ALRA advisor....

Association Of
Labour Relations Agencies

6G

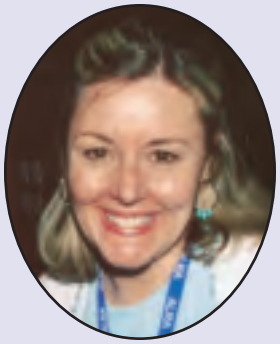
NOVEMBER 2005

ALRA ACADEMY 2006

Pilar Vaile, New Mexico PELRB

I was extremely impressed with the caliber of speakers. Overall I would rate this conference as one of the best I have attended. I am looking forward to the next conference in July 2006.

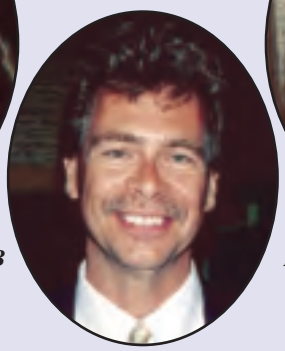
— Martin V. Dominguez



Debbie Tiehen, Oklahoma

Cynthia Spahl, Massachusetts LRC

Cheryl Hipp, Homeland Security LRB



Steve Hoffmeyer, Minnesota

Sharon Purcell, Illinois Education LRB

Jennifer Niemiec, Illinois LRB

Martin Dominguez, New Mexico PELRB

Juan Montoya, New Mexico PELRB

Dario De La Rosa, Washington PERC

Pam Bradburn, Washington PERC

Paula Alberts, Phoenix LRB

I found the ALRA Academy to be an excellent primer on the various issues typically or frequently raised in representation petitions and prohibited practice complaints. I particularly appreciated the experience, expertise and insight of the instructors.

— Pilar Vaile, Deputy Director
NM Public Employee Labor Relations Board

Missing

Duff Westbrook, New Mexico PELRB

As a new director for the Oklahoma PERB, I found the Academy to be a wealth of information presented in an informal, comfortable setting that was conducive to discussion and concerns of labor issues. Of course, staring out an open window at the sailboats gliding through the picturesque Puget Sound while sipping endless cups of Starbucks Coffee made the Academy experience most enjoyable!

— Debbie Tiehen, Oklahoma PERB

President's Column

Jaye Bailey

Jaye Bailey

Greetings from Connecticut. It is hard to believe that 4 months have passed since the outstanding Seattle conference and that we are well into another year of planning. Our time in Seattle was truly memorable. The program, accommodations and events were outstanding and we have our Washington hosts to thank for that experience. Seattle will always be memorable, as well, for the introduction of a new game called "Who Is the ALRA President Today?" For those of you able to attend, you may remember that, for a variety of reasons, we had several different people presiding over the meetings. As I look back on that conference, I am again reminded of the strength of this organization and the commitment of its members and of its value to each of us both professionally and personally. Thank you again to everyone for that great experience in Seattle.

In 2006 we will head to Baltimore. The Executive Board and committees met at the conference site in October. The Renaissance HarborPlace Hotel is a great conference venue. Located on the Inner Harbor, it offers excellent meeting space, plenty to see and do in the area and a terrific staff to accommodate our needs. That weekend produced lots of plans for the 2006 conference including many great program sessions, training opportunities and fun activities. This year the Program Committee is chaired by Abby Simms (NLRB) and Arnie Powers (FMCS - Canada); Mary Johnson (NMB and ALRA Executive Board Member) has taken on the task of chairing the Arrangements Committee; and the Professional Development Committee, headed by Les Heltzer (NLRB and ALRA Vice President, Professional Development) will develop the conference training sessions. Many, many thanks to each of these folks and to the members of their committees for all the effort. The details of the conference plans to date are discussed in other articles in this edition of the Advisor and I encourage you all to review the plans, offer any suggestions and start planning for Baltimore!

As we make our way through another year and try to anticipate and address the needs of our members, we are working on a number of projects. The Neutrality Project continues to be a key focus in our efforts. The feedback from the delegates in Seattle was terrific. The Neutrality Project Committee continues to work on incorporating the comments, revising the work to date and forging ahead with new chapters. The response to this project has been overwhelming. As we try to do our jobs every day, we are all reminded of the vital importance of our neutrality and of the need to pass on our experiences and knowledge to incoming participants in our field. Toward that end, the Project Committee has taken on an arduous task and I would like to take this opportunity to thank John Higgins, as Chair and the members of that committee for their dedication. As a special note, I would like to thank Professor Marty Malin of the Chicago-Kent School of Law for his continuing dedication as Reporter for the project. Marty's focus, hard work, keen insights and good humor are all offered to ALRA on a volunteer basis and are vital elements in this project's success. We will keep you updated as this project goes forward.

We are, as always, continuing to revise, update and expand the ALRA website. The website is invaluable as a tool for passing on organization information, reaching out to members in-between conferences and offering information on resources for our members. Please continue to give me your suggestions for and comments on the website. And again, many thanks to Tom Worley (Ohio SERB) and Dan Rainey (NMB) for heading up our Technology Committee.

Again in 2006 ALRA will offer the experience of ALRA Academy to new and new-ish Board members, commissioners and top-level agency staff. The Academy has

Dan & Jaye

long been a highlight of ALRA's resources to member agencies and I encourage you to learn more about the Academy, promote attendance within your agency and contact Jackie Zimmerman (Illinois LRB) or Les Heltzer (NLRB) with any questions.

As you may remember, we hosted several guests from other nations at our Seattle conference. We continue to receive inquiries from interested practitioners around the world and anticipate we may again have visitors in Baltimore. Without exception, our 2005 guests found the organization and the conference to be outstanding and send many thanks for the hospitality and learning opportunities.

I am so pleased and honored to be the ALRA President this year. I have made many friends in this organization over the years and continue to learn from each of the people I meet through ALRA. I believe the heart of the organization is found in the dedication of the individuals who participate on the committees and projects. I encourage anyone who is interested in any ALRA activity to contact me and get involved. On behalf of the Executive Board, thank you to each person who dedicates their time, attention and expertise toward producing an outstanding conference each year.

I look forward to speaking with many of you in the coming months and of course, to seeing everyone in Baltimore next July.

PROGRAM COMMITTEE REPORT

On October 15, 2005, the Program Committee met in Baltimore, MD, at the site of the 2006 ALRA Annual Conference. The following Program Committee members were able to attend: Abby Simms (NLRB), Arnie Powers (FMCS-Canada), Carol Nolan Drake (Ohio SERB), Tim Noonan (Vermont Labor Board), Mike Cuevas (NY PERB), Josee Dubois (Public Service Staffing Tribunal-Canada), Reg Pearson (Ontario Ministry of Labour), Karl Pence (MD Higher Education Board-retired), Phillip Hanley (Phoenix Employment Relations Board) and Eileen Hoffman (FMCS-US). The complete list of Program Committee members can be found on the ALRA website.

