ALRA advisor....

Association Of Labour Relations Agencies

JULY 2003

FMCS (US) and ALRA for Canadian Mediators

On May 22 and 23, 2003, thirty-six Canadian mediators assembled in Ottawa for the biennial mediator training workshop sponsored by the Canadian Association of Administrators of Labour Legislation (CAALL). Although CAALL has provided opportunities for mediator professional development in the past, this years' offering was somewhat out of the ordinary. Not only were the Canadians joined by representatives of the New Zealand and Connecticut mediation agencies, but the two-day training session was organized and delivered by the U.S. Federal Mediation and Conciliation Service.

Six provinces[1] and the Federal Mediation and Conciliation Service (Canada) are members of ALRA. As a result of an application by these members for a training grant, ALRA provided funding that assisted the Canadian agencies in hosting this unique international event.

Based on the very successful intensive training sessions developed for the US FMCS' own staff, the session was designed as a "Train the Trainer" workshop, focusing on the improvement of labour-management relations through the use of various preventive mediation programs. The objectives of the workshop were:

- to share best practices in preventive mediation programs;
- to examine options for the outreach, intake and diagnostic activities that occur prior to delivery of preventive mediation programs;
- to explore methods of designing effective preventive mediation programs to meet client needs;

Kurt Sanders, FMCS US

- to learn effective training techniques for use in delivering preventive mediation programs.

Trainers Kurt Saunders and David Thaler of the US FMCS kept the audience of seasoned mediators thoroughly engaged through the two activity packed days. The various types of preventive mediation programs and their content were canvassed. The curriculum included how to design and deliver educational programs, such as joint steward-supervisor training; process programs such as Committee Effectiveness and Interest Based Bargaining training; skills development programs such as communication and facilitation skills training; and relationship rehabilitation programs such as Relationships By Objectives and Partners in Change.

Participants came away with a comprehensive set of materials and numerous valuable ideas that they plan on incorporating into their respective preventive mediation programs.

[1]British Columbia, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec.

President's Column

Bob Anderson

ALRA's World: Neutrality, Expertise and Graciousness

Don't blink: that's the advice I give new parents. If you do, your children will be out of diapers and into college. In 1980 my first child was born and the next year I went to my first ALRA conference. But I blinked: both my children have grown up and I'm about to become an ALRA past president. I've had great joy and no regrets with both my children and ALRA, often combining family vacations and ALRA conferences.

The three words in the title express what ALRA means to me: neutrality, expertise, and graciousness. I need to believe in what I do, not just to collect a paycheck. The practice of neutrality is an art as well as a skill, and resolving labor relations disputes is a considerable social good. ALRA accentuates my appreciation of this art and recharges my pride in my work. I also need to know what I'm doing; ALRA educates me through our roundtables, training sessions, Advocate's Day offerings, Advisor articles, hospitality room conversations, and phone calls and e-mail exchanges. And we all need the companionship of our ALRA friends and I myself treasure the models of graciousness they offer. Where can we find a more hospitable group of people than in our ALRA hospitality room?

As president, I've kept these three words in my heart and employed them in our plans. Here's what we've worked on and what you'll see at the conference.

Neutrality

John Higgins is the consummate practitioner of this art and a role model for me. So I asked him to lead a committee to deepen our understanding of the principles and ethics of neutrality and to cultivate a public appreciation of our work as neutrals. You can read an article by John in this newsletter about his committee's innovative ideas and you can hear him lead a discussion at a Tuesday morning session.

Expertise

This conference was designed both to meet the training needs of our member agencies and to provide a program that would draw advocates and stimulate delegates. I stand in awe of the job that Scot Beckenbaugh, Lance Teachworth and the Program committee have done in planning the roundtables on Sunday and attracting distinguished speakers and presenters to Advocate's Day on Monday and the job that Jaye Bailey Zanta, Mary Stevens, Reg Pearson and the Professional Development committee have done in organizing the intensive training sessions on Tuesday and Wednesday. As Yogi Berra might have said (but didn't), if we're not a lot smarter by the end of this conference, then we're too stupid to be smart.

Lance Teachworth

ALRA also expands our expertise by providing training grants. This year six member agencies of the Canadian Association of Administrators of Labour Legislation received a $5000 grant for mediation training. Liz MacPherson has supplied the details in an accompanying article.

ALRA itself has an institutional need for expertise. No one knew more about ALRA and planning conferences than my predecessor, Julie Hughes. Losing her last summer was an immense organizational loss as well as an agonizing personal blow. No one person can replace her so I formed an Institutional Memory committee to develop a handbook for ALRA's affairs and conferences and I put Jim Crawford, the mastermind of the Philadelphia conference, in charge. The committee's efforts are described in another article; Jim would welcome the help of ALRA veterans in advancing that work.

Graciousness

Labor relations neutrals are gracious by nature and cantankerous only by occasional design. We all have models of deportment in ALRA: I, for one, would name John Truesdale. But gracious hosts rely on planning as well as instinct to create a welcoming environment. So I

asked Liz MacPherson and Julio Castillo to head a welcoming committee; the committee's well-conceived and friendly plans are also described in another article and include a Sunday afternoon reception for newcomers.

I also applaud Ruthanne Okun, Bruce Janisse, and the Arrangements committee whose hard efforts will allow us to effortlessly enjoy ourselves in Detroit. When you're admiring the Diego Rivera frescoes at the Detroit Institute of Arts, raise a glass or an hor d'oeuvre to them in gratitude. Other examples of ALRA's graciousness at its best are the Friday night dinners welcoming ALRA Academy attendees (thank you Jackie Zimmerman) and the nightly hospitality room (thank you Ken Zwicker).

Graciousness this year calls for us to remember those who won't be with us in Detroit as well as to rejoice in the company of those who will be. Many old friends may not be able to come because of budget crunches and calamities; other old friends have retired — for example, Lance Teachworth and John McCormick. Give thanks for these friendships and make a call or write a note to reconnect.

Jim Breckenridge is also a model of graciousness. And he's been a model of diligence in editing and publishing the Advisor — a rich resource of information and a reliable source of cheer. I also celebrate the congeniality and contributions of Joy Reynolds, a faithful ALRA friend and Advisor correspondent for many years who has just received an honorary ALRA membership.

Hosting a conference is always a huge undertaking and sometimes an ordeal (blink your eyes is good advice at those times). Our hosts in Detroit are the Michigan Bureau of Employment Relations, the Michigan Department of Civil Service, the FMCS (U.S.) And FMCS (Canada), the NLRB, and the Ontario Ministry of Labour. We give thanks for their staffs' endless hours of work and relentless attention to detail. I especially appreciate and admire Ruthanne Okun, MERC's Bureau Director, who coordinated all the efforts and who consumed weekends and nights by sending me e-mails and leaving me voice mails. And, miracle of miracles, she kept her cheer and composure and sustained mine.

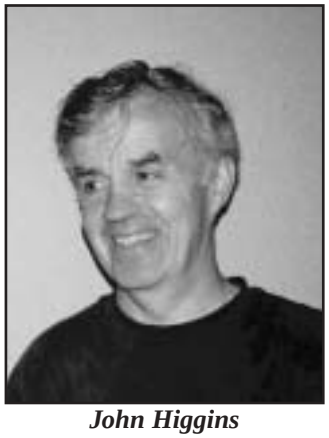
So welcome to Detroit and this year's conference. Many, many people have spend many, many hours preparing to inspire, educate, and entertain us. Let us take pride in our profession, improve our skills, and above all, enjoy each other's company.

— Bob Anderson

JOHN HIGGINS REPORT

Executive Board Approves Neutrality Project

At the closing banquet for last years conference, President Bob Anderson spoke of the importance of succession planning for ALRA and promised to make it a polestar for his term as president. True to his word, he has focused a great deal of effort on creating mechanisms for passing on the principles of ALRA, for ensuring continuity in our organizational practices, for welcoming new people in ALRA and for developing new leaders for the association. The common theme running through all of those activities is the desire to pass on that most important attribute of any public official in our field — neutrality.



John Higgins

As part of this effort, the Executive Board has, over the past year, been working on what has been designated as the "Neutrality Project." The Project calls for a multi-year plan in which the neutrality of our member agencies and their staffs — what it means, how we do it and its importance to our mission — will be a critical part of our Annual Meetings and will ultimately become the basis for ALRA publications and programs.

The Board has created a Neutrality Committee to develop a program that will emphasize the critical importance of neutrality for effective labor relations agencies.

The Neutrality Committee provided an initial report to the Board that was considered and approved at the

NEUTRALITY PROJECT – Cont'd

Board's Spring Meeting. That plan contemplates making neutrality related topics part of every annual meeting. It also calls for the development and publication of an ALRA neutrality code, a code that can serve as a training guide for agencies, as a valuable research tool for the public including practitioners and as an aid to legislators in their consideration of the structure of labor-relations agencies.

The Committee envisions a project format somewhat similar to that used by the American Law Institute in its preparation of Restatements. Thus, "black letter" neutrality principles would be developed with each of these principles supplemented with material that would flesh out these subjects with discussion and hypotheticals.

In each year of the 3 to 5 years of this project, the Neutrality Committee would prepare two or three "black letter" points with supplementary information and commentary. This material would be sent to member agencies well in advance of the Annual Meeting. A time would be scheduled during meeting for discussion and debate. In short, at the end of each annual meeting ALRA would have the views of the membership on the draft, views that would then be incorporated into a revised draft. The Committee would then begin to develop additional principles for discussion at the next year's meeting.

The project will be discussed more fully at the Detroit Meeting and there will be an opportunity for member agencies to become involved in the project and to make suggestions for its course.

In the meantime, anyone with questions about the Project or ideas on the subject can contact one of the committee members. John Higgins (NLRB), Warren Edmonson (FMCS Canada), Mary Johnson (FMCS US), Homer LaRue (Maryland), Marilyn Sayan (Washington), Marjorie Wittner (Massachusetts) and John Truesdale (NLRB Emeritus).

— John Higgins

REPORT OF THE WELCOMING COMMITTEE

The Welcoming Committee is co-chaired by Julio Castillo of the District of Columbia Public Employee Relations Board and Elizabeth MacPherson of the Canadian Federal Mediation and Conciliation Service, and is composed of Guy Baron (Canada), Marvin Johnson (Maryland), Megan Kohtz (Nebraska), Linda McIntire (Vermont), Annette Prince (Oklahoma), Antonio Santos (Puerto Rico) and Mark Torgerson (Alaska). Its initial mandate was to make recommendations to the Executive as to how ALRA can be more welcoming and how we can engage new people and bring along new leaders.

In October 2002, the Welcoming Committee submitted a number of recommendations to the Executive Board that were approved for implementation at the Detroit Conference. These include:

- Identifying first-time attendees by means of a unique colored name tag and asking that all ALRA "old hands" make a special effort to introduce themselves to the new attendees and to make them welcome.
- Holding an "orientation session" for newcomers at the beginning of the Conference, where representatives from the E-Board and each of the various groups (General Counsel; Mediators; Board Members etc.) would describe the structure of ALRA and the aspects of ALRA that they find most valuable. This session will be held in the Hospitality Suite from 5:00 to 6:00 PM on Sunday, July 27, just prior to the Reception.

Liz Macpherson

Members of the Welcoming Committee will have a particular responsibility for making new attendees feel welcome and to encourage attendees to volunteer for committees, but we hope that everyone will make a special effort to welcome our new ALRA colleagues and to make them feel at home in our organization.

— Liz Macpherson

JIM CRAWFORD REPORT

Institutional Memory Committee Hard At Work

What you may ask is the Institutional Memory Committee? Because ALRA has no permanent staff and relies on the efforts of volunteers from its member agencies to perform all its functions, much of the learning process for new people has been a combination of on-the-job training and word of mouth advice from predecessors who have done it before. Too often seasoned ALRA stalwarts have acquired tremendous experience only to leave the organization, taking their extensive knowledge with them. ALRA has decided that there is a need for new generations to have the benefit of the wisdom and experience of predecessors. This ad hoc committee was organized to memorialize ALRA's major! functions into a kind of handbook or manual for succeeding ALRA generations. The Institutional Memory Committee was created to start the process of tapping the wealth of knowledge of present ALRA luminaries before their rapidly advancing age causes their institutionalization. ALRA has identified several major functions as follows: ALRAcademy, ALRAdvisor, Annual Conference Program, Conference Site Selection, Conference Hotel Negotiations, Conference Arrangements and On-Site Conference Management, Finance, Governance and Archives which are being addressed by committee members who have extensive experience in these areas. The goal is to have a preliminary draft of a manual for presentation to the Executive Board at the Detroit Conference in July for its review and comment and completion of the project following the E-Board's input. The committee is composed of a roster of ALRA All-Stars including Jackie Zimmerman, Steve Meck, Marv Schurke, Rick Curreri, Jim Breckenridge, Mary Helenbrook, Mary Johnson, Parker Denaco, Jacques Lessard, Jacques Dore, Dan Nielsen and Bob Hackel.

Jim Crawford

— Jim Crawford, Chair

REMINDER — ALRA 2004 — HALIFAX

Now is the time to start planning to attend the annual ALRA conference in beautiful, historic Halifax, Nova Scotia (July 24 – 28, 2004). Halifax was unanimously chosen by ALRA's Executive Board as the site for the 2004 Conference and we look forward to combining an interesting program with the many charms of Halifax in the summer to create a conference you won't want to miss. One of the City's prime downtown hotels, located on the waterfront adjacent to Halifax's Historic Properties, has been reserved for the event.

Halifax and Nova Scotia have much to offer visitors, and you are encouraged to plan a family vacation before or after the conference. Visit http://www.novascotia.com, the official tourism website of the Province of Nova Scotia, where you will find hundreds of things to see and do, places to stay, festivals, events and attractions for you to experience throughout the province; you can also order a free 400 page "Doers and Dreamers" travel guide to Nova Scotia.

For general information on Nova Scotia, check out the Nova Scotia Notebook at http://www.gov.ns.ca/cmns/notebook, where you will find many interesting facts about the Province, including: Where is Nova Scotia and What is it Like, The Story of Nova Scotia, Halifax Firsts and Oldests, Nova Scotia Photos, Famous Nova Scotians, Places to Visit, Historical Treasures in Halifax and Things To Do In Nova Scotia.

As well, in addition to the Province's regular events and attractions, it was recently announced that the Tall Ships will visit Nova Scotia between July 29 and August 2, 2004!

Nova Scotia's Official Welcome is ***Ciad Mile Failte***, which is Scottish Gaelic for One Hundred Thousand Welcomes. We look forward to extending ***Ciad Mile Failte*** to ALRA delegates and their families in Halifax at ALRA 2004!

— Sheri King

ELECTIONS

ALRA ELECTIONS

Elections for the Executive Board of ALRA will be conducted at the annual business meeting on Wednesday of the conference in Detroit. The offices of President-Elect, Vice President-Administration, Vice President-Professional Development, and three Executive Board Members will be filled at the meeting.

Reg Pearson, Director of the Ontario Ministry of Labour, has been nominated by the Wisconsin ERC to serve as President-Elect. Reg is currently a member of the Executive Board, and has previously served as Program Chair. Reg and Jim Breckenridge of the Ontario Ministry are responsible for publishing the ALRA Advisor.

Incumbent Vice President-Professional Development **Jaye Bailey Zanta**, General Counsel of the Connecticut State Board of Labor Relations is seeking re-election, as is Vice President-Administration **Tom Worley**, a mediator with the Ohio SERB. Executive Board Members **Marilyn Sayan**, Chair of the Washington PERC, and **Mary Johnson**, General Counsel of the National Mediation Board, are seeking re-election. **Jim Crawford**, the General Counsel of the Pennsylvania Labor Relations Board is seeking the Executive Board position formerly held by Reg Pearson. Jim was the Chair of the Arrangements Committee for the Philadelphia conference.

All positions on the Executive Board are for two year terms, except President-Elect, President and Past President, all of which are one year terms. Executive Board members **Scot Beckenbaugh, Warren Edmondson** and **Phil Hanley** are finishing the first year of two year terms they were elected to in San Diego, as is Vice President-Finance **Jack Toner**. President-Elect **Dan Nielsen** of the Wisconsin Employment Relations Commission will take over from ALRA President **Bob Anderson** at the close of the business meeting, and will preside over next year's conference in Halifax, Nova Scotia.

Board Member
Reg Pearson
[TERM ENDS JULY 2003]
Labour Management Services, Ontario Ministry of Labour
(416) 7322

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

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

Board Member
Scott L. Beckenbaugh
[TERM ENDS JULY 2004]
Federal Mediation and Concilation Service - U.S.
(612) 370-3300

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

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

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

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

Jim Crawford
Pennsylvania Labour Relations Board
(717) 787-1091

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

Vice President-Finance
Jack Toner
[TERM ENDS JULY 2004]
National Labour Relations Board
(202) 273-1936

President
Robert E. Anderson
[TERM ENDS JULY 2003]
New Jersey Public Employment Relations Commission
(609) 292-9830
(609) 777-0089 Fax

SPOTLIGHT ON AGENCIES

Michigan Employment Relations Commission and Bureau of Employment Relations

The Michigan Employment Relations Commission (MERC) is an independent agency charged with administering various laws governing labor/management relations in the State of Michigan. MERC, formerly the Labor Mediation Board, was established in 1939 pursuant to the Labor Relations and Mediation Act. The Commission is comprised of three members, one of whom is the designated Chairperson, appointed for staggered three-year terms by the Governor with the advice and consent of the Senate. By statute, no more than two members may be of the same political party.

Members of the Michigan Employment Relations Commission and Bureau Director
(l to r) Harry Bishop (Member), Ruthanne Okun (Director), Maris Stella Swift (Chairperson) and C. Barry Ott (Member)

The Michigan Employment Relations Commission, supported by an administrative agency – the Bureau of Employment Relations – administers the following statutes:

Labor Relations and Mediation Act
(Act 176 of the Public Acts of 1939, as amended)

This law (the LMA) regulates collective bargaining and labor management relationships between private sector employers and unions not within the exclusive jurisdiction of the National Labor Relations Act. The LMA provides for mediation and arbitration of labor disputes and guarantees the rights of employees to organize and bargain collectively with their employers through representatives of their own choosing.

Public Employment Relations Act
(Act 336 of the Public Acts of 1947, amended in Act 379 of 1965)

This statute grants all public employees in Michigan, excluding classified civil service employees of the State of Michigan and employees of the federal government, the right to organize and be represented by labor organizations of their choice and to engage in collective bargaining with their public sector employers. PERA prohibits strikes by public sector employees.

Compulsory Arbitration of Labor Disputes in Police and Fire Departments
(Act 312 of the Public Acts of 1969 and Act 17 of 1980)

Act 312 provides for compulsory binding arbitration of unresolved contract disputes in police and fire departments operated by cities, counties, villages and townships. Employees covered by Act 312 include municipal police officers and firefighters, as well as emergency medical personnel and emergency telephone operators.

In Act 17 of 1980, the compulsory arbitration procedure was made applicable to unresolved contract disputes between the State of Michigan and the labor organization representing state police troopers and sergeants.

Mission and Services

The Bureau of Employment Relations provides administrative and statutory functions for the Commission. Its mission is to foster peaceful, cooperative and effective public and private sector employer-employee relationships by the application of conflict resolution procedures, neutral and timely adjudication of labor disputes, and labor-management education and training. The Bureau also maintains a list of qualified and neutral Fact Finders and Arbitrators appointed to conduct fact finding, compulsory arbitration, and grievance arbitration hearings.

The Bureau, which has offices in both Detroit and Lansing, is comprised of two divisions: Labor Relations and Mediation. The labor relations division is responsible for adjudicating unfair labor practice charges, determining appropriate bargaining units, conducting pre-election conferences, and conducting and certifying the results of representation elections. The mediation division provides comprehensive mediation services under PERA, LMA, and NLRA in the areas of contract mediation, grievance mediation, last offer elections, and the formation of and support for labor-management committees, collaborative facilitation, and education and training.

Conclusion

The Michigan Employment Relations Commission has been an ALRA member agency since the organization's inception. We are proud to host the 2003 ALRA Conference and extend a warm welcome to everyone.

To learn more about MERC/BER, please visit our website, which is accessible via www.michigan.gov. An informational booklet entitled "Guide to Public Sector Labor Relations in Michigan – Law and Procedure before the Michigan Employment Relations Commission" is available for purchase. Please contact Bureau Director, Ruthanne Okun, at (313) 456-3519.

Respectfully submitted,
Jim Corbin, Labor Mediator
MERC/BER
July, 2003

3026 West Grand Boulevard, Suite 2-750
Post Office Box 02988
Detroit, Michigan 48202-2988
Voice: (313) 456-3510

1375 South Washington
Post Office Box 30015
Lansing, Michigan 48909
Voice (517) 373-3580

Total Staff: 24
(5) Support, (11) Mediators, (4) ALJ/H Off, (2) Election Officers, (1) Court Reporter and (1) Director
Total Budget: $3,074,600

EMPLOYMENT RELATIONS BOARD

The Employment Relations Board was created by the Civil Service Commission in 1980 to handle the increasing labor relations activity in the classified civil service. It is appointed to staggered terms of 3 years and serves at the pleasure of the Commission. It makes recommendations on appeals of grievance decisions concerning non-exclusively represented employees; appeals of technical review decisions about classification, qualifications, appointments, or disbursements for personal services; appeals of labor relations decisions about unfair labor practices, unit determination, excluded position determination, or prohibited subjects of bargaining; and appeals of other administrative decisions of the State Personnel Director, an administrative officer or an adjudicating officer when authorized by the Rules or Regulations. It also serves as an Impasse Panel to recommend resolution of collective bargaining disputes and as the Coordinated Compensation Panel to make recommendations for non-exclusively represented pay proposals. In 2002, the Board or its Administrative Officer issued 81 decisions. Members are Susan Zurvalec, Chair, William J. Braman, and Richard I. Warner. The Board's Administrative Officer is Mary Pollock.

HEARINGS, EMPLOYEE RELATIONS, AND MEDIATION

The Office of Hearings, Employee Relations, and Mediation (HERM) provides neutral dispute resolution services for many different aspects of labor and management relations within the state classified service. The services include adjudicating employee grievances and unfair labor practices, conducting representation elections to determine exclusive representation rights, and providing mediation to assist in resolving collective bargaining disputes, employee grievances, and unfair labor practice disputes. The HERM program manager is Michael Cain.

Adjudicating Employee Grievances

HERM has one in-house hearing officer and eleven ad hoc hearing officers to adjudicate grievances and unfair labor practice charges. The grievance adjudication is for the approximate 15,000 state classified employees who are not exclusively represented and the unfair labor practice adjudication is primarily for the approximate 40,000 state classified employees who are exclusively represented. In calendar year 2002, HERM adjudicated 127 grievance appeals and 24 unfair labor practice charges.

Representation Elections

There are eight employee organizations who have been elected to be the exclusive representative for ten bargaining units. The community of interest for each unit is determined by classification and crosses departmental boundaries. Two of the representation units exceed 9,500 employees. Over the last six years, HERM has conducted four representation elections. However, most of the representation units have had an exclusive representative since the early to mid 1980s, when representation elections were first authorized.

Mediation

In addition to providing mediation in the collective bargaining process, HERM mediates unfair labor practice charges and conducts grievance mediation. The mediation process has been very helpful in assisting the parties to find a resolution to both grievances and unfair labor practice charges. In 2002, HERM conducted over 50 grievance and ULP mediations with the parties reaching settlement in the vast majority of the disputes.

THE MICHIGAN CIVIL SERVICE COMMISSION
THE MICHIGAN DEPARTMENT OF CIVIL SERVICE

400 South Pine Street, Lansing, Michigan 48933
(517) 373-3020 Fax (517) 373-3103
www.michigan.gov/mdcs

The Michigan Civil Service Commission is a four-member non-salaried body, not more than two of whom are members of the same political party. The Commission is appointed by the Governor and not subject to Senate confirmation for 8-year staggered terms. Current Commissioners include Susan Grimes Munsell, Chair, James P. Pitz, Robert P. Hunter, and Sherry L. McMillan. John F. Lopez is the State Personnel Director; Janet McClelland is the Chief Deputy Director; General Counsel is D. Daniel McLellan.

State of Michigan Constitution (Article 11, Section 5) establishes the Commission's quasi-legislative and quasi-judicial powers, and mandates that the Commission shall:

- Classify all positions in the classified service according to their respective duties and responsibilities,
- Fix rates of compensation for all classes of positions,
- Approve or disapprove disbursements for all personal services,
- Determine by competitive examination and performance exclusively on the basis of merit, efficiency, and fitness the qualifications of all candidates for positions in the classified service,
- Make rules and regulations covering all personnel transactions, and
- Regulate all conditions of employment in the classified service.

The Constitution requires appropriation of 1% of the aggregate payroll to finance the Commission's duties. The Department has about 190 employees currently and is operating on a budget of $33.5 million. There are over 55,000 classified state employees currently.

Chapter 6 of the Michigan Civil Service Commission Rules authorizes a form of collective bargaining for eligible classified employees, and a meet and confer process for classified employees in non-exclusively represented positions. A collective bargaining agreement between the elected exclusive representatives and the State Employer, a gubernatorial appointee, must be approved by the Commission before implementation. The Commission can approve, modify, or reject an agreement. There are 15 prohibited subjects of bargaining including classification, selection, working out of class, disbursements for personal services, political or union activity, patents and copyrights, union leave, strikes, and abolition or creation of positions. There is a complaint system to adjudicate whether a CBA, arbitrator's decision, or settlement agreement violates a civil service rule or regulation governing a prohibited subject of bargaining. Decisions of the Commission can be accessed at http://web1mdcs.state.mi.us/.

FEDERAL

UNITED STATES

National Labor Relations Board

On May 2, 2003, NLRB General Counsel Arthur F. Rosenfeld issued a report on recent case handling developments in that office. Part I of the report addresses actions taken by the General Counsel in furtherance of a 2002 Supreme Court decision, *BE & K Construction Co. v. NLRB*, which considered under what circumstances the NLRB may find the filing of a lawsuit to be an unfair labor practice. Factors to be examined include whether a lawsuit is reasonably based and whether it has a retaliatory motive. Part II discusses a number of other GC actions taking place during the period from September 2002 to January 2003.

In late May the NLRB authorized the General Counsel to proceed on his recommendation to challenge two provisions of a California statute on the basis that they are preempted by the National Labor Relations Act. The provisions in question prohibit employers from using state funds to assist, promote or deter union organizing. Similar prohibitions in recent New York and New Jersey fiscal accountability requirements have also drawn the General Counsel's attention.

The General Counsel has announced that the Board's 51 field offices will now accept E-mail filing of certain communications and documents related to case processing. Among those documents that may be so transmitted are position statements, election observer designations, requests to proceed, withdrawal requests and disclaimers of interest. Board agents will honor requests from outside parties that communications not be sent by E-mail. Certain documents, however, will not be accepted by E-mail. These include election objections, briefs in general, unfair labor practice charges and representation petitions. The Board's rules and regulations require such documents to be submitted by a date certain, and timely receipt is occasionally disputed.

The NLRB itself has instituted similar procedures for document receipt at the national office. It announced

that certain documents may be submitted by filling out a one-page form on the agency's web site and attaching the document in question. The Board will evaluate the new process after a four-month period. Further information on these and other actions by the NLRB and the General Counsel may be obtained at www.nlrb.gov.

The labor-management community was diminished recently by the death in Washington, D.C. of long-time National Labor Relations Board member, Howard Jenkins, Jr., at the age of 87. Mr. Jenkins was the first black member of the Board. He was appointed by President John F. Kennedy in 1963 and served for 20 years, re-appointed by Republican and Democratic Presidents alike, until the Reagan White House declined to name him to a fifth term. Mr. Jenkins was instrumental in bringing issues of racial and gender discrimination to the forefront of labor decisions by the NLRB and the courts by fleshing out a union's duty of fair representation. He had been the first African-American to pass the Colorado bar exam. Prior to his service on the NLRB he participated, as a professor of law at Howard University, in litigation to desegregate the railroads and the public schools (the landmark case of Brown v. Board of Education). Hired by the Solicitor of the Department of Labor in 1956, he also helped to draft and administer the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959.

National Mediation Board

Late last year ALRA's own Mary I. Johnson was named to the post of General Counsel of the National Mediation Board. She has served with the NMB in various capacities since 1980, including senior hearing officer, designated ethics official, and litigation counsel.

The NM also announced that it will permit telephone electronic voting in representation elections beginning with the current fiscal year. TEV is a highly secured technology used by many carriers and other organizations for shareholder voting, membership voting, and polling.

US Department of Labor

In February 2003 the Bureau of Labor Statistics reported that union density in the US in 2002 was 13.2 percent, down from 13.4 percent the previous year. The figure, which represents 16.1 million persons, continued its 20-year decline since collection of comparable statistics began in 1983, when 20.1 percent of workers belonged to unions. (The historical high of about 35 percent was reached in the mid 1950s.) In addition, in 2002 about 1.7 million wage and salary workers were represented by a union at their main place of employment while not being union members themselves

Some highlights of the data, reported in press release USDOL 03-88, available at www.bls.gov/cps/, are as follows:

- Nearly 4 in 10 government workers were union members in 2002, compared with less than 1 in 10 workers in private-sector industries. The transportation industry had the highest private-sector rate of unionization.
- Nearly two-fifths of workers in protective service occupations were union members in 2002. Protective service occupations include firefighters and police officers. This group has had the highest union membership rate of any broad occupation group in every year since 1983.

In December 2002, to the dismay of many interested persons, the Bureau of Labor Statistics ceased publishing statistics on mass layoffs due to a lack of funding. After enactment of the Omnibus Appropriations bill for fiscal 2003, the BLS announced resumption of the program and reported in April 2003 on layoffs occurring during the period of interruption.

Of Historical Interest

The US Postal Service has issued a first-class stamp honoring labor and civil rights leader Cesar Chavez, founder of the United Farm Workers of America, who died in 1993. Mr. Chavez's organization helped to bring about enactment in 1975 of the California Agricultural Labor Relations Act during the tenure of Governor Jerry Brown. Enactment of CALRA essentially brought an end to the violent confrontations over recognition that occurred over the preceding decade between the UFW and the Teamsters' union. State-by-state legislation in this area has been necessary because farm workers are excluded from the National Labor Relations Act.

— Joy Reynolds

Northwest Airlines

Huge Setback Could Have Been Avoided

Northwest Airlines Flight Attendants bolted the Teamsters Union June 19 for an upstart independent union, the Professional Flight Attendants Association, in one of the largest decertification votes in the history of the Teamsters.

The responsibility for this setback falls squarely on the shoulders of James Hoffa and the Teamster leadership who alienated the Flight Attendants with weak contract negotiations and strong-arm tactics.

TDU (Teamsters for a Democratic Union) leaders tried repeatedly to consult with and help the Teamster leadership, calling for expanding the Teamster leadership team, promising a clear end-date to the trusteeship with a pledge that the unpopular Hoffa-appointees would not seek office, and a pledge to involve the PFAA and Teamster supporters equally, a new day for Teamster Flight Attendants.

But some in the Hoffa administration wanted to have the Flight Attendants leave the union, to be rid a group — mostly women — who did not support Hoffa politically in internal Teamster elections, and who actively opposed his dues hike last year.

Hoffa's strong-arm tactics pushed many Flight Attendant activists and the entire elected executive board into supporting the breakaway union-effectively ending any chance at keeping the Flight Attendants in the Teamsters.

TDU tried to convince Flight Attendants that sticking with the Teamsters and working within it for reform was a better course of action than creating a small new union from scratch. A number of Flight Attendants did vote for the course advocated by TDU, but not enough to offset the thousands alienated by the Hoffa administration.

"Hoffa essentially drove 11,000 Teamsters out of the union, 75 percent of them women, by refusing to deal with their issues or their elected leaders," said TDU National Organizer Ken Paff.

"This is no way to send a signal that the Teamsters are open to new voices, to women, to the diverse workers that we need to build a strong union in the 21st century. This sends a signal that the Teamsters Union is run by an old-boys club that refuses to open up and listen to dissenting voices. Apparently those in power want to make sure it stays that way, even at the expense of driving members out of the union." Paff said.

Hoffa's General Executive Board has 24 voting members. Twenty-three of those 24 are men and 23 are white.

— TDU Press Release

Canada

Canadian Broadcasting Corporation (CIRB/CCRI Decision no. 218)

On January 1, 1999, a new section was added to the *Canada Labour Code (Part I — Industrial Relations)*, R.S.C. 1985, c. L-2, as am. 1998, c. 26 (the Code) to govern the restructuring of bargaining units, section 18.1. Contained in the new section is a threshold that must be met before bargaining unit structural reviews can be commenced by the Board. The section states that in order to review the structure of the bargaining units, the Board must be "satisfied that the bargaining units are no longer appropriate for collective bargaining." The Board's decision in *Canadian Broadcasting Corporation* (2003), as yet unreported CIRB decision no. 218, issued February 28, 2003, is the first decision of the Board to directly consider the threshold that is established by these words.

The Canadian Media Guild (the CMG) filed an application pursuant to section 18.1 to consolidate the two bargaining units that it represents at the English language network of the Canadian Broadcasting Corporation (the CBC). The CBC filed a counter-application that sought to consolidate all four bargaining units at the network, the two represented by the CMG along with two remaining bargaining units, both represented by the Communications, Energy, and Paperworkers Union of Canada (the CEP). The CEP opposed the CBC's application on the grounds that the CBC had not met the threshold required by the section and proven that the bargaining units were no longer appropriate for collective bargaining. The CMG did not oppose the CBC's application.

The majority decision stated that in determining whether units are "no longer appropriate for collective bargaining," the Board must consider the language used in the Code, the consequences of a determination that

the bargaining units are in fact no longer appropriate for collective bargaining pursuant to the section (being a full-blown bargaining unit review), the broader purposes of the Code, and as well the specific situation before it. In devising a threshold, the Board stated that there must be sound reasons for the review, but the threshold cannot be a high one. The Board pointed out that the section is not remedial, designed to react only to serious problems that have become intolerable. The section must allow the Board to react to situations where effective industrial relations have been significantly impaired and address those situations in a flexible manner aimed at ensuring effective industrial relations and sound and constructive labour management and collective bargaining practices. The industrial relations issues that are relevant to the determination of whether bargaining units are no longer appropriate may vary from case to case, and the Board should assess the factors identified by the parties. The Board's inquiry will also involve a comparison of the current bargaining unit structure with the Board's established policies regarding appropriate bargaining units. A bargaining unit structure that departs from the policies normally articulated by the Board will suggest that a reexamination of the structures may be required.

The Board found that due to financial pressures, technological developments, and other workplace realities, the current bargaining unit structure at the CBC had, over time, resulted in employees who perform similar and integrated functions being in separate bargaining units. It found that not only had the similarity of the bargaining units already resulted in unsound labour relations (reduced flexibility, jurisdictional uncertainty, increased tensions, and administrative complexity), but it was also affecting the ability for the employer to respond to industry pressures, competition, and reduced funding and to maintain a national presence by managing reduced personnel resources. The Board also found that if the situation was not corrected, it would continue to cause difficulties in the future. The bargaining units would require constant adjustment by the parties themselves, and the impact of any one unit's decision to strike could be affected. The bargaining units were found to be no longer appropriate for collective bargaining.

The dissenting decision stated that the language chosen by Parliament indicated its intention that the threshold necessary for the Board to commence a review of bargaining units should be a high one. The party applying to the Board to commence a review should have to establish "compelling reasons" to warrant a review, and the Board should only intervene where there are serious labour relations problems caused by the structure of the bargaining units. The high threshold is necessary to maintain stability in the labour relations community, and adopting a low threshold may increase the potential for the disruption of labour relations and the interference with the employees' choice of bargaining agent.

— Akiva Starkman

Merging seniority lists — Federal Court weighs In

The merger of Air Canada and Canadian Airlines in January 2000 resulted in a dispute between pilots of the two airlines over the integration of seniority lists. In a decision issued on March 27, the Federal Court of Appeal agreed with the Canada Industrial Relations Board in declining to discount the seniority of former Canadian Airlines pilots because their company, and their jobs, were rescued by Air Canada.

Arbitrator rejects "date of hire" as guideline, opts for ratioed model

In contemplation of the establishment of a single consolidated pilot bargaining unit, unions representing the pilots at Canadian Airlines and Air Canada — ALPA and ACPA — agreed to refer the integration of the pilots' seniority lists to binding arbitration. At arbitration, ALPA argued that a seniority list based on date of hire was the most equitable. Conversely, ACPA argued that a "date of hire" approach to integration was inequitable because of a disparity in hiring patterns. Canadian had virtually stopped hiring in 1990, whereas almost half of the Air Canada pilots had hiring dates of 1995 or later. Moreover, ACPA submitted, Air Canada pilots were entitled to a premium since Air Canada had saved Canadian from bankruptcy.

The arbitrator concluded that, while date of hire was the basis for seniority integration favoured by many arbitrators, it was not appropriate in the circumstances of this case. Instead, he adopted a ratioed model, based on the relative size of pilot groups at the two airlines. However, in doing so, he also enhanced the seniority status of Air Canada pilots in order to neutralize the demographic disparities between the two groups and to take account

of the economic circumstances of the airlines prior to the merger. In addition, Air Canada pilots were protected to some extent by "fences". Thus, the award provided that pre-merger Air Canada pilots, many of whom held "no layoff" guarantees, were not to be laid off until 422 former Canadian pilots had been laid off.

CIRB opts for equality of treatment

Dissatisfied with this result, the pilots at Canadian Airlines asked the Canada Industrial Relations Board to intervene, in the exercise of its authority under the Canada Labour Code to determine the bargaining unit structure (s. 18.1), pursuant to a single employer declaration (s. 35). The Canadian pilots argued that the arbitrator had failed to adopt a remedial approach to seniority list integration, as directed by the Code.

The Board agreed. While it endorsed the arbitrator's rejection of a strict "date of hire" approach, and supported his adoption of a ratioed model, the Board ruled that the arbitrator had erred in giving undue weight to economic circumstances prior to the merger, to the disadvantage of Canadian pilots. Although such an approach might be consistent with that taken in arbitration cases, it was not consistent with the principles under the Canada Labour Code, the Board stated. Under the Code, "consideration of pre-merger economic circumstances must yield to … existing collective agreement rights." In the Board's view, "there does not appear to be a factual or economic basis for a significant discounting of the seniority rights of either group …" Instead, "the focus … should be to group pilots in a similar work situation together with those whose seniority allowed them to fly similar equipment with similar status …" The Board concluded that "in a seniority integration under Code principles there can be no automatic approach or preferred methodology. The methodology chosen for seniority integration must be that which is appropriate in view of a careful consideration of the facts and a careful assessment of the rights of the parties as established in accordance with the Code." The parties were directed to negotiate a new seniority list in accordance with proper Code principles, with the Board reserving jurisdiction to determine outstanding issues in the event of an impasse.

Court of Appeal endorses Board's decision

The Air Canada pilots appealed, arguing that the Board had exceeded its jurisdiction by overriding the freely negotiated agreement of the parties to resolve the integration issue through binding arbitration. The Federal Court of Appeal dismissed the appeal, ruling that the Board had properly exercised its general jurisdiction to review decisions under s.18 of the Code. Judge Brian Malone, writing for the Court, observed that, while the parties were permitted to make a first attempt at resolving the issues arising from a single employer declaration, any such resolution must accord with the principles and objectives underlying the Code, including the promotion of co-operative and effective labour relations, constructive settlement of disputes, industrial stability, and a just and equitable distribution of resources. In this regard, the Board was "the best judge of what would promote these legislative objectives", and it had properly concluded that "a 'winner take all' approach that gives one group of employees a premium and disadvantages others is not consistent with the intent of s.18.1."

The Court also upheld the Board's choice of October 17, 2000 as the date for integrating the seniority lists since that was the date on which the Board ordered consolidation of the bargaining units, and the date on which the units therefore actually merged.

Air Canada Pilots Association v. Air Line Pilots Association Federal Court of Appeal Judges Brian Malone, Arthur Stone and Marshall Rothstein March 27, 2003

— Lancaster House

Keller's Decision

As a result of the CIRB decision the parties, the Air Canada Pilots Association (ACPA), the Airline Pilots Association (ALPA) agreed to a second arbitration protocol in an attempt to establish the seniority list for the pilots of the company (Air Canada).

The panel began hearings in January 2003, and over the next five months had 17 hearings. The award was issued June 16, 2003 with the nominees indicating their dissents would follow

In the award, Brian Keller wrote:

> "…the award of this Panel differs significantly from that of Arbitrator Mitchnick. This is not because the panel is of the view that the

Mitchnick award was wrong. It is rather because the context and mandated considerations of the Panel are significantly different from those followed by Mr. Mitchnick. This Panel has been given specific direction by the CIRB in decision 183. As well, Decision 183 sets out the factual context this Panel has been required to consider.

The facts and principles of decision 183, as outlined in the award are:

Date of merger October 17, 2002:

The collective agreements of the two groups were substantially similar:

As of the date of merger the two airlines were essentially similar:

Both airlines brought value to the merger;

As of the date of merger, CAIL was an integral part of the operations of the Company:

The jobs brought to the merger is of limited relevance:

The arbitration must not create winners and losers:

Each side must share in the fruits of progress:

Any decision must be effective and stand the test of time:

The ALPA pilots were disadvantaged by the Mitchnick award:

The Canada Labour Code Principles must apply.

"Additionally", wrote Keller, "the context against which this award is written and of Arbitrator Mitchnick could not be more different. The Mitchnick award was written, and the parties hypothesized a time of robust, almost endless growth"

"As events have proved that was dramatically wrong. The reality today is that as this award is being written Air Canada is under bankruptcy protection. Between then and now, the world economy has faltered, there was 9/11, and there was SARS. There was also the reality that the Air Canada debt load was just too huge an albatross to allow the Company, structured as it was, to service. Air Canada is in the midst of seeking relief from its creditors, seeking major economic relief from its employees and most importantly for the purposes of this award, looking at massive reconfiguration of its fleet and consequently its operations."

The award establishes categories which are based on similarities as well as "the type of flying, the range, whether wide body or narrow body and stage length and capacity of each type of aircraft." Within each category there is a ratio which reflects the number of members of the ACPA and the ALPA to be in each category as of October 17, 2002. These ratios are changed, effective June 15, 2003.

"The award goes beyond what ACPA claims is necessary (as they claim no redress is required) and does not, by any significant measure, satisfy the ALPA "damage" claim. It is, however, in the view of the Panel, a reasonable approach to take to reconcile the competing interests the two pilot groups."

Editor's Note:

Preliminary analysis of the award suggests that, on average pilots in ALPA will rise on the combined seniority list by more than 300 positions while the average a ACPA pilot will drop by about 180 positions "give or take a few". There are 3,440 pilots now flying with Air Canada – of which 1,100 were pilots for Canadian.

When this award was released the Company pilots were in the process of ratifying a six year agreement which allows for $257 million in annual savings from the pilots. (The total was 1.1 billion dollars annually from all employee groups, and the pilots were the last group to come to terms). The Company is attempting to emerge from bankruptcy protection by a September 30, 2003 deadline. The parties, with he help of a court appointed mediator agreed on a 15% wage reduction and the lay-off of 317 pilots during the next six months. Ratification was announced July1, 2003, however the effect of the Keller award will mean that some Air Canada pilots will earn up to 40% less depending on where they fall on the merged list.

Upon release of the award the ACPA sought and was given a meeting with Paul Lorden, Chair of the CLRB. In spite of the protests from the association and its members – 300, and most in uniform attended the meeting – Mr Lord said the award would effective from the date of release. He did, however, agree to a "limited review" at a future date. Stay tuned!

Donald Wood: The Dean of Canadian Industrial Relations

Donald William Wood, 83 died of renal failure June 23, 2003 in Kingston General Hospital.

In 1960 he became the first director of the Queen's University Industrial Relations Centre, a position he held until 1985. Before coming to the Centre Mr. Wood was director of employee relations at Imperial Oil. He began his working career in the post office while serving in the Royal Canadian Air Force during the Second World War. Following his military service he studied at McMaster and Queen's universities. He received a PhD in economics from Princeton.

While head of the centre, Mr Wood was involved in a number of public policy initiatives. He led research for the Glasgow commission regarding the reform of the Canadian Public Service. In addition, a paper he wrote for the Senate on manpower policy became a blueprint for Canadian human resources policy. Mr. Wood was a member and then chairman of the Ontario Economic Council, a research body that provided economic advice to the provincial government.

Under his leadership the centre focussed both on academic research excellence and on building a continuing education program to teach human resource managers about employer-employee relationships. As a result Mr. Wood was known across Canada for seminars that provided a forum of exchange between union and government and industry that made quite an impact.

'He helped shape provincial and federal industrial relations policy. He bridged the gap between employers and employees across the country and the centre became a world-renowned research and training institution," said his colleague and friend Pradeep Kumar, of Queen's University.

Mr. Wood is survived by his wife Connie, daughters Leslie and Sandie Wood and Sandie's husband Creighton Madill's two grandchildren and his brother Norm Wood.

— The Kingston Whig Standard

Increase in Dads Taking Paternity Leave

More men are taking paternity leave following the federal governments 2001 increase of paternity benefits from 10 to 35 weeks, Statistics Canada reports. The monthly average number of fathers taking leave reached 7,900 in 2002, five times the average two years earlier. The percentage of working dads taking leave rose from three per cent to 10 per cent.

— HR Reporter

If you enjoyed the satire of Will Durst at the annual banquet in San Diego, you can view his thoughts at: www.workingforchange.com.

And remember, when you look across the river to Windsor, you are looking south!

AROUND THE STATES AND PROVINCES

BC

BRITISH COLUMBIA CRITICIZED OVER LABOUR LAWS

The International Labour Organization, an agency of the United Nations has found the government of British Columbia in violation of international agreements on collective bargaining.

The conduct for which the BC government was admonished dates back to 2001 and early last year when six pieces of legislation were passed which affected 150,000 workers in health, social services and education. Together the enacted bills effectively forced health-care workers to stop lawful work action, imposed the employees' latest offer as contract in a number of negotiations, voided previously negotiated contract rights for health and social-services workers, and barred education workers from taking job action by deeming education an essential service

The respective unions brought their complaints to the ILO claiming these bills violated ILO conventions and freedom of association principles and encouraged employers not to use collective bargaining.

"We said in the election we were going to do this and that is what we have done," said the Premier in responding to the ruling. "I feel no pressure whatsoever. I was not participating in discussion with the UN."

A spokesperson said the Minister of Labour has begun looking into a discussion process with unions and employers "to see if there is different way of conducting public-sector bargaining."

— HR Reproter

MARYLAND

Union contends Ehrlich bound by 2% increase negotiated by Glendening; Casefirst test of bargaining law

The union that represents 27,000 state workers filed a lawsuit yesterday to try to force Gov. Robert L. Ehrlich Jr. to abide by the 2 percent pay raise his predecessor negotiated for Maryland employees just weeks before leaving office.

The American Federation of State, County and Municipal Employees Council 92 alleges that Ehrlich was bound by former Gov. Parris N. Glendening's deal with the union. Glendening signed the contract the day before he left office in January.

The lawsuit — filed in Anne Arundel County Circuit Court — is expected to be the first test of how a 1999 law that guarantees bargaining rights to state employees is implemented.

"We are all aware that outgoing administrations do a lot of things that bind and have a subsequent effect on the subsequent administration," said Joel A. Smith, an attorney for the union. "How could one assume that every agreement or contract the governor or the Board of Public Works makes could somehow evaporate on the morning of the next governor's inauguration?"

At question, say lawyers on both sides, is whether a new governor is bound to a contract with state employees negotiated by a previous administration, as if it were a contract to purchase highway equipment made under similar circumstances.

When he submitted his budget to the General Assembly this year, Ehrlich ignored the contract with the union.

The governor, who laughed at the lawsuit yesterday, said this winter that the state could not afford to give the 2 percent raises because of what was then a $2 billion budget shortfall over the next two years.

Legislative leaders also condemned Glendening then for negotiating the $100 million worth of pay raises during a budgetary crisis. The Assembly passed a $22.4 billion

budget for next year that did not include any raises for state employees, who have not had a salary increase in almost three years.

Yesterday, Ehrlich said he was dismayed that the union is continuing to press the issue even as his administration is working to avoid layoffs.

"You can't even look at it seriously," Ehrlich said. "It's really interesting that this particular group would want to benefit some state employees and cost others their jobs."

But the union's lawsuit says Ehrlich had an obligation to put the agreement in his budget so the legislature could decide whether the state could afford the cost-of-living increases.

The state's collective-bargaining law empowers a governor to negotiate contracts but gives the legislature final say to approve them — particularly when it comes to provisions that cost money.

"That is the process: We negotiate the contract, and then the General Assembly has to say if the money is there," said Sallie Davies, president of AFSCME Council 92. "But in this case, the General Assembly has not stood in the way of our contract, the governor has."

The lawsuit also alleges that the state has been slow to implement parts of the law, such as defining what constitutes an unfair labor practice and how conflicts should be resolved.

Ehrlich, Budget Secretary James C. DiPaula, the state of Maryland and the state Labor Relations Board are named as defendants.

Smith, the union's attorney, said he will ask the courts to decide how the collective-bargaining law should be implemented — not whether the state can afford to give raises this year.

"This is a process case," Smith said. "This is asking the court to rule on the how of the matter, not the what of the matter."

But the union is seeking an order requiring Ehrlich to request the money to pay for the raises and other associated costs in either a supplemental budget this year or in the 2005 spending plan he will unveil in January.

Because it is the first lawsuit since the collective bargaining became law, Smith said he expects the issue to go before the Court of Appeals: "What we really want the court to do is help us and help the parties understand the law so we know where we are going."

Robert A. Zarnoch, an assistant attorney general, said his office determined that Ehrlich was not required to include money in his budget to cover the raises Glendening negotiated.

"Our reading of the statute is that the governor who signs the deal has to be the one who does the funding," Zarnoch said. "Because Ehrlich was not the governor who signed it, he did not have to fund it."

Smith responded by questioning Zarnoch's credentials to speak on the matter. "Mr. Zarnoch is not a judge," Smith said. "I know he often holds forth with his opinions about matters, but he is not a member of the judiciary."

But two former governors — who noted they never had to deal with collective bargaining while in office — said yesterday that they do not fault Ehrlich for submitting a budget without pay raises.

Former Gov. Harry R. Hughes said a governor generally feels "compelled to abide by a contract" but also has an "obligation" to re-examine it if the state can't afford it.

Former Gov. Marvin Mandel, whom Ehrlich recently appointed to the state university system Board of Regents, said he does not think the union contract is valid because it did not win legislative approval.

"I would not see how he could be held accountable if it did not go the legislature for their approval," said Mandel. "You have to look and see if you have the money to carry out the contract."

Glendening did not return phone calls yesterday seeking comment.

Even if Ehrlich had included the raises, the legislature most likely would not have agreed to it.

Although Maryland governors have tremendous sway over the budget, the Assembly has the right to make cuts. This year, lawmakers cut roughly $200 million from Ehrlich's plan.

"I think the legislature would have cut it," said House Speaker Michael E. Busch, an Anne Arundel Democrat.

Zarnoch said Ehrlich might have been able to avoid the lawsuit by including the raises and leaving them for the legislature to cut.

DiPaula said yesterday that was never an option. "That is what we are trying to get away from," the budget secretary said. "Part of what Governor Ehrlich is trying to do is operate with honest accounting."

DiPaula said the administration is willing to negotiate a new "noneconomic" contract with the union similar to agreements it recently reached with firefighters at Baltimore-Washington International Airport and the union representing state troopers.

Davies said she also hopes the lawsuit does not stall talks. "We do not expect anything to get frozen or get held up as this goes along," she said.

Sun staff writer Michael Dresser contributed to this article.

By Tim Craig and David Nitkin
Sun Staff
April 30, 2003

ONTARIO

SCC puts Tory appointments in their place Politics can't play a role in arbitration process

The Supreme Court of Canada has eviscerated an attempt by Ontario's Tories to hijack the arbitration process under the Hospital Labour Disputes Arbitrations Act (HLDAA).

"Canadian Union of Public Employees (CUPE) v. Ontario will stand for a long time as the case that defines the nature of arbitration," says Michel Picher, a Toronto-based labour arbitrator and mediator. Picher represented the National Academy of Arbitrators (NAA), a North American guild of 600 professional labour arbitrators, of whom 60 are Canada-based.

"The NAA intervened in this case as part of its mission to protect the integrity of the labour arbitration process," Picher says.

The Canadian Bar Association also intervened.

Since 1965, Ontario's hospital and nursing homes have been subject to compulsory arbitration under the HLDAA. If the parties can't agree on an arbitrator, a three-member panel is struck. Two of the members are chosen by the parties and the designates attempt to agree on a third member. If they cannot agree, the minister of Labour appoints the third arbitrator.

In 1979, amendments to the Labour Relations Act resulted in the creation of a list of arbitrators acceptable to both sides. Since 1980, senior officials at the Ministry of Labour, resorting for the most part to the list, identified appropriate HLDAA arbitrators.

In 1998, the minister appointed four retired judges to chair several arbitration boards. The judges were not appointed by mutual agreement nor were they on the list. The practical effect was devastating to the process.

"Ever since the minister announced his new policy, there has not been a single agreement on the appointment of any chair," says a prominent arbitrator who spoke on condition of anonymity. "It was clear to employers that it was to their advantage to have the minister make the appointment."

The union sought declarations that the appointment created a reasonable apprehension of bias and lacked institutional independence and impartiality.

The Ontario Divisional Court dismissed the applications for judicial review, but the Court of Appeal concluded that there was a reasonable apprehension of bias and interference with arbitrators' independence and impartiality, and that the appointments had defeated the legitimate expectations of the unions contrary to the requirements of natural justice.

The Court of Appeal ordered the minister to make appointments only from the list.

In a 6-3 decision released May 16, the Supreme Court upheld the ruling, albeit on a different basis. Justice Ian Binnie, writing for the majority, pinned his judgment on s. 6(5) of the HLDAA. The section contemplates the appointment "of a person who is, in the opinion of the minister, qualified to act."

The minister's discretion under the statute, however, had to be exercised consistently with its purpose and objects. While s. 6(5) used broad language, the minister was required to consider relevant labour relations expertise, independence, impartiality, and general acceptability within the labour relations community.

"By 'general acceptability,' I do not mean that a particular candidate must be acceptable to all parties all the time, or to the parties to a particular HLDAA dispute," Binnie cautioned. "I mean only that the candidate has a track record and is generally seen in the labour relations community as widely acceptable to both unions and management by reason of his or her independence, neutrality, and proven expertise."

While the appointments of the judges were not patently unreasonable merely because the minister failed to resort to the list, excluding reference to relevant factors went to the heart of the legislative scheme and caused him to act in a patently unreasonable manner.

"The result [of requiring the minister to consider relevant matters] is a perfectly manageable framework within which the legislature intended to give the minister broad but not unlimited scope within which to make appointments in furtherance of HLDAA's object and purposes," Binnie wrote.

Binnie also concluded that the Court of Appeal was wrong in deciding that the minister had compromised the independence of the arbitrators, which was guaranteed by their training, experience, and mutual acceptability. Nor could retired judges — as a class — be seen as having an anti-labour bias so as to impinge on their impartiality; rather, allegations of bias were properly dealt with on an individual basis.

"The Supreme Court's decision turned the issue into a substantive complaint regarding the minister's actions, whereas the Court of Appeal looked at the case as involving procedural considerations relating to impartiality and independence," says Leslie McInstosh, Toronto-based counsel with the Ministry of the Attorney General department, who acted for the Ministry of Labour.

In the result, the appeal was dismissed, but the Court of Appeal's judgment was varied to require the minister to satisfy himself that prospective chairpersons were not only independent and impartial, but possessed appropriate labour relations expertise and were recognized in the labour relations community as generally acceptable to both management and labour.

"The Supreme Court was obviously concerned that the challenged appointment would result in a politicization of the arbitration process in a way that undermined its integrity and moved away from normative principles of true neutrality and acceptability," says Picher.

So was the CBA.

"The CBA's mission statement is very much about the public's confidence in the dispute resolution process and the rule of law in the case of administrative tribunals as well as courts," says Richards. "The court recognized that the HLDAA was a carefully calibrated balance between union and management for the good of the whole public in a very contentious area, and that we can't have ministers exercising their discretion in a way that undermines the legislation's policy and objects."

Indeed, the decision's implications go way beyond the HLDAA. There are more than 60 statutes in Canada dealing with the appointment of interest and grievance arbitrators. As well, the Weber line of cases has steadily expanded arbitrators' jurisdiction. And there are scores of other statutes requiring the exercise of ministerial powers.

"CUPE v. Ontario applies to every government minister exercising a broad discretion," Richards says.

— Julius Melnitzer
Law Times

Harry Arthurs wins Bora Laskin Award

Posted May 28, 2003

On May 7, 2003, Professor Harry Arthurs became the first recipient of the Bora Laskin Award, established by the University of Toronto. The new award, which recognizes distinguished contributions to Canadian labour law, was presented at the Conference on Canadian Labour Boards, hosted by Lancaster House and the University of Toronto Centre for Industrial Relations. At the award ceremony, John Laskin, a justice of Ontario's Court of Appeal and son of Bora Laskin, the late Chief Justice of Canada, paid tribute to Professor Arthurs.

PENNSYLVANIA

DEVELOPMENTS

***Upper Moreland Township School District*, 33 PPER ¶ 33065 (Court of Common Pleas, 2002).** On appeal from the PLRB's determination of the employer's back-pay liability, the Court of Common Pleas remanded the matter for findings on an alleged lack of due diligence in securing alternative employment by the unlawfully discharged employes during the period between their discharge and the employer's offer of reinstatement. The court placed the burden on the employer to prove that other substantially equivalent positions were available and that the employe failed to use reasonable diligence in attempting to secure interim employment.

***State System of Higher Education v. APSCUF*, 33 PPER ¶ 33037 (Final Order, 2002), *affirmed sub nom., State System of Higher Education v. Pennsylvania Labor Relations Board*, 821 A.2d 156 (Pa. Cmwlth. 2003).** The PLRB amended the faculty union's certification to include non-faculty athletic trainers who shared a community of interest with the faculty athletic trainers within the professional bargaining unit. State System of Higher Education v. PLRB, 757 A.2d 442 (Pa, Cmwlth. 2000). Following their accretion, APSCUF successfully grieved the employer's failure to apply a recently negotiated contract between the college and the faculty athletic trainers to the non-faculty trainers. On appeal, the Commonwealth Court remanded the matter back to the arbitrator, holding that if the duties of the non-faculty trainers were substantially similar to those of the faculty athletic trainers, then the terms of the collective bargaining agreement would apply, however, if not, then there would be an obligation to bargain prospectively a new contract for those employes. State System of Higher Education v. APSCUF, 800 A.2d 983 (Pa. Cmwlth. 2002). While on remand before the arbitrator, in a collateral unfair practice charge filed for a refusal to bargain over the terms for the accreted non-faculty athletic trainers, the PLRB found that because the duties of the non-faulty athletic trainers were arguably within the scope of the certified unit covered under the collective bargaining agreement, the union had a sound arguable basis for refusing to bargain over the terms and conditions for the non-faculty trainers.

***Pennsylvania State Police v. PLRB*, ___ Pa. ___, 810 A.2d 1240 (2002).** In a *per curiam* order, the Pennsylvania Supreme Court essentially held that probationary state police officers are not "employes" under Pennsylvania's collective bargaining laws. Previously, in Upper Makefield Township v. PLRB, 562 Pa. 113, 753 A.2d 803 (2000), the Pennsylvania Supreme Court directed the PLRB to dismiss an unfair labor practice charge because the probationary police officer in question had no right to "appeal" a dismissal either under Act 111 or the collective bargaining agreement. Relying on the Supreme Court's determination on probationary trooper status, the Commonwealth Court held in Pennsylvania State Police v. PLRB, 764 A.2d 92 (Pa. Cmwlth. 2000), that the employer did not commit an unfair labor practice by unilaterally ceasing its five-year practice of providing pre-termination hearings to probationary troopers "since the protections of Act 111 cover only those officers who have successfully completed and passed their probationary period." Dissenting Justice Saylor criticized the majority for distorting the status of probationary employes for purposes of labor law due to the majority's fear that probationary employes could arguably challenge termination for failure to successfully complete probation.

Weingarten Developments

***Commonwealth, Pennsylvania Emergency Management Agency v. PLRB*, 768 A.2d 1201 (Pa. Cmwlth. 2001).** The union filed a charge of unfair labor practices on behalf of one of its members alleging that the employer violated an employe's Weingarten rights, and declined to appeal the hearing examiner's dismissal of the charge. The employe filed his own, pro se, exceptions to the hearing examiner's determination. The PLRB allowed the employe to intervene at the exceptions stage, and addressed the merits of the employe's exceptions. On appeal, the Commonwealth Court affirmed, noting that the employe was the real party in interest in a Weingarten case, and affirmed the Board's determination that an employe may be entitled to make whole type relief if the employer relied on information obtained in the unlawful interview in disciplining the employe.

***Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania*, 33 PPER ¶ 33177 (Final Order, 2002), *appeal pending*, 2633 CD 2003 (Pa. Cmwlth. argued April 1, 2003).** The PLRB recognized that an employe has a right to consult with his union representative over questions posed by the

employer during the course of a Weingarten interview, so long as there is no undue disruption of the investigation.

***Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania*, 34 PPER ¶ 1 (Final Order, 2003), *appeal pending*, 107 CD 2003 (Pa. Cmwlth.).** The PLRB recently held an employe has the right to choose an available Weingarten representative, not the employer. However, in order to be "available" the representative must be at work and on duty when the need arises, and attendance at the interview would not occasion any unwarranted disruption of the employer services.

NEW JERSEY

New Jersey Cases

Grievance Arbitration

The New Jersey Supreme Court has granted a petition for certification and a cross-petition for certification in Camden Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002), certification granted, 175 N.J. 77 (2002). In New Jersey, appellate courts have split on the contractual arbitrability of grievances alleging that school boards violated just cause clauses by not renewing the annual employment contracts of custodians. Some cases have restrained arbitration of such grievances regardless of the reasons for a non-renewal and have effectively required majority representatives to negotiate for explicit authorization to arbitrate non-renewals. Other cases, like Camden, have considered the reasons for a non-renewal and have permitted arbitration if the custodians could show that their contracts were not renewed for disciplinary reasons. The New Jersey Supreme Court will consider these two lines of cases, plus a third approach based on the Steelworker's Trilogy, given a broad arbitration clause, such grievances are contractually arbitrable regardless of the reasons for a non-renewal and it is up to the arbitrator to interpret and apply the just cause clause.

Arbitration of Statutory Claims

In Leodori v. Cigna Corp., __ N.J. ___ (2003) the New Jersey Supreme Court held that a provision in an employee handbook requiring employees to arbitrate all employment-related claims could not be enforced against the plaintiff, an in-house lawyer. The provision was unambiguous, but the lawyer had not actually agreed to be bound by that provision. He had not signed the "Employee Handbook Receipt and Agreement" form and the record did not otherwise unmistakably show that he had agreed to the arbitration provision.

Employees and Independent Contractors

In New Jersey Judiciary and Communications Workers of America, P.E.R.C. No. ___, __ NJPER ___ (¶_____ 2003), the Public Employment Relations Commission held that free-lance interpreters who worked at least 288 hours a year for the Judiciary are public employees rather than independent contractors. The New Jersey Employer-Employee Relations Act has a broader scope of coverage than the National Labor Relations Act and does not expressly exclude independent contractors and does encompass those who are in the service of a public employer by virtue of a contract or appointment. The Judiciary closely regulates the services and working conditions of free lance interpreters and refuses to permit individual variations in their working conditions. Other factors such as tax treatment and lack of benefits favor a finding of independent contractor status, but on balance the common law factors and the purposes of the Act support allowing these interpreters to seek collective representation.

Run-off and Rerun Elections

In Cumberland Cty. Bd. of Social Services and NJCSA Cumberland Council 18 (Supervisors and Cumberland Supervisors Ass'n), P.E.R.C. No. _____, __ NJPER ___ (¶_____ 2003), the Commission held that an employee who was not eligible to vote in an initial representation election was not eligible to vote in a run-off election. However, when that election resulted in a tie between the two competing unions, a rerun election was ordered. The Commission held that the employee was eligible to vote in that rerun election. The Commission follow the NLRB's procedures for determining eligibility in rerun elections. See NLRB Casehandling Manual §11452.2.

OREGON

THOMAS TO HEAD OREGON ERB

Rita Thomas is the new Chair of the Oregon Employment Relations Board, replacing Dave Stiteler. Rita has served as a member of the Board for the past six years, and was elevated to Chair effective June 1st of

this year. Prior to her appointment to the Board, Rita was the Chief Negotiator for the State of Oregon. A native of Michigan, Rita has previously served as Vice President of the Detroit Local of the American Postal Workers Union, a labor relations representative for the Michigan Association of School Boards and as General Manager of Labor Relations for a division of Inland Steel. Rita is the founding President of the Michigan Council of School Attorneys.

QUEBEC

The Numbers

Quebec workers are the most unionized in North America, according to the latest figures from Statistics Canada.

Quebec's unionization rate stood at 40.4 per cent in 2002, higher than the national level of 32.2 per cent.

In the United States, less than 15 per cent of the work-force is cover by union contract.

Even though Canada's unionization rate is more than twice that of the U.S., it pales in comparison to some European nations. Countries at the high end include: Iceland, 83.3 per cent; Sweden, 81.9 per cent; and Denmark, 81.8 percent.

— HR Reporter

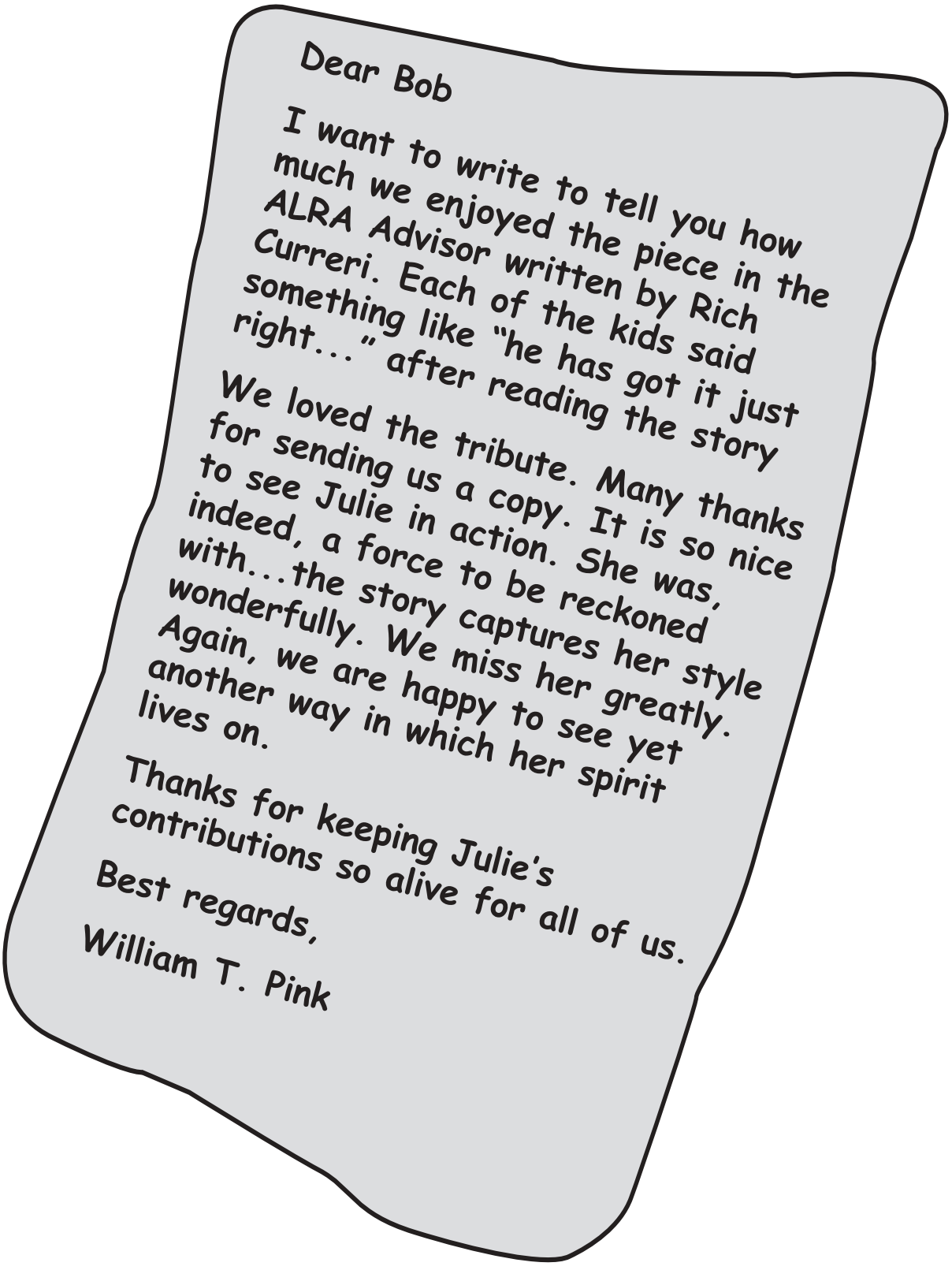
WISCONSIN

NEW COMMISSIONERS AT THE WERC

The Wisconsin Employment Relations Commission has three new commissioners since the last ALRA conference. Governor Jim Doyle has appointed **Judith Neumann** as Chair of the Commission, replacing Steve Sorenson. Judy is a native of Milwaukee, who returns to Wisconsin after 20 years in Massachusetts, where she served as counsel and hearing officer for the Massachusetts Labor Relations Commission, and then as legal counsel to the Massachusetts Teachers Association.

In addition to Judy Neumann, Governor Doyle has appointed **Paul Gordon** and Sue Baumann to the WERC. Paul Gordon is formerly the City Attorney for Chippewa Falls and a member of the Chippewa Falls School Board. He had also served as Chair of the Private Industry Council for Chippewa County. Paul replaces Paul Hahn, whose term expired in March.

Sue Baumann is a labor lawyer who served for twelve years as a member of the Madison City Council and six years as Mayor of Madison. In addition to her law degree, Sue has a Masters Degree in Labor and Industrial Relations from the University of Wisconsin's Industrial Relations Research Institute, and a Master's Degree in Chemistry. Prior to going to law school, Sue was an 8th grade teacher, and served as President of the Madison teachers' association. She replaces Henry Hempe, who resigned effective June 15th.


Dear Bob
I want to write to tell you how much we enjoyed the piece in the ALRA Advisor written by Rich Curreri. Each of the kids said something like "he has got it just right..." after reading the story
We loved the tribute. Many thanks for sending us a copy. It is so nice to see Julie in action. She was, indeed, a force to be reckoned with...the story captures her style wonderfully. We miss her greatly. Again, we are happy to see yet another way in which her spirit lives on.
Thanks for keeping Julie's contributions so alive for all of us.
Best regards,
William T. Pink