ALRA advisor....

Association Of
Labour Relations Agencies

February 2001

PROGRAM COMMITTEE'S
Preliminary Plans for ALRA 2001 Montreal

The Program Committee is pleased to report that it had a productive meeting in Montreal on October 21st and appears to be off to a good start in planning a relevant and exciting program for the 50th anniversary of ALRA. We are fortunate to have Montreal as a setting for planning ALRA 2001. The city is culturally diverse and in a province that is rich with interesting labor history.

Sunday will be a special day because it is the day that we officially will honor returning ALRA alumni. We hope to welcome back many old ALRA friends and colleagues. After ALRA President Steve Meck's opening address, there will be a formal presentation honoring the ALRA alumni, who responded to invitations to attend ALRA 2001. This presentation will be followed by a session highlighting 50 years of ALRA history and 50 years of significant labor events in the U.S. and Canada. This session most likely will be divided into two parts, highlighting the first 25 years (of ALRA and key labor events during that period) and the second 25 years (of ALRA and key labor events during that period). The day will end with our traditional roundtables, which are always an ALRA favorite.

Monday will be a departure from traditional conferences in that we are not going to advertise the conference and do not intend to make money on ALRA 2001. Quebec employees generally take their holidays before and during the time of our conference. Consequently, most potential advocates' day attendees would either be on holiday on Monday or just returning to work that day. Fortunately, this conference falls on the heels of an incredibly successful conference in Philadelphia. Although Monday is not going to be a traditional Advocates Day, it still will have a "formal" tone. We hope that the mayor, or some Montreal dignitary, will formally welcome the delegates to the city. This will be followed by a keynote address by Roy Heenan, a lawyer from Montreal who has written a book comparing the development of labor history in Canada to labor history in the U.S. We are very fortunate to have received a confirmation from Heenan so early in the year – and we are grateful to Warren Edmondson for making the call that resulted in Heenan accepting our invitation. Heenan's address will be followed by a plenary session featuring heads of U.S. and Canadian agencies with presentations keyed into Heenan's address.

Bob White will be the luncheon speaker. He is the former president of the Canadian Labour Congress and former president of the Canadian Auto Workers. The story of the Canadian Auto Workers' split from its international has been captured in a film entitled "Final Offer" which has been an ALRA offering in past conferences, including the conference in Burlington, Vermont in 1991

There will be two breakout sessions after lunch. One will feature a Montreal company that does business in the U.S. (Quebecor) which will include presentations from both union and

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Program Committee's Preliminary Plans for ALRA 2001 Montreal

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management, focusing primarily on recent negotiations which resulted in a 10 year contract and enabled a Buffalo, N.Y. plant to remain open. The proposed title of this session will be "A Long Road to a Long Contract". PC member Mary Helenbrook participated in these negotiations and will help assemble this panel, with assistance by Roger Lecourt from the Quebec Ministere du Travail. The other breakout session will feature a public sector topic and will present the tensions created between labor relations and quality of education. Joel Weisblatt will be assisted by John Mather in assembling this panel.

Monday potentially may close with a plenary session by a Quebec organization, Fonds de solidarite FTQ, which was established to raise money for the creation and maintenance of jobs in Quebec by aggressively investing its members' money. The Fonds has been abundantly successful in its investments and mission. After this session, we hope to end the day with a reception at the Olympic Stadium and are inviting the Fonds to co-sponsor this reception.

The E-Board approved the Program Committee and Arrangement Committee's proposal to spend Tuesday in Quebec City, capital of the province. We will board a train which will leave from our hotel early in the morning and proceed to Quebec City. In the past, delegates have commented that they would like more time later in the conference to follow up on Sunday roundtable discussions. Riding the train to Quebec City will be an excellent opportunity for delegates to continue those roundtable discussions on an informal basis.

We will arrive mid-morning in Quebec City and a bus will take us to the Parliament Building, where we hope to secure a room for an educational and interesting plenary session, commencing with a presentation by a professor of of labour history. The history of labour in Quebec is very unique in that Catholic Church was very involved in its origins. We hope to follow the labor history segment with a presentation about the current high union penetration in the province, and, finally, we hope to end this session with a wrap-up by a dignitary from the Quebec Ministere du Travail. The Arrangements Committee intends to offer tour options of the Parliament Building for delegates' guests while delegates attend this session.

We then propose a quick buffet lunch so that delegates and their guests will have an opportunity to spend the afternoon in Old Quebec City, which is fascinatingly beautiful. We also anticipate that one of the Canadian agencies will be able to arrange a reception at the Citadelle at the end of the day, following the changing of the guards. The Citadelle is the second oldest fort built by Europeans in Northern America. We want you to know that everything – Parliament, Old Quebec City and the Citadelle – is within easy walking distance. This will be a long but exciting day and a true celebration of Quebec! We are proposing an "early" bus back to Montreal and a "later" bus for those who wish to dine in the city.

The Professional Development Committee again is taking responsibility for Wednesday's training sessions. At this time, we have not made arrangements for a luncheon speaker on Wednesday. There appeared to be a general sentiment to just enjoy each other's good company during this last luncheon of a very full conference.

In preparing the program - speakers, introducers and moderators – the Program Committee will remain mindful of diversity and gender balances. We think that ALRA 2001, as proposed, is reflective of its distinctive setting and we hope delegates will leave with a better understanding of labor-management relations in the Northeast and this unique province. We received a lot of good suggestions and have other proposals which we can fall back upon if we start to have difficulties in securing speakers.

ALRA 2000 – DON'T NEED A RECOUNT

Jack Toner

The efforts of the Pennsylvania Labor Relations Board with praiseworthy support from their neighbors in New Jersey, set a new profit record breaking the old record so convincingly that even counting "pregnated chad" would not make a difference. The Philadelphia Conference more than doubled the money made for ALRA By the previous record holder – The 1997 Washington, D.C. Conference.

However, while putting money in the bank is nice, that is not what the ALRA Annual Conference is all about. It's about collegial sharing of knowledge and experiences. That sharing happens best when the proper environment is created. Jim Crawford and friends did a fantastic job in creating that environment.

The location was perfect – it allowed the attendees to explore all that Philadelphia has to offer – from the Liberty Bell to the "Walk Thru" Heart at the Franklin Institute; all the events were thoughtfully planned to remind us of the unique features of Ben Franklin's hometown from the "Hoagie" at the opening reception to the Mummer's Strut at the closing Banquet (Bob Hackel's Camden Aquarium reception also reminded us that New Jersey is much more than the NJ Turnpike and Bedroom Communities for Philadelphia And New York – a Wonderful Evening.)

The obvious attention our hosts paid to all the logistical details of running such a large, successful conference, was evident throughout our stay.

The program itself went without a hitch – again in large part to the effort the Pennsylvania Board expended in making sure all arrangements were worked out well in advance. The speakers, almost to a man, (literally true – hint to the new Program Committee – Diversity) were excellent. It certainly was a big help to have such well-respected "Locals" on the Program Committee (i.e. Jack Markle and Joel Weissblatt) who were

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ALRA 2000 – DON'T NEED A RECOUNT

Jack Toner

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able to reach out to their colleagues in the Philadelphia/New Jersey Area and convince them to participate. Also, the Professional Development Committee chaired by Bob Anderson did more than rightfully could be expected in putting together sessions of particular interest to our delegates.

Jim Crawford & Bob Anderson

The round tables on the first day were as always successful. It's amazing that despite coming from different agencies which enforce various laws, different governing bodies and indeed different countries, how much we share in the way of common concerns and how helpful it is to hear fellow ALRA delegates discuss how an issue was addressed at their Agency.

Advocate's Day brought a number of interesting and thoughtful presentations including a history lesson from the Lt. Governor Of Pennsylvania, Mark Schweiker. The comment by a Union-side Attorney that the employees of a company he operated did not desire to be unionized because they were well treated and Dan Nielsen's serf like deference to titles were particularly memorable.

The Four Panels that afternoon each had such knowledgeable panelists that it was difficult to make a selection.

Tuesday's discussion by Denise Keyser and Richard Schall of the implications of the electronic world of communications on our laws and decisions regarding employee and workplace access by Labor Organizations, was illuminating especially since so many of our implementing statutes were passed in the 1930s, long before the electronic revolution.

Speaking of things that go back to the 1930s, later that morning we had the panel Of John Truesdale, Walter Gershenfeld, Dick Markowitz and William Whiteside (talk about a lack of diversity!). Their remarks, especially Truesdale's, resonated with the Wisdom Of The Ages – Dan's comments regarding prehistoric creatures may have been appropriate here. Emil Kaunitz's presentation of the New Jersey Public Employment Relations Commission's Electronic Case Tracking System, which was developed by Specialty Systems Inc., demonstrated what is possible when a first rate administrator like Bob Hackel teams up with true technical experts. We all wish we had similar systems at our Agencies.

The Philadelphia Conference surely has set a standard for future conferences to be measured by.

ALRA AND FMCS DISCUSS CONCERNS ABOUT CREDENTIALLING PROGRAM FOR LABOUR MEDIATORS

On July 18th, the U.S. Federal Mediation and Conciliation Service announced an initiative to establish credentials for mediators in four areas of practice: commercial, regulatory, employment and labor. This effort was undertaken in conjunction with Pepperdine University and several entities associated with the Alliance for Education in Dispute Resolution: Cornell University, MIT, the Usery Center at Georgia State University, Ohio State University, UCLA, Willamette University, SPIDR, IRRA, National Academy of Arbitrators, and the ABA Section on Labor and Employment Law. The FMCS press release stated that, in addition to establishing credentialing standards, the FMCS would establish and administer rosters in these areas, much the same as its existing arbitration rosters.

This announcement generated a good deal of discussion at the Annual Conference in Philadelphia. Many member agencies were concerned that they had not been consulted about the labor mediation aspects of the plan, and about the possible long term implications of a federal roster for labor mediation agencies at the state and local levels.

The ALRA Executive Board conferred with FMCS Liaison Eileen Hoffman and FMCS Regional Director Scot Beckenbaugh, and a working group was formed to make further inquiries. Discussions ensued after the conference with FMCS Deputy Director George Buckingham, who consulted with Director Barnes and clarified the FMCS's intentions. According to Deputy Director Buckingham, the FMCS did intend to establish credentials and rosters for mediators in the fields of commercial, employment and regulatory negotiations. The Service also intends to articulate standards for credentialing in the labor field, which will track what it requires of its mediation staff. However, the Service has no intention of establishing, sponsoring or endorsing any ad hoc roster of labor mediators.