The committee members in attendance had a very successful brainstorming session to plan the program for the Annual Conference in July. While subject to change, our current schedule includes: on Sunday, July 23, a brunch speaker who will address a labor history topic, possibly Baltimore-based, the neutrality committee report, and our traditional roundtables with specific topics and facilitators. On Monday July 24, Advocates' Day, the program includes a keynote speaker who will focus on an overview of the changing workplace, and sessions highlighting the changing roles of employers, unions and the neutral. We also will have a luncheon speaker on a related subject. On Tuesday morning there will be roundtables on the neutrality project and a session on how generational differences impact today's workplace.

An additional Programming Committee planning meeting will be scheduled for late February or early March, tentatively in Chicago. The Committee members will be notified when arrangements for the meeting are finalized. In the interim, Arnie and I welcome suggestions from program committee members and all ALRA delegates. Please contact us: Arnie Powers at arnold.powers@hrsdc-rhdcc.gc.ca (416-954-2873) orAbby abby.simms@nlrb.gov (202-273-2934). We look forward to hearing from you.

Arnie Powers

Abby Simms

PROFESSIONAL DEVELOPMENT COMMITTEE

The Professional Development Committee met October 15th at the Renaissance Harborplace Hotel in Baltimore, MD, the site of the 2006 ALRA Annual Conference. The following PD Committee members were able to attend: Les Heltzer (NLRB), Liz MacPherson (FMCS-Canada), Sue Bauman (Wisconsin ERC), Jim Breckenridge (Ontario Ministry of Labour), Kate Dowling (NMB), Ed Fitzmaurice (NMB), John Mather (Ontario Ministry of Labour), Sarah Miller (Connecticut State Board of Labor Relations), Marilyn Sayan (Washington State PERC), Akivah Starkman (Canada Industrial Relations Board) and Jackie Zimmerman (Illinois Labor Relations Board. The complete list of PD Committee members can be found on the ALRA website.

Les Heltzer

Sue Bauman

John Mather

The planning meeting was very productive and substantial progress was made in shaping the PD sessions for the Annual Conference in July. Two plenary PD sessions are scheduled for Wednesday, July 26. The ever-popular *Mr. and Ms. Wizard*, an entertaining, informative and highly participatory session on Ethics for mediators, arbitrators and adjudicators, is scheduled for Wednesday morning. *Beyond Collision: High Integrity Labour Relations*, an interactive presentation by Industrial Relations professor, Dr. Allen Ponak of the University of Calgary, is scheduled for the early afternoon. The presentation will include a documentary film and written case studies highlighting different organizations in which management and the union have created relationships that are productive for the company, the union, and the employees. The concurrent sessions scheduled later in the afternoon will be *Streamlining the Hearing Process* and *The Role of the Agency in Reducing the Trauma of Mergers, Acquisitions and Other Major Corporate Changes.*

An additional PD Committee planning meeting will be scheduled for in February or early March, tentatively in Chicago. The Committee members will be notified when arrangements for the meeting are firmed up. Until then, suggestions from PD-ers and all ALRA delegates, past or present, for participants in the concurrent sessions are welcome. Please e-mail any suggestions to Les Heltzer at lester.heltzer@nlrb.gov or Liz MacPherson at elizabeth.macpherson@hrsdc-rhdcc.gc.ca.

Puget Sound

NEUTRALITY COMMITTEE

Making Progress

The ALRA Neutrality Committee reported on its work at the 2005 Annual Meeting in Seattle. The Neutrality Project's goal is to produce a volume that will serve the needs of agencies, parties, policymakers and the public. The Committee presented a redraft of Chapter 1, Foundations of Neutrality, which took into account comments from the membership at the 2004 Annual Meeting in Halifax. The Committee also presented a draft Preface and a draft of Chapter 2, Independence. The Preface was drafted in response to comments at the Halifax meeting suggesting its need.

The Seattle Annual Meeting produced very constructive discussion and very valuable comments on the draft preface and chapters. Among the points made were the need to recognize that role of agencies created by means other than statutes and the need to adjust the tone of the document so as not to sound too arrogant. Concern was also voiced for greater dissemination of Committee drafts before the annual meeting and for a rough table of contents that will enable the membership to see where the committee plans to go with the project. Several delegates voiced the desire to have as much of the document available for them to cite and rely on in their dealings at their agencies.

The Committee met on October 15, 2005, in connection with the ALRA Board meeting in Baltimore. The Committee further refined the existing drafts in light of the comments received at the Seattle Annual Meeting. The redraft expressly covers agencies created by means other than statute and tones down the language. The Committee also discussed ways to improve the communication of drafts to the membership as a whole in advance of the annual meetings.

The Committee decided that the next chapter should be devoted to Conflicts and the Appearance of Conflicts of Interest. This chapter will include the subject of recusal but will be broader than that. Any member having suggestions for material for this chapter should communicate those suggestions to Committee Reporter Martin Malin at mmalin@kentlaw.edu.

John Higgins, Bob Anderson, Marty Malin

INTERNATIONAL

Michael Gay,
Australia

Raymond McGee,
Ireland

John Taylor,
U.K.

Geoff Giudice,
Australia

Ken Bacon,
Australia

Left to right: Kao Thach, Sin Kimsean, Michael Lerner, Men Nimmith
Cambodia (except Michael Lerner)

