

Public Safety Employee Benefits Act Interpreted by the Supreme Court of Illinois

Raquel Lee
The John Marshall Law School
Juris Doctor Candidate, Expected May 2018

Local government leaders strive to maintain service levels for the public while abiding by budgets. For example, local governments care for public safety officers, such as by providing pensions or disability benefits. Nevertheless, spending by local governments in caring for public safety officers has increased dramatically and strained government budgets due to a well-intentioned statute called the Public Safety Employee Benefits Act (“PSEBA”).¹

Under PSEBA, an employer must pay the entire premium of the employer’s health insurance plan for a law enforcement, correctional probation officer, or firefighter who suffers a catastrophic injury or is killed in the line-of-duty.² This coverage is extended to the injured employee, the injured employee’s spouse, and for each dependent child of the injured employee.³ The employee’s spouse is entitled to free health insurance coverage for the remainder of the life of the employee, or until the spouse remarries, and the employee’s children are entitled to free health insurance coverage until they reach the age of majority.⁴ Payment of lifetime health insurance coverage costs is costly, and yet these benefits are paid entirely by local governments and their taxpayers.

PSEBA has a conscientious and sensible intent, in that, the law is designed to provide health insurance coverage when a public servant’s is killed or sustains severe injuries caused while protecting and serving. However, PSEBA, as a statute, has been found to be vague, lacking definition of many important terms. As a result, the Supreme Court of Illinois has interpreted the statute mostly using legislative history. Thus, PSEBA has expanded outside its intended purpose and as currently applied, is overly inclusive.

This article will explore the interpretation and application of PSEBA by the Supreme Court of Illinois over the years since its enactment in November 1997.⁵ In view of Supreme Court of Illinois precedent, this article attempts to understand how PSEBA affects local governments and proposes beneficial reform.

The Supreme Court of Illinois Interprets “Catastrophic Injury” under PSEBA

The Supreme Court of Illinois first ruled on PSEBA in 2003 in a long-awaited decision: *Krohe v. City of Bloomington*, 789 N.E.2d 1211 (Ill. 2003). The issue in this case was whether, under section 10(a) of PSEBA, the term “catastrophic injury” was synonymous with an injury resulting in a line-of-duty disability under section 4-110 of the Illinois Pension Code (40 ILCS 5/4-110).⁶ According to section 4-110, line-of-duty disability pensions are paid to firefighters who “as the result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, [are] found to be physically or mentally permanently disabled for service in the fire department.”⁷ Unfortunately for local governments, the court found these terms are synonymous.

¹ 820 ILCS 320/10

² 8 Ill. Law and Prac. Cities, Villages, Etc. § 281

³ *Id.*

⁴ *Id.*

⁵ 820 ILCS 320/10

⁶ *Krohe v. City of Bloomington*, 789 N.E.2d 1211, 1212 (Ill. 2003)

⁷ 40 ILCS 5/4-110

The plaintiff, Bill Krohe, was a firefighter employed by the defendant, the City of Bloomington. Pursuant to section 4-110 of the Illinois Pension Code, the City's pension board awarded plaintiff a line-of-duty disability pension, under section 4-110, for injuries sustained in the line-of-duty.⁸ Despite receiving this pension, plaintiff nevertheless asked the City to continue paying his and his family's health insurance premiums, as required by section 10(a) of PSEBA.⁹ The City declined plaintiff's request insisting the injury was not "catastrophic."

The court focused on the indication of the legislative intent in the definition of "catastrophic injury." The problem was that the legislature nowhere explicitly defined the term "catastrophic injury" in PSEBA.¹⁰

The court rejected all of the City's proposed interpretations of this term. The court rejected the argument that the phrase "catastrophic injury" could be construed as only those injuries that "severely limit the earning power of the affected employee,"¹¹ only those injuries that preclude a firefighter, as a result of a line-of-duty injury, from obtaining gainful employment elsewhere, which provides a salary comparable to that of a firefighter,¹² or only those injuries that are "financially ruinous," rendering a firefighter "incapable of engaging in any gainful employment."¹³ Despite the reasonable definitions of "catastrophic injury" put forth by the City, the court stated that not one of the definitions relied upon the statute's plain language.¹⁴ The court stated that the defendant's definitions originated from dictionary definitions of "catastrophe," as well as statutory definitions borrowed from other jurisdictions.¹⁵ Instead, the court applied PSEBA's legislative history.

