ALRA advisor....

Association Of
Labour Relations Agencies

## October 2002 — SAN DIEGO

# 50th Anniversary — San Diego

The organizational meeting of the Association of State Mediation Agencies was held in 1952 in Detroit. Arthur Stark of New York is the only member of that founding class who is still active. If Arthur were here, we could ask him what the hell they were thinking, coming up with a name that spelled out "ASMA."

In any event, the following year the conference met in New Jersey at Rutgers University, and a young man named Will Weinberg was in attendance. That young man has stayed in the habit of attending these conferences – having been at the last 50 in a row. Although Will has always had the good judgment not be roped into becoming a member of the Executive Board, we cannot properly commemorate the organization without recognizing our most faithful member — Will would you stand up, please? — That shows what 50 years of ALRA conferences will do to a man — Will was 6 foot four back in 1953.

We'll move along now to those who did not share Will's good sense and thus have served as members of the Executive Board. If the members of the current Executive Board would please stand as I call your names – Putting aside Bob Anderson and Steve Meck for the moment, we have Vice President of Administration Tom Worley of Ohio, Vice President of Professional Development Jaye Bailey Zanta of Connecticut, Executive Board members Mary Helenbrook of New York, Marilyn Sayan of Washington State Reg Pearson of Ontario, Warren Edmondson of FMCS Canada, Scot Beckenbaugh of FMCS US in Minneapolis and Mary Johnson of the National Mediation Board in Washington, DC

With us today we have several former Executive Board Member and Officers. If you would please stand as I call your name — If you've left the room, in order to avoid confusion please don't stand when I call your name John Caraway, who retired from the California State Mediation and Conciliation Service a couple of years back was a member of the ALRA Board from 1990-1993.

Mike McDermott, former head of FMCS Canada, was a member of the Board from 1991 to 1996.

Eileen Hoffman of the FMCS U.S. served on the Executive Board from 1993 to 1996.

Jim Breckenridge of the Ontario ERC and now at the Ministry of Labour, served as an officer and Executive Board member from 1990-1994, and then again in 1997 to 1998.

Joel Weisblatt of the New York — New Jersey Port Authority Employment Relations Panel served as a member of the Executive Board from 1998 to 2001.

Joining us today as well are 16 persons who have served as ALRA President over the past four decades. We nearly had five decades, but Arvid Anderson of Wisconsin and then New York OCB called in with his regrets, as his family is celebrating his 80th birthday this weekend.

Paul Tinning, of the Oregon State Conciliation Service, presided over the 1970 conference in Hot Springs, Arkansas of what was then the Association of Labor Mediation Agencies. My only knowledge of this conference was hearing Morrie Slavney talk about getting on the elevator at the hotel and noticing that the chair of the host agency was also responsible for inspecting the elevators. Apparently the Arkansas agency had vast jurisdiction.

Parker Denaco, then of Maine, now of New Hampshire, presided over the 1979 conference in Madison, Wisconsin – that conference was the first for ALRA

Herman Torosian of Wisconsin – and I am proud to be from Wisconsin every time I say this out loud — presided at the Playboy Club in Great Gorge New Jersey in 1981.

The following year, 1982, Pete Obermeyer of Minnesota presided over ALRA's last visit to the Golden State, when we met in San Francisco.

Mabel Leslie of New York was ALRA's fifth president in 1961. A scant 25 years later, Janet Walden of the California PERB became the second woman to head ALRA at the 1986 conference in St. Paul, Minnesota.

Marv Shurke of the Washington PERC enjoyed a home field advantage as President at the 1988 Conference in Seattle.

The following year, Bob Jensen of the Montana Board of Personnel Appeals, journeyed even further north, as he presided in Toronto, Ontario.

Diane Zaar Cochran of the Massachusetts Board of Conciliation and Arbitration, the only ALRA President ever know for sure to have been pregnant in office, in 1990 delivered, among other things, a fine conference in Cincinnati, Ohio.

Doug Collins of the Los Angeles City Employment Relations Board is our most recent Californian to be president, and is one the great wine fanciers in ALRA. Doug showed his flexibility by serving as President in Beer City, USA at the 1992 conference in Milwaukee.

John Truesdale, a man who is alleged to have held every non-clerical title at the NLRB, presided in 1993 in Portland, Oregon.

In 1995, Sol Sperka of the Michigan Employment Relations Commission presided in Boston, where he was not the President who grabbed three floors of the hotel at the last minute, but was the president who had to handle the situation.

Most past presidents go quietly. However, John Cochran of the Massachusetts Labor Relations Commission, was ushered out of office to the sound of bagpipes and a procession of flaming desserts at the very memorable party thrown by Norm Bernstein in Ottawa in 1996.

Bill Clinton had the wisdom to vacate Washington, DC for a week to make room for a President of even greater charms and certainly greater beauty — Jacalyn Zimmerman of the Illinois State Labor Relations Boards — my personal favorite among ex-presidents — presided over the 1997 conference in Washington, DC.

Rick Curreri of the New York PERB brought his typically understated style to the 1998 St. Louis conference.

Much to everyone's relief, Steve Meck of Florida resisted the temptation to give his presidential address in French when he presided last year in Montreal, Quebec.

Finally, ALRA's incumbent president, Bob Anderson of New Jersey.

If all of our past and present leaders would please stand, let's give our honored guests a round of applause.

— Dan Neilson

# Favorite ALRA Memories

### *Harold Newman*
### *President 1984-85*

While I was in Virginia teaching sophisticated stuff to men and women attending the ALRA Academy, I received an invitation to debate a Federal official who opposed public sector collective bargaining. I accepted. A chauffeur in dove-grey livery appeared the next day with a splendid black limousine and drove me to the debate site in a Washington hotel. The sponsors provide a lovely lunch at the hotel where the debate took place.

After I was driven back to the temporary headquarters of the ALRA Academy in Virginia I felt that I had had a most worthwhile day. I had carefully folded the Wall Street Journal which had been thoughtfully left for me on the car seat. What greater tribute could I have been given?

At dinner I mentioned to an ALRA colleague that I had a very good day in Washington. He sat silent until I had finished. Then he said, "The Wall Street Journal? They didn't think you worthy of the New York Times?" Ah, ALRA!

### *R. Douglas Collins*
### *President 1991-92*

Boat Trips and Political Intrigue. Vancouver Conference 1980 – Awesome! The Tidal Bore in Moncton, New Brunswick. Hospitality suites with unlimited booze.Montana – Big Mountain, Flathead Lake!

Parker Denaco leaving the New Jersey Playboy Club (1981 Conference) with TWO Bunnies!

# President's Column

***Bob Anderson***

Being grateful is the best part of being ALRA's president. So I give thanks for what has been, for what is, and for what is to come.

### *Thanks for What Has Been*

There was so much to be grateful for at our San Diego conference besides the perfect weather. Our host agencies did a splendid job of arranging the social events and securing program speakers. I especially salute an indefatigable, inspired, and enthusiastic trio: Gerald James of the California Public Employment Relations Board, Micki Callahan of the California State Mediation and Conciliation Service, and Norma Turner of the California Agricultural Labor Relations Board. A special tip of the ALRA hat goes to Bob Hackel, a San Diego native and now a colleague of mine in New Jersey, for the superb planning he did for our beach party, our night at the zoo, and our trip to the ballpark.

The best compliment I can pay the program chairs — Mary Johnson and Liz McPherson — is to say the program matched the weather and the arrangements in excellence. Who will forget, for example, the riveting accounts of how unions, employers and ALRA agencies all responded to the events and aftermath of 9/11? Jaye Bailey Zanta and the Professional Development committee deserve special thanks for another flawless ALRA Academy preceding the conference and a stimulating and packed afternoon of training offerings concluding the conference.

In San Diego, we celebrated our first 50 years and delighted in the company of many of our past presidents. Rick Curreri produced a beautiful, illustrated directory of ALRA officials and Marv Schurke gave a stimulating and humorous address reviewing our first 50 years. Let me quote Sol Sperka, a past president who wrote us a thank you note: "The idea of recognizing past presidents was gracious and the carrying out of the plan was tasteful, warm, and left nothing to be desired."

Finally, I'm thankful for how all of us pulled together to make the conference a celebration of ALRA despite the grievous loss of Julie Hughes, our president, at the beginning of July. Elsewhere in this newsletter several contributors will remember Julie's contributions to ALRA and her kindnesses to all she met. But we all remembered Julie best by enjoying this conference in her honor.

### *Thanks for What Is*

An ALRA president has no power to compel, but lots of power to invite. So I've spent the last two months inviting dozens of people to help out with all sorts of committees. Unlike my unsuccessful calls in high school seeking dates, people have almost always said yes. Thank you for helping ALRA and boosting my self-esteem.

Elsewhere in the newsletter, I discuss my plans for beginning our next 50 years and the special committees I've formed to pass on our principles, preserve our institutional memory, and welcome newcomers and develop leaders. And of course, we've got the usual committees hard at work planning parties and programs and professional excellence, all led by committed and creative ALRA friends Ruthanne Okun and Bruce Janisse are the co-chairs of the Arrangements Committee; Lance Teachworth and Scot Beckenbaugh are the co-chairs of the Program Committee; and Jaye Bailey Zanta will once again oversee the many facets of our Professional Development, including an intensive focus in Detroit on training offerings. I'll stay out of the way and let these committees work their magic.