Mo Ally,
South Africa

PRESENTERS

Susan McCloskey,
Decision Writing & Editing

Wilma B. Liebman,
NLRB

Ron Sims,
King County Executive

Larry Gibbons, Karyl Elinski, Chuck Foster, Ken Latsch

Stephanie Slogett-O'Dell, Steven Sleight, David Alfred

ASSOCIATION OF LABOUR RELATIONS AGENCIES

Jaye Bailey,
President

Warren Edmondson,
President Elect

Reg Pearson,
Past President

Robert A. Hackel,
Vice-President – Administration

Jack Toner,
Vice-President – Finance

Les Heltzer,
Vice-President – Professional Development

EXECUTIVE BOARD MEMBERS

Michael Cuevas

Carol Nolan Drake

Phil E. Hanley

Mary Johnson

Liz MacPherson

Marilyn Glenn Sayan

FEDERAL

CANADA

WILLIAM P. KELLY

The founder of the Canadian FMCS, William P. "Bill" Kelly, passed away on Friday, September 16, 2005 at the age of 81. Bill was born in Toronto in 1924 into a railway family. After serving as a pilot in the Royal Canadian Air Force during the Second World War, he joined the Canadian Pacific Railway, where he worked as a brakeman and conductor before moving on to positions within the Brotherhood of Railway Trainmen (later the United Transportation Union). He was recruited into the federal public service after he led a nation-wide railway strike and so impressed the Labour Minister of the day that the latter determined it would be in his own best interest to recruit Bill into the mediation service (which was then known as the "Conciliation and Arbitration" branch of the Department of Labour. Bill rose rapidly through the ranks and resolved numerous high profile labour disputes over the course of his twenty-three year career with the department. His skills were recognized on many occasions and he was awarded the Order of Canada by the Governor General in 1984. He retired in 1989 from the position of Associate Deputy Minister of Labour. On September 15, 2005, at a ceremony that Bill was too ill to attend, the federal Minister of Labour announced the creation of the W.P. Kelly Award, which will be presented biennially to a mediator who embodies the qualities that Mr. Kelly demonstrated during his career as "Canada's chief mediator".

I believe we are witnessing today an increased dramatization, often ill-founded, by the media and others about the impact of a given work stoppage. There is a growing inclination on the part of politicians to respond too readily to public pressure and rhetoric, and this results in an erosion of the willingness on the part of the bargaining partners to fulfill their fundamental responsibility to reach a settlement.

. . . . .

Legislative intervention in the collective bargaining process creates a disrespect for the process itself. The labour-management negotiators, if they sense legislation in the offing usually freeze up and make no effort to come up with the compromises required to settle the dispute. Tough decisions have to be made in collective bargaining both by Unions and Management. If, either one, or both parties know the government is about to get them "off the hook", they are relieved from making the tough decisions.

— Bill Kelly
ALRA '89, Toronto
Advocates' Day Lunch

THE CANADA INDUSTRIAL RELATIONS BOARD

New Appointments to the Canada Industrial Relations Board – The Honourable Joe Fontana, Minister of Labour and Housing, appointed for a term of three years:

Ms. Maureen Flynn, as part-time
Vice-Chairperson
(term ending in June 2008)

Mr. Stan Lanyon, as part-time
Vice-Chairperson
(term ending in June 2008)

Mr. Andrew C.L. Sims, as part-time
Vice-Chairperson
(term ending in September 2008)

This marks the first time that part-time Vice-Chairpersons have been appointed to the CIRB.

Client Consultation Committee Update – The CIRB Client Consultation Committee has recently submitted its views and recommendations to the Chairperson on issues pertaining to the process for appointment to the Board. The Committee continues to meet regularly to discuss ways in which the CIRB can best meet the needs of its clients.

New Expedited Certification Process – Following consultations with major client groups and stakeholders, the CIRB established a committee in 2004-05 to review its case processing practices with respect to certification applications. A new process aiming to significantly

reduce the processing time was implemented on April 1, 2005. A first assessment of the process at the beginning of September revealed encouraging results, with significant reductions in the overall time for addressing certification applications.

Duty of Fair Representation (DFR) Complaints – Close to 20% of the Board's matters are related to this type of case. A DFR Process Review Committee headed by Vice-Chairperson Michele Pineau is currently looking at various best practices used by provincial labour tribunals as well as other measures that could simplify and greatly shorten their disposition. Final recommendations are expected soon.

In keeping with its intention to simplify the disposition of DFR complaints, the Board, in addressing two "section 37" complaints, issued a decision (*Virginia McRaeJackson et al.*, [2004] CIRB no. 290) that would serve as a reference for the labour relations community in dealing with future duty of fair representation complaints.

In that decision, the Board set out a comprehensive review of the Board's jurisprudence regarding DFR complaints. The decision clarifies the duty of fair representation, the duties and responsibilities of the complainants and unions under the *Code*, the role of the employer in section 37 complaints, the role of the Board in considering complaints of a breach of the duty of fair representation, the available remedies, as well as the issue of the right to a hearing.

Key Decision – In a decision involving Transport Besner Inc., the Board unanimously dismissed two applications for reconsideration of its decision in *Transport Besner Inc. et autres* (2004), as yet unreported CIRB decision no. 303, in which the original panel determined, following a restructuring of the bargaining units, that a single unit was appropriate for bargaining and ordered a representation vote pursuant to section 29(1) of the *Canada Labour Code*. The reconsideration panel upheld the decision of the original panel, which found that a partial transfer of activities from Transport Besner to Besner Atlantic and Besner Central, along with Besner Network, occurred pursuant to section 44 of the *Code* in the fall of 2002, prior to Transport Besner closing its doors on December 23, 2002, and determined that the 98 drivers laid off that day were entitled to participate in the representation vote.

CBC AND MEDIA GUILD REACH TENTATIVE AGREEMENT

Negotiators are working on a return-to-work protocol after a tentative agreement was reached between the CBC and the Canadian Media Guild on October 3rd. Approximately 5,500 employees have been locked out since August 15, 2005; federal mediators had been involved since August 31, and with public pressure for a settlement mounting, the Minister of Labour had met with the two parties on September 26 and called for immediate resolution of the dispute.

The main sticking point in negotiations was over the use of contract workers, and on this issue, the Canadian Media Guild claims victory. According to the CMG website, the tentative agreement limits the number of employees on contract to 9.5% of permanent staff, and entitles people who have been on contract for four years to convert to permanent status. After 18 months in the same location and media line (radio, TV or internet), temporary employees with a break of one week or less in service will convert to permanent status.

Wages will increase by 12.6% over the life of the contract to March 31, 2009, with full retroactivity for all employees on the payroll prior to the lockout, including contract and temporary employees.

PILOTS' ARBITRATION

A dispute between Air Canada and its pilots that had threatened the airline's multi-million dollar purchase of new Boeing 777 and 787 jets has been resolved by arbitration.

The dispute arose in June, when the pilots did not ratify a tentative agreement, concerning the terms under which the new aircraft — 777's and 787's — which Air Canada's business plan mandated, would be operated by the pilot group.

At arbitration, management took the position that the award should mirror the terms of the tentative settlement, or in the alternative, reflect reduced rates "because oil prices have risen and because recent developments in the USA with Delta and Northwest suggest their pilots pay will be reduced and Air Canada's competitive position will worsen."

