ALRA advisor....

Association Of Labour Relations Agencies

6

NOVEMBER 2004

ALRA ACADEMY
2004

Erica Lell ,
Maryland

Pierre Hamel,
PSSRB

Peter Philips,
New Hampshire

Hugh Reily
Massachusetts

Richard Evangelisla,
Virgin Islands

Carlos Marin Vargas,
Puerto Rico

Michael Hade,
Illinois

Patricia Snyder,
Ohio

Richard D. Fincher
Phoenix

President's Column

Reg Pearson

Reg Pearson

The Halifax conference has past and another fond memory is forever in our thoughts. All who attended appreciated the Halifax hospitality, the beauty of the city itself and a truly great conference. Special thanks go out to everyone who worked on the project. This was one of the most successful conferences in our history and you should be very proud.

This year we are headed to Seattle, Washington and we have already started to put together a list of activities and a conference agenda that will be exciting and fun for everyone. This year there will be a full advocates' day on the Monday with a number of interesting speakers and presentations covering subjects that will be thought-provoking and full of information.

The Neutrality Project Committee will present the results of the discussions in Halifax and the next phase of this important endeavour. Our neutrality is the foundation of our existence and we need to not only understand what it means to us, and the people who use our services but to be able to document it for future practitioners. When we look forward into the not too distant future our agencies will undergo a fundamental change in staffing. Not only that, the leadership and long-time negotiators from both labour and management with undergo similar turnover. It is extremely important to ensure that new people know about our experience and the value of a neutral presence in the processes of labour relations.

A few delegates from other nations who are interested in our agencies and this organization will also join us this year.

I am honoured to be the President of ALRA and would encourage everyone to take the opportunity to get involved in our committees and projects. It is incredible that ALRA puts together absolutely the best conferences each year with no staff or offices of its own. The people who volunteer their time, expertise and unending dedication over and above their regular daily jobs is a pleasure to be part of every year, and on behalf of the Executive Board, I thank you.

I look forward to seeing many of you in Seattle next July for another great conference.

ARRANGEMENTS COMMITTEE

Starr Knutson

At the October meeting, the Arrangements Committee identified a number of activities which would complement the conference. Preliminary discussion focussed on two events. The first is a diner on Blake Island which would include a native American show. The second involved the choice of a spectacular location for the Annual Golf Tournament. The committee, which is made up of Laurie Rentalla, Nova Scotia; Mary Johnson, NMB; Jim Crawford, Pennsylvannia LRB; and Yvon Tarte, PSSRB, will continue assessing these options and will have a full slate of activities for the February 2005 e-board meetings in Chicago.

PROFESSIONAL DEVELOPMENT COMMITTEE

Les Heltzer

The Professional Development Committee met October 16th at the Edgewater Hotel, Seattle, the site of the 2005 ALRA Annual Conference. The following Committee members were able to attend: Les Heltzer (NLRB), Liz MacPherson (FMCS-Canada), Jaye Bailey Zanta (Connecticut State Board of Labor Relations), Jim Breckenridge (Ontario Ministry of Labor), Kate Dowling (NMB), Karol Elinski (Washington State PERC), Larry Gibbons (NMB), Pierre Hamel (Canada Public Service Staff Relations Board), and John Mather (Ontario Ministry of Labor). The complete list of the PD Committee members can be found on the ALRA website.

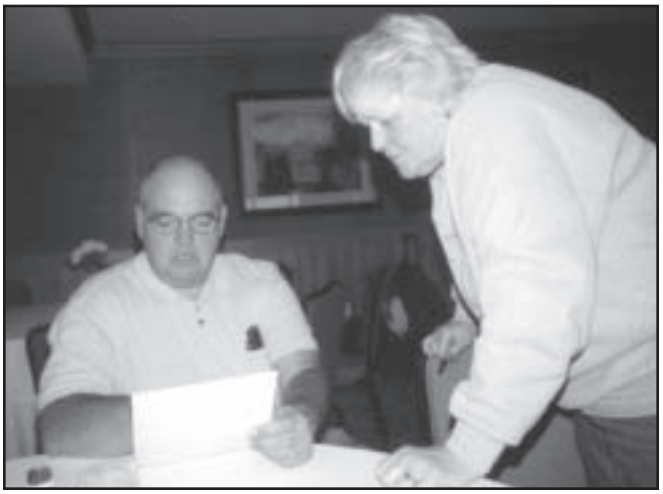
Real progress was made at the meeting in shaping the Professional Development sessions for the Annual Conference in July. The Conference PD sessions are scheduled for Wednesday, July 13, with a plenary session in the morning on Ethics, featuring the return—by popular demand—of Mr. Wizard, Jr. and Ms. Wizard. In the early afternoon, concurrent sessions are scheduled for writing skills and mediation in concessionary times, respectively, followed by concurrent sessions later in the afternoon on writing skills and mediation skills and techniques, respectively. The next PD Committee meeting will be held in Chicago and, as of this time, is scheduled for Saturday, February 26. We look forward to seeing as many of the PD Committee members as possible in Chicago.

Grant funds for staff training for ALRA-member agencies are still available. Single ALRA-member agencies may apply, but priority is given to applications for staff training involving more than one ALRA-member agency. Further information is available on the ALRA website.

— Les Heltzer
V.P. Professional Development

PROGRAM COMMITTEE REPORT

The program committee met October 15 and 16 in Seattle, Washington. The committee is made up of: Scot Beckenbaugh, FMCS; Mark Brown, British Columbia; Fred Rosenberry, Washington State PERC; Mark Downing, Washington State PERC; Bob Hackel, New Jersey PERC; Pat Sims, NMB; Jennifer Niemiec, Illinois; Warren Edmondson, CIRB; and Mike Cuevas, New York PERB.. Unfortunately not all members were able to attend.



On Friday the committee were pleased to receive a report from Ariella Bernstein and Beth Schindler, both of the FMCS Washington Office, on the work they have done in the area of mediator training, with regard to health and welfare concerns in contract negotiations. Their office has put together a two day training program on this subject with the assistance of MIT and they have a great deal of information to share with mediators and other interested parties in the negotiation field.

During the Saturday session, the committee discussed the subject of health and welfare matters and agreed that this would be of interest to attendees at the July conference in Seattle.

The committee has taken the first steps in putting together a full program for 2005 conference that both delegates and advocates will find informative and interesting.

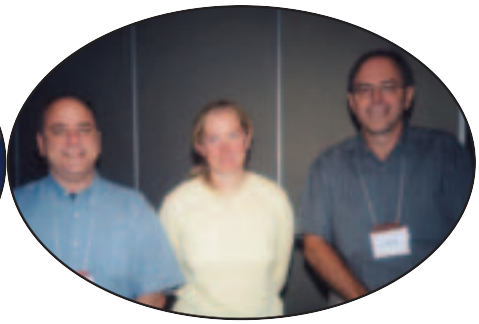
Marilyn Sayan
Co- Chair

Bruce Janisse
Co- Chair

ROUND TABLES

John Moreau, Michael Cuevas

Coleen Barns, Arnie Powers, John Mather



Arthur Pearlstein, Kate Dowling, Pierre Hamel

PRESENTERS

Back: Larry Gibbons, Tim Handley, Rick Curreri
Front: Elizabeth MacPherson, Peter Hurtgen

Peter Hurtgen, Kevin Whitaker, Joel Weisblatt

Susan MCloskey

Dan Rainey, Thomas Worley

Roland Walkins, Wilma Liebman, Jaye Bailey (Standing), Kevin Whitaker

Mike Tynes, Jim Hanley, Reg Pearson

Les Parmelee, Patricia Sims, Tom Hodges

Joe O'Neill, Dr. Nuala Kenny

ALRA 2005

Seattle, July 9 - 13

at

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Washington PERC Delegation at Halifax 2004

Left to Right:
Starr Knutson, Fred Rosenberry, Karol Elinski, Marilyn Glenn Sayan, Katrina Boedocker, Marv Schurke, Sue Rosenberry

SCOT BECKENBAUGH

Scot did not seek re-election to the Executive Board at the annual meeting in Halifax. In his three years on the Board, Scot served on many committees and was instrumental in suggesting, contacting and arranging speakers and presenters for three conferences. His expertise in mediation combined with his knowledge of the field benefited the Association in two ways. First, he was great colleague for both the E-Board and Executive members. He was also responsible for heightening the awareness of ALRA members of the new techniques, training, development and technology with respect to the mediation process.

Scot and Linda Beckenbaugh

While he remains a member of the ALRA family, he intends to concentrate his time on his duties with FMCS in the mid west region, ride his bicycle safely and spend at least two more weekends a year at home.

Recognition Award/Lifetime Membership Plaque to Will Weinberg

Will Weinberg: A lifetime membership to ALRA in recognition of a 53 year association. Will was unable to attend the Halifax Conference due to health reasons.

Mike McDermott: Presented with lifetime membership to ALRA in recognition of service to the organization

NEUTRALITY

Neutrality Project Discussed in Halifax

Members attending the ALRA Annual Meeting in Halifax, Nova Scotia, received the first report of the Neutrality Committee. In a session moderated by Robert Anderson (NJPERC), members heard perspectives on neutrality from National Academy of Arbitrators President George Fleischli and Association for Conflict Resolution President Nancy Peace. Fleischli opined that it is naive to believe that changes in political climate do not have an effect on labor boards' positions. Advocates expect that, but it is possible to stretch that beyond the good will of the parties, as occurred with the National Labor Relations Board in the 1980s. For arbitrators, the problem is self-correcting. Arbitrators' practices rise or fall based on their reputations for neutrality. Under the Code of Professional Responsibility, an arbitrator must be as ready to rule for one party as for another regardless of impact on future business.

John Higgins

Martin Malin

Peace addressed a core concern that many others echoed in the discussion that followed. She observed that there is a perception that if one believes in the institution of collective bargaining, one must be pro-union. There is a need to think about what is the work that we do and how we do it. The process has become more legalistic and more attorney-driven.

Peace also addressed neutrality concerns in mediation. She challenged the organization to consider such questions as: How do you define mediation? What is the goal of mediation? Is it only to get a settlement or is there any responsibility for the quality of the settlement? Do we have any concern with getting the parties to improve their relationship? Do we have any concern with the impact of the settlement on the public? What actions may mediators take and still be impartial: mediator recommendations? mediator proposals? mediator evaluation of strengths & weaknesses of a case? mediator prediction of likely outcomes?

Anderson introduced the report, noting, "Neutrality is the foundation of all of our principles; it is our lifeblood. There is a need for ethical clarity and to avoid ethical distress by stating our values clearly and practicing them religiously. The project's goal is to produce a handbook to state our values and define our practices. In the process we will become more rooted in our principles and practices and spread them beyond ALRA."

Neutrality Committee Chair John Higgins (NLRB) presented the draft of Chapter 1. The document was organized into sections, with each section stating a black letter principle, followed by commentary and, where appropriate, examples. Several delegates called for the addition of a preamble to address the purpose of the project and the differences between being pro-collective bargaining and pro-union.

Section 1 declares, "Impartiality is the most essential attribute of a labor relations agency." Delegates seemed to agree that impartiality must be considered in the context of the agency. Agencies are not there to decide that there will be a policy of collective bargaining; agencies are there to implement the policy that has already been decided. The statutory purpose is to foster collective bargaining if the parties choose it. Delegates also suggested that the quasi-judicial nature of most member agencies should be set forth expressly. The document will be a useful tool in educating legislators that labor relations agencies are law making bodies, not promotional commissions.

Section 2 declares, "A neutral labor relations agency seeks to effectuate the legislative policy endorsed by the statute authorizing collective bargaining within the limits defined by the statute and with a strict impartiality as to the outcomes of negotiations or adjudications." Some suggested that Section 2 should precede Section 1. Others raised questions concerning when a lack of funding affects impartiality, e.g. delays in hearings and elections? How does the appointment process affect impartiality?

Other questions raised to be addressed in this section included: Are agencies advocates of the law? Are agencies advocates of the law when it is under attack, for example, before legislative committees? It was suggested that there may be a need for a chapter on the interactions between agencies and the legislature (or the

NEUTRALITY – Cont'd

executive). How does the agency avoid the appearance of non-neutrality?

Section 3 declares, "Regardless of agency structure, board members or commissioners are charged with the duty to serve as labor relations statespersons rather than partisans and to embrace the labor relations process and decide cases with integrity from the perspective of the agency as a whole." Delegates observed the need to address the role of political appointees (e.g. "wing men") separately. If the document is to be valuable to new board members and legislators, this must be up front. We need to acknowledge the difficulties of making the transition from advocate to neutral. We need to address the, "Don't forget where you came from" syndrome. This underscores the importance of characterizing the agency as quasi-judicial.

One delegate expressed caution with the phrase, "from the perspective of the agency as a whole." He expressed concern that the phrase could be abused to justify ex parte contacts and other unethical behaviors. Concern was also expressed that the project not neglect careerist agency professional staff.

Nancy Peace, George Fleischli

Section 4 declares, "Labor relations agencies administer statutes that contain considerable room for interpretation and entrust interpretations and application to informed agency discretion. Agencies should not shy away from exercising their discretion but should do so within the bounds of the scope of their legitimate authority." Delegates made a number of points, including: The deference that courts show us underscores the importance of doing our jobs appropriately. Add "founded on expertise" to "entrust interpretation and application to informed agency discretion." Refer to agency rulemaking authority as rulemaking enhances the appearance of neutrality.

Delegates also offered their advice to the committee concerning how the project should proceed. There was discussion of the need to address issues concerning careerist professional staff and to single out special concerns in the public sector where the agency frequently regulates the political authority who appoints the board members/commissioners. There also was discussion of the need to develop a best practices section and to include in that section issues involved in dealing with pro se parties and a need for a separate section dealing with mediation.

The Neutrality Committee is considering the suggestions and expect to present a revised draft of chapter one and proposed chapter two at the Sea 116 Conference.

The next edition of the Advisor will have more on the Neutrality Project.

VirtuALRA

VirtuALRA is the list serv system introduced last year to allow easy, direct communication between ALRA agency personnel. The following seeks to answer some common questions about the system.

How Do I Access The Virtualra System To Get Information From Other Agencies?

It should be relatively easy. The virtuALRA system is designed to let you post questions directly to the list serv by addressing your e-mail to the list serv address, so long as you are a member. When a message is posted to the list, it is automatically sent to all members, and any reply to that message is also automatically posted to all members.

Dan Nielsen

How Do I Become a Member of the List?

Membership is controlled by ALRA through the list administrator. The administrator of

VirtuALRA – Cont'd

the list is Dan Nielsen, and anyone who wants to participate can be added just by contacting him at wercdjn@execpc.com or by fax at (262) 637-3448.

Can I Reply Directly to the Sender, Without Copying Everyone?

Even though the original message may appear to have come directly from the author, hitting "reply" copies all of the members, not just the original sender. Anyone who wishes to respond privately should do so either by forwarding the message, and entering the author's e-mail address, or by hitting "reply", but then replacing the address that the e-mail system shows with the desired e-mail address.

What Are The Addresses For virtuALRA?

There are two list servs, one for legal issues and one for issues concerning agency administration.

For legal issues, messages should be addressed to virtualra-legal@yahoogroups.com.

For agency administration issues, messages should be posted to virtualra-admin@yahoogroups.com.

— Dan Nielsen

ALRA ARTICLES

Website Improvements

The next time you go to "alra.org" you will notice a change in the home page. After years of patient and persistent scrolling to get to the web feature that you wanted, you now can click on the item with no scrolling needed (at least for the home page).

The labor links web page has undergone a major revision too. Previously, the state matrix table on the labor links page included the first agency in that state to report a website. Other agencies of that state were listed below the table in a very long list of U.S. federal, Canadian, and other websites.

Now all agencies are listed in matrix tables: one for state agencies, one for U.S. federal agencies, and one for Canadian agencies. In addition, if there is more than one agency in a state, province, etc., the user will be directed to a listing of all agencies for that category.

Scrolling is eliminated for virtually all of the 80 websites now listed on the ALRA Labor Links of Interest. The only websites that involve a quick scroll are related national associations and some legal reference sites. As an alternative for those who prefer an alphabetical listing of all labor links, there is a complete listing if you scroll further down the page.

The labor links page contains a feature to review a list of all new websites recently added to the web page. At present, there are 22 new or revised websites included on that list. Thanks to "google.com", the technology committee discovered many new sites that had not been reported via past directory updates. Some of the new sites belong to sister agencies that have not been member agencies of ALRA.

Tom Worley

In addition, there is detailed information regarding the hotel arrangements for the Seattle Conference. Please go to the conference web page and consider making hotel reservations for next year. Early reservations are a must if you desire a king-size bed or two double beds for your room. Most available rooms at the conference rate feature one queen-size bed.

— Tom Worley

Board Meeting Summaries

July 25, 2004

Jack Toner reported that ALRA now can accept membership fee payments via credit card over the internet. Although Canadian agencies are not able to make payments via the internet as yet, they can make payments via credit card by calling Jack or his staff. In addition, it should be possible to allow participants to pay registration fees for the 2005 Seattle Conference via credit card.

The Board adopted the Membership Committee's recommendation to approve the membership applications

of the New Mexico Public Employee Labor Relations Board and the Manitoba Conciliation and Mediation Services.

Jaye Bailey serves as chair of the grant administration committee and provided a report related to the FMCS grant for ALRA and the Neutrality Project. The grant amounts to $51,500. She reported that the ALRA membership is very supportive of the Neutrality Project and the related grant funding. As a result of the special invitations, 25 additional participants were able to attend the conference and serve as panelists or responders to the first draft of the Neutrality Committee.

The Board approved a proposed set of policy guidelines. The proposed guidelines evolved from a review of past minutes (1997-2004). Policy decisions of past Boards were updated or clarified to represent today's operating procedures for ALRA. Dan Nielsen explained that the policy guidelines would not be bound by a policy guideline if they vote to adopt a different policy. Future Presidents would be bound by a policy guideline until such time that the designated board could conduct a conference call or meeting to adopt a difference policy. Reg Pearson noted that there is regular turnover of board members and officers. It is uncertain that board members would be aware of past policy decisions unless there was a document that incorporated various policy guidelines.

July 28, 2004

Reg Pearson announced the following Committee Chair or Co-Chair appointments:

Program – Marilyn Sayan and Bruce Janisse
Professional Development – Les Heltzer
Arrangements – Starr Knutson and Bob Hackel
Audit – Phil Hanley
Grant Administration – Jaye Bailey
Technology – Tom Worley and Dan Rainey
Neutrality Project – John Higgins
Internatioinal Labour Relations Organizations Liaison – Warren Edmondson and Dan Nielsen

October 16-17, 2004

Jack Toner reported that ALRA's current asset blance is $51,669.39 when including the $20,000 received from the Halifax Conference account. In a recent e-mail, Dan Nielsen confirmed that the Halifax Conference resulted in the second highest profit of any past conference. He noted that the gains of the last two conferences (Detroit and Halifax) effectively have offset the loss at the San Diego Conference in 2002.

Jack Toner

Reg Pearson announced the need to develop profiles of each member agency that can be listed on the website for future reference. He will form a group to complete this project in the near future.

Jaye Bailey reported for the grant administration committee. The initial $51,500 U.S.-FMCS grant will expire in April 2005; however, it is possible to extend the grant for an additional six months. Jaye announced that ALRA has been awarded a second grant of $50,000 from the U.S.-FMCS for support of the ALRA Neutrality Project, the Advisor, and the ALRAcademy. It is expected that the new grant will be effective in January 2005.

Jim Crawford provided a final draft of the Institutional Memory Project. It is a manual for ALRA committees and officers.

Jim Crawford

Thanks to the NLRB, ALRA has a new site for its archives. Past President Ken Strike has forwarded all the early files and documents of ALRA to the NLRB offices (representing the first 40 years of ALRA). Tom Worley is creating an inventory of all items received. Eventually, it is intended to gather information related to the past 12 years of ALRA for inclusion as part of the archives.

Mary Johnson reported for the Site Committee and announced that the 2006 annual conference will be held at the Renaissance Harborplace Hotel in Baltimore (July 21-25, 2006).

— Tom Worley,
V.P. Administration

Mary Johnson

FEDERAL

CANADA

FEDERAL PUBLIC SERVICE STRIKE ACTION SUSPENDED AS AGREEMENTS AWAIT RATIFICATION:

Strike action is on hold and tentative agreements have been reached between the federal Treasury Board and the Public Service Alliance of Canada (PSAC). Bargaining is organized into several "Tables": for Table 1, the 80,000 member Program and Administrative Services Group, and for Table 3, the Technical Services Group, the union is recommending rejection. For these groups, the wage settlement is acceptable, but supplementary issues remain a problem.

The Canadian Food Inspection Agency, with approximately 3,000 employees, and the Canada Revenue Agency, with approximately 22,000 employees have also reached tentative agreements with PSAC. All the tentative agreements contain wage increases of 2.5% retroactive to 2003, 2.25% for 2004, 2.4% for 2005 and 2.5% for 2006, for a cumulative total of 10%.

— CIR

ALLEGED NON-COMPLIANCE WITH CANADA HEALTH ACT A MATTER FOR PARLIAMENT, NOT THE COURTS, JUDGE RULES

The Federal Court has ruled that it has no authority to consider a claim by a coalition of unions and public interest organizations that the federal government has failed to carry out its statutory duties under the *Canada Health Act* by not collecting information about, and reporting on, the growth of privately-owned, for-profit health care clinics in Canada. The applicants, including CUPE, the Council of Canadians, and the Canadian Health Coalition, contended that successive federal Ministers of Health, acting on behalf of the government, have not adequately monitored provincial compliance with funding eligibility requirements under the Act, or fully reported the nature and extent of privatization initiatives which contravene the legislation.

The *Canada Health Act* provides in s.7 that, in order to qualify for a "full cash contribution" by the federal government, the health insurance plan of each province must satisfy five criteria: public administration; comprehensiveness; universality; portability; and accessibility. Pursuant to s.23 of the Act, the Minister of Health is required, on an annual basis, to present a report to Parliament which includes "all relevant information on the extent to which provincial health care insurance plans have satisfied the criteria, and the extent to which the provinces have satisfied the conditions, for payment under this Act." Section 14, furthermore, authorizes the federal government, following consultations with the province in question, to withhold all or part of the federal contribution if it is satisfied that the province has failed to meet any of the criteria set out in s.7; such consultations are to be initiated by the federal government through the issuance of a "notice of concern."

According to the applicants, the Minister's annual reports have "poorly document[ed] the key developments and transformations that have been taking place in health care service delivery, notably the proliferation of private clinics and for-profit delivery of health care services." This was so, they argued, because the information provided by the provinces respecting the administration of their health plans was a "patchwork quilt … that [was] incomplete [and] often not comparable." (The annual reports tabled by the Minister consist of data compiled by the provinces on the basis of a "Users' Guide" prepared by Health Canada.) As a result, the applicants contended, Parliament and the public were precluded from making an "informed assessment" as to the extent of provincial compliance with the Act.

Moreover, noting that the government has never issued a notice of concern pursuant to s.14, despite numerous complaints alleging non-compliance with the Act's requirements, the applicants argued that the Minister had "abdicated his duty" to investigate violations of the legislation and enforce national standards. By way of remedy, the applicants requested orders directing the government to correct the "informational deficiencies" in the annual reports by providing "all relevant information", in accordance with s.23, and to carry out its mandate under the Act by issuing notices of concern where this was warranted.

Justice Richard Mosley of the Federal Court held that, "while this application raises important questions, they are of an inherently political nature and should be addressed in a political forum rather than in the courts." In Mosley's view, since the Act required that the Minister's annual report be tabled in Parliament, it lay with Parliament, not the courts, to assess whether the contents of the report satisfied the requirements of s.23. "It is not for the courts to usurp the role of Parliament in determining the nature and quality of the information it has deemed necessary to conduct its functions," he declared. Mosley further ruled that he had no jurisdiction to entertain the applicants' challenge to the Minister's alleged failure to enforce the Act by invoking s.14. "I am … of the view that this issue is [also] not justiciable, as the process of initiating an investigation and issuing a notice of concern to a province with regard to possible non-compliance with the *Canada Health Act* is a political and policy-oriented one" and, as such, beyond the Court's purview.

In the result, the application was dismissed. The applicants have not yet decided whether they will appeal the ruling.

— LANCASTER ROUNDUP

ACCEPTANCE OF BEQUEST FROM FORMER CLIENT NOT A CONFLICT OF INTEREST, PSSRB RULES

The federal Public Service Staff Relations Board has ruled that a public employee was not precluded by the government's *Conflict of Interest and Post-Employment Code* from accepting a $5,000 bequest form a client's will.

Five years before the testatrix died, the employee, a lawyer in the federal Bureau of Pension Advocates, had assisted her in obtaining a widow's pension. The lawyer learned of the bequest only after the testatrix's death, at which time he immediately reported that he faced a potential conflict of interest. Following a review, the Department of Veterans Affairs, which administers the Bureau, concluded that accepting the gift could "result in the public view that preferential services may be available for a price," contrary to the *Code*, and directed that the employee decline the bequest. The employee grieved this decision, and the grievance was referred to adjudication.

Under s.28 of the *Code*, federal public employees are not permitted to accept "incidental gift, hospitality or other benefits" conferred upon them as a result of the performance of work-related duties, unless they are "(a) within the bounds of propriety, a normal expression of courtesy, or within the normal standards of hospitality; (b) are not such as to bring suspicion on the employee's objectivity and impartiality; and (c) would not compromise the integrity of the government."

Writing for the Public Service Staff Relations Board, Francine Chad Smith allowed the grievance. Smith noted that the grievor had last provided advice to the testatrix frive years before she made the will, had no further contact with her prior to her death, and learned that he had been named a beneficiary only after she had died. In the absence of evidence that the grievor was in a position to exert influence on the testatrix, Chad Smith ruled that the preconditions set out in paragraphs (b) and (c) of s.28 had been met. "[W]hen all the facts are considered," she found, "it[is] clear there was nothing wrong, or even suspicious, about the grievor's conduct in relation to the testatrix."

With respect to the requirements of paragraph (a), there was "no doubt," in Chad Smith's view, that the bequest was too large to be considered a "normal expression of courtesy" or consistent with the "normal standards of hospitality." However, Chad Smith was satisfied that the gift was "within the bounds of propriety," since the amount of the bequest was "not overwhelming," and the deceased had bequeathed gifts to a wide range of beneficiaries. She also noted that, where the gift in dispute involves a testamentary bequest, "the amount of the bequest in and of itself is not as signficiant."

In the result, Chad Smith held, the facts did not disclose a "real, potential or apparent conflict of interest" prohibited by the *Code*. "Our public servants, who are carrying out their duties as expected, and in some cases providing a higher quality of service, should not be arbitrarily denied independent displays of appreciation from the public, particularly in a case such as this one, where there was no question [that] the grievor was [not] in a position to, intentionally or unintentionally, benefit the testatrix or act [partially] toward her in the course of his employment," she concluded.

— LANCASTER ROUNDUP

ROSALIE ABELLA AND LOUISE CHARRON APPOINTED TO CANADA'S SUPREME COURT:

The Honourable Louise V. Charron and the Honourable Rosalie Silberman Abella were appointed as Justices of the Supreme Court of Canada on August 30. Madam Justice Abella brings impressive experience in the areas of employment and human rights, having chaired the Ontario Labour Relations Board and served as a member of the Ontario Human Rights Commission and the Ontario Public Service Labour Relations Tribunal. She is perhaps best known in her role as sole Commissioner of the 1984 Royal Commission on Equality in Employment, from which she is credited with originating the term "employment equity". In 2004, she was awarded the Walter S. Tarnopolsky Award for Human Rights. Their appointments followed a new process whereby the candidates were nominated by the federal Minister of Justice and the nominations reviewed and confirmed by an ad hoc committee of Members of Parliament and legal experts.

— CIR

FEMINIZATION OF LABOUR UNIONS IN CANADA:

A study released by Statistics Canada on August 31 presents statistics about union membership in Canada between 1977 and 2003 and identifies 3 major trends: feminization of the membership; growth of public sector unions, and the decline of international unions. Union membership has grown by 43% from 2.8 million in 1977 to just over 4 million in 2003, but since this growth has not kept pace with employment growth, the unionization rate in Canada has actually declined from 32.6% in 1977 to between 30% and 31% over most of the past decade. According to the analysis, "the biggest and most profound transformation in membership occurred in the mix of men and women." Between 1977 and 2003, the percentage of union members who are women has grown from 12% to 48%.

UNITED STATES

National Labor Relations Board

Joy Regnolds

The National Labor Relations Board has issued a number of controversial decisions recently, some of which reverse decisions of the Clinton Board. These cases involve such issues as collective bargaining rights of graduate teaching assistants in private universities and a nonunion employee's right to be represented in disciplinary actions. Some observers have criticized the Board for taking a step backward, while others contend that the Bush Board is merely returning to longstanding precedents which the Clinton Board was rash to overturn.

These decisions are briefly discussed below, as well as other cases pending or decided which raise issues of interest including coverage of Native American business enterprises, disabled workers in "sheltered" work situations, the status of voluntary recognition as a bar to an election, and interpretation of the special provisions of the National Labor Relations Act applicable to health care workers. Further information on these cases, including full texts of decisions, are available on the Board's web site, www.nlrb.gov/

In a 3-2 decision in July 2004 involving Brown University (342 NLRB 42), the NLRB overruled its 2000 decision in *New York University* (332 NLRB 1205) that graduate student assistants are employees within the meaning of section 2(3) of the Act. The Board found that

> the Board's pre-*NYU* principle of regarding graduate student assistants as nonemployees was sound and well reasoned. It is clear to us that graduate student assistants, including those at Brown, are primarily students and have primarily an educational, not economic, relationship with their university.

The Board stated that the Act is "designed to cover economic relationships and that the Board will not assert jurisdiction over relationships that are 'primarily educational.'"

The dissenting opinion described the majority decision as "woefully out of touch with academic reality," noting that collective bargaining by these persons is becoming more common, and their abrupt exclusion from rights under the NLRA, including not only the right to orga-

nize but also to be protected from discrimination for concerted activities, will lead to increased campus labor unrest. They also contended that the majority unduly limited the Act's broad definition of "employee" in Section (2)(3). According to the dissent, nothing in that provision "excludes statutory employees …on the basis that the employment relationship is not their 'primary' relationship with their employer."

The *Brown* decision by the Board may also call into question the rights of medical interns, residents and housestaff at teaching hospitals, who were found to be protected under the NLRA in 1999 in *Boston Medical Center*, 330 NLRB 152. The 2004 Board majority noted in *Brown* that it expresses no opinion about the Medical Center case, while the dissenters state that it was correctly decided.

The nature of the employment relationship also provided the basis of the NLRB's recent decision to deny representation rights to disabled workers whose primary relationship to the employer was found to be rehabilitative. In *Brevard Achievement Center and Transport Workers Union*, decided September 10, 2004, the Board described Brevard as "a nonprofit corporation whose mission is to assist adults with severe disabilities to become independent members of the community by providing them with training, education and rehabilitative services." The majority opinion outlined the history of the Board's position that it would not assert jurisdiction over relationships that were primarily rehabilitative, and noted that the position found support in the legislative history and in the courts. Applying the standard to the present case, the Board wrote

> [a]lthough the disabled clients work the same hours, receive the same wages and benefits, and perform the same tasks under the same supervision as the nondisabled employees, they work at their own pace, and performance problems are dealt with through additional training rather than discipline. (footnotes omitted)

The dissenting members cited recent efforts to bring the disabled into full participation in society, including The Americans with Disabilities Act (1990). They state that they want to abandon outdated ideas of the place of the disabled in society, and criticize the majority for remaining "outside the mainstream":

> By excluding disabled workers from the protections of the [NLRA] because they may also receive rehabilitative services from their employers, the majority continues the needless segregation of those workers…The majority's decision to exclude the disabled janitors from the coverage of the Act is not a product of the statutory language. Rather, it is a product of the majority's rigid adherence to the Board's "typically industrial-primarily rehabilitative" analysis, a policy-based approach that the Board has used to rewrite the plain language of the Act…

The minority asserts that "economic activity need not be the sole, or even, dominant purpose of a cognizable employment relationship…All the Act requires is that there be *an* economic aspect of the relationship."

In another 3-2 decision the NLRB ruled on June 9, 2004 that employees in a nonunionized workplace are not entitled to have a coworker accompany them to a meeting with their employer, even if the meeting might result in discipline. This decision, *IBM Corp.*, 341 NLRB 148, overruled a 2000 decision that had granted unrepresented employees such a right (*Epilepsy Foundation,* 331 NLRB 676).

Two pending cases, on which interested parties were invited to submit *amicus* briefs to the Board, involve whether voluntary recognition of a union by an employer (i.e., without the holding of an NLRB supervised secret ballot election) may bar consideration of a petition for decertification in the same unit for a reasonable period, as currently is the situation under NLRB practice. The current practice has been challenged in cases involving voluntary recognition of the UAW by Metaldyne Corporation and Dana Corporation, cases 8-RD-1976, 6-RD-1518, and 6-RD-1519. These cases have been consolidated by the Board. The challenges were brought by workers supported by the National Right to Work Legal Defense Foundation.

The Board's vote to review these cases was 3-2. The majority stated that they had made no judgments about the merits of the challenges. The dissent, on the other hand, stated

> Voluntary recognition — and with it a temporary bar against raising representation questions before the Board after recognition — have long been a "favored element of national labor policy." In recent cases, American labor unions have had increasing success in organizing employers by winning voluntary recognition from employers.

> Success, it seems, has prompted greater scrutiny. Today, inexplicably, our colleagues have cast a cloud over voluntary recognition, by granting review in this case. Decades of Board and court precedent supporting voluntary recognition are now called into question, and unions, employers, and employees are left in doubt, as the Board contemplates a radical change in the law. (citation and footnotes omitted)

By a 4-1 vote the Board reversed long-standing precedent and asserted jurisdiction over commercial enterprises operated by Native American tribes on their reservations, *San Manuel Bingo and Casino*, Cases 31-CA-23673 and 31-CA 23803, May 28, 2004. A case from 1976 had held that an Indian mining company was in effect a governmental entity, operated by a government, the tribe, thus excluded from coverage under the NLRA. Later analyses rejected that reasoning and asserted jurisdiction over commercial enterprises off the reservation. *San Miguel*, as noted, extends the Board's reach to reservation-based entities. The lone dissenter would have deferred to the unique status of tribes and their special relation to the Federal government. He concluded that

> …operation of the casino on the Tribe's reservation is an 'internal matter' directly implicating 'rights of self-governance,' and we should not…assert jurisdiction in the absence of a clear expression of Congressional intent.

In the 2004 case *Alexandria Clinic, P.A.*, 339 NLRB 152, the NLRB upheld the firing of nurses who went on strike four hours after the time stated in their notice to the employer. Private non-profit health case facilities were brought under the NLRA by legislation enacted in 1974. Those amendments require, inter alia, a ten-day notice of an intent to strike, in order to give the institution time to make arrangements for continuity of care. The Board majority stated that the language of the strike notice provision (Sec. 8 (g) of the NLRA), clearly requires that the strike, if it is to occur, take place at the exact time stated in the notice. The union, having missed the first deadline, was required either to file another 10-day notice or to get written agreement from the employer that the strike may take place in less than the 10 additional days. According to this reasoning, the striking nurses were lawfully terminated.

The minority would have applied a rule of reason to this case. They noted that plans for alternative care (replacement nurses) were still in effect, and stated that the statutory language provides for dismissal of only those employees who strike before expiration of the notice period.

National Mediation Board

The National Mediation Board has created an On Line Help Desk to provide an information base for inquiries from union members, researchers, attorneys, members of Congress and the press, among others. The Board's announcement noted that it receives a wide range of questions ranging from labor and employment law to more general topics. The NMB Help Desk provides links to the NMB web site and other government sites in order to be of assistance even if the inquiry is outside the jurisdiction of the Board.

In August 2004 the NMB requested public comment on proposed rule changes governing grievance arbitration in the railroad industry. The changes would impose a schedule of fees for the filing of grievances and the appointment of arbitrators, and would impose a time limit of one year on resolution of cases, with provision for a specific waiver to be granted by the NMB Director of Arbitration Services. Not meeting the time limit would mean that the arbitrator would be denied payment and could be barred from receiving additional cases. A link to the proposed rules can be found on the NMB web site,www.nmb.gov

Department of Labor

The US Department of Labor has announced creation of an E-mail subscription service to provide updates of information to citizens who request to be kept informed on issues of interest to them. In part the system is designed to take advantage of the public's usage of email which far outnumbers the public's visits to government agency web site. The system will be implemented in stages with the first wave including several major agencies in the DOL as well as the Office of the Secretary. In a test of the system over 2000 signed up in one month, with minimal advertising, to receive updates on the issue of the "Fair Pay initiative" (the recent controversial changes in overtime payment rules).

Submitted by Joy K. Reynolds
October 2004

FMCS

FMCS Director and Deputy Assist Labor Relations Efforts in African Nations

Peter J. Hurtgen

WASHINGTON, DC – Peter J. Hurtgen, Director of the U.S. Federal Mediation and Conciliation Service (FMCS), and FMCS Deputy Director Gary A. Cantwell are in Africa at the request of the U.S. State Department for meetings with government labor officials, academics and other leaders in the nations of South Africa, Swaziland, Botswana and Mozambique.

Hurtgen and Cantwell are visiting the African nations Sept. 18-Oct. 8 at State Department request in support of international labor standards and to increase understanding of the U.S. model for labor dispute resolution. While in South Africa, they will speak at a training seminar on labor issues for State Department foreign service nationals, conducted by the U.S. Department of Labor Bureau of International Affairs.

In meetings with leaders in the African nations, Hurtgen will discuss the importance of sound labor relations in the face of intense global competition and the great impact of technological change on the workplace. The FMCS Director also will discuss the role and function of the FMCS in the U.S. economy, particularly: (1) the voluntary process by which FMCS mediators become involved in disputes; (2) various mediation techniques; and (3) services that FMCS mediators provide to labor and management in the area of dispute resolution and prevention.

The FMCS officials arrived in Gabarone, Botswana Saturday for meetings with the Botswana Federation of Trade Unions, the Botswana Department of Labor, the Botswana Institute for Development Policy Analysis, the Botswana Industrial Court and the University of Botswana. From there they are to travel to Mbabane, Swaziland for a seminar on labor issues at the Mbabane American Center. In Maputo, Mozambique they will meet with Labor Ministry officials, the U.S.-Mozambique Chamber of Commerce, labor union representatives and university academics before traveling to Johannesburg, South Africa for a final round of meetings. In Johannesburg, they will meet with the South African Commission for Conciliation, Mediation and Arbitration; the National Economic Development and Labor Council; the Congress of South Africa Trade Unions; university academics; and representatives of the International Labor Organization.

Denver Grocery Talks to Continue at FMCS Request

WASHINGTON, DC – Negotiators representing supermarkets and members of the United Food and Commercial Workers (UFCW) Local 7 in the Denver CO area have agreed to the terms and conditions of a request from the U.S. Federal Mediation and Conciliation Service (FMCS) to extend their current labor negotiations. The agreement is subject to a vote of the members of Local 7 and the approval of the three supermarket chains. Members of Local 7 will vote on the request during meetings on Friday and Saturday in Colorado Springs and Denver. The affected employers will consider the request during the same time period. If approved by all parties, talks on new labor agreements will be extended past the expiration of the current union contracts at midnight Saturday.

FMCS Western Regional Director Scot Beckenbaugh, who is personally mediating coordinated negotiations between representatives of UFCW and Albertsons, King Soopers, and Safeway supermarkets in the Denver area, said both sides agreed to the terms of the extension request Thursday afternoon. The terms and conditions will be revealed to all interested parties upon official acceptance of the request to extend their talks past the contract expiration and to observe a "cooling off" period next week, during which no talks will be scheduled, Beckenbaugh said.

"This is a request from the FMCS, not from any of the parties," Beckenbaugh said. "Our goal is to help the parties reach a mutually acceptable agreement. I want to commend the parties for their willingness to stay with the process of mediation and to continue at the bargaining table."

Beckenbaugh said the parties will exchange benefits cost information next week "so that they understand more clearly where they disagree." The parties have agreed to resume face-to-face discussions

after next week's exchange of information. Under Thursday's request to talk beyond the contracts' expiration dates, the parties agreed to a timetable by which they can terminate or further extend the talks, if necessary.

FMCS Training Initiative Examines U.S. Health Care System

WASHINGTON, DC – The Federal Mediation and Conciliation Service has developed a new training initiative to provide FMCS mediators with critical information about the U.S. health care system—its current status and outlook for the future to better assist labor and management during difficult bargaining on health care benefits issues.

Beginning this month, all FMCS mediators will participate in a two-day training program focusing on the health care system from service and delivery issues, to quality of care concerns, and skyrocketing costs. A distinguished panel of trainers including representatives of Tenet HealthCare, the American Federation of Teachers, the AFL-CIO, the Blue Cross Blue Shield Association, and the American Academy of Family Physicians will discuss these issues and how they affect health care bargaining.

This in-depth training will also examine best practices in the industry and provide FMCS mediators valuable guidance in assisting labor-management negotiators dealing with health care issues including health insurance coverage, care and costs. FMCS Director Peter Hurtgen said, "Our primary objective is to give mediators the knowledge they need in this complex area to assist the parties during the collective bargaining process and beyond."

Lucent Technologies' Negotiations with CWA and IBEWTo Begin in Washington with FMCS Mediation

WASHINGTON, DC – The Federal Mediation and Conciliation Service (FMCS) today announced that representatives for the Communications Workers of America, the International Brotherhood of Electrical Workers and Lucent Technologies Inc. will conduct their negotiations under FMCS auspices in Washington, DC.

At the request of the parties, the FMCS Director Peter J. Hurtgen said he will personally join the talks. FMCS staff mediators also will assist in the negotiations, he said.

"The parties are facing a set of very difficult issues, and we hope the process of mediation will help them find common ground on which to build a mutually acceptable agreement," Hurtgen said.

The new round of contract talks cover approximately 3,000 Lucent workers represented by the CWA and another 250 represented by the IBEW. The negotiations will begin Oct. 7, and the current contracts for both groups expire on Oct. 31.

Assistance from Federal Mediation and Conciliation Service Helped Achieve Agreements in 80 Percent of Cases

WASHINGTON, D.C. – About 80 percent of all labor-management negotiations involving assistance from the U.S. Federal Mediation and Conciliation Service (FMCS) were settled with agreements in fiscal year 2004, averting potentially disruptive work stoppages for thousands of companies and tens of thousands of workers in industries key to the economy and national security.

According to agency fiscal year-end figures, the total number of work stoppages declined from 289 to 271 in fiscal 2004, which ended Sept. 30. The average duration of work stoppages was higher, at 60.3 days, but in large part due to the 141-day Southern California supermarket strike.

Federal mediators were asked for their assistance in approximately 5,000 labor-management talks in fiscal 2004 out of a total of 18,493 collective bargaining negotiations nationwide. Federal mediators helped the parties reach agreements in 3,768 of those cases—an 80 percent settlement rate, consistent with previous years. The most contentious issue continues to be health care costs. In 55 percent of the agency's cases, health care costs was an issue in contract negotiations.

The agency played a key role in helping parties reach agreement in a number of high-profile labor-management negotiations during the fiscal year. Among them was the Southern California grocery strike, SBC Communications, and Maytag. FMCS is currently assisting the parties in contract negotiations in the hotel

industry in San Francisco, Los Angeles and Washington D.C.

"This has been another productive and successful year for FMCS," said agency Director Peter J. Hurtgen. "FMCS has a long record of continuing accomplishment in assisting parties in conflict. I am particularly impressed with the 80 percent settlement rate this fiscal year. I want to thank the FMCS staff for their hard work and dedication."

NLRB CASES

Listed below are NLRB cases of significance that issued between April 2004 and October 2004.

Copies of these decisions are available on the NLRB website www.NLRB.gov <http://www.NLRB.gov>

1. Engelhard Corporation - 342 NLRB No. 5 - Discussion of whether picketing at an off-site shareholders meeting violated a contractual no-strike clause.

2. Lakewood Engineering and Manufacturing - 341 NLRB No. 101 - Discussion of when an election will be set aside based on a Board agent's failure to lodge eligibility challenges.

3. Waters of Orchard Park - 341 NLRB No. 93 - Discussion of whether two nursing home employees were engaged in protected concerted activity under the National Labor Relations Act when they called the New York State Department of Health Patient Care Hotline to report excessive heat in the Respondent's nursing home.

4. Int'l Union of Operating Engineers - 341 NLRB No. 114 - Discussion of the Union unlawfully discharging its paid organizer in violation of Section 8(a)(1) because he disparaged the Local for allowing employers to cease making pension contributions on behalf of probationary apprentices.

5. Manhattan Crowne Plaza - 341 NLRB No. 90 - Discussion of whether an employer committed objectionable conduct by sending a memorandum to its employees describing events that occurred at another company, including the termination of employees and the outsourcing of their work, following unionization.

6. ITT Industries, Inc. - 341 NLRB No. 118 - Discussion of whether the Respondent violated Section 8(a)(1) by prohibiting handbilling by its offsite employees in its parking lot.

7. Fessler & Bowman, Inc. - 341 NLRB No. 122 - Discussion of whether a union engaged in objectionable conduct by collecting employees' mail ballots.

8. St. George Warehouse, Inc. - 341 NLRB No. 120 - Discussion of surface bargaining, including the effect of an employer's independent Section 8(a)(5) violations and other away-from-the-table conduct on the surface bargaining analysis.

9. Jacobs Heating and Air Conditioning - 341 NLRB No. 128 - Discussion of the General Counsel's burden of showing that an applicant had experience or training relevant to the announced or general known requirements of a position in a refusal to hire case.

10. San Manuel Indian Bingo and Casino - 341 NLRB No. 138 and Yukon Kuskokwim Health Corporation - 341 NLRB No. 139 - Discussions of when the Board will assert jurisdiction over Indian-owned commercial enterprises, including enterprises operated on Indian reservations.

11. Kansas AFL-CIO - 341 NLRB No. 131 - Discussion of whether the Respondent violated Section 8(a)(5) and (1) by eliminating a bargaining unit position and terminating the employee in that position without providing the Union prior notice and an opportunity to bargain.

12. Precoat Metals - 341 NLRB No. 143 - Discussion of the Board finding that the Respondent violated Section 8(a)(4) of the Act by discharging an employee for talking to and giving an affidavit to a Board agent, but determining that the employee forfeited the remedies of reinstatement and backpay due to his false testimony in his pretrial affidavit and during the Board hearing.

13. Laboratory Corporation - 341 NLRB No. 140 - Discussion of whether the petitioned-for multi-facility unit was appropriate.

14. Gold Kist, Inc. - 341 NLRB No. 135 - Discussion of whether the Respondent's video and slide show presentations and manager's statements to employees threatened the inevitability of strikes and strike violence in violation of Section 8(a)(1).

FEDERAL – Cont'd

15. Saint Gobain Abrasives, Inc. - 342 NLRB No. 39 - Discussion of whether a hearing must be held to determine if there is a casual connection between alleged unfair labor practices and employee disaffection with a union, overruling Priority One Services, 331 NLRB 1527 (2000).

16. Oregon-Columbia Chapter of National Electrical Contractors Association - 342 NLRB No. 10 - Discussion of (1) whether a union may deliberately deviate from the rules governing the operation of its hiring hall to give preferential dispatching treatment to 'salts' and others who engaged in union organizing, and (2) whether the union's mistaken departures from those same rules breached its duty of fair representation.

17. Sociedad Espanola de Auxilio Mutuo y Beneficencia de Puerto Rico - 342 NLRB No. 40 - Discussion of lockout issues.

18. Brown University - 342 NLRB No. 42 - Discussion of the employee status of graduate student assistants within the meaning of Section 2(3) of the Act.

19. Boghosian Raisin Packing Company, Inc. - 342 NLRB No. 32 - Discussion of the application of Section 8(d)'s loss-of-protected-employee-status provision with respect to a strike that is unlawful due to the union's negligent failure to file notice of dispute with the Federal Mediation and Conciliation Service.

20. First Legal Support Services, LLC - 342 NLRB No. 29 - Discussion of special remedies, its rejection of a decisive authorization card which would have triggered a Gissel bargaining order, and its reaffirmation of the Board's policy of not issuing nonmajority bargaining orders.

21. St. Barnabas Medical Center - 341 NLRB No. 151 - Discussion of whether the Union incurred traditional bargaining obligations by agreeing to discuss wages with the Respondent, absent a wage reopener provision, during the term of the contract.

22. American, Inc. - 342 NLRB No. 76 - Discussion of why the judge's inability to credit either the General Counsel's key witness or the Respondent's key witness leads to the conclusion that the General Counsel failed to establish that antiunion animus was a motivating factor in the Respondent's refusal to consider for hire and/or hire 9 union-affiliated applicants.

23. Wohlsen Construction Company - 342 NLRB No. 74- Discussion of the Board's agency principles, including actual and apparent authority, and also for the majority's decision not to pass on the viability of the Board's "joint-venture" theory of liability.

24. Boden Store Fixtures, Inc. - 342 NLRB No. 68 - Discussion of the Respondent's obligation to provide information requested by a regional affiliate of the Carpenters Union, even though the regional affiliate was not a named party to a national agreement between the Respondent and the Carpenters.

25. Crittenton Hospital - 342 NLRB No. 67 - Discussion of an employer's failure to notify and bargain with the union over the changes made to its dress code policy.

26. Southern California Gas Company - 342 NLRB No. 56 - Discussion of whether an employer is obligated to provide a union with certain requested information when the request is made pursuant to a complaint filed with a state agency, and not for the purposes of collective bargaining.

27. St. Pete Times Forum - 342 NLRB No. 53 - Discussion of the employer's asserted Title VII liability concern as a rebuttal defense under Wright Line in light of t he D.C. Circuit Court of Appeals' directive, in Adtranz ABB Daimler-Benz Transportation v. NLRB, 253 F.3d 19, 27 (D.C. Cir. 2001), that the Board interpret the Act in a manner which is sensitive to employer's responsibilities to address workplace harassment under Title VII.

28. Pathmark Store, Inc. - 342 NLRB No. 31 - Discussion of the application of Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945), in finding that the Respondent established special circumstances justifying its decision to prohibit employees from wearing "Don't Cheat About the Meat!" T-shirts and hats during their working time in customer areas of the Respondent's grocery stores.

29. Anheuser-Busch, Inc. - 342 NLRB No. 49 - Discussion of the Respondent's unilateral installation and use of surveillance cameras and the remedy for that 8(a)(5) violation.

ARIZONA

AFSCME v. CITY OF PHOENIX and PHOENIX EMPLOYMENT RELATIONS BOARD

PERB Case No. CA-180

Maricopa County Superior Court Cause No. CV2002-011886

CA-180 was initially filed by three unions, seeking to have the issue of "fair share" declared a mandatory subject of bargaining as opposed to a permissive subject of bargaining. Although the parties briefed and argued whether or not "fair share" would violate Arizona's right to work laws, as well as the Meet and Confer Ordinance's restriction against employees being obligated to participate in a union (Section 2-214 of the Meet and Confer Ordinance), the issue before PERB was whether "fair share" was a mandatory or a permissive subject of bargaining. Relying on Section 2-215(A) of the Ordinance, which provides that the provisions contained in the 1988-90 and subsequent memoranda of understanding are mandatory subjects of bargaining and that all other subjects are permissive subjects of bargaining, the Board found "fair share" to be a permissive subject of bargaining.

AFSCME Local 2384 filed a special action in the Maricopa County Superior Court, seeking to have the Board's order reversed. In addition, AFSCME included a request for declaratory relief, asking the court to rule that "fair share" would not violate Arizona's right to work laws. PERB filed a motion with the court, asking it to dismiss the declaratory relief portion of the special action because (1) a party is not entitled to seek declaratory relief in a special action which is requesting review of an administrative decision, and (2) AFSCME had failed to exhaust its administrative remedies in that PERB had not rendered an opinion on the legality of "fair share". The court, rather than dismissing the count asking for declaratory relief, remanded the matter to PERB for a determination of whether "fair share" would violate Arizona's right to work laws.

On remand, the Board, not having an actual "fair share" agreement to consider (AFSCME did, however, provide a couple of hypothetical scenarios), ruled that the "concept" of "fair share" would not violate Arizona's right to work laws. Thereafter, the City appealed this ruling to the superior court.

On September 2, 2004, the superior court issued its decision. In the ruling, the court took a different approach. It was determined that the Union's two "fair share" hypothetical proposals, both of which compelled non-union member employees to participate in "fair share" payments to a union, were illegal under Arizona's right to work laws, and also violated Section 2-214(A) of the Ordinance. Consequently, the court found that "fair share" was not subject to collective bargaining. Presumably, the court determined that "fair share" was an illegal subject of bargaining and, as a result, found the issue of whether "fair share" was a mandatory or permissive subject of bargaining moot—although the court indicated that it would have found "fair share" to be a permissive subject of bargaining under the definition contained in Section 2-215(A) of the Ordinance, which provides that public employees shall have the right to participate in any employee organization of their own choosing or to refrain from participating in the same.

The court, in its decision, did not rule on whether an elective "fee for service" proposal, similar to the type approved by the court in Cone v. Nevada Services Employees, 998 P.2d 1178 (Nev. 2000), would violate Arizona's right to work laws. This was because such a proposal was not part of the record which was presented to the Board, and therefore could not be considered by the court.

CITY OF PHOENIX v. PERB, AFSCME, LOWE and BROWN

PERB Case No. CA-155/156

Arizona Court of Appeals No. 1 CA-CV 02-0810

In these two cases, the employees (Lowe and Brown) filed ULPs against the City, alleging that their Weingarten rights (the right to have a union representative present

at an investigatory interview which could reasonably result in discipline) had been violated. In addition to the ULPs, both employees had appealed their discipline to the Phoenix Civil Service Board.

Section 2-211(H) of the Meet and Confer Ordinance provides that the Board shall have the authority to adjudicate a charge for which no appeal has been taken to the Civil Service Board, and further provides that the Board shall have no jurisdiction over any cases involving discipline where timely filed under the City's civil service system. Section 2-211(H)(8) of the Ordinance provides that the Board shall have the exclusive authority to determine the existence of an unfair labor practice.

PERB, relying on Section 2-211(H)(8) of the Ordinance, ruled that it had jurisdiction to determine the existence of a ULP. PERB, however, further ruled that, since the employees had appealed their discipline to the Civil Service Board, it was limited to issuing a cease and desist order in the event it was found that a ULP had been committed.

The Maricopa County Superior Court reversed the Board's decision, and ordered PERB to dismiss the ULP charges, finding that PERB lost jurisdiction over the ULPs once the employees appealed their discipline to the Civil Service Board. PERB and AFSCME appealed the superior court's ruling to the Arizona Court of Appeals.

On March 25, 2004, the appellate court issued its opinion and reversed the decision of the superior court. The appellate court determined that there was nothing in the Ordinance, Phoenix City Charter or PERB's Rules and Regulations which would compel the conclusion that an employee forfeits the right to have PERB determine whether a ULP has been committed by seeking the Civil Service Board's review of the "just cause" for a disciplinary action. The court agreed with PERB that the Phoenix City Council's primary concern when adopting the 1990 amendments to Section 2-211(H) of the Ordinance was to eliminate potential inconsistent remedies from two separate boards, and not to deprive PERB of its authority to adjudicate ULP charges. PERB, by limiting the remedy to a cease and desist order, correctly recognized the limitations contained in the Ordinance which prevents PERB from exercising jurisdiction over an employee's "disciplinary action" once that action has been appealed to the Civil Service Board.

The City filed a Petition for Review with the Arizona Supreme Court which was denied.

BRITISH COLUMBIA

PRIVACY COMMISSIONER SOUNDS ALARM ON OUTSOURCING OF B.C'S MEDICAL SERVICES PLAN AND PHARMACARE PROGRAMS TO U.S. COMPANIES, B.C. GOVERNMENT PROCEEDS ANYWAY

The British Columbia government's plans to contract out the administration of that province's Medical Services Plan and PharmaCare programs were called into question in a report released by the B.C. Privacy Commissioner on October 29, 2004. The report raises concerns about how British Columbians' personal and medical information can be protected if the information comes under the control of U.S. companies subject to that country's anti-terrorism legislation, the *Patriot Act*.

The *Patriot Act* permits the U.S. government to order American companies to hand over a wide range of personal and confidential information for foreign intelligence purposes or to protect against international terrorism. "We have concluded that if information is located outside B.C. it will be subject to the laws that apply where it is found, regardless of the terms of the outsourcing contract", Loukidelis' report says. "Therefore, if an outsourcing arrangement calls for personal information to be sent to the U.S., that information would be subject to the *Patriot Act* while in the U.S."

When the Campbell government announced its intention earlier this year to contract out the administration of the province's Medical Services Plan to Arizona-based Maximus Corporation, the British Columbia Government Employees' Union launched a court challenge seeking to put a halt to the proposed outsourcing. At the time, the BCGEU opposed the government's plan based on concerns that it would result in personal health and other information becoming available to federal U.S. law enforcement authorities, as well as other American organizations that might gain access to the information.

In his report, Privacy Commissioner David Loukidelis recommends that the government delay plans to contract out the administration of its Medical Services Plan and other such programs until a deal can be reached between

Ottawa and Washington to ensure that the privacy rights of B.C.'s citizens will be protected. The report lists 16 recommendations for addressing the potential impact of public sector outsourcing, including imposing direct responsibility on contractors to ensure that personal information provided by a public body is not disclosed, other than in accordance with provincial privacy legislation, and imposing fines of up to $1 million or a penalty of imprisonment on any public body or contractor who sends personal information outside Canada. In addition, Loukidelis recommends that, pending the enactment of further legislation or nation-to-nation agreements with the U.S., public bodies should engage in monitoring and compliance audits of all contractors to ensure that information is not being disclosed in violation of provincial laws.

BCGEU President George Heyman lauded the report, stating that it vindicates the union's position that the government should not be contracting out the provision of its services to U.S.-based companies until the full implications of such measures can be ascertained. "We were right", Heyman stated, adding that the commissioner's report "confirms the USA *Patriot Act* is a huge threat to the privacy of British Columbians." Heyman also asserted: "It's going to take a lot more than just amending a law or re-jigging a contract to comply with [the Commissioner's] ... list of recommendations," concluding, "The only rational response for the B.C. government is to put the brakes on outsourcing."

However, on the same day that the Loukidelis report was released, the B.C. government announced its intention to continue with the outsourcing of its information services, citing recent amendments introduced to the province's *Information and Protection of Privacy Act* (Bill 73), which purport to ensure that personal data managed by outside firms cannot end up in the hands of U.S. authorities. In his report, Loukidelis had commented that these amendments did not go far enough to ensure the protection of British Columbians' personal information. Loukidelis therefore recommended that the legislation be further strengthened, and that additional measures be taken before the government moved ahead to sign any contracts. The government has indicated that it will look seriously at Loukidelis' recommendations, particularly in the area of fines for breach of non-disclosure requirements, but that it will not halt its plans to contract out the services.

In the face of the government's announcement, the BCGEU has declared that the union will consider a range of possible legal options, including an injunction to stop the signing of any further contracts with U.S.-linked companies until the government fulfills the recommendations contained in the Loukidelis report.

— LANCASTER ROUNDUP

UNIONIZATION AT WAL-MART: UFCW LOSES IN B.C.

The British Columbia Labour Relations Board has dimissed an application by the United Food and Commercial Workers' Union for certification as the bargaining agent of employees at the Wal-Mart store in Terrace, B.C. In its application, the union contended that department managers should be excluded from the proposed bargaining unit. The Board rejected this argument and, as a result, the membership evidence tendered by the UFCW fell short of the minimum required by the province's *Labour Relations Code* to entitle the union to a representation vote.

In the Board's opinion, department managers did not, despite their title, "perform any management functions such that they should be excluded." They managed merchandise, not employees, it found. Furthermore, department managers did not have access to "confidential information either about the operations of the employer or about co-workers." The Board also concluded that department managers were "functionally integrated" with Wal-Mart "associates" (i.e., sales staff) because the two groups of employees had "overlapping duties on a regular and consistent basis and [did] the same work."

The Board rejected the UFCW's argument that the requirements relating to bargaining unit composition should be relaxed in this case because the employer operated in a "difficult to organize" sector. In the Board's view, even it was established that Wal-Mart employees worked in a "difficult to organize" sector, this would not relieve the union of its obligation to establish a "rational and defensible boundary around the proposed bargaining unit." In this case, the Board ruled, "[d]ue to the overlapping core duties" shared by associates and department managers, "any relaxation of the rules concerning bargaining unit description would not result in a minimally defensible boundary if the department managers [were] excluded."

In the result, because the union lacked the requisite level of membership evidence to obtain a vote (45% of

employees in the proposed bargaining unit), the application for certification was dismissed.

— LANCASTER ROUNDUP
Oct 14/04

FLORIDA

A Thirty Year Journey in Southern Public Labor and Employment Law

By Stephen A. Meck, Florida PERC General Counsel and Former ALRA President.

Steve Meck

In 1974 the Florida Legislature enacted the Public Employees Relations Act (PERA) effective January 1, 1975, in response to two decisions of the Florida Supreme Court holding that Article 1, Sector 6 of the Florida Constitution provides a constitutional right for public employees to collectively bargain which must be implemented. Therefore, it is now the 30th anniversary of PERA and the Public Employees Relations Commission. This was, and still is, the only state-wide collective bargaining act in what is traditionally considered the "Old South." As originally enacted, PERA was patterned after the National Labor Relation Act, making PERC a regulatory entity that certified bargaining units throughout all levels of government and investigated and prosecuted unfair labor practices. The litigation of these cases was originally performed in the Division of Administrative Hearings (DOAH). The process proved to be cumbersome, with significant delays.

However, PERC notwithstanding slow case processing, PERC was striving to do things right, so that the parties would have notice of the policies that it was developing in its decisions. Notably, PERC was the first state agency to comply with the statutory requirement that all agency decisions must be published and indexed. Other agencies did not comply with requirement until a 1993 decision of the Fourth District Court of Appeal, later affirmed by the Supreme Court, held that the failure to comply with this requirement constitutes reversible error of agency action.

In 1977, Chairman Leonard Carson initiated Legislative reforms based upon PERC's short experience and evaluation of models of sister agencies throughout the United States. First, the Commission itself was changed from part-time to full-time, with a prohibition from other employment. The regulatory scheme was changed, so that PERC was designated to be quasi-judicial, with the parties advancing their cases to a neutral body. The Commissioners themselves started conducting hearings in ULP cases and, in 1977, PERC was given statutory authority to have its staff conduct hearings in representation cases. By policy which evolved through Commission decisions, discovery was generally not allowed, absent compelling reasons. This model proved to be so efficient that in 1979, PERC was given authority for its staff to conduct hearings in ULPs as well.

With these changes in place, with less than five years of experience PERC was organized in its current structure more than 25 years later. The next significant development at PERC was to add employment law jurisdiction to that of public sector labor law. This is unique in the United States. For years the Legislature had entertained complaints about the operations of the Career Service Commission (CSC), which conducted civil service appeals of state career service employees. It was a part-time per diem board that traveled throughout the state hearing multiple cases and ruling from the bench, comparable to a territorial judge riding circuit. The complaints centered on delays in case resolution, inconsistency in results, and reversals on appeal. After an extensive study the Legislature abolished the CSC in 1986, giving this jurisdiction to PERC, with a 230 case backlog and statutory requirement that the hearings be held within 30 days of filing.

PERC assumed this awesome task and, through an efficient organization and by marshalling its resources, eliminated the huge backlog bringing the docket current within one year, while maintaining the 30 day deadline. This accomplishment was rewarded with the legislative conferment of other jurisdictions upon PERC between 1987 and 1992, including drug testing cases, veterans' preference appeals, and state whistle-blowers' appeals. This resulted in a case increase from approximately 700 filings to more than 1700 filings per year. By attrition and an inability to replace staff due to legislative elimination of vacant positions, PERC's staff was also reduced from it original number of 42 positions to the current staff of 33.

The two most significant Legislative actions in the next decade were the repeated inquiries into the possibility

of merging PERC with DOAH and the Service First legislation. The merger proposition apparently emanated from budget reviews and organizational changes necessitated by the abolishment of the Department of Labor and Security, in which PERC was organizationally housed since its inception. In the late 1990's, the Legislature determined that PERC would be moved into the Department of Management Services, which already had attached to it several other commissions, including DOAH. So, a series of studies were conducted to evaluate the possibility and correctness of merging quasi-judicial entities. This culminated in a report by the Office of Program Policy Analysis and Governmental Accountability (commonly referred to as "OPPAGA"), in the Florida Legislature in June 2004. OPPAGA found that merging PERC and DOAH would not result in savings or increased efficiencies.

The Service First reforms occurred in 2001, and it was the first revision of the Career Service rights of State employees in decades. It was introduced by the Governor the preceding year as his top priority of that session. The legislation ultimately enacted has a number of significant statutory changes, including the reclassification of thousands of Career Service employees into the Select Exempt Service class with no appellate right. It reduced the time for filing of the appeal of suspensions or dismissal of Career Service personnel from 20 to 14 days and strictly limited the time for conducting hearings and issuing final orders. It eliminated the Commission's ability to mitigate discipline for all employees, other than police, firefighters, correctional officers, and health care employees. Finally, it eliminated the award of attorney's fees. Although there has not been a sufficient track record for accurate prediction, these changes have resulted in a significant reduction in Career Service appeals.

Notwithstanding the reduction of cases in the Career Service arena, the Commission's case load has remained constant, if not grown, due to increases in its labor jurisdiction. This is a consequence of an effective expansion in PERC's jurisdiction by a Florida Supreme Court ruling holding for the first time that deputies of constitutional officers are public employees. This had not been the case since 1978, when the Court ruled that deputies are not "public employees" for the purpose of the act, because they are appointed personnel. This has resulted in numerous filings of representation cases affecting many thousands of employees of Sheriffs and other constitutional officers. Moreover, the changing of public employer of the 11 institutions of higher learning from one statewide body, the Board of Governors, to the 11 Boards of Trustees at each institution has generated massive labor activity.

With this brief overview, I would now like to give my personal assessment of PERC. Having come up to the plate on so many occasions that I cannot recall them all, I have always had the conviction to address those who would question PERC's operations by pointing to our track record. Year after year, PERC meets its legislatively set performance standards between 96% and 99% of the time. This includes meeting strict time limits, percentage of cases appealed, and percentage of appealed cases that are affirmed. I challenge any other comparable forum to even approach these numbers and the underlying standards. The effectiveness of PERC's processes is further validated by the fact that there have been no illegal strikes reported in Florida since 1982. This efficiency and the predictability of PERC's decisions minimizes workplace strife and results in huge savings of taxpayer dollars. I am proud to be an employee of this agency and have the greatest respect for the Commission and its dedicated staff.

MANITOBA

NO UNION FOR WALMART IN MANITOBA

Dennis Harrison

For the second time, employees at the Wal-Mart store in Thompson, Manitoba, have voted against unionizing. The Manitoba Labour Board announced the results of the vote (67 against, 44 in favour) on August 6th. The union, the United Food and Commercial Workers Union, stated that it will make a third attempt at organizing the store after the statutory 6 month waiting period.

— CIR
Aug 9/04

MARYLAND

Allen G. Segal

On July 1, 2001, Maryland enacted its first Collective Bargaining Statute, Title 3 of the Personnel and Pensions Article, which provides collective bargaining for eligible Maryland skilled service state employees. This same Statute also established collective bargaining for employees employed by Maryland's state higher education institutions. By statute, the 5-member SLRB comprises two members from the "business community," two members "with knowledge of labor issues" and a permanent ex officio member, the Maryland Secretary of the Department of Budget and Management (DBM).

The current Secretary of Maryland's DBM is James "Chip" DiPaula, appointed by Governor Robert Ehrlich. In January 2004, Governor Ehrlich appointed Allen Siegel, Esq. to a 6-year term as one of the two statutory labor experienced members. The other labor member position remains vacant. Sherry Lynn Mason, currently with Volvo Corp., is a business community member of the SLRB appointed by former Governor Glendening as one of its original members. Member Mason's term runs to June 30, 2006. Laird Patterson (formerly of Bethlehem Steel) is the other business community member and was recently appointed by Governor Ehrlich on July 1, 2004 to a 6-year term.

The SLRB has been without a Chairman since the departure of its first Chairman, Homer C. La Rue, in April 2003.

MICHIGAN

Flint Professional Firefighters Union Local 352 v City of Flint and 68th District Court; AFSME Council, Locals 1600 and 1799 v City of Flint and 68th District Court; Flint Police Officers Association v City of Flint and 68th District Court
2002 MERC Lab Op 322
Court of Appeals Nos. 244953; 244961 & 244985, issued June 17, 2004

In an unpublished opinion, the Michigan Court of Appeals affirmed in part, reversed in part, and remanded MERC's dismissal of an unfair labor practice charge alleging that the Respondent City of Flint made a unilateral change and mid-term contract modification to the collective bargaining agreement. More specifically, the contract provided that the final average compensation (FAC) for the purpose of computing pension benefits shall be calculated on "the highest annual compensation paid said members by the City of Flint during any period of three years." Respondent's payroll and retirement supervisor usually chose consecutive years used to determine the FAC, but employees were permitted to choose the years themselves. Because there are 52 weeks in a year, this calculation typically involved 26 bi-weekly pay periods. In the early 1990s, several employees began choosing their three final annual compensation years in which the first day and last day of the year were paydays. As a result, their FAC was computed on a basis of 27 bi-weekly pay periods over three non-consecutive years. Between January 1991 to January 2000, 284 of 671 union and non-union employees used dates in which there would be 27 pay periods when calculating their FAC, resulting in an increase of at least 3.7% in each employee's pension benefits. Many of the payroll and retirement supervisors working during this period also used this method in determining pension benefits. When the issue was brought to the attention of the Board of Trustees, Respondent amended its policy to direct the payroll and retirement supervisor to only consider a total of 26 bi-weekly pay periods in calculating the FAC. Petitioners Flint Police Officers Association (FPOA), Flint Professional Firefighters Union Local 352, and AFSCME Council, Locals 1600 and 1799 alleged that

Ruthanne Okun

because the FAC was previously computed on a basis of 27 pays, Respondent unilaterally modified the contract.

MERC found that the term "annual compensation" in the contract unambiguously limited the number of bi-weekly pay periods to 26. MERC also concluded that the calculation of the FAC on a basis of 27 pays did not amount to a past practice that altered the contract because the parties did not knowingly, voluntarily, and mutually agree to this change in the contract. In fact, neither party mentioned the issue at the bargaining table. Therefore, MERC held that the amendment to the retirement policy was a clarification of the contract instead of a unilateral modification.

On appeal, the Court of Appeals agreed with MERC that "annual compensation" by definition includes only 26 bi-weekly pay periods. The Court reasoned that the "27th pay date represents monies received for work done in a different year period." The Court further affirmed MERC's holding that the practice was not "'so widely acknowledged'" as to change the contract in allowing the employees to utilize 27 pay periods during the full three years on which the FAC was to be computed. However, contrary to MERC's decision, the Court found that there was a sufficient past practice established to amend the contract to allow employees to use 27 pay periods for one of the three years in calculating the FAC. To support this conclusion, the Court pointed to the fact the even when a payroll and retirement supervisor chose the year in which the FAC was to be calculated, he or she often chose years in which there were 27 pay dates. Therefore, the Court held that Respondent unilaterally modified the collective bargaining agreement.

Respondent argued that, with regard to Petitioner Flint Police Officers Association, the collective bargaining agreement had expired and the issue had been submitted to arbitration. The arbitration panel found that the FAC should be computed using a 26 bi-weekly pay period. The Court still found that Respondent committed an unfair labor practice by unilaterally modifying the FPOA's contract. The Court stated that when a collective bargaining agreement expires, "all the parties have a duty not to unilaterally change the status quo during negotiations unless the parties have bargained in good faith to the point of impasse." Because Respondent did not negotiate to impasse, the Court reasoned that the arbitration ruling is irrelevant to the present issue. The Court then concluded that FPOA is entitled to recover for Respondent's unfair labor practice because the parties formed a valid contract regarding the number of pay periods to be used in calculating the FAC before the arbitration award. The Court subsequently remanded the case to MERC to effectuate the decision.

This case is currently on appeal to the Michigan Supreme Court.

Buena Vista Schools –and- Buena Vista Education Association, MEA/NEA

MERC Case No. C02 B-050, issued November 18, 2003

Charging Party Buena Vista Education Association, MEA/NEA and Respondent Buena Vista Schools were parties to a collective bargaining agreement covering the 1996-2001 academic years. The provision in the agreement pertaining to health care insurance co-pays provided that the mail order prescriptions would be subject to a "$0 co-pay." Respondent did not obtain a mail order provider during the pendency of the agreement. During the last year of the contract, it began reimbursing employees for co-pays for prescriptions that could have been ordered through a mail order program if one had been in place.

Before the expiration of the 1996 -2001 contract, the parties began negotiating for a collective bargaining agreement for 2001-2006. The parties agreed that the provisions in the 1996 -2001 contract would be carried over into the new contract unless expressly stricken. The parties did not strike the language providing for the $0 co-pay for mail order prescriptions. However, the parties added the following new language regarding health care insurance co-pays: For Blue Cross/Blue Shield insurance (BC/BS), the language provided: "RX at $7 generic/$14 brand name. Mail order RX up to 90-day supply per co-pay." For PPO coverage, the language provided: "RX at $5 generic/$10 brand name. Mail order RX up to 90-day supply per co-pay." After the parties executed a tentative collective bargaining agreement, Respondent continued to provide reimbursement for mail order co-pays for two months into the term of the 2001-2006 agreement. Respondent prepared a final draft of the collective bargaining agreement containing the previously stated language, but without referring to the $0 co-pay. Charging Party refused to sign the agreement because it did not refer to the $0 co-pay for mail order prescription drugs. Subsequently Charging Party filed the instant charge.

The dispute centered on the meaning of the new language provided in the tentative agreement providing

for "mail order RX up to 90-day supply per co-pay." Charging Party maintained that the language clarified that a 90-day supply could be obtained by a mail order with a $0 co-pay. Respondent maintained that the $0 co-pay would only apply if, at some future date, BC/BS would provide a mail-order plan with a $0 co-pay.

The Commission agreed with the ALJ's finding that the parties failed to reach a meeting of the minds regarding the contract language for the mail order provision. The Commission found that the tentative agreement's language was ambiguous, and that both parties had different understandings of the meaning of that language. The Commission held that Respondent could not be required to implement a mail order prescription plan on which there was no actual meeting of the minds.

NEW BRUNSWICK

TOP COURT WON'T HEAR UNION APPEAL FROM CONTROVERSIAL "ESSENTIAL SERVICE" DESIGNATION

Victor Leger

The Supreme Court of Canada has announced that it will not entertain an appeal from a decision that teacher assistants in New Brunswick's public schools who attend to the needs of special students are performing an "essential service" within the meaning of the province's *Public Service Labour Relations Act*, and are therefore prohibited from taking part in a strike. Under s.43.1(1) of the Act, an employer may apply to the New Brunswick Labour and Employment Board for a determination that "the services provided by the bargaining unit [are] essential in the interest of the health, safety or security of the public." In this case, the Board concluded that the duties of some, though not all, teacher assistants related to the health, safety and security of students with special needs.

The Canadian Union of Public Employees sought judicial review, arguing that the Board's decision designating the teacher assistants as "essential" was patently unreasonable. A judge of the New Brunswick Court of Queen's Bench agreed, noting that the inclusion of school support services in an essential services designation was inconsistent with the prevailing case law. According to the judge, "[l]abour boards have repeatedly determined that the services provided through the education system are not essential to the health, safety or security of the public." Furthermore, the judge held, the Board's ruling created an anomaly, since teachers in the province were not designated as "essential," but their assistants were.

The New Brunswick Court of Appeal, allowing an appeal by the government, reinstated the Board's decision. Writing for the Court of Appeal, Judge Margaret Larlee noted that the Board was not bound by its previous decisions, and was free to reassess their applicability in the context of changed circumstances. Furthermore, the Court of Appeal ruled, it was open to the Board to interpret s.43.1(1) as relating primarily to the health, safety or security of special needs students rather than the provision of education services in general. The Court of Appeal held: "The Board preferred to examine the specific services provided by certain members of the bargaining unit, not to globally examine all the services provided in connection with the education system … Section 43.1(1) is subject to an interpretation that would allow for two possible conclusions and the Board had the right to choose the one it preferred."

Since the approach adopted by the Board could be rationally supported by the Act, the Court of Appeal ruled, its decision was not patently unreasonable. The Court of Appeal further held that the judge in the court below had erred by taking into account the issue of whether teachers or other bargaining unit employees were subject to an essential services designation; in the Court of Appeal's view, this was an irrelevant consideration.

— LANCASTER ROUNDUP

TENTATIVE AGREEMENT FOR NEW BRUNSWICK NURSES AVERTS PROVINCE-WIDE STRIKE

A tentative agreement reached between the New Brunswick Nurses Union (NBNU) and the provincial government on September 7 has averted the strike which had been tentatively scheduled for September 13. Details of the agreement are not being released until it is ratified by the 5000 nurses across the province, but the dispute has centred on wage parity with nurses in the

other Atlantic provinces. NBNU had demanded 24.5% over 2.5 years while the provincie had offered 18% over 4 years, plus a wage adjustment to achieve parity by Jan. 1, 2007.

— CIR
Sept 06/04

NEWFOUNDLAND AND LABRADOR

SUPREME COURT DECIDES NEWFOUNDLAND'S BUDGETARY CRISIS OUTWEIGHS PAY EQUITY OBLIGATIONS

On October 28, the Supreme Court of Canada unanimously dismissed an appeal by the Newfoundland and Labrador Association of Public and Private Employees (NAPE) and ruled that Section 9 of the province's *Public Sector Restraint Act of 1991* is constitutional under the *Canadian Charter of Rights and Freedoms*. As a result of the Supreme Court decision, 5,300 health care workers, predominantly women, will not receive approximately $24 million in pay equity adjustments.

The province and its health care workers had bargained a Pay Equity Agreement in 1988, but the Public Sector Restraint Act deferred the promised pay equity increase from 1988 to 1991 and cancelled the arrears for those 3 years. The Supreme Court agreed with the government of Newfoundland that it faced an exceptional and serious fiscal crisis in 1991 and that "the need to address a fiscal crisis ... was a pressing and substantial legislative objective. " The Court also said, however, that "courts will continue to look with strong scepticism at attempts to justify infringements of Charter rights on the basis of budgetary constraints. To do otherwise would devalue the Charter because there are always budgetary constraints and there are always other pressing government priorities."

— CIR
Nov 01/04

NEW JERSEY

Developments in New Jersey

By a 4-3 vote, the New Jersey Supreme Court has refused to apply a presumption of contractual arbitrability in public sector labor relations cases. *Camden Bd. of Ed. v. Alexander*, 2004 N.J. LEXIS 945 (2004). The Court restrained arbitration of grievances asserting that the Board violated a clause requiring just cause for discipline when it did not renew the annual employment contracts of 15 non-tenured custodians who had been accused of excessive absenteeism.

The majority opinion held that the grievances were not contractually arbitrable absent clear language making non-renewal decisions subject to the just cause clause. The majority relied on a statute, *N.J.S.A*. 27-4.1, that sets forth procedures by which a school board determines whether to renew employment contracts. It reasoned that this statute shifted the burden to the union to obtain clear and unequivocal language making non-renewals subject to a just cause clause. The majority specifically rejected reliance on the presumption of arbitrability set forth in the Steelworkers' Trilogy and otherwise followed by New Jersey courts in the contexts of reviewing the merits of awards and reviewing arbitral remedies.

The dissenting opinion presented an extended analysis of why the Steelworkers' trilogy and its presumption of arbitrability should apply and why these grievances were arbitrable under that approach. The grievance procedure permitted arbitration of all contractual disputes and the parties had a dispute over the interpretation and application of the just cause clause; these contractual questions went to the merits rather than the arbitrability of the grievances so arbitration should not have been restrained.

In *Morris Cty.. v. Morris Council No. 6, 371 N.J. Super*. 246 (App. Div. 2004), pet. for certif. pending, the Appellate Division of the Superior Court affirmed orders of the Public Employment Relations Commission requiring the County to provide majority representatives with the home addresses of employees in their negotiations units. The Commission concluded that sound labor relations precedents and policies favored disclosure of home addresses for representational purposes absent a likelihood (not demonstrated in this case) that employees will be harassed or endangered if their majority representative has that information. The Commission and the Court rejected claims that disclosure would violate

the County's asserted constitutional right to regulate access to its personnel records or the employees' right to privacy.

In *Hunterdon Cty. v. CWA*, 369 *N.J. Super*. 572 (App. Div. 2004), pet. for certif. pending, the Appellate Division affirmed a Commission order requiring the County to deduct representation fees from the paychecks of its employees. The Court upheld the constitutionality of a statute, N.J.S.A. 34:13A-5.5, permitting a majority representative to obtain fees even absent a negotiated representation fee provision, provided that over 50% of negotiations unit employees belong to it and it has a valid system for contesting fees. The County had argued that there was no compelling state interest in allowing deductions if the employer itself did not agree to such deductions.

NOVA SCOTIA

NOVA SCOTIA HEALTH CARE WORKERS ENTITLED TO TOP WAGE RATES IN REGION, ARBITRATOR CONCLUDES

An arbitration board has awarded health care workers in Nova Scotia's Capital Health District Authority wage increases to a compounded maximum of 15.96% over three years. The employees, who are represented by the Nova Scotia Government and General Employee's Union, had agreed to waive their right to strike on condition that issues which were not resolved through collective agreement negotiations would be submitted to binding arbitration.

The arbitration board, chaired by William Kaplan, concluded that the Health Authority operated the leading medical facilities in Atlantic Canada, and employees should be compensated accordingly. "This board," Kaplan wrote, "accepts that the claim to [be] first in Atlantic Canada has more than arguable legitimacy, given both the value of the work…and the institution where that work is being performed." Therefore, in addition to "economic" increases of 2.0% in each year in the period 2004-2006, the board awarded annual "catch-up" increases of 2.9% to eligible employees. Eligible employees are those who work in classifications which were not already the highest-paid in Atlantic Canada as of October 31, 2003 (the date on which the previous collective agreement expired), or did not become the highest-paid as a result of any subsequent "catch-up award." Most employees covered by the new collective agreement are expected to receive the maximum increase of 15.96%.

The arbitration board denied the union's request for enhancements to overtime pay and retirement allowances. Employee's sick leave entitlement will remain unchanged. In addition, pursuant to the award, employees with the most seniority will be entitled to a preference in vacation scheduling during peak vacation periods.

— LANCASTER ROUNDUP
Aug 31/04

RETURN TO WORK AT ALIANT TELECOMMUNICATIONS

The 4,300 employees of telecommunications company Aliant began returning to work across the Atlantic provinces on September 20, ending a bitter work stoppage that began on April 23. Seventy-six percent of the members of the Communications, Energy and Paperworkers Union of Canda and the Atlantic Communication & Technical Workers Union voted in favour of the new collective agreement. The new agreement will expire on December 31, 2007.

— CIR
Sept 20/04

CAPE BRETON MINERS WIN BATTLE OVER $40-MILLION PENSION SURPLUS

An arbitrator has ruled that former coal miners in Cape Breton, Nova Scotia are entitled to $40-million in pension surplus funds from plans established for their benefit.

In 1968, the coal mining industry was the principal employer and economic backbone of Cape Breton. Based on estimates that the mines would be economically exhausted within the next 15 years, Parliament enacted the *Cape Breton Development Corporation Act*, which established the Cape Breton Development Corporation ("Devco"), to oversee the reorganization and orderly closure of the mines.

Section 18 of the Act provided that Devco "shall by bylaw provide for the establishment, management and administration of pension arrangements for the benefit of persons and dependants of persons employed by [Devco] in connection with its coal mining and related works and undertakings," as well as for the benefit of employees and dependants of the predecessor mining corporations taken over by Devco.

Based on these obligations, a number of pension plans were created. In 1968, three plans, including a non-contributory plan, were established by a bylaw which stated that, in the event of a plan's termination, "the fund was to be applied by the pension board in an equitable manner and in accordance with the winding up provisions of the *Pension Benefits Standards Act* for the benefit of pensioners and employees." A consolidation of these plans in 1973 had a similar bylaw. No mention of plan funds being paid to Devco was made in subsequent revisions until 1983, when a clause attributing any surplus to Devco was unilaterally added by the corporation.

In 1974, a contributory pension plan came into effect which was intended to top up the non-contributory plan. From its inception, the contributory plan, which was approved by the union, purported to provide that any surplus upon wind-up was to go to Devco.

After Devco closed its mining operations in 2001and paid out its pension obligations, a surplus of approximately $35.1 million (which has since grown to $40 million) remained in the plans. As plan beneficiaries, the mining employees and their dependants claimed entitlement to the surplus. Devco claimed that a proper trust had never been created, or in the alternative, that the 1974 trust agreement, developed at the same time as the contributory plan, revoked the terms of the earlier trust and provided that any surplus would be paid to Devco. The parties agreed to submit the matter to binding arbitration.

Arbitrator Peter Cory awarded the surplus to the employees, ruling that, given the provisions of the Act creating Devco, the emergency situation which led to its passage, and the actions of the corporation in paying pension funds pursuant to plan bylaws, a trust had been created, with a fiduciary duty on the part of Devco to use the funds of that trust solely for the benefit of employees.

Interpreting the bylaws of the 1968 and 1973 non-contributory plans as providing that "the trust is to benefit the employees exclusively," and noting that "[t]here was never any statutory provision which indicated that Devco was to benefit from the trust fund," Cory held that "Devco had no authority to use the trust funds in any way other than for the benefit of the employees." Accordingly, the arbitrator ruled that the bylaws regarding distribution of the non-contributory plan funds to employees and their dependants upon wind-up could not be revoked or amended to divert any surplus in the fund to Devco, and the surplus in that plan belonged to the employees.

Similarly, with respect to the contributory plan, Cory held that, because "the empowering statute imposes a fiduciary duty upon Devco to establish the pension funds for the benefit of employees," the stipulation that Devco was to receive any surplus from that plan could not stand. "Devco must act in good faith and it cannot and should not exercise its powers so as to personally gain from the relationship," the arbitrator concluded.

— LANCASTER ROUNDUP
Nov 10/04

OREGON

James Kasemeyer was appointed by the Governor to fill the ERB public member position recently vacated by Luella Nelson. "Kase" is a well respected Oregon labor attorney who left practice a couple of years ago to begin an arbitration practice. He has been serving as an adjunct ALJ for ERB since February, 2004.

ONTARIO

NEW LAW WOULD FOSTER FAIR AND BALANCED LABOUR RELATIONS

TORONTO—The Ontario government introduced legislation that would ensure fairness and choice in Ontario's workplaces, Labour Miniter Chris Bentley announced Wednesday, Oct. 3rd.

"Since 1990, Ontario's labour laws have swung unfairly in favour of one side or the other," said Bentley. "We intend to restore balance, giving all Ontarians equal confidence in our laws. This would promote the har-

mony and stability in the workplace that are vital for a prosperous and productive economy."

If passed, the Labour Relations Statute Law Amendment Act, 2004, would:

- Eliminate measures that promote an unhealthy working relationship among employers and employees in Ontario. For example, employers would no longer be required to post de-certification information in all unionzed workplaces, and unions would not have to disclose the name, salary and benefits of all directors, officers and employees earning $100,000 or more a year.
- Restore to the Ontario Labour Relations Board (OLRB) the power to remedy the worst labour relations conduct by either side during an organizing drive. For example, the OLRB would be able – as a last resort – to grant union certification when an employer violates labour laws, or dismiss a certification application when a union violates the law.
- Re-establish a card-based certification system for the construction sector in addition to the existing vote system. Currently, a vote must always be held before a union can be certified. The card-based system would permit automatic union certification if more than 55 per cent of employees sign cards to join a union.
- Prevent consecutive strikes from paralyzing the homebuilding industry, as happened in 1998. The act would make permanent the special bargaining and dispute resolution regime for residential construction in the Toronto area in place since 2001.

ONTARIO JUDGE EXTENDS INSOLVENCY PROTECTION FOR STELCO

On Friday September 24th, a judge of the Ontario Superior Court of Justice granted a request by insolvent steelmaker Stelco to extend the period of its protection under the *Companies' Creditors Arrangement Act*, which was due to expire on September 30. In approving an extension until November 26, Judge James Farley rejected arguments by the United Steelworkers of America that the company was "suffering from an embarrassment of riches" and that the court order granting protection from creditors should be lifted, even though the restructuring process has not yet been completed. The union, which has accused Stelco of using its sheltered status under the Act to obtain concessions in the area of pensions and retiree benefits, pointed to evidence that the company made a profit of $42 million in the second quarter of this year as a result of record-high steel prices. "They're coming to us and saying, 'You have to help us with the monetary shortfall,' " said Bill Ferguson, president of USWA Local 8782, which represents 1,000 employees at the company's Lake Erie operations. "Well, we don't see any monetary shortfall."

Stelco countered that, unless an extension was granted, it would become subject to debt repayments in the amount of $550 million and accounts payable totaling $125 million – obligations which the company says it is not able to meet. According to Courtney Pratt, Stelco's CEO, "a number of creditors and people who have loaned us money and trade suppliers will be asking for payment, and we don't have the money to pay." The company indicated that, while its second-quarter profit was encouraging, the improved results were temporary, and did not eliminate the need to address high operating costs.

In his ruling, Judge Farley responded to the union's assertions with skepticism. "As to the concerns of the USWA that labour law is being replaced by insolvency law, while I do not question that this is a sincere belief and concern, it would be helpful for it to truly review and question whether this perception is correct."

— LANCASTER ROUNDUP

STELCO, UNION SPEED UP NEGOTATIONS IN EFFORT TO RETAIN MAJOR CUSTOMERS

Stelco's larges customer, General Motors, will have the right to buy steel from other suppliers in the first quarter of 2005, according to an agreement between the parties approved last week by the Ontario Superior Court of Justice. This agreement also provides that, unless the insolvent steelmaker reaches a collective agreement with the union representing 1,000 employees at its Lake Erie Works by November 19, and secures adequate financing by that date, General Motors will be entitled to purchase steel from other companies for the remainder of 2005 as well.

General Motors, which buys approximately 10% of Stelco's annual output of 4.1 million tons, had initially intended to apply to the Court for permission to terminate its supply contract altogether, following the issuance of a 90-day strike notice by the United Steelworkers of America. (Pursuant to the *Companies' Creditors Arrangement Act*, requests to cancel supply contracts with companies under insolvency protection must be approved by a judge.) In an affidavit filed with the Court, General Motors warned that disruptions in steel shipments resulting from a strike at the Lake Erie Works would lead to a temporary shutdown of production at vehicle assembly plants in Oshawa and elsewhere, causing a loss of "tens of millions of dollars per day," as well as thousands of layoffs. Most of the steel which the automaker's parts suppliers obtain from Stelco is produced at the Lake Erie Works, located in Nanticoke, Ontario.

However, General Motors withdrew the application upon receiving assurances from Stelco and the union that a collective agreement will be concluded within weeks. "I can optimistically say that these talks are going to have a very fruitful outcome," said Bill Ferguson, president of USWA Local 8782. Daimlyer-Chrysler – Stelco's second biggest customer – had also threatened to find alternative suppliers in the event of a strike, in order to avert the possibility of disruptions at its assembly operations in Windsor and Brampton.

In addition to approving the agreement regarding supply arrangements for General Motors, Judge James Farley endorsed proposals by Stelco to sell several divisions which it no longer considers part of its "core business," and to attract new capital. Stelco has indicated that it wants to raise between $360 million and $465 million over the next two years in order to expand the Lake Erie Works and modernize the company's Hilton Works in Hamilton

— LANCASTER ROUNDUP

ONTARIO TO END MANDATORY RETIREMENT

On August 18, Ontario Labour Minister Chris Bentley released a consultation paper as a first step towards ending mandatory retirement at age 65. Currently, the protections of the *Ontario Human Rights Code* prohibit discrimination based on age for those between 18 and 65 years of age, which has allowed work policies and collective agreements to stipulate a mandatory retirement date. The Ontario Human Rights Commission recommended changes to the *Code* in 2001.

Public consultation meetings and written submissions are called for throughout September. At issue is how to give workers the right to choose when to retire without undermining early retirement rights or existing benefit and pension entitlements. The government will also consider the impact on skills shortages, especially in certain occupational groups such as nursing, teaching and skilled trades.

IMPROVEMENT TO ONTARIO GOVERNMENT WEBSITE

The Ontario Labour Relations Board launched an updated website in October, providing a much clearer interface and more online information *Recent Decisions of Interest* are highlighted and full-text of those decisions is available. OLRB Decision since Jan. 2000 are available at the Canadian Legal Informatioin Institute website at http://www.canlii.org/on/cas/onlrb/.

— CIR
Oct 25/04

Peter Gallus, Anna Barrett

ONTARIO'S HEALTH PREMIUM IS AN INDIVIDUAL RESPONSIBILITY ACCORDING TO NEW ARBITRATION DECISIONS

Contrary to the mid-October decision in the Lapointe Fisher Nursing Home grievance, in which Arbitrator Barrett found that the employer was responsible for Ontario's new health premium, two decisions reported the week of October 25th found that the individual

must pay. Arbitrator Owen Shime ruled that Ontario's community colleges are not required to pay for the new health tax on behalf of their teachers because the new levy is a tax, not a premium. The collective agreement between the colleges and the Ontario Public Service Employees Union stated that "if the government at any time in the future reverts to an individually paid premium for health insurance, the parties agree the colleges will resume paying 100 per cent of the billed premium for employees." Arbitrator Martin Teplitsky, ruling on a grievance between Jazz Air and the Air Line Pilots Association, provided 3 reasons for ruling for the employer. He found that the premium could not have been contemplated when the collective agreement was negotiated and that such an increase "cannot usually be achieved in a 'rights' arbitration"; the "tax" fluctuates with income and the collective agreement does not provide any mechanism for disclosing pilot's income to the employer; and finally, "benefits are always specifically bargained and identified." The Ontario Health Premium (OHIP) became effective July 11, 2004, is a fixed, lump sum amount, graduated according to individual income to a maxium of approximately $900 a year.

— CIR

SOLIDARITY FOREVER AND EVER, AMEN

A group of United Church clergy in Ontario and British Columbia, have taken the first steps toward unionizing the 4,000 pastors in Canada's largest Protestant denomination.

Citing psychological and physical abuse, bad working conditions, sweatshop wages and a corporate church that responds to their problems inadequately, a group of 30 clergy in Ontario and a similar number on the West Coast have invited unions to step in and organize the church.

Physical abuse has become a problem for the clergy. "People are sometimes angry at God, or religion or at life, and a clergy person represents all that", said one of the leaders of the unionization movement.

In Ontario, the clergy approached the Canadian Auto Workers and were greeted with open arms. Mike Shields' the CAW's national director of organizing said: "I didn't have any hesitation when it was brought to my attention. They're were we're at on social justice issues."

The issue does not appear to upset the church which is aware of the move to organize the clergy. The United Church national secretary, Rev. Jim Sinclair said, "our relationship with the union movement is not something that has been a negative one, and I don't see why it couldn't be a positive one, if in fact this moved further along."

— Michael Valpy
The Globe and Mail

QUEBEC

WAL-MART BAN ON UNION ORGANIZING CONTRARY TO QUEBEC LABOUR CODE, COMMISSION RULES - INTERIM INJUNCTION GRANTED

The Quebec Labour Relations Commission has issued an interim order directing retail giant Wal-Mart to stop interfering in a union organizing campaign at its store in Brossard, a Montreal suburb. The Commission granted the order in response to a complaint by the United Food and Commercial Workers' Union, which has applied for certification as the bargaining agent of employees in the Brossard outlet.

In its complaint, the union alleged that three workers had been disciplined for violating a management directive to refrain from soliciting union support "in the workplace or at home." One of the workers, who received a written warning, subsequently quit her organizing efforts. The other two, the UFCW asserted, received verbal warnings, prompting one to deny any involvement with the certification drive and the other to cease all organizing activities. Wal-Mart's intimidation tactics, the union charged, made it impossible to persuade a majority of workers to sign union membership cards. As a result, the union brought an application under s.118(3) of the *Quebec Labour Code*, which empowers the Commission to make an interim order where this is necessary to "to safeguard the rights of the parties."

Upholding the complaint, Labour Commissioner Michel Denis ruled that Wal-Mart's prohibition against organizing activities breached s.12 of the *Labour Code*. That provision states as follows: "No employer, or person acting for an employer or an association of employers, shall in any manner seek to dominate, hinder or finance the formation or the activities of any association of

employees, or to participate therein." Although s.5 of the *Code* prohibits employees from soliciting union support "during working hours," Denis noted, "[s]olicitation at the workplace … is not, in itself, prohibited by the *Labour Code*." The Commissioner concluded that the union's application for a s.118 order was well-founded, reasoning: "[B]y applying this directive and by threatening employees who transgress it with disciplinary sanctions, [Wal-Mart] seeks, apparently, to obstruct the activities of the applicant union." In the result, Denis ordered that Wal-Mart "cease and desist" from enforcing its directive. This order will remain in effect until the UFCW's certification application is heard on October 25, 2004.

Last month, the Commission rejected Wal-Mart's challenge to a previous order certifying the UFCW at the company's store in Jonquière, Quebec.

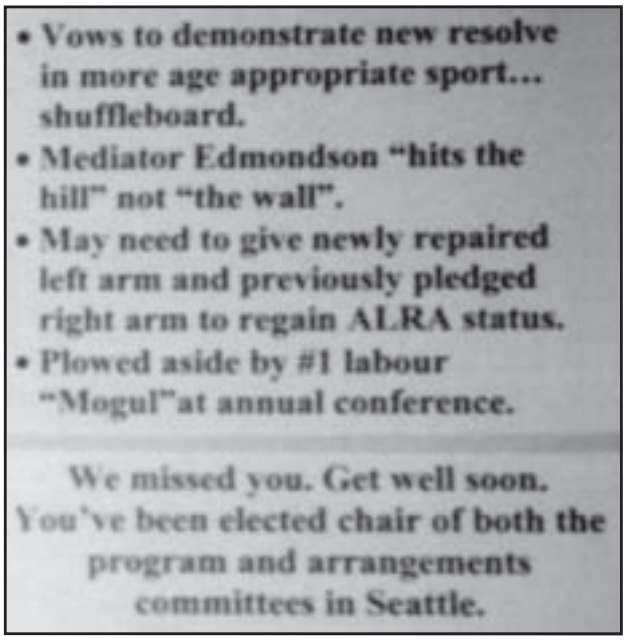
— LANCASTER ROUNDUP
Oct 4/04

UPDATE ON THE UFCW WAL-MART CAMPAIGN

The election of the executives at the United Food and Commercial Workers Union Local 503 in Jonquiere, Quebec, will be supervised by the national union following unspecified complaints, according to a Globe and Mail article. Local 503 met with Wal-Mart representatives last week to begin negotiating a first collective agreement; bargaining sessions are scheduled for November 29, 30, and December 1 and 2. Certification of the Jonquiere store was upheld by the Quebec Labour Relations Board on September 10, 2004, but Wal-Mart has since stated that the store is unprofitable. Employees at 2 other Quebec stores have also applied for certification and in British Columbia, UFCW Local 1518 has applied for certification at 7 Wal-Mart auto service locations in Terrace, Dawson Creek, Fort St. John, Quesnel, Kamploops, Langford and Surrey.

— CIR
Nov 01/04

E-Board member Warren Edmondson, shown in a picture taken at the Winter E-Board meeting in Washington D.C., was not able to attend the Halifax Conference. Instead, he had surgery to repair nerve and tendon damage on his left shoulder which he injured while skiing. His "friends" made up the card and many of the Halifax delegates offered Warren free advice. The surgery was successful, and Warren continues with physical therapy while the transplanted nerve re-generates in the shoulder. He may be ready for opening game with the former Expos.



Hell Freezes Over

I am 53 years old and for 53 years my team and I have been losers. Today – October 28, 2004 – the sparks in Hell have been snuffed out by icicles. For Red Sox Nation, our cry is now: "Wait 'til this Year." It is a sweet feeling, made doubly sweet by my being at Yankee Stadium for game seven of the titanic struggle between the Red Sox and the Yankee Pig Dogs. If only we can find a way to practice cryogenics on years as well as bodies.

Over my many years working at the New Jersey PERC and participating in ALRA affairs, I have taken much abuse as the Red Sox have fumbled the ball time and again. Rick Curreri and Bob Hackel, in particular, have piled on with glee. But it turns out that they have been more gracious in defeat than vengeful in victory. Rick sent me roses (don't tell his wife) and Bob has given me a T-shirt proclaiming that the Curse is Dead.

I ardently believe in reconciliation in labor relations and all walks of life. The graciousness of Bob and Rick despite the most bitter of baseball rivalries and the worst of defeats inspires hope for, among other things, world peace. But another explanation of their generosity may be possible: perhaps they are being so kind as a way of tormenting me about my previous lack of graciousness and making me retroactively forfeit my claim to moral superiority. As a Red Sox fan and thus an inheritor of the Calvinist tradition, I am presumptively and perhaps eternally guilty. Perhaps they are maliciously showing that Yankees fans are better people than Red Sox fans. Such a low, but effective blow!

In any event, ALRA is a great nation where even our occasionally warring tribes find ways towards reconciliation and shared affection. I am grateful for this day in baseball history and for these most recent examples of ALRA collegiality.

Rick Curreri

Bob Hackel

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