

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, FALL, 2004

Letter From The President

IT IS HARD TO BELIEVE THAT SUMMER is almost gone and fall is right around the corner. 2004 has been a good year for OHPELRA. The Board has been very busy this year. We spent several days in April planning this year's training events and developing a budget that allows for quality training and member services. This Board is committed to continuing the OHPELRA tradition of offering the highest quality training at the lowest possible cost to public sector employers.

Our Annual Summer, **free to members**, training was expanded to two events this year. On May 13 we teamed with CORSA, CCAO, Buckeye State Sheriffs' Association, and Downes, Hurst and Fishel (OHPELRA sponsor) to present a program on the timely issues of FLSA changes and Ohio's New Concealed Carry Gun Law. Over 90 attendees enjoyed the informative workshop. We were very excited to provide training in the Cleveland area on July 19. It has been an OHPELRA goal for many years to reach that part of the State with training and thanks to Pepple and Waggoner, Ltd. (OHPELRA sponsor) we successfully accomplished that goal this year. Approximately 100 people attended the *Labor Relations* seminar that was presented in Independence, Ohio. We are very proud of

this accomplishment and will strive to make this high quality training in Northeast Ohio an annual event. Our sincere thanks to everyone that contributed to the Summer programs.

On October 7, OHPELRA will present *The Anatomy of a Termination*, our Fall Seminar, at the Grand Host East Conference Center in Reynoldsburg. Knowledgeable practitioners are scheduled to offer attendees information on the entire termination process. You should have received a program flyer in the mail, and information is available on our website. Please register early as our programs tend to fill up quickly.

The Board recently met to plan the 2005 Annual Conference program that will again be back at the Cherry Valley Lodge. Mark your calendars for February 6 – 8 and keep an eye on our website for further details.

Thank you for all your support and please communicate with your Board of Directors. We value your input. I look forward to seeing you on October 7 at the Grand Host East Conference Center.

Sincerely,

Joy Campbell
President

OHPELRA Summer Workshop On Labor Relations A Huge Success

ON JULY 19, NEARLY A HUNDRED OHPELRA MEMBERS and guests gathered in Independence, Ohio for a free workshop on collective bargaining and labor relations issues. The program was offered by the Cleveland law firm of **Pepple & Waggoner**, one of OHPELRA's newer sponsors, and the Board of Directors is very grateful for that firm's generosity in providing all of the speakers as well as underwriting of the cost of this event.

The program was an ambitious one — in less than five hours, we covered a variety of topics:

- Timeless Negotiation Principles
- Reducing Health Insurance Costs through Negotiations
- Identifying and Avoiding Unfair Labor Practices
- IBB - A Different Way of Getting to Yes
- Public Relations During Negotiations
- Effective Use of Fact-Finding and Conciliation

Given that any one of these topics could fill a day on its own, the attorneys of Pepple & Waggoner did an amazing job of packing a lot of valuable information into a single day. The evaluations were extremely positive, and attendees commended the firm and OHPELRA for offering such valuable training at no cost to attendees.

OHPELRA thanks Pepple & Waggoner, and particularly speakers **William C. Pepple, Kevin J. Locke, Donna M. Andrew, R. Brent Minney, and Glenn D. Waggoner** for an excellent program. We also



OHPELRA PRESIDENT, JOY CAMPBELL, INTRODUCES SUMMER PROGRAM LABOR RELATIONS SEMINAR SPEAKERS WILLIAM C. PEPPLE AND DONNA M. ANDREWS OF THE LAW FIRM PEPPLE & WAGGONER, LTD.

thank the firm's office manager, **Sherry Majercak**, and her assistants, who handled all the registrations and arrangements and were a delight to work with.

This year, for the first time in memory, OHPELRA offered two free training programs to members as part of OHPELRA's commitment to offer value to our members. Take this opportunity to share with a colleague who is not an OHPELRA member the benefits that membership brings.