Both prior to and after the vote on PSEBA, two different state congress members, including the Bill's sponsor, Representative Art Tenhouse and Senator Laura Kent Donahue, remarked that PSEBA's intent is to provide continued health benefits to officers and firefighters, and their families, that are "killed or *disabled in the line of duty*."¹⁶ This explicit phrase, "killed or disabled in the line-of-duty," was uttered at three separate occasions both before and after the Bill was voted upon and was not an isolated "eleventh hour" statement.¹⁷

Consequently, the court stated that the legislative history and debates could not be clearer.¹⁸ The court found that, in light of the unambiguous legislature history concerning clarification that a "catastrophic injury" can mean "disabled in the line of duty," the court found that this term is synonymous with the definition from section 4-110 of the Illinois Pension Code.¹⁹

The result of this ruling continues to have serious financial consequences for local governments who employ full-time public safety officers, such as firefighters, police, and correctional officers. This decision means that an employee and his/her family may receive lifetime health insurance benefits even if they are not disabled to the point where he or she cannot work. Surprisingly, this ruling seems to contradict the common sense meaning of catastrophic.

The Supreme Court of Illinois Determines When PSEBA Attaches

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 1213.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1213-14.

¹⁵ *Id.*

¹⁶ *Id.* at 1215.

¹⁷ *Id.*

¹⁸ *Id.* at 1214.

¹⁹ *Id.* at 1215.

After *Krohe*, the Supreme Court of Illinois applied PSEBA again in 2011 in *Nowak v. City of Country Club Hills*, 958 N.E.2d 1021 (Ill. 2011). Here, the court decided an issue on timeliness. The court answered the question of when the officer's employer becomes statutorily obligated to pay the entire health insurance premium for the injured officer and his family.²⁰

Plaintiff, Don Nowak, was injured in the line-of-duty while attempting to make an arrest, and he did not return to work as a police officer.²¹ After the injury, plaintiff continued to receive 100% of his salary for twelve months pursuant to the Public Employee Disability Act (PEDA)²², and he continued to have health insurance premiums deducted from his paychecks during this time. Three years after the injury, plaintiff applied for disability benefits, and the City's police pension board awarded plaintiff a line-of-duty disability pension under the Illinois Pension Code.²³ Concurrently with the pension award, pursuant to section 10(a) of PSEBA, the City immediately began paying 100% of plaintiff's health insurance premiums.²⁴ Soon thereafter, plaintiff requested reimbursement from the City for the health insurance premium costs deducted from his PEDA paychecks.²⁵ As a result, the plaintiff sued the City for the deducted health insurance premiums.²⁶

The issue of this case was, when did the City's obligation to pay entire health insurance premiums under section 10(a) attach?²⁷ Unfortunately, section 10(a) is silent as to when an employer's obligation attaches. According to the court, there are two points in time when the employer's obligation could have attached: the date when an officer "suffers a catastrophic injury," or the date on which the officer is declared permanently disabled and awarded a line-of-duty disability pension consistent with the ruling in *Krohe*.²⁸

Again, the court referred to the legislative history and debates they used in *Krohe* to interpret the timing ambiguity of PSEBA. According to the relevant legislative history, PSEBA was enacted to protect officers who already have been forced into retirement by a line-of-duty injury.²⁹ Thus, PSEBA provides a *postemployment* benefit, designed to ensure that the termination of an officer's employment, whether by death or by injury, does not leave his or her self or family without employer-sponsored health insurance coverage.³⁰ That is, PSEBA ensures continuing health insurance coverage following the *termination* of the officer's employment. Furthermore, the court found that termination only occurs when the officer's is awarded a line-of-duty disability pension.³¹

In this case, plaintiff's employment was not terminated until the Illinois Pension Board awarded plaintiff a line-of-duty disability pension, thus, making him eligible for health insurance coverage under PSEBA.³² The court therefore ruled that the City was not required to pay health insurance premiums until after a line-of-duty disability pension was awarded.³³

²⁰ *Nowak v. City of Country Club Hills*, 958 N.E.2d 1021, 1022 (Ill. 2011)

²¹ *Id.*

²² 5 ILCS 345/1

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 1023.

²⁶ *Id.*

²⁷ *Id.* at 1024.

²⁸ *Id.*

²⁹ *Id.* at 1025.

³⁰ *Id.* at 1025-26.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 1029.

The Supreme Court of Illinois Defines “Emergency” under PSEBA

In 2012, the Supreme Court of Illinois decided a consolidated case brought by two injured firefighters against the Board of Trustees of Orland Fire Protection District.³⁴ The first firefighter sought payment of health insurance premiums under PSEBA. The second, different firefighter brought action against the defendants seeking a declaratory judgment compelling payment of health insurance premiums under PSEBA.

The first firefighter, Michael Gaffney, was injured in a live-fire exercise that included smoke and obstacles and was instructed to treat it as an actual emergency.³⁵ During the exercise, a fire hose became hooked around a “loveseat type chair,” and Gaffney moved the loveseat with his left arm to free the hose.³⁶ He suffered a career-ending injury to his shoulder and was subsequently awarded a line-of-duty disability pension.³⁷ Additionally, Gaffney demanded payment of health insurance premiums under section 10 of PSEBA,³⁸ but the defendants responded stating that it would not provide the benefits because his injury did not meet the four requirements of section 10(b) of PSEBA.³⁹ Specifically, the defendants did not agree that the injury or death occurred as the result of the officer’s response to fresh pursuit, *the officer or firefighter’s response to what is reasonably believed to be an emergency*, an unlawful act perpetrated by another, or during the investigation of a criminal act.⁴⁰ The defendants argued that Gaffney’s injury did not occur during an “emergency” because the situation was not urgent, it did not call for immediate action, and the Gaffney was not facing unforeseen circumstances.⁴¹ The defendants argued that Gaffney could not have reasonably believed he was responding to an emergency when he knew and understood that he was participating in a training exercise.⁴²

However, Gaffney argued that the language of PSEBA does not require an actual emergency, but only a reasonable belief of an emergency under section 10(b).⁴³ Further, Gaffney argued that since PSEBA’s language does not exclude a training exercise as an emergency situation, PSEBA should be construed liberally to achieve its purpose of conferring benefits upon public safety employees injured in the line-of-duty.⁴⁴ Gaffney argued that the training exercise required urgency and immediate action under the circumstances, and he is entitled to continuing health coverage benefits under PSEBA because his injury occurred in response to what he reasonably believed to be an emergency.⁴⁵

Again, the court was tasked with the objective of statutory construction to give effect to the intent of the legislature of the term “emergency.”⁴⁶ Once again, the court looked to to the legislative intent of the statutory language, in other words, its plain and ordinary meaning. The court found that “*a response to what is reasonably believed to be an emergency*” requires public safety employees to respond to emergencies, whether they are real or not.⁴⁷ According to the court, a false fire alarm provokes the same response from firefighters as a real one.⁴⁸ The court found that if the General Assembly intended to limit an “emergency”

³⁴ *Gaffney v. Bd. of Trustees of Orland Fire Prot. Dist.*, 969 N.E.2d 359, 363 (Ill. 2012)

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 371.

⁴⁰ 820 ILCS 320/10

⁴¹ *Gaffney v. Bd. of Trustees of Orland Fire Prot. Dist.*, 969 N.E.2d 359, 371 (Ill. 2012)

⁴² *Id.*

⁴³ *Id.* at 370.

⁴⁴ *Id.* at 370-71.

⁴⁵ *Id.* at 371.

⁴⁶ *Id.* at 372.

⁴⁷ *Id.*

⁴⁸ *Id.*

only to those events representing an actual or real threat to the public, it would not have added the modifying language “reasonably believed” to the phrase.⁴⁹ Further the use of the word “emergency” in this context suggests an intent to cover dangerous situations arising in a firefighter’s employment, including an emergency that arises during a training exercise involving a live fire.⁵⁰ The court found that in Gaffney’s case, he was injured as a result of a response to what was reasonably believed to be an emergency, and thus was eligible for health insurance benefits under PSEBA.⁵¹

The second firefighter, Brian J. Lemmenes, injured his knee during a training exercise.⁵² However, in this training exercise, no live fire was present.⁵³ Nevertheless, Lemmenes claimed that he performed “under emergency circumstances” and that he responded “as if it were an actual emergency.”⁵⁴

The court found that Lemmenes’s training exercise simulated an actual supermarket fire, but did not include any live fire or unforeseen circumstances.⁵⁵ Notably, the exercise was performed under “controlled conditions.”⁵⁶ Therefore, the court found that Lemmenes’s case did not involve any unforeseen circumstances involving imminent danger requiring an urgent response.⁵⁷ Lemmenes understood that he was participating in a training exercise despite the efforts to simulate an emergency situation.⁵⁸ The court found that these circumstances of Lemmenes’s case, in contrast to Gaffney’s situation, did not satisfy the requirements of section 10(b) of PSEBA because he was not injured as a result of a response to what was reasonably believed to be an emergency, and thus, was ineligible for health insurance benefits under PSEBA.⁵⁹

PSEBA’s Application to Occupational Disability Benefits

The most recent Supreme Court of Illinois case regarding PSEBA was decided in 2017. As noted above, the court held, in *Krohe*, that the phrase “catastrophic injury” in section 10(a) of PSEBA is synonymous with an injury resulting in a line-of-duty disability pension under section 4-110 of the Illinois Pension Code. *Bremer v. City of Rockford*, 76 N.E.3d 1271, 1272 (Ill. 2016) recently decided whether that same phrase is also synonymous with an injury resulting in an *occupational* disease disability pension under section 4-110.⁶⁰

Plaintiff, William Bremer, was employed as a firefighter by the defendant, the City of Rockford. Bremer filed an application for an occupational disease disability pension under section 4-110.1 of the Illinois Pension Code with the City of Rockford firefighters’ pension board, and his pension became effective.⁶¹ Three years later, defendant informed Bremer that it would no longer pay the premiums and that he would be required to pay the premiums if he wished to maintain the benefits.⁶² Consequently, Bremer then applied to defendant for continuing health insurance benefits under section 10 of PSEBA.⁶³ Defendant determined that plaintiff did not establish that he suffered a catastrophic injury as required by section 10(a),

⁴⁹ *Id.* at 374.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 366.

⁵³ *Id.* at 375.

⁵⁴ *Id.*

⁵⁵ *Id.* at 375.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Bremer v. City of Rockford*, 76 N.E.3d 1271, 1272 (Ill. 2016), as modified on denial of reh’g (Apr. 7, 2017)

⁶¹ *Bremer v. City of Rockford*, 76 N.E.3d 1271, 1272–73 (Ill. 2016), as modified on denial of reh’g (Apr. 7, 2017)

⁶² *Id.* at 1273.

⁶³ *Id.*

based on his receipt of an occupational disease disability pension.⁶⁴ Accordingly, defendant denied Bremer's application for continuing health insurance benefits.⁶⁵

In response to the plaintiff's argument that he qualified for PSEBA benefits due to an occupational disease disability, the court held that they have consistently defined "catastrophic injury" as being a term of art that means an injury resulting in a line-of-duty disability pension. However, the court stated that an occupational disease disability pension awarded under section 4-110.1 is not, by definition, a line-of-duty disability pension under section 4-110. As noted by the court, the General Assembly set forth different eligibility requirements for section 4-110 line-of-duty disability pensions than section 4-110.1 occupational disease disability pensions.⁶⁶ Those separate provisions employ different language in awarding disability pensions based on injuries or diseases suffered under different conditions.⁶⁷ Thus, Bremer's argument is wrong on its face. The court also noted that nothing in PSEBA's legislative history indicates an intent to expand the definition of "catastrophic injury" to include other types of disability pensions awarded under other sections of the Illinois Pension Code.⁶⁸ Therefore, the court held that a "catastrophic injury" under PSEBA is not synonymous with an injury resulting in the award of an occupational disease disability pension under the Illinois Pension Code.

Conclusion

The cases summarized above demonstrate that the Supreme Court of Illinois has not had an easy time understanding the full breadth of PSEBA due to the vague and undefined language used by the General Assembly in enacting PSEBA. In all four cases described above, the Supreme Court of Illinois resorted to or at least strongly considered the affect of legislative history in making a final ruling.

The effect of vague statutory language has obviously led local governments to invest a significant amount of legal resources and fees trying to obtain more clarity from the Supreme Court of Illinois in determining their obligations under PSEBA. But more importantly, the effect of these rulings has led to significant amount of money being paid out to former public servants. According to Illinois Municipal League, the amount paid out by local governments has increased dramatically between the years 2003 and 2010. During this seven-year period, the annual cost of PSEBA awards grew from \$358,094 in 2003 to \$2,783,812 by 20120 – an increase of 677%.⁶⁹ This dramatic increase in spending for health benefits strains local government budgets and is a significant strain for local governments.

As clearly shown from the decisions above and the statistics provided, the Supreme Court of Illinois has not significantly narrowed PSEBA's scope, nor can it without more clarity within the statute. Therefore, it is up to the Illinois legislature to help local governments fix this issue by enacting clearer legislation.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 1279.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *The High Cost of PSEBA Expansion*, Illinois Municipal League (April 2011), <http://www.iml.org/file.cfm?key=4992>