits—thus eliminating the constitutional infirmity created by the current statutory gap as applied to Westphal.

Cheatham v. City of Phoenix, Arizona

This case stemmed from the Goldwater Institute's suit brought on behalf of several taxpayers against the City of Phoenix ("City") and Phoenix Law Enforcement Association ("PLEA") alleging that union release time provided to PLEA through its Memorandum of Understanding ("MOU") with the City amounts to a violation of the Gift Clause of the Arizona Constitution. As in many state Constitutions, the Gift Clause in Arizona prohibits its political subdivisions from using public funds raised by taxation for private purposes.

Although this case involved the City and the police union, the MOU between IAFF Local 493 and the City contained a similar union release time provision. For that reason, and because this anti-union suit could have ramifications in other states, the IAFF participated in the case in an *amicus* capacity.

The trial court issued a preliminary injunction and found that the release time provisions violated the *Gift Clause* due to lack of a public purpose and inadequate consideration received by the City. The court of appeals affirmed on the grounds that the provisions were not supported by adequate consideration because PLEA was not obligated to perform any specific duty or give anything in return for the release time.

On September 13, 2016, the Arizona Supreme Court reversed the appeals court's ruling. The high court ruled that a government expenditure challenged under the *Gift Clause* will be upheld if: (1) it has a public purpose, and (2) the consideration received is not "grossly disproportionate" to the amounts paid to the private entity. The Court found that the union release provisions of the MOU satisfied both prongs as "a component of the overall compensation package negotiated between the City and PLEA."

Anthony San Felippo v. City of Wauwatosa, Department of Employee Trust Funds and Labor Industry Review Commission

In this state court action, IAFF member Anthony San Felippo and his attorney challenged adverse decisions of the state's Labor and Industry Review Commission and the Circuit Court which had

rejected San Felippo's claim for duty disability benefits. The IAFF filed an *amicus* brief in support of San Felippo's claim.

After an administrative law judge granted him benefits, the Wisconsin Labor and Industry Review Commission (LIRC) reversed the administrative judge's findings, on the grounds that the respiratory condition did not arise from his employment as a City of Wauwatosa fire fighter. A Wisconsin Circuit Court then deferred to and upheld the LIRC's adverse decision. Fire fighter San Felippo appealed to the Wisconsin Court of Appeals which, unfortunately, decided to uphold the adverse decision of the LIRC.

SAIF v. Thompson, Oregon

The IAFF filed an *amicus* brief in this case which involved the interpretation of Oregon's workers' compensation laws, specifically its heart-lung presumption law. Under this presumption, if a fire fighter becomes disabled as a result of "any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease," then the condition is presumed to have resulted from his or her employment as a fire fighter, as long as the claimant has worked as a fire fighter for at least 5 years and a physical exam demonstrates that the condition didn't pre-exist employment as a fire fighter.

In this case, Roger Thompson, a member of IAFF Local 1159 (Clackamas County, OR), had a myocardial infarction (heart attack) related to coronary artery atherosclerosis. He filed a workers' compensation claim which his employer denied. At the hearing before the Administrative Law Judge (ALJ), the insurance company's doctor testified that the "exact etiology," (*i.e.,* the cause of atherosclerosis) is unknown, and that the typical risk factors were not present in Thompson's case. The ALJ upheld the denial of the claim.

The Oregon Workers' Compensation Board reversed the ALJ's order, focusing on the inconsistent testimony of the insurance company's doctor. The Board concluded that his testimony "did not satisfy [the insurance company's] burden to overcome the statutory presumption."

The Court of Appeals reversed the Board's decision. The court disregarded the fact that the Board had found the insurance doctor's testimony to be inconsistent and unpersuasive, and instead stated that the Board's decision was based on the fact that his testimony lacked proof of the ultimate cause of claimant's atherosclerosis.