Recent Developments Expand Additional Concealed-Carry Rights to Law Enforcement Officers

WHEN OHIO'S NEW CONCEALED CARRY STATUTE went into effect on April 9, 2004, it left several questions open for Ohio's law enforcement community. The new statute indicated that police officers would be treated as license holders, which might be interpreted to mean that police officers would need to act as license holders when carrying off duty, i.e. complying with the significant restrictions placed on license holders with respect to where and how they can carry concealed handguns.

Two recent developments have resolved the issue off-duty carry for Ohio law enforcement officers. On July 19, 2004, the Ohio Attorney General issued an official opinion letter addressing the concerns of Ohio's law enforcement community with respect to off-duty carry under Ohio's concealed carry statute. On July 22, 2004, President Bush signed into law the Law Enforcement Officers Safety Act of 2004, which will act to fill some of the gaps left by Ohio's concealed carry statute, as interpreted by the Attorney General.

The combined effect of the Attorney General's opinion letter and the new Law Enforcement Officers Safety Act is that Ohio law enforcement officers may carry a concealed handgun off-duty anywhere in the state of Ohio, except into courthouses, parts of school safety zones,¹ establishments serving liquor, and any location where weapons are prohibited by federal law. In addition, Ohio law enforcement officers may carry across state lines, regardless of reciprocity between any two states or any state statute restricting the right to carry concealed handguns. The only state laws that will continue to apply to law enforcement officers are state statutes restricting the carrying of weapons onto any State or local government property and state statutes that permit private persons or entities to prohibit or restrict weapons on private property.

Because of the timing of the Attorney General's opinion, which came out few days before President Bush signed the Law Enforcement Officers Safety Act, much of the opinion has been rendered moot under principals of federal supremacy. However, because the Law Enforcement Officers Safety Act does not preempt state laws governing the carrying of concealed weapons on public property or state laws empowering private landowners to restrict weapons on their own property, portions of the Attorney General's opinion are still important for establishing the right of Ohio law enforcement officers to carry concealed handguns off-duty.

In his opinion, the Attorney General concludes that those Ohio law enforcement officers who fall within the statutory definition of "peace officer"² are not required to obtain licenses to have the right to carry a concealed handgun off-duty. The Attorney General based this decision on a provision within the new concealed carry statute indicating that peace officers have the "same right" to carry a concealed handgun as a person who was issued a license to carry under the new statute. This portion of the decision has been rendered somewhat moot by the new federal statute, which applies more generally to law enforcement officers. However, it does mean that Ohio "peace officers" who do not fall within the definition of "law enforcement officer" under the federal statute will be treated as licensees within Ohio and other states with which Ohio has reciprocity agreements.

After determining that law enforcement/peace officers are provided the same rights as licensees under the Ohio's statute, the Attorney General went

on to delineate the restrictions placed on off-duty law enforcement officers when carrying concealed handguns. The Ohio concealed carry statute contains significant restrictions on the rights of licensees to carry handguns into specifically enumerated locations, such as courthouses, police stations, day care centers, airports, school safety zones, churches and other places of worship, public and private colleges and universities, and all public buildings. In addition, the statute authorizes private landowners to post "no handgun" signs prohibiting license holders from carrying concealed handguns into such places as stores, restaurants and other businesses. Finally, the new statute contains strict rules governing how a licensee can carry a concealed handgun within a motor vehicle.



Upon a detailed analysis of the concealed carry statute, the Attorney General concluded that only five of the restrictions placed upon licensees apply to law enforcement/peace officers. Specifically, the Attorney General found that off-duty law enforcement officers may not carry into establishments serving liquor, school safety zones, courthouses, or vessels (i.e., most watercraft). In addition, the Attorney General found that off-duty law enforcement/peace officers must comply with the concealed carry statute's rules for carrying a concealed handgun within a motor vehicle.