This understanding was confirmed in a September letter from ALRA President Steve Meck:

Dear Director Barnes:

I am writing in my capacity as President of the Association of Labor Relations Agencies, of which the FMCS is a valued member. At my request, ALRA Vice-president Dan Nielsen has recently been in touch with your Deputy Director, George Buckingham, about the Service's plans to offer credentialing of mediators in four subject areas beginning this Fall:

"The Federal Mediation and Conciliation Service (FMCS) today announced a new initiative to credential outside private and public sector mediators in four specific dispute resolution disciplines: labor, employment, commercial, and regulatory negotiations." [July 18, 2000 press release]

The listing of labor mediation caused a good deal of consternation at the ALRA conference this year, and it was in response to this that Dan spoke with Scot Beckenbaugh and Eileen Hoffman and, subsequently, Deputy Director Buckingham.

From the press release on the credentialing initiative, it appeared that the Service was going to establish or sponsor a roster of ad hoc labor mediators. Naturally this raised concerns for many state and local agencies, both on practical and philosophical grounds. The Service's intentions have been clarified in Dan Nielsen's discussions with George Buckingham, and it appears that much of the concern has been misplaced.

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ALRA AND FMCS DISCUSS CONCERNS ABOUT CREDENTIALLING PROGRAM FOR LABOUR MEDIATORS

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As I understand it, the FMCS credentialing initiative is primarily aimed at serving your clientele in non-traditional areas and relieving the caseload pressure created by the expansion of that portion of your caseload. The Service intends to state what it believes to be the necessary credentials for a labor mediator, and these credentials will track your own requirements – a minimum of three weeks of classroom training and six to twelve months of field experience. The Service does not, however, intend to offer credentials to any non-FMCS employee, nor to establish, endorse or offer a roster of ad hoc labor mediators, and will not be referring any such work to sources outside of the FMCS. If this is the case, I believe that the other ALRA agencies will have little reason to question the FMCS initiative. Assuming this to be an accurate summary of the Service's plans, we will communicate it to the other ALRA member agencies. Please let me know if my understanding is in some material way inaccurate or incomplete.

With the explosion of interest in mediation, and the rise of "instant mediators," any effort to maintain the high standards of practice and service established by the FMCS and its sister public agencies is a positive step. In order to avoid any miscommunication or undue concern in the future, I would ask that the Service let ALRA know if any changes in the current plans are contemplated, either as to the offering of a roster through the FMCS, the credentialing of non-FMCS personnel, or any other significant change that might implicate the operations or jurisdiction of ALRA agencies. Such notice would allow the other public sector mediation providers to get information at an early stage and offer any input that may be relevant. I am confident that such an arrangement would prevent the type of misunderstanding that arose earlier.

Finally, I would like to comment on the assistance of Eileen Hoffman, Scot Beckenbaugh and George Buckingham in defusing any tensions that could have been created by this situation. The quality of these people makes it easy to understand the Service's deservedly fine reputation in the field of disputes resolution.

Very truly yours,

Steve Meck
President
ALRA

The ALRA Executive Board is continuing to monitor the development of the credentialing program.
The FMCS coordinator for the credentialing project is Gary Hattal, Director of the FMCS Institute.
Any member agencies with question should direct them to:

Dan Nielsen
ALRA VP-Finance
? (262) 637-2043
e-mail : werc-djn@execpc.com

Mediation/Arbitration: Why Now?

Speech by George Adams delivered in Toronto

When I first became active in labour relations, our workplace dispute resolution systems – mediation and arbitration – had evolved to a state of what might be called "institutional purity" or specialization. Arbitrators judged. Mediators assisted the parties in their negotiation. These separate roles were never confused or mixed.

Arbitrators know they were passive and impartial actors, receiving evidence and argument through the adversary process. This format was fortified by the requirements of natural justice. Arbitrators for example, would not have dreamed of meeting separately with a party and courts would not tolerate it.

In marked contrast, mediators did meet separately with individual parties. They did this to permit parties to confide in them and to test positions and to translate messages. No mediator would have wanted the power to impose a settlement. A mediator's responsibility was to help the parties to fashion a voluntary settlement.

Therefore, back in those ancient times, to suggest the combination of mediation and arbitration functions in one hybrid dispute resolution entity would have been heresy of the highest order – a genetic mis-engineering, if you will. Lon Fuller, Pauler Weiler and other high priests of institutional form would have warned that mixed functions only serve to undermine the integrity and effectiveness of each separate function. They would say parties will not confide in a mediator with the power to decide and no one will respect the fairness of a decision based on information received in the secrecy of a caucus meeting with only one of the sides of a dispute. A more intuitive but similar response of practitioners at the time would have been "that dog don't hunt".

Today, however, mediation/arbitration is a growing feature of public sector labour relations. Many parties voluntarily use it to renew their collective agreements. Some public sector labour relations statutes have imposed it on or make it available to the parties. Mediation/arbitration is also regularly used in the resolution of grievances over rights. What has happened? Is all that previous theory about the nature of judging and mediation wrong? the answer, I suggest, is both "yes" and "no".

Yes, because pure arbitration and pure mediation systems come with their own considerable imperfections. Arbitration procedures, whether dealing with interests or rights, can be highly formal, time consuming, easily dominated by professionals and very expensive. The compulsory arbitration of interest disputes also suffer from the absence of shared rules, policies and principles which make common law judging or rights arbitration work. The result has been highly adversarial proceedings in which parties are encouraged to take extreme positions in anticipation that the arbitrators will split the difference. It has also been suspected that the availability of interest arbitration undermines voluntary settlements – a feature the academics refer to as the "narcotic effect" of interest arbitration.

Mediation/arbitration is aimed at remedying these imperfections by acknowledging that public sector interest disputes are very challenging negotiations which, to be mediated, may require giving the mediator leverage or muscle, if you will. Arbitration supplies that muscle and is the default procedure, with that mediator as arbitrator should mediation fail. In mediation/arbitration the mediator uses his/her collective bargaining expertise and negotiation skills to lead the parties to agree, all the while holding the club of possible arbitration to encourage the taking of reasonable positions.

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Mediation/Arbitration: Why Now?

Speech by George Adams delivered in Toronto

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The parties still retain much more control over their affairs than in a pure arbitration and can use the mediator's "guidance" to respond to and even shape constituency pressures. The process is fast, comprehensible and informal. And it is a process in which the clients and counsel are partners in participation.

The answer, however, is also "no" because mediation/arbitration in the hands of those not alert to the challenges of successfully combining conflicting dispute resolution functions can do quite a bit of damage to the parties, the public and to the neutral. We know how arbitrators and mediators should conduct themselves. We do not have the same shared understanding about the appropriate table manners for mediator/arbitrators. Moreover, no neutral can understand a dispute as well as the parties and in the fast moving mediation/arbitration process the mediator may miss important details which can come home to roost if a decision is ultimately required. There is also the reality that one tends to use the power one possesses. It is therefore tempting to simply coerce the parties rather than take the time to really mediate a consensual solution. But using the threat of decision is easier said than done without provoking concerns for bias and unfairness. Everything is further complicated by the incentives against confiding in this two-headed neutral.

Nevertheless, mediation/arbitration has worked. The concept is to focus almost all the neutral's energy on mediating an agreement while maintaining just enough integrity to impose an enduring settlement if necessary. Traditional mediation techniques are employed insofar as agenda formation and communications are concerned. Interest-based discussions on possible options can also be factored in. However, the big difference from traditional mediation is the need and ability of the neutral to create uncertainty over what the arbitrator might do and to use that unique knowledge about the arbitrator to show parties the challenges they face if they do not agree or at least become more reasonable. In the hands of someone who genuinely does not want to impose an agreement, mediation/arbitration can produce a surprising degree reasonableness and, therefore consensus.

Concerns over the possible problems of mediation/arbitration have sometimes been addressed by adding experienced nominees and, on occasion, by having a formal arbitration phase if mediation fails. I have performed mediation/arbitration alone, with nominees with a formal arbitration phase, with a less formal arbitration phase or with none. Indeed, I have had the pleasure of conducting 12 tripartite mediation/arbitration commissions simultaneously arising out of the 1995 national rail strike. The design of a mediation/arbitration intervention is still in its infancy. Most labour relations dispute resolution innovations began in tripartite forms but evolved after the parties had trained enough neutrals to be confident in single neutral mandates. In short, there is no one or correct way to mediation/arbitration. It is a matter of tailoring the device to the needs, readiness and problems of particular parties and labour relations sector.

In conclusion, mediation/arbitration in another pioneering effort by our labour relations community. More specifically, it illustrates the continuing dynamism and professionalism of broader public sector labour relations which this conference also symbolizes. What needs to be done, to insure the effective institutionalization of mediation/arbitration, is what you will do this afternoon – sharing experiences and assessing how mediation/arbitration best fits within the constellation of other processes and the pressures which impact on public sector labour relations.

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ALRA: UP CLOSE AND PERSONAL

⇨ Linda McIntire resigned as Co-chair of the Program Committee, effective December 31st. She accepted an appointment as Deputy Commissioner, Vermont Department of Labor and Industry and began work with her new employer in January.

Linda's involvement with the ALRA began in 1991 when the Vermont agency hosted the ALRA conference. Over the years she became more active in the organization and last year co-chaired the Professional Development Resources subcommittee.

The Vermont Department of Labour and Industry will benefit from Linda's intelligence, insight and sensitivity.

Mary L. Johnson , a member of the Program Committee, has agreed to accept the position as Co-chair for the Montreal conference. Mary is a twenty-year veteran of the National Mediation Board in Washington where she is a Litigation Counsel/Senior Hearing Officer.

From the ALRA executive both a welcome and thank you!

Linda McIntire

THE STREAK IS BROKEN"

⇨ Not the streak of baseball's Iron Man, but that of Los Angeles'. After perfect attendance for 20 years, retirement prevents Doug Collins from joining us in Philadelphia. On Advocates' Day, he'll be gingerly dipping his toe into his first full week of reduced activity. Of course, he hopes to continue his arbitration practice near its current level, so one could ask how much time Doug will actually have to enjoy the life of leisure I certainly envision for myself on the other side of that delicious word, RETIREMENT

⇨ Commenting on his ALRA conference streak, Doug opined that his first conference, in 1980 at Vancouver, B.C., set an unbeatable standard. His memories of it remain clear: lodging at the Four Seasons Hotel in Vancouver, pods of killer whales cavorting about during the obligatory boat trip to Victoria, with acres of flowers at the Butchart Gardens, shopping, and a dinner in the elegant Empress Hotel overlooking the inner harbor and impressive Parliament buildings. He hopes to attend the ALRA Conference the next time we gather in California. Invitations anyone?

⇨ On January 12, 2000, Richard E. Halnan was reappointed as a public member, and Phillip E. Hanley was appointed to his first term as a management member, of the Phoenix Employment Relations Board.

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ALRA: UP CLOSE AND PERSONAL

ALRA advisor....