The Air Canada Pilots' Association argued that the failed agreement should not be the "basis of any award

because of changed circumstances since the tentative agreement was made"

In making his decision, Arbitrator Martin Teplitsky wrote:

> The middle ground between my view at that time that unratified settlement is irrelevant and the opposite view that an unratified settlement must be enforced is that the unratified settlements should, in the absence of compelling reasons, form the basis of a subsequent award. This middle ground, which admits of a more nuanced discretionary approach to non-ratified tentative agreements, appeals to me as the best approach. It is the approach which most arbitrators follow today.
>
> . . . . .
>
> Moreover, using the non-ratified agreement as the starting point emulates what happens in free collective bargaining. It is generally agreed that replication of free collective bargaining is the goal of interest arbitration. Finally, it is not likely that an interest arbitrator will fashion a better solution that the parties themselves have, particularly in matters of this kind, which are complicated and require considerable expertise.

Following the announcement of the award, an Air Canada spokesperson said," With the successful resolution of this matter, we can now re-engage Boeing to conclude an agreement on the acquisition of new wide –body aircraft. The mid-sized, fuel-efficient planes are the key to Air Canada's plans to keep costs down and remain competitive."

— Teplitsky Award, 27-Oct-05
Toronto Star, 02-Nov-05

NEW EXECUTIVE DIRECTOR

The new Public Service Staffing Tribunal will officially open its doors on December of this year, when the new *Public Service Employment Act* (PSEA) comes into force. The Executive Director will be Josée Dubois. Adopted in November 2003 as part of the *Public Service Modernization Act* (PSMA), the new PSEA is designed to facilitate the hiring of the right people in the right jobs at the right time by providing departments and agencies with the flexibility they need while preserving core public service values such as fairness, transparency and access.

The new PSEA brings about three key changes which are expected to result in a more efficient and responsive staffing system. First, although the responsibility for the overall integrity of the system remains with the Public Service Commission (PSC) under the Act, the new legislation calls for the PSC to delegate its appointment authority to deputy heads in government departments and agencies. Deputy heads will be expected to exercise this authority by designing staffing programs within the PSC Appointment Framework that meet the needs of their organizations.

Secondly, the concept of merit is defined in the legislation for the first time. The existing definition of merit, "the best qualified person", is derived from case law related to staffing complaints and has come to mean the first person on an eligibility list. According to the new definition, an appointment is based on merit when a person meets the essential qualifications required to perform the work. In deciding who to hire, the manager may also have regard to any additional qualifications considered to be an asset for the work to be performed as well as any current and future needs of the organization or operational requirements as identified by the deputy head. In this way, the manager is able to select the person who best meets the needs of the organization.

The third major change brought about by the new PSEA is the introduction of a new recourse system, including the creation of a new, independent body to hear complaints, the Public Service Staffing Tribunal. Before lodging a formal complaint about an internal appointment process, however, employees may raise their concerns in an informal discussion with the hiring manager and the manager may, if necessary, correct any errors that may have occurred during the process. By addressing employee concerns throughout the process, it is expected that the number of formal complaints will be reduced significantly.

Nonetheless, complaints to the new Tribunal can be lodged not only against internal appointments, but also with respect to lay-offs, the application of a corrective action ordered by the Tribunal and the revocation of an appointment.

Josée Dubois

The grounds for complaint vary according to the nature of the complaint: For internal appointments, abuse of authority in the application of merit and in the choice of appointment process and the failure to assess a candidate in the official language of his/her choice are the grounds for complaint. Abuse of authority is also the grounds for a complaint resulting from a lay-off or a corrective action. A complaint against a revocation can be made on the basis that the decision to revoke the appointment was unreasonable. Under the new system, the concerns of an employee, not the process itself, will be the focus of a complaint.

The new Tribunal has the authority to interpret and apply the *Canadian Human Rights Act* when a complainant raises an issue of discrimination (as defined by the Act) in his/her complaint against an internal appointment or a lay-off. Where the Tribunal finds a complaint of discrimination to be substantiated, it can award damages up to a maximum of $20,000 as compensation for pain and suffering or for reckless or willful discrimination.

With respect to its remedial powers, the Tribunal may revoke an appointment or set aside the decision to lay off an employee or to revoke an appointment. In complaints regarding an internal appointment, a lay-off or a revocation, the Tribunal may also order the deputy head to take any other corrective action it considers appropriate in the given circumstances.

The Tribunal may consist of five to seven permanent members appointed by the Governor in Council, including the Chairperson and the Vice-Chairperson, and an unlimited number of temporary members. Guy Giguère, former Deputy Chairperson of the Public Service Staff Relations Board was appointed Chairperson in March 2005; Sonia Gaal, former member of the Canadian Industrial Relations Board, was appointed Vice-Chairperson in September 2005. It is expected that the Tribunal will hear its first case in March 2006.

UNIONS WANT OTTAWA TO RETURN PENSION FUNDS

Public service unions began a court battle on November 15th to force the federal government to repay billions of surplus dollars taken from pension funds.

To get access to workers' funds, the government changed the law on pension surpluses in the late 1990s. The move made its financial position look better, at least in accounting terms, although its obligations to employees and retirees did not change.

Like many private employers, the government wound up after years of good investment returns with more money in its pension funds than was necessary. Unions argue that surplus funds should be spent to improve the pension plan.

The public-service unions say the money was, in effect, stolen in 1999 when the government helped itself to surpluses in RCMP, military and civil service funds. More than $30 billion was transferred to general revenue.

The government takes the view that no one was hurt because it stands ready to pay the agreed pensions regardless of whether there is a surplus.

One of the plaintiffs is the Professional Institute of the Public Service, whose president, Michele Demers, says the government slashed jobs, put a freeze on wages and increased pension premiums in the 1990s. She says pension money was never supposed to be used to help the government out of a financial jam.

Demers says a massive pension surplus should mean bigger benefits for retired civil servants and smaller contributions for those still working.

"It seems that every time the government is in a straitjacket with respect to expenses and deficit and debt, the first ones to suffer are public-service employees," she said.

Jose Aggrey, president of the Canadian Association of Professional Employees, says private-sector employers generally don't have access to pension money, and neither should the federal government.

Lawyers in the case are representing 300,000 employees. The unions expect it to be a long battle.

— CBC

UNITED STATES

NATIONAL MEDIATION BOARD

In July 2005 the National Mediation Board announced creation of the NMB Knowledge Store, a new public information service containing an archive of over 40,000 arbitration records of the National Railroad Adjustment Board, the entity created by the Railway

Labor Act in 1934 to help resolve grievances in the rail industry. Eventually the knowledge store will include a full archive of arbitration awards under the Act as well as NMB representation determinations, reports of Public Emergency Boards (appointed by the president to resolve interest disputes in airlines), labor contracts and union constitutions and bylaws in the two industries, rail and airlines, subject to the RLA. The knowledge store is available on the NMB web site, www.nmb.gov, under "Documents and Forms."