The Attorney General found that list of restricted places in the statute, such as day care centers and universities, do not apply to law enforcement/police officers. The opinion letter reasoned that these restrictions only apply to "licensees," as that term is defined under the statute. Because the term "licensee" does not include those merely granted the "same rights" as licensees, i.e. peace officers, the restrictions specifically applicable to licensees do not apply to law enforcement/peace officers. This same reasoning was applied to the portion of the Ohio statute empowering private landowners to prohibit licensees from carrying concealed handguns onto private property, as well as the statutory provision allowing Ohio employers to prohibit concealed handguns through an employment policy. Thus, per the Attorney General's opinion letter, law enforcement/peace officers may legally disregard the "no handguns" signs posted by private landowners, and may carry a concealed handgun in contravention of a second employer's policy.

With respect to the five restrictions that were found to apply to law enforcement/peace officers, the Attorney General noted that each of these restrictions is found in a separate statute that is more generally applicable to "persons," rather than to "licensees." Hence, the opinion letter reasoned, these restrictions would apply to off-duty law enforcement/peace officers.

The Law Enforcement Officers Safety Act preempts the Attorney General's opinion with respect to non-public places on the list of five, i.e. vessels and motor vehicles. However, two of the places on the list of five are public in nature, and hence beyond the scope of the federal law. Specifically, courthouses are public buildings, and therefore the state is entitled to restrict the carrying of concealed handguns within courthouses. Further, school safety zones often include public schools. Thus, the federal law would only permit law enforcement officers to carry concealed handguns, without restriction, into those portions of a school safety zone that are not "state or local government property, installations, buildings, bases or parks." When carrying a concealed handgun through a school safety zone surrounding a public school, then, a law enforcement/peace officer must be careful not enter the public school's premises unless called to duty on those premises.³

The restriction on carrying into an establishment that serves liquor is both state and federal. Federal restrictions on the carrying of concealed handguns will continue to apply to law enforcement officers under the Law Enforcement Officers Safety Act. Thus, law enforcement/peace officers may not carry concealed handguns into establishments that serve liquor.

The full text of the Attorney General's opinion letter is available online at

¹ With respect to school safety zones, Ohio's statute contains some exceptions allowing licensees to carry their concealed handguns within motor vehicles, so long as they are just driving through or dropping children off at the front door. These exceptions would also apply to off-duty law enforcement officers.

² "Peace officer" includes nearly all police organizations within Ohio, including county sheriffs and deputy sheriffs, members of municipal police departments, state university law enforcement officers, park officers, township police constables, airport police officers, and numerous other specially designated law enforcement officers.

³ Generally, licensees may carry concealed handguns through a school safety zone so long as they merely passing through the safety zone, are not within the safety zone for a school function, and do not enter the school's premises or building. For example, a licensee may drive through a school safety zone.

Court Vacates Arbitrator's Decision to Reinstatement Police Officer Who Admittedly Lied While Providing Sworn Testimony During a Criminal Trial of a Fellow Officer

by Jonathan J. Downes, Esq., and Benjamin S. Albrecht, Esq.
Downes, Hurst & Fishel

Background

The Hamilton County Court of Common Pleas recently vacated an arbitrator's award that reinstated a Cincinnati police officer admittedly guilty of dishonesty. During a two-day arbitration hearing in October, the City established that the Grievant was guilty of dishonesty when he admitted to lying under oath as a witness during the criminal trial of his friend and former Field-Training-Officer ("FTO"). Nonetheless, the Arbitrator reinstated the Grievant, less a three-day suspension. Per R.C. § 2711.10, the City appealed to the court of common pleas seeking to have the arbitration award vacated.

Facts—Briefly

In November 2000, several police officers were involved in a physical struggle with a suspect they were attempting to arrest. During the struggle, the officers used both physical force and chemical irritant to handcuff and restrain the suspect. Following the physical struggle, the suspect died while in the custody of the Police Department.

Because of the struggle to restrain the suspect, multiple calls for assistance were issued over the radio. As a result, numerous officers from multiple jurisdictions arrived at the scene. The Grievant was one of the officers arriving on the scene. Although arriving after the struggle, the Grievant had a particular interest in the struggle as his friend and former FTO was actively involved in the physical restraint of the suspect. During a subsequent conversation with a supervisor, the Grievant observed his friend demonstrate the physical restraint he utilized on the suspect. The Grievant was later asked about the hold he observed.

