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To: The Board of the Pennsylvania State Lodge,
Fraternal Order of Police

From: Sean T. Welby, Counsel

Re: Solicitor's Report 8/03/08

Hinchey v. Forest Hills Borough – This file began as a case involving all members of the Forrest Hills Borough Police Department, with the lead Plaintiff being Officer Edward Hinchey, with respect to an alleged violation of the Older Workers' Benefit Protection Act. We had filed a Complaint in Federal Court. Typically, such cases would come within the jurisdiction of the Equal Employment Opportunity Commission and normally would require that Plaintiffs filed first with the EEOC before filing with the Federal Court. We had gone forward on a theory that since the allegation of violation --- that at some point in the future, the officers disability retirements if any would reduced to regular retirements without regard to their continuing disability status --- had not actually occurred and since we were looking for a declaratory judgment, it would be futile to go through the EEOC process. However, it then did appear that the Court was going to require that we follow the usual EEOC filings. Since none of the named Plaintiffs had actually experienced a reduction at that point, and therefore could not go forward with an EEOC complaint, we withdrew the federal claim; in the meantime, one of the officers, Brian A. Ellicker, had reached the point where his disability retirement pension actually was reduced to a regular retirement. We therefore filed complaint with the EEOC which is now going forward.

Robert Martin – Mr. Martin was a Narcotics Agent employed by the Office of Attorney General. He was injured in 1993 during the course of a controlled cocaine buy. He had been receiving workers' compensation benefits and a disability retirement benefit as well as a disability retirement supplement pursuant to the State Employees Retirement Code. Under the Workers' Compensation Act, once a claimant in partial disability status, as was Mr. Martin, reaches 500 weeks of benefits, the benefits cease. Under the State Employees Retirement Code, when an annuitant is no longer receiving workers' compensation, for whatever reason, the annuitant is no longer eligible for the supplement, although the annuitant does continue to receive the basic disability pension. The Commonwealth decided that Mr. Martin had exhausted his 500 weeks of workers' compensation, and the workers' compensation therefore ceased, and thus triggered the cessation of the additional disability retirement supplement. A suit is pending receipt of requested information from Mr. Martin.

Deputy Sheriff Edward Eugene Schroeder --- This was an appeal brought on behalf of Roxanne Schroeder, the widow of Deputy Sheriff Edward Schroeder, with respect to a claim for death benefits under the Federal Public Safety Officers Benefits Act. Deputy Sheriff Schroeder was employed by the York County Sheriffs Department and died of a massive heart attack during the course of training. The United States Department of Justice which administers the Public Safety Officers Program initially denied benefits. We then appealed. We had a hearing in front of a hearing officer appointed by the Department of Justice. Mrs. Schroeder testified along with York County Sheriff Rich Keuerleber and Sgt. David Godfred, also of the York County Sheriffs Department. We then submitted a brief. Under a letter dated June 24, 2008, the Department of Justice reversed its decision and approved payment of benefits to Mrs. Schroeder in the amount of \$275,658.

Scranton PD Retirees – Social Security/Anti-Windfall Provisions – The Social Security Administration has advised various Scranton Police Department retirees that the Anti-Windfall provisions of the Social Security Act apply to them and therefore have reduced the Social Security benefits to which they are entitled. However, based upon the Scranton Police Pension Fund, the Anti-Windfall provisions do not apply to the retirees and the State Lodge is assisting the officers. We have written to the SSA and requested reconsideration. In regard to one retiree (Hugh Haggerty), on August 20, 2007, SSA has denied our request. We have requested a hearing before an Administrative Law Judge. By letter dated June 12, 2008, SSA informed our office and Hugh Haggerty that the file has been transferred to the SSA's Wilkes-Barre Office for a hearing.

PPLF – Dissolution - A Petition to Compel Termination and Distribution of Trust has been filed. The Petition seeks a Court Order declaring the PPLF be terminated by reason that the PPLF no longer uses funds for the purpose and under the conditions specified in the agreement and by-laws creating the Trust. The Petition seeks an Order authorizing the PPLF to turn over to the State Lodge all existing funds.

Limbacher v. Borough of Forest Hills - This case involved litigation by the Borough of Forest Hills where it attempted to intervene in a lawsuit filed by disabled Forest Hills Borough Police Officer Limbacher against the manufacturer of his defective bulletproof vest. Limbacher became permanently disabled from a shooting. He sued the manufacturer of the bulletproof vest and the two sides reached a settlement. The settlement included a typical set off where Forest Hills would be reimbursed for workers compensation and Heart and Lung Act payments to Limbacher. The Borough, however, then attempted to take the matter one step further and to extract monies from the settlement to pay into the pension fund due to Limbacher's having qualified for a disability pension. The state lodge intervened on Limbacher's behalf. Its intervention resulted in the Borough dropping its application to intervene in the suit and to seek a reduction in Limbacher's pension.

Ellwood City Police Wage and Policy Unit and PLRB v. Borough of Ellwood City - This case arose as an unfair labor practice challenging a unilaterally enacted Borough Ordinance banning smoking and use of tobacco products on Borough property. The Unit succeeded before the Hearing Examiner and full Board. The Commonwealth Court, however, reversed on appeal. It held that the Borough has the police power to make regulations necessary to promote the health, safety, morals and general welfare of its citizens, which in turn makes the smoking ban a managerial prerogative. This decision is completely contrary to all prior decisions of that same court with regard to the smoking issue. The PLRB and the Wage Policy Unit, with assistance of the State Lodge, filed a Petition for Allocatur with the Pennsylvania Supreme Court. The high Court has yet to rule on whether it will take the case. Those petitions were filed in February of 2008.

Pa State Lodge v. FOP, Lafayette Lodge No. 55, et al. - The State Lodge intervened in order to aid this Lodge in refilling its leadership positions, determining the amount and makeup of Lodge assets, etc. Out of concern that the Lodge No. 55 assets could be vulnerable to unauthorized withdrawals, the State Lodge applied for an injunction freezing the bank accounts until the reorganization could be achieved. The Court of Common Pleas of Fayette County granted the injunction, which continues in place pending the restructuring of the local lodge.

City of Uniontown and Louis Giachetti - Louis Giachetti is a retired Uniontown City Police Officer (Fayette County). When he contacted the State Lodge to verify his entitlement to state wide ad hoc COLA adjustments to his pension, concern arose that he may not have received the Act 147 COLA, which the Legislature put into effect in 1989. The City's records are not well kept and we are still in the process of attempting to verify the adjustment. The next step is contact to the Auditor General for record verification. A Declaratory Judgment action may be necessary to conclude this matter, depending on the information provided.

City of Reading, Scott Wertz Killed In Service Benefits – Mrs. Wertz has received all statutory and contractual benefits with the exception of benefits from PSOB (Federal). All information has been supplied and all requests complied with. Inquiries to PSOB are made bi-weekly.

Susquehanna Township, James Nelson ~~XXXXXX~~ Killed In Service Benefits – Mrs. Nelson has received all contractual killed in service benefits as well as an Act 30 Line of Duty Death pension. Worker's compensation benefits have been denied and an appeal is pending review by a State Lodge retained physician. Act 101 and PSOB benefit applications are pending the expert report.

Somerset Borough, Pyle Social Security – Pyle retired from Somerset Borough in 1996. He retired on a service connected disability pension and had received regular disability pension benefits upon retirement. Subsequently, he filed an application for Social Security Disability Benefits, which were granted, subject to an offset for disability pension benefits received. Upon State Lodge intervention, an appeal was filed and a hearing held in January, 2008. This issue is whether the anti-windfall provisions of the Social Security Act are applicable to a pre-Act 30 disability pension. No decision has yet to be entered.

Tansey v. Township of Lower Merion, et al. - Tansey, a former police lieutenant with the Lower Merion Township Police Department, suffered a work-related injury in 1997 which left him permanently disabled from performing his police duties. Following the injury, Tansey sought and obtained benefits pursuant to the Workers' Compensation Act and retired from the police department on a disability pension. Pursuant to the 1996 amendments to the Workers' Compensation Act, the employer attempted to offset Tansey's workers' compensation benefits by the amount of the employer-funded portion of Tansey's disability pension benefit. Tansey filed suit in the Court of Common Pleas, arguing the collective bargaining agreement provides for a full-disability pension without a workers' compensation benefit offset. As a preliminary matter, Tansey must establish that the benefits of the collective bargaining agreement apply to him pursuant to the Chiefs' Act. The parties entered into a Stipulation of Facts and submitted and briefed cross-motions for summary judgment. The Township's summary judgment motion was denied but the court took no action on Tansey's motion. The parties filed renewed motions and we are awaiting a decision. Settlement negotiations are on-going.