### *Thanks for What Will Be*

At the October Executive Board meeting in Detroit, we'll come up with the preliminary plans for the Detroit/Windsor conference and I'll share those plans with the membership soon afterwards. For right now, I invite you to save the dates — July 26-30, 2003 — view the gorgeous picture of the Marriott Renaissance Center on the ALRA web site, and trust your peers and our host agencies to plan an enjoyable and stimulating conference.

# FAREWELL AND WELCOME

## Thank You Mary and Steve

The Executive Board bids farewell to two old friends and welcome to two new ones. Recapitulations and introductions are thus in order.

### *Mary Helenbrook*

Mary Helenbrook of the New York State Employment Relations Board is leaving the Executive Board after completing two terms. She has served ALRA especially well as the Chair of the Site committee. After all, without site, there's no conference. Mary's hard work in lining up locations, agency support and hotels, and in taking care of all sorts of details paid off in our splendid conferences in Philadelphia, Montreal, and San Diego and will continue to produce dividends at our Detroit/Windsor conference next summer. In addition, Mary audited our books this year without producing any headlines or scandals and led one of the best program panels I've ever seen. The Long Road to A Long Contract session featuring Quebecor in Montreal. Great job and thanks, Mary. And may you delight in your grandchildren as they will delight in you.

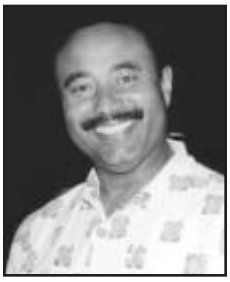
### *Steve Meck*

Steve Meck of the Florida Public Employees Relations Commission has paid many ALRA dues over the years and is now a free man having finished his term as immediate past-president. He served as Program Chair at the 1994

conference in Boston and never slowed down after that. As Vice-President of Professional Development, he conducted an extensive survey of our agencies' training resources; created a training grants program; taught at ALRA Academy for several years; and co-authored the unfair practice outline. Best of all, Steve had the good sense to be president and presider at our Montreal conference? What grand memories for him and for us.

A few years ago Rick Curreri included a story about Steve in Rick's Up Close and Personal column in the ALRA Advisor. It seems that Steve was thrown by a horse named El Diablo and suffered some painful injuries as well as a blow to his pride. The injuries were not painful enough, however, to keep Steve from bouncing right back into the saddle. And from being thrown right back out. At least Steve didn't try again. Happy trails, Steve, and keep away from El Diablo.

## Hello Phil and Jack



### *Phil Hanley*

Phil is a Member of the Phoenix Employment Relations Board and a newcomer to our Executive Board. He's been hard at work the last few years on our Program and Professional Development committees and has been a presenter in our training sessions. He rejoiced in the Diamondbacks' World Series triumph last year; I'm happy for Phil and our Phoenix friends personally, but as a Red Sox fan I don't think they suffered enough to enjoy it properly.

### *Jack Toner*

When Jack ran for Vice-President of Finance, he was the Executive Secretary of the National Labor Relations Board. Since then, however, he's accompanying Peter Hurtgen over to the Federal Mediation and Conciliation Service where Peter will become the Director and Jack will be the Chief of Staff. Jack co-chaired the Program Committee in Philadelphia and is an affable guy so long as you are not rooting against Penn State.

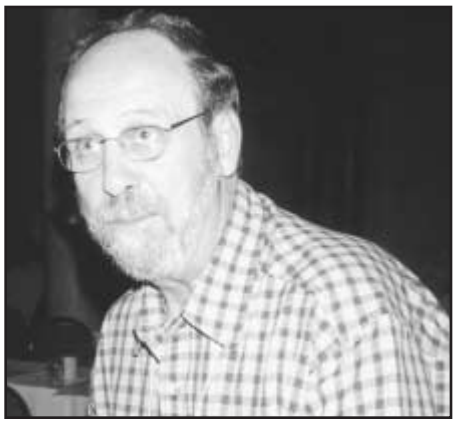
— Bob Anderson

# HIGHLIGHTS

## Halifax Bound: 2004

I'm pleased to announce that the Executive Board has unanimously and enthusiastically accepted a proposal to have our 2004 conference in Halifax, Nova Scotia. The host agencies will be Canada's Federal Mediation and Conciliation Service and Nova Scotia's Department of Environment and Labour. The dates will be July 24-28. Block out your calendars now.

The Board voted quickly on the proposal, rather than wait for its fall meeting, to make sure that hotel space would be available in this popular tourist destination. We're especially delighted that in a three-year period, our delegates will go from the Pacific Ocean (San Diego) to the Great Lakes (Detroit and Windsor) to the Atlantic Ocean (Halifax). We sure do get around.



***Ken Zwicker, Nova Scotia***

We give great thanks to our host agencies for inviting us to come to Halifax and we pass on their greeting to all delegates and their families:

Caid Mille Failte. That's Gaelic for "one hundred thousand welcomes."

— Bob Anderson

# Memo

Soon after the San Diego conference ended, I sent our Executive Board this memo setting forth my plans for this year, over and above having a wildly successful conference in Detroit next summer. The invitation in the last paragraph extends to everyone who reads this newsletter — we're happy to get all the help and company we can.

**Memo**

To: ALRA Executive Board
From: Bob Anderson, President
Re: Succession Planning and Strategic Planning

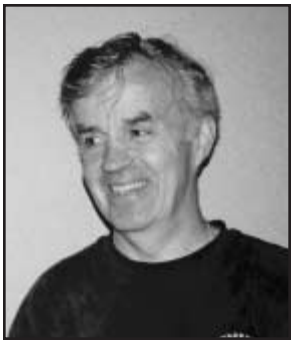
At the banquet, I talked about my focus for the next year on succession planning and strategic planning. That makes sense to me as ALRA begins its second 50 years. Let me set forth some ideas and ask for your reactions.

Succession planning has three key aspects: passing on our principles, ensuring continuity in our organizational practices, and welcoming new people into ALRA affairs and developing leaders.

We believe that the collective negotiations process serves the public interest and that our member agencies best promote that public interest when we observe an ethics of neutrality. But there's been a generational turnover in the last 20 years so I believe that understanding of the negotiations process and neutrality needs to be intentionally cultivated and passed on to new leaders and staff at our agencies and sometimes explained to the public. ALRA Academy has been one way of addressing this concern and we've also included program offerings (John Higgins' speech in Washington in 1997) and training offerings (Mr. Wizard) on neutrality. Is there more we should be doing to introduce new agency heads to the world of neutrality? Is there more we can do to help our member agencies cultivate an ethics of neutrality within their agencies? Can we help new agencies practice and promote neutrality? John Higgins will chair a committee charged with looking into these questions.

Organizationally, we sometimes reinvent the wheel from conference to conference as new people pick up major responsibilities. We have also been blessed with individuals like Julie Hughes who knew everything and could give answers when called. But now we've lost Julie and we need an institutional memory bank which we can pass on from year-to-year e.g. a handbook of procedures and time lines for our major functions. This handbook would cover such areas as program, arrangements, site selection, hotel negotiations, finance, on-site conference details, the Advisor, and ALRA Academy. Mary Johnson will chair a committee charged with developing such a memory bank or handbook.

Like any other organization, ALRA needs to welcome new friends, broaden participation, and develop new leaders. At the last Executive Board meeting, Warren Edmondson also rightly pointed out that we need to be attentive to reaching out to new delegates to learn how ALRA can meet their needs. Julio Castillo and Liz MacPherson will co-chair a committee charged with making recommendations about how we can be more welcoming and how we can engage new people and bring along new leaders.



***John Higgins***

***Dan Nielsen***

In strategic planning, I'd like to consider whether we should continue to plan our conferences on a year-by-year basis or whether we should intentionally seek to vary the nature and structure of our conferences over a longer period of time. I'd especially like to think about whether our training offerings might be rotated over a longer period of time given an analysis of delegate attendance that has been done and updated. I'll charge the Policy and Constitution committee, chaired by Dan Nielsen as president-elect, with studying these questions and with identifying other issues of strategic planning we might want to pursue. I'd also ask Jaye Bailey Zanta as our Vice-President of Professional Development to serve on that committee and take the lead in figuring out how to plan our training offerings.

I'll be putting together these committees and filling out the other traditional committees over the next two weeks. If you've got a desire to work on any committee or an idea about what we should be doing in succession or strategic planning, give me a call (609-292-9830) or send me an e-mail (banderson@perc.state.nj.us).

## *Highlights of the Executive Board Meeting – July 21, 2002*

1) Presidency – Bob Anderson succeeds to the office of President as a result of the unfortunate death of Julie Hughes.
2) Arrangements - The Board encouraged the early distribution of a list of conference attendees. Even though the individual listings may not be confirmed by the attendees nor reflective of last minute registrations or

*Continued on page 9*

# San Diego

substitutions, the preference is to have an initial list available at the time of registration to enable participants to get to know each other better.

3) Conference Program — For the first time, conference attendees will receive materials for all sessions related to the concurrent Wednesday afternoon training programs regardless which sessions are attended by the participants.
4) Membership – The Board approved the admittance of the Maryland Higher Labor Relations Board as ALRA's newest member agency. In addition, the Board authorized the Membership Committee to conditionally accept future qualifying applicants for membership in order to allow the agency to attend the conference pending a decision by the full board.
5) Finance – The Board authorized the President Elect (elected in odd-numbered years) and the Vice President Finance to sign financial instruments and accounts of ALRA for a concurrent two-year period.

Note: Each year the ALRA Executive Board meets in July on the morning of the first day of the annual conference to assist with the final plans of the annual conference and to prepare for the annual meeting.

## *Highlights of the Annual Business Meeting – July 24, 2002*

1) Recognition — Past ALRA President Jackie Zimmerman offered recognition in memory of President Julie Hughes and remarked on Julie's dedication to her profession, her family and her friends. Bob Anderson encouraged conference participants to make contributions to an education fund established to help Julie's children.
2) Election — Dan Nielsen (President Elect), Jack Toner (Vice President Finance), and Scot Beckenbaugh, Warren Edmondson, and Phil Hanley (Board Members) were elected by acclamation.
3) Constitution — Motion passed to amend Article 3, Section 2 to automatically recognize past presidents as honorary members. Motion passed to amend Article 6, Section 1 and Article 7, Section 6 to allow the Immediate Past President who is a member of the Executive Board to vote at Board meetings.
4) Finance — With the expansion of services, costs are rising. Nonetheless, the profits made in recent conferences keeps the organization in excellent financial condition.
5) Membership — There are more than 70 member agencies.
6) Audit — The audit of financial records was completed; and the records were found in order.
7) Publications — There was recognition for the leadership of Jim Breckenridge and Reg Pearson for publishing three issues of the Advisor in the last year.
8) Professional Development — Three subcommittees worked hard in soliciting input for conference training sessions, recommending two training grants, administering the ALRAcademy, and expanding the training resources listed on alra.org.
9) Site — Next year's conference will be held in Detroit from July 26 – 30, 2003. A proposal for holding the conference in Nova Scotia in 2004 is in the offing.

***CANADA EH?***
***Members of PSSRB & Bob Anderson***

10) Technology — The web site has been expanded to add Board minutes, annual meeting minutes, past Advisors, conference notes, and other publications.
11) Uniform Mediation Act — Motion passed to allow ALRA to support member agencies in evaluating the need for changes in the Uniform Mediation Act as it relates to labor mediation of labor disputes.
12) ABA Scholarship — ALRA assists the ABA in identifying eligible and interested candidates for attendance of the state and local government collective bargaining law subcommittee meeting held each year.
13) Federal Legislation — There will be a review of any progress related to the Uniform Services Act. Member agencies will be kept informed.
14) Motion passed to approve changes to the Labor Mediators' Code of Conduct.

Note: Each year ALRA conducts a business meeting on the last day of its annual conference. Every member agency is invited to attend and has a vote in the proceedings.

### *Highlights of the Executive Board Meeting – July 24, 2002*

1) Welcome – President Bob Anderson welcomed new officers and Board members.
2) Conference Program 2003 – Based upon the success of providing copies of materials for all Wednesday afternoon training programs, the Board will consider expanding the concept to allow for the distribution of materials for all conference sessions regardless which sessions are attended by the participants. The Professional Development Committee has been asked to develop training sessions for both Tuesday and Wednesday for next year's conference.
3) Site – The 2003 Conference will be held at the Detroit Marriott at the Renaissance Center from July 26 – 30.
4) Goals – Bob Anderson outlined goals for the organization. To allow for intentional succession planning, he asked that each committee and officer outline a list of responsibilities and a guide to completing typical tasks assigned to the position or group. Bob is naming John Higgins to lead an effort to identify and discuss guiding principles for labor relations neutral agencies.
5) Technology – alra.org is getting 6700 hits per month by users and search engines.
6) Based upon an inquiry made at the annual business meeting, Bob will ask that the Policy and Constitution Committee review current circumstances to determine the feasibility of including Mexican labor relations agencies as member agencies of ALRA.

Note: Each year the ALRA Executive Board meets in July on the afternoon of the last day of the annual conference to welcome new board members and officers and to begin plans for the new program year.

# FEDERAL

## Canada

### *Pay equity deal reached at Bell Canada*

A deal has been reached in the decade-long pay equity battle between Bell Canada and its clerical and sales workers. After months of negotiations with their union, the Canadian Telecommunications Employees' Association (CTEA), Bell agreed to pay a $178 million settlement to 29,000 workers who worked for the company between April 1993 and May 2002. The amount includes $128 million in cash payments and $50 million in pension benefits. Cash payouts to eligible employees will range from $500 to $20,000, depending on wage classification and years of service. Pension benefits will vary from $50 to $15,000.

While the deal has yet to be ratified by the union membership, CTEA leaders expressed the view that the deal was a good one, and expected ratification when the members vote on the deal later this month. "I am very pleased that we were able to reach this settlement with Bell Canada," said Brenda Knight, President of CTEA. "I'm confident that our membership will ratify it because it serves their real interest. It provides them with substantial amounts of money in a very short timeframe, and it may end long and costly litigation, the outcome of which has been highly uncertain. This is a significant milestone in equity-related gains we have made over the last decade."

The settlement also requires that Bell and CTEA assign a joint committee the responsibility to participate in maintaining equity within Bell in the future. "[W]e are aware that pay equity issues will have to remain a priority for the CTEA," Knight said. "We intend to remain vigilant and focused on our objective: to ensure that our members receive equal pay for work of equal value."

Although the deal, if ratified, will bring a measure of relief to the clerical and sales workers, about 5,000

female phone operators, represented by the Communications, Energy, and Paperworkers Union (CEP), continue to await resolution of their own pay equity dispute with Bell. In 1999, Bell offered the CTEA $32 million and the CEP $29 million. Both unions rejected those offers. The CEP wants Bell to seriously address its $400 million claim. Union President Brian Payne attributed Bell's offer to the CTEA to public pressure applied recently by the unions, such as speaking out at shareholders' meetings, a demonstration at the Molson Centre in Montreal, and an expected demonstration at the Bell Canadian (Golf) Open.

Michael Sabia, CEO of Bell Canada, welcomed the settlement with CTEA. "This settlement demonstrates Bell's commitment to ensuring a fair, equitable, and diversified workplace for all employees," declared Sabia. "We are pleased that discussions with the CTEA have resulted in a fair settlement of this long-standing dispute that enables us to move forward as a stronger company." The company's President and Chief Operating Officer John Sheridan was hopeful that a similar settlement could be reached in the pay equity dispute with the Communications, Energy, and Paperworkers Union. "Bell remains open to pursuing discussions with the CEP should the union indicate a willingness to resume the negotiations at a future date," said Sheridan.

**Background Information**

The CTEA and CEP launched pay equity battles in 1992 after a study found that the mainly female operators and clerical employees were paid approximately $2 to $5 less per hour than the mostly male technicians, for work of equal value. The unions filed complaints with the Canadian Human Rights Commission, which referred the claims to the Canadian Human Rights Tribunal. Bell challenged the appointment of the Tribunal, contending that the Commission's investigation was biased and that the unions' claims were vexatious and in bad faith. Judge Francis Muldoon agreed and granted Bell's application for judicial review, but this decision was overturned on appeal by the Federal Court of Appeal (reported in the January/February, 1999 issue of Women/Pay Equity).

Bell then took a new tack and argued that the Tribunal was institutionally incapable of providing a fair hearing because of its links to the Canadian Human Rights Commission, which investigated the complaint and appointed the Tribunal. Judge Donna McGillis agreed and granted Bell's application for judicial review. In response, the federal government enacted amendments to the legislation to reinforce the Tribunal's independence from the Commission. Bell Canada was not satisfied, however, and renewed its objection to the Tribunal's appointment by filing a fresh application for judicial review. The application was granted by Judge Danièle Tremblay-Lamer, who ruled that there should be no further proceedings in the matter until the government addressed the remaining problems with the Tribunal's impartiality and independence. In her view, the continuing power of the Commission to issue binding guidelines in a "class of cases" diminished the Tribunal's ability to make independent decisions, giving rise to a reasonable apprehension of bias.

Tremblay-Lamer's decision was set aside by the Federal Court of Appeal, which ruled that the legislative amendments were sufficient to ensure the independence and impartiality of the Tribunal. Undeterred, Bell Canada applied to the Supreme Court of Canada for leave to appeal the Federal Court of Appeal's decision. As reported in the November/December, 2001 issue of Women/Pay Equity, the Supreme Court of Canada granted leave to appeal on December 13, 2001.

— Lancaster House

## *Seniority rights on merger: labour board sets out the rules*

The Canada Industrial Relations Board has quashed an arbitration award that gave preference to Air Canada pilots in merging their seniority list with that of former Canadian Airlines pilots.

The merger of Air Canada and Canadian Airlines in January, 2000 resulted in a number of disputes between employees of the two airlines, the most contentious being the merger of seniority lists. For pilots, seniority ranking is of critical importance. It determines which aircraft they fly and what salary they earn, as well as their choice of base and ability to exercise their preference as to routes. The CAIL pilots entered the merger

negotiations determined to protect their position through a blended seniority list based strictly on date of hire. The Air Canada pilots contended that the only way to meet pre-merger expectations was to evaluate the contribution of each pilot group to the continuing enterprise, and to construct an integrated list on a ratioed basis.

Influenced by the economic situation of the two airlines prior to the merger, the arbitrator opted for the ratio model proposed by the Air Canada Pilots Association. "There is no question who rescued whom here, so that if there are negative employment consequences from the merger, it is fair to say that any protection against those ought properly to be allocated to the Air Canada pilots." As a result, the arbitrator gave Air Canada pilots exclusive bidding rights on certain aircraft, and directed that "as between pilots on the pre-merger combined list … no former Air Canada pilot will be laid off until 442 former CAIL pilots have been laid off."

Alleging that the ruling created a form of "pilot apartheid" that would have "extraordinary harsh repercussions on the careers of individual pilots," the CAIL pilots (through their union, the Air Line Pilots Association) applied to have the award reviewed by the Canada Industrial Relations Board.

The Board ruled that, while the "variable ratio" method used by the arbitrator to integrate the two seniority lists was appropriate in the circumstances, the arbitrator erred in devaluing the seniority of CAIL pilots on the basis of the airline's pre-merger economic circumstances. As Board Chair Paul Lordon noted, the merger of the two bargaining units resulted from a single employer declaration under section 35 of the Canada Labour Code, the purpose of which was to protect the collective bargaining and collective agreement rights of employees affected by a merger.

In the Board's view, therefore, the appropriate approach when integrating bargaining units in these circumstances was to reconcile the two agreements in a manner which ensured, to the greatest extent possible, that the existing collective agreement rights of those affected by the merger were preserved. Any changes in those rights should be restricted to the minimum necessary to effect the integration, and the rights of both bargaining units should be given equal value, unless there was a persuasive basis for preferring the rights of one group over another. Moreover, the relative pre-merger economic condition of the two employers was not grounds for favouring one group of employees over the other, the Board ruled, and should not be used to devalue collective agreement rights, unless that intention was expressly agreed to by the parties or reasonably implied from the circumstances.

In this case, the Board held, there was no indication that the CAIL pilots had agreed to forego any of their rights. Indeed, Air Canada had expressly renewed and extended their collective agreement until June 30, 2005, and the decision had clearly been made well before the arbitration that the rights of CAIL pilots, including seniority, were to be carried forward in the merger process. According to Chair Lordon, once the Board had declared a single employer and consolidated the bargaining units, there was no basis to prefer the rights of one pilot group over the other.

While there might be circumstances where pre-merger economic conditions were relevant, the Board ruled, preference must always be given to preserving the pre-existing rights of bargaining unit members: "The concern of the Board in respect of these matters is not that pre-existing economic circumstances and pre-merger employee expectations were considered in the circumstances, but that they were not considered carefully and flexibly in the context of the contractual rights of the merging bargaining units…"

While the Board agreed with the arbitrator's conclusion that a variable ratio model was the best means of integrating the two seniority lists, it concluded that the objective of the merged seniority list should be to leave each pilot, to the extent possible, in the same position he or she would have been in prior to the merger, without any adjustment to the relative seniority of employees on either list or discrimination based on prior affiliation. In the Board's view, once the bargaining unit had been merged, members should expect that whatever occurred in the future would occur equally to all members of the bargaining unit in accordance with common rules, without fences or lay-off protection for either of the pre-merger groups.

In the result, the Board gave the parties 120 days to attempt to negotiate an integrated seniority list on the basis of the principles laid out in its decision. Failing that, the Board retained jurisdiction to intervene to resolve the issue.

**Air Line Pilots Association v. Air Canada Pilots Association**
Canada Industrial Relations Board
Paul Lordon, Chair
July 10, 2002

— Lancaster House

# USA

## *National Mediation Board*

The National Mediation Board has undergone substantial change recently, with the retirement of long-time member Maggie Jacobsen and the addition of two new members to join current Chair Frank Duggan. Maggie served three terms on the Board and a total of 24 years as a government mediator. In remarks issued August 2, 2002, she bade farewell to those she had worked with over the years, including parties in the railroad and airline industries, individuals at other government agencies, and the press. She noted:

> My plans are to play a constructive role in labor-management relations in a mediator/facilitating capacity and perhaps to do some teaching. I believe that labor representatives, labor relations professionals, and the media play an essential catalytic role in overcoming conflicts that will always exist in the workplace and hope my experience could be helpful in the continuing work of conflict resolution.

The two new members confirmed on August 1, 2002, are Edward J. Fitzmaurice and Harry R. Hoglander. Mr. Fitzmaurice has practiced labor law in Dallas, Texas and was also a captain, co-pilot and flight engineer for Braniff Airlines for 17 years. Mr. Hoglander most recently worked for Massachusetts Democratic Congressman John Tierney, and had served as labor representative to the US Aviation Bi-Lateral delegation, an officer of the Air Line Pilots Association, and a captain for TWA.

## *Federal Mediation and Conciliation Service*

Former National Labor Relations Board Chairman Peter J. Hurtgen was confirmed by the Senate July 29, 2002 as Director of the Federal Mediation and Conciliation Service.

## *National Labor Relations Board*

Chairman Hurtgen's departure from the NLRB to head the FMCS leaves the Board with a functioning quorum of three, Wilma B. Liebman, Michael J. Bartlett, and William B. Cohen. As noted in the previous adviser, President Bush announced his intention to nominate two members, Robert Battista and Peter Schauber. We reported also the nomination last fall of Deputy Attorney General R. Alex Acosta. It is expected that member Liebman will be renominated, and former member Dennis P. Walsh will also rejoin the Board, forming the full complement of five members. Bartlett and Cohen serve in recess appointments and are not expected to remain.

## *Federal Labor Relations Authority*

In September 2002 President Bush announced his nomination of Dale Cabaniss for a five-year term as member of the FLRA. Upon her confirmation she will be designated Chairman. Ms. Cabaniss has been a member of the Authority since 1997 and been Chairman since March 2001.

Also at the FLRA, the President nominated Peter Eide, director of Labor Law Policy at the US Chamber of Commerce, to be General Counsel. Mr. Eide has practiced labor and employment law, worked in management at Martin Marietta, and was a field examiner with the NLRB.

Submitted by Joy K. Reynolds

# Florida

## *CAREER SERVICE GUIDE AVAILABLE*

The Commission has published a guide to the career service appeal process, including changes resulting from the Service First legislation. This sixteen-page document can be downloaded from the Commission's web site,

http://www2.myflorida.com/les/perc/default.html.

A copy of the guide can also be obtained by $2.00 to the address below, requesting "Career Service Appeals Under Service First":

Florida Public Employees Relations Commission
4050 Esplanade Way
Tallahassee, Florida 32399-0950

## *Election Procedures Addressed*

In *Florida Police Benevolent Association, Inc. v. City of Clewiston*, Case No. RC-2002-013 (June 28, 2002), the parties stipulated to the composition of a bargaining unit of police officers and filed a joint motion for an on-site election. The hearing officer recommended that the motion be approved. However, while the Commission approved the agreed-upon bargaining unit, it denied the motion for an on-site hearing because there were only twelve eligible voters, the parties sought to schedule the Commission's election agent at shift changes at 10:45 p.m.-11:15 p.m. and 6:45 a.m.-7:30 a.m., the election location was a difficult travel destination from the Commission's office, and none of the reasons articulated in support of an on-site election were based on any facts unique or specific to the election. The Commission found specious the parties' argument that rejection of their requests would result in "greater expense as parties will have less incentive to stipulate on issues rather than go to a hearing,." Stating that while the choice to stipulate or litigate an issue remains entirely within the discretion of the parties, the Commission will not be directed by litigants seeking to dictate through stipulations the Commission's internal case handling procedures. The Commission concluded that a mail ballot election was appropriate. However, because the hearing officer stated that an on-site election was "an integral part of their agreement to the unit composition," the Commission provided the parties an opportunity to withdraw the stipulation as to the unit composition. If this occurs, the Commission will rescind the order directing election and the hearing officer will be directed to expeditiously process the case in order not to unduly burden the employees' constitutional right to decide for themselves whether to unionize.

## *Termination of Local PERC*

In response to a city's inquiry, the Commission explained in *In Re City of Pensacola Local Option Commission*, Case No. LO-2002-001 (May 13, 2002), the procedure for the termination of a city's local public employees relations commission adopted pursuant to a local option ordinance provided for by Section 447.603, Florida Statutes (2001). The Commission clarified that as soon as a local option commission has been dissolved, the city may file a copy of the relevant ordinance of dissolution and the Commission will assume jurisdiction. Upon assumption of jurisdiction by the Commission, any employee organization that was previously certified by that city's local option commission should file a petition with the Commission requesting that it now be certified by the Commission as the representative of a bargaining unit of city employees. The union should include with its petition copies of all records from the city's local option commission regarding the certification and any clarification or amendments to the certification. The union should also be registered with the Commission pursuant to Section 447.305, Florida Statutes (2001).

## *UNFAIR LABOR PRACTICE CASES*

***Palm Beach County Police Benevolent Association, Inc. v. City of Riviera Beach*, 28 FPER ¶ 33143 (2002) (Relates to AF-2001-002, CA-97-099, and RC-97-029)**.

Commission concluded that the unlawfully discharged employee was entitled to back pay which included holiday and good cause pay, medical reimbursement, and overtime pay, but not pay for off-duty police employment. Furthermore, interest on back pay is calculated using simple interest based on quarterly net back pay.

***Fire Rescue Professionals of Alachua County, Local 3852, IAFF v. Alachua County***, **28 FPER ¶ 33158 (2002)**.

Union filed an unfair labor practice charge alleging that the County unilaterally eliminated an adjusted hours leave practice (AHLP) affecting supervisory certified fire fighters without advance notice and bargaining. Commission determined that the charge was timely filed; Section 215.425, Florida Statutes (2001), prohibiting payment of extra compensation to County employees when not done pursuant to properly promulgated policies or ordinances, was inapplicable to the facts here; the AHLP was not prohibited by the Fair Labor Standards Act under the facts here; the actions of the deputy chief were attributable to the county because, within the context of an unfair labor practice charge, he was a managerial employee acting as the county's agent; and bargaining unit employees had a reasonable expectation that the AHLP would continue. Thus, the Commission concluded that the county committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), Florida Statutes (2001). Commission did not award Union attorney's fees and costs because the issue of whether Section 215.425 is violated by an AHLP is novel and, thus, the county neither knew nor should have known that its conduct was unlawful.

***Professional Association of City Employees, Inc. v. City of Jacksonville***, **28 FPER ¶ 33162 (2002).**

Union's charge that the City had unilaterally changed the employees' absence without pay procedure without offering to bargain with the union was dismissed where the change occurred two days before the union was formally certified. Union had not charged that the City implemented the change after the union won the representation election but before the official certification to avoid bargaining with the union or to interfere with the employees' right to choose their own representative. The City's exceptions were denied where allegedly overlooked facts by the hearing officer would not change the ultimate result of the case. Furthermore, because the hearing officer concluded that the moving party failed to carry its burden of proof, and the moving party did not except to that decision, it was unnecessary to resolve the exceptions. The City's request for an award of attorney's fees and costs was denied.

***Joe Ferrara v. City of West Miami***, **Case No. CA-2002-018 (May 24, 2002)**.

Appeal of General Counsel's summary dismissal of an amended unfair labor practice charge was dismissed where the appeal was untimely filed, no motion to extend the time limit was filed during the twenty-day period for filing the appeal, the existence of an extraordinary circumstance was not shown, and the charging party did not respond to a show cause order asking why the appeal should not be dismissed as untimely.

***Jacksonville Consolidated Lodge No. 5-30, Fraternal Order of Police v. City of Jacksonville***, **Case No. CA-2001-058 (May 24, 2002)**.

Commission concluded that the City did not commit an unfair labor practice by failing to notify the union of, or giving it an opportunity to provide input into, changes to health insurance plan benefits and premiums where the City complied with the applicable collective bargaining agreements, and the union failed to establish that the practice regarding changes in health plan benefits was altered by the changes. Commission also concluded that the City was entitled to an award of attorney's fees and litigation costs.

***Professional Association of City Employees, Inc. v. City of Jacksonville***, **Case No. CA-2002-005 (June 6, 2002)**.

Union alleged that the City committed an unfair labor practice by failing to deduct union dues for five bargaining unit members. Commission found no unfair labor practice where the failure was due to a clerical error that was fixed as soon as the City became aware of it. The City was not awarded attorney's fees because prior to this case the Commission had not expressly declared that intent was a required element to demonstrate a violation involving dues deductions.

***Ronald Shepherd v. Broward Sheriff's Office***, **Case No. CA-2001-071 (June 21, 2002)**.

Unfair labor practice charge was dismissed where employer did not retaliate against employee for soliciting signature cards for a representation election and did not adopt an overly restrictive union solicitation policy. The employer was not awarded attorney's fees and costs.

***Anthony Zitnick v. City of Pembroke Pines***, **Case No. CA-2002-019 (June 25, 2002)**; ***Anthony Zitnick v. International Association of Firefighters, Local 2292*, Case No. CB-2002-004 (June 25, 2002)**.

Commission affirmed the General Counsel's summary dismissals of the charging party's amended unfair labor practice charges where charges were untimely filed and insufficient on their merits to establish a prima facie violation.

## *Practice Pointers: Exceptions and Transcripts in Career Service Appeals*

The advent of Service First markedly shortened the time for disposition of career service appeals. The Commission is now required to issue a final order within thirty days of hearing if no exceptions are filed. If exceptions are filed, the Commission's final order must issue within thirty days of that filing. The time for filing exceptions was shortened to five business days. However, in most cases a court reporter will not be able to produce a transcript in less than seven working days. As a result, the parties to career service appeals are increasingly requesting extensions of time in which to file exceptions on the ground that they will not be able to obtain a transcript within the allotted five working days.

As a practical matter, this circumstance should indicate to all parties that it is risky to wait until receipt of the hearing officer's recommended order before ordering a transcript. It is well-settled that the Commission cannot reject or modify a hearing officer's findings of fact, credibility determinations, or recommended penalty without first reviewing a transcript of the evidentiary record. §120.57(1)(l), Fla. Stat. (2001); *Roberts v. Department of Corrections*, 690 So. 2d 1383 (Fla. 1st DCA 1997); *Brown v. Department of Corrections*, 691 So. 2d 47 (Fla. 1st DCA 1997). Moreover, as the Commission's recent holding in *Stotts v. Department of Transportation*, Case No. CS-2002-004 (Fla. PERC June 10, 2002), makes clear, the transcript must be a complete transcript of the entire evidentiary hearing, not merely a transcript of the testimony, or of one day of a multi-day hearing.

However, even where the parties have delayed ordering a transcript until receipt of the recommended order, the Commission will grant a limited extension of time for exceptions. Because the Commission has only thirty days from the hearing (about two weeks after it receives a recommended order) to issue the final order if no exceptions are filed, it is not possible to grant lengthy extensions. When a party has waited until receipt of the recommended order to decide whether to order a transcript, it is almost certain that the Commission will not be able to grant a sufficient extension to allow that party to prepare exceptions after receipt of the transcript while still preserving sufficient time for issuance of the final order in the event no exceptions are filed. However, the Commission has long recognized that for parties and counsel who were present at the evidentiary hearing access to a transcript is not essential for preparation of exceptions. Thus, the Commission will grant the longest extension for filing exceptions possible while still allowing itself adequate time to issue a final order within thirty days of the hearing if no exceptions are filed. Once exceptions are filed, the Commission begins a new thirty-day period, calculated from the date the exceptions were filed, for issuance of its final order. Therefore, the Commission will allow a party filing exceptions before receipt of a transcript to supplement those exceptions with transcript citations and a copy of the transcript during that new thirty-day period.

## *Reopening The Record: Pre and Post-Final Order*

**by: William D. Salmon, Hearing Officer**

The Commission applies different standards to evaluate requests to reopen the record depending on whether the request comes before or after issuance of the final order. *Seay v. Department of Corrections*, 16 FCSR 294 (2001), presented the Commission with an opportunity to consider the circumstances under which it would reopen the record to receive additional evidence after the final order issued. In *Seay*, the employee had not attained permanent status in the career service system prior to his dismissal, and the Commission dismissed his appeal for lack of jurisdiction. The Commission's final order issued in June 2001, and in March 2002, the employee sought to reopen the record alleging that the agency had intentionally defrauded him during the May 2001 hearing.

In considering Seay's motion, the Commission relied on *State Employees Attorneys Guild, FPD, NUHHCE, AFSCME, AFL-CIO v. State of Florida*, 27 FPER ¶ 32200 at 476 (2001). There, the Commission concluded that it can only reissue a final order under the following circumstances:

1) When it is necessary to correct clerical errors arising from mistake or inadvertence;
2) When there are "egregious circumstances" warranting the issuance of a superceding final order to permit a belated appeal; or
3) When a party "had not received a copy of the final order and had been unaware of its issuance until after the time for appeal had expired.

The Commission determined that Seay's assertion of intentional fraud during an evidentiary hearing constituted an allegation of "egregious circumstances" but declined to reopen the record because the motion failed to present facts that supported this assertion.

On May 23, the Commission denied Seay's third motion to reopen the record because it lacked jurisdiction to consider the motion. Seay was provided an opportunity to appeal that order to the District Court.

Had Seay filed his motion to reopen the record prior to the issuance of the final order, the Commission would have considered a different set of factors. In determining whether to reopen the evidentiary record prior to the issuance of the final order, the Commission considers:

(1) Whether the evidence is newly discovered and was not available or discoverable with due diligence prior to the hearing;
(2) Whether the motion is opposed;
(3) Whether delay would result from granting the motion; and
(4) What impact, if any, the admission of such evidence will have on the material factual determinations made by the hearing officer.

See *Brunn v. Department of Revenue*, 3 FCSR ¶ 150 at 492 (1988), *aff'd*, 545 So.2d 1370 (Fla. 1st DCA 1989).

# ONTARIO

## *Government enacts "orangutan clause" in Toronto strike, then promptly disavows its use*

By July 11, sixteen days after 6,800 outside workers went on strike, and eight days after 15,000 inside workers joined them on the picket line, Ontario's provincial government recognized that negotiations between Canadian Union of Public Employees (CUPE) and the City of Toronto were at a virtual standstill over the issue of job security. The union wanted to retain and improve upon a commitment by the City not to privatize the jobs of workers with 10 or more years of seniority. The City wanted to end its commitment, at least for workers attaining that level of seniority in the future. As piles of garbage mounted, Premier Ernie Eves reconvened the Legislative Assembly in order to enact a bill that would return striking workers to their jobs and impose binding medidation-arbitration by a third party.

The major obstacle to ending the strike became the choice of an arbitrator. The government insisted on the inclusion of a so-called "orangutan clause," mockingly referred to as such by labour because it would allow the government to appoint anyone — even a primate — as an arbitrator. Specifically, section 11(4) empowers the Minister of Labour to appoint as a mediator-arbitrator someone who:

"

(a) has no previous experience as a mediator, mediator-arbitrator or arbitrator;
(b) has not previously been or is not recognized as a person mutually acceptable to both trade unions and employers;
(c) is not a member of a class of persons which has been or is recognized as being composed of persons who are mutually acceptable to both trade unions and employers."

Section 11(5) also authorizes the Minister of Labour to "depart from any past practice concerning the appointment of mediators, mediator-arbitrators, arbitrators, or chairs of arbitration boards…."

However, with the NDP vowing to delay passage of the bill as long as the controversial clause was included, and the Liberals publicly proposing names of widely acceptable neutrals, the government committed itself to appoint one of three acceptable arbitrators (Kevin Whitaker, Tim Armstrong, or Victor Pathe) in the event of an impasse between the parties. Although the "orangutan clause" remains in the bill, the Premier issued a public letter confirming the government's commitment if the City and the union failed to arrive at an agreement on a choice of arbitrator within five days after the bill received Royal Assent. Click here for the Premier's letter of July 11, 2002.

On July 17, five days after the bill was enacted, with the parties unable to agree, Tim Armstrong was appointed by the Minister of Labour to act as mediator-arbitrator. The parties will now enter into 60 days of mediation, followed by 60 days of arbitration, if a settlement is not reached.

Editors' note: The "orangutan clause" was first enacted by the Ontario government in April 2001, in legislation ending a strike by custodial staff against the Toronto District School Board and the Windsor-Essex Catholic District School Board. The clause is widely regarded as the government's attempt to nullify a decision of the Ontario Court of Appeal (C.U.P.E. and S.E.I.U. v. Ontario) which struck down the appointment by the provincial government of retired judges as arbitrators in labour disputes. The Court held that the appointment of retired judges to act as arbitrators in labour disputes interfered with "the institutional independence and the institutional impartiality of boards of arbitration," and was an attempt by the government to "seize control of the bargaining process," and "replace mutually acceptable arbitrators with a class of persons seen to be inimical to the interests of labour." The decision has been appealed by the province to the Supreme Court of Canada, and will be heard by the Court in October of this year.

An Act to Resolve City of Toronto Labour Disputes (Bill 174)
Short Title: City of Toronto Labour Disputes Resolution Act, 2002.
Royal Assent: July 11, 2001
Effective Date: July 11, 2001

— Lancaster House

### *CAW and The Big Three*

The Canadian Auto Workers union (CAW) has reached settlements with General Motors, Ford and Daimler-Chrysler. The negotiations involving the CAW and the "Big Three" began in September with General Motors. The parties reached a settlement during the third week of September. The CAW then negotiated with Ford. Settlement with Daimler-Chrysler occurred October 15.

Highlights of the settlement include:

- Wage increases each year of the three year agreement of 3%, 3%, 2%
- Signing bonus of $1000
- Improved COLA formula
- Special payment in December of $1500 in each year
- Additional paid time off
- Three additional holidays
- Improved health care benefits
- Restructuring retirement incentive of 60,000

## NEW JERSEY

### *Interest Arbitration*

In New Jersey, police officers and firefighters may invoke interest arbitration as a means of resolving negotiations impasses. N.J.S.A. 34:13A-14 et seq. Unless the parties agree to an alternate terminal procedure, disputes are resolved through conventional arbitration.

In 1996, the Public Employment Relations Commission was given jurisdiction to review interest arbitration awards to ensure that the arbitrator applied the criteria specified by the interest arbitration statute and did not violate the standards set forth in the general arbitration act. The Appellate Division of the Superior Court has just issued its first opinion reviewing a Commission decision under that grant of authority. *Teaneck Tp. v. Teaneck FMBA*, Local 42, ____N.J. Super. ____, ____A.2d ____(App. Div. 2002).

The main issue in Teaneck was the FMBA's proposal that firefighters work a schedule of 24 hours on, followed by 72 hours off (24/72). The arbitrator awarded this proposal on a trial basis, even though the superior officers were on a different work schedule and another

interest arbitrator had rejected their proposal for a 24/72 schedule. The Commission rejected the employer's position that it had a non-negotiable prerogative to determine work schedules and held that the record supported awarding the work schedule change on a trial basis. P.E.R.C. No. 2000-33, 25 NJPER 450 (para. 30199 1999). The Commission, however, modified the award (as expressly authorized by the interest arbitration statute) to delay implementation of the new schedule for firefighters until a common schedule was adopted for their superior officers. The Commission articulated and applied this standard for analyzing proposals that would establish different work schedules for supervisors and non-supervisors:

An arbitrator may award such a schedule only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.

The Court agreed with the Commission that the 24/72 work schedule was mandatorily negotiable and that the recrod supported awarding the proposal on a trial basis. It also agreed with the Commission's guidelines for reviewing interest arbitration awards generally and its guidelines for analyzing supervision concerns raised by differing work schedules specifically. However, it remanded the case so that the new standard for analyzing the supervision issue could be applied by the arbitrator in the first instance.

The Township has asked the New Jersey Supreme Court to review the case. The sole issue it seeks to present is the negotiability of a proposal that would put firefighters on a different work schedule than their superior officers.

**Representation Fees**

The Governor has signed a bill amending the representation fee provisions of the New Jersey Employer-Employee Realtions Act. See N.J.S.A. 34:13A-5.5 and 5.6. The previous representation fee law had required negotiations over a proposal to deduct representation fees from the paychecks of non-members, but not agreement. The new law entitles a majority representative to paycheck deductions if a majority of the employees in the negotiations unit are voluntary dues paying members of the majority representative and a valid demand-and-return system is in place. The Commission is charged with conducting an investigation to determine whether these conditions exist and with ordering deductions if they do.

**Public Records**

The Legislature has enacted a statute expanding public access to government records and narrowing the exemptions for confidential records. N.J.S.A. 47:1A-1 et seq. The statute, however, exempts "information generated by or on behalf of public employers or public employees in connection with …any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position…." Consistent with that exemption and its statutory mission and core concerns, the Commission has proposed regulations that would exempt records pertaining to settlement efforts during collective bargaining, mediation, factfinding or arbitration or processing of pending cases. Another proposed regulation would exempt records that divulge the identity of employees supporting or opposing representation petitions or divulge how an employee voted.

# NEW HAMPSHIRE

THE SUPREME COURT OF NEW HAMPSHIRE

Public Employee Labor Relations Board

No. 2000-191

APPEAL OF INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

(New Hampshire Public Employee Labor Relations Board)

Argued: November 7, 2001

Opinion Issued: August 12, 2002

*Morris Phillips*, of Hampton (*Peter C. Phillips* on the brief and orally), for the petitioner.

*Sumner F. Kalman. Attorney at Law P.C.*, of Plaistow, (*Sumner F. Kalman* on the brief and orally), for the respondent, the Town of Atkinson.

*James F. Allmendinger*, of Concord, staff attorney, by brief, for NEA-New Hampshire, as *amicus curiae*.

*Kerry P. Steckowych & a.*, of Goffstown, by brief, for the New Hampshire Association of Chiefs of Police, Inc., as *amicus curiae*.

*Kevin P. Chisholm*, of Concord, staff attorney, by brief, for the New Hampshire Municipal Association, as *amicus curiae*.

BROCK, C.J. The petitioner, the International Brotherhood of Police Officers (IBPO), appeals a decision of the public employee labor relations board (PELRB) which dismissed an unfair labor practice charge after concluding that "probationary employees" are not entitled to protection under the Public Employee Labor Relations Act. *See* RSA chapter 273-A (1999 & Supp. 2001). We reverse and remand.

On October 5, 1999, the IBPO filed an unfair labor practice charge against the Town of Atkinson (town), alleging, among other things, that it had wrongfully terminated Michael Rivera's employment because of his union activity in violation of RSA 273-A:5, I(a), (b), (c) & (g) (1999). After conducting a hearing, the PELRB found that because Rivera had not completed twelve months of employment, he was a "probationary employee." *See* RSA 273-A:1, IX. Consequently, the PELRB dismissed the charge, finding that because he was still a probationary employee, Rivera was not covered by the provisions of the Public Employee Labor Relations Act. This appeal followed.

The original complaint filed by the IBPO alleged violations of several provisions of RSA 273-A:5. On appeal, however, the IBPO limits its argument to the provision of RSA 273-A:5, I(c), which prohibits discrimination in hiring and tenure for the purpose of encouraging or discouraging membership in any employee organization.

The applicable standard of review in this case is provided by RSA 541:13 (1997), which authorizes our review of agency decisions for errors of law. *See Appeal of House Legislative Facilities Subcom.*, 141 N.H. 443, 445 (1996). We presume the PELRB's findings of fact to be "lawful and reasonable." RSA 541:13. We act as the final arbiter of the meaning of the statute, however, and will set aside erroneous rulings of law. *See Appeal of Inter-Lakes Sch. Bd.*, 147 N.H. 28,31 (2001).

RSA 273-A:5, I(c) prohibits public employers from "discriminat[ing] in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization." RSA chapter 273-A contains no definition of "employee"; RSA 273-A:1, IX (Supp. 2001), however, defines "public employee" and excludes "[p]ersons in a probationary or temporary status" from the definition.

The town contends that because the Public Employee Labor Relations Act specifically excludes probationary employees from the definition of public employees, RSA 273-A:5 provides no protection in their hiring or tenure. The town asserts that the word "employee" is merely an abbreviated form of "public employee" and thus, by definition, does not include probationary employees. We disagree.

In *Appeal of Town of Conway*, 121 N.H. 372 (1981), we considered the process used by the PELRB in certifying a bargaining unit under RSA 273-A:8, I, which referred to "employees" rather than "public employees." Reviewing the entire statutory scheme, we concluded that the definition of "public employee" was applicable to the word "employee" used in RSA 273-A:8, I, stating: "Words used with plain meaning in one part of a statute are to be given the same meaning in other parts of the statute unless a contrary intention is clearly shown." Id. at 373 (ellipses arid brackets omitted).

We conclude that a "contrary intention" is clearly shown by the language of RSA 273-A:5, I(c). That section prohibits public employers from discriminating in, among other things, the hiring of employees for the purpose of discouraging membership in any union. The definition of "hire" is "to engage the personal services of for a fixed sum: employ for wages …." *Webster's Third New International Dictionary* 1072 (unabridged ed. 1961); *see* RSA 21:2 (2000) (words used in statutes are to be construed according to common and approved usage of language). Usually, a person applying to be hired by a public employer will not already be a "public employee." Therefore, we conclude that the.legislature intended to prohibit a public employer from refusing to hire an applicant on account of the applicant's union views or activities, despite the fact that an applicant is not a "public employee." *Cf. Appeal of City of Nashua Bd. of*

*Educ.*, 141 N.H. 768, 771 (1997) (indicating that discriminatory hiring policy would raise serious issues of unfair labor practices). Thus, the prohibition in RSA 273-A:5, I(c) extends beyond discrimination by a public employer against "public employees." We hold that subsection I(c) prohibits discrimination against probationary employees as well.

Our reading of the statute is consistent with the purpose of the Public Employee Labor Relations Act. The Act was established in 1975 "to foster harmonious and cooperative relations between public employers and their employees …." Laws 1975, 490:1. In establishing the PELRB, the legislature recognized the "right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof …." Laws 1975, 490:1, I. Allowing a public employer to discriminate in the hiring or tenure, or the terms and conditions of employment of probationary employees for the purpose of discouraging union membership would undermine the Act's goal of fostering harmonious cooperative relations between public employers and their employees. The dissent would construe the statute narrowly to exclude probationary employees from its protection. We believe such a construction, allowing such discrimination against probationary employees, might well deter public employees from exercising their right to organize and be represented for the purpose of bargaining collectively.

We are cognizant that our task is to construe the statute in accordance with legislative intent. If the legislature believes that unintended consequences have beset its statutory language, we would respectfully urge it to clarify the statute to remove any uncertainty. *See Lord v. Lovett*, 146 N.H. 232, 242 (2001) (Broderick, J., concurring).

Because we conclude that RSA 273-A:5, I(c) prohibits a public employer from discriminating in the hiring or tenure, or the terms and conditions of employment of its probationary employees for the purpose of encouraging or discouraging membership in any employee organization, we reverse the dismissal of the unfair labor practice charges brought by the petitioner as they refer to Rivera. We remand for further proceedings consistent with this opinion.

*Reversed and remanded.*

BRODERICK and DUGGAN, JJ., concurred; NADEAU, J., with whom DALIANIS, J., joined, dissented.

NADEAU, J., dissenting. The language of RSA 273-A:1, IX is plain and unambiguous. It defines "public employee" and "expressly excludes 'persons in a probationary or temporary status' from the definition." *Appeal of Town of Conway*, 121 N.H. 372, 373 (1981).

I agree with the town that because the Public Employee Labor Relations Act specifically excludes probationary employees from the definition of public employees, RSA 273-A:5 provides no protection in their hiring or tenure. The word "employee" is merely an abbreviated form of "public employee" and thus, by definition, does not include probationary employees.

The PELRB was established in 1975 "to foster harmonious and cooperative relations between public employers and their employees." Laws 1975, 490:1. In establishing the PELRB, the legislature recognized the "right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivisionthereof…." Laws 1975, 490:1, I.

I disagree with the IBPO's contention that the use of "employee" in certain provisions of RSA 273-A:5, I, and "public employee" in others indicates a legislative intention to address issues concerning two separate classes of employees. The Public Employee Labor Relations Act's statement of purpose, as well as other provisions within the act, uses the terms "employee" and "public employee" interchangeably. *See, e.g.*, RSA 273-A:1, VIII, :8, :10, :11. The PELRB's title, however, coupled with the definition of"public employee" set forth in RSA 273-A I, IX, is indicative of the legislature's intent to limit the jurisdiction of the PELRB, excluding from it, among other things, probationary employees.

The IBPO's argument that the language of RSA 273-A:5, I(c) must apply to probationary employees because it addresses "hiring" and "tenure" does not change this conclusion. The definition of "public employee" provides that no employee with an individual contract shall be determined to be probationary, "nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of [his or her]

position…." RSA 273-A:1, IIX(d). Given the various types of positions which may fall within the PELRB's jurisdiction and the potential for public employees to move within them or between various public employers at both the local and State level, I do not believe the use of the term "hiring" in RSA 273-A:S, I(c) implies a legislative intent to expand the jurisdiction of the PELRB.

The conclusion that probationary employees are not covered by the Public Employee Labor Relations Act is supported by our earlier decision in *Appeal of Town of Conway*, 121 N.H. 372. That case addressed the process used by the PELRB in certifying a bargaining unit under RSA 273-A:8, I, which referred to "employees" rather than "public employees." Reviewing the entire statutory scheme, we concluded that the definition of "public employee" applied to the word "employee" used in RSA 273-A:8, I, stating that "[w]ords used with plain meaning in one part of a statute are to be given the same meaning in other parts of the statute, unless a contrary intention is clearly shown." *Id*. at 373 (ellipses and brackets omitted). We therefore held that probationary employees could not be included when determining whether a bargaining unit could be certified. *Id*.

Although the legislature amended RSA 273-A:8, I, two years later, "the legislative modifications do not indicate any intent to disturb the earlier statutory interpretations…." Petition of Correia, 128 N.H. 717, 720 (1986). The amendment neither defined nor changed the reference to "employees." *See* Laws 1983, 270:2. It also conveyed no rights to probationary employees. *See id*. Instead, it clarified that while the positions of probationary employees could be counted for purposes of certifying a bargaitiing unit, probationary employees could not vote in any certification election. *See id.* The legislature is presumed to have known of the narrow construction we had previously given the term "employee." *See Petition of CIGNA Healthcare*, 146 N.H. 683, 690 (2001). Had it disagreed with our construction, the legislature could have amended the chapter to reflect that disagreement. I would not usurp that prerogative now by expanding the definition we have previously given to the word "employee" when used in the Public Employee Labor Relations Act.

For these reasons, respectfully, I dissent.

DALIANIS, J., joins in the dissent.

## WASHINGTON STATE

The "big" news at the Washington PERC is that the election process started just before the ALRA-2002 conference (by sending out 25,501 mail ballots on July 22) concluded on August 26 with the issuance of a certification naming the Service Employees International Union as exclusive bargaining representative of the state-wide unit of "individual providers" of home care services under various medicaid programs. When the ballots were tallied on August 16, 2002, 6575 votes were cast in favor of the union and 1234 votes were cast for no representation. The entire election process ran smoothly (except for the breakdown of an electric letter opener during the tally — lesson learned is to buy a new machine before starting on an election of this magnitude) and there were no objections.

This opens the door to a brave new world for home care workers as employees. They have historically been considered independent contractors paid on a vendor payment system. A new state board composed largely of consumer advocates was created to fill the "employer" role in a bargaining relationship that was enabled by an Initiative Measure passed by Washington voters in November of 2001.

The union and the Home Care Quality Authority will negotiate the wages and benefits of the home care workers (but not the selection, supervision and termination of individual employees, which remains controlled by the individual consumers), and an interest arbitration process normally reserved for uniformed personnel will be applicable if there is an impasse in bargaining. PERC will administer the mediation and interest arbitration processes. The resulting agreement or interest arbitration award will be submitted to the state Legislature for an "up or down" ratification vote.

The Governor is excluded from the collective bargaining and legislative ratification processes, but could perhaps still exercise the constitutional veto power on any resulting appropriations.

PERC will provide dispute resolution services on an ongoing basis, including mediation and interest arbitration in negotiations for successor contracts, unfair labor practices, and grievance arbitration.

— Marvin L. Schurke

# In Memorium

## In Memory of Julie Hughes

Although we knew Julie as a get-it-done person for hotel arrangements, ALRA finances, and many other projects, I remember Julie most as a teacher. She willingly came early each year for the ALRA conference in order to teach at the ALRAcademy. It was natural for her in that she served as an ad-hoc faculty member at the DePaul University College of Law. Julie co-lead the academy course on unfair labor practices. She could provide instant reference to the variety of cases, laws and administrative practices used in the public and private sectors of labor relations. Julie encouraged participants to call her anytime during the year for help. There are not many labor relations library reference desks active in the U.S. Hers is closed for the moment until the next consummate professional discovers this unique calling. Unlike Lucy in Peanuts, this help desk never charged for advice and the information always was reliable.