Due to the death in custody, multiple investigations ensued. Both a criminal and internal investigation were handled by the Police Department. During the criminal investigation, the Grievant was asked to demonstrate the hold utilized by his friend. In fact, the Grievant was asked multiple times to demonstrate the restraint shown by his friend on November 7, 2000. The officer who used the physical hold was later tried criminally for his actions and involvement in the death of the suspect. The Grievant was called as a witness by the prosecution during the hearing. The arbitrator concluded that the Grievant presented a different hold than he previously demonstrated during the criminal investigation. The arbitrator determined the Grievant "intentionally" changed his demonstration of the hold 'because it didn't look as threatening as the other movement.' Further,...(Grievant) indicated that he did 'lie' during his testimony." The Grievant lied "on his own in order to present a less-threatening hold to the jury." Although the arbitrator determined the Grievant's behavior was "egregious," he reduced the termination to a three-day suspension. Per the arbitrator, the three-day suspension was consistent with

the Disciplinary Table contained in the Police Department's Manual of Rules and Regulations.

In response to the arbitrator's reinstatement of a dishonest police officer, the City filed a Motion to Vacate the Arbitrator's award consistent with Chapter 2711 of the Ohio Revised Code. The Hamilton County Court of Common Pleas determined that the arbitrator exceeded his authority and vacated the award.

Findings of the Court

- The Grievance Procedure in the parties' collective bargaining required that discipline be for "just cause;" therefore, the Disciplinary Table in the Department's Manual of Rules and Regulations was not binding;
- An arbitrator's award must draw its essence from the terms of the collective bargaining agreement;
- "Just cause" means that the arbitrator is required to determine the reasonableness of the disciplinary penalty in light of the nature, character and gravity of the misconduct;
- The arbitrator's analysis did not focus on the terms of the collective bargaining agreement, but rather the arbitrator relied solely upon the terms of the Manual when determining what level of discipline was appropriate;
- An Employer may implement a disciplinary table for consistency with potential punishments, but the implementation of a table does not absolve an Employer from complying with "just cause" provisions in a collective bargaining agreement;
- Although the City raised the issue, the Court did not conduct or provide a public policy rationale/analysis in support of its decision because the Arbitrator's award could be vacated on other grounds;
- The Court cited the Arbitrator's conclusion that "honesty and service to the community are expectations of all law enforcement officers. A violation of this trust impairs an officer's ability to perform the duties of his/her job."
- The Union has filed its Notice of Appeal following the decision of the Common Pleas Court; therefore, the matter may not yet be fully resolved.

Based upon the court's ruling, Employers possessing a Disciplinary Table are not necessarily bound by them. Rather, both the Employer, in issuing discipline, and the arbitrator, when reviewing the discipline, are likely bound by the "just cause" provision negotiated and contained in the parties' collective bargaining agreement. However, if a Table/Schedule is negotiated and contained and/or referenced in a collective bargaining agreement, the Employer and arbitrator will likely be bound by the negotiated Table/Schedule. It is important to recognize that should an Employer choose to develop a Disciplinary Table/Schedule for fairness and/or consistency, such a Table should not be drafted in such a manner that usurps the authority and discretion of the Employer to issue discipline for just cause.

Should you have any further questions, comments or requests regarding this matter please do not hesitate to contact this office at (614) 221-1216. DOWNES, HURST & FISHEL is an OHPELRA sponsor.

Recent Developments from page 2

<http://www.ag.state.oh.us/sections/opinions/2004/2004-028.pdf>. The full text of the Law Enforcement Officers Safety Act of 2004 is available online at:

<http://www.leaa.org/218/218text.html>. While the Attorney General's opinion letter does not have the force of law, courts routinely defer to the Attorney General in matters within his or her realm of expertise. As the Attorney General is empowered to implement several provisions of the concealed carry statute, it is likely that a court facing the issues described above and decided by the

opinion letter would come to the same conclusion.