The NMB has announced a conference on labor-management relations at the passenger railroads to be held in Baltimore Maryland March 23 and 24, 2006. Further information can be obtained from parmalee@nmb.gov.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Joy Reynolds

The Federal Mediation and Conciliation Service has announced that the 13th National Labor-Management Conference will be held in Chicago August 16-18, 2006. This major biennial conference draws together experts in labor-management relations and labor-management cooperation, participating in over 60 workshops and plenary sessions addressing such issues as partnerships, dispute resolution, health-care cost containment and workplace redesign. Information about the conference will soon be made available on the agency web site, www.fmcs.gov.

President Bush on July 21, 2005 announced the nomination of Arthur F. Rosenfeld to be director of FMCS. Rosenfeld had previously served as general counsel of the National Labor Relations Board.

FMCS was named one of the best federal agency workplaces in 2005 by the Partnership for Public Service, a nonpartisan, nonprofit group that works to attract workers to government jobs. The ranking of workplaces (FMCS was No. 1 among small agencies) was based on data drawn from the Human Capital Survey conducted in 2004 by the Office of Personnel Management, the federal government's primary personnel office.

NATIONAL LABOR RELATIONS BOARD

On August 31, 2005 the president named Peter C. Schaumber to a recess appointment to the National Labor Relations Board. Mr. Schaumber's first term as an NLRB Member, which began on December 17, 2002, expired on August 27, 2005. Under this recess appointment, he can serve until the end of the next session of Congress unless the Senate acts on his pending nomination, for a term ending in 2010, before adjourning.

In June the president withdrew the nomination to the board of Ronald E. Meisburg, whose recess appointment had expired at the end of 2004. Instead the president nominated him to the position of general counsel at the board, replacing Arthur Rosenfeld.

In a number of administrative developments:

The board has published its first bilingual guide, *Dos Idiomas — Una Ley*, (Two Languages — One Law) to assist board agents and practitioners working with the Spanish-speaking public, including employees and witnesses. The agency also implemented a bilingual toll free number in 2003, and persons who can speak Spanish now constitute about 10 percent of agency nonsupervisory staff in the field.

The NLRB and the Equal Employment Opportunity Commission have renewed their interagency Attorney Honor Program, "designed to attract a broad range of talented entry-level attorneys with a demonstrated interest in civil rights or labor and employment law." The highly competitive program was instituted in 2000 and annually provides a pool of about 300-400 applicants, from which the agencies hire an average of five each year. A provision of the program makes it possible for individuals to experience working in both agencies.

The NLRB report on case production in FY 2005 showed a slight decrease from the previous year, but Chairman Battista and members Liebman and Schaumber noted that, despite functioning with only three of the statutory complement of five members, the Board was able to reduce its inventory of cases and to issue over 500 cases for the last three consecutive years.

The board has issued an invitation to file briefs in a case involving Firstline Transportation Security, Inc., 344 NLRB No. 124, slip op. at 1 (2005). The case raises issues of whether the board has jurisdiction over privately employed airport security screeners and, if so, whether the board should exercise that jurisdiction. Briefs and responses were due in August. Information

on this and other board actions can be obtained at www.nlrb.gov.

Board member Wilma B. Liebman dissented from the decision to brief this issue, as she has dissented on many issues before the current board. Attendees at this years Advocates' Day at the ALRA Conference in Seattle enjoyed Ms. Liebman's keynote address on adapting the National Labor Relations Act to changing workplace realities.

Ms. Liebman expressed the view, shared by many other experts, that the NLRA probably could not be enacted today. She noted that the NLRB operates in very difficult circumstances. It must contend with a labor-management landscape that ranges from productive partnerships in some industries to an outright refusal on the part of other employers to recognize unions or accept the notion of collective bargaining. She quoted labor law expert (and Canadian) Paul Weiler's remark questioning whether US labor law was "an elegant tombstone for a dying institution."

The statutory framework administered by the Board faces many stresses, including the decision by some unions to bypass NLRB recognition processes altogether, and their exercise of economic muscle to influence the enactment of state laws in the area of neutrality, a tactic that has raised questions of preemption of state laws. The ongoing upheaval in the US labor movement also raises problems, including possibly resurrecting the old problem of raiding, although some rapproachments have been made between those remaining in and leaving the AFL-CIO to avoid this outcome. Further, the board seems always to be functioning with less than its full complement of five members, and delays continue to plague both decisionmaking and the appointment process itself.

Member Liebman also referred to the inadequate remedies under the act, and the problems of an aging statutory text that does not accommodate current workplace realities, including the new types of workers, tasks performed, and employer structure. For example, issues continue to be raised about the distinction between employees and supervisors, employees and independent contractors, and the employer's duty to bargain after corporate restructuring. When these problem areas are coupled with a seeming intent on the part of the current board majority to roll back decisions of the Clinton board, the protections of the act have narrowed rather than expanded. (Prior issues of the ALRA Advisor have described several of those cases, where workers including graduate student assistants and disabled employees in sheltered workshops lost the protections of the act.) In sum, Ms. Leibman concluded that recent decisions have resulted in fewer workers being covered, covered workers having fewer rights, and employers being given a freer rein.

COLLECTIVE BARGAINING IN THE FEDERAL SERVICE

Collective bargaining in the federal government continues under attack by the Bush Administration. One of the president's first actions upon taking office in 2001 was to rescind the Executive Order providing for partnerships between labor and management in the federal government. Since that time, and especially in the wake of 9/11, the administration has proposed significant limitations on the collective bargaining rights of certain employees, in part on the basis of national security concerns and with the stated aim of increased effectiveness and efficiency. Unions and other observers are concerned because administration officials have stated that the changes could provide the template for government-wide revisions in the management of all federal workers, who presently have collective bargaining rights under the Civil Service Reform Act of 1978.

The Bush administration has proposed a radically revamped employee relations structure applicable to the Department of Homeland Security, which has about 180,000 employees brought together from 22 agencies performing a broad range of governmental functions, including border security.

The proposed rules were blocked by a court decision in August in litigation brought by federal employee unions. District Court Judge Rosemary M. Collyer enjoined application of parts of the new personnel system, ruling that the power given to the agency to abrogate provisions of negotiated contracts would in effect nullify the collective bargaining rights of employees. She stated:

> "The regulations fail because any collective bargaining negotiations pursuant to its terms are illusory; the [Homeland Security] secretary retains numerous avenues by which s/he can unilaterally declare contract terms null and void, without prior notice to the unions or employees and without bargaining or recourse."