ALRA Advisor is published for members of the Association of Labour Relations Agencies (ALRA) and their staff . Copyright February 2001 by ALRA. Please send your comments or information to any of the following:

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Past President John Higgins and Current President Steven Meck

Rick Curreri

Joel M. Weisblatt

Phil Hanley currently works as Assistant General Manager of Operations for the Phoenix Transit System. He sees his function on the Board as that of a neutral, considering both sides of each issue and trying to reach a fair and impartial result. Phil's transition hasn't been difficult, since he has always paid attention to each side's interests and needs so he can explain them to the other. He also articulates his approach as a modified Golden Rule: treat people as he would like to be treated in the same situation.

His experience as a human resource manager, lead labor negotiator, and participant in grievance processing and arbitration, always with a commitment to progressive labor relations, began 28 years ago and continues. To this rich history, Phil adds a family and personal labor background; his father was a long-time assistant business agent of the Tulsa Laborers Union, and Phil worked as a union laborer during summer vacations from college. And his time with Arizona's Industrial Relations Association (last eight years on the board) has burnished his ability to work with labor, management, and impartial persons.

TRAINING GRANTS

A How-to on applying for a training grant …

Ruthanne says, It's not that tough, really

Sure you're tired of those useless self-help and how-to articles, but don't turn the page yet. This one will actually help you, unless you're not interested in almost fee money and sharing war stories with other member agencies in Canada and the U.S.A. This year Ruthanne Okun secured $2,000 from ALRA to help her agency, the Michigan Employment Relations Commission, refresh their mediators in refined interest-based bargaining concepts, which they will pass on to their clientele.

- Think of a function or task your agency and some nearby agencies perform, such as mediation, holding hearings, running elections, et cetera.

- Imagine your agency doing this task better, and figure out types of training that could produce such improvements.

- Contact folks at nearby agencies, including across the border, ask them to go through step 2, and then discuss your conclusions.

- Review the training grant criteria on the ALRA web site and try harder to to find other agencies, since applications for joint training get preferred treatment when it comes time to give out the money.

- At any time in the process, contact members of the training grant sub-committee (names and contact info below and on the Web site) for practical help; most have successfully shepherded a grant proposal through the process.

- Consult the ALRA web site and other agencies for tips on trainers.

- Submit your proposal at least 2 months before your training is scheduled, and at least 6 weeks before the next Executive Board meeting (set at press time for February and July, 2001). Hold yourselves in readiness to answer clarification questions from the training sub-committee or Executive Board.

- Enjoy your training and camaraderie with ALRA's sincere support!

- ALRA has plenty more in its bank account and A strong desire to fund more grants (up to a $7000 cap)

Eagerly awaiting your call are:

Ruthanne Okun, Michigan
Tel: (313) 256-3540
Fax: (313) 256-3090
ruthanne.okum@cis.state.mi.us

Ruthanne got $2000 to refresh Michigan's mediators in how to train parties in interest-based bargaining techniques.

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Lance Teachworth, Minnesota (tel) 651-649-5421 (fax)651-643-3013 lteachworth@medior.state.mn.us	Lance worked with his counterparts in Iowa and Wisconsin to conduct two joint staff training meetings on representation case management, conducting hearings, joint labor-management committees, and interest-based bargaining. ALRA awarded a $3000 grant to help defray the cost of the joint training program conducted in 1999.
Josee Dubois, Canadian Artists (tel) 613-996-4053 (fax)613-947-4125 dubois.josee@ic.gc.ca	Josee is looking into possibilities for Canadian Agencies to share training. U.S.A. agencies looking for Canadian partners could use Josee's contacts.
Pamela Bradburn, Washington (tel) 425-739-1775 (fax)425-739-1770 Pamela <perc@oly.wa.net>	Pamela recommends against scheduling a 5 day training session like she did for Washington, Alaska, and Oregon. Work on writing decisions was helpful, but the reality of being away that long made participants a little frantic.

ALRA TRAINING GRANT UTILIZED TO PROVIDE COLLABORATIVE BARGAINING REFRESHER

With the assistance of a $2,000 training grant from the Association of Labor Relations Agencies (ALRA), Mediators from the Michigan Employment Relations Commission (MERC) recently participated in a highly successful "Train the Trainer" session in collaborative bargaining techniques. The two-day session was conducted this past Spring by Hal Stack, the Director of the Labor Studies Center of the College of Urban, Labor, and Metropolitan Affairs at Wayne State University in Detroit, Michigan.

The training of the 11 person mediation staff was the culmination of a project which commenced at MERC in early 1999 to refine the collaborative bargaining approach then being utilized by its labor mediators. The process was aptly titled the "Collaborate to Contract" or "C to C" approach to collective bargaining. Recognizing that many public sector entities in Michigan, particularly those in the educational arena, are seeking to resolve the terms of their collective bargaining agreement utilizing a collaborative versus a confrontational approach, the sessions with Mr. Stack assured that MERC mediators are better equipped to respond to this demand. The ALRA Training Grant was utilized to pay Mr. Stack's per diem rate, as well as travel and other incidental costs associated with the training. In addition to the "Train the Trainer" information that Mr. Stack so skillfully imparted, the program served as a "refresher" course in

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ALRA TRAINING GRANT UTILIZED TO PROVIDE COLLABORATIVE BARGAINING REFRESHER

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collaborative bargaining. Highlighted were those areas in which traditional and cooperative bargaining techniques differ, including: requiring that the parties focus on interests - not positions; exploring options for mutual gains; utilizing objective criteria, not power, to resolve issues; and separating personalities from problems.

The Mediators reviewed techniques with which to assist parties in applying problem solving and communication skills through brainstorming; consensus decision-making; effectively using flip charts; active listening; and closure techniques. The training included: preparing for the first bargaining session by developing opening statements, agreeing on a list of issues; and establishing ground rules and bargaining committees.

Based on the written evaluations of participants, the objectives of the program and the outcomes identified at the beginning of the sessions were all successfully met. As a result, MERC mediators are better able to offer Michigan's public sector labor/management community with an alternative to resolving their collective bargaining disputes through the "C to C" process.

The materials prepared by Mr. Stack and distributed at the training session are available for ALRA members to borrow (see, the resources section on the ALRA web-page), and Mr. Stack is highly recommended as a trainer for organizations seeking to train and/or refresh their staffs in collaborative bargaining concepts. Visit the ALRA web-site or contact MERC Bureau Director Ruthanne Okun, at (313) 256-3501, for more information.

ALRA EXCHANGE COMMITTEE

Joel M. Weisblatt, Chair

Over the past few years, ALRA has studied the concept of staff exchanges and now established the ALRA Exchange Committee. This *ad hoc committee* is intended to provide member agencies and their staffs with a clearinghouse for possible exchange programs, which might serve the interests of agencies or staff members or both. These programs could take any one of many possible forms, ranging from formal long-term exchange or personnel loans to informal arrangements of short duration which might suit narrow, specific need.

The concept of facilitating exchanges is that there may be numerous advantages in short or long-term experiences with another agency. First of all, the opportunity to perform in a different jurisdiction could provide any agency employee with great training. This obviously has potential benefits for the employing agency and the staff member as well. Training experiences arising from on-the-job experiences in a varied set of circumstances provide the type of "hands on" learning that most ordinary training programs strive to develop through simulations and mock exercises.

Another possible advantageous application of an exchange might involve an agency "borrowing" another agency's staff member to work on a specific type of matter that no current staff member has handled before. For example, a similar ballot election with which it has had no prior experience. That agency could seek experienced assistance from another ALRA agency. The result might be that the receiving agency's staff gets to work together with an experienced professional, gaining hands on training for future matters.

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ALRA EXCHANGE COMMITTEE

Joel M. Weisblatt, Chair

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An additional scenario where an exchange might be of great value is where a jurisdiction has a revision to its statute. For example, the implementation of interest arbitration for the first time might make it very valuable for an agency to to arrange an exchange with another ALRA agency in order for a staff member experienced with administering interest arbitration to work in new jurisdiction for a transitional period.

Yet one more application of the exchange concept could involved the exchange of a mediator from one agency to another. Perhaps there is a slow period for mediation services in one jurisdiction while a need to exists elsewhere. The staff mediator might enjoy the change of environment and might gain great insight from applying his or her skills in different context. Such an exchange might even be made on a single case basis. If it involved a double-team effort to resolve a difficult dispute, both staff members could benefit from the collaborative effort and share experience.

As can easily be seen, there are an endless number of possible situations where formal or informal exchanges might be of great value to all concerned. The ALRA Exchange Committee is designed to be flexible in its approach to requests. Any inquiries can be handled on an individual response basis in order to structure the exchange to the specific needs of the parties concerned.

The ALRA Exchange Committee is available to serve as the clearinghouse for requests from either agencies or individual staff members with an interest in an exchange. There are issues related to compensation, benefits and seniority which could require some attention and the Committee would assist in finding answers and solutions in that area. For example, the Intergovernmental Personnel Act (IPA) is an established federal program which provides the basis for exchanges between governmental entities. This program is not limited to exchanges between federal agencies but also contemplates activity involving other levels of government. There are state regulations which may allow the "sending" agency to retain the staff members on payroll for the extended period of an exchange or loan. There may also be grant money available for facilitating staff exchanges.

There is a vast opportunity for training and professional development through staff exchange experiences. ALRA is the natural organization to facilitate these exchanges for agencies and staff members that may not have an established means for finding an exchange mechanism.

For any agency or staff member interested, *please contact the Committee through its Chair, Joel Weisblatt, or anyone on the ALRA Executive Board.*

DEVELOPING PROFESSIONALLY

Bob Anderson
Vice President Professional Development

Professional development is at the heart of ALRA's mission. Last year, the Professional Development Committee (PDC) provided imagination and leadership in four areas: arranging for training sessions at the annual conference; soliciting and approving training grants; developing the web page (ALRA.org) and other ways to share information about training resources; and continuing the proud tradition of ALRA Academy. We're hard at work (and at play) again this year in each area. Let me tell you who's doing what.

Conference Training Sessions

The Executive Board has charged the PDC with providing at least one-half day of training sessions at the annual conference. In fact, we took charge of all the Wednesday program offerings (except the luncheon speaker). To prove it, we've got reports on each session, to be posted on our Web Page. We've also got a videotape of the Lisa Kohn session on Supervising Professional Employees - call me (609-292-6780) if you'd like to see it.

This year, Scot Beckenbaugh of the United States FMCS and Reg Pearson of the Ontario Ministry of Labour will lead the planning for our Wednesday training sessions. Also serving on the conference training subcommittee are Julio Castillo of the D.C. Public Employee Relations Board; Linda MacRae of the California PERB; Dan Nielsen of the Wisconsin Employment Relations Commission; and Jaye Bailey Zanta of the Connecticut State Board of Labor Relations.

