ALRA advisor....

Association Of
Labour Relations Agencies

December 2001

ALRA 2001 Montreal – 50th Anniversary

President's Commentary.....

Julie Hughes

This is a very special year for ALRA. It is our 50th anniversary. The celebration began during last summer's conference in Montreal and will conclude during the San Diego conference in July of 2002. All former ALRA presidents and Executive Board members will be our honored guests during the San Diego conference. There will be many opportunities too for our alumni to meet and greet their former colleagues and for the current ALRA participants to bring them up to date on ALRA activities.

The Montreal conference, held at the Queen Elizabeth Hotel in July of 2001 was a tremendous success. The program and social activities were outstanding. I want to express my sincere thank you to the Arrangements Co-Chairs Jacques Lessard and Jacques Dore and to the Program Co-Chairs Jacques Lessard and Mary Johnson for their hard work throughout the past year. It is because of their efforts that the conference was such a success.

We now look forward to our conference in San Diego from July 20-24. The Arrangements Committee (Chair Gerald James, Doug Collins, Micki Callahan, Norma Turner, and Bob Hackel) have already planned a number of exciting social events, including outings to Sea World, San Diego Zoo, a beach party/dinner, and a harbor cruise.

The Program Committee, led by Co-chairs Mary Johnson and Liz McPherson, is also off and running with invitations outstanding to many nationally and internationally known speakers. The Arrangements, Program and Professional Development Committees (Chaired by Jaye Bailey Zanta) met during the weekend of the Executive Board meeting in San Diego. A special thank you goes out to all committee members and Executive Board members who gave up their weekend for ALRA and, for many, incurred their own expenses to do so.

Our finances are in better shape than they have ever been. We have a record membership of 68 agencies. Training grant money is available. Our web page and ALRA Advisor are terrific sources of information. Minutes of the October, 2001 Executive Board meeting will be posted on the web page, along with updated information about the San Diego conference. Please contact me or any other officer or Executive Board member if you have questions or concerns throughout the year. Welcome to ALRA's 50th anniversary!

ALRA conferences always manage to squeeze in a little time for fun and memorable social events. San Diego will be no exception. Under the leadership of Gerald James, the Arrangements Committee (Micki Callahan, Norma Turner, Bob Hackel and Doug Collins) have planned social events that take advantage of San Diego's fabulous weather and scenery.

President's Commentary……contd…….

On Sunday evening, delegates and their guests will board buses for LaJolla Shores, where they will be treated to a catered picnic on the beach and games and activities. Monday evening's Advocates' reception will be held at the world-famous San Diego Zoo. Following cocktails, delegates and advocates will board the Zoo tram for a short tour of the zoo. A dinner reception at the zoo will follow the tour. Marine World is the destination for delegates and their guests on Tuesday afternoon. Marine World is only a short bus ride from the U.S. Grant Hotel. Delegates will spend three or four hours at Marine World before returning to the hotel. Those delegates with energy yet to burn will then spend Tuesday evening on a harbor cruise. The ship will be reserved just for ALRA delegates and their guests. Dinner and drinks will be served. A beautiful sunset is promised. Look for more information about these events on ALRA's web page or in your registration packets that will be mailed in May. You must register for each of the social activities. With the exception of the Advocates' reception, there will be an additional charge for the other activities.

ALRA 2002 Program

Mary Johnson,
Program Co-chair

ALRA's 2002 conference in San Diego, California will continue the celebration of the organization's 50th anniversary. ALRA's past presidents and Executive board members will be invited to attend the conference. On Sunday, July 21, president Julie Hughes will read excerpts from the speech given by ALRA's first president at the 25th anniversary celebration. In addition to the usual roundtables on Sunday afternoon, there will be a special roundtable for past presidents and E-board members.

Monday, July 22 is Advocates Day. We have invited Secretary of Labor Elaine Chao to be our keynote speaker. Following the keynote speech there will be a panel discussion on the impact of September 11 and other tragic events . Participants in the panel will include representatives of government agencies and labor organizations. There will be three breakout sessions in the morning and three in the afternoon.

Elizabeth McPherson,,
Program Co-chair

The topics will include: 1) a look at experience under new California legislation expanding the jurisdiction of California PERB; 2) transit issues; 3) agricultural issues; 4) interest arbitration; 5) NAFTA; and 6) education reform. We have invited former NLRB Chair Bill Gould, now a professor at Stanford, to be our lunch speaker. The afternoon plenary session will focus on labor relations in the entertainment industry.

Tuesday July 23 there will be a plenary session on the effects of cataclysmic events on labor relations agencies and collective bargaining. That session will be followed by a panel discussion on ADR models. Tuesday evening we will board the "California Princess" for a dinner cruise exclusively for ALRA delegates and guests.

Wednesday, July 24 will start with the annual ALRA business meeting and election of officers. There will be one plenary session on "Violence in the Workplace". We will then have a lunch speaker, followed by an afternoon devoted to professional development. The conference will conclude with a reception and banquet.

PROGRAM

John Trusdale of the National Labour Relations Board officially launched ALRA's two-year commemoration of its 50th anniversary. John outlined the history of the organization known as Association of State Mediation Agencies (ASMA) when it was founded in 1951. The name was later changed to the Association of Labor Mediation Agencies (ALMA). The current name was adopted in 1978.

Roy Hennan , a founding member of the law firm Hennan Blaikie outlined the similarities and significant differences between Canadian and American Labour Law. He also informed the audience of the gypsy curse, "may you be born or caught between two lawyers."

Gerald Berendt, Chair of the Illinois Educational Labor Relations Board, who along with Maggie Jacobsen, of the National Mediation Board, and Warren Edmondson, Canadian Assistant Deputy of labour, formed the International Panel of Agency Heads.

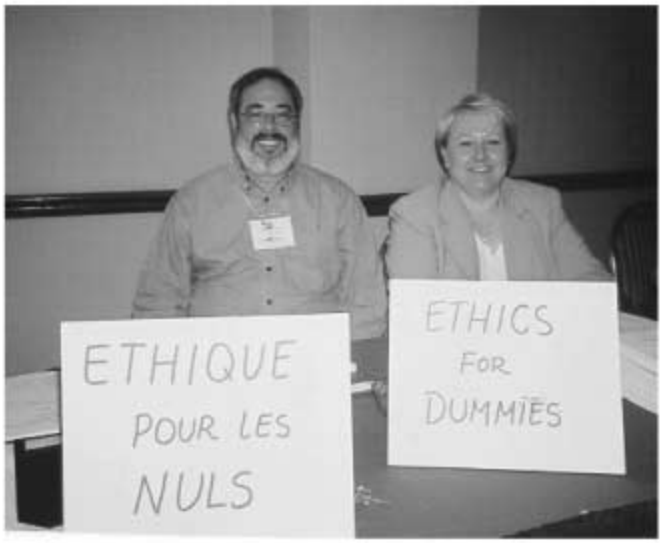
Luncheon speaker Bob White, who retired as President of the Canadian Labour Congress outlined the split between the United Auto Workers (UAW) and its Canadian branch, which led to the formation of the Canadian Auto Workers (CAW).