Judge Collyer also found proposed changes in employee appeals procedures to be unacceptable and unfair. It is of interest to note that Ms. Collyer served as general counsel of the National Labor Relations Board as a Reagan appointee.

Federal sector unions have also announced plans to file suit to block a proposed revised personnel system for the Department of Defense Act of 1978. Unions charge that the National Security Personnel System, designed to cover 650,000 civilian employees at DOD, is subject to defects similar to those affecting the DHS system enjoined by Judge Collyer; e.g., it effectively nullifies collective bargaining. In addition, unions maintain that the system was developed without the consultation with employee representatives as required by law.

The issues raised by these proposed changes in federal sector bargaining will be a subject of discussion at the 58th annual meeting of the Labor and Employment Relations Association (formerly IRRA) in Boston January 5-8, 2006. As noted in a previous ALRA Advisor, the LERA has instituted industry councils in various sectors to study issues of interest to labor relations and human resource personnel. The federal public sector council will hold a panel discussion of issues relating to Defense, Homeland Security, and the Federal Aviation Administration. A full program of sessions will address other issues such as health care, changes in the union movement, assessing the NLRA after 70 years, and issues of corporate governance. Details are available at the LERA web site, www.lera.uiuc.edu.

— Joy Reynolds

SCALIA TO SPEAK AT NATIONAL ACADEMY OF ARBITRATORS MEETING

The Annual Meeting of the National Academy of Arbitrators will be held at the Omni Shoreham Hotel in Washington DC on May 24-27th. The meeting, which is open to all practitioners in the labor-management relations field, will feature a luncheon address by Justice Antonin Scalia, a Fireside Chat with Judge Harry T. Edwards reflecting on his own long career in the field of labor relations law, the presentation of a new paper on just cause by Richard Mittenthal, and dinner entertainment by the Capitol Steps.

Additional information about the meeting can be obtained by contacting the Academy's Operations Center at (607) 756-8363 or by e-mail at naa@naarb.org

U.S. LABOR DEPARTMENT INSPECTOR GENERAL CRITICIZES DOL DEALINGS WITH WAL-MART

An internal memo to Wal-Mart's board of directors has proposed a number of ways to reduce health care costs. The proposals included hiring more part-time workers and discouraging unhealthy people from applying for jobs by ensuring that all jobs include some physical activity. The 27-page memo contained numerous other ways to reduce rising health-care costs.

The inspector general of the United States Department of Labor has criticized officials in the department for not following proper procedures with their dealings with Wal-Mart. Department officials had agreed to give Wal-Mart stores 15 days notice before inspecting them for child labor violations. Also, Wal-Mart lawyers were allowed to write substantial parts of the agreement.

FMCS SAVED U.S WORKERS AND BUSINESSES $9 BILLION OVER SIX YEARS

WASHINGTON, D.C. – In a preview of the key findings of an independent study by the Employment Policy Foundation (EPF), the Federal Mediation and Conciliation Service (FMCS) said today that analysis of the agency's case data shows that mediation in collective bargaining disputes saved workers and businesses approximately $9 billion between 1999 and 2004 by averting work stoppages that otherwise would have idled hundreds of thousands of employees each year.

FMCS commissioned the independent study to assess the impact of mediation in collective bargaining disputes in the United States. Through mediation and collective bargaining, the vast majority of the approximately 28,000 labor negotiations conducted each year in the U.S. are settled without work stoppages. However, EPF researchers, using statistical methodology in analyzing FMCS case data, were able to estimate how many

additional work stoppages would have occurred each year without FMCS mediation efforts.

The EPF study, due out next month, found that:

- FMCS mediation reduced the cost of work stoppages to workers and businesses by 41.6 percent—from $21.7 billion to $12.7 billion—and reduced the number of impacted workers by 43.2 percent—from 4.3 million to 2.4 million. Without FMCS intervention, the costs of work stoppages over a six year period would have been 71 percent greater—$21.7 billion instead of $12.7 billion—and would have impacted 76 percent more workers, 4 million instead of 1.85 million.
- FMCS prevented 1,265 work stoppages over the six-year period and saved workers, businesses, and workers at other, affected companies approximately $1.3 billion annually in wages and profits that otherwise would have been been lost. Without FMCS mediation, the number of work stoppages in an average year would have been 61 percent higher
- Early mediation can reduce work stoppage duration by 46 percent. Researchers found that after a contract expires, for every four days that the parties do not use FMCS another day is added to the duration of a work stoppage that occurs.

FMCS Acting Director Scot L. Beckenbaugh said the preliminary key findings of the EPF study underscore the benefits of mediation in resolving labor disputes for workers and businesses alike.

NLRB Case Notes

The NLRB was at full five-member strength for only a 2 ½ month period of FY 2005 which began on October 1, 2004. On December 8, 2004, former Member Ronald Meisburg's recess appointment ended and on December 16, former Member Dennis P. Walsh's term expired. Member Peter C. Schaumber's term expired on August 27, 2005, and he received a recess appointment on August 30. Through the end of the fiscal year on September 30, 2005 and thereafter the Board has been operating with three members.

During November and December 2004 the then-five member Board issued a number of significant cases, including those summarized below. The Board divided 3-2 on the major issues in these cases, with Chairman Robert J.Battista and Members Schaumber and Meisburg constituting the majority, and Members Wilma B. Liebman and Walsh the dissent. The Board's decisions and the dissenting opinions in these cases are extensive. The summaries are intended only to highlight the cases and, for any other purposes and completeness the full texts of the decisions should be read. The full texts of these decisions can be accessed on Board's web site, www.nlrb.gov, by clicking on "NLRB Documents" then "Decisions" on the home page.

In ***Lutheran Heritage Village-Livonia***, 343 NLRB No. 75 (Nov. 19, 2004), the Board majority (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting in part) concluded that certain work rules maintained by the employer that prohibited "abusive and profane language," "harassment," and "verbal, mental and physical abuse" were lawful. The majority, relying on the general principles of *Lafayette Park Hotel*, 326 NLRB 824 (1998) indicated that in determining whether a challenged rule reasonably tends to chill employees in the exercise of their Section 7 rights, the Board must give the rule a reasonable reading, must refrain from reading particular phrases in isolation, and must not presume improper interference with employee rights. Further, relying on the circuit court's opinion in *Adtranz ABB Daimler-Benz Transp., N.A., Inc. v. NLRB*, 253 F3d. 19 (D.C. Cir. 2001), denying enf. in pert. part to 331 NLRB 291(2000), the majority applied the following analytical framework: If the rule explicitly restricts activities protected by Section 7, the rule will be found unlawful. If the rule does not explicitly restrict such activity, "the violation is dependent on a showing of one of the following: (1) the employees would reasonably construe the language of the rule to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights."