At this point, the committee is planning sessions on these topics:

- Bulletproofing decisions (designed to assist all levels of decisions writers on how and what to avoid in writing decisions subject to appellate review);
- Ethics of neutrality (perspectives, frequent and unique situations that give pause regarding your neutrality);
- Diversity issues and their impacts on our work (focusing on the challenges faced and the sensitivity required in conducting hearings and mediating disputes given increasingly diverse workforces)
- Advanced mediation (focusing on disputes with unique processes – hybrid IBB - , new and contentious issues, media strategies and political players); and
- Supervising and Evaluating Professional Employees (focusing on how to reward and motivate professional employees subject to uniform appraisal and compensation systems).

Let Scot and Reg know if you've got ideas related to these (or other) topics.

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PROFESSIONAL DEVELOPMENT RESOURCES

This subcommittee is charged with helping to make ALRA an integrated community of shared expertise and resources, technologically and in other ways. Last year, the Web Page came into its own, thanks to this subcommittee and Webmaster Tom Worley of the Ohio SERB. This year, the subcommittee is headed by Akivah Starkman of the Canadian Industrial Relations Board and Ruthanne Okun. Also serving on that subcommittee are Antonio Barbosa of the California Agriculture LRB; Marshall Gratz of WERC; Linda MacRae of the California PERB; and Solly Thomas of the FLRA. Ongoing challenges for the subcommittee will be to update information on the Web and to gather information on training resources from agencies that haven't responded to previous surveys. It will also seek to post materials and reports on conference training sessions as well as names and pertinent information concerning trainers.

ALRA ACADEMY

The ALRA Academy which is designed for new Commissioners and Board members and senior staff will be held July 27-29, 2001 in Montreal. The academy provides an excellent introduction to the world of labor relations, the ethics of neutrality, and the services and collegiality of ALRA. The academy program reviews public and private sector labor law, representation procedures, unfair labor practice charges, dispute resolution techniques, hearing procedures, and professional ethics. Trainers, training materials, and most meals are provided at no cost to academy participants.

Jackie Zimmerman of the Illinois State and Local Labor Relations Board will coordinate the academy. Joining her are two graduates of last year's class, Phil Hanley of the Phoenix Employment Relations Board and Antonio Santos of the Puerto Rico Public Service Labor Relations Commission, and two veteran instructors, John Higgins of the NLRB and Julie Hughes of the Illinois Educational Labor Relations Board.

Bob Anderson, Vice President of Professional Development, has overall responsibility for the Academy. Registration is limited. Please contact the Academy coordinator for information or registration.

Need Training Resources?
Go to www.alra.org

Academy Coordinator:

Jacalyn J. Zimmerman
? (312) 793-6480
FAX: (312) 793-4447
Illinois Labour Relations Board
160 North LaSalle Street,
Suite S-400
Chicago, IL 60601-3103

ALRA SPOTLIGHT

ONTARIO MINISTRY OF LABOUR
LABOUR MANAGEMENT SERVICES

400 UNIVERSITY AVENUE, 8TH FLOOR, TORONTO, ONTARIO M7A 1T7
WEB ADDRESS: www.gov.on.ca/lab/main

REG PEARSON DIRECTOR

GENERAL INFORMATION	BUDGET AND STAFFING	
	6.3 Million	FTE …….. 73.5

JURISDICTION: - covers private and public sector except police and jurisdictions covered by Federal Legislation, Police Arbitration Commission. Federal Legislation covers (inter-provincial transportation, (rail, air, shipping, trucking) telecommunications and broadcasting.

ONTARIO LABOUR RELATIONS ACT (LRA)

EDUCATION IMPROVEMENT ACT: covers school boards & teachers and incorporates most provisions of Labour Relations Act.

HOSPITAL LABOUR ARBITRATION ACT (HLDA) covers hospitals , nursing homes, homes for aged, their employers and unions - strikes/lock-outs prohibited – disputes to arbitration.

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT (CECBA) covers the Crown, its employees and their unions - includes essential service framework

FIRE PROTECTION & PREVENTION ACT 1997 (FPPA) covers fire departments and full-time fire fighters Strike/lock-outs prohibited – disputes to arbitration.

PUBLIC SECTION LABOUR RELATIONS TRANSITION ACT 1997 - addresses labour issues raised by restructuring in education, hospital and municipal sector.

NOTE:

The above Acts are adjudicated by the Ontario Labour Relations Board (O.L.R.B.), a separate and independent quasi-judicial tribunal

OFFICE OF MEDIATION:

ASSISTANT DIRECTOR: JOHN MATHER ? 416-326-7326
32 Conciliation officers/Mediators - 10 Admin. Staff

- Provides neutral third party assistance to employers and trade unions in collective bargaining

Conciliation Stage
- Conciliation mandatory to get in strike/lock-out position - 3000 cases per year

Mediation Stage - Voluntary - 1100 cases per year

OFFICE OF ARBITRATION:

PROGRAM MANAGER, RHONDA KURAHASHI ? 416-326-1301

? Rights disputes ? Interest Disputes
? 3,000 requests per year ?2,700 approx.

? OLRA ? HLDA ? FPPA ? First Contract Arbitration

OFFICE OF COLLECTIVE BARGAINING INFORMATION :

PROGRAM MANAGER, KATHIE WATHERHOUSE ? 416-326-1293

- Receives and maintains library of all collective agreements (10,000)
- Collects data and information on wage settlements wage benefits working conditions, strike and lock-outs, collective agreement expirations

Publications: The collective Bargaining Highlights and Quaterly Review on Ontario Collective Bargaining Developments are available in the online publications section
e-mail : weblab@gov.on.ca

Research Services: Confidential research consultations are available to all parties. Customized research from the office's database can be tailored to specific sectors, industries or regions on a variety of subjects.

FEDERAL FILES

Summary of Reports

Wisconsin

Earlier this Fall, the WERC opened a new regional office serving central Wisconsin. The Wausau office is staffed by Steve Morrison and Laura Millott, both new hires for the WERC. Steve Morrison is an experienced attorney with a background in mediation. Laura Millott joined the WERC from her position as Director of Employee Relations with the Rhinelander School District. The opening of the Wausau office continues the Commission's effort to provide more timely service to parties across the state. Nearly one-half of the Commission's staff is now stationed outside of the Madison office. In addition to Madison and Wausau, the Commission has staff out-stationed in Elkhorn, Oshkosh, Eau Claire, Milwaukee and Racine.

Iowa

Iowa Begins Collaborative Training for School Personnel

An unprecedented labor-management initiative, funded by a $108,000 federal grant, is being introduced this fall by the Iowa Association of School Boards (IASB), the Iowa State Education Association (ISEA), and the Iowa Public Employment Relations Board (PERB). This initiative is intended to improve the working relationships between educators and administrators and set a new tone and pattern for labor relations and collective bargaining in the public education arena.

A new state-level Labor-Management Committee (LMC) has been established, called Partners for Collaboration, and seeks to promote the use of collaborative/cooperative interest-based approaches by labor and management in their communications, negotiations, and problem solving. The LMC was formed by IASB, ISEA, and PERB and was recently joined by the School Administrators of Iowa (SAI).

Governor Tom Vilsack calls the initiative, "A step in the right direction that will bring long term benefits to Iowa's children."

"Fostering productive employer-employee working relationships in Iowa public education through cooperative problem-solving methods means more time is focused on our children and how they are learning, and less time is spent on positional or adversarial bargaining. This is good news for the students, teachers, administrators and the taxpayer," concluded the Governor.

Five one-day regional conferences designed to bring together employer and employee negotiating teams from over 200 of the 375 school districts, area education associations, and community colleges, start November 1, 2000 at the Sheraton Hotel in Iowa City. Other dates and sites include Creston on November 8, 2000 at Bernings Cafe Activity Center; November 29, 2000 at Buena Vista University in Storm Lake; November 30, 2000 at the HyVee Conference Center in West Des Moines; and November 7, 2000 at the Holiday Inn Convention Center in Waterloo. These one-day meetings wi1l explore a variety of collaborative problem-solving models and will expose the participants to the essential elements of interest-based cooperative processes that can make working together and bargaining contracts a more positive experience.

The Federal Mediation and Conciliation Service recently approved the national project grant to support the work of the Partners for Collaboration LMC.

Anyone desiring more information about Iowa's initiative should contact:

Jim Riordan, Board Member, Iowa Public Employment Relations Board
514 East Locust, Suite 202, Des Moines, Iowa 50309, Phone: 515-281-4414

Missouri

Missouri State Board of Mediation Has Record Year in FY 2000

During fiscal year 2000, the Missouri State Board of Mediation had a record 66 cases filed, including petitions and requests for technical assistance from public employee groups in Missouri. As a result, Board Chairman John Birch conducted 47 preliminary conferences and 32 employee elections throughout the slate. The Board also conducted four formal hearings. The previous record for petitions was 54 cases filed, set during fiscal year 1999.

One possible reason for the record numbers of petitions may be low pay among government workers, Bob Carico, an official with the American Federation of State, County and Municipal Employees, told the Kansas City Star in a recent interview. "Every politician walks around talking about reducing taxes," he said. "To do that and keep the same level of services, you have to take it out of somebody's hide."

The State Board of Mediation is a five-member panel that directly administers Missouri public sector labor law. While the state has no collective bargaining law as such, it does have what is referred to as "meet and confer." Public employees are given the right to organize and join labor organizations, with the exception of police, deputy sheriffs, highway patrol, teachers, and National Guard members. The Board is responsible for determining an appropriate bargaining unit of public employees and determining majority representative status by conducting an election. Public employers are mandated to meet and confer with the exclusive bargaining agent for their employees regarding salaries and other conditions of employment. Public employers include the state, counties, school districts, municipalities and taxing districts. All petitions for public sector unionization come to the Board, which is composed of two representatives of public employers and two representatives of the employees, as well as a neutral chairman. The chairman and Board members are appointed by the Governor and approved by the Senate.

When disputes arise which the chairman is unable to resolve, the Board is convened to conduct a formal hearing to resolve the issue.

Representation elections are conducted by the chairman, and can last from one hour to as many as 12 hours, involving one to several hundred participants. *-- John Birch*

Michigan

MERC Holds 4th Annual Public Sector Labor Law Conference

The Fourth Annual MERC Public Sector Labor Law Conference was held in June at Michigan State University. The conference marked the 35th anniversary of Michigan's basic public sector statute, and offered training and updates in every area of practice for the 175 attendees. One highlight was a thoughtful presentation on the recent work stoppage in the Detroit public schools by two of the principal players, Dr. David Adamany and John Elliott. The MERC is considering whether to adopt a new format for the conference next year, offering mini-seminars at various times and locations, rather than a single conference.

MERC Affirms Its Policy on Grievance Mediation

In August, the MERC reiterated its policy against having staff mediators provide written recommendations for the resolution of grievance mediation cases, and discouraging parties from naming mediators as part of a grievance procedure or other contractual provision. The Commission's concern is that even non-binding written recommendations might raise questions of neutrality and thus compromise the effectiveness of staff in future disputes.