For more information, please contact:
Jeffrey A. Mullins, Esq.
Jill A. May, Esq.
Coolidge, Wall, Womsley & Lombard
33 West First Street, Suite 600
Dayton, Ohio 45402
Telephone: 937-223-8177
Fax: 937-223-6705
e-mail: mullins@coollaw.com
e-mail: may@coollaw.com

The law firm of COOLIDGE, WALL, WOMSLEY & LOMBARD is an OHPELRA sponsor.

© Copyright 1997–2004, Coolidge, Wall, Womsley & Lombard, Co L.P.A., All rights reserved. This material has been prepared by the law firm Coolidge, Wall, Womsley & Lombard Co., L.P.A. The information herein is abridged from laws, court decisions, administrative rulings, and general legal information and should not be construed as legal opinions on specific acts. Readers should not act upon information contained on this website without professional guidance.

OHPELRA Welcomes New Members

Since the last issue of *OHPELRA Update*, the following new members have joined OHPELRA and NPELRA. Welcome to our organization, and we hope to see you at our next event!

Gayle E. (Buddy) Berry
Assistant Director for Employee
Relations & Information Services
Wright State University

David Carmany
Regional Manager
PARS (New Sponsor)

Shawn Garver
Director, Personnel Services
Hamilton County Board of
MR/DD

Priscilla Hapner, Esq.
Prospicio Consulting, LLC

Jim Kovacs
Human Resources Manager
City of Wadsworth

Elisabeth Krugh
HR/Benefits Coordinator
Genoa Township

Douglas L. Lewis
City Manager
City of Conneaut

Larry Lovejoy
Secretary and Chief Examiner
Dayton Civil Service Commission

Brad Niemeyer
Project Engineer II
Allen County Sanitary Engineer's
Department

Marilyn Snyder
Director of Personnel
City of Parma Heights

OHPELRA's Fall Seminar — The Anatomy of a Termination

Schedule

8:30 - 9:30 a.m. — Registration and Continental Breakfast

9:30 - 10:30 a.m. — Conducting the Investigation
Deborah S. Adams, Esq.
Frost Brown Todd, LLC
Cincinnati

10:30 - 10:45 a.m. — Break

10:45 - 11:45 a.m. — The Pre-Disciplinary Hearing
Evelyn A. Whilding and Marsha Jordan-Smart
Greene County Board of Commissioners
Douglas E. Duckett, Esq.
Butler County Board of Commissioners

11:45 a.m. - 12:45 p.m. — Lunch Provided

12:45 - 1:30 p.m. — Preparing for Arbitration
Donald L. Crain, Esq.
Frost Brown Todd, LLC
Middletown

1:30 - 1:45 p.m. — Break

1:45 - 3:30 p.m. — The Arbitration Hearing
— A Mock Presentation

Arbitrator: Raquel Dowdy-Cornute
Miami University
Counsel for the Employer: Donald L. Crain, Esq.
Counsel for the Union: Kevin J. Locke, Esq.
Pepple & Waggoner, Ltd.
Cleveland
Plus an OHPELRA cast of characters!

OHPELRA THANKS ITS 2004 CONTRIBUTING SPONSORS

See the links on our web site at ohpelra.org for links to these sponsors and more information. Please consider our sponsors when seeking professional services, and thank them for supporting OHPELRA!

Baker & Hostetter, LLP
Columbus, Cincinnati,
and Cleveland

Bernardini Consulting Services
Columbus

CareWorks
Dublin

CompManagement, Inc.
Dublin

Coolidge, Wall, Womsley & Lombard
Dayton and Xenia

Downes, Hurst & Fishel
Columbus

Dublin Management Group
Dublin

Frost Brown Todd, LLC
Cincinnati, Middletown, and
Columbus

McGohan Brabender, Inc.
Dayton

PARS
Columbus

Pepple & Waggoner, Ltd.
Cleveland

Personnel Profiles, Inc.
Covington, KY

The Segal Company
Chicago, IL

OHPELRA's program is designed to help you handle this most difficult of all human resources actions, from the first stage of the investigation through the formal arbitration process. We will look at:

Conducting the Investigation. While few of us have formal training in investigatory techniques, the job of finding out what happened often lands in our laps. An investigation gets even trickier when it involves difficult questions of sexual conduct, personal relationships, and even allegations of criminal wrongdoing. One of OHPELRA's most popular and entertaining speakers, attorney Deborah Adams of Frost Brown Todd, will offer tips on how to conduct an investigation, using this scenario alleging off-duty sexual misconduct.

The Pre-Disciplinary Hearing. How should you conduct the pre-disciplinary hearing that we are required to offer classified employees? Is the employee entitled to a full-evidentiary hearing in front of a neutral hearing officer? OHPELRA members Evie Whilding, Marsha Jordan-Smart, and Douglas Duckett will lead us through a mock pre-disciplinary hearing, and attendees will have the chance to discuss the hearing and offer different views on how to approach this process.

Continues on page 6

OHPELRA Website Changes

Be sure to check out the OHPELRA web site at www.ohpelra.org for new information online. If you are a member and have forgotten the user name and password for the member-only portions of the website, please e-mail webmaster Steve Barker at barkes@odjfs.state.oh.us.

OHPELRA, BSSA Join as *amici* and Court Reverses SERB Order

Summary prepared by David A. Riepenhoff, Esq.,
associate attorney with Downes, Hurst & Fishel

RECENTLY, THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION (“OHPELRA”) joined with the Buckeye State Sheriffs’ Association as *amicus curiae*, arguing in favor of the employer’s position in a case involving midterm bargaining disputes. *Amicus curiae* literally means “friend of the court,” and permits a party that is not involved in a particular case to advise the court on its position.

In this case, the Hamilton County Court of Common Pleas overturned a State Employment Relations Board decision that held that an employer could not implement a tuition reimbursement program during the term of the collective bargaining agreement after the union refused to bargain over the effects of the program.

The Oak Hills Local School Board and the Union were parties to a collective bargaining agreement. The agreement contained no provision pertaining to tuition reimbursement. Four months after the agreement was renegotiated, the School Board notified the Union that it wished to “bargain over the effects” that a partial tuition reimbursement program at Xavier University “may have on the terms and conditions of employment.” The Union refused to bargain over the matter and the School Board implemented the program unilaterally.

The Union filed an unfair labor practice with SERB, arguing that it was under no obligation to bargain the issue. Since the Union chose not to bargain, the School Board could not implement the plan because it was a mandatory subject of bargaining.

SERB’s administrative law judge (“ALJ”) stated that the parties had not developed a procedure in the collective bargaining agreement to deal with mid-term bargaining disputes such as this one. Therefore, she applied the standard for determining an employer’s obligation to bargain as stated in the case of *In re Toledo City School Bd. of Ed.*, SERB 2001-05(10-01-01):

A party cannot modify an existing collective bargaining agreement without the negotiation and by agreement of both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the agreement became effective that requires a change to conform to the statute.

In *Toledo*, SERB further stated it would follow the same test as above for cases involving issues not covered in the collective bargaining agreement, such as the issue involved here. Based on this statement, the ALJ found that the Employer committed an unfair labor practice by implementing the plan. It was stipulated that neither of the two conditions stated in the *Toledo* standard were present in this case.

SERB adopted the proposed order of the ALJ and the case was appealed. The magistrate in the Hamilton County Court of Common Pleas upheld SERB’s decision and the employer filed objections to the Judge.

Judge Crush stated that the agreement **did** contain a midterm bargaining dispute procedure in its management rights clause:

1.0101 All matter[s] pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of this Agreement are subject to collective bargaining between the Oak Hills Local School District Board of Education . . . and the Oak Hill Education Association . . .

Because the Judge found that the agreement contained a “midterm dispute resolution procedure,” the *Toledo* standard **did not** apply.



Judge Crush then held that because the School Board offered to subject the tuition reimbursement plan to collective bargaining, and the Union refused to bargain, pursuant to *In re Youngstown City School Dist. Bd. of Ed.*, SERB 95-010 (6-30-95), the Union waived its right to bargain. The Employer properly implemented the plan.