In concluding the maintenance of these rules was lawful, the majority found that the rules neither explicitly nor implicitly referred to Section 7 activity, there was no evidence that the rules had been adopted in response or applied to such activity, that the rules were clearly intended to maintain order in the employer's workforce and a reasonable employee reading the rules would not construe them as prohibiting conduct protected by the Act.

The dissent stated that the majority decision had lost sight of the fundamental precept in *Republic Aviation v. NLRB*, 324 U.S. 793, 707-798 (1945), cited in *Lafayette,* that in determining the lawfulness of an employer's work rules it is necessary to balance the competing interests of the employer's right to maintain discipline and the employees' right of self-organization. Although agreeing that employers have a legitimate interest in protecting themselves by maintaining rules that discourage conduct that might result in employer liability, the dissent considered that interest appropriately subject to the requirement that employer rules be sufficiently specific that they do not impinge on Section 7 rights and therefore rejected the analysis in *Adtranz*. The dissent found the rules here were overbroad and that they could reach protected activity, and concluded that, in the context of the particular language of the Employer's rules, its maintenance of other facially invalid rules (that both the majority and dissent had found unlawful), and the existence of apparent duplicative rules, employees would reasonably construe the rules as interfering with their Section 7 rights.

In ***Oakwood Care Center***, 343 NLRB No. 76 (Nov. 19, 2004), the Board majority (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting) reversed *M.B. Sturgis*, 331 NLRB 1298 (2000), and, returning to earlier longstanding Board precedent, held that bargaining units that combine employees who are solely employed by a user employer and employees who are jointly employed by the user employer and a supplier employer constitute multiemployer units that are statutorily permissible only with the consent of the parties. The majority concluded that *Sturgis* by defining a user employer and a supplier employer as one employer had departed from the plain meaning of the term "employer unit" as used in Sec. 9(b) of the Act. It further found a joint employer analysis did not apply because the two employers did not codetermine essential terms and conditions of employment over both groups of employees. Finally, it found the bargaining structure set forth in *Sturgis* problematic as it gives rise to significant conflicts among the various employers and groups of employees and fails to adequately protect employee rights.

The dissent argued that the majority decision misconstrued Sec. 9(b) and was predicated on an erroneous premise that a joint-employer situation is no different than a multiemployer, multi-worksite situation. They contended that, as noted in *Sturgis*, where one or more supplier employers provides employees to a single user employer at a common worksite, all the employees at the site work for the user employer and that, in contrast, the traditional multiemployer bargaining situation involves employers that are entirely independent and often competing businesses, operating on different worksites and hiring their own employees. Finally, the dissent argued that *Sturgis* was consistent with economic realities and the goals of the Act and that *Sturgis* bargaining units facilitated rather than hindered collective bargaining.

In ***Crown Bolt, Inc***., 343 NLRB No. 86 (Nov. 29, 2004) the Board (Chairman Batttista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting in part) overruled *Springs Industries*, 332 NLRB 40 (2000) that had applied a presumption that the most serious threats, such as plant closure, were widely disseminated among employees, unless there was evidence to the contrary. Relying, inter alia, on pre-*Springs Industries* precedent, the majority held that the better evidentiary rule is to require the party that seeks to rely on dissemination throughout the plant to establish the dissemination. In so doing, the majority concluded that: the *Springs Industries* presumption was contrary to the general rule that the burden of proof rests on the party objecting to an election or asserting that an unfair labor practice has occurred; it invited the extension of a presumption to other kinds of coercive statements; it was unnecessary because proof of dissemination should be relatively easy to establish; and it was correspondingly difficult for an employer to rebut the presumption.

The dissenters stated they would adhere to the rule of *Springs Industries*. They argued that traditional Board precedent had recognized that dissemination of an employer's threat of plant-closure is all but inevitable and that, accordingly, the Board in the past had rightly placed on the employer the burden to prove the occurrence of the more unusual event, i.e., that the plant-closure threat was not disseminated. They also argued that the Board correctly had applied the presumption of dissemination to employer statements other than plant-closure threats, but further stated their view that, absent proof to the contrary, dissemination should be presumed as to any threat or promise sufficiently coercive as to make it a likely topic of conversation in the workplace. They found the majority's reasoning that establishing dissemination was easy ignored the realities that employees are often reluctant to testify against their employer, and that the majority had exaggerated the evidentiary difficulties employers would have in establishing nondissemination.

In ***Harborside Healthcare, Inc.***, 343 NLRB No. 100 (Dec. 8, 2004), a case remanded from the Sixth Circuit, the Board (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting) clarified that Board precedent did not require an express promise or threat to find prounion supervisory conduct objectionable, notwithstanding the language of certain previous Board decisions that may have suggested otherwise. Further, the majority restated the Board's legal standard for determining when supervisory prounion activity warrants setting aside an election as a two-prong test, as follows:

(1) Whether the supervisor's prounion conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election.

    This inquiry includes: (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the prounion conduct; and (b) an examination of the nature, extent, and context of the conduct in question.

(2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

Additionally, the majority, overruling *Millsboro Nursing*, 327 NLRB 879 (1999), held that absent mitigating circumstances, solicitation of authorization cards by a supervisor has an inherent tendency to interfere with an employee's freedom to choose to sign a card or not. Applying the standards to the facts of the case, the majority concluded that the conduct of the supervisor warranted setting the election aside. It relied, inter alia, on the supervisor's repeated threats of job loss if the Union lost the election, her continuous and pervasive campaigning for the Union, including soliciting employees' signatures on cards and a prounion petition, and her repeatedly asking employees if she could "count on" them. Finally, noting that in assessing the effect of the conduct on the election the Board may take into account antiunion statements by an employer's higher officials and the extent to which the supervisory conduct was disavowed, the majority found that the Employer's stance opposing unionization did not mitigate the effects of the supervisor's conduct.

In the dissent's view the Board has not required an actual threat or promise of benefit by a supervisor to find objectionable conduct, but that the majority went beyond responding to the court's remand for clarification and had created a new legal test. The dissent argued, inter alia, that the majority's decision, and particularly its application to the facts of the case, opened the possibility that even noncoercive conduct may be found objectionable based on the degree of the supervisor's authority and the extent of the supervisor's participation, and that the decision minimized the realities that whether a particular individual is a supervisor often is not clear during a campaign and that the potential coercive effect of prounion supervisory conduct in itself may be diminished by the employer's open opposition to a union. In the dissent's view, the majority's reversal of precedent that the mere supervisory solicitation of a union-authorization card was not objectionable, coupled with its reliance on solicitation that may have wholly occurred prior to the critical period, was likely to jeopardize the outcome of many elections.