On August 4, 2016, the Oregon Supreme Court ruled that even if the insurance carrier may present and rely on testimony that atherosclerosis generally is unrelated to firefighting, the Board reasonably found that the insurance carrier's doctor's testimony did not meet the burden of persuasion. The state Supreme Court upheld the fire fighter's claim by giving deference to the Board's finding. This is a victory for Oregon fire fighters and provides legal authority that can be used to detail how unpersuasive traditional defense experts are.

Other Pending Amicus Cases

Americare Medservices, Inc. v. City of Anaheim, California (anti-trust immunity for EMS providers); **Marin County Association of Public Employees v. Employees Retirement Association, California** (retirement association unilaterally excluding unused leave payments from pension calculations); **Catherine A. Boling and City of San Diego v. California Public Employment Relations Board** (judicial deference to PERB's interpretations of state's labor law).

Other Cases Handled by the General Counsel's Office

The IAFF General Counsel's Office is also responsible for representing the International in protecting its rights, and defending 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 Convention, those matters are as follows:

Alan Nicholson v. IAFF, IAFF Local 2149, and Lloyd Kerr

This lawsuit was filed in federal district court in Texas by union member Alan Nicholson against the IAFF, Local 2149 (Plano, TX) and former Local President Lloyd Kerr. Plaintiff Nicholson alleged that he was discriminated and retaliated against because of his race (African-American/Native American) in violation of Title VII of the Civil Rights Act of 1964.

IAFF General Counsel filed a motion to dismiss the Complaint against the International on multiple grounds, including the position that the IAFF was not involved in this local matter, and that the established local autonomy of affiliates precludes these allegations against the International. In response to this dismissal motion and supporting papers, the plaintiff and his lawyer agreed to voluntarily dismiss the International from the suit, with prejudice (meaning the suit cannot be re-filed against the IAFF).

IAFF v. N-Depth Fire Graphics Company

This was a situation where N-Depth Fire Graphics Company, without IAFF authorization, repeatedly had been advertising and selling merchandise displaying the IAFF's logo and marks. This practice infringes on the International's registered trademark protections under the federal Lanham Act. On August 4, 2016, IAFF General Counsel Tom Woodley sent the owner and operator of N-Depth Fire Graphics a cease and desist letter demanding that he and his company immediately stop using counterfeit IAFF Marks to advertise, offer for sale, sell or distribute such merchandise—whether on the web, in person or by any other medium—or else the IAFF would pursue a federal court action to enforce its rights and recover damages and other relief. The Company took down its online storefronts and closed online advertisement of IAFF-branded

products. Compliance was obtained without the need to pursue costly litigation.

Peter Gorman v. IAFF and Harold Schaitberger

Former IAFF Chief of Staff Peter Gorman filed this lawsuit against the International and General President Harold Schaitberger in the Washington, DC Superior Court on October 24, 2016. Gorman resigned from his Chief of Staff position at the IAFF on October 28, 2015, and he was given a substantial, financial severance package regarding pay and benefits.

In his court Complaint, Gorman alleged that he was "terminated" as the IAFF Chief of Staff on October 28, 2015 in retaliation for his email sent to General President Schaitberger on March 13, 2015 accusing former IAFF General Secretary-Treasurer Tommy Miller of engaging in discrimination with respect to the hiring of the IAFF's HR Director. He claimed that his purported concerns on this subject started with conversations he asserted he had with then Chief of Operations Jim Lee. Gorman's discrimination allegations in his March 13, 2015 email were strongly refuted by Tommy Miller and Jim Lee. A thorough investigation conducted by the IAFF General Counsel's office, and a resulting report given to General President Schaitberger, found that Gorman's claims of discrimination lacked merit or any factual support. Gorman subsequently alleged in his Court Complaint that he was "terminated" seven months later, in violation of the District of Columbia Human Rights Act which prohibits employers from retaliation against employees who assert that discrimination has occurred, such as in the hiring process.

