ALRA advisor....

Association Of
Labour Relations Agencies

NOVEMBER 2003

Ron Gettelfinger,
President UAW

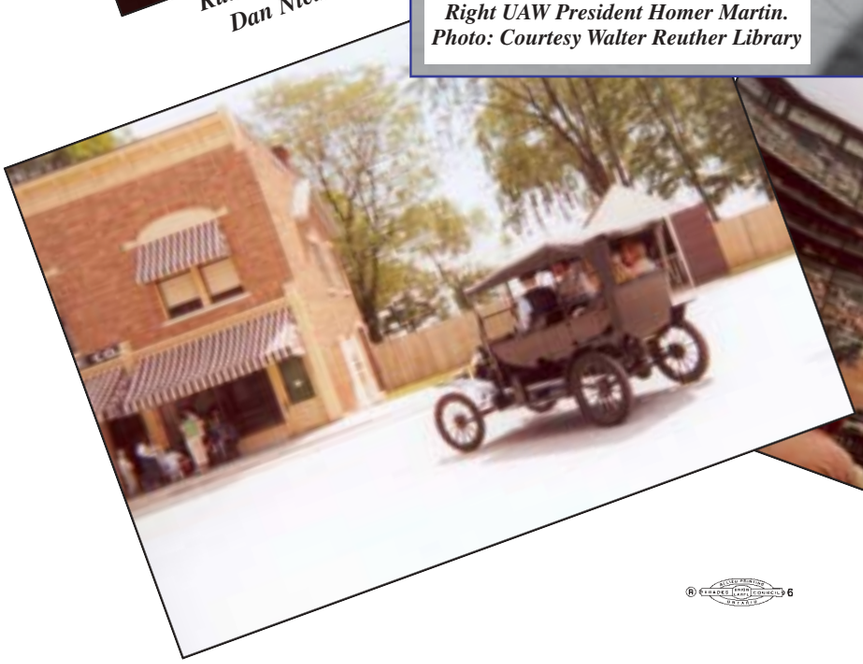
Archives of Labor and Urban Affairs

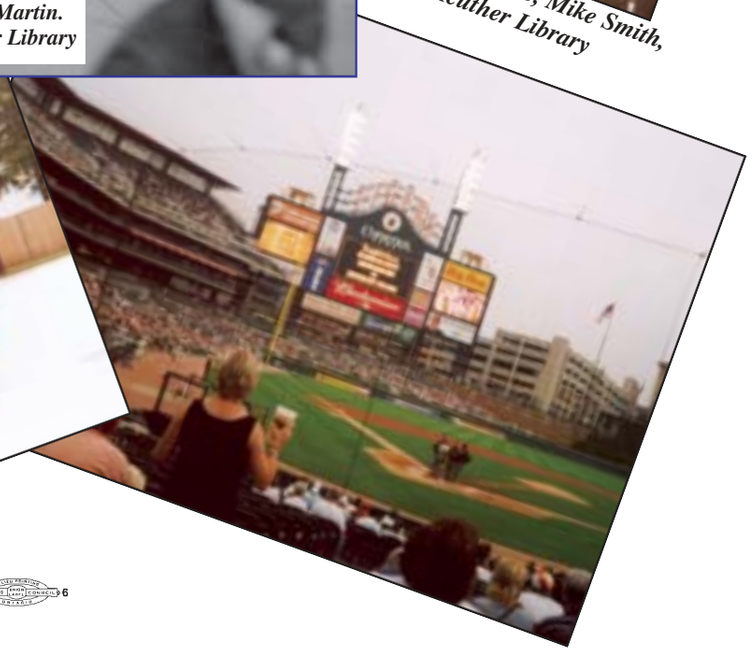
Cadillac strikers, sit-down strike, January 17, 1937.
Center, head turned Walter Reuther,
Right UAW President Homer Martin.
Photo: Courtesy Walter Reuther Library

Mary Pollock,
Employment Relations

Ruthanne Okun,
Dan Nielsen

Tom Featherstone, Mike Smith,
Walter Reuther Library





Gettlefinger Speach Excerpts

from the keynote address of UAW President Ron Gettelfinger. The full text of his speech can be viewed on the ALRA website. (ALRA.org)

The one thing I will say about the UAW's relationship with the domestic automakers — or as we refer to them, the Big Three, is that our relationship shows just how well a partnership between an employer and a union can work.

We see the Big Three continue to make gains in quality and productivity and we are proud to say that they are the benchmark when it comes to safety in the automobile industry. All of this has been accomplished because of — not in spite of — the partnership between those companies and the UAW.

.....

Instead, it seems to us that the American economy, and certainly the American workforce, would be much better off if all that energy, time and money could be focused on figuring out how other sectors of the economy could duplicate the successful partnership that now exists between the UAW and the Big Three automakers.

.....

Until the legal system can be fixed, we've also worked with employers to develop a better and more fair system for determining employee desires: the Card Check.

It's a simple procedure: …

President's Column

Dan Nielsen

Dan Nielsen

It's a pleasure to write to you about what's happening in ALRA right now, because a lot of exciting and worthwhile things are starting to come together. The year for ALRA activities runs from one annual conference to the next, and this year is bookended by the realization of one great conference and the promise of another.

Detroit is viewed as the classic labor town and in the last week of July it lived up to its billing. We kicked off the conference with an in-depth study of labor relations in organized professional sports – we went to a Tigers game on Saturday night. From there, the conference was a cascade of highlights, from a Sunday morning presentation on the labor history of that history rich city, to Monday with perhaps the finest Advocates' Day program in memory featuring big picture speeches by UAW President Ron Gettelfinger, nationally known management attorney Harold Coxson, and a troika of leading government neutrals – NLRB Chair Robert Battista, FMCS Director Peter Hurtgen and FLRA Member Carol Waller Pope. Tuesday and Wednesday showcased the talent within the ALRA family, as the Professional Development Committee organized training sessions that rank with any I've seen in 22 years in the business. **Scot Beckenbaugh** and **Lance Teachworth** richly deserve the accolades they received for the general program, while **Jaye Zanta**, **Mary Stevens** and **Reg Pearson** continue to set a seemingly impossibly high standard for the

Harold Coxson

Mary Stevens

PRESIDENT'S COLUMN – Cont'd

Reg Pearson

Scot Beckenbaugh

Lance Teachworth

training – a standard they then exceed with each successive conference.

ALRA has no staff, and the running of a successful five day conference is an incredibly involved undertaking. The smashing success of the Detroit conference is attributable to the host committee headed by the tireless **Ruthanne Okun** and her staff on the U.S. side of the river, and **Bruce Janisse**, admirably upholding the honour of the Windsor side. Ruthanne and Bruce orchestrated the efforts of a large team drawn from the Michigan agencies, the NLRB, and the Ontario Ministry of Labour to create a seamless conference – they not only made the buses run on time, they managed to transform the Detroit Institute of Art into ALRA's private dining hall. Their work led to a conference that was genuinely memorable in every respect, from the smallest detail of registration to the biggest name speaker on rostrum.

Ruthanne Okun and Bruce Janisse

The other bookend of ALRA's year will be our meeting next summer in Halifax, Nova Scotia. The Executive Board met in Halifax in October to begin planning for the conference. As a first time visitor, I had expected to be impressed. I can only say that the city and the region are even more beautiful and charming than I had expected, and the meeting facilities are close to perfect. The conference hotel is in the heart of the historic district and the only problem I anticipate is getting people to pay attention to the speakers when the view of the bay from the meeting rooms is so lovely. My concerns about that are reduced by the fact that Program Co-chairs **Jim Breckenridge** and **Les Heltzer**

Sheri King & Ken Zwicker

and their committee members have begun to construct a substantive program that should hold the attention of even the most seasoned conference goers among us. The off-time during the week will be slightly less programmed than usual, as Arrangements Co-Chairs **Sheri King** and **Ken Zwicker** have wisely determined to balance the planned events with allowing folks to take full advantage of the activities and attractions that lie a few steps outside the hotel doors.

While it is early, some of the substance of what we will do in Halifax is already known. In my speech after the banquet in Detroit, I spoke of the majesty of what we do – the notion that we are the government, and that means more than being some ADR firm, or some set of private arbitrators, or even just some lawyers who happens to temporarily be on the public payroll. It is a higher calling and a greater responsibility. On Tuesday morning of the Halifax conference, we will begin to more fully explore what that means. At that time, we will hear and debate the inaugural report of the Neutrality Committee appointed by **Bob Anderson** last year. This represents the beginning of a long term project to articulate what it is we mean by a "neutral" government agency. The effort is being headed by Past President **John Higgins**. The project is more fully described elsewhere in this issue of the Advisor, and I will not go into any great detail here, other than to say it is as important an

Bob Anderson

Dan Rainey

initiative as ALRA has undertaken in the past quarter century, and I am grateful to Bob for starting the effort, and to John for conceiving of the specific project and agreeing to see it through.

On Wednesday morning, after the business meeting, we will have two concurrent workshops on topics of importance to member agencies. The problems posed by pro se litigation before labor relations agencies will be the focus of a workshop presented by the Pro Se Working Group, chaired by **Patricia Crawford**. At the same time, **Dan Rainey** will moderate a session on useful technologies to help manage caseloads and get the work done in tough budget times. The session will be developed by the Technology Committee, co-chaired by Dan and **Tom Worley**.

Tom Worley

Detroit was a great conference and started the ALRA year off on the right foot. Halifax cannot help but be a spectacular conference, given the venue and the talented people working on it, and it will finish the year with a flourish. As for the middle of the year, that is where the hard work is done that makes the conferences so successful. It is the time when the Ruth Okuns and the Sheri Kings and the Bob Hackels of the this organization shine. If anyone wants to shine along with them by pitching in on a committee or a working group please just drop me a line and let me know.

NEUTRALITY PROJECT

Back to Basics: Neutrality Project Prepares for Takeoff

Last year ALRA President Bob Anderson appointed a Neutrality Project Committee under the leadership of John Higgins, to study methods for assisting member agencies in "*cultivating, practicing and promoting neutrality in agency operations and administration of the labor relations statutes, and ethics in the field of labor relations.*" In order to fulfill this mandate, the Committee has set an ambitious and far reaching goal. Beginning with next summer's conference in Halifax, the Committee will present draft "Statements of Neutrality" to the member agencies for consideration and debate. These statements will deal with the structure, administration and practices of neutral agencies, and will attempt to define the necessary characteristics of a neutral agency and what is expected of a neutral working within such an agency.

Statements on which agreement can be reached will be adopted by the membership. Those which cannot be agreed will be referred back to the Committee for revision in accordance with the points raised in debate at the conference. The ultimate product of this process of give and take will be a Handbook of Neutrality, serving as a guide to inform agencies and policy makers. The effort is expected to last for at least five years.

The project will be overseen by Committee Chair John Higgins and by Professor Martin Malin, of the Chicago-Kent College of Law, who will serve as the Reporter for the Neutrality Project. In addition to his many roles at the NLRB, John is well known to ALRA agencies as a former President of ALRA and as the editor of the Developing Labor Law. Professor Malin, the Director of the Law School's Institute for Law and the Workplace, is well versed in agency structure and operations from his work as a consultant on the original administrative rules for the Illinois agencies. He is a prolific scholar and author who has spoken at several ALRA conferences over the years. His book, Individual Rights Within the Union, is considered the definitive work on the relationship between labor organizations and their members. He is also the co-author of Public Sector Employment, a public sector law casebook, to be published in the near future.

Work on the initial Statements will begin early in 2004, and draft Statements will be circulated to member agen-

NEUTRALITY PROJECT – Cont'd

cies in advance of the conference. In order to assist the Committee in its work, the Executive Board is asking that agency representatives provide John with input – questions, comments, areas that should be addressed, areas that should not be addressed, absolutely anything related to neutrality – by the beginning of the year.

John Higgins

The 2003-04 membership of the Committee is:

Chair: John Higgins, Deputy General Counsel,
National Labor Relations Bd.
1099 14th Street, N.W. Washington, D.C.
20570-0001
john.higgins@nlrb.gov
Phone: (202) 273-3700
Fax: (202) 273-4270

Reporter: Professor Martin Malin,
Chicago-Kent College of Law
565 West Adams Street, Chicago, IL
60661-3691
mmalin@kentlaw.edu
Office Phone: 312-906-5056
Fax: 312-906-5280

Committee Members:

- Robert Anderson, General Counsel, New Jersey PERC
- Warren Edmondson, Assistant Deputy Minister, HRDC/FMCS Canada (Chair-designate, Canada Industrial Relations Board)
- Marlene Gold, Chair, New York City Office of Collective Bargaining
- Mary Johnson, General Counsel, National Mediation Board
- Arthur Pearlstein, General Counsel, Federal Mediation and Conciliation Service
- Marilyn Glen Sayan, Chair, Washington PERC
- John Truesdale, Chair, NLRB (retired)
- Will Weinberg, Chair, NY-NJ PAERB

PRO SE LITIGANTS

Going It Alone: ALRA Studies the Challenges of Pro Se Litigants

The familiar axiom is that anyone who represents him or herself has a fool for a lawyer. Whether or not there is truth to that statement, cases involving pro se litigants are an increasing percentage of the workload for many ALRA agencies. At the Philadelphia conference in 2000, a workshop on the topic drew a large audience, most of whom expressed frustration at the challenges posed by need to afford pro se litigants a full opportunity to make a case, while still keeping the litigation manageable.

This remains an important and difficult issue for ALRA agencies. As a follow-up to the discussion in 2000, ALRA has formed a Pro Se Working Group which will study the issue of pro se litigation, and will present its findings in a session on Wednesday morning of the Halifax conference. The Working Group is chaired by Pat Crawford of the Pennsylvania Labor Relations Board. Member agencies are encouraged to contact Pat, or any of the Working Group members, to share information about special problems encountered with pro se litigants, techniques that they've found particularly effective in managing such litigation, or specific issues to be addressed in the Committee's report. The members of the Working Group are:

Working Group Chair: Patricia Crawford, Secretary of the Board, Pennsylvania Labor Relations Board — patcrawfor@state.pa.us 418 Labor & Industry Building, Seventh and Forster Streets, Harrisburgh, PA 17120 / Phone: (717) 783-6018 / Fax: (717) 783-2974

Members:

- Robert Anderson, New Jersey PERC – banderson@perc.state.nj.us
- Dan Nielsen, Wisconsin ERC – werc-djn@execpc.com
- Tim Noonan, Vermont LRB – tnoonan@lrb.state.vt.us
- Mark Torgerson, Alaska LRA – Mark_Torgerson@labor.state.ak.us
- Edward Zuccaro, Vermont LRB – erz@zwb-law.com
- Marjorie Wittner, Massachusetts LRC – marjorie.wittner@lrc.state.ma.us

PD COMMITTEE SUMMARY

ALRA PROFESSIONAL DEVELOPMENT COMMITTEE PLANS FOR THE YEAR

The ALRA Professional Development Committee is off to a good start for the coming year. Committee members this year are: Susan Baumann, Jack Buettner, Mary Cappadona, Brenda Council, Jim Crawford, Rick Curreri, Ed Fitzmaurice, David Gedrose, Geoff Giudice, Pierre Hamel, Craig Hoster, Liz MacPherson, Bennetta Mansfield, Zandra Petersen, Antonio Santos, Marilyn Glenn Sayan, Abby Simms, Akivah Starkman, Mary Stevens, Ed Turner, Joel Weisblatt, Clint Wolcott, Jim Wilkerson, Jackie Zimmerman and Jaye Bailey Zanta.

The Committee met for the first time in Halifax, Nova Scotia at the hotel that will host the 2004 summer conference. The meeting was very productive and the city of Halifax is a truly enticing destination for next summer.

In the coming year, the Committee will be preparing for the annual ALRA Academy to take place July 23 – July 25, 2004 in Halifax. The Academy will open on Friday night with dinner and a welcoming presentation and will continue through Sunday morning. Offerings will include sessions on "Becoming a Neutral", "Unfair Labor Practices", "Representation Cases" and "Mediation Concepts". There will be plenty of time for the usual animated discussion and interaction. The Academy experience is always highly regarded. Any agency with new Board Members or Senior Staff are encouraged to contact Jackie Zimmerman at the Illinois Labor Relations Board for details.

The PD Committee will also present two in depth training sessions on Wednesday, July 28, 2004 in Halifax. The two sessions will run concurrently on Wednesday afternoon and will provide hands-on, interactive sessions on "Decision Writing" and "Mediation". The sessions will be designed to provide the participants with high level information on the topics and the chance to participate, practice, ask questions and learn techniques from the best in our field. The decision to run these sessions is based on the members' response to evaluation forms in the past years. Thank you for you input. More information will be coming as the sessions are developed.

As always, the PD Committee is encouraging member agencies to apply for Training Grants for staff development programs during the year. ALRA has reserved funds of $7,000 for this purpose. The Grant criteria are listed on the ALRA website. Multi-agency efforts are favored and may qualify for up to $5,000 per program. Specific questions may be sent to Jaye Bailey Zanta at Jaye.Zanta@po.state.ct.us or at 860-566-3306.

The PD Committee will also be concentrating this year on reviewing the PD resources that ALRA provides to member agencies throughout the year. Anyone with ideas or specific requests for training or other resources, contact Jaye Bailey Zanta. Facilitating staff development for member agencies is a priority of ALRA, so let us know how we can help.

The PD Committee is looking forward to the 2004 summer conference in beautiful Halifax. Our Canadian hosts have already done a great job of setting up what promises to be a great conference. Mark your calendars!!

Jaye Zabta Bailey
"Not on my shoes"

PROGRAM COMMITTEE

The Program Committee, which is responsible for devising the substantive program for the annual conference, met on October 18 in Halifax. Members of the committee are: Scot Beckenbaugh, Mike Cuevas, Carol Nolan Drake, Jacques Dore, Allan Drachman, Josee DuBois, Larry Gibbons, Gerald Joyce, Sheri King, Loren Kleeger, John Mather, Judy Neumann, Laurie Rantala, Yvon Tarte, Les Heltzer and Jim Breckenridge.

The conference will open with a lunch on Sunday, July 25th. This will be followed by separate, but concurrent roundtable sessions for mediators, general counsels, board members and directors/admin officers.

The on-going Neutrality Project will take up the morning of Tuesday July 27th. A Pro Se session will be held on Wednesday following the annual business meeting in the morning. In addition, the PD committee has scheduled sessions for the afternoon. (See PD Committee Report)

Plans for the program on Monday, July 26 are in the emergent stage Themes that are being considered include; the cost of conflict, as well as meditative and adjudicative control strategies.

The Committee is scheduled to meet again in February. In the meantime the phone lines and cyberspace will be busier than usual.

Les Heltzer
Program Co-Chair

SISTER ORGANIZATIONS INITIATIVES

ALRA AND THE BROADER WORLD OF ADR

The experience of a couple of years ago, when ALRA became aware fairly late in the game that the Commissioners on Uniform Laws were drafting a Uniform Mediation Act, drove home the fact that the world of ADR is expanding and that the familiar tools of our trade – mediation, conciliation and arbitration – are now being wielded by people with little appreciation of the subtleties of the labor-management field. The dramatic turn to alternative disputes resolution in settings ranging from family law to massive corporate litigation has understandably triggered a host of proposals for regulating the process. This raises the prospect of ALRA agencies suffering collateral damage from efforts to curb perceived abuses of ADR techniques in other fields.

Liaisons Appointed

In order to avoid surprises such as the UMA, ALRA is taking two steps to keep apprised of the activities of other organizations in the ADR world. First, ALRA now has liaisons to the National Academy of Arbitrators, the Association for Conflict Resolution (formerly SPIDR), the American Bar Association and the Canadian Association of Administrators of Labour Legislation. These liaisons are tasked with keeping abreast of the activities of these organizations and advising the Executive Board of any that may affect the interests of ALRA agencies. They will also inform the other organizations of ALRA's stake in proposed legislation or regulations to avoid unintended interference with the operation of our member agencies. The liaisons to other organizations are:

- American Bar Association – Labor Law Section:

SISTER ORGANIZATIONS – Cont'd

- John Higgins, Deputy General Counsel, NLRB – john.higgins@nlrb.gov / Phone: 202-273-3700
- Mary Johnson, General Counsel, NMB – johnsonm@nmb.gov / Phone: 202-692-5040
- Jacalyn Zimmerman, General Counsel, Illinois Labor Relations Boards – Zimmerma@ilrb.state.il.us / Phone: 312-793-6480
- Association for Conflict Resolution: Jack Toner, Chief of Staff, FMCS U.S. – jtoner@fmcs.gov / Phone: 202-606-5325
- Canadian Association of Administrators of Labour Legislation: Liz MacPherson, Director General, FMCS Canada – elizabeth.macpherson@hrdc-drhc.gc.ca / Phone: 819-997-1118
- National Academy of Arbitrators: Joel Weisblatt, Member, New York-New Jersey Port Authority Employment Relations Panel – jmwarb21@aol.com / Phone: 609-497-2324

In addition to the efforts of these dedicated individuals, each of us should take personal responsibility to keep ALRA informed of any proposals for regulation of ADR, certification of practitioners, imposition of codes of conduct or other matters that have the potential to interfere with the traditional operations of the labor relations agencies. In most cases, these efforts are not aimed at ALRA agencies, and early contact by ALRA can generally insure that appropriate exemptions are included for collective bargaining disputes.

Sister Organizations Initiative

The liaison effort is basically defensive in nature, to ensure that ALRA agencies are not harmed by the efforts of other organizations. On the more positive side, ALRA is playing role in an initiative to bring together organizations that have an interest in ADR to raise awareness of one another's goals and activities, and to discuss possible areas of cooperation among and between the organizations. In late October, Walt Gershenfeld, President of the National Academy of Arbitrators, convened a meeting in Colorado, with representatives of the Academy, ACR, the ABA, the Alliance for Education in Dispute Resolution, the College of Commercial Arbitrators, the International Society for Labor Law and Social Security, the Center for Public Resources and ALRA to begin this discussion. The representatives of these organizations all expressed enthusiasm for the notion of greater communication and cooperation, ranging from sharing information about conferences to formulating joint positions on matters of public policy.

These discussions are in their very early stages, but there are several areas in which ALRA can easily reach out to other groups. Courtesy copies of this and future issues of the Advisor will be sent to representatives of the organizations that met in Colorado, and links to some of those organizations' websites will be added to Labor Links section of the ALRA Website. Those organizations will also be made aware of the Advocates' Day at the annual conference, and ALRA will include information in the Advisor about the meetings of those organizations. As a first step, there is a brief article elsewhere in this issue about the NAA Annual Meeting Las Vegas next May. In Halifax next summer, we will hear from incoming NAA President George Fleischli and from Nancy Peace, the Immediate Past President of ACR. Both are former officials of ALRA member agencies, and their presentations will help jump start our discussions of the Neutrality Project report on Tuesday morning.

The Sister Organizations initiative is a long term project for all of the organizations involved, and it is likely that ALRA will find substantial areas of common interest with some of the groups, and none or very little with others. The Executive Board is considering what other steps might be taken in the near term to encourage communication and sharing of information and resources, with the current focus on ACR and the NAA, both of which have substantial interests in labor relations issues, and both of which have a good deal of membership overlap with ALRA agency personnel. Joel Weisblatt, ALRA NAA liaison, will represent ALRA in these discussions, which will be chaired for the Academy by Dan Nielsen. Comments and suggestions should be directed to Joel.

Jim Crawford
Pennsylvania Labor Relations Board,
elected Executive Board at Detroit Conference

PRESENTERS

Carol Walter Pope

Carol Nolan Drake, James Cunningham, David C. Holster

Roy L. Roulhac, Clint Wolcott, Stephen Glasser

Cindy Goodakre, John Toner, Vicky Thomas, Percy Hatfield

Top: Dan Rainey, Robert Hackel
Bottom: John Tone, Reg Pearson

Joel Weiblatt

Bill Murnigham

Sean McAlinden

Paul Born

Nicholas Nahat

Wanda Mayer

Karen Bush, Walt Gershenfeld

John Pinto, Jackie McViegh, Ed Philips

Larry Gibbons

John Mather

Arnie Powers, Liz MacPherson

Jack Buettner, Ruthanne Okun, Marvin Schurke

FEDERAL

UNITED STATES

National Labor Relations Board

Robert J. Battista

The National Labor Relations Board has requested and received briefs from interested persons on the supervisory status of workers in three current cases that raise issues similar to those addressed in the Supreme Court's 2001 decision in NLRB v. Kentucky River, 532 U. S. 7001.The Court upheld a lower court's refusal to enforce the Board's determination that six registered nurses at a mental health facility were not supervisors, based in part on their exercise of independent judgment in performing tasks.

Supervisors do not have the right to representation or collective bargaining under the National Labor Relations Act (NLRA) because of a perceived conflict of interest that led to their exclusion by the Taft-Hartley amendments of 1947. This exclusion distinguishes the act from many other labor laws, including some covering state and local government employees, as well as collective bargaining laws and practices in other countries. The supervisory issue has been under increasing scrutiny here in recent years because of the increase in "knowledge workers" and the growing impetus toward collective action by long-standing highly-skilled persons such as nurses and physicians.

On November 7, 2003, Chairman Robert J. Battista and General Counsel Arthur F. Rosenfeld announced the launching of a major redesigned NLRB web site (www.nlrb.gov). The new site enables the public to more easily access information and interact with the Agency as it expands its E-Filing projects to include more document transactions. The NLRB first launched the site in April 1997. At that time, the site consisted primarily of static pages of information. Since its original launch, the site has grown from approximately 100,000 hits a month to over 1.5 million hits per month by outside users.

The redesigned site is more dynamic than the previous site and provides better organization of content, an improved navigation structure and a faster search engine. The search options enable users to perform simple or advanced searches, to search for words and phrases in All Files or by sub-categories, and to highlight search terms in the search results. Users who choose an advanced search can enter several criteria, including a range of documents, whether the documents should contain the search terms in the body or title, and the desired number of results sorted by relevance, scored using date and sorted by relevance, or sorted by title.

Other new features include four navigation channels — Workplace Rights, NLRB Documents, E-Gov and News Room —, a regional office locater that allows a user to find the nearest local NLRB office by entering a zip code, and a site map and quick links to main topic areas. The NLRB is inviting the public to provide online feedback on the new site.

The NLRB has expanded the research capabilities of its web site, www.nlrb.gov, by adding CiteNet, a searchable database comprising an index to NLRB and related

Standing: Dan Rainey, Ed Fitzmaurice, Suzanna Pequignot, Larry Gibbons
Sitting: Mary Johnson, Benetta Mansfield

court decisions. Issues are synopsized from cases dating back to February 1992. Searches may be made by the Board's topical classification system, key word, or case name.

The Board reported that it issued 543 decisions in fiscal year 2003, which ended September 30. Of the total, 387 were unfair labor practice cases and 156 were representation cases. In a statement Chairman Battista and Members Liebman, Walsh and Schaumber said:

We are encouraged by the progress in case production. Being down to a four-Member Board since the departure of Member Acosta in August slowed us down, but we made headway in reducing the backlog and improving overall case production from the previous year. As always, we are indebted to the outstanding efforts of our dedicated staffs.

National Mediation Board

In October 2003 the National Mediation Board, which has jurisdiction over labor-management relations in the railroad and airlines industries, conducted joint training for Northwest Airlines and the International Association of Machinists in conjunction with the W. J. Usery Center for the Workplace at Georgia State University. The parties have been engaged in negations but participated in training in preparation for mediation by the Board.

One part of the training featured online dispute resolution technology, a bargaining tool advanced by the NMB. The Board and the Usery Center are convinced that joint training and discussions create a more productive environment for negotiations. They plan to offer other specialized courses for mediators, arbitrators, bargainers and attorneys practicing under the Railway Labor Act (RLA). The first continuing legal education course (CLE) was scheduled to be offered in Atlanta GA on November 12, 2003.

The NMB has also received public comment on a notice of proposed rule making regarding its responsibilities in the resolution of so-called "minor" disputes (grievances) under the RLA. The Board appoints and compensates neutrals (referees) under the National Railroad Adjustment Board established pursuant to the RLA. The NMB sought suggestions regarding the effective resolution of deadlocks and ways to achieve more efficient and cost-effective case handling.

Further information on these matters can be obtained from www.nmb.gov The Usery Center web site is www.userycenter.org

Federal Labor Relations Authority

In October 2003 Chairman Dale Cabaniss was confirmed by the Senate to a second five-year term as a Member of the Federal Labor Relations Authority. She has served as Chairman since 2001.

Federal Mediation and Conciliation Service

Jack Toner

Earlier this year, John J. Toner, a long-time official at the National Labor Relations Board, was named to be Chief of Staff at the Federal Mediation and Conciliation Service. He had served most recently as Executive Secretary of the NLRB.

US Department of Labor

In October 2003 the Department of Labor announced final rules to increase the financial reporting requirements of labor unions pursuant to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA applies to unions in the private sector, unions that include both private and public sector workers, and unions of Federal workers, including the postal service. The DOL had received over 35,000 public comments about the proposed rules, many of which opposed the proposal. Labor Secretary Chao stated the new requirements were necessary because:

"Too many workers are being hurt by the wrongdoing of a few. In this era of accountability and transparency, updating the financial reporting requirements will empower and protect workers who trust their unions to represent their interests."

Among the new requirements is one for reporting by unions on financial transactions of large trusts like "joint funds,' which are jointly administered by unions

and employers. More information can be obtained from the Department's web site, www.dol.gov

Death of John T. Dunlop

Noted labor-management relations expert Dr. John T. Dunlop died in October in Boston. He was 89. His knowledge extended over many fields, including health care, economics, agriculture and construction. His 1958 book, "Industrial Relations Systems," remains a classic.

Dr. Dunlop left the ivory tower of Harvard frequently to resolve disputes in many different industries, and to serve the federal government in many positions, including at the War Labor Board, National Labor Relations Board, EEOC, and to chair the Dunlop Commission examining the future of worker-management relations. Dr. Dunlop served for a brief time as Secretary of Labor, but he resigned in 1976 in a dispute with President Gerald Ford over veto of a "common site" picketing bill that Ford had promised to support. Dr. Dunlop's obituary can be viewed on the ALRA website: ALRA.org – news and publications.

Submitted by Joy K. Reynolds
October 2003

LIFE MEMBERSHIP

President Bob Anderson presented Joy Reynolds with a lifetime membership to ALRA in recognition of her 30 year career with the US Department of Labor and ongoing contributions to ALRA.

Joy K. Reynolds had a 30-year career with the US Department of Labor beginning in 1966. She served as a labor law advisor in the program that administers union democracy and financial reporting requirements, and as an industrial relations specialist with primary interests in collective bargaining legislation and labor-management policy issues. During her tenure she participated in many task forces, including those on the reform of the civil service laws, collective bargaining in agriculture, the Dunlop Commission, and the examination of service delivery in state and local government. She also participated in working groups with Canadian and Mexican counterparts in the development of labor issues under NAFTA, and as a member of a delegation to the OECD. She has been providing the ALRA Advisor with articles and information on federal (US) agencies and developments since 1997.

Joy K. Reynolds

FMCS

Southern California Grocery Talks to Resume After Recess; Mediator Calls Talks 'Useful'

Release Date: 11/12/2003

WASHINGTON, DC — Describing the resumed negotiations as "useful," Peter J. Hurtgen, the Director of the Federal Mediation and Conciliation Service (FMCS), called a recess at noon Pacific time today in talks between the parties in the Southern California grocery strike and lockout.

Peter Hurtgen

Hurtgen is mediating the talks, which resumed Monday between representatives of the United Food and Commercial Workers and the supermarket chains — Ralph's Grocery Company; Vons Company Inc., a Safeway Company; and Albertsons, Inc.

In calling the recess, Hurtgen said, "The parties have issues and matters to reflect upon, and I will be in touch with them in the days ahead. We will resume the negotiations at an appropriate time." During the recess, both sides will continue to honor a commitment to refrain from further comments to the media about the status of talks, he said.

"I respect the good faith that the parties have demonstrated at the bargaining table and in abstaining from comment to the news media, and I have asked the parties to again refrain from all comments to the media," the FMCS director said.

The Federal Mediation and Conciliation Service, created in 1947, is an independent agency whose mission is to preserve and promote labor-management peace and

cooperation. Headquartered in Washington, DC, with five regional offices and more than 70 field offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities.

FMCS and Korea Labor Education Institute Cooperate on Workshops

Release Date: 10/31/2003

FMCS and the South Korea Labor Education Institute (KLEI) are cooperating in a series of workshops to build mediation skills among practitioners in that Asian nation. Most recently, a workshop on preventive mediation was held at the Ritz Carlton Hotel in Seoul, Korea October 1, with another series of workshops to begin in November. The Seoul training session, developed by KLEI with cooperation from FMCS, was designed to present and discuss preventive mediation programs and mediation skills. The 33 participants included 15 mediators from South Korea's National Labor Relations Commission (NLRC) as well as officials of the Ministry of Labor (MOL) and NLRC, union and management leaders, labor attorneys, professors, researchers, and the KLEI staff. Earlier this year, representatives from South Korea attended a FMCS training course, "Mediation Skills for Workplace Disputes" held in Seattle ,WA , June 16-20 and a preventive mediation workshop in Seattle office on June 23-24.

The program will continue in November, when a pair of two-day classes on mediation skills are scheduled for NLRC mediators. In addition, classes on mediation skills will be offered to labor attorneys, officials, union leaders and others next year. Two-month-long training courses in mediation skills and preventive mediation are under development for current and potential mediators in South Korea.

FMCS Announces Grants for Labor-Management Partnership Program

Release Date: 10/30/2003

The Federal Mediation and Conciliation Service (FMCS) has announced grants totaling nearly $1.1 million to fund initiatives throughout the country to promote better labor-management relations and to encourage cooperation and partnering in resolving workplace issues.

"The FMCS grants program is an important initiative in support of our mission to promote industrial peace and successful dispute resolution," said FMCS Director Peter Hurtgen. "This year's grantees demonstrated a variety of innovative approaches to strengthening labor-management ties and showing the benefits for collaboration over confrontation.

"In many ways, these are model programs that we would like to clone in other industries and locations," the FMCS Director said.

FMCS Grants Program Director Jane Lorber said that because of limited funding, only one out of every five applications in FY 2003 could be selected for a grant. Grantees were eligible for up to $125,000 for their labor-management partnership projects under the program. Lorber said a goal of the program "is to enable an organization or committee to work on a project that would be otherwise financially blocked."

Grantees were selected for demonstrating "best practices in labor-management cooperation as a way of improving collective bargaining, and proactively mitigating disputes," she said. Grantees in past years have received support for a broad range of projects, including outreach, communications, strategic planning, minority recruitment and process development.

Because of the number of outstanding applications that were received but could not be funded, Lorber said many were being encouraged to apply for funding in fiscal year 2004. "If an applicant wasn't selected, we will explain why in sufficient detail to give the applicant the information necessary to write a successful application the following year, if the organization chooses to reapply," she said.

Attached is a list of the Fiscal Year 2003 grant recipients.

FEDERAL MEDIATION AND CONCILIATION SERVICE

FY 2003 FUNDING SUMMARY

AREA

San Diego-Imperial Counties (San Diego,CA) 03-CA/A-006

$113,535 Develop strategies to help workers overcome legal barriers to Employment Using Local Labor-Management Committees

FEDERAL – Cont'd

Community Services Agency of the Metropolitan Washington Council (Washington, DC) 03-DC/A-007

$110,668 Implementation of Workplace Issues and Collective Bargaining in the Classroom in the Metropolitan Washington, DC Area by giving the students a better understanding of the work in the society in both an historical and contemporary perspective.

PLANT

Blue Ridge Paper Products Inc. (Canton, NC) 03-NC/P-002

$65,000 The creation of a new, more industry competitive "Employee Ownership" organizational culture, through a joint Labor/Management Partnership.

INDUSTRY

H-CAP, INC. (Washington, DC) 03-DC/I-003

$122,829 Address workforce needs, specifically the current nursing shortage crisis by creating a training program which will offer an industry-led nursing education program.

International Association of Machinists & Aerospace Workers/District Lodge 141M (South San Francisco, CA) 03-CA/I-004

$125,000 Improve labor-management relations and to enhance productivity and employment security in the airline industry by developing and supporting highly trained and effective labor-management committees.

Consortium for Worker Education, Inc. (New York, NY) 03-NY/I-005

$119,243 Develop industry led training and business services to help decrease the Employment skills shortage and help improve the workers skills.

Alpena General Hospital (Alpena, MI) 03-MI/I-008

$116,439 Enhance labor relations in two separate hospitals using a new nursing profession initiative "The Magnet Recognition Program" to mandate standards for hospitals to create healthier work environments and stronger organizations.

Mid-Michigan Construction Alliance (Lansing, MI) 03-MI/I-011

$120,721 Enhance the chances for finding better ways to achieve positive outcomes to deal with the many labor-management problems in Mid Michigan, organized construction community.

Association of Joint Labor Management Educational Programs (New York, NY) 03-NY/PS-009

$76,014 Development and implementation of a multi-faceted labor-management committee training program in order to strengthen and promote the need for training for the committees.

City of Fresno (Fresno, CA) 03-CA/PS-010

$70,801 Improve Labor-Management Communication, Trust and Decision-making during uncertain economic times.

Mediators Hear Aerospace Industry Issues in Training Seminar

Release Date: 10/27/2003

The first of a series of industry workshops for FMCS mediators gave insight into aerospace industry collective bargaining issues for participants from the agency's Northeast region at two consecutive trai ning sessions in Baltimore, MD starting October 21. Gary Cantwell, Vice President, Industrial Relations, Lockheed Martin Corporation (left) and Stephen Sleigh, Director of Strategic Resources for the International Association of Machinists and Aerospace Workers (right) led each of the one-day sessions for mediators. Representing management and labor perspectives, they reviewed key technological, organizational, demographic, political and sociological forces behind collective bargaining issues in the aerospace industry. In coming months, the sessions will be presented to sub-regional groups of FMCS mediators throughout the rest of the country. The workshop inaugurates an FMCS program to increase and broaden the knowledge of agency mediators about key industries with the goal of assisting parties in negotiations in developing innovative solutions at the bargaining table. Similar workshops on the health care, telecommunications, transportaton and construction industries are in development.

CANADA

Minister Bradshaw announces appointments to the Canada Industrial Relations Board

OTTAWA, Sept. 30 /CNW/ – The Honourable Claudette Bradshaw, Minister of Labour, announced September 30th the appointment of Mr. Warren Edmondson as Chair of the Canada Industrial Relations Board (CIRB) for a term of four years. The appointment is effective January 1, 2004.

Mr. Edmondson has served as Assistant Deputy Minister of Labour and Head of the Federal Mediation and Conciliation Service with the Labour Program of Human Resources Development Canada since July 1998. From 1990 to 1998, he was Director General of the Federal Mediation and Conciliation Service. In this position, he led a team of mediators responsible for administering the dispute settlement provisions of Part I (Industrial Relations) of the Canada Labour Code.

A graduate of Loyola College (Concordia) in Montreal, Mr. Edmondson began his public service career in 1981. In October 2001, he was presented with the Outstanding Achievement Award of the Public Service of Canada for sustained outstanding achievement in modernizing the conduct of labour-management relations in Canada.

In announcing this appointment, Minister Bradshaw acknowledged the efforts of Mr. Paul Lordon during his almost six years of service. Mr. Lordon served as the first Chairperson of the CIRB and was the last Chairperson of its predecessor, the Canada Labour Relations Board.

Warren Edmondson

Minister Bradshaw also announced the appointment of Ms. Louise Fecteau of Montreal to the position of Vice-Chair for a term of four years. A lawyer specializing in labour and commercial law, Ms. Fecteau previously served as a full-time member of the CIRB.

The Canada Industrial Relations Board, which came into effect on January 1, 1999, is an independent, representational, quasi-judicial tribunal whose mandate is to interpret and apply the provisions under Part I of the Canada Labour Code dealing with bargaining rights and unfair labour practices. For more information on the Board, visit their web site at http://www.cirb-ccri.gc.ca.

Canadian Labour Congress Survey

A telephone survey of more than 2,000 Canadian adults conducted in August, for the Canadian Labour Congress asked employees who would not vote to join a union: why not? Included in this group were unionized workers who would not join a union today if they had a choice. The results, discussed at the CLC conference in October, are:

- One third of Canadians who are not members would join a union if asked.
- Two thirds who are not members would opt for an employee association.
- The most powerful obstacle to organizing is the fear of unions – not employers.
- Four in ten members and non union workers say employees have no say in how the union operates.
- Non union workers recognize that union make some aspects of work better, but they want to minimize what they consider to be the risks and disadvantages.
- Thirty-eight percent of members and 44% of non members, who would not vote for a union say the seniority system is "the major reason" for not wanting a union.
- Forty-four percent of members and 38% of non members who would prefer not to be unionized say the dues are too high.

- Women, young people and immigrants are receptive to unions
- Eight percent would be willing to join a union through the internet

The Canadian Labour Congress has determined that the labour movement must organize between 150,000 and 200,000 new members a year to avoid further declines in union density which has fallen to 32.2%. Union represented 41.8 of the Canadian workers in 1984.

Ken Georgette, President of the CLC, told participants at the close of the weekend conference that "the world has changed around us and we have to change".

From Virginia Galt, Labour Reporter
The Globe and Mail

Public Service Labour Relations Board

An Act to modernize employment and labour relations in thew Canadian Federal public sector was finally approved by the Canadian Parliament on Tuesday 4 November,2003.

The Act creates a staffing regime that is more flexible to facilitate the hiring of employees when and where they are needed. It also sets up a new staffing tribunal whose responsibility will be to hear appeals against certain staffing practices.

Yuon Tarte, Pierre Hamel, Gilles Grennier

With respect to labour relations, the existing Public Service Staff Relations Board (PSSRB) will be restructured and renamed the Public Service Labour Relations Board (PSLRB). Important changes in the new mandate will include dealing with human rights issues arising in the Federal public sector workplace and the responsibility for pay research and analysis. ADR practices are actively promoted. The new legislation promotes cooperation and consultation between labour and management.

Fianally a Canada School of Public Service, amalgamating several existing institutions, will be created. Its focus will be to promote a culture of continuous learning and innovation in the Federal Public Service.

ALRA ACADEMY 2003

Ed Fitzmaurice Jr., NMB

Lynn Morrison, Michigan

Paul Gordon, Wisconsin

Susan Bauman, Wisconsin

James Cunningham Jr., Minnesota

Ed Turner, Ohio

Peter Maydonis, Phoenix

Les Heltzer, NLRB

Benetta Mansfield, NMB

AROUND THE STATES AND PROVINCES

CALIFORNIA

"The California Supreme Court has determined that the state's 2001 interest arbitration statute for public safety employees is unconstitutional. In a unanimous ruling, the Court held that the statute unconstitutionally interfered with local government agencies' duty to set compensation for their employees. The law, SB 402, gave labor organizations representing local police officers and firefighters the right to interest arbitration to resolve their collective bargaining disputes.

Although there are a few cities and counties that have enacted interest arbitration by local ordinance, this ruling eliminates the unions' right to pursue the process in all other localities.

The Court's ruling may have implications for California's new "mandatory mediation" statutes for farmworkers. Governor Davis signed two bills last year that set forth a new method for resolving collective bargaining disputes involving agricultural employees. Under the statutes, a union may demand mandatory mediation of its collective bargaining dispute. In the event there is no settlement, the mediator drafts a collective bargaining agreement for implementation. These statutes have already been challenged in court by the growers."

FLORIDA

FISCAL PROBLEMS AND UNILATERAL CHANGES

By Jack E. Ruby

In the past twelve years there have been significant decisions by the Public Employees Relations Commission, the Florida District Courts of Appeal, and the Florida Supreme Court, as well as legislation as a result of those decisions, regarding fiscal problems and the duty of public employers to collectively bargain. Recently, there have been three Florida Circuit Court lawsuits involving recent legislation addressing the duty to bargain changes caused by fiscal problems. One of the Circuit Court lawsuits has resulted in a decision, discussed below. A preliminary discussion of the background of the recent legislation is necessary to determine the importance of the recent Circuit Court decision.

Background Prior to 1991, Without Consideration of "Underfunding"

Article I, Section 6, of the Florida Constitution is both simple and succinct: "The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." The Florida Supreme Court has held that public employees have the right to "effective collective bargaining." Hillsborough County GEA v. Hillsborough County Aviation Authority, 522 So.2d 358, 363 (Fla. 1988). As an integral part of the constitutional right, a public employer must maintain the established status quo during the collective bargaining process. School Board of Orange County v. Palowitch, 367 So.2d 730, 731 (Fla. 4th DCA 1979). A unilateral change in terms and conditions of employment during the status quo period may be a violation of the statutory duty to negotiate in good faith. § 447.501(1)(a) and (c), Fla. Stat. (2003).[1]

By statute, the subjects of wages and other economic terms and conditions of employment are mandatory subjects of negotiations. § 447.309(1), Fla. Stat. (2003). Nassau Teachers Association, FTP-NEA v. School Board of Nassau County, 8 FPER ¶ 13206 (1982). A public employer may take unilateral action to change these and other mandatory subjects of negotiations pursuant to the impasse resolution mechanism of Section 447.403, Florida Statutes, to change terms and conditions of employment, but only after (1) completion of negotiations which fail to end in an agreement and (2) exhaustion of the statutory impasse procedures. This provision only applies after the completion of the impasse process, and it does not authorize unilateral action during pending negotiations. Palowitch v. Orange County School Board, 3 FPER 280 (1977), aff'd, 367 So.2d 730 (Fla. 4th DCA 1979) (the bargaining table is the legislatively mandated forum to determine wages, hours, and terms and conditions of employment). In addition to legislative body action, a public employer may lawfully take unilateral action where there has been

[1]Where the 2003 statutes are cited, this provision of the statute has remained unchanged since before 1991. If there has been a statutory change, an earlier version of the statute is cited.

a waiver by the employee organization or where there are exigent circumstances. Florida School for the Deaf and Blind v, Florida School for the Deaf and Blind Teachers United, 483 So.2d 58 (Fla. 1st DCA 1986). Absent such defenses, a public employer's unilateral change is a per se unfair labor practice violating the duty to bargain in good faith. Pasco County School Board v. Pasco County CTA, 3 FPER 9, 13 (1976), 353 So.2d 108 (Fla. 1st DCA 1977).

The "Underfunding" Cases of 1991

Section 447.309(2), Florida Statutes (1991), stated:

> Upon execution of the collective bargaining agreement, the chief executive officer shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.

In 1991, two school districts were the subject of unfair labor practice charges filed by employee organizations for unilateral acts allegedly taken pursuant to the underfunding provision of Section 447.309(2), because of admittedly significant revenue shortfalls during the recession that year. In both cases, the Commission held that the underfunding provision did not apply and that exigent financial circumstances were not alleged or shown. In both cases, the Commission was reversed and the Courts of Appeal held that the underfunding statute did apply. Sarasota Classified Teachers Association v. Sarasota County School District, 18 FPER ¶ 23069 (1992), reversed, 614 So. 2d 1143 (Fla. 2nd DCA 1993), review dismissed, 630 So.2d 1095 (Fla. 1994); Martin County Teachers Association v. School Board of Martin County, 18 FPER ¶ 23061 (1992), reversed, 613 So.2d 521 (Fla. 4th DCA 1993).

1992-1993 Florida Supreme Court Decisions on Collective Bargaining

In 1992, the Florida Supreme Court decided a case in which the Florida Legislature decided in the general appropriations act to alter certain state employee leave benefits during the middle of the term of a collective bargaining agreement. State of Florida v. Florida PBA, 613 So.2d 415 (Fla. 1992). A divided Court reversed lower holdings that the changes were unlawful and held that, unlike the private employer, a public employer's signature of the executive cannot bind the appropriation of funds by the legislature. 613 So.2d at 418-19.

In addition to concluding that Section 447.309(2) allowed underfunding, the Second District Court of Appeals reversed the Commission citing to the Florida PBA Supreme Court decision in also reversing the Commission:

> Under the separation of powers doctrine, the right to bargain must be considered along with Article VII, Section 1(c) of the Florida Constitution, which provides that "no money shall be drawn from the treasury except in pursuance of appropriation made by law." Accordingly, even though school board employees have the right to bargain with their employer, the school board in its capacity as the legislative body has the absolute right and obligation under the Constitution to fund or not fund any agreement entered into between the employees and the school board as employer. The Legislature clearly reserved this right when it enacted Section 447.309(2) and made it clear that underfunding an agreement was not an unfair labor practice. Any other rule would permit the executive branch of government, by entering into collective bargaining agreements calling for additional appropriations, to invade the legislative branch's exclusive right to appropriate funds.

Sarasota County School District, 614 So.2d at 1148.

Subsequent to this opinion, however, the Florida Supreme Court issued an opinion that called this reasoning into question, Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla. 1993). In that case, the state Legislature refused to fund pay increases under a collective bargaining agreement because of a shortfall in funds. The Court held that to be unlawful, distinguishing its prior opinion:

> We begin by noting that the present case is factually quite different from our recent opinion in State v. Florida Police Benevolent Association, 613 So.2d 415 (Fla. 1992). There we dealt with a situation in which no final agreement had been reached between the parties, unlike here where an agreement was reached and funded, then unilaterally modified by the Legislature, and finally uni-

> laterally abrogated by the Legislature. Accordingly, we do not believe that the result in Police Benevolent Association dictates the result here.
>
> The state now argues that whatever agreement was reached between it and the unions somehow failed to reach the level of a fully enforceable contract. Indeed, the logical conclusion of the state's position is that public-employee bargaining agreements cannot ever constitute fully binding contracts, even after they are accepted and funded. We cannot accept this position.

615 So.2d at 672.

The Court then stated ground rules for the abrogation of an agreement where there are revenue shortfalls:

> We recognize that in the sensitive area of a continuing appropriation obligation for salaries, and perhaps in other contexts as well, the Legislature must be given leeway to deal with bona fide emergencies. Accordingly, we agree with the trial court that Legislature has authority to reduce previously approved appropriations to pay public workers' salaries made pursuant to a collective bargaining agreement, but only where it can demonstrate a compelling state interest. Art. I, § § 6, 10, Fla. Const.; Hillsborough County Governmental Employees Ass'n v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988).
>
> Before that authority can be exercised, however, the Legislature must demonstrate no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, the legislature must demonstrate that the funds are available from no other possible source. Accord United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed2d 92 (1977); Association of Surrogates and Supreme Court Reporters v. New York, 940 F.2d 766 (2d Cir. 1991); Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal.3d 296, 152 Cal. Rptr. 903, 591 P.2d 1 (1979). That has not happened here.

615 So.2d at 673.

Statutory Amendment of the Underfunding Statute

In 1995, Section 447.309(2)(b) was amended to state:

> If the state is a party to a collective bargaining agreement in which less than the requested amount is appropriated by the Legislature, the collective bargaining agreement will be administered on the basis of the amounts appropriated by the Legislature. The failure of the Legislature to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice. All collective bargaining agreements entered into by the state are subject to the appropriations power of the Legislature and the provisions of this section shall not conflict with the exclusive authority of the Legislature to appropriate funds.

Ch. 95-218, § 1 at 1943, Laws of Florida. The effect of this amendment was to limit the applicability of the underfunding statute to the State of Florida.

Creation of New Statute on "Financial Urgency"

As a part of the statutory amendment to Section 447.309(2)(b), the Legislature created a new statute, Section 447.4095, which provides:

> Financial Urgency. In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his representative and the bargaining agent or his representative shall meet as soon as possible to negotiate the impact of a financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred and one of the parties shall so declare in writing to the other party and to the [Public Employees Relations] Commission. The parties shall then proceed pursuant to the provisions of Section 447.403 [to resolve the impasse]. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

Ch. 95-218, § 2 at 1944, Laws of Florida.

Subsequent Case Law on Section 447.4095

In February 2002, the Commission received a request from the School Board of Miami-Dade County for the appointment of a special master to resolve impasses with employee organizations involving the application of Section 447.4095, Florida Statutes. Thereafter, two circuit court lawsuits and two unfair labor practice

charges were filed concerning the application of the statute. The lawsuits and unfair labor practice charges involved the School Board of Miami-Dade County and the School Board of Madison County. Each case involved the alleged abrogation of existing collective bargaining agreement economic provisions because of significant shortfalls in revenues. The lawsuits filed by the various employee organizations alleged the facial unconstitution-ality of Section 447.4095, using the Supreme Court's standard that the defendant school districts were allegedly unable to show that the "funds [to pay contractual benefits] are available from no other possible reasonable source." The parties resolved the lawsuits and unfair labor practice charges without any statutory interpretation in mid-2002. Therefore, neither the Commission nor the Florida Courts have had an opportunity to interpret Section 447.4095 and the circumstances in which it may be applied until a recent decision from the Florida Circuit Court for the Nineteenth Circuit.

The Circuit Court action was predicated upon a motion by the Indian River County School Board (School Board) to vacate an arbitrator's award in favor of the Communications Workers of America (CWA) relating to changes to benefit levels and employee contributions to the School Board's health insurance plan without negotiations. The School Board defended its changes by arguing that they were made pursuant to Section 447.4095. The Circuit Court held that the arbitrator incorrectly held that the remedy of arbitration was available and that the arbitrator could interpret the School Board's actions under Section 447.4095. The Circuit Court held that the unfair labor practice provisions of Sections 447.501 and 447.503 preempted the arbitrator's consideration of the issue of whether the School Board violated the provisions of Section 447.4095. The Court held that, if injunctive relief was necessary to prevent a change in the status quo, the injunction provisions of Section 447.503(3) were available.

In addition, the Circuit Court held that:

> Just as the activities at issue here were matters for PERC, that interpretation is also a matter clearly within the jurisdiction of PERC. For this same reason and because the Court must avoid reaching constitutional issues where it can resolve matters on other grounds such as the preemptive jurisdiction of PERC, the Court will not reach the CWA's claim that Section 447.4095, Florida Statutes, is unconstitutional.

Accordingly, the Circuit Court set aside the arbitrator's decision pursuant to Section 682.13(1)(c), Florida Statutes (2003) for exceeding the powers granted to the arbitrator and ruling upon matters arguably covered by Chapter 447, part II, Florida Statutes, and within the preemptive jurisdiction of the Commission. See Indian River County School Board v. Communications Workers of America, No. 20020354-CA-17 (Fla. 19th Cir. Ct. Aug. 28, 2003) (unpublished opinion). The Commission did not participate as a party in the lawsuit. A representative of the Commission has been informed that the CWA intends to file an appeal of the Circuit Court's decision to a Florida District Court of Appeal.

ILLINOIS

As of November 1st, the Illinois State Labor Relations Board State Panel has five new members. Jackie Gallagher takes over as Chair of the Board, replacing Manny Hoffman who retired last summer. Chair Gallagher has long been involved in labor, governmental and political affairs. Immediately prior to her appointment as Chair, she was a legislative and political consultant for the Chicago Teachers Union. Joining Chair Gallagher as new members of the State panel are:

Rex Piper, retired Secretary-Treasurer of the United Mine Workers in Southern Illinois. Member Piper was formerly a County Commissioner in Williamson County, and Mayor of the city of Energy, Illinois.

- Charles Hernandez, a project manager for Johnson Controls who has represented management interests in the Hispanic American Construction Industry Association.
- Letitia Taylor, formerly an Area Field Services Director for the American Federation of State, County and Municipal Employees.
- Michael Hade, former President of the Springfield and Central Illinois Trades Council, and retired Field Service Director for the Illinois Federation of Teachers.

The Illinois Labor Relations Board has jurisdiction over non-education public sector cases. Cases within Cook County are decided by the Local Panel, and those outside of Cook County are decided by the State Panel. Chair Gallagher will also serve as Chair of the Local Panel. Ed Sadlowski remains the appointee of the

Mayor of Chicago on that panel, and Donald Hubert continues as the appointee of the President of the Cook County Board.

MARYLAND

The first institution and union to complete negotiations under the new higher education collective bargaining law that went into effect July 1, 2001 are St. Mary's College of Maryland and AFSCME. The agreement covers both the exempt and nonexempt units. Its life is from October 23, 2003 through 10/23/2006 (3 years' duration is the maximum under the law).

The agreement does not include pay increase as that was proscribed in budget language passed in the 2003 General Assembly, although the contract provides for automatic reopeners on compensation should the bar be lifted and monies become available.

In one interesting provision the parties agree to submit disputes over unit clarification to the SHELRB whose decisions shall be binding.

The only other unit to have completed MOU negotiations so far is the sworn police officers unit at the University of Maryland College Park, but the MOU has not yet been ratified by the governing body (University System of Maryland Board of Regents) though that action is anticipated shortly. St Mary's College is one of three State higher education institutions independent of the USM Board of Regents. The SMC governing board approved the MOU at its quarterly meeting Oct 23.

— Karl Pence

MICHIGAN

NORA LYNCH APPOINTED MERC CHAIRMAN

Nora Lynch was appointed Chairman of the Michigan Employment Relations Commission by Governor Jennifer M. Granholm on July 10, 2003. Ms. Lynch served as an Administrative Law Judge with the Michigan Bureau of Employment Relations for over 25 years and retired from that position in November of 2002 to begin a labor arbitration practice. She is currently on arbitration rosters for the American Arbitration Association and the Federal Mediation and Conciliation Service.

Ms. Lynch received a B.A. degree from Marygrove College, and an M.S.L.S. and J.D. degree from Wayne State University in Detroit, Michigan. She resides in West Bloomfield, MI, with her husband Mark Rubin, an Administrative Law Judge with the National Labor Relations Board.

NEWFOUNDLAND AND LABRADOR

Loblaw locks out 1,600 workers

Employees began rotating strikes
Union says no to wage concessions

Canada's biggest supermarket chain has locked out about 1,600 workers at its 15 Dominion stores in Newfoundland after the workers began rotating strikes.

Loblaw Cos. Ltd. said in a brief statement it had locked out the employees due to a labour disruption.

The workers, members of the Canadian Auto Workers Local 597, said they began picketing the stores to protest the company's demand for wage and benefit concessions.

The Toronto-based company said the offer contains signing bonuses, pay increases for existing employees and pension improvements.

However, it also said it needs more room to manoeuvre against lower-cost rivals.

"We're asking for flexibility so we can compete in a predominantly non-union retail environment," Loblaw spokesperson Geoff Wilson told Bloomberg News.

Wilson said a wage agreement would allow Loblaw to open warehouse-type stores in Newfoundland, similar to new stores in Ontario that carry more profitable non-food merchandise.

George Joyce

The stores are seen as Loblaw's response to the growing threat from low-cost operators, such as Wal-Mart, which are carrying more and more groceries.

But CAW president Buzz Hargrove said too many retailers are using the threat of low-paying competitors to demand contract concessions.

"All the companies want to use Wal-Mart to set the lowest standards they can even where Wal-Mart isn't a problem," he said, noting Loblaw enjoys industry-leading profits and dominates up to half of the Newfoundland grocery market.

Loblaw's offer to its Newfoundland workers is "insulting," he said.

The workers, who are seeking a first contract, are among the lowest paid in the industry already. Starting rates are just 50 cents above the provincial minimum, the union said.

Some members of Loblaw's much larger Ontario workforce are watching the dispute with interest after their own union, the United Food and Commercial Workers Union, agreed to concessions at the new superstores without consulting them.

One unhappy union member, Ben Blasdell, is challenging the United Food deal at the Ontario Labour Relations Board, saying it should have been put to a general membership vote.

The union's leaders said it agreed to Loblaw's terms in exchange for automatic recognition in those stores, an extension of its Real Canadian Superstore concept in Western Canada

— Dana Flavelle, Business Reporter
TORONTO STAR

NEW JERSEY

The New Jersey Supreme Court has affirmed per curiam a case holding, among other things, that a 24/72 hour work schedule for firefighters was mandatorily negotiable and could be awarded by an interest arbitrator. Teaneck Tp. and Teaneck FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd ___ N.J. ____ (2003). Pursuant to N.J.S.A. 34:13A-16, the Public Employment Relations Commission has jurisdiction to enterain appeals of interest arbitration awards. The Appellate Division panel approved the Commission's narrow standard of review in such cases: the Commission will not disturb an arbitrator's exercise of discretion in weighing the evidence unless an appellant demonstrates that the arbitrator did not adhere to the standards in the interest arbitration statute or the general arbitration act or unless it shows that an award is not supported by substantial credible evidence in the record as a whole. The panel also approved the Commission's standards for analyzing an employer's supervision concerns when a work schedule proposal covering rank-and file officers would place them on a different work schedule than their superior officers: an arbitrator may award a different schedule if he or she finds that the schedule would not impair supervision or if there are compelling reasons to grant that proposal that outweigh any supervision concerns. The Supreme Court had granted certification to consider the negotiability of a proposal to place rank-and-file officers on a different work schedule, but at oral argument the Justices realized that the employer had not properly preserved that argument so the Court elected to issue a per curiam affirmance.

The New Jersey Legislature has amended the New Jersey Employer-Employee relations Act, N.J.S.A. 34:13A-1 et seq, to prohibit school boards from unilaterally imposing their contract positions after negotiations reach impasse. N.J.S.A. 34:13A-33. If fact-finding proceedings do not produce a settlement, the amendments expressly authorize a super concilation process. N.J.S.A. 34:13A-34, 35, and 36.

The New Jersey Legislature has also amended section 5.3 of the Act, N.J.S.A. 34:13A-5.3, to permit the State and majority representatives of its employees (except State troopers) to enter contracts requiring binding arbitration of all major disciplinary disputes. This amendment overrides the previous prohibition against arbitrating a dispute when an employee had an alternate statutory appeal procedure — for example, a Civil Service employee who could appeal a discharge to the Merit System Board.

— Bob Anderson

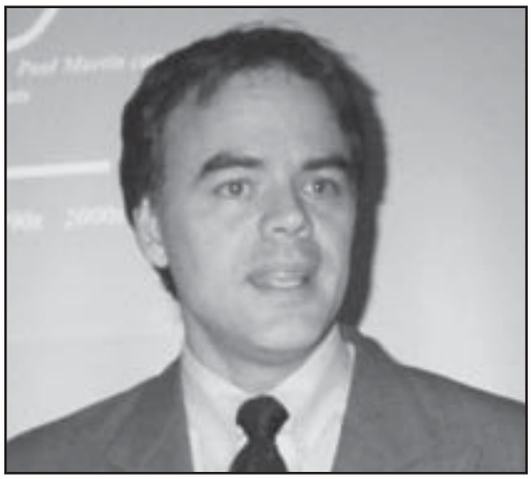
ONTARIO

The third annual collective bargaining conference, hosted by Labour management services of The Ministry of Labour, was held on October 23rd in Toronto.

One hundred and thirty participants – from public and private sector unions and management – attended the conference and contributed to its success through facilitated discussion and questions for the keynote speaker and panellists.

Jim Sanford, an economist with the Canadian Auto Workers delivered the keynote address. The Honourable Mr Justice Warren Winkler addressed the conference during lunch.

Two panels complemented the program: The benefits panel consisted of Irene Klatt, Assistant Vice President of the Canadian Life and Health Insurance Association, Randy McGlynn, Chief Operating Officer of the Ontario Teachers' Insurance Plan and Robert J. Bass, of Bass



Jim Stanford, Economist CAW

Associates. The second panel dealt with the issue of pensions and included Keith P. Ambactsheer, author of The Ambactsheer Letter, Isla Carmichael. Senior Researcher at OPSEU, and Mark Zigler, of Koskie Minsky.

OREGON

Nelson and Gamson join Thomas on Oregon ERB

Luella Nelson has been appointed to replace Dave Stiteler as Public Member of the Oregon ERB. Luella is a veteran neutral, who started work with the National Labor Relations Board upon her graduation from Harvard Law School in 1976. While with the Board, she served as Board Counsel and Senior Counsel in Washington, where she worked closely with former ALRA President John Truesdale. In 1981, she left Washington to become a Field Attorney in the Board's Oakland office for five years.

In 1986, Luella opened a private ADR practice on the west coast. A member of the National Academy of Arbitrators, Luella is Past Chair of the Labor and Employment Law Sections of both the Oregon State Bar and the State Bar of California, and currently chairs that section for the Bar Association of San Francisco. Luella is also Past President of the Oregon Chapter of the IRRA.

Luella joins Paul B. Gamson as newly appointed members of the Oregon Board. Rita Thomas, a member of the Board for the past six years, took over as Chair last summer.

NLRB CASES

Listed below are NLRB cases of significance that issued between May and October 2003. Copies of these decisions are available on the NLRB website www.nlrb.gov.

(1) ***Reliant Energy*** – 339 NLRB No. 13: Discussion of a new NLRB rule provision for supplementing a brief when authorities come to the attention of a party after it has filed its brief. The new procedure is modeled after Rule 28(j) of Federal Rules of Appellate Procedure.

(2) ***Wal-Mart*** – 339 NLRB No. 10: Discussion of the Jencks provisions limiting disclosure of pretrial statements for cross-examination only and the further requirement that they be returned to counsel for the General Counsel at the close of the hearing.

(3) ***Jano Graphics, Inc.*** – 339 NLRB No. 38: Discussion of the employer's insistence that a union submit the employer's final offer for a ratification vote as a condition of further bargaining, and the impact of that insistence on the employer's declaration of impasse.

(4) ***Aesthetic Designs, LLC*** – 339 NLRB No. 55: Discussion of whether a "yes" vote, cast on the sample ballot provided with the official election kit rather than on an official ballot, should be counted.

(5) ***USF Red Star, Inc.*** – 339 NLRB No. 54: Discussion of an employer's overbroad prohibition on the wearing of a union button.

(6) ***Armored Transport, Inc.*** – 339 NLRB No. 50: Discussion of the Board's finding that the employer violated Section 8(a)(5) by dealing directly with its employees by attaching to a series of letters to employees copies of a proposed contract before affording the Union either an opportunity to consider the proposal or to bargain.

AROUND STATES & PROVINCES – Cont'd

(7) ***International Protective Service, Inc.*** – 339 NLRB No. 75: Discussion of whether the strike by security guards lost the protection of the NLRA because they failed to take reasonable precautions to protect the employer's operations from such imminent danger foreseeably that would result from their sudden cessation of work.

(8) ***Fantasia Fresh Juice Company*** – 339 NLRB No. 112: Discussion of the Board's conclusion that the Respondent employer is entitled to an award of attorney fees under the Equal Access to Justice Act (EAJA) because the General Counsel's exceptions to the ALJD, which the Board adopted, were based almost entirely on an unwarranted attack on the ALJ's credibility findings and, hence, were not substantially justified as required by EAJA.

(9) ***Nations Rent, Inc.*** – 339 NLRB No. 101: Discussion of the Board decision that the Respondent's continued maintenance of an overly broad no-solicitation/no-distribution rule, and its failure to send a written expunction letter to an employee were violations of an earlier settlement agreement that warranted setting the agreement aside for noncompliance.

(10) ***Trane, an Operating Unit of American Standard Companies*** – 339 NLRB No. 106: Discussion of the Board's single facility presumption. First, the Board found that the excluded site lacked any semblance of local autonomy based in large part on the absence of separate supervision. Second, the Board found that the geographic distance between the facilities and the absence of evidence of interchange were outweighed by other factors supporting a multi-facility unit.

(11) ***U.S. Postal Service*** – 339 NLRB No. 151: Discussion of the rights of off-duty employees of a property owner's subcontractor to have access to the owner's property for purposes of union organizing.

(12) ***Alexandria Clinic, P.A.*** – 339 NLRB No. 162: Discussion of the requirements under Section 8(g) that union-represented health care employees provide 10-day notice of the date and time of an intent to strike, and reversing the Board's prior rule permitting unilateral extensions of the 10-day period for as much as 72 hours.

(13) ***Staten Island University Hospital*** – 339 NLRB No. 135: Discussion of whether a union agent's conduct, although directed against supervisors, managers, and security guards, violated Section 8(b)(1)(A) under the circumstances of the case.

(14) ***Pieper Electric, Inc.*** – 339 NLRB No. 160: Discussion of circumstances under which an employee stock purchase plan constitutes a permissive subject of bargaining, and distinguishing prior Board decisions in which such plans were found to be mandatory bargaining subjects.

(15) ***IBEW, Local 236*** – Discussion of who is a "co-worker" for purposes of an employee's exercise of the right to co-worker representation ("Weingarten rights") under *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 676 (2000).

(16) ***American Steel Erectors, Inc.*** – 339 NLRB No. 152: Discussion of whether disparaging statements directed at a prospective employer are sufficient to cause a job applicant to lose the protection of the Act.

(17) ***Federated Logistics and Operations*** – 340 NLRB No. 36: Discussion of the appropriateness of special remedies, including a broad order, supplying names and addresses of unit employees to the Union, a public reading of the notice, and posting (and reading) the notice in additional languages.

(18) ***Exxon Chemical Company*** 340 NLRB No. 51: Discussion of when a company's refusal to arbitrate grievances amounts to a repudiation of the contract's grievance-arbitration provision and a violation of Section 8(a)(5).

(19) ***King Soopers, Inc.*** – 340 NLRB No. 75: Discussion of an employer's obligation to bargain over the implementation of new work rules that can be grounds for discipline.

(20) ***Campbell Electric Co., Inc.*** 340 NLRB No. 93: – Discussion of the circumstances under which it is appropriate to deny reinstatement and toll the backpay of an unlawfully terminated employee who was considering resigning at the time of the termination.

Reader Survey for ALRA Advisor

To our readers: we are asking for your opinions about the overall usefulness of the ALRA Advisor, what features you like, which ones you feel are less useful, and what else you would like to see included. Given the hi-tech world we live in, we also ask whether you prefer to receive the news letter electronically or whether you would prefer to continue to receive a hard copy.

We look forward to hearing from you.

SURVEY

1. In general, do you find the ALRA Advisor useful?
2. Do you share it with others in your agency or workplace? How many?
3. What current features do you find most useful: spotlight on agencies; reports on federal and state and local developments; longer feature articles on topics of interest, e.g., training; committee and project reports; president's column; report on annual conference?
4. What would you like to see included or expanded on in the Advisor: letters to the editor; personalities; occasional book reviews; more photos; profiles of key agency members or staffers; articles on training of the type covered in ALRA Academy; other (please specify)?
5. Any items you would like to see de-emphasized or deleted?
6. Is the frequency of the issues about right, too few, too many?
7. Regarding format, would you prefer to receive the Advisor on line or in hard copy?
8. Do you have any other suggestions or comments?

Some people read a national newspaper at breakfast. Others, like Harry Hoglander of the NMB above, read the ALRA Advisor.

Replies to: Jim.Breckenridge@mol.gov.on.ca

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