As of late October 2005 when this article was submitted, the Board continued to have three-members: Chairman Battista, whose current term runs through December 16, 2007; Member Liebman, whose current term runs through August 2006; and Member Schaumber whose recess appointment runs until a member is confirmed for that seat or until Congress adjourns near the end of 2006.The President's nominations of former member Walsh and Member Schaumber for Board seats are pending before the Senate. However, as of this time, the President has not placed a name in nomination for the third Board seat.

Les Heltzer

AROUND THE STATES AND PROVINCES

BRITISH COLUMBIA

BC TEACHERS RETURN TO WORK AFTER $500,000 FINE FOR CIVIL CONTEMPT

Members of the BC Teachers Federation voted by a margin of 77% to accept facilitator Vince Ready's proposals to end their 10 day illegal strike and to return to the classrooms across B.C. Ready's report recommended $85 million for teachers' salaries and benefits, an extra $20 million in 2005/06 to improve learning conditions, and a greater role for teachers on a new education roundtable. Although the union initially demanded a written guarantee that the government would amend the School Act to include specific limits on class sizes, teachers returned to work on October 24th with only verbal assurance.

In a decision on October 21, Madam Justice Brown of the Supreme Court of B.C. considered the differences between civil and criminal contempt and fined the union $500,000 for civil contempt for its failure to comply with her earlier orders of October 9 and 13. The Justice also reminded the union that "as a result of my order of October 13, 2005, individual teachers will not be reimbursed for pay lost while in contempt of court".

B.C. PUBLIC SECTOR WAGE ADJUSTMENTS

Looking forward to March 2006 when collective agreements for 84% of the provincial public sector will expire, the British Columbia Office of the Canadian Centre for Policy Alternatives has published a backgrounder that "provides contextual information on broader wage trends that should inform our thinking on what a reasonable employer's bargaining position might be." The report provides an overview of the province's current 0% wage guidelines and recent public sector settlements, summarizes the base pay forecasts for 2006 by Canada's major consultants, and considers the issue of the government's ability to pay.

CALIFORNIA

Dear ALRA friends,

Micki Callahan

Micki Callahan has accepted a position running the employee relations program for the City and County of San Francisco, and has to say goodbye-at least for now-to ALRA. "I've enjoyed working with you all and wish I could have done more. Please call if you are in the area and I'll give you the executive tour!"

California State Mediation and Conciliation Service (until 10/14/05)

FLORIDA

UNFAIR LABOR PRACTICE CASES

***City of Lake Worth v. Professional Managers and Supervisors Association,* Case No. CB-2005-012 (Sept. 12, 2005).**

Commission affirmed General Counsel's summary dismissal of an unfair labor practice charge alleging that the union unlawfully threatened a supervisory employee and refused to participate in grievance arbitration concerning that threat. The union did not violate Chapter 447, Part II, by its admonition to a supervisory employee that his conduct may be improper. The mere opinion as to the legality of the supervisor's actions was not an unlawful threat or an unlawful interference with a managerial employee. Further, the language in the parties' agreement did not contemplate the city presenting a grievance for arbitration.

Volusia County Fire Fighters Association, Local 3547, IAFF v. Volusia County, **Case No. CA-2005-033,** ***Volusia County v. Volusia County Fire Fighters Association, Local 3547, IAFF,*** **Case No. CB-2005-018, and** ***In Re Impasse Proceeding Between Volusia County Fire Fighters Association, Local 3547, IAFF, and Volusia County,*** **Case No. SM-2005-022 (Sept. 16, 2005).**

Union's motion to stay impasse proceedings granted. The Commission, not hearing officers, has the authority to rule upon motions to stay impasse proceedings. The Commission has stayed impasse proceedings pending the resolution of unfair labor practice charges alleging bad faith bargaining and premature declaration of impasse. This is because the impasse proceedings may be unnecessary if the charge is proven and additional bargaining is ordered as a remedy.

Seminole County Professional Firefighters, Local 3254 v. Seminole County, **Case No. CA-2005-020 (Sept. 20, 2005).**

County did not commit an unfair labor practice by failing to bargain the effects of its decision to withdraw take-home vehicles from two chiefs because the union failed to give the county notice of any specific and identifiable impacts it desired to negotiate.

Heyhurst v. Broward Teachers Union, **Case No. CB-2004-024 (Sept. 28, 2005).**

Union did not commit an unfair labor practice by assisting a guidance counselor in obtaining a temporary restraining order against her school principal. Attorney fees not awarded to union, in part because the Commission had not previously considered whether the alleged misuse of the civil legal system could constitute an unfair labor practice.

LIUNA, Local 678 v. City of Orlando, **Case No. CA-2005-030 (Sept. 29, 2005).**

City committed an unfair labor practice by refusing a timely request for union representation during an employee interview that was reasonably perceived by employees as potentially leading to disciplinary action. Union was awarded attorney's fees and costs.

REPRESENTATION CASES

In Re Petition of UFF to amend Certification No. 218, **Case No. AC-2005-003, and** ***UFF v. University of Florida Board of Trustees,*** **Case No. RC-2002-073 (Sept. 9, 2005).**

Petition to amend certification to reflect the U of F Florida Board of Trustees as the successor employer to the Florida Board of Education for a unit of faculty and administrative employees granted. The historical bargaining unit in effect since 1976, albeit on a state-wide basis, remained appropriate at the local university level for purposes of collective bargaining. Inasmuch as the amendment was granted, the corresponding representation-certification petition involving the same unit was dismissed.

MARYLAND

Karl Pence

Karl Pence resigned August 31, as Executive Director of the Maryland State Higher Education Labor Relations Board to retire from State service and return to teach Latin at Chopticon High School in St Mary's County, Maryland. Pence left his teaching at Chopticon in 1989 to become vice president and eventually president of the Maryland State Teachers Association/NEA. From 2000 to 2001 he served as Education Policy Adviser to Governor Parris Glendening but left in August 2001 to establish the SHELRB as the agency to implement a new law extending collective bargaining rights to nonteaching employees of State higher education institutions. During his tenure, the SHELRB conducted over 30 representation elections affecting some 7600 employees, processed unfair labor practices complaints, and established the SHELRB as an independent and neutral implementer of the collective bargaining statute. His former assistant Erica Snipes is currently serving as acting Executive Director. Pence is continