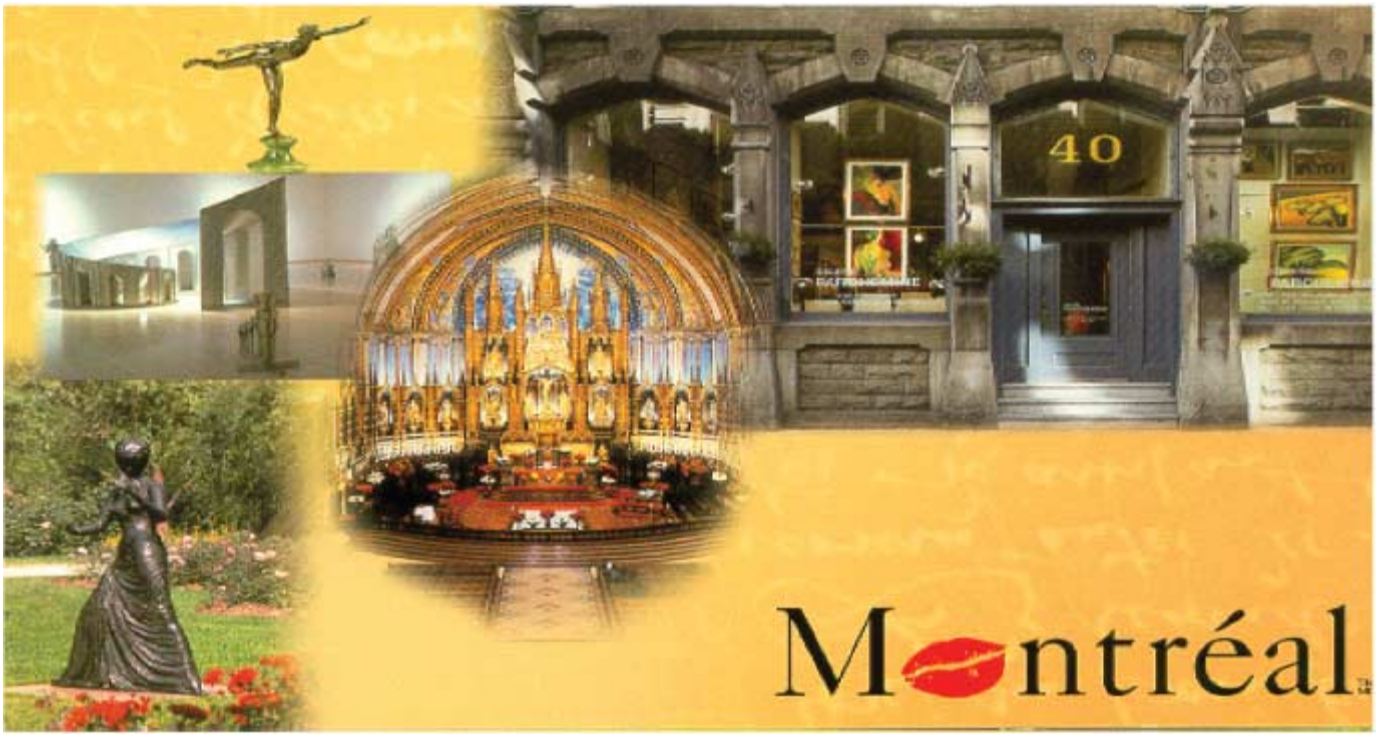
ALRA advisor....

Association Of
Labour Relations Agencies

July 2001

ALRA 2001 Montreal
July 28 – August 1, 2001



Montreal is one of the ten best cities in the world to call home. "It is cosmopolitan, its nice to look at, its more fun than Toronto and *it is a city that is serious about food*, - perhaps the best food city in North America," according to the December 2000, issue of Wallpaper magazine.

During the year editors and correspondents of the magazine wandered grocery stores, checked out neighbourhoods, sampled mass transit, and rubbed shoulders with the locals in cities throughout the world. As a result of their field visits 10 urban centres were identified. "They should be seen as a barometer for the way things should be. None are perfect but all are preferable: none have come up with the secret tonic for city life this century but all stand above their peers as centres that are making a conscious effort to improve daily life."

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Montreal was number four on the survey; the others were Antwerp, Barcelona, Copenhagen, Melbourne, Palma de Mallorca, Seattle, Stockholm, Sydney and Zurich.

DEVELOPING PROFESSIONALLY

Bob Anderson, Vice-President
Professional Development

I've been Vice-President of Professional Development for two years so what have I accomplished? I've become accomplished at saying thank you. So here are some well-earned and heart-felt thank yous for the hard work and good companionship of ALRA colleagues.

The first thank you goes to Jackie Zimmerman, the coordinator of ALRA Academy. The Academy continues to be wildly popular and smoothly run. This year, 20 or so attendees will receive a first-rate introduction to both the substantive world of labor relations and the gracious world of ALRA hospitality. I am grateful as well to the faculty – to Jackie and John Higgins (the Academy's eminence grise) who teach the representation course, to Julie Hughes (ALRA's incoming president) who teaches the unfair practices course, and to Liz MacPherson and Dan Nielsen (subbing for Tom Colosi who had a prior commitment to train Seabees on Guam!) who teach the impasse resolution course. And I appreciate the Academy committee members – Jose Dubois, Phil Hanley, and Antonio Santos as well as John and Julie - who responded so promptly to so many e-mails and helped me determine that we didn't need to break a successfully spinning wheel.

Scot Beckenbaugh and Reg Pearson headed up the committee planning the training offerings for the conference. They were assisted by Julio Castillo, Linda MacRae, Dan Nielsen, and Jaye Bailey Zanta. You'll judge the training sessions, but as a former program chair I'm well-positioned to judge the effort and imagination that went into their conception and I give Scot and Reg and their cohorts an 'A' plus.

ALRA offers up to $7000 a year to assist agencies with training. If you don't believe me, look in your delegate packets for the training grant criteria. We couldn't give money away this year. But no one can claim ignorance as an excuse. Lance Teachworth and Pamela Bradburn, along with committee members Ruthanne Okun and Josee Dubois did a first-rate job of publicizing the availability of grants through a conference workshop, Advisor articles, Web Page announcements, and telephone calls. Agencies are already lining up for the coming year. This is one race that will not be won by a tortoise.

I'm also beholden to the committee on professional development resources for helping me conceal my technological illiteracy. Akivah Starkman and Ruthanne Okun, along with committee members Antonio Barbosa, Marshall Gratz, Linda MacRae, and Solly Thomas and Webmaster Tom Worley, have turned our Web page into the centerpiece of ALRA's efforts to share our members' expertise and resources. They are masters of being gracious while hounding us to update and share information on training resources. Click on www.alra.org and judge the Web Page for yourself, but I believe that an A plus is warranted here as well.

Most of all, I'm grateful for the friendships we form as we work together in ALRA and share our expertise and humor. Lawyers now aspire to civility, but I crave collegiality. Collegiality is the hallmark of ALRA and a joy in my life. Thank you to all my ALRA colleagues for helping me develop both professionally and personally.

----- *Bob Anderson*

ALRA advisor....

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

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ALRA website: ALRA.org.

Higgins & Truesdale

President Bush designated John Higgins Jr. Acting General Counsel of the National Labour Relations Board on May 16. John has been with the NLRB for 37 years

John Truesdale, despite a letter of resignation, has 46 years of seniority with the NLRB. Both are past presidents, and long-serving members of ALRA. For John Truesdale 19 years; for John Higgins 14 years.

ALRA 2001 – MONTREAL

GENERAL BUSINESS MEETING

Following is the list of the candidates for offices to be filed at the Annual Meeting in Montreal, Canada on August 1, 2001. The candidates are:

For President Elect: **Robert E. Anderson,** New Jersey Public Employment Relations Commission

For Vice-President-Professional Development: **Tom Worley,** Ohio State Employment Relations Board

For Vice-President-Professional Development: **Jaya Bailey Zanta,** Connecticut State Board of Labor Relations

*For Executive Board (*Three (3) seats to be filled):

Marilyn Glenn Sayan, Washington Public Employment Relations Commission
Reg Pearson, Ontario Ministry of Labour
Mary L. Johnson, National Mediation Board

ASSOCIATION OF LABOUR RELATIONS AGENCIES

Stephen A. Meck, President
General Counsel, Florida PERC – (850) 488-8641 Ext. 109

Julie K. Hughes, President – Elect
General Counsel, Illinois Ed. Labour Relations Bd. – (312) 793-3170

John E. Higgns Jr., Immediate Past President
Solicitor, National Labour Relations Labour Board – (202) 273-2910

Warren Edmondson, Vice President-Administration
Assistant Deputy Minister, FMCS/HRD Canada – (819) 997-3290

Dan Nielson, Vice President-Finance
Mediator, Wisconsin ERC – (262) 637-2043

Robert E. Anderson, Vice President-Professional Development
General Counsel, New Jersey PERC – (609) 292-9830

Executive Board Members

Mary Helenbrook
Mediator, New York State Employment Relations Bd. – (716) 847-7160

Reg Pearson
Director, Ontario Ministry of Labour – (416) 326-7322

Marilyn Glenn Sayan
Chair, State of Washington PERC – (360) 426-7440

Joel Weisblatt
Member, NY/NJ Port Authority Employment Relations Panel – (609) 497-2324

G. Thomas Worley
Mediator, Ohio SERB – (614) 466-2965

Jaye Bailey Zanta
General Counsel, Connecticut State Bd. Of Labour Relations – (860) 566-7535

2001 Conference Committee Chairs

Jacques Dore	Mary Johnson	Jacques Lessard
Arrangements Chair	Program Co-Chair	Program Co-Chair

FEDERAL-PROVINCIAL MEDIATORS' CONFERENCE

Mediators from five provinces and the federal government attended a three-day conference in Toronto, June 6 to 8, 2001.

Hosted by Labour Management services of the Ontario Ministry of Labour and the Federal Mediation and Conciliation Services (Canada), the conference was organized and designed by Jacqueline McVeigh, Mediator Specialist, Office of Mediation, Ontario, and Sherri King, Senior conciliation Officer (FMCS) The organizers attempted to make this an international conference but neither the Canadian dollar, nor the lure of the Skydome hotel was enough to entice people across the border.

Sheri King & Reg Pearson

A panel of Directors kicked off the conference with an overview of the legislative changes, the level of activity and the problems which occurred in each jurisdiction. The consensus was concern about an abnormally high number of failed ratifications and the lack of strategic thinking which is evident from the new players on both sides of the table.

Laurie Rantala

The conference focussed on two processes: Interest based bargaining and mediation-arbitration. Representatives of the Ontario Nurses Association and the Ontario Hospital Association recounted their experience with interest based bargaining during both the previous and present rounds of negotiations. The parties successfully negotiated a collective agreement during the last round of negotiations which came as a surprise to both themselves and to the labour relations community. Nurses in the province do not have the right to strike and as a result the parties have relied on arbitration for the resolution of disputes. Their ability to use the process and step out from their environment in spite of fiscal and structural pressures within the health care field is considered one of the good news stories of the past year.
(The present round of bargaining, using the interest based process is not going as well.)

Reg Pearson, executive board member of ALRA, chaired a panel on mediation-arbitration consisting of an arbitrator, a labour lawyer and two union leaders, experienced in this process. The panel members agreed that the focus in this process is on mediation. Although there was agreement that the best conflict resolution process

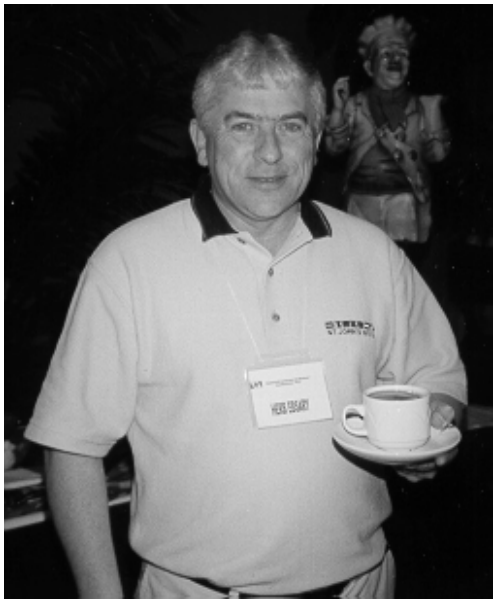
FEDERAL-PROVINCIAL MEDIATORS' CONFERENCE

is one to which the parties agree. The limited experience with med-arb indicates that it must be flexible to accommodate the needs of the parties. The union leaders were emphatic that they preferred med-arb to the alternative. The problem, as they see it, is how does one present issues and rational in mediation and ensure that presentation doesn't prejudice their position in arbitration?

Jim Breckenridge & Warren Edmondson

The conference concluded with a session on mediator issues, chaired by Warren Edmondson, Vice President of Administration, ALRA. Panel members included Laurie Rentala, Director, Nova Scotia, Dennis Nelson, Mediator Specialist, Ontario and Arnie Powers, Director, Great Lakes Region FMCS. The panel reviewed the last ten years in terms of amalgamation, restructuring, fiscal restraint and legislative changes that affected both federal and provincial labour relations. The panel concluded that the present climate affords the opportunity for mediators to expand their role as educators of the process, manage the media, and work to develop "closers" in each agency. In addition the key task for the agencies is to keep the politicians informed, while at the same time, convincing them not to use the legislative solution.

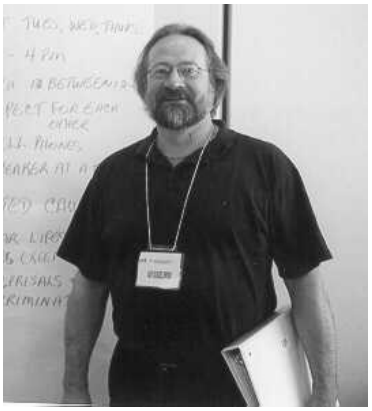
The conference is a bi-annual event and is part of the Canadian Association of Administrators of Labour Legislation (CAALL) conference.



Herb Ebsary, Newfoundland

John Mather

Shadow Boxing With a Master – In Training For My First Bout



Ray Kuszelewski

I'm a voyeur – I like to watch.

In this, my new job, I get to watch a lot. I watch - the senior conciliator - and learn. I watch him trying to anticipate, predict, goad, cajole and rationalize. Finally, using every skill and trick in his repertoire, he works towards a tentative collective agreement.

And I, well, I am afforded the luxury of second guessing - of innocently and without consequence putting forward my views. It is shadow boxing where I am honing my skills, sitting between two parties, two bargaining committees comprising thirty-some participants, who are attempting to catalyze a collective agreement.

Skills can be taught to a degree. But skills must also be acquired and tempered through experience. That is my role as a shadow boxer. And 'shadowing' does provide the vouyeur with experience that a textbook could never even attempt to replicate.

First, let's set the stage. A large international industrial union is in the midst of bargaining three major collective agreements with three separate employers within a similar industry in a similar geographic area.

One employer has been struck for a period of time with no imminent resolution on the horizon - all attempts to conciliate through the strike have been unsuccessful. No further meetings have been scheduled.

A second employer settles its collective agreement just as our story unfolds.

The shadow arrives on the scene of the first meeting between the third employer, the union and the conciliation officer.

The meetings are scheduled at a local hotel, known to be a hub of high profile political activity, good food and hospitality. Conciliators there, as elsewhere, are known to be found in their traditional hotel offices - the lobby. As for location, it's a voyeur's dream come true and for the shadow boxer, this is where he can question and be questioned, second guess and offer an opinion to the master.

No story would be complete without a bevy of eccentric characters and twisted plots. This one is no different.

Upon our arrival we were quickly informed by an insider that the union's international rep, a difficult and much disliked individual was scheduled to appear. This immediately set the tone for our first morning - how would we deal with this person given the perception of his disruptive interference in the process even by simply appearing.

We casually meet with the employer in order to assess the mood and the issues.

Immediately the employer becomes entrenched and adamant saying they will not meet the union if the international rep is present. Clearly our order of the day.

We are also told that the struck employer is awaiting this settlement in order to achieve a break through.

But with the presence of the international rep would this process end immediately? We wonder and ponder.

Shadow Boxing With a Master – In Training For My First Bout

We find that they the union reps take the position that the international rep was uninvited and will not be involved in the process. But then why is he here?

The union and the employer both had work to do before they would see each other - so they were busy for the better part of the day. That would keep them apart while the conciliator strategized about the outstanding issues and how to keep the parties active and progressing. The voyeur watched and shadow boxed. The parties wanted a deal, but could they get it?

The union also had in their midst for the first time a seasoned and well respected rep who had just returned from a long term leave of absence. That was a positive note on their side and added some comfort to the employer. He knew how to negotiate and how to get a deal. Both skills being very different but absolutely necessary.

There was also the bargaining committee - a varied group of represented interests, individual and collective. We had to know to whom the union positions were catering - individuals or the greater good.

After lunch the international rep finally arrives at the hotel. He rolls by the conciliator without a nod of recognition. I could see how that attitude could chill a 'relationship'.

A few hours later, while the parties are still awaiting replies to various counter proposals between them, the chief negotiator for the struck employer arrives. Surprise?! Totally unexpected. What does this mean?

He explains that a meeting between the employer and the union - the same union with which our office is conciliating, with the same union reps involved with whom we are working, has been scheduled. By whom we ask? By the parties he answers. What about the conciliator in that matter we asked. He wasn't informed. Blunt and to the point, but what did it mean? Clearly this employer wants a deal and wants it now. The employer is ready to get it done on his own. (The process is never carved in stone. It's heart is creativity.)

The master and the shadow boxer spend the afternoon in the lobby discussing perspective, tactics, swapping war stories and watching the passing parade.

At 6 p.m. the parties finally meet face-to-face. A further trading of proposals. Each side back to caucus. No sign of the much feared union rep.

At 8:30 p.m. the parties meet again. Back to caucus at 9:20 and returned to meet at 11 p.m.

Meeting with the employer in caucus we find that it is his view that the progress of the day would not carry much further and he wished to save energy for the next day and night, if necessary. This particular employer bargaining member was somewhat arrogant in his approach to the process and had the ability to derail matters quickly. The conciliator was concerned - still too many obstacles.

We adjourned for the night.

Debriefing we felt the day went well, all things considered. But could it continue. No sightings of the renegade union rep - so why was he here???

No one had any idea. And what about the second employer, how far did he get today? Can we keep the parties focussed on the issues and away from personalities and self interests? We sleep on it.

At 7.00 a.m. the conciliator and the shadow meet for breakfast. Lo and behold who should walk into the dining room but a former, now

Shadow Boxing With a Master – In Training For My First Bout

notorious, premier of the province with an entourage. What's he doing here?

Glad handing his way to a table at the back he is quickly joined by our employer reps. 'Power breakfast' indeed! American owners, Canadian Director, Employer and bargaining committee. What's in store for us today? Yesterday you could feel the power in the air - something was brewing. Today, you saw the power at play - it was there for all to see - if you were able!

Over breakfast the shadow quizzed the master - the master quizzed the shadow. Debriefing and predicting, analyzing and critiquing. In the end a bet was made. Clearly a deal was in the offing - barring any interference from the still unseen deal wrecker and the sometimes unpredictable employer. The shadow bets that the deal will be done by mid-night. The master states 7 a.m. the next morning. The shadow balks and laughs - no way!

We start the day.

The employer feels a deal will be done by the following morning. We get to it.

We find in our travels that morning that the second employer has reached a tentative agreement with the same union. If the union can get this one it would be a grand slam three!

The day's pace quickens.... there is a deal in the air... the power and the desire are felt by us both... the bet is on!

Exchanges move along 8:10; 9:00; 9:18; 9:23; 9:25: 9:29; 9:36; 9:40; 9:45; 9:50; 10:05; 10:07; 10:12 - back and forth they go. A quick pace, but then it slows.

By now we are known to all three shifts of the hotel front desk and service staff. They know where we sit. We joke with them about our 'office space'. They concede they could never do our jobs. We tell them we are happy to be paid to read the newspaper in hotel lobbies and watch the passing parade - we are voyeurs after all. They bring us coffee. We have devised a scheme by which we read all the free newspapers in alphabetical order. I have a novel, the master his cigarettes. He has an advantage in his smoking because he can casually walk out for a smoke and involve himself in natural, friendly conversation. Amazing what information casual conversation offers. I suggest that maybe I will carry cigarettes for that purpose. He laughs.

The employer works on a document till 1.00 p.m. The union gets it at 1:36 p.m.

A series of responses back and forth through the afternoon, the pace is fast and productive. They are working. My bet is looking better all the time, master! 7.00 a.m. he replies.

We watch as the feared union rep leaves just as he had arrived without any notice or fanfare. We still don't know why he was here - we can only speculate.

Till mid- afternoon the pace continues, back and forth, the issues few and narrow, they are critical deal makers or breakers!

Suddenly the pace dies! Exchanges slow: 4 p.m.; 5:30; 6:30; 7:48; 9 p.m. My bet is failing me. 7 a.m. says the master!

The master has a smoke break with the union rep. There is a 'deal'. The union will table it shortly. It is 'the deal'. The employer simply has to accept it.

It's now 11 p.m. I am helping the night auditor fix his printer. You have to be creative in your time management. There are no newspapers left to read. My bet is an hour away. 7 a.m. says the master.

He tells me that quite often you might see the deal in your mind. He says, you're focussed on it, waiting for it when it suddenly comes together totally unexpected and out of right field. I ponder that for a while. What else can I do? I am convinced it will happen before 7 a.m.

Through the exchanges the parties have narrowed the issues down. Both have worked diligently.

Shadow Boxing With a Master – In Training For My First Bout

But, in order to settle someone has to move. "'Do it', I say to the master, why don't they just do it!?" 7.00 a.m. he says. I cringe in disbelief - no way!

Minor exchanges through the mid-night, usually an hour apart.

Finally at 2 a.m. after the union has tabled 'the deal' maker the employer tables 'the deal' as they see it. They make a slight and tiny change to the union's 'final offer'.

The union responds at 3 a.m with a counter. It blows the employer offer out of the water. It is more than everything that has been rejected through the last two days.

I've already lost my bet. But now I'm in disbelief. I can see this deal, I know I can. And now the union has totally changed the direction of their proposals. What's going on?

The employer is livid! They feel betrayed. I am trying to figure out why the union's 'deal' was not accepted by the employer. And, why the employer's counter which was in fact a bit richer was not only rejected, but caused a floodgate counter offer from the union?!

At 4 a.m. the union requests a face-to-face with the employer.

Everyone is tired. You can see it in their eyes and hear it in their voices and comments.

The employer is wary of the union invitation. They feel the relationship is now strained. They want a meeting agenda before they agree . We speak to the union and they say they just want to talk to the employer.

After some cajoling the employer agrees to go and 'listen'.

At 4:25 a.m. the parties meet. The union explains its position on all the outstanding issues. They are direct and passionate.

In mid sentence while the union is still speaking the employer says 'Done!' and agrees to the union demands.

It's 4:34 a.m. It's over.

I walk out of the room shaking my head in disbelief. The master laughs. I told you so, he says.

At least the master didn't get the time right either. That's conciliation!

Ray Kuszelewski, is an Industrial Relations Officer, with the Department of Environment & Labour, in Nova Scotia

Rich Closure Deal

The Canadian Auto Workers (CAW) has negotiated one of the richest plant closure packages in the province's (Ontario) history. The 1,084 employees of Visteon, an auto parts manufacturer north of Toronto, will receive support from a rich pension and benefit fund worth more than $128 million. The deal gives workers over 55 years of age unreduced pension benefits with no minimum years of services, employees with 25 years of service will receive full health benefits. Two thousand dollars is available to each employee for tuition and training and an employee assistance plan (EAP) is being set up.

Employees are also protected in the event that the plant is sold prior to its closure in 18 to 24 months.

ALRA SPOTLIGHT

Québec Ministry of Labour
Labour & Construction Relations
200 chmin Sainte-Foy, Québec, (Québec) G1R 5S1

ROGER LECOURT, DEPUTY MINISTER

GENERAL INFORMATION

Through its own interventions and programs, the Québec Ministry of Labour (QML) must favour the building as well as the maintenance of harmonious relations between employers and employees or their representative associations. The QML must execute or take the necessary steps to diffuse studies, research and analysis considered useful. Furthermore, the QML must collect, compile, analyse and diffuse available information regarding labour relations, norms and labour organization, labour market and working conditions.

BUDGET AND STAFFING $ 19,663,800 FTE…….317

OFFICE OF LABOUR COMMISSIONER GENERAL

Commissioner General Roger Barette 418-646-2997

32 commissioners 20 certification agents

Within its general activities, the Office of labour commissioner general acknowledge receipt of 8,371 requests complaints as of March 31, 2001.

OFFICE OF MEDICAL EVALUATION (OME)

Program Manager Michel Dupont 418-643-5899

Since its creation, the OME has received within 8,000 to 10,000 requests of medical evaluation a year. In 1999, OME registered 9,228 requests. In 2000, the requests of evaluation have increased to 10,018, a rise of 8.6%.

ALRA SPOTLIGHT

Québec Ministry of Labour
Labour & Construction Relations

GENERAL LABOUR RELATIONS DEPARTMENT (GLRD)

Program Manager General Fernand Matteau 514-873-4633

The General Labour Relations Department's main responsibility is to ensure the enforcement of some *Labour Code* provisions as well as the maintenance of harmonious relations between employers and employees or their representative associations.

The GLRD gives greater place to dialogue within firms, development of human resources, creativity in the search of solution and the settlement of disputes through a flexible intervention, fast and suited to the needs. The GLRD provides specialized services to both parties when they require a further help to solve their difficulties linked to negotiation or the application of collective agreement as well as these following from daily working reports inside firms. Among GLRD services, conciliation is a service provided to both parties to help them conclude a satisfactory collective agreement. Moreover, conciliation contributes to clarify disputes, to accelerate negotiation process and to develop new solutions.

OFFICE OF ARBITRATION & MEDIATION (OAM)

Program Manager, Jean Poirier 418-643-3239

The OAM responsibility , among others, is to administer arbitration disputes services as well as grievances according to *Labour Code* for all Quebec territory.

OFFICE OF PREVENTION & PARTNERSHIPS (OPP)

Program Manager, Danielle Fredette 514-873-0539

The OPP responsibility, among others, is to develop and to offer various types of preventive intervention to both parties who are willing to improve their labour relations quality giving priority to harmonious daily labour relations within the firms.

AROUND THE STATES AND PROVINCES

Missouri

The State of Missouri has sixteen departments of state government and these employees have the right to organize for "meet and confer" purposes. At present there are eleven randomly certified bargaining units within state government. Some of these units are department wide, most are within a division of a certain department. The State Board of Mediation has been the administrative agency for public sector labor law since 1967. We have a staff of three employees.

There is an effort by public sector unions in our state to establish statewide bargaining units. While I realize this is common in states with mature collective bargaining histories, it will be more complex to accomplish in our state. What is to be done with currently certified bargaining units with current Memorandums of Understanding? I, like most administrators, would prefer to be told by our Legislature how to proceed.

At present it appears our Board will have to make the decision. If any of my colleagues have been faced with this scenario, I would appreciate any friendly "survival" guidance which could be provided. I'd also like to thank Washington's, Marvin Schurke, for his input.

---- *John Birch*

New Jersey

The Public Employment Relations Commission recently issued two decisions delineating permissible and impermissible union representative conduct during investigatory interviews and grievance discussions. In State of New Jersey (Dept. of Treasury), P.E.R.C. No. 2001-51, 27 NJPER ___ (¶_____ 2001), a shop steward intervened, without being solicited, in an interview of a unit employee by a supervisor. The steward confronted and threatened the supervisor, obstructed and prevented the interview, advised the employee not to cooperate, and by shouting, disrupted the nearby workforce.

The Commission traced the contours of an employee's right to request and receive a union representative's assistance during an investigatory interview that the employee reasonably believes may lead to discipline. It also described the limits placed on union representatives in that setting. NLRB v. Weingarten Inc., 420 U.S. 251, 88 LRRM 2689 (1975); Matter of Univ. of Medicine and Dentistry of New Jersey, 144 N.J. 511 (1996). Limitations include: an employer need not inform an employee of the Weingarten right; the interview must be investigatory and the employee must reasonably believe that discipline may result (belief being measured by objective standards); the right to representation may not interfere with legitimate employer prerogatives; and the employer has no duty to bargain with a representative attending the interviews. In this regard, union representatives are not in equal control of the investigatory interview, nor may they turn the interview into an adversarial contest.

Although an employer cannot condition a union representative's attendance at an interview upon the representative's silence, it can command the time, place and manner of the interview. See NLRB v. Texaco, Inc. 659 F.2d124, 108 LRRM 2850 (9th Cir. 1981); United States Postal Service v. NLRB, 969 F.2d 1064, 140 LRRM 2639 (D.C. Cir. 1992). A shop steward may help an employee clarify an account; object to harassing, confusing or misleading questions; and suggest additional witnesses. Applying both private sector and public sector case law to the facts, the Commission determined that the shop steward had

New Jersey

lost the protection of the Act by confronting and threatening a supervisor and preventing her from interviewing a unit employee.

In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 2001-52, 27 NJPER ___ (¶_____ 2001), the Commission focused upon a union representative's conduct in both an investigatory interview and in grievance meetings. In the latter setting and in negotiations, management officials and union representatives meet as equals and exchange views freely and frankly. See, e.g., Crown Central Petroleum Corp. v. NLRB, 430 F.2d 724, 74 LRRM 2855 (5th Cir. 1970).

A second principle is that, while the courts have allowed leeway for adversarial and impulsive behavior in negotiations or grievance meetings, such representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order, and respect.

Compare Crown Central, 74 LRRM at 2860 and NLRB V. Thor Power Tool Co., 351 F.2d 584, 60 LRRM 2237 (7th Cir. 1965). Whether the representative's conduct is indefensible in the context of the setting turns on a balancing of the unit employees' heavily protected right to representation in negotiations and grievance discussions against the employer's right to maintain workplace discipline.

In the State of New Jersey (Dept. of Human Services) case, the shop steward's yelling in locations accessible to staff and patients after a Weingarten meeting had ended was found to be unprotected. Similarly, the same shop steward's yelling at a supervisor and finger-pointing at her from as close as six inches also was not protected; the employer's written reprimand for this conduct was sustained.

The Commission also recognized that the types of representation discussed do not exhaust the universe of permissible representational activities and that shop stewards have roles to play in addressing other situations that may arise in the workplace. The circumstances of each such situation and the arguments presented must be carefully considered.

---- *Jonathon Roth*

New Brunswick

COLLECTIVE AGREEMENT RETRIEVAL SYSTEM (CARS)

Victor Leger

In January 2001, the Industrial Relations Branch of the New Brunswick Department of Training and Employment Development came online with the *Collective Agreement Retrieval System (CARS).* The system provides users with electronic full text search capabilities of over 540 collective agreements filed with the department.

Active or current agreements are scanned into the database and as agreements are renewed over time, expired or previous agreements are electronically archived and will continue to be available for historical research.

New Brunswick

The system enables searches to be done using variables and designated key words in both French and English which are encoded into the system, as well as text or words of the user`s choosing. Variables include :

- Key words or terminology used by labour relations practionners
- Employer name
- Union name
- Type of business or service as described in the *Standard Industry Classification* (SIC) codes
- Geographic area or municipality
- Collective agreement effective date
- Collective agreement expiry date

Although agreements are scanned as registered and are not translated, there is an automatic cross-index between French and English collective agreements. The text can be printed page by page or by whole agreement as required.

With its comprehensive search capabilities, CARS is becoming an invaluable tool for collective agreement negotiators and administrators, conciliators, mediators and researchers involved in labour-management relations.

The *Collective Agreement Retrieval System* is marketed in partnership with Service New Brunswick and is available online for an annual subscription fee of $250.00 plus HST. Site requirements are Internet Explorer Version 4.0 or higher and Acrobat Reader Version 4.0 or higher for Windows. Technical Support and a Help Desk can be accessed for assistance. For further information, please contact Service New Brunswick by phone at 1-866-762-2277, by e-mail at snb@snb.ca, or via the Internet at http://www.snb.ca.

Ontario

ADAMS AWARD

Hamilton Wentworth elementary teachers were awarded a wage increase totalling 6.25% over two years. The increases are staged over the life of the contract with 2.25 % effective September 1, 2000 and another 1.5 %, August 31, 2001. Increases in the second year of the contract include 1.75 %September 1, 2001 and a further 0.75 % April, 2002. A teacher with 10 years of experience and maximum qualifications will make $70,481.

The award, issued by George Adams who was appointed by the parties, was the result of a mediation-arbitration process conducted under the **Back to School Act, Hamilton-Wentworth District School Board 2000 (Bil1 145).** This legislation ended a strike which began on October 30, 2000 and lasted 17 school days.

The teachers, represented by the Elementary Teachers Federation of Ontario (ETFO), objected to the constitutionality of the legislation and the School Board questioned his jurisdiction to hear the constitutional objections.

The parties, however agreed to make submission with respect to these issues and they further agreed that a decision would only be issued if they failed to reach an agreement during mediation

In addressing this issue, Mr Adams wrote: "The Federation raised a number of preliminary issues with respect to my jurisdiction under Bill 145, arguing amongst other things, that Bill 145 created a system that was not constitutionally independent or impartial and which violated Sections 7 and 15* of the ***Canadian Charter of Rights and Freedoms*.**" Both the School Board and the Attorney General argued otherwise and I heard extensive submissions on these matters over

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three days of hearing following which I reserved my decision. While I was prepared to decide these matters and indeed, prepared draft reasons pending the conduct of mediation-arbitration, events which occurred at that subsequent proceeding make it no longer appropriate for me to address any of the preliminary matters raised.

During the course of mediation-arbitration, I suggested to the parties that, having regard to the timing of my decision in relation to the current school year and the coming school year, they might wish to consider allowing me to issue an award for two school years, the second being outside the scope of Bill 145. The parties reluctantly agreed that I do so and, by that co-operative act, it is my view that a decision on the preliminary issues is no longer appropriate. In my view, the agreement to enter into a voluntary mediation-arbitration process for the second year altered the factual underpinnings relevant to the preliminary issues. The parties themselves had required that no decision on the preliminary matters be rendered in the event of an agreement. While this award is something other than a memorandum of agreement between the parties, it arises in part from the parties' agreement to arbitrate the second year - a jurisdiction not conferred by the legislation being challenged. In my view, this triggers the parties' agreement to forego a decision on the preliminary issues. In any event, it would be unfair to the parties and possibly harmful to their relationship to release reasons based on a different conception of my mandate and, for these further reasons, I decline to do so.

However, in coming to this conclusion, I wish to make it clear that I am passing no comment on the validity or otherwise of the arguments raised by the parties."

* Due process of rights and equality of rights.

Ontario

LABOUR BOARD ORDERS REMEDIES

In a case which Labour relations experts say is "unusual" the Ontario Labour Relations Board, has ordered wide ranging remedies against a Toronto area company. The company which makes metal doors, employs 90 people and was the subject of an organization drive by the United Steel Workers of America. (a previous drive held 13 months before had failed.)

A certification vote, supervised by the Ontario Labour Relations Board was scheduled for November 16, 1998. (The outcome of the vote was a tie: 42 for certification and 42 against.) On the 5th of November, the company hired 6 new employees. Two of these new hires were fired after working only parts of four days. However during those four days they managed to obtain a list of the names, addresses and telephone numbers of four employees' all of whom were inside organisers for the union certification drive. As well, they arrived late and left early, had free run of the plant and spent much of their time talking on cell phones. They did tell the four organizers they were gang members and that the organizers would be shot and killed if the union won the vote.

The organizers, who were Sri Lankan, took this threat seriously and informed their fellow Sri Lankan employees and asked for a meeting with management. At that meeting management was informed that the two new hires were known to be members of a street gang and that they had threatened to kill the four organizers if the union won the vote. The employees also asked management to call in the police

Management refused the request to call in the police, reasoning that the people who were threatened should go to the police. Management

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offered to give the employees time off for this purpose (which they did), and termination notices were issued for these two employees.

Evidence given by a police officer, who specializes in crime among the Tamil population of Greater Toronto, confirmed that the two hires were known members of a Sri Lankan gang which was well known to the police.

Physical evidence at the hearing illustrated that of the six hires on November 5, two had their application forms filled in by a member of management, as well there were no interview notes with respect to the same two hires, while extensive notes were kept on the other four job applicants who filled out their job applications themselves..

Additional evidence indicated one of the two had a full time, afternoon shift position at a manufacturing operation and that during the four days of his employment with the door manufacturer he was on time and did not leave until his shift with his regular employer was completed. All of which led the Vice-Chair of the labour Board to write, "In my view the oddities of the process of employment, their freedom of movement about the workplace, their disregard, without consequences of the hours of work required of them; and the continued permanent employment of one of them are sufficient to establish that they were recruited for an improper, anti-union purpose by the company".

The Board ordered that a "fresh" vote be held within six months of the date of the decision (May 4, 2001) and the date be determined by the union. It further ordered the company to compensate the union for its organizing expenses

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between the period of September 1997 when it lost the first vote to November 16, 1998. The company is to provide office space in the company premises for the union until the conclusion of the fresh vote, and to provide the union with names, addresses and phone numbers of all employees in the bargaining unit who are eligible to vote in the fresh election. The Board allowed the union to designate three representatives to act on its behalf on the company premises.

The question of compensation for those who were eligible to vote on November 16, 1998 and those who were intimidated was left open although the Board expressed a willingness to address the matter if the union made a decision to seek damages.

The Company announced that it will appeal the decision of the Labour Board. Harry Hynd, Canadian director of the United Steel workers of America, said he was "disappointed with the announcement to appeal. They hate justice and they hate losing."

SUPPORT STAFF STRIKE
Toronto District School Board
CUPE 4400

The Toronto District School Board and its support staff avoided legislatively impose binding arbitration by reaching a negotiated settlement in their contract dispute on May 4, 2001. (Schools opened April 30). The support staff, made up of 13,000 members, and composed of three autonomous bargaining units – instructors (not teachers), office, clerical and technical and

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custodial and maintenance – is represented by the Canadian Union of Public Employees (CUPE). The union, local 4400 CUPE, struck the board March 31 to back demands of an 8% wage increase and job security in a two year contract.
The strike, which affected the 565 elementary and secondary schools and 300,000 students in the public system, was ended by back-to-work legislation passed April 27, 2001. The Toronto District School Board and school staff kept the schools open however as the strike continued, cleanliness became an issue and daily enrolment declined. (Newspaper reports indicated that four schools were closed by health authorities) The Board closed all schools Monday April 23.

The terms of the legislation included the opening of the schools within two days of the passage of the legislation. In addition, the parties were given one week to continue negotiations If they were not successful the dispute would revert to binding arbitration and the government named the arbitrator.

The negotiated settlement included a 5.9% wage increase and a best efforts clause to ensure that job losses where handled through attrition..

------ Jim Breckenridge

Ontario

ONTARIO FEDERATION OF LABOUR

The Ontario Federation of Labour is considering calling for wildcat strikes to protest pending changes to provincial health and safety legislation. The changes, contained in Bill 57, The Government Efficiency Act, would eliminate the requirement to automatically report work- related injuries due to accidents, explosions and fires, and would also eliminate the requirement for employees to keep a list of hazardous materials at work. The right to refuse unsafe work would also be affected, with inspectors no longer required to investigate the refusal in person, but rather have the power to review the refusal over the phone. Due to these changes, the OFL may call on union workers to illegally walk off the job when safety is in question.

------ (From the Canadian HR Reporter)

CAW AND SEIU

A notorious battle between Canada's largest private-sector union and its archrival ended in April when the Canadian Auto Workers and the Service Employees International Union agreed to put the past behind them. The CAW was accused of raiding the SEIU when it gained 12,000 members after taking over eight SEIU locals. The Canadian Labour Congress (CLC), labour's umbrella group representing 2.3 million unionized workers, expelled the CAW, removing it from participating in national committees and other activities. With the CAW rejoining the fold, CLC president Ken Georgetti proclaimed Canada's labour movement is ready to stand up for workers' rights in the face of corporate globalism.

------ (From the Canadian HR Reporter)

CONSTRUCTION

The largest construction local in North America has signed a "unique and groundbreaking" deal with the Metropolitan Toronto Apartment Builders' Association. Local 183 of the Universal Workers' Union, made up of carpenters, labourers, handymen and working foremen, ratified the deal in May which guarantees labour peace – no lockout, no strike - until 2010.

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The three-year deal which took effect May 1, allows for wage increases of 10.5 to 12.7 percent. At the end of the three years the parties will meet again to iron out wages and other issues.

They will do the same thing in 2007. If they are not able to reach agreement at these times, outstanding issues will be resolved through binding arbitration.

The parties have also agreed to work together to improve the apprenticeship system and to get more people into training.

The average wage increase over the three years is $3.75. As of May 1, 2004 handymen will make $32.75 an hour, carpenters $38.36.

Québec

DID you know ?

The ministre d'État au Travail, à l'Émploi et à la Solidarité sociale, (minister of State for Labour, Employment and Social Solidarity Mr. Jean Rochon, has recently tabled in the Quebec National Assembly Bill No. 31, entitled *An Act Modifying the Labour Code, creating a Labour Relations Board and amending other legislative provisions. (Loi modifiant le Code du travail, instituant une Commisssion des relations du travail et modifiant d'autres dispositions législatives).* This bill features five major aspects:

1. Bill 31 provides for the establishment of a Labour Relations Board (LRB). This administrative tribunal would for all intents and purposes assume all responsabilities which are actually conferred on the Office of the General Labour Commissioner of the Department of Labour. All decisions rendered by this level would be final and binding, therefore justifying abolishing the Labour Court. This would encourage more efficient recognition of union applications for certification, as the Commission would have to render a decision within 60 days of the filing of an application for certification. The main advantage of such an administrative tribunal is that it would have a more flexible approach than regular courts would in the settlement of disputes. In order to do so, it would have investigative powers, a capacity to do research, to intervene and to render injunctive type orders and reparation. The Minister of Labour would retain his responsibilities for conciliation, mediation and arbitration.

2. Bill 31 would maintain the definition of employee as it is now. However, it provides for preventive measures which would be applicable in cases in which the employer would make changes to the way work is organized, and which would have employees who are covered by a collective agreement lose that status from the employer's point of view. This new provision requires that an employer give notice of the projected changes to the certified union. The union would then be able to apply to the new Labour Relations Board to have it decide on the consequences of the employer's projected changes, and to decide whether or not to maintain the employees' unionized status. In this way, everyone would know ahead of time what the consequences of the employer's projected changes would be.

3. Bill 31 also broadens situations to which the rule of law applies concerning the transfer of union certification and the collective agreement to a new employer in case of alienation or operation of an undertaking by another. It broadens the protection which these

collective rights confer in the case of a judicial sale, for example in the aftermath of a bankruptcy, or if the employer makes a decision about the undertaking which would transfer it from Québec's jurisdiction to that of the Federal government.

4. Bill 31 maintains in force all the provisions of section 45 concerning the alienation and operation of an undertaking by another. However, it enacts certain particulars and new conditions applicable to operation of an undertaking in whole or in part by another. This involves entrusting to a third party the management of the undertaking for a specified period of time. The collective agreement which would be transferred to the new employer would terminate twelve months after the transfer. The idea is to enable both parties to adjust to new realities. Finally, one of the new provisions which is enacted would introduce a time limit to have the transfer of an undertaking recognized. Such a time limit would avoid section 45 of the Labour Code being invoked at a later date. The application of this principle would require that the employer advise the certified union of any alienation or of any partial or total operation by another of the undertaking, and mention the date on which this would take place. The union would have 90 days to apply to the Labour Relations Board with a motion for transfer.

5. Bill 31 enables an employer and a union to temporarily conclude an agreement not to invoke section 45, for example when a sub-contract may be involved. The Board would have flexible powers which would enable it to settle any difficulties in the application of this section, when for example, after the alienation of an undertaking, the new employer has several certified unions or several collective agreements which apply to the same category of workers.

Wisconsin

A three member working group headed by Commissioner Paul Hahn has undertaken the task of reviewing and updating the Administrative Code provisions applicable to the Wisconsin Employment Relations Commission. WERC General Counsel Peter Davis and Team Leader Marshall Gratz have worked with Hahn on the rewrite effort, which was begun in late January of this year. The effort was prompted by concerns that the Code, which was last rewritten in the 1970's, has not kept pace with changes in procedures, technologies and underlying statutes.

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The drafters have met 12 times since January, and have completed work on three of four functional areas: (1) General Provisions and Complaint Cases, (2) Grievance Arbitration/ Declaratory Rulings, and (3) Mediation and Impasse Resolution. Code provisions in the final area, Representation and Referenda, are still be reviewed and work will begin on revisions to those in the near future. Drafts of the completed revisions were circulated to the Commission's staff for review and comment, and were the subject of a lively discussion at the June staff meeting. One point of discussion has been whether the Rules governing complaint cases

AROUND THE STATES AND PROVINCES

Wisconsin

should reflect the looser evidentiary rules contemplated by the Administrative Procedures Act or A the rules of evidence prevailing in the courts of equity at which is the standard specified in the Wisconsin Employment Peace Act, the original private sector statute. Since the courts of equity were abolished in Wisconsin many years ago, and the Administrative Procedures Act is of far more recent vintage than WEPA, there has long been a tension between the two in Commission proceedings.

Revisions are being considered in light of the staff's input, and the drafts will be the subject of a series of public hearings before the Commission finalizes any changes. Once the revisions are adopted by the Commission, they will be forwarded to the state legislature, which must approve any changes to the Administrative Code.

There is no schedule set for the public hearings, and Commissioner Hahn estimates that no changes will be implemented before 2002, at the earliest.

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Federal Canada

GOVERNMENT WORKERS' FIRST CONTRACT

About 1,300 public-sector workers in Canada's newest territory ---- including nurses, social workers, clerks and janitors ---- have settled their labour dispute with the Nunavut government. A wide-scale strike was possible after the negotiating team recommended members turn down the government's final offer, but the majority of the members voted to accept the deal. The first contract negotiated between the union (Public Service Alliance of Canada, Nunavut Employees Union, includes a 3.5% increase, retroactive to April1, 2001 and an increase of 2.75 per cent effective April 1, 2002. The new contract will also include a travel assistance program.

---------- *(From the Canadian HR Reporter)*

FEDERAL SECTOR LABOR-MANAGEMENT PARTNERSHIPS

On February 17, 2001, President George W. Bush revoked Executive Order 12871 issued by President Bill Clinton on October 1, 1993 that established the National Partnership Council and required Federal agencies to form labor-management partnerships aimed at identifying specific improvements in organizational efficiency that can be achieved through partnership. Bush's action dissolved the National Partnership Council and ordered the Office of Personnel Management and the heads of executive agencies to promptly rescind any offers, rules, regulations, guidelines or policies implementing or enforcing EO 12871.

On January 9, 2001 the Office of Personnel Management had issued a report to President Clinton finding that "a substantial majority of federal agencies have made genuine improvements in productivity, cost savings, quality of work life, and labor-management relations as a direct result of labor-management partnership." In addition, OPM found that most agencies had formed effective partnership councils and offered training in interest-based bargaining and alternative dispute resolution.

FEDERAL LABOR RELATIONS AUTHORITY

On January 25, 2001, FLRA General Counsel Joseph Swerdzewski issued a memorandum entitled "Guidance on Meetings Under the Federal Service Labor-Management Act." The memorandum sets forth the Office of the General Counsel's policy on the rights and obligations of unions and agencies in meetings with employees under the Federal Service Labor-Management Relations Statute. It provides guidance on the types of situations where employees have a right to union representation and where unions have their own right to be represented when agency representatives meet with bargaining unit employees. In addition to discussing the statutory requirements and legal tests for finding a right to representation, the Guidance also provides checklists for supervisors, union stewards, and employees to use to determine whether a particular situation gives rise to a right to representation.

PERSONNEL CHANGES

Dale Cabaniss was named Chairman of the Federal Labor Relations Authority effective March 8, 2001. Ms. Cabaniss has served on the FLRA since 1997.

FLRA General Counsel Joseph Swerdzewski announced his resignation effective April 15, 2001. He had been General Counsel at the agency since his nomination by President Clinton and confirmation by the US Senate in November 1993. He was the longest serving General Counsel at the Authority and the first to be nominated to a second term.

NATIONAL LABOR RELATIONS BOARD

In January 2001 the National Labor Relations Board announced a new policy designed to achieve more timely processing of cases pending on appeal before the Board in Washington. The Board hears appeals taken by parties from decisions issued by administrative law judges in unfair labor practice cases and

regional directors or hearing officers in representation cases. Board decisions on such appeals are normally issued by a three Member panel, but major cases, such as those addressing significant legal or policy issues or involving the overruling of precedent, are decided by the full Board.

Board policy had previously set time targets for the internal circulation of a draft majority opinion. The new policy, adopted unanimously by the four Members then on the Board, establishes deadlines for the preparation and internal circulation of separate concurring or dissenting opinions following circulation and approval of the draft majority opinion. If the deadlines are not met, the Executive Secretary of the Board will issue the majority decision forthwith.

Over the past two years, the Board's primary goal has been to reduce the number of old unfair labor practice and representation cases pending on appeal in Washington. It has substantially achieved that goal by issuing 95 percent, or all but 21 of the 424 oldest cases it had targeted for issuance in its FY 1999 and 2000 performance plans.

Personnel Changes

On December 29, 2000, President Clinton named Dennis P. Walsh to a recess appointment as Member of the NLRB. Mr. Walsh had worked at the Board from 1984 to 1989 and then from 1994 to the present. Most recently he served as Chief Counsel to Member Wilma Liebman. Under the terms of a recess appointment, he will serve until the expiration of the first session of the current Congress.

National Labor Relations Board

The National Labor Relations Board finds itself in a labor dispute with the National Labor Relations Board Professional Association, which represents over 145 non-supervisory attorneys at the Board headquarters in Washington, DC.

Relations between the Board and its unions are governed by the Federal Service Labor-Management Relations Statute of 1978, which is administered by the Federal Labor Relations Authority. The NLRBPA has filed a charge with the Authority alleging that the Board committed an unfair labor practice because the bargaining team it sent to the table has no authority to reach an agreement. In May the union also engaged in informational hand billing outside a meeting in Washington attended by senior Board officials.

The Board issued a statement quoted in the Washington Post saying "We believe we have bargained in good faith and that the charges are without merit."

Board field staff and headquarters support staff are represented by the National Labor Relations Board Union, with a membership of over 1000 non-supervisory attorneys, field examiners and support staff. The NLRBU has also been engaged in lengthy negotiations and it participated in the May hand billing.

Both unions were certified in 1963 pursuant to President Kennedy's landmark Executive Order 10988 providing for recognition of labor organization in the federal service.

FEDERAL FILES

National Mediation Board

Frank J. Duggan became Chairman of the National Mediation Board effective January 1, 2001. He was first appointed to the NMB in late 1999 and was subsequently confirmed for a three-year term on September 8, 2000. Chairmanship of the NMB rotates among the three Members on a yearly basis.

-------- *Joy K. Reynolds*

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 column covers cases from Nov. 2000 through April 2001.

If you have any comments or questions about this column, contact John Higgins at (202) 273-2910.

- Ukiah Valley Medical Center, - 332 NLRB No. 59 - Whether the Board's assertion of jurisdiction over a church operated hospital implicates the Religious Freedom Restoration Act. See also University of Great Falls, 331 NLRB No. 188 (2000).

- Fleming Companies, Inc., 332 NLRB No. 99 - Whether 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), remains in effect. This case also deals with the presumption of relevance for information requests pertaining to the bargaining unit.

- **T**radesmen International, Inc., 332 NLRB No. 107 - 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.

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

- Kingston Constructors, Inc., 332 NLRB No. 161 - Whether a union can lawfully require employees to pay dues under a union-security agreement to support a "market recovery program," under which the union subsidizes the wage rates paid by union contractors in order to enable them to bid competitively with non-union firms.

RECENT NLRB DECISIONS

- Saturn Corporation, 333 NLRB No. 43 - Whether a union violates Section 8(b)(1)(A) by promulgating a policy that requires employees who have "withdrawn dishonorably" from the union, i.e., resigned from the union while remaining in bargaining unit positions, to pay a fee equivalent to the dues for the period of nonmembership if they seek to rejoin the union, while allowing employees who have "honorably withdrawn," i.e., resigned from the union when they took positions outside the bargaining unit, to rejoin without having to pay such a fee.

- Morgan's Holiday Markets, Inc., 333 NLRB No. 92 - Discussion of how the Board determines, in a case involving fraudulent concealment, whether the allegedly concealed evidence is "material."

- Levitz Furniture, 333 NLRB No. 105 - Discussion of the standards an employer must meet in order to (1) withdraw recognition from an incumbent union and (2) obtain an RM election.

- Allegheny Ludlum, 333 NLRB No. 109 - Discussion of the Board's revised standards governing employee participation in an employer's campaign videotape.

- Marian Manor for the Aged & Infirm, Inc., 333 NLRB No. 133 - Discussion of the hearing officer's right to refuse to enforce a subpoena where the party seeking enforcement fails to meet its burden to show it was unable to obtain by other means the substantial equivalent of the subpoenaed material.