New York

Buffalo Teacher Strike Resolved Through Mediators' Proposal

On September 20, a formal mediators' proposal issued by PERB neutrals was accepted by both the Buffalo City School District and the Buffalo Teachers Federation, thereby putting an end to a bitter contract dispute during which the District's 4700 teachers failed to report to work on two days and classroom instruction was canceled on another. Teachers had initially failed to report on September 7, the second day of the new school term. When the Superintendent canceled classes for the following day to avoid uncertainty and disruption, BTF asked teachers to report to schools; they worked in their classrooms, but no instruction took place.

Weekend mediation efforts by PERB Director of Conciliation Richard A. Curreri and Regional Director Adam D. Kaufman brought teachers back to work from September 11 through 13, but the job action resumed the next day. The announcement that a mediators' proposal would be issued the following week resulted in agreement by BTF to have teachers return to work pending release of the proposal.

Acceptance of the proposal resulted in a five-year agreement, retroactive to July 1, 1999 and ending on June 30, 2004. Among other changes, it provides for a 13.5% increase to the salary schedule over its term, a phase-in of art, music and physical education in the primary grades, a new provision for health and human service delivery by outside sources, and reductions in termination compensation, employer contribution to retiree health insurance, and early retirement incentive.

Subsequent to agreement being reached, BTF President Phil Rumore and two other BTF officers were held in criminal contempt of a court order that had enjoined the strike. Rumore was sentenced to ten days in jail; all three were fined the statutory-maximum $1000.

PERB Finds Nurses Appropriately Fragmented From Existing Unit Even Absent Bargaining Conflict

Overruling its prior case law, the New York State PERB has held that a petition to fragment nurses from an existing unit may be granted even where there has been no showing of inadequate representation and no proof of a conflict of interest. *Ichabod Crane Registered Nurses Association and Ichabod Crane Central School Dist. et al.*, 33 PERB ¶ 3042 (10/6/00).

Four registered nurses were employed by a school district, and had been represented in a general non-instructional bargaining unit by CSEA since at least 1991. During that time, two collective bargaining agreements had been negotiated, which accorded special benefits to the nurses, apart from the other benefits received by all unit employees.

The evidence was such that PERB affirmed its ALJ's decision that nurses had not been systematically and intentionally ignored by CSEA so as to warrant fragmentation from the general unit on that basis.

The Board went on, however, to note that in initial uniting cases, separate units of nurses historically had been held to the most appropriate in a municipal setting; in school settings, it was held that an initial uniting petition seeking inclusion of nurses with other professional employees would be the most appropriate.

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New York

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These cases rested on a "community of interest" standard. The "conflict of interest" standard had only been utilized where nurses had been initially placed in non-professional or non-instructional units. It found past reliance on the latter standard to be inappropriate, determining that nurses, "based upon their education, training and professional responsibilities and duties…are appropriately placed together in bargaining units, even in the face of a range of working conditions and/or benefit level." As such, the Board held "that nurses are not properly placed in units of non-professional or non-instructional employees."

Significantly, while the Board noted that its decision does not suggest abandonment of its fragmentation standards generally, it went on to state: "We are also mindful…that 'any fragmentation ordered in this case cannot be confined logically to [nurses] and will lead inexorably to similar requests by other employees who can reasonably claim some unique community of interest. We will decide such issues as appropriate should they arise in the future."

-- Rick Curreri

New Jersey

The New Jersey Supreme Court has affirmed a ruling of the New Jersey Public Employment Relations Commission requiring negotiations before a Township changed a longstanding practice concerning the initial salary guide placement of trained and experienced police officers. Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (29016 1998), aff'd 25 NJPER Supp. 357 (30151 App. Div. 1999), aff'd ___N.J.____(2000). For 13 years, the employer placed newly hired officers who had graduated from the police academy and worked for at least one year in another police department on step three of the salary guide.

The Supreme Court agrees with the Commission that initial salary guide practice is mandatory negotiable and while the employer was not bound to maintain that practice for the life of the contract, it was required to negotiate before changing it.

In Jackson Tp. Bd. of Ed. and Jackson Tp. Ed. Ass'n, P.E.R.C. No. 99-62, 25 NJPER 87 (30037 1999), aff'd 26 NJPER 373 (31150 App. Div. 2000), certif. den. ___N.J. ____(2000), an Appellate Division panel upheld the constitutionality of a statute requiring school boards to negotiate over all aspects of extracurricular employment. The Court rejected the argument that allowing an arbitrator to review a decision not to reappoint a coach would constitute an undue delegation of governmental power.

At the end of its decision, the Jackson court questioned the wisdom and propriety of state administrative agencies appearing in appellate proceedings to defend their quasi-judicial decisions. There is a decades-old practice of New Jersey agencies such as PERC, the Merit System Board, and the State Board of education making such appearances in cases deemed to involve the public interest. The Appellate Division panel referred its question to the Civil Practice Committee of the New Jersey Supreme Court; that committee quickly reaffirmed the longstanding practice.

-- Bob Anderson

Ontario

Bill 147 Employment Standard Act Amendments

The Employment Standards Act which, sets out the basic rules for working and the standards of employment in the Province, was amended by the government in December. These amendments fulfill a commitment it made during the election campaign to give employers and employees greater flexibility in designing work place arrangements and to provide a family crisis leave provision.

Employees will now have up to one year for maternity/ parental leave, and up to ten unpaid days off a year for family crisis.

However three areas of the new legislation — hours of work, overtime and holidays — were the subject of both debate and criticism.

The previous standard for hours of work was eight in a day and 48 in a week. Employees, if they agree, will be able to work in excess of eight hours in a day (or "regular day" if it is already over eight hours) or 48 hours in a week up to a maximum of 60 hours per week. Agriculture and construction may be exempt

In the amended legislation overtime would be payable after 44 hours of work in a week. However, if employers and employees are able to agree, overtime may be averaged over a period of **up to four weeks.** Previously, overtime was mandatory after 44 hours.

Employees are entitled to two weeks vacation a year with four percent vacation pay after 12 months of employment. Employers are now required to schedule vacation in minimum one week blocks. In addition, employees are able to make written request to schedule vacation time in shorter periods, including one day at a time.

Ontario's Court of Appeal Has Upheld The Right Of Judges Secretaries To Join A Union

The secretaries had been members of the Ontario Public Service Employees' Union (OPSEU) for more than 20 years. However the Government sought to exclude them from collective bargaining under the Labour Relations Act on the ground that their duties and responsibilities "constitute a conflict of interest with their being members of the bargaining unit"

The Ontario Labour Relations Board denied the request for the exclusion, arguing that secretaries' membership in a union did not conflict with their duties and responsibilities to judges. The government applied to the Divisional Court for judicial review.

Divisional Court quashed the Labour Board ruling, stating in their view, the key issue -- whether the unionization of judges secretaries violated the principle of judicial independence -- was a constitutional issue, and that the Labour Board had no expertise in this area and was therefore not entitled to deference. The Court stated that given the close working relationship with the judges, the secretaries should be seen as an extension of the judiciary., and ruled the unionization of secretaries did conflict with their duties. The union (OPSEU) appealed to the Ontario Court of Appeal.

The Court of Appeal held that the core issue before the Labour Relations Board was whether under s.1.(3) of the Labour Relations Act the judges' secretaries had "duties or responsibilities that, in the opinion of the Ontario Relations Board, constitute a conflict of interest with their being members of a bargaining unit". As a result the matter fell within the jurisdiction of the Labour Board. In addition, the Court noted ," the conceptual presence of judicial independence in a

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case does not automatically transform what is in essence a labor relations issue into a constitutional one".

The government, the Court of Appeal pointed out, was the employer of the secretaries. Therefore unionization did not interfere with judicial independence by depriving judges of any pre-existing independent authority over their secretaries. It simply gave the secretaries the right to collectively bargain their working conditions, rather than having them imposed by the government. As well, the Court noted , the government did not produce any evidence to show that the independence of the judiciary had been impaired over the past 20 years by the secretaries union membership.

In allowing the appeal, the Court noted that the government's role as the employer of judges' secretaries could, itself, be seen as a threat to judicial independence. The Crown was not prepared to acknowledge, as some do, that its role as employer of judges' secretaries itself represents a potential threat to judicial independence. Yet logically, if the Crown's unilateral capacity to interfere with the working conditions of judges' secretaries represents no such threat, it is difficult to see how unionization creates one.

The Labour Relations Act Amended

The Labour Relations Amendment Act, 2000, passed by the Legislature in December includes the following changes:

- A requirement that the Ministry of Labour produce information outlining employees' rights and how to apply for decertification.

  This information will include:

  - Who may make an application for decertification
  - When the application may be made and any applicable Ontario Labour Relations Board (OLRB) rules regarding decertification process.

  In addition, employers are to make "reasonable effort to post and keep posted" this information in the work place, and provide it to employees annually.

- A requirement for the disclosure of the salaries and benefits of all union officials earning in excess of $100,000 annually. This information must be given to union members who request it, and it must be filed annually with the Minister of Labour, who could make the information public.

- The lengthening of the open period of a contract, which is the window for decertification, from 60 to 90 days. In addition, there is a requirement for a one year cooling-off period following and unsuccessful certification drive by a union.

- The requirement for separate ratification and strike votes in first contract situations

- The legislation will also permit employers who do not sell construction services - municipalities, school boards and banks — to tender their work on construction projects to both union and non-union contractors.

- In addition, there are changes to the project agreement section of the Act which allows the parties involved in those projects to negotiate working conditions which may differ from those contained in the provincial agreement. Specifically the amendments eliminate the need to negotiate a new agreement for each project. As well, agreements may now include non-construction work and protect non-union employers hiring unionized non-construction workers from certification.

Union Victory in Ontario Arbitration Case

The Ontario government tried to unfairly "seize control" of the collective bargaining process by choosing retired judges to act as arbitrators in the negotiation of hospital contracts, the Ontario Court of Appeals has ruled in ordering the province to return to the process of electing arbitrators from a pool of candidates agreed to by both unions and the government. The decision was a major victory for tens of thousands of unionized hospital workers, as well as police and firefighters, who don't have the right to strike. Unions representing the workers say the government tried to take over the selection of arbitrators as a way to cut spending on health care. The court also said the appointment of retired judges raised seious doubts about their fairness since they were dependent on the government for future work.

Adams Appointed Mediator/Arbitrator

George Adams agreed to act as mediator/arbitrator in the dispute between the Hamilton-Wentworth District School Board and the Elementary Teachers Federation of Ontario. This consensual appointment by the parties, flows from the Back to School Act (Hamilton-Wentworth District School Board), 2000, which ended a strike/ lock-out situation which began on October 30 and lasted 17 school days.

York University Strike

Classes resumed at Canada's third largest university on January 12. Toronto's York University, with 3,000 students, had been virtually shut down since October 26 when teaching assistants, graduate assistants and contract faculty went on strike. The strikers made up three separate bargaining units represented by the Canadian Union of Public Employees (CUPE). One unit, made up of contract staff, settled on January 5 when they voted, in a Ministry supervised Last Offer voted to accept the employer's offer. The other two units, who also voted, rejected the offer and returned to the table. With mediation assistance, the parties reached a tentative agreement January 11.

The two year deal includes a 2%wage increase in each of the two years and the guarantee of a rebate for any tuition increase during the life of the contract. This was the key issue for the teaching assistants.

The University senate announced that fall term will be extended to February 12, and the winter term will begin February 26 and end May11. *-- Jim Breckenridge*

Alaska Labor Relations Agency

Who Pays the increased Health Premium during Bargaining?

The State of Alaska's financial woes presented the Alaska Labor Relations Agency with yet another difficult question under tight time constraints. The Board concluded that, when an expired collective bargaining agreement (CBA) sets dollar limits for employer and employee contributions toward medical insurance, and when the employer's dilatory conduct contributes to a failure to reach agreement or impasse before expiration, the employer must pay any premium increases above the CBA's dollar limits until the parties reach agreement or impasse. On reconsideration, the Board refused to modify its decision but adopted a deadline at which the parties would be at impasse on medical insurance if they had not yet reached agreement. Before the deadline, the parties managed to reach agreement, and their experts agreed no premium increase was necessary. *continued page…. 26*

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Alaska State Employees Association/AFSCME Local 52, AFL-CIO (union) and the State of Alaska (employer) were parties to a CBA that expired June 30, 1999. The covered employees were entitled by state law to strike, so the employer could lawfully take unilateral action at impasse. The CBA did not address the possibility of premium increases beyond the specified limits on employer and employee contributions. The parties began negotiations for a successor CBA in January, 1999. The union had a proposal on medical insurance ready then, and inquired several times when the employer would be prepared on the topic. The parties disagreed whether an increased premium would be necessary July 1, 1999 to continue coverage, and whether it should be covered by reserves. Medical insurance proposals were finally traded when the employer was ready in May, 1999; the employer offered to share premium increases equally with employees in the successor CBA.

Seven days later, the legislature passed a resolution declaring its refusal to approve and fund any CBA that cost the state more money than its predecessor had. (Alaska's labor law requires the legislature to review and approve the monetary terms of any CBA the executive branch negotiates.) The executive branch interpreted the resolution as preventing it from negotiating increased employer medical insurance contributions, withdrew its proposal, and substituted a proposal that employees pay all premium increases. The union filed an unfair labor practice charge alleging the employer had engaged in surface and regressive bargaining.

The parties continued negotiating after the CBA's June 30, 1999 expiration date. Beginning July 1, the employer deducted from employee paychecks the full amount of the premium increase above the maximum employer contribution set in the CBA. The union filed a second unfair labor practice charge, alleging the employer had unilaterally modified a mandatory subject of bargaining before impasse.

The parties stipulated at hearing they were still bargaining and had not reached impasse. The employer acknowledged health benefits were a mandatory subject of bargaining.

The Board held the employer had not committed surface bargaining, based on the totality of the circumstances, though the panel was disturbed by the employer's slow pace on medical insurance. On the second charge, the Board held the employer had unilaterally modified the mandatory subject of employee contributions to medical insurance before impasse, and ordered it to make the employees whole.

The Board rejected the employer's defense that the legislative resolution prevented it from increasing its contributions toward medical insurance. Noting the legislature had no CBA before it for approval or disapproval when it acted, the Board found the "non-binding expression of opinion that applies only to the legislature" was not a resolution under state law "disapproving the monetary terms of an agreement...Were it otherwise so, the legislature could undermine the collective bargaining process by dictating the terms and conditions of contracts by simply passing resolutions."

Reasoning the employer is obligated to maintain the status quo after a CBA's expiration date, the Board found the status quo required the employer to pay any premium increases beyond the CBA limits on employer and employee contributions. The employer should not be allowed to transfer those costs to employees because "employees would in effect be required to bear the increased costs resulting from misguided projections they had no part in making."

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The Board also rejected the employer's claims of necessity and compelling business justification, noting the employer had ample time between the January start of negotiations and the June 30 expiration date to "negotiate meaningfully" on the topic.

December 2, 1999, the Board decided to reconsider its decision after the employer supplied it with an Alaska Supreme Court decision issued after the record on the Board's case was closed. The Board declined to reverse itself but modified its order to provide that the parties would be at impasse on health care benefits as of December 31, 1999, unless they reached agreement on or before that date.

The Board distinguished the new Alaska Supreme Court decision on its facts. The court had ruled the state was not required to pay negotiated wage increases to public employees before the CBA was approved by the legislature and money appropriated to fulfill its terms (the legislature had failed to act when the executive branch asked, but did later). However, the Board's case involved an earlier step in the collective bargaining process, before any CBA had been submitted to the legislature.

The Board also rejected the employer's argument that the present case should be determined by an earlier Board decision allowing the employer to unilaterally increase employee contributions toward medical insurance. The Board noted the expired CBA in the earlier case limited the employer's contribution toward medical insurance but did not cap the amount of employee contributions, and concluded that was a significant difference from its present case, sufficient to justify distinguishing the earlier decision.

State of Washington Public Employment Relations Commission

Will the Third Time be the Charm at Washington PERC?

In decisions dated a mere month apart, two Examiners dismissed complaints involving union allegations the respective employers had committed unfair labor practices by interrogating union officers about conversations with other bargaining unit members. The Commissioners reversed both Examiners. The Examiner in the third unfair labor practice complaint involving similar allegations will now have the benefit of Commission precedent on the issue, and harmony between Examiners and Commissioners may reign again in the state of Washington.

The first case is City of Vancouver, Decisions 6732 and 6732-A (PECB, 1999). Vancouver involved allegations union officers at union meetings had: disparaged a bargaining unit member; said he needed to be taught a lesson; discussed interfering with raising money for a charity he supported; violated rules by posting his interview in an earlier departmental internal investigation because he had volunteered information as required by the rules, instead of limiting his comments to the exact question, which the union preferred. Several union officers and bargaining unit members who had participated in these union meetings told management about the comments. The employer took the allegations seriously, fearing the subject of the alleged comments could be endangered or interfered with in his work by bargaining unit members who occasionally supervised him. It began an internal review process, and sought to interview a number

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of bargaining unit members, including union officers identified as making the alleged remarks. The union filed a complaint contending the union officers' and members' conversations were protected from the employer.

The Examiner applied the National Labor Relations Board's multi-faceted balancing approach to such issues and concluded the employer had the right to question union officers and members, under the circumstances of the case. The Commissioners disagreed with her conclusion, but adopted the test. They viewed the employer as having overreacted based only on rumors and "venting" by union members, said all employees were being interviewed under the threat of discipline if they didn't cooperate (standard procedure for internal investigations), emphasized the ease of establishing an interference claim, and advised the employer of other possible responses, including asking another law enforcement agency to investigate so the roles of employer and law enforcement would be separated.

The second case is City of Tacoma, Decisions 6793 and 6793-A (PECB, 1999, 2000). Tacoma also involved union members disagreeing with the way another union member interpreted his responsibilities as an employee. As explained by the Examiner, a bargaining unit member was appointed as a union representative to a departmental deadly force review board. The president phoned the union representative during a recess in the board proceedings, and said the representative's role was advocacy, not interrogation, and that the president didn't want to be embarrassed by having the union representative vote against officers. The union representative told the employer about what he saw as an effort to improperly influence his vote. The employer began an internal investigation into the allegations of union interference with confidential review board proceedings. When the union president was interviewed, the union's attorney said the questions were intruding on internal union matters. The union president said he was trying to explain to the union representative that his role on the deadly force review board was to insure the employer behaved properly and to advocate for the officer whose decisions were being questioned. This interpretation was news to the employer. When asked who had contacted him before he called the union representative to the review board, and what that person(s) had said, the president refused to answer despite warnings that his refusal could lead to discipline. The union attorney again stated his belief that the employer had no right to ask a union official to divulge internal communications.

The Examiner dismissed the complaint. He saw the union as attempting to protect only the identity of the person who had phoned the union president, since the union president readily described his conversation with the union representative to the review board. He doubted that participation on the review board was union activity, since the entity had been established outside the collective bargaining process, emphasized that the union had not claimed the source was a bargaining unit member, and noted all the alleged union conversations occurred on the union president's work time. He concluded the alleged conversations, like some other union actions, were beyond the borders of statutory protection.

The Commission took an entirely different approach and reversed the decision. They closed the factual gap found by the Examiner, inferring the union president was seeking to protect a bargaining unit member from the fact that the union president had asserted a right to engage in confidential union communication. They also put the onus on the employer to prove it had a sufficient reason to question a union official under threat of discipline. The Commission held the employer unlawfully interfered when it continued asking the union president questions after he had asserted a union privilege, citing its decision in Vancouver (issued three months after the Examiner's decision in the Tacoma case).

Employment Relations Board of the State of Oregon

Temporary Workers are People, Too

In a precedent-setting decision, a majority of the Board permitted the Oregon Public Employees Union to add temporary workers to bargaining units (strike-prohibited and strike-permitted) that already included a number of employees whose employment was similarly limited in duration, regularity, and continuity, as well as regular, full-time employees. The Board had previously ruled that temporary workers were permitted by law to organize, but hadn't reached the issue in this case.

Oregon regulations define four employment categories: permanent, seasonal (occurring, ending, and recurring periodically), limited duration (determined by project funding), and temporary (non-competitive and non-status appointments for emergency, short-term, or non-recurring needs). The union's bargaining units included all categories except temporary. The State opposed adding temporary employees to the existing bargaining units, suggesting instead that they be placed in their own, separate units.

The Board majority included temporary workers in the existing bargaining units, finding the evidence established a community of interest. Many temporary workers held the same classifications as bargaining unit members. In that situation, temporary workers and bargaining unit members worked side-by-side, performed the same work, were often paid at the same salary range, shared the same supervision, and met the same minimum qualifications. The Board majority noted the employer and union had accommodated the restricted entitlements of seasonal and limited duration categories in their collective bargaining agreement; thus, they would be able to handle the limited entitlements of temporary workers.

The Board majority rejected the employer's suggestion of a separate unit, because the union had asked to include the disputed workers in existing bargaining units, and because of its historical preference for wall-to-wall units.

The Board majority also rejected the employer's argument that temporary workers' relationship with the employer was too tenuous. The evidence established that temporary employees could work up to (and in certain circumstances, beyond) six months in a calendar year. The evidence also showed substantial numbers of temporary employees had moved into bargaining unit positions. And the union's bargaining units already included employees with similarly uncertain and limited employment opportunities, some of whom could work for shorter periods than temporary workers.

Board member Rita Thomas dissented. She argued that temporary workers, by definition, were precluded from holding "positions" and unit clarification petitions, by definition, are used to add "positions" to bargaining units. She reasoned the union should have filed a representation petition for separate units. Thomas also noted both the employer and union had earlier recognized temporary workers weren't like other employee categories, relying on union comments to the legislature in 1985 and 1989, and on a separate appeal process the legislature adopted in 1989 just for temporary workers. Thomas also found the record too slender to reach a conclusion affecting numerous temporary employees (the majority found the state had employed about 1,100 temporary workers on April 30, 1999): only three current temporary workers and five former temporary workers who had moved into bargaining unit positions had testified; the second of two computer printouts of temporary workers made six months apart lacked many of the names on the first, and the record failed to show a pattern or practice of temporary workers becoming permanent workers.

Unilaterally Imposed Final Offer Isn't a Written Contract

The Board's second, recent precedent-setting decision involved an employer's effort to enforce, through unfair labor practice proceedings, a prior notice requirement for union representatives making job site visits; this requirement had been proposed that year by the employer and was included in its final offer. The Board majority held that an implemented final offer isn't a written contract and can't be enforced through unfair labor practice proceedings, which by definition apply to violations of a written contract. On reconsideration, the Board majority held to its initial decision.

Jefferson County and the Oregon Public Employees Union failed to agree on a successor collective bargaining agreement. The union declared impasse, final offers were exchanged about ten days later, and the employer unilaterally implemented its final offer two months after the exchange. One and a half months after the implementation, the union struck for five days. During the pre-strike organizing, a male union organizer spent ten to 15 minutes discussing the need for the strike with a female bargaining unit member who felt economically constrained from striking. The visit occurred on the woman's work time and in her work area. She informed county officials that she had felt pressured. The employer filed an unfair labor practice complaint during the interval before the strike, alleging the union had violated the terms of the implemented final offer.

The three Board members agreed the union hadn't interfered with the woman's labor law rights. The majority held the employer lacked standing to pursue that claim on the woman's behalf since only the injured party, the employee, could file a complaint. The Board majority also held that an implemented final offer isn't the same as the written contract mentioned in the definition of the unfair labor practice of "[v]iolat[ing]" the provisions of any written contract with respect to employment relations". The majority reasoned that only mutually bargained and accepted collective bargaining agreements are written contracts for the purpose of the unfair labor practice definition. In addition, the majority noted the legislature used "offer" in the section permitting unilateral implementation and strikes after impasse, but used "written contract" rather than "offer" for the unfair labor practice definition.

The majority rejected the employer's argument that an implemented final offer is a written contract because the elements of offer and acceptance exist. It noted that none of the private sector cases the employer cited involved similar facts, and that the courts in those cases found an "implied-in-fact" contract based on the parties' behavior. In the present case, however, the majority noted the union never indicated assent to the terms of the implemented final offer. The employer admitted some parts of an implemented final offer couldn't be enforced against a union, and the majority was uncomfortable with putting parties in the position of having to litigate to know which parts could, and which parts couldn't, be enforced. The majority also noted it might have been possible to find an implied consent by the union if the advance notice language had been carried forward from the expired contract. But this language was newly proposed by the employer in the unsuccessful negotiations, and therefore the union's objection was clear.

The majority also discounted the employer's argument that its decision shifted the balance of power in the dispute resolution process toward the union. The majority suggested the employer could enforce the rest of the implemented final offer's terms because they set the employees' working conditions; however, the advance notice language imposed a new burden on the union, not the employees.

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Board member Thomas dissented. She reasoned that earlier precedent held union access language was a mandatory subject of bargaining and therefore, could be unilaterally changed after impasse and included in an implemented final offer. Thomas interpreted the relevant legislation as not distinguishing between a written contract and an implemented final offer, in order to maintain a balance between the parties and to avoid the anomaly of an employer able to implement but unable to enforce, through unfair labor practice proceedings, the terms it had implemented against the union. Thomas concluded the majority decision would encourage employers to propose deleting all employee protections so it could implement only terms favorable to it. She also found that an implied interim contract was formed during the period after implementation, because the union allowed employees to work during the weeks before it struck.

FEDERAL FILES

Federal Labor Relations Authority

Carol Waller Pope, a career Federal employee, was recently sworn in as a member of the Authority for a term ending in July 2004. Succeeding Phyllis Segal, Ms. Pope joins Chairman Donald S. Wasserman and member Dale Cabaniss on the three-member quasi-judicial body administering the labor-management relations program for 1.9 million non-Postal Federal employees.

In October the FLRA announced the publication of a new edition of "Guide to the Federal Service Labor-Management Labor Relations Program," which is designed to provide nontechnical assistance in understanding the rights and obligations of agencies, employees and labor organizations under the Federal Service Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978).

Also in October, the FLRA launched a revised and improved web site at (<www.flra.gov>). Included are new information about the processes of the agency's three components, the Authority itself, the Office of the General Counsel, and the Federal Service Impasses Panel; a new map of the United States with color-coded jurisdictions of the seven FLRA regions; personnel contacts, including hyper-linked e-mail addresses; and summaries of FLRA court opinions, with links to full text, in addition to FLRA and FSIP decisions.

The FLRA announced a joint training session on the occasion of the Impasses Panel's 30th anniversary. The session is to be held in Washington DC on December 11, 2000. Among the topics to be discussed are the different missions of the three components of the FLRA and how they coordinate their efforts when parties file cases in all three entities arising from the same bargaining context. A discussion among current and former members of the FSIP will then address the history of the Panel, the evolution of their impasse resolution procedures, and some of their most important cases. For more information, contact the Authority on (202) 482-6670.

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In July 2000 the Authority convened a focus group of customers to provide views on the quality of the Authority's written legal decisions and the measures that can be used in assessing that quality. In this connection, Chairman Wasserman stated, "The Authority is committed to excellence in the quality and timeliness of its written legal decisions. The views of agencies, unions and other interested persons as to how we might assess and improve this process will be invaluable."

Federal Mediation and Conciliation Service

FMCS has named Richard R. Giacolone the Director of International and Dispute Resolution Services. In this position he is responsible for the delivery of domestic ADR programs and international labor relations and dispute resolution activities. Giacolone had served as special assistant to FMCS Director C. Richard Barnes, as a commissioned mediator with the FMCS, and in labor relations posts representing management, including a component of the Department of the Navy.

The FMCS web site (<www.fmcs.gov>) contains information on the mediator credentialing program referred to in the July 2000 issue of ALRA Advisor; fiscal year 2001 classes offered by the FMCS Institute; and the FMCS Technology Assisted Group Solutions, a network of computers and customized software used by mediators to assist groups in problem solving.

National Labor Relations Board

The NLRB recently issued several decisions of major policy significance, including granting collective bargaining rights to graduate teaching assistants, and permitting inclusion of employees obtained from labor suppliers in the same bargaining unit as permanent employees of the employer to which they are assigned. [See Higgins listing of cases (pages 37-38); details and full text available at the web site, (<www.nlrb.gov>).] In the former case, at New York University, the 1700 graduate assistants have now won representation by the UAW.

A new item on the NLRB's web site is information on the Board's Office of Inspector General, including its mission statement, functions and procedures, and semiannual reports.

Former NLRB Chairman William B. Gould IV has published a memoir of his years at the Board, 1994-1998. Entitled "Labored Relations: Law, Politics and the NLRB," the book is based in large part on a diary Gould kept during his somewhat turbulent tenure as well as the lengthy and contentious confirmation process that preceded it.

National Mediation Board

In September 2000, Board member Francis J. Duggan was confirmed to a full three-year term. Other members include Ernie DuBester and Maggie Jacobsen.

In partnership between the NMB and George Mason University, Fairfax, Virginia, an advisory board of key national union and management leaders in the railroad and airline industries has been named to guide and support the programs of GMU's Center for Advanced Study of

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Law and Dispute Resolution. The Center's initial focus will be on education associated with labor-management dispute resolution in the airline and railroad industries. The Center's web site is (<www.law.gmu.edu/drc>

The NMB web site, (<www.nmb.gov>) now includes Board determinations retrievable by citation, carrier, union acronym and craft or class.

Office of Compliance

New on the web site of the Office of Compliance, (<www.compliance.gov>) is the Report to Congress on Use of the Office of Compliance by Covered Employees, January 1, 1999 - December 31, 1999. The report, dated February 1, 2000, details activities relating to employees in the legislative branch of the US government.

Of General Interest

The 53rd annual meeting of the Industrial Relations Research Association was held January 5-7, 2001 in New Orleans, Louisiana. Sessions address topics including the divergent development of US and Canadian industrial relations, collective bargaining rights for public employees in the US and Canada, organizational strategies and experiences of contingent faculty in the academic workplace; and different approaches to employee representation. Additional information is available at the IRRA web site, (<www.irra.uiuc.edu>).

Prepared by Joy K. Reynolds

Recent Developments at the Canadian FMCS

One of the major benefits of being a member of ALRA and attending ALRA Conferences is the contacts that you make with individuals in other agencies engaged in the same types of work. The 2000 Philadelphia Conference was an especially rewarding one for the management and staff of the Canadian Federal Mediation and Conciliation Service, as relationships developed at that Conference have led to a variety of opportunities for interchanges in recent months. The Canadian FMCS and the US National Mediation Board have had a fruitful exchange of information on their respective responsibilities for mediation in the railway and airline industries and have resolved to continue developing this mutually beneficial exchange. The Canadian FMCS has supplied information on its Preventive Mediation programs to both the NMB and to the Puerto Rico Public Service Labor Relations Commission. The US FMCS kindly permitted three new Canadian mediators to attend one of their week-long training sessions held in Washington D.C. in the fall of 2000 and the two organizations are hopeful that further interchanges of this nature can be arranged in the future. Benefitting from the work done by the US FMCS in the area of mediator credentialling, a working group from the Labour Relations Committee of the Canadian Association of Administrators of Labour Legislation (CAALL) is developing a discussion paper on credentialling for consideration by Canadian mediation agencies. These are all initiatives that grew out of contacts made through ALRA, which once again demonstrate the value of bringing people with common interests and concerns together - a principle which we as mediators apply every day in our working lives.

FEDERAL FILES

Yvon Tarte & Guy Baron
Of the Public Service Staff Relations Board

Activities At The Public Service Staff Relations Board (Canada)

The Public Service Staff Relations Board (the Board) is a quasi-judicial statutory tribunal that is responsible for administering the collective bargaining and grievance adjudication systems established under the Public Service Staff Relations Act (PSSRA) and the Parliamentary Employment and Staff Relations Act (PESRA).

The lines that follow will enable you to acquaint yourself, to some extent, with some of the work done by the Board in 2000-2001.

Mediation Pilot Project

In the fall of 1999, following extensive discussions with Employers and Bargaining Agents, the Board went forward with a 12-month pilot project involving the use of mediation to resolve the grievance and complaint files submitted to it. All grievances and complaints referred to the Board for adjudication were automatically referred to mediation. A mediation session was scheduled unless one or both of the parties advised the Board, in writing, that they did not wish to avail themselves of that service.

Rather than recruit a number of mediators from the private sector, it was proposed that the mediators would be members of the Board and the Board's staff mediators. The members received extensive training in mediation prior to commencing their new duties. Additional training was provided on an ongoing basis. The only condition on the use of Board members as mediators was that, should the grievance or complaint not be resolved at mediation, a different Board member would hear and determine the matter on the merits.

During the above-mentioned period, the Board had more than 500 files proceed through the pilot project. A success rate of 85 percent was achieved as a result of the involvement of a mediator. A team of three university professors is currently making an independent evaluation of the project and will submit its conclusions to the Board shortly. On the basis of a positive interim evaluation, the encouraging feedback from the Board's clients and the obvious success the project has had, it is anticipated that mediation will become a permanent step in the resolution of disputes before the Board.

National Mediation Training Program

In September 2000, a second initiative was undertaken under the direction of Yvon Tarte, Chairperson of the Board. His appreciation for the mediation process and his desire to promote its use in the Federal Public Service culminated in the development and presentation of a national mediation training program. Support from both the Employer and the two major bargaining agents was critical to the success of this program. This

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program was and continues to be offered as joint union and management training sessions.

The Board's team of in-house mediators was assigned responsibility of providing the training. Among other things, the basic training makes it possible to address questions relating to conflict, interest-based negotiation and mediation. To date, nearly 500 individuals have been able to take part in the training program and positive feedback has been received from both employer and union representatives. Even though the delivery of training is not a primary activity of the Board, the program continues to be in high demand and additional sessions are planned for the new fiscal year.

Successor Rights

In terms of important decisions rendered during this period, it would be difficult to overlook the case involving the new Parks Canada Agency.

On December 11, 2000, the Board issued a decision following two applications made pursuant to section 48.1 of the Public Service Staff Relations Act. This particular section deals with successor rights when a portion of the Public Service for which the Treasury Board is the employer becomes a separate employer under Part II of Schedule I of the Act.

When an application is made under section 48.1 of the Act, the Board must determine:

1. whether employees of the separate employer who are bound by collective agreement or an arbitral award constitute one or more units appropriate for collective bargaining;
2. which employee organization shall be the bargaining agent for the employees in such unit; and
3. whether an existing collective agreement is to remain in force and if it is, the date on which it is to expire.

Prior to transfer to the Parks Canada Agency, there were five different bargaining agents representing eleven different occupational groups with a total number of approximately 4000 employees. In its December decision, the Board ruled that, among other reasons,

> Given the specialised nature of the mandate and mission of the Parks Canada Agency, we believe that all employees share a common bond and a broad community of interests. …In short, the weight of the evidence tendered by the parties has led us inexorably to the conclusion that in the instant case all employees of the Parks Canada Agency should be included in a single bargaining unit."

The Board is now in the process of taking a representation vote and the results should be known in early spring 2001.

The Board is currently hearing a similar case involving the Canada Customs and Revenue Agency, which was recently created as a separate

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employer. While the issues are similar, this case involves approximately 40 000 employees represented by six different bargaining agents covering thirteen different occupational groups.

Other Areas

Many of the collective agreements reached within the PSSRA and the PESRA jurisdiction have expired or will expire in this fiscal year. Collective bargaining is resuming and the Board is involved with numerous requests concerning the appointment of conciliators, conciliation boards and arbitration boards.

Conclusion

The last six months have been very active for Board members and the staff of the Public Service Staff Relations Board and it is anticipated that this high level of activity will continue in the foreseeable future.

ALRA EXECUTIVE BOARD MEETING

March 3-4, 2001
Governor's House Hotel
WASHINGTON D.C.

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Go to www.alra.org

AROUND THE STATES AND PROVINCES

RECENT NRLB DECISIONS

The purpose of this column is to provide our readers with a regular update on NLRB law. Some of these case developments may be of particular interest to member Agencies in considering matters pending before them while others may simply be of general interest to our readers.

The column will not attempt to analyze cases. Instead, it simply lists a case, its citations and a very brief description of the issue involved. Interested readers can obtain a copy of the decision either from the Board's Division of Information, Washington, D.C., 20570 or from the Board's website - www.NLRB.gov. In this latter event simply click at "decisions", the decision number. This final column covers cases from July 2000 to the present.

If you have any comments or questions about this column, contact John Higgins at (202) 293-2910.

- Hacienda Resort Hotel & Casino - 331 NLRB No. 89 - Discussion of whether an employer's obligation to continue a dues check off arrangement expires with the contract that created the obligation.

- Family Service Agency - 331 NLRB No. 103 - Discussion of whether an election must be set aside when a supervisor acts as the union's observer.

- Mid-Wilshire Health Care Centre - 331 NLRB No. 129 - Whether the pro se Respondent's informal answer to the the complaint, constitutes a sufficiently clear denial of two allegations in the complaint.

- Epilepsy Foundation - 331 NLRB No. 92 - Whether the principles set forth in *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), affords employees in non-union workplaces the right to have a co-worker present at an investigatory interview.

- Roseburg Forest Products Co. - 331 NLRB No. 124 -Whether the Americans with Disabilities Act (ADA) precludes an employer from disclosing requested employee medical information to its employees' collective-bargaining representative.

- Raleigh County Commission on Aging - 331 NLRB No. 119 - Whether an employer engaged in objectionable conduct by its pre-election announcement of a post election victory dinner for employees.

- Atlantic Limousine, Inc. - 331 NLRB No. 134 - Discussion of election objections involving raffles.

- Premier Living Centre- 331 NLRB No. 9 - Whether, the Board is required to determine the supervisory status of job classifications in a bargaining unit any time the issue is raised.

- Baker Victory Services, Inc. - 331 NLRB No. 146 - Whether an election should be set aside as a result of severe weather conditions on the day of the election.

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AROUND THE STATES AND PROVINCES

RECENT NRLB DECISIONS

- Sturgis/Jeffboat - 331 NLRB No. 173 - Whether, or under what circumstances, employees who are jointly employed by an employer and a labour services provider may be included in a bargaining unit with the employer's solely employed employees. The case overrules *Lee Hospital*, 300 NLRB 947 (1990), and clarifies *Greenhoot, Inc.*, 205 NLRB 250 (1973) to provide guidance on unit questions involving contingent worker.

- Springs Industries, Inc. - 332 NLRB No. 10 - Whether and under what circumstances threats of plant closing are presumed to be disseminated among employees.

- Chelsea Industries, Inc. - 331 NLRB No. 184 - Whether an employer may withdraw recognition after the certification year expires, based on evidence of employee dissatisfaction that was obtained during the certification year.

- Goodless Electric Co., Inc. - 332 NLRB No. 96 - Construction industry case - Whether an 8(f) union can attain 9(a) status by executing a "*Kroger*-type"- prospective recognition agreement in which the parties by express language agree that 9(a) recognition will be granted if the union submits proof of majority at some future point during the term of a contract.

- Fleming Companies, Inc. - 332 NLRB No. 99 - Discussion of the Board's exception to the Section 8(a)(5) duty to provide information for witness statements, as set forth in *Anheuser-Busch*, 237 NLRB 982 (1978).

- Professional Facilities - 332 NLRB No. 40 - Whether a union may seek to represent an appropriate unit of the employees

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of a single user employer without regard to whether the unit employees are jointly employed by another employer.

- Ukiah Valley Medical Center - 332 NLRB No. 59 - Discussion of the Board's assertion of jurisdiction over a hospital, operated by the Seventh Day

- Caterpillar, Inc. - 332 NLRB No. 101 - Discussion of the effect of a Board Order vacating a prior Board decision.

- Tradesmen International, Inc. - 332 NLRB No. 107 - Discussion of whether a union salt's testimony before a municipal board, as to whether the Respondent should have been required to post a surety bond with the city in order to perform construction work within the city limits, constituted protected concerted activity.

- New York University - 332 NLRB No. 111 - Whether graduate students employed as "graduate assistants" are employees within the meaning of Section 2(3) of the Act.

- The Permanente Medical Group, Inc. - 332 NLRB No. 106 - Discussion of whether an employer in formulating its proposals for bargaining can consult with its employees without violating Section 8(a)(5) and (1) of the Act.

- Woodman's Food Market, Inc. - 332 NLRB No. 48 - Discussion of substantial compliance in Excelsior cases. The Board found that while it will continue to consider the percentage of omissions, it will also consider other factors as well, including whether the number of omissions is determinative and the employer's explanation for the omissions.

*The ALRA Executive Board encourages all member agencies to include their Training Resources on the organization's web site. To expedite the process, you need only to complete the following brief survey, tear it out and send it to Ruthanne Okun at the address indicated. You will be contacted if more information is needed. Thank you for your time.

ALRA TRAINING RESOURCES SURVEY

Date_____

Agency_____ Name/Title of Contact_____

Address _____

Telephone of Agency _____ Telephone of Contact _____

Fax _____ E-mail Address_____

Does your agency have training manuals or other written educational materials that might be of assistance to other ALRA member agencies?
Yes _____ No_____ If yes, please list:

Title/Subject matter _____

Name of preparer _____

Date of production _____ Length _____

Does your agency have training tapes, diskettes, audios or videos, and/or CD-ROMS that might be helpful to other ALRA member agencies for staff use?

Yes_____ No_____If yes, please complete the following:

FORMAT (audio, video, diskette, tape, CD-rom)	DATE OF PRODUCTION	TITLE & DESCRIPTION	NAME OF PREPARER

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Is your agency willing to share any or all the training resources listed above with other ALRA member agencies on a short-term lending or other basis?
Yes_____No_____

If yes, how will the training tool be shared?

Is there a charge?_____ If so, how much?_____

Can it be borrowed for copying?_____

Please provide the name, address, telephone number, fax, E-mail, etc. of the person to contact to obtain the training tool (if different than above)

_____

TRAINERS

Does your organization have a suggestion for a trainer on any particular subject?
Yes_____ No_____

If yes, please complete the following:

Name of trainer _____

Address _____

Telephone _____

Fax and/or E-mail address _____

Topic/description of training _____

Please return the completed survey to:

Ruthanne Okun, Director
Michigan Bureau of Employment Relations
1200 Sixth Street, 14th Floor
State of Michigan Plaza Building
Detroit, Michigan 48226-2480

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Montreal, Quebec, Canada

ALRA Academy: July 27-29th

For details, go to www.alra.org