The relief sought in Gorman's Complaint included reinstatement to employment with the IAFF. He also sought backpay, the value of any lost benefits, plus interest, and front pay which is future earnings and benefits he claimed he would have received had he not been subject to retaliation. In addition, Gorman sought compensatory damages for the emotional and mental harm he claimed he suffered, punitive damages, and the recovery of attorneys' fees and expenses.

Later in the suit, the IAFF filed Counterclaims asserting that since at least April 2014, in his role as IAFF Chief of Staff, Gorman engaged in the breach of fiduciary duty of undivided loyalty owed to the IAFF and the General President by the unauthorized misappropriation and dissemination of confidential and proprietary data and records of the IAFF to outside third parties.

The insurance policy of the IAFF applied to this case. Pursuant to that policy, the insurance carrier exercised its right to initiate the mediation/settlement process available under the court's procedures. It was a "tripartite" mediation conducted among attorneys for Gorman, the IAFF, and the IAFF's insurer. The mediator was a retired D.C. Circuit Court Judge. At the end of a full day of mediation, the insurance carrier did a 'cost-benefit' analysis and made a financial decision that it could settle this suit more cost efficiently than bear the cost the carrier would incur through several years of litigation/defense, including significant costs regarding numerous depositions, expert witness fees, attorneys' fees, consultant charges, travel expenses, etc..

The Mediator imposed very strict requirements on the mediation process, prohibiting the parties and their representatives from disclosing the parties' positions or details of the mediation process to anyone outside of the direct parties involved (Mediator, Gorman, IAFF General President, and their Counsel). In addition, the settlement agreement and its terms, approved by the Mediator, are bound by confidentiality as specified in the settlement agreement itself.

The insurance carrier insisted on settling this case solely at its cost (neither the IAFF nor General President Schaitberger paid a penny toward the settlement). The insurance company's decision avoided litigation that would have continued for years, imposing a time-consuming burden with numerous depositions, document reviews, trial preparation, and witness' testimony by senior IAFF staff and former and current members of the Executive Board—a substantial distraction from the work and services that the IAFF performs for the union's membership.

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 2294, Hillsborough County, FL (Public confrontation between Local VP and Chief); **Local 2004, Irvington, NJ** (Fire Fighters background checks); **Local 1935, Coon Rapids, MN** (Non-promotion of Local officer); **Local 3448, Kernersville, NC** (Termination of Local activist); **Local 3704, Mandeville, LA** (Suspension of union officer); **Local 3311, Old Bridge, NJ** (Refusal to bargain and sign agreement); **Local 4298, Leander, TX** (Termination of former Local President); **Local 3357, Augusta-Richmond, GA** (Suspension of Local President)**; Local 3063, Fulton, NY** (PERB case involving negotiating dispute); **Local 32, Utica, NY** (PERB case regarding retaliation); **Local 630, Livingston, MT** (Claimed retaliation against former President); **Local F-85, Camp Pendleton, CA** (Pay for training time); **Local 5031, Brooklyn Park, MN** (Surveillance of union meeting); **Local 4041, Rye Brook, NY** (Claimed violations of labor contract); **Local 601, Havre, MT** (Potential adverse action against Local leaders); **Local 2665, Professional Fire Fighters of Eastern Missouri** (Discharge of Local Vice President); **Local 191, Watertown, NY** (Minimum Staffing and discipline); **Local 3932, Goshen, OH** (Demotion of Local President); **Local 921, Johnson City, NY** (Previously settled free association suit); **Local F-33, Clemente Island, CA** (Use of military fire fighters); **Local 601, Havre, MT** (Discipline of Local President).

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 5137, Oak Bluff, MA (Chief's actions against forming a union); **Local 624, San Antonio, TX** (Deduction of vacation hours from pay cycles); **Local 3663, Demopolis, AL**(Promotional policies and practices); **Local 4473, Bellows Falls, VT** (Elimination of bargaining unit positions); **Local 2963, Cookeville, TN** (Workplace harassment claim); **Local 4309, Orange Beach, AL**(Disability claim under ADA); **Local 124, Fort Wayne, IN** (Disability retirement benefits);**Local 22, Philadelphia, PA** (Political activity of members);**Local 574, Savannah GA** (Promotion/hiring practices); **Local I-14, Manchester, TN** (Termination of member); **South Carolina State Firefighters Association** (Dues payroll deductions); **Local 184, Hattiesburg, MS** (Right to communicate with City officials);**Local 61, Charleston, SC** (Promotion of union members); **Local I-18- Grand Forks, ND** (Recovery of dispatchers' health benefit payments); **Local 4820, Emergency Services District 8, Travis County, TX** (Constitutional free speech rights); **Local 574, Savannah, GA**(Forced use of compensatory time); **Local 4309, Orange, AL** (ASA claim of terminated member); **Local 4309, Orange Beach, AL** (Non-promotion of member); **Local 1775, Marin County, CA** (Floating divisor in calculating pay); **Local 479, Tucson, AZ** ("Smoothing practice" for compensation purposes); **Local 152, Springfield, MO** (Training and "work out of title"); **Local 437, Bremerton, WA** (Volunteering for Fire Ops with no overtime liability); **Local 244, Albuquerque, NM** (Release of members *Garrity* statements); **Local 1619, Prince George's County, MD** (Confidentiality agreements in investigations); **Local 2661, McKinney, TX** (City-imposed gag order); **Local 2665, Monarch FPT, MO** (Protective provisions in Union contract);**Local 52, Meridian, MS** (Injured union member's claims); **Local 452, Vancouver, WA** (Prohibition on accessing information in stations); **Local 3748, Cleveland, TN** (Potential appeal of adverse court ruling); **Local 52, Meridian, MS** (Privacy rights on duty); **Local 1329, Arlington, TX** (Pay exemption of Chiefs); **Local A-7, CT** (Organizing local Indian Tribe); **Local 1403, Metro Dade, FL** (County Charter impacting political activity); **Local 440, Fort Worth, TX** (Inspectors' schedule changes); **Local 5057, Rockwall, TX** (Restrictions on political activities); **Local 3449, United Valley, AZ** (Cancelled payroll deductions); **PFFA of New Jersey** (Appeal of NJ Supreme Court decision regarding pensions);**Local 1619, Prince Georges County, MD** (Legality of paid union leave); **Local 2850, Farmington, NM** (Bargaining under state law); **Local 1583, Biloxi, MS** (Lawfulness of annual leave policy); **Local 4041, Rye Brook, NY**(Elimination of jobs); **Local 2882, Strongsville, OH** (No violation of settlement agreement); **Locals F-282 and F-313**(Compensatory time for training); **Local 35, North Little Rock, AK** (Compelling arbitration over payroll changes); **Local 4610, PEMSA, NJ** (NLRB ULP charges regarding contracting out); **Local 1270, Salinas, CA** (Re-employment rights after military service); **Local 1476, South Portland, ME** (Arbitrating pay parity grievance); **Local 568, Keokuk, IA** (Prior restraint on free speech); **Local 540, Alexandria, LA** (Legality of drug/alcohol testing; **Missouri State Council of Fire**

Fighters, MO (Proposal anti-union state law); **Local 52, Meridian, MS** (Battalion chief excluded from Local); **Local 660, Charlotte, NC** (Political activities off-duty); **Local 4781, Lexington, TN** (Retention of fire chief).

Other Legal Opinion Letters

Local 586, Bloomington, IN (Calculation of overtime pay); **Federal Fire Fighters – Air Force** (Agency duty to pay for required medical tests); **Local 3743, Williston, ND** (Policy regarding unpaid 'on call' time); **Local 3556, El Dorado County, CA** (Pay offsets negating overtime claims); **Local 3666, Frederick, MD** (On-call time under the FLSA); **Local 1014, Los Angeles County, CA** (Pay issues for dispatchers); **Local 3169, Marion County, FL** (Overtime pay for deployment outside county); **Local 112, City of Los Angeles, CA** (Compensation of rotational fire fighter/paramedic); **Local 1596, Lawrence, KS** (Captains denied FLSA overtime pay); **Local 3690, Cottonwood, CA** (FLSA violations of overtime requirements); **Local 2921, Waynesville, MO** (Failure to pay overtime); **Local 35, North Little Rock, AR** (Pay issues); **Local 135, Wichita, KS** (Fire Investigators denied overtime pay); **Local 365, East Chicago, IN** (Use of compensatory time); **Local 3610, Mercer County, NJ** (Contract proposal regarding salary adjustment); **Local 4295, Mohave Valley, AZ** (Pay issues); **Local 613, Bozeman, MT** (Questions regarding compensation); **Local 4669, Ft. Pickett, MD** (Pay difference in changed positions); **Local 112, Los Angeles** (Rotational paramedics' pay issues); **Local 2921, St. Robert, MO** (Sleep time and compensatory time); **Local 2820, Farmington, NM** (Pay for travel time); **Local 1032, Medford, MA**(Regular rate/overtime rate issues); **Local 2585, Shelby County, TN**(FLSA pay rate and exemption of Captains); **Local 48, City of Cincinnati, OH** Regular rate/overtime rate issues); **Local 995, Richmond, VA**(Regular rate/overtime rate issues); **Local 863, Newton, MA**(FLSA pay rate and exemption of Captains); **Local 2602, McAllen, TX** (FLSA exemption of Captains); **Local 412, Dearborn, MI** (FLSA pay rate and exemption of Captains); **Local 1652, Framingham, MA** (Regular rate/overtime rate issues); **Local 3282, La Marque, TX** (FLSA exemption of Captains); **Local 556, Hammond, IN** (FLSA exemption of Captains); **Local 5050, Scottsdale, AZ** (FLSA exemption of Captains); **Local 2141, Alexandria, VA** (Regular rate/overtime rate issues); **Local 2532, Danville, VA** (FLSA pay rate and exemption of Captains); **Local 2046, Santa Barbara, CA** (FLSA pay rate and exemption of Captains); **Local 1444, Montgomery, AL** (FLSA exemption of Captains); **Local 1198, West Haven, CT** (FLSA pay rate and exemption of Captains); **Local 87, Jackson, MS** (FLSA exemption of Captains); **Local 935, San Bernardino, CA** (FLSA pay rate and exemption of Captains); **Local 571, Galveston, TX** (Regular rate/overtime rate issues); **Local 1974, Livermore/Pleasanton, CA** (FLSA pay rate and exemption of Captains); **Local 3690, Sedona, AZ** (FLSA exemption of Captains); **Local 3690, Sedona-Verde Valley, AZ** (FLSA exemption of Captains); **Local 3690, Sedona -Cooper Canyon, AZ** (FLSA exemption of Captains); **Local 86, Troy Uniformed Firefighters Association, NY** (FLSA exemption of Captains);**Local 479, Tucson, AZ** (FLSA pay rate and exemption of Captains); **Local 145, San Diego, CA** (FLSA pay rate and exemption of Captains);**Local 3845, New Braunfels, TX** (FLSA exemption of Captains); **Local 22, Philadelphia, PA** (FLSA exemption of Captains); **Local 505, Decatur, GA** (FLSA exemption of Captains); **Local 883, Tyler, TX** (FLSA pay rate and

exemption of Captains); **Local 149, Boise, ID** (FLSA exemption of Captains); **Local 2270, Kingsport, TN** (FLSA pay rate and exemption of Captains); **Local 3758, Franklin, TN** (Regular rate/overtime rate issues); **Local 58, Dallas, TX** (FLSA pay rate and exemption of Captains); **Local 2400, San Mateo, CA** (FLSA exemption of Captains); **Local 76, Somerville, MA** (FLSA exemption of Captains); **Local 1311, Baltimore County, MD** (FLSA pay rate and exemption of Captains); **Local 2164, South Metro, CO** (FLSA exemption of Captains); **Local 345, Louisville, KY** (FLSA exemption of Captains); **Local 1365, Orlando, FL** (Regular rate/overtime rate issues); **Local 760, Hartford, CT** (FLSA exemption of Captains); **Local 539, Portsmouth, VA** (FLSA pay rate and exemption of Captains); **Local 135, Wichita, KS** (FLSA exemption of Captains); **Local 2970 West Valley City, UT** (FLSA exemption of Captains); **Local 2498,York County, VA** (FLSA pay rate and exemption of Captains); **Local 660, Charlotte, NC** (FLSA exemption of Captains); **Local 1882, Lawton, OK** (FLSA exemption of Captains);**Local 93, Cleveland, OH** (FLSA pay rate and exemption of Captains); **Local 4588, Palatine, IL** (FLSA pay rate and exemption of Captains); **Local 3520, East Pierce, WA** (FLSA exemption of Captains); **Local 2612, Sedgwick, KS** (FLSA exemption of Captains); **Local 493, Phoenix, AZ** (FLSA pay rate and exemption of Captains); **Local 2403, Adams County, CO** (FLSA exemption of Captains); **Local 493, City of Phoenix, AZ** (FLSA exemption of Captains); **Local 27, Seattle, WA** (FLSA exemption of Captains); **Local 735, Bethlehem, PA** (FLSA pay rate and exemption of Captains); **Local 1747, Kent, WA** (FLSA pay rate and exemption of Captains); **Local 850, East Providence, RI** (FLSA pay rate and exemption of Captains); **Local 1492, DeKalb, GA** (FLSA pay rate and exemption of Captains); **Local 407, Waukesha, WI** (Regular rate/overtime rate issues); **Local 781, Independence, MO** (FLSA exemption of Captains); **Local 106, Bellingham, WA** (FLSA pay rate and exemption of Captains); **Local 1348, Muncie Fire Fighters** (FLSA exemption of Captains); **Local 1032, Medford Firefighters** (FLSA pay rate and exemption of Captains); **Local 586, City of Bloomington** (FLSA pay rate and exemption of Captains); **Local 312, Youngstown, OH** (Regular rate/overtime rate issues); **Local 3631, Orange County, CA** (Regular pay rate issues); **Local 112, Los Angeles, CA** (Pay for urban search captains); **IAFF 16th District** (Application of Public Law 104-113); **Local 127, Tomah, WI** (Calculation of backpay for paramedics); **Local 5023, Macomb Township, MI** (Overtime pay for on-call shifts); **Local 3138, Rockledge, FL** (Failure to include pay elements in overtime); **Local 479, Tucson, AZ** (Overtime pay due for scheduled overtime hours); **Local 3690, Cottonwood, AZ** (Overtime pay violations); **Local 3054, Kodiak, AK** (On-call time); **Local 1206, Redford Township, MI** (Overtime pay questions); **Local 1464, Scituate, MA** (Offsets of pay allegedly owed); **Local 2289, Canton, MI** (No overtime violations); **Local 3876, North Mason, WA** (Wage calculations); **Local 1186, Benecia (Vallejo), CA** (Compensability of training time); **Local 230, San Jose, CA** (Improper offsets against overtime pay).

Miscellaneous Matters

a) Working with other Union General Counsels

As a Director on the AFL-CIO's Lawyers Coordinating Committee Board of Directors, IAFF General Counsel Tom Woodley has participated in regular strategy meetings of the General Counsels of major AFL-CIO affiliates and also the Lawyers Advisory Panel.

b) 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.

c) IAFF 2018 Convention

Attorneys from the IAFF General Counsel's office will be assisting and advising the 2018 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, under the supervision of Managing Partner Tom Woodley, continues to devote the full-time services of one of its experienced partners, Doug Steele, as the IAFF's in-house Legal Counsel. Two additional attorneys with the firm, Michael Keefe and Nicole Gonzalez, serve as in-house Assistant Legal Counsel on a full-time basis to handle the growing number of requests for legal guidance. The Legal Counsel's Office is also ably assisted by paralegal Pat Dunn, Secretary II Pam Hall, and Executive Secretary Stephanie Griffiths.

Since the 2016 Convention, the Legal Counsel's Office has received and handled nearly 2,000 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 Convention, 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. Attorneys in the Legal Department have also assisted IAFF General Counsel Tom Woodley in providing assistance to IAFF affiliates pursuant to the IAFF's Guardian Policy, the Front Line Policy, the Amicus Brief Policy and the FLSA Policy. Those matters are summarized above in the General Counsel's Report.

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. The Legal Department has also drafted the proposed Public Safety Officers' Collective Bargaining Bill.

Education & Training. Since last Convention in 2016, attorneys in the Legal Department have presented seminars at the IAFF Vincent J. Bollon Affiliate Leadership Training Summit-Ernest A. "Buddy" Mass Human Relations Conference (ALTS-HR), the IAFF Elected Human Relations Committee Meeting, and the IAFF's John P. Redmond Symposium-Dominick F. Barbera EMS Conference. At the ALTS Conference in January 2018, attorneys Doug Steele, Megan Mechak Michael Keefe and Nicole Gonzalez served as presenters. They covered the following classes: 1) Conducting union elections; 2) Employee discipline before the lawyer arrives; 3) Title VII; 4)

First Amendment Law; 5) Understanding the FLSA; 6) Fitness for Duty; 7) Supreme Court's Janus Case Update (Fair Share/Agency Fees); and 8) Local Union Governance (at DFSR Training session). In April 2018, Attorney Steele was invited to the Labor-Management Alliance Conference held in Denver, Colorado. He presented a session on Title VII of the Civil Rights Act.

IAFF Foundation. The Legal Department has also assisted the IAFF Charitable Foundation, including aiding the Foundation's efforts to register and comply with state charitable solicitation laws, review contracts, register for sales and use tax exemptions, and provide responses to legal inquiries regarding the fundraising activities of the Foundation. Staff assisted in the draft of a resolution for consideration at the 2018 Convention on Restructuring, Refocusing the IAFF Foundation.

Executive Board Committees. General Counsel Tom Woodley and Legal Counsel Doug Steele have also provided assistance to a number of IAFF Executive Board Committees, including the Emergency Disputes Fund and Legal Services Committee, the Constitution and By-Laws Committee, the Policy Committee, the Organizing and Field Services Committee, Human Relations Committee, the Board's ad-hoc Pre-Trial Review Boards, and the ad-hoc Resolutions Committee.

IAFF Legal Department Manuals. At the February 2017 Executive Board, the EDF and Legal Services Committee discussed a desire to update the IAFF Local Union Trial Manual based upon committee member recommendations and experiences. Suggested revisions were reviewed at the September 2017 Board meeting and changes not requiring Convention approval were approved at the February 2018 Board meeting. The Legal Department maintains and updates a wide variety of manuals to assist local affiliates, including manuals on the following topics: Fair Labor Standards Act, Freedom of Information Laws (FOIA), Fitness For Duty, Fair Share and Agency Shop, Local Trial Board Procedures, Charitable Activities, and the Internet Manual.

IAFF Arbitrator Database. The Legal Department maintains an on-line database of arbitrators who have ruled on fire fighter related cases. The information on the database is obtained through the District Vice Presidents as well as fire fighter attorneys throughout the country. The database allows for an assessment of each arbitrator, and the ability to upload arbitration decisions.