Labor Relations and the Quality of Education presenters Paul Rouleau, and Randi Weingarten. Mr Rouleau is a lawyer who is active in the French Community of Ontario, negotiates for a number of School Boards in the Province, including the majority of the French language School Boards. Ms. Weingarten is president of the United Federation of Teachers which represents New York City Teachers.

A Long Road to A Long Contract: What was necessary to keep Quebecor World Canada both profitable and in Buffalo through labor relations and mediation.

PROGRAM

Commissioner Valerie Barnett from FMCS outlined Diversity Issues and their impact on third parties. Her observations included, 'clients may speak with a accent but they don't think with one," and "mediators guide not drive the process."



The Ethics of Neutrality presenters, Josee Dubois Executive Director and General Counsel of the Canadian Artists and Producers Professional Relations Tribunal, and Les Heltzer, Deputy Executive Secretary of the NLRB

ALRACADEMY UPDATE

Jaye Bailey Zanta

ALRA's weekend training seminar for new Board/Commission members and executive staff, was conducted under the direction of then-Vice President for Professional Development (and now President-Elect) Bob Anderson July 27 through July 29, 2001 in Montreal. The program began with a cocktail hour and sumptuous dinner Friday night (merci, Jacques Lessard) and was a tremendous success notwithstanding that the airlines had lost two attendees' luggage (one showed up in jeans, the other went shopping).

Nineteen individuals registered for the Academy; they represented the following agencies: California Public Employment Relations Board, Canada Industrial Relations Board, District of Columbia Public Employee Relations Board, Illinois Educational Labor Relations Board, Illinois Labor Relations Board, Maine Labor Relations Board, Massachusetts Labor Relations Commission, Nebraska Commission of Industrial Relations, New Hampshire Public Employee Labor Relations Board, Oklahoma Public Employees Relations Board, Pennsylvania Bureau of Mediation, Phoenix Employment Relations Board, Virgin Islands Public Employees Relations Board. There were nine Board

ALRACADEMY UPDATE

Jaye Bailey Zanta

or Commission members, with the rest of the attendees either senior staff or the only professional staff in their agencies. We also had one distinguished and charming guest/observer, Justice Geoff Giudice from Australia.

The program followed the standard format: Saturday morning representation cases; Saturday afternoon unfair labor practices, Sunday morning impasse resolution. Evaluation forms were distributed to all attendees and we received 11 evaluations. On a five-category scale, everyone rated the overall value of the program either outstanding or excellent, the two highest categories. The relevance of the topics presented was rated "very", the highest category, by every rater. On a five-category scale the faculty was rated the highest category, "outstanding", by six attendees, "excellent" by four, "good" by one.

In particular, we asked the attendees to comment on various aspects of the Academy. With respect to the opening reception and dinner, the attendees indicated that they enjoyed it very much and that it provided an excellent opportunity to meet new people and exchange information.

In assessing the overall program, several individuals indicated that they would have liked more time. We have received this comment before but it is difficult to accommodate given the ambitious schedule of the rest of the conference. We also asked the attendees to assess the overall program content and organization; the comments were so uniformly positive that there were not even any suggestions.

Because of time constraints, the Academy did not include a session on ethical obligations in administering a neutral agency in this year's offering. When asked whether that subject was adequately covered, some attendees felt that it might have been more effectively addressed in a separate session. We will consider that suggestion for next year as we make plans for the next Academy.

We also received several other suggestions on how to improve the Academy and the conference in general, all of which were helpful in evaluating our goals for next year.

Looking ahead:

For 2002, Jackie Zimmerman of the Illinois State and Local Labor Relations Board will act as Academy coordinator for the San Diego conference. Jackie and the Professional Development Committee will be reviewing all the materials and comments from last year's session as they put together another successful Academy.

Thanks to everyone who participated last year – we're looking forward to seeing everyone on the west coast in 2002.

Justice Geoff Giudice from Australia.

ALRA: UP CLOSE AND PERSONAL

Jack G. Day, the first chair of the Ohio State Employment Relations Board (SERB) died, September 25, at his home in Shaker Heights. He was 88.

During a varied career that spanned more than 60 years, Day alternated among private practice, service on government boards and the bench. He was the first Ohio director of the American Civil Liberties Union and an officer of the Cleveland NAACP during the civil rights era.

Jack Day was born in Covington Kentucky. He attended Ohio State University and graduated with a law degree and master's degree in political science.

His first professional job was with the U.S. Department of Labour in Atlanta where he joined the National War Labor Boards during World War ll and chaired one of its regional boards.

He was vice chairman of the National Wage Stabilization Board before he settled in Cleveland in 1946 to practice law and participate in local political and civic causes.

That year he was elected chairman of the Progressive Citizens Committee of Cleveland at a meeting at which noted singer and political activist Paul Robeson was a speaker.

His practice concentrated on labor and personal injury law and he defended people accused of disloyalty during the McCarthy witch hunt period. He also argued a number of constitutional issues before the Supreme Court.

Day became a judge on the 8th Ohio District Court of Appeals in 1968 where he served for 15 years, becoming appellate chief justice in 1982. He left the bench in 1984 to chair the new Ohio State Employment Relations Board for four years.

During and after his judgeship, Day made numerous contributions to books and law journals. He lectured at Case Western Reserve University, Cleveland State University law schools and at the institute for Judicial Administration at New York University. He helped to organize a conference of the nation's labor law professors that developed a new basic casebook emphasizing collaboration rather than confrontation in labor relations.

In 1976 he chaired the Ohio State Advisory Committee to the United States Civil Rights Commission.

Day is survived by his wife of 67 years, three sons, two daughters, six grand children and three great-grand children.

Memorial donations may be made to the Ruth and Jack Grant Day Endowment for Civil Liberty Interns, Law School, Case Western Reserve University, 11075 East Blvd., Cleveland 44106-7148

adapted from Richard M. Peery
Plain Dealer Reporter Shaker Heights


VIA
Québec

FEDERAL FILES

National Labor Relations Board

The National Labor Relations Board announced in October 2001 that it had met its three major goals for fiscal year 2001 pursuant to the Government Performance and Results Act of 1993. In announcing that the Board had issued all unfair labor practice cases over two years old, all representation cases over 18 months old, and had reduced the number of pending ULP cases to below 450, Board Chairman Peter J. Hurtgen credited his predecessor, John Truesdale, for most of this success. He said, "[Truesdale] fostered a culture of collegial decision-making that will be his legacy as Chairman. I have endeavored to follow his example."

Mr. Truesdale resigned from the Board on October 1. (ALRA members will be delighted to learn that he has been elected to the Executive Board of the national Industrial Relations Research Association.) Member Hurtgen had been designated Chairman of the NLRB earlier in the year. Though he had expressed an intention to return to the practice of law after his term expired in August, he instead received a recess appointment from President Bush to continue as Chairman through the end of the current Congress in 2002 or until the Senate's confirmation of a nominee. Other Board members currently serving are Wilma E. Liebman and Dennis P. Walsh. There are two vacancies.

In October President Bush announced his intention to nominate R. Alex Acosta to the Board for the remainder of a term expiring in 2003. Mr. Acosta is currently Deputy Attorney for Civil Rights in the Department of Justice and has practiced labor and employment law with the firm of Kirkland and Ellis in Washington DC.

In another personnel development the Board named Jeffrey Wedekind Solicitor of the NLRB, a post formerly held by ALRA's own John E. Higgins, Jr. Mr. Wedekind has served in various responsible staff and appointed positions at the Board since 1983.

Arthur F. Rosenfeld was confirmed as NLRB General Counsel on May 26, 2001. He had most recently served as senior labor counsel to the Senate Committee on Health, Education, Labor and Pensions, in various responsible posts at the Department of Labor, and as a practicing labor law attorney. John E. Higgins, Jr. is now Deputy General Counsel at the Board.

In July the Office of the General Counsel published the NLRB Bench Book for the use of administrative law judges in the adjudication of unfair labor practices. "Written in plain English," the book cites over 500 decisions by the Board and the Federal courts, and covers topics such as settlement efforts, subpoenas, expert witnesses, attorney-client privilege, and admissibility of various types of evidence, among others. The General Counsel anticipates that the book will be of use to other Federal and State agencies conducting trials and hearings. It can be ordered by name and stock number 031-000-00374-1 for $25 (US) from the US Government Printing Office, telephone (202) 512-1800.

FEDERAL FILES

The NLRB announced that in conformity with the government reinvention initiative "Conversations with America," it will continue its practice of sponsoring seminars and conferences focussing on developments in the National Labor Relations Act and other labor and employment laws. In these venues Board representatives discuss agency policies and practices and listen to comments of participants, who may voice concerns about the matters under discussion. The Board will publish an updated schedule of such events every two to three months (see the Board's web site at www.nlrb.gov).

National Mediation Board

Former Senior National Mediation Board member Ernest W. DuBester has joined the faculty of George Mason University in Fairfax, Virginia as professor of law and Chairman of the Dispute Resolution Program. He will also work with the Center for the Advanced Study of Law and Dispute Resolution Processes, an interdisciplinary center established by the GMU Law School, the Institute for Conflict Analysis and Resolution, and the National Mediation Board.

Currently the NMB membership comprises Chairman Frank Duggan and Maggie Jacobsen, with one vacancy.

Federal Legislative Developments

On November 6 the Senate rejected an effort by Democrats to add a collective bargaining bill for state and local police, firefighters and emergency medical service personnel to the health, education and labor appropriations bill.

The legislation, S. 952, would have empowered the Federal Labor Relations Authority to determine whether states substantially provide for the rights of such employees to organize and to bargain collectively over wages, hours and terms and conditions of employment. In the absence of such rights in a given state, the FLRA would issue regulations ensuring collective bargaining rights and would itself determine the appropriateness of units, conduct elections, resolve unfair labor practice complaints, and otherwise administer the provisions of the law.

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

Beer Allowance

Unionized workers at the Guiness brewery in Dundalk, Ireland, which is slated to close, have voted in favour of a rich and unique severance package. Workers will receive a payout of between $85,000 and $300,000 depending on years of service. In addition, they will continue receiving "benefits" including a popular "beer allowance" that works out to two bottles of Guinness a day.

Canada
FEDERAL MEDIATION AND CONCILIATION SERVICE

The Canadian Federal Mediation and Conciliation Service hosted its 4th biennial Industrial Relations Conference in Aylmer, Quebec from October 10th to 12th 2001. The Conference was attended by more than 200 representatives of labour, management and neutral dispute resolution professionals from across Canada.

Guest speakers at the Conference included Lynn Williams, former President of the United Steelworkers of America, who spoke on the future of international trade unionism in an increasingly global economy; Joshua Javits, former Chair of the U.S. National Mediation Board, who provided excellent advice on the importance of developing constructive labour-management relations in the period between contract renegotiation; and Mr. Justice Warren Winkler of the Ontario Court of Justice, who decried the increasing trend toward judicialization of labour relations, to the detriment of both the industrial relations system and relationships between unions and employers.

Participants were provided with a review of recent trends in the jurisprudence of the Canada Industrial Relations Board by Graham Clarke of Borden, Ladner, Gervais and with the economic forecast by Jim Frank of the Conference Board of Canada. The various services available from the Federal Mediation and Conciliation Service and the Labour Program of Human Resources Development Canada were showcased in a variety of workshops offered throughout the Conference.

---- *Elizabeth McPherson* ----

Public Servants Ratify Deal

Federal government workers – 87,000 – represented by The Public Service Alliance of Canada (PSAC) have voted "overwhelmingly" to ratify a new collective agreement. The workers, without a contract since June of 2000, had taken job action in the form of a series of weekly one day strikes where they had set up picket lines at Federal Government offices and airports across the country. (Federal workers designated as " essential service employees" remained at their workstations). The last day for job action was September 10. The next week Union officials called off the strike and asked the membership to vote of the last offer from Treasury Board. The results of the vote were announced during the first week of November.

The contract, which expires in 2003, includes increases of 3.2% in the first year, 2.8% in the second year and 2.5% in the third year.

Public-Sector Unions

Public servants should be allowed to attend union meetings at work and during working hours, according to John Fryer. Many public service workers are alienated from their unions because the meetings are off-site and after hours. As a result they are dominated by a handful of "dedicated" people who don't represent the will of the membership, Fryer told a parliamentary committee.

Fryer, a long-time labour leader, led a group that spent a year examining federal labour relations. He concluded that public service workers are so unhappy with their union many would vote to end their membership if given the chance.

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Duty of Fair Representation Cases Are Exclusively Within the Province Of PERC

In Gow v. AFSCME, 4 FPER ¶ 4168 (1978), the Commission recognized that Sections 447.301 and 447.307, Florida Statutes, pertaining to the representation of public employees, create a duty of fair representation on behalf of certified unions analogous to those found in the private sector under the National Labor Relations Act (NLRA). The National Labor Relations Board (NLRB) held that it is an unfair labor practice under the NLRA for a union to unfairly represent a bargaining unit employee in either negotiations or grievances. See Wallace Corp. v. NLRB, 323 U.S. 248, 255 (1944) (under the NLRA exclusive bargaining agents are "charged with the responsibility of representing…[the employees'] interest fairly and impartially."); see also Miranda Fuel Co., 140 NLRB 181 (1962), rev'd, 326 F.2d 172 (2nd Cir. 1963) (although reversed, Miranda Fuel is the seminal NLRB case cited in subsequent NLRB cases for the proposition that a violation of the duty of fair representation is an unfair labor practice).

The Commission announced in Gow that, as in the private sector, a union breaches its duty to represent employees fairly when its conduct in negotiations, including the processing of grievances, is arbitrary, discriminatory, or taken in bad faith. Gow, 4 FPER ¶ 4168 at 325. Accordingly, it is an unfair labor practice within the meaning of Section 447.501(2)(a), Florida Statutes, for the union to violate its duty of fair representation. Id.; see also Galbreath v. School Board of Broward County, 466 So.2d 1045, 1047 (Fla. 1984), appeal dismissed, 469 U.S. 801 (1984) and IBPAT, Local 1010 v. Anderson, 401 So.2d 824, 831 (Fla. 5th DCA 1981) (adopting the Commission decisions concerning a union's duty of fair representation).

Since Gow, duty of fair representation cases have been litigated exclusively before the Commission. However, in the private sector, under the NLRA, employees have not exclusively used the remedy of filing an unfair labor practice with the NLRB. In the seminal case of Vaca v. Sipes, 386 U.S. 171 (1967), the U.S. Supreme Court held that trial courts and the NLRB have concurrent jurisdiction of fair representation violations under the NLRA. In a recent Florida state appellate case, the Fifth District Court of Appeal held that the Commission has exclusive jurisdiction and the circuit courts of Florida have no jurisdiction of fair representation cases, unlike the concurrent jurisdiction of cases under the NLRA. Browning v. Brody, 26 Fla. L. Weekly D2232a (Fla. 5th DCA 2001).

Browning, in her capacity as a public school teacher and union member, filed a complaint against her union in circuit court alleging that it had breached its duty of fair representation by failing to follow the proper procedure in the filing of grievances on her behalf. The union moved to dismiss the complaint for lack of subject matter jurisdiction, maintaining that the Commission possessed exclusive jurisdiction over the matter because the union's alleged breaches of its duty of fair representation constituted unfair labor practices as set forth in Section 447.501(2)(a), Florida Statutes. The trial court agreed and the Fifth DCA affirmed.

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In concluding that fair representation matters were within the exclusive jurisdiction of the Commission, the court distinguished the U.S. Supreme Court's decision in Vaca from cases in Florida under Chapter 447, Part II, Florida Statutes, as follows:

The [U.S. Supreme] Court's decision in Vaca was grounded in the concern that concurrent jurisdiction [between the trial courts and the NLRB] was necessary to assure that injured private sector employees could receive impartial review of their administrative complaints in light of the fact that, under the federal scheme, the National Labor Relations Board's (NLRB) general counsel had "unreviewable discretion to refuse to institute an unfair labor practice complaint." Id. at 182. Florida's Act which pertains to public employees contains no provision analogous to the "unreviewable discretion" of the NLRB's general counsel to decide if a charge can be filed in the first instance. Id.

A case that is more on point is Karahalios v. National Federation of Federal Employees, Local 1263, 489 U.S. 527 (1989). Karahalios involved a public employee's claim of the breach of duty of fair representation against a union under the Civil Service Reform Act of 1978 (CSRA) which applies to federal public employees. The Court held that the remedy for a breach of the duty of fair representation, which the CSRA explicitly defined as being an unfair labor practice, was exclusively before the Federal Labor Relations Authority, the public sector counterpart to the NLRB. In distinguishing Vaca, the Court explained that the CSRA does not deprive employees of recourse or remedies otherwise provided by statute or regulation. Id. at 524-536. Similar to public employees in Karahalios, Browning is adequately covered by the Act which mandates PERC to expeditiously process charges of unfair labor practices.

The Karahalios Court was also persuaded by the fact that the legislature had specifically conferred jurisdiction on the federal district courts in a few specific areas, none of which reference claims of breach of duty of fair representation. Similarly, Florida's Act confers jurisdiction to the circuit courts in a few specific instances. For example, Section 447.507 of the Act authorizes circuit courts to hear and determine all actions alleging violations of the no-strike provision of the Act and Section 447.509 of the Act authorizes circuit courts to issue injunctions and conduct contempt proceedings over claims involving specified unlawful acts committed by unions and their members. The union also correctly points out other courts have rejected claims of concurrent jurisdiction under similar circumstances. See Foley v. AFSCME, Counsel 31, Local No. 2258, 556 N.E. 2d 581, 585 (Ill. App. 1 Dist. 1990) (holding that state labor relations board possess exclusive jurisdiction over duty of fair representation claims as unfair labor practices); see also Coleman v. Children's Services Div. of Department of Human Resources, 694 P. 2d 555 (Or. App. 1985) (same).

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In a footnote, the Browning court held that there was no "common law" duty of fair representation recognized by Florida courts. The court stated that state courts have recognized the duty of fair representation as being separate and distinct from any common law duty, citing the Florida Supreme Court decision in DeGrio v. AFGE, 484 So.2d 1 (Fla. 1986), which held that unions are excused from simple negligence in their representation.

----- *Steve Meck* ----

First DCA Rules on Stipulated Fees, Back Pay

The case of Doyle v. Department of Business and Professional Regulation, Case No. CS-96-117, has a protracted history, including a three-day career service hearing, a remand to the hearing officer, a hearing to determine the amount of back pay, attorney's fees, and costs, and three appeals to the First District Court of Appeal . In sum, the Commission reduced Doyle's dismissal to a five-day suspension and she was awarded back pay and reasonable attorney's fees and costs. Thereafter, the Agency and one of the two sets of attorneys representing Doyle at the career service hearing stipulated to $75,000.00 in attorney's fees and costs. The hearing officer rejected the stipulation as unreasonable because it included $46,150.00 in appellate fees that had not been awarded by the court. A consolidated hearing on fees and back pay was conducted. The hearing officer awarded $9,508.58 in fees and costs to those attorneys and a larger amount to another attorney who had also represented Doyle at the career service hearing. In addition, the hearing officer rejected, as unsubstantiated, the parties' stipulation to increase Doyle's back pay award by $7,533.00 to compensate her for an increased federal income tax liability. On review, the Commission increased the fees and costs award to $12,471.08 and agreed with the hearing officer on the back pay issue.

In the third appeal of this case, the issue was whether the Commission had the authority pursuant to former Section 447.208(3)(e), Florida Statutes, to reject a stipulated amount of back pay, attorney's fees, and costs as unreasonable. The back pay and attorney's fees cases were consolidated for appellate review. Doyle v. Department of Business and Professional Regulation, 26 Fla. L. Weekly D2183c (Fla. 1st DCA 2001).

In interpreting former Section 447.208(3)(e), the court focused on the provision that attorney's fees may be awarded in an amount "to be determined by the commission" and concluded that the statute authorized the Commission to determine the amount of reasonable fees and costs only when a dispute existed between the employee and the state agency. The court held that in the absence of a dispute the Commission must infer that the parties entered into the stipulation after good faith negotiations. Thus, the Commission lacked the authority to reject as

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unreasonable the stipulated amount of attorney's fees and costs. Similarly, the court concluded that in the absence of a dispute between the parties the Commission could not reject as unreasonable a stipulation that a career service employee is entitled to increased back pay to compensate for an increased federal income tax liability. The Commission was ordered to reinstate the stipulated amounts.

----- *Steve Meck* ----

First DCA:

Transfer of Work Out of Unit Without Impact Bargaining Is Not ULP

In City of Jacksonville v. Jacksonville Supervisor's Association, Inc., 26 Fla. L. Weekly D1734e (Fla. 1st DCA July 17, 2001), the First District Court of Appeal reversed the Commission's determination that the City of Jacksonville committed an unfair labor practice by not engaging in impact bargaining over the transfer of bargaining unit work to positions outside of the bargaining unit.

In reorganizing three departments in 1999, the City deleted three positions in the bargaining unit and created positions outside of the bargaining unit. In its decision, the court held that in granting discretion to the public employer "to exercise control and discretion over its organization and operations," Section 447.209, Florida Statutes, rejects the concept of impact bargaining with respect to good faith changes in a public employer's organization and operations, unless those changes impact the determination of wages, hours, and terms and conditions of employment of employees within the bargaining unit. Since there was no dispute that the reorganization had any impact upon the wages, hours, or terms and conditions of employment of any employees in the bargaining unit, the court found that impact bargaining was not required. The court affirmed an issue not challenged on appeal, that the City committed an unfair labor practice by failing to provide the JSA with information regarding the reorganization.

----- *Steve Meck* ----

Labor Decisions of Note

In Union of Needletrades, Industrial and Textile Employees (UNITE!) v. City of Tallahassee, Case No. EL-2001-025 (Fla. PERC Aug. 24, 2001), the Commission dismissed post-election objections, verified election results rejecting UNITE, and dismissed a representation-certification petition seeking a bargaining unit of blue-collar City employees. Certain election objections were dismissed for failure to provide information supporting the objections pursuant to Florida Administrative Code Rule 38D-18.005(1). Objections pertaining to comments made at meetings between City officials and employees were dismissed because there was no authentication of the transcripts of the alleged meetings. In addition, there was no basis to objectively assess the impact on the election of improper statements allegedly made at the meetings because there was no indication of the number of employees at the meetings.

Further, even if the transcripts had been sufficient, the comments complained of failed to objectively demonstrate that the City's conduct

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impacted the election to a degree that would warrant a rerun election Specifically, the City's statements that employees' terms and conditions of employment would be governed by a collective bargaining agreement and be "frozen" until such time as a contract was ratified by the parties represented fair comments on the possible effects of unionization and could not objectively be construed as a threat of reprisal. The Commission concluded that other meetings between City officials and employees did not affect the election.

The Commission also rejected an objection to a City leaflet that described current pay and benefits available to all City employees, indicating a difference in benefits for unionized and non-unionized employees. The Commission concluded that the leaflet, standing alone, did not provide a promise of benefit or a threat of reprisal that would be sufficient to negate the election results. Finally, the Commission rejected an objection to one or two incidents of a supervisor attending UNITE meetings, finding this insufficient to impact the election. The Commission concluded that, without more, this conduct did not establish that the City had engaged in a campaign of surveillance such that a new election should be ordered.

In State Employees Attorneys Guild v. State of Florida, Case No. RC-2000-045 (Fla. PERC Aug. 31, 2001), after the Commission denied a motion for reconsideration, the First District Court of Appeal relinquished its jurisdiction so the Commission could address the motion for reconsideration. The original order issued by the Commission on June 11, 2001, with one dissent, held that, given the enactment of Chapter 2001-43, Laws of Florida, effective May 14, 2001, a representation-certification petition seeking to represent a bargaining unit of attorneys should be dismissed because of a "strong State policy towards a more comprehensive organizational structure of Selected Exempt Services (SES) that groups organizations together with respect to benefits and rewards rather than compartmentalizing them." The majority further found that the "work-related interest of attorneys can be successfully represented by a bargaining agent in a unit with others SES professional employees."

On reconsideration, the Commission rejected SEAG'S argument that no other SES professional employees exist that might share a community of interest with the attorneys. It also rejected SEAG'S request to be allowed to supplement its showing of interest for an "expanded" bargaining unit rather than suffer dismissal of its petition. The Commission held that a petitioner is only allowed to supplement its showing of interest after hearing when the Commission increases the number of employees in a proposed unit which it has found to be appropriate. Where the Commission determines the proposed petition is inappropriate, the petition must be dismissed. Consequently, SEAG's motion for reconsideration was denied.

AROUND THE STATES AND PROVINCES

FLORIDA

In Seminole Education Association v. School Board of Seminole County v. Seminole Education Clerical Association, Case No. UC-2001-040 (Fla. PERC Sept. 14, 2001), the Commission granted a unit clarification petition seeking to move classifications from one bargaining unit to another. Because of confusion on this issue, the Commission took the opportunity to state conditions under which such a unit clarification would be granted. A unit clarification procedure is appropriately invoked only when the positions involved have been created, abolished, or substantially altered after certification or when the initial inclusion or exclusion of such positions resulted from misunderstanding or inadvertence. The Commission stated that, despite the parties' agreement, the unit clarification criteria must be fulfilled in order to move employees from one bargaining unit to another. The Commission further held that it would not apply the stricter severance standard of showing that a unit has become "unworkable or otherwise inappropriate" in order to remove a classification from a bargaining unit in a unit clarification proceeding. Thus, where the unit clarification procedure is properly invoked, and classifications have changed substantially since certification, those classifications may be moved from one bargaining unit to another as long as the scope of each of the bargaining units involved is not enlarged or diminished.

----- *Steve Meck* ------

ONTARIO

New Chair OLRB

Kevin Whitaker has been appointed Chair of the Ontario Labour Relations Board (OLRB). He succeeds Rick MacDowell who was appointed Chair in 1995 and recently celebrated his 25th anniversary with the OLRB. Mr. MacDowell retired when his current term ended in September of 2001.

Mr. Whitaker has a background in labour arbitration and mediation and was a part-time vice-chair of the Crown Employees Grievance Settlement Board . He is a co-editor of the Labour Arbitration Yearbook and an executive member of the Ontario Labour Management Arbitrators' Association.

Mr. Whitaker was vice-chair of the OLRB from March 1995 to December 1999. Prior to joining the OLRB he was in private practice and a founding partner of the law firm Ryder Whitaker Wright from 1989 to 1995. Mr Whitaker has also been counsel to the Workers'Compensation Appeals Tribunal, a senior legal policy advisor at the Ministry of Consumer and Commercial Relations, and practiced law at the firm of Gowling Henderson.

ONTARIO

CAW and Magna First Agreement

The Canadian Auto Workers (CAW) and Magna International have ratified a first agreement that covers 700 workers at the Integram seat plant in Windsor. The contract – which both sides are calling a "model" agreement -- marks a breakthrough for the CAW in its long quest to organize union-free Magna, the county's biggest independent auto parts maker with about 19,000 employees.

The vote for union certification, which Magna contested at the Ontario Labour Relations Board (OLRB), was held more than two years ago. Later the company and the union decided to resolve the dispute through bargaining, which took several months.

Unique features of the three-year contract include a process where workers have the option of taking a grievance through a multi-step company-union process or pursuing it with a special employee committee as well as a no strike no lockout provision for six years. Under this provision, each side could invoke binding arbitration for a contract.

The agreement provides for improvements in job security provisions based on seniority, overtime pay, paid education leave, dental and drug coverage. As well, workers have the option of joining a new pension plan with defined benefits or a company program dependant on profits

Under the contract workers will receive a $1,000 bonus and a wage increase of 13.1% over the three years. The wage of an installer will increase by $2.57 an hour to 22.17 and a maintenance mechanic by $3.64 to $31.48.

A spokesman said the company does not plan to apply the Integram contract to its other operations but will continue to survey competitors in reviewing annual wage rates and benefit plans.

Union Certification

Workers aboard the Hibernia oil platform, off the coast of Newfoundland and Labrador, have voted to join the Communications, Energy and Paperworkers' union (CEP). While the union win is thought to be a first in North America, there are unionized platforms in the North Sea

Hibernia Management Development Corporation, the group of companies which operates the platform, has launched a court challenge which could overturn the union's certification. Union officials are confidant the judicial review in the Newfoundland Supreme Court, which is looking into the jurisdiction of the province's Labour Relations Board, will no be successful.

The union intends to negotiate a first contract with the assistance of a mediator. Under the terms of Newfoundland's Labour Relations Act, the workers are prohibited from striking.

Union officials confirmed the Terra Nova offshore project, operated by Petro-Canada is their next organizing target.

QUEBEC

Supreme Court of Canada

The Supreme Court of Canada has ruled that the freedom of association under the Charter of Rights and Freedoms does not protect Quebec construction workers from forced membership in trade unions.

In a 5-4 decision, a majority of judges upheld a law that requires all construction workers to join one of five unions approved by the Government of Quebec.

Eight of the judges recognized the freedom of association under the Charter of Rights and Freedoms includes a right 'not to associate', however three of them added the qualification that the right was limited and did not cover union membership in Quebec. "Some forms of compelled association in the workplace might be compatible with Charter values and the guarantee of freedom of association." They further reasoned that the violent history of labour relations in Quebec's construction industry required that the 'delicate exercise' of labour relations best be left to the Quebec National Assembly.

A majority of five judges said the law does violate the Charter. One of the five, however, wrote that the infringement was justified. "The freedom of association guaranteed by the Charter encompasses a negative right to be free from compelled association, which is infringed by the legislation at issue here." And then added, "The Construction Act was adopted within a unique and complex historical context, and serves to promote distinct social and economic objectives that were and remain, pressing and substantial."

The four justices who dissented said the Quebec scheme involved 'ideological coercion' and compared it to forced membership in a political party. "It is clear that a conception of freedom of association that did not include freedom from forced association would not truly be 'freedom' within the meaning of the Charter. The objection to union membership can be anchored in profound moral, religious or political convictions and it is implicit in Canadian law that such convictions are to be respected."

A lawyer representing Advance Cutting and Coring Ltd., the company which challenged the legislation, said "the decision opens the door to court challenges in other Quebec industries, including bakeries, metalworking, and textiles."

HAPPY NEW YEAR

NATIONAL LABOR RELATIONS BOARD

Listed below are NLRB cases of significance that issued between April and November 2001. Copies of these decisions are available on the NLRB website www.nlrb.gov.

(1) ***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.

(2) ***Allegheny Ludlum*** – 333 NLRB No. 109: Discussion of the standards governing employee participation in an employer's campaign videotape overruling *Sony of America*, 313 NLRB 420.

(3) ***Butera Finer Foods*** – 334 NLRB No. 11: Discussion of Board's "bright-line" rule prohibiting unions from using their non-employee agents as election observers in decertification elections.

(4) ***Lee Lumber Building*** – 334 NLRB No. 62: Discussion of "reasonable period of time" that an employer must bargain after unlawfully refusing to recognize or bargain with an incumbent union, before the union's majority status can be challenged.

(5) ***Crown Cork & Seal*** – 334 NLRB No. 92. Dismissal of Section 8(a)(2) complaint finding that employee committees there are not "labor organizations" because they do not "deal with" the employees.

(6) ***Wyndham Palmos del Mar Resort*** – 334 NLRB No. 70: Discussion of whether an employer may withdraw recognition from union based on an anti-union petition signed during notice posting period requested by a settlement agreement.

(7) ***American Signature*** – 334 NLRB No. 109: Discussion of successorship liability to remedy ulps under *Golden State Bottling v. NLRB*, 414 U.S. 168 (1973).

(8) ***August A. Busch & Co.*** – 334 NLRB No. 137: Discussion of whether General Counsel and Charging Parties should be awarded litigation expenses and whether the Charging Party should be awarded negotiation expenses.

(9) ***Ferguson Electrical Co.*** – 335 NLRB No. 15: Discussion of Board's revised remedial provision in backpay cases to provide records in electronic form if they exist and to supply them at a "reasonable place designated by the Board."

(10) ***BellSouth Telecommunications*** – 335 NLRB No. 18: Whether an employer and union can agree to a policy requiring objecting employees to wear both employer and union logos on their uniforms.

(11) ***Lakeland Bus Lines, Inc.*** – 335 NLRB No. 29: Discussion of whether an employer's conduct constituted a claim of inability to pay; thus, requiring that the employer provide the union with requested financial information.

(12) ***Verizon Information Service*** – 335 NLRB No. 44: Discussion of whether an agreement between the employer and union for voluntary recognition and containing a promise to submit unit disputes to arbitration may bar a petition filed by the signatory union.

(13) ***Visiting Nurses Health System*** – 336 NLRB No. 35: Discussion of the circumstances in which a certified union may lawfully engage in secondary picketing.

(14) ***Contra Costa Electric*** – 336 NLRB No. 44: Discussion of whether a union violates its duty of fair representation by inadvertently failing to refer an applicant in proper order from an exclusive hiring hall.

(15) ***Contra Costa Electric*** – 336 NLRB No. 44: Discussion of whether a union violates its duty of fair representation by inadvertently failing to refer an applicant in proper order from an exclusive hiring hall.

(16) ***Hillhaven Highland House*** – 336 NLRB No. 62: Discussion of the property access rights of employees at the facilities of their employer where they do not work where they are seeking to organize the employees at that site.

REPRESENTATION CASES

***Coastal Florida Public Employees Association v. Flagler County Sheriff's Office*, Case No. RA-2001-007 (June 6, 2001).** Union's recognition-acknowledgment petition granted for a unit of noncertified support personnel.

***Coastal Florida Police Benevolent Association, Inc. v. Flagler County Sheriff's Office*, Case No. RA-2001-006 (June 19, 2001).** Union's recognition-acknowledgment petition granted for a unit of certified detention officers.

***Amalgamated Transit Union Local 1395 v. Escambia County Board of County Commissioners*, Case No. RC-2000-088 (April 5, 2001).** Proposed unit of operational services employees was approved.

***United Academic Faculty Association of North Florida Community College v. District Board of Trustees of North Florida Community College*, Case No. RC-2001-001 (April 12, 2001).** Consent agreement in unit of college's instructional personnel approved.

NATIONAL LABOR RELATIONS BOARD

***Florida Public Employees Council 79, American Federation of State, County and Municipal Employees v. City of Hialeah,* Case No. RC-2000-090 (April 17, 2001)** Consent agreement in unit of city's regular full-time employees approved.

***Broward County School Administrators Association v. School District of Broward County, Florida,* Case No. RC-2000-075 (May 1, 2001)** Separate units of school board's professional and non-professional employees approved.

***Local 218, Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union v. Clay County Building Maintenance,* Case No. RC-2001-003 (May 7, 2001)** Union's representation-certification petition seeking to represent a unit of building maintenance employees dismissed where proposed unit was overly fragmented inasmuch as it was confined to a single department.

***Florida Public Employees Council 79, American Federation of State, County and Municipal Employees v. Orange County,* Case No. RC-2000-086 (May 7, 2001)** Union's representation-certification petition seeking to represent a unit of detention service officers dismissed where proposed unit was overly fragmented inasmuch as it was confined to two of the seven non-certified positions in county's detention facilities.

***Eustis Professional Fire Fighters, Local 4072, IAFF v. City of Eustis,* Case No. RC-2001-010 (May 7, 2001)** Consent agreement in unit of fire suppression personnel approved.

***Union of Needletrades, Industrial and Textile Employees v. Leon County,* Case No. RC-2001-009 (May 9, 2001)** Proposed unit of regular full-time and part-time operational services employees approved.

***Union of Needletrades, Industrial and Textile Employees v. City of Tallahassee,* Case No. RC-2001-008 (May 10, 2001)** Proposed unit of regular full-time and part-time operational services employees approved.

***Volusia County Firefighters Association, Local 3574 v. County of Volusia,* Case No. RC-2001-013 (May 17, 2001)** Consent agreement in unit of fire lieutenants approved.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Levy County Sheriff's Office,* Case No. RC-2001-017 (May 17, 2001)** Union's petition dismissed where showing of interest was not numerically sufficient.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Town of Longboat Key,* Case No. RC-2001-011 (May 18, 2001)** Proposed unit of police officers and sergeants approved.

NATIONAL LABOR RELATIONS BOARD

***Amalgamated Transit Union AFL-CIO, CLC, Local Union 1749 v. Central Florida Regional Transportation Authority DBA/LYNX*, Case No. RC-2001-031 (June 20, 2001)** Union's petition seeking to represent a unit of a small group of supervisory employees dismissed where proposed unit was overly fragmented inasmuch as it was confined to certain blue-collar supervisors at specific work facilities.

***Teamsters, Chauffeurs and Helpers, Local Union No. 79 v. School Board of Hillsborough County, Florida*, Case No. RC-2001-006 (June 21, 2001)**

Union's petition seeking to represent a unit of rank-and-file security service employees dismissed where the proposed unit was a departmental unit inappropriate for the purpose of collective bargaining.

***Pinellas Lodge No. 43, Fraternal Order of Police v. City of Pinellas Park*, Case No. RC-2001-022 (June 22, 2001)**

Proposed unit of police officers approved.

***Professional Association of City Employees v. City of Jacksonville*, No. EL-2001-004 (Relates to RC-2000-056) (June 18, 2001)**

The Commission dismissed election objections filed by the incumbent union which lost the election. There were no allegations or evidence that each voter was not given the opportunity to vote in secret or that the ballot box was not protected in the interest of a fair and secret vote. There was no evidence of unlawful promises of benefits or threats of reprisal or force. Rival union's electioneering tactics were not such that the Commission found it necessary to invalidate the will of the voters. Consequently, rival union was certified as bargaining agent for a unit of non-professional employees.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Fort Lauderdale*, No. EL-2001-008 (Relates to RC-2000-049) (June 19, 2001)**

The Commission dismissed the incumbent union's post-election petition. Incumbent alleged that the city did not permit employees to vote during work hours and that the unilateral change of the election procedures restricted employees to voting only before or after work and on their lunch break. Incumbent admitted that the issue of whether employees would be permitted to vote on city paid time was not addressed during the pre-election conference. The Commission concluded that incumbent's mistaken belief about the election procedure was insufficient to demonstrate any improper conduct by the city. The polls' hours of operation appeared to accommodate voting before and after work. Any personal inconvenience this caused to voters was insufficient to require a rerun election. Incumbent union failed to demonstrate that the city misinformed employees or unilaterally altered the agreed upon election procedures by not permitting employees to vote on city paid time. Consequently, rival union was certified as bargaining agent for a unit of non-professional employees.

***Gillum v. Florida Police Benevolent Association, Inc.*, Case No. RD-2001-001 (April 17, 2001)** Decertification election directed in unit of police officers.

NATIONAL LABOR RELATIONS BOARD

***Italico v. Federation of Public Employees*, Case No. RD-2001-002 (May 7, 2001)** Decertification election directed in unit of operational services personnel.

***Mershon v. Northeast Florida Public Employees, Local 630*, Case No. RD-2001-003 (June 21, 2001)** Decertification election directed in unit of blue-collar personnel.

***National Conference of Firemen and Oilers, Local 1220, NCFO, SEIU, AFL-CIO, CLC v. Pinellas Suncoast Transit Authority*, Case No. UC-2001-008 (April 2, 2001)** Petition to clarify unit of non-supervisory blue-collar employees dismissed because it sought to exclude two classifications which had not been previously included in the unit at issue. Further, the petition was dismissed because union was not registered with the Commission when it filed petition.

***Hernando County v. Hernando County Professional Firefighters, IAFF, Local 3760*, Case Nos. UC-2001-004, UC-2001-006, UC-2001-007 (April 3, 2001)** Joint petition to merge three bargaining units of county employees represented by union into one new unit and to add the newly created classification of firefighter/EMT denied because the bargaining unit reconfiguration sought creates a question concerning representation that may only be addressed within the context of a representation petition.

***Transport Workers Union of America, AFL-CIO, Local 291 v. Miami-Dade County*, Case No. UC-2001-013 (April 11, 2001)** Petition to clarify a unit of transit employees to include the classification of transit welders granted.

***Coastal Florida Police Benevolent Association, Inc. v. City of Orange City*, Case No. UC-2001-012 (April 16, 2001)** Union's petition to clarify a unit of police officers to include the classification of police sergeant granted.

***Committee of Interns and Residents v. Jackson Memorial Hospital/Public Health Trust*, Case No. UC-2001-014 (April 17, 2001)** Petition to clarify a unit of hospital employees to include non-academic graduate assistants in the areas of dermatology (research), special immunology, neurology, ophthalmology, general dentistry, and otolaryngology granted.

***National Conference of Firemen and Oilers, Local 1220 v. Pinellas Suncoast Transit Authority*, Case No. UC-2001-009 (April 17, 2001)** Petition dismissed where union failed upon request to provide sufficient information supporting the relief requested, and union was not registered when it filed petition.

***Orange County Professional Firefighters, Local 2057 v. Orange County Fire/Rescue Department*, Case No. UC-2001-002 (April 18, 2001)**

Petition to clarify a fire suppression and medical rescue unit to include the classifications of municipal fire inspector and fire protection systems specialist granted.

NATIONAL LABOR RELATIONS BOARD

***International Union of Painters and Allied Trades, AFL-CIO, Local 1010, an Affiliate of District Council #78 v. School Board of Brevard County,* Case No. UC-2000-036 (April 18, 2001)**

Petition to clarify a rank-and-file blue and white-collar nonprofessional bargaining unit to include newly created classifications, reflect title changes to certain classifications, and to delete classifications that were abolished granted. In addition, the Commission clarified the unit to exclude employees who possessed a supervisory conflict of interest with unit employees, employees who did not share a community of interest, employees who performed investigatory duties creating conflict of interest with unit employees, managerial employees, confidential employees, and professional employees.

***Seminole County Professional Fire Fighters, Local 3254 v. Seminole County,* Case No. UC-2001-010 (May 1, 2001)** Petition to clarify a fire suppression and medical rescue unit to include the positions of lieutenant/training and lieutenant/EMS granted.

***Federation of Public Employees v. State of Florida, Department of Lottery,* Case No. UC-2000-030 (May 9, 2001)** Petition to clarify a unit of non-professional employees to include the classification of contract compliance coordinator granted.

***Broward County Police Benevolent Association, Inc. v. City of Wilton Manors,* Case No. UC-2001-011 (May 9, 2001)** Petition to include the nonsworn classifications of records technician/tac coordinator and records manager/criminal analyst in unit of sworn police officers and non-sworn police department personnel granted.

***Federation of Public Employees v. City of Lighthouse Point,* Case No. UC-2001-019 (May 11, 2001)** Petition to clarify a comprehensive bargaining unit of non-supervisory personnel to include the position of part-time bus driver granted.

***District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union v. Canaveral Port Authority,* Case No. UC-2001-003 (May 15, 2001)** Petition to clarify a bargaining unit to include newly created classifications, to reflect title changes, and to delete classifications that had been abolished granted.

***National Association of Government Employees, Local R-5 186 v. City of Palm Bay,* Case No. UC-2001-020 (June 12, 2001)** Petition dismissed where union was not registered at the time it filed petition, and Commission records reflected that the union was not the certified bargaining agent for the city's blue-collar employees.

***National Association of Government Employees (NAGE), Local R-5 197 v. City of Palm Bay,* Case No. UC-2001-021 (June 12, 2001)** Petition dismissed where union was not registered at the time it filed petition, and Commission records reflected that the union was not the certified bargaining agent for the city's white-collar employees.

NATIONAL LABOR RELATIONS BOARD

***National Conference of Firemen & Oilers, SEIU, Local 1227 v. City of Boynton Beach,* Case No. UC-2001-025 (June 21, 2001)** Petition to clarify a blue-collar bargaining unit of nonsupervisory personnel to include the positions of bus driver and utility location specialist senior granted.

***Pinellas Suncoast Transit Authority v. Local 1220, SEIU, AFL-CIO,* Case No. UC-2001-029 (June 22, 2001)** Petition to clarify a blue-collar supervisory bargaining unit to delete the abolished classification of safety and training coordinator granted.

***International Union of Painters and Allied Trades, Local Union 2301 v. City of Cape Coral,* Case No. UC-2001-035 (June 29, 2001)** Petition to clarify a bargaining unit to include newly created classifications, to reflect title changes, and to delete classifications that had been abolished granted.

***In re: International Union of Painters and Allied Trades, Local Union 2301 to Amend Certification 986,* Case No. AC-2001-002 (April 9, 2001)** Petition to amend certification to substitute petitioner as the certified bargaining agent for a unit of non-supervisory administrative and clerical employees of the City of Cape Coral granted.

***In re: National Conference of Firemen and Oilers/SEIU, Local 1227,* Case No. AC-2001-005 (May 31, 2001)**

Petition to amend certification by substituting petitioner as the certified bargaining agent for a unit of Village of Palm Springs nonsupervisory blue and white-collar employees granted.

***Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, IAFF, Inc. v. City of Fort Myers,* Case No. AC-2001-006 (June 29, 2001)**

Petition to amend certification to reflect petitioner as the certified bargaining agent for a unit of certified firefighters of the City of Fort Myers granted.

Unfair Labor Practice Cases

Federation of Public Employees v. City of Coconut Creek, Case No. CA-2001-003 (April 9, 2001).

The Commission granted the city's motion to dismiss the union's charge when the union lost a decertification election and failed to challenge the results of that election.

Federation of Public Employees v. City of Winter Haven, Case No. CA-2000-045 (April 17, 2001) The Commission concluded that the city was entitled to a pro rata portion of its reasonable attorney's fees and costs for litigating portions of the charge from the day of the hearing until the union withdrew the charge.

NATIONAL LABOR RELATIONS BOARD

AFSCME District Council 79 v. Department of Environmental Protection, Case No. CA-2000-051 (April 25, 2001) Charge that DEP discharged a bargaining unit member in retaliation for filing grievances and a lawsuit against it was dismissed. The Commission concluded that while the bargaining unit member engaged in concerted, protected activity in filing his grievances and lawsuit, this activity was not a substantial or motivating factor in the decision to discharge him from employment. Neither party was awarded attorney's fees or costs.

Dade County School Administrators' Association, Local 77 v. School Board of Miami-Dade County, Case No. CA-2000-047 (April 30, 2001) Charge that the school board unlawfully interrogated employees concerning union preferences and legitimate union activities, directed employees to rescind authorization cards, and interrupted the solicitation of authorization cards and questioning of employees was dismissed. The Commission concluded that the brief inquiry made by a school board agent was done so that the signing employee could determine whether she desired to retrieve her card which she was entitled to do. Under the circumstances, the inquiry did not interfere with, restrain, coerce, or have a chilling effect on the employee's collective bargaining rights or those of an employee soliciting cards for a rival employee organization. Neither party was awarded attorney's fees or costs.

Walker v. Duval County School Board, Case No. CA-2001-024 (May 31, 2001).

The Commission denied an order for injunctive relief where the General Counsel had determined that the charge did not establish a prima facie violation of any unfair labor practice provision.

Williams v. AFSCME Florida Council 79, Case No. CB-2000-011 (April 3, 2001) The Commission concluded that the union breached its duty of fair representation by the arbitrary manner in which it processed employee's grievance and that employee would have prevailed in his grievance at arbitration. Employee was awarded back pay, attorney's fees, and costs.

Tidyman v. Federation of Public Employees, Case No. CB-2000-029 (April 9, 2001) The Commission granted the union's motion to dismiss employee's charge alleging a breach of its duty of fair representation with respect to conduct which occurred during negotiations where union was decertified as the bargaining agent for the white-collar bargaining unit of which employee was a member and any remedy ordered in the case would have had limited value.

***DePaola v. Davie Professional Firefighters, Local 2315*, Case No. CB-2001-001 (June 5, 2001)** Charge against union alleging breach of duty of fair representation was dismissed.

NATIONAL LABOR RELATIONS BOARD

Employee was discharged for incidents that occurred in 1993, when he was a member of the union. Employee had been the union's president prior to 1997 when he was promoted out of the bargaining unit. He allowed his membership to lapse, and was subsequently demoted to a bargaining unit position and discharged. The union refused to process a grievance over his demotion and discharge because he was not a union member. Given the unique facts of this case and the Commission's prior case law concerning a union's ability to deny a non-member representation, the union's motion for attorney's fees was denied. Employee raised a unique issue and his charge was not frivolous, groundless, or unreasonable.

***Percival v. Southwest Florida Professional Firefighters and Paramedics, Local 1826, IAFF, Inc.*, Case No. CB-2001-004 (June 19, 2001)**

Charge that the union unlawfully conducted a contract ratification vote was dismissed where union provided bargaining unit employees with reasonable notice of the contract ratification vote and a reasonable amount of time to review the contract and educate themselves prior to that vote. Neither party was awarded attorney's fees or costs.