## TRIBUTES

On behalf of the Oklahoma PERB I want to express our heartfelt sorrow on the death of ALRA president and stalwart, Julie Hughes.

Julie was a beautiful woman in every respect. Her abundance of warmth, good humor, intelligence and energy was very remarkable. She made our Oklahoma contingent, and I'm sure everyone else, feel honored, special, and most welcome. Her death is a great loss to ALRA and to all who knew her.

— Craig Hoster

I am honored to write a memorial for Julie Hughes, as she was a fine person and dear friend. I was deeply saddened and shaken by her death, even though logically I knew for some time that her situation was dire and recovery totally unlikely. I knew this from a similar experience involving my stepmother. So, in writing this, I will attempt, through historical example, to testify to the characteristics that made me so fond of Julie and made her reign as an unparrelled figurehead of this honorable organization.

First, you must appreciate that Julie had the style, elegance, and grace of a big city girl. She was always properly attired for the occasion and had a stage presence. Her public presentations were intelligent and insightful, and she was very well spoken. However, this public persona was misleading. She wasn't a sophisticated and cold socialite, but a kind and considerate product of Des Moines, Iowa and the University of Nebraska.

Above anything, Julie was thoughtful. She honestly cared about how other people were treated, including total strangers and those who are shy. She almost worried too much about potential consequence of her actions or inaction. She reached out to all newcomers, seeking their perspective and recommendations, which had the practical consequence of expanding committees to sizes never before seen in ALRA. She simply loved people, always showing them the utmost curteousy and respect.

In private Julie was vulnerable and, seemingly, insecure. As many of you know, Julie and I taught unfair labor practices at the academy. On several occasions, I would try to lead her astray on the night before, and she would seriously complain about her lack of preparation. I was usually successful though, leaving Julie with, according to her, no time to prepare. She would fret and complain throughout the night and I would tell her not to sweat it. However, by the next morning, the tables had turned and it was I who was the one that was insecure. She always handled it like an old pro, probably drawing upon her experience in teaching labor law and public school.

Julie was also practical and down to earth. I now fondly remember how Julie and I were on the same panel in

Seattle in the early 1990s. I had previously given guest lectures in labor and administrative law at several law schools, and been a graduate and faculty advisor at the National Judicial College in Reno, Nevada. So I thought that I was pretty hot stuff. We gave the presentation, along with panel member Phil Chodos, and I was pleased with my performance. Many years later, as Julie and I passed through the executive board, vice presidency, and presidency of ALRA, Julie teased me on numerous occasions for coming off like "stuffed shirt," and how she spread this throughout the conference with the unanimous agreement of others. She'd sweep her hair back, taking a certain pride in teasing me, and I will miss that.

Julie was dependable. I can't relate in words the volume of work that she performed for ALRA. Suffice it to say that it was immense and very well done. When she served as Vice President of Finance, I commonly complained about the reams of documents that she would deliver at the meetings, because I had to carry all of it home. The planning and work that she did for the Chicago, St. Louis, and Phoenix conferences was unbelievable. She negotiated the best deals available from the hotels, and would follow up with complaints afterwards. Nobody has, and I dare say, ever will provide ALRA with the sure quantity of work that Julie did. In the words of prior ALRA President, Pam Talkin, Julie was amazing.

In the final analysis, Julie was a friend that each and every one of us would be blessed to have. She was a mother, sister, and close confederate, all wrapped into one. I've had the privilege of meeting her three children, and I feel very sorry for them for losing, not only their mother, but such a great person. Yet, they were extremely fortunate to have her as a mother, albeit for way too short a time. As I've mentioned to a number of other board members, it is hard to find anything positive in losing Julie. But there is something. It helps us to put things into perspective; to figure out what is really important; to work on relationships; to not focus on minor matters; to treat those around us with the utmost respect. This is what Julie tried, and would want all of us, to do. Goodbye Julie. We all miss you!

— Steve Meck

Because I did not know Julie well, I will write about the ALRA images that come to mind when I hear her name. I see her in Chicago at the Saturday night reception as the beautiful and perfect hostess. She was thrilled to showcase Chicago and her enthusiasm was contagious, even in sweltering 98 degree weather. I see Julie with her daughter in Phoenix, sitting by the side of the pool while the rest of us splashed, sang and made perfect fools of ourselves. She enjoyed watching our mischief, but remained responsible and attentive to her daughter's needs throughout the conference. Finally, I see Julie at several ALRA business meetings, so serene and articulate and adding a touch of class to our motley group. Julie struck me as a perfect hostess, an honorable person, a dedicated mother and a serene and classy lady.

— Linda McIntire

## Julie Hughes and The ALRA Blanket

At the San Diego conference, I celebrated Julie's graciousness and recounted my own favorite example. It was a beautiful blue evening six summers ago at a jazz festival at a park in Ottawa. Julie saw my friend Ira and me enter on the far side of the park and waved us over, to share her blanket and her food. She insisted there was enough room, although the blanket was occupied by eight other lost souls she had already gathered in. And behold there was. As we sat down, a swing band struck up the Washington Post March. It was a perfect evening.

Julie's first name could have been Welcome. She said this word often and she embodied it always. The soul of inclusiveness, she found ways to make the ALRA blanket more inviting, happier and somehow even bigger. She embraced us socially, encouraged us professionally, and involved us organizationally. I rejoice in her friendship and leadership over the years and commit myself to following in her spirit and style.

So welcome to new and old friends. There's always room for many more on the ALRA blanket.

# ALRA Officers and Executive Board

## President

Robert E. Anderson [TERM ENDS JULY 2003]
New Jersey Public Employment Relations Commission
PO Box 429
Trenton, NJ 08625-0429
(609) 292-9830
(609) 777-0089 fax
banderson@perc.state.nj.us

The President serves a one-year term immediately following a year of service as the President-Elect of the Association, appoints all committees, and leads and sets the agenda for board meetings and the annual meeting of the Association.

## President-Elect

Dan Nielsen [TERM ENDS JULY 2003]
Wisconsin Employment Relations Commission
(262) 637-2043

The President-Elect is elected to a one-year term, chairs the Policy and Constitution Committee, prepares a financial plan with the Vice President-Finance, and performs duties of the President in the President's absence.

## Immediate Past President

Julie Hughes [1950 – 2002]

The Immediate Past President serves a one-year term immediately following a year of service as the President of the Association and like all officers, is a member of the Executive Board.

## Vice President-Administration

Tom Worley [TERM ENDS JULY 2003]
Ohio State Employment Relations Board
(614) 466-2965

The Vice President-Administration is elected to a two-year term, keeps minutes of association and executive board meetings, chairs the Publications and Communications Committee, maintains all association records, prepares association correspondence, and coordinates publication of the ALRA Advisor.

# ALRA Officers and Executive Board

## Vice President-Finance

Jack Toner [TERM ENDS JULY 2004]
National Labor Relations Board
(202) 273-1936

The Vice President-Finance is elected to a two-year term, receives revenues, pays bills, invests assets, chairs the Membership Committee, and maintains association financial records.

## Vice President-Professional Development

Jaye Bailey Zanta [TERM ENDS JULY 2003]
Connecticut State Board of Labor Relations
(860) 566-3306

The Vice President-Professional Development is elected to a two-year term, chairs the Professional Development Committee, receives training grant requests, coordinates ALRAcademy, oversees development of conference training programs, and maintains a listing of available training materials.

## BOARD MEMBERS

There are six Board Members who are elected to staggered, two-year terms, serve on various committees by appointment of the President, and serve as members of the Executive Board which is empowered to transact the business of the Association between meetings of the membership.

Scot L. Beckenbaugh [TERM ENDS JULY 2004]
Federal Mediation and Conciliation Service - U.S.
(612) 370-3300

Warren Edmondson [TERM ENDS JULY 2004]
Federal Mediation and Conciliation Service - Canada
(613) 997-1493

# ALRA Officers and Executive Board

## BOARD MEMBERS – Cont'd

Phillip E. Hanley [TERM ENDS JULY 2004]
Phoenix Employment Relations Board
(602) 262-4024

Mary Johnson [TERM ENDS JULY 2003]
National Mediation Board
(202) 692-5036

Reg Pearson [TERM ENDS JULY 2003]
Labour Management Services
Ontario Ministry of Labour
(416) 326-7322

Marilyn Glenn Sayan [TERM ENDS JULY 2003]
State of Washington Public Employment Relations Commission
(360) 753-3444

**Volleyball Champions**
*Mary Stevens • Joe Diggs • Mary Helenbrock*

*1st Annual ALRA Open*

*Jacques Dorré — Québec*

*Arnie Powers — FMCS Canada*

**ALRA Offers and Executive Board**
Back Row: *Parker Denaco, Joel Weisblatt, Herman Torosion, Doug Collins, Jim Breckonridge*
Middle Row: *Michael McDermott, Bob Jensen, Jane Walden, Maw Schurke, John Cockran, Rick Curren, Jackie Zimmerman, John Caraway, Paul Tinning, John Truesdale, Steve Meck*
Front: *Diane Zaar Cockran, Sol Sperka*
Missing: *Eileen Hoffman, Pete Obermeyer*