The case has been appealed by the Union and by SERB and is currently pending in the First Appellate District of Ohio. OHPELRA and BSSA have again joined as *amici* and filed an *amicus* brief with the Appellate Court.

Considerations for public employers:

Though this decision avoided analysis of the controversial *Toledo* standard, it is important, nonetheless. The Order reaffirms the scope of the language in management rights clauses. Also, the decision lends support to the position that the union waives its right to bargain if it refuses to do so. Specifically, though a narrow effect of the decision, the Judge explicitly held that the language cited from this particular agreement stated a “midterm dispute resolution procedure.” Finally, the decision limits the applicability of the *Toledo* standard. At least in Hamilton County, this case should have a formidable impact on the merit of a union’s refusal to bargain as an attempt to unilaterally veto programs that an employer offers to bargain midterm.

Jonathan J. Downes, of DOWNES, HURST & FISHEL, and Douglas E. Duckett, BUTLER COUNTY PERSONNEL DEPARTMENT, prepared and submitted the *Amicus Curiae* briefs on behalf of OHPELRA and BSSA before the Hamilton County Court of Common Pleas. Both Mr. Downes and Mr. Duckett are long-time OHPELRA members. Bill Deters of ENNIS, ROBERTS & FISHER represented the Oak Hills Local School District.

The case is *Oak Hills Local School Dist. Bd. of Ed. v. State Employment Relations Bd.*, Hamilton Common Pleas No. A-03-02526 (February 2004).

DOWNES, HURST & FISHEL is an OHPELRA sponsor.



OPERS Health Care Preservation Plan (HCPP)

THROUGHOUT THE SPRING AND SUMMER OPERS has been contacting employers and employees about their proposed **Health Care Preservation Plan (HCPP)**. As employer representatives we are being asked by OPERS to make sure our employees understand the ramifications of the proposed changes and encourage them to contact OPERS with questions and comments. All employers are asked to be familiar with the DRAFT HCCP and its potential impact on them and their employees. Remember that the HCCP has not yet been adopted by the Retirement Board; it's slated to be voted on in early fall so it's important to give them any input you want to share as soon as possible. The OPERS web site www.opers.org offers the opportunity to give feedback online or you can call the Employer Call Center at 888-400-0965 with your ideas.

As all of us are aware, the rising cost of health care has become a national problem that will affect all pension systems, both public and private. As reported by OPERS, in the public sector, 64% of

all states are likely to increase cost sharing and retiree contributions while 10% of all states are likely to terminate health care plans for future retirees. The primary causes for these statistics are health care costs rising at double digit rates, the reality of the first baby boomers approaching retirement, and workers retiring younger and living longer. OPERS staff are working toward a goal of preserving health care options for OPERS members. By taking proactive steps now, OPERS hopes to be in the position to preserve health care into the future.



Fall Program from page 4

Preparing for Arbitration. Most arbitrations are won or lost before anyone sets foot in the hearing room — based on preparation. Attorney Donald Crain of Frost Brown Todd, with decades of experience in labor arbitrations, will share his tips on how to prepare a successful case for the arbitrator.

The Arbitration Hearing. OHPELRA programs feature practical tips for success — not just theory — and in that spirit, we will conduct a mock arbitration of this case. Raquel Dowdy-Cornute will serve as our arbitrator, and attorneys Don Crain and Kevin Locke of Pepple & Waggoner will represent the employer and union. OHPELRA past presidents and members will play the roles of various witnesses in the case, which should offer some light moments in a day of learning.

And at the end, you get to say how you would have decided the case! The group discussion of what worked and what didn't is often the most helpful part of the learning process.

The cost will be \$125 for members, \$150 for non-members. People can get full copies of the brochure and register on line at www.ohpelra.org.

PAGE 6

The logo for OHPELRA Update. It features the letters 'OHPELRA' in a bold, sans-serif font, with a stylized outline of the state of Ohio to the left. The word 'Update' is written in a larger, bold, sans-serif font to the right of 'OHPELRA'. The entire logo is set against a dark, textured background.

c/o Erie County Department of Human Resources
2900 Columbus Avenue
Sandusky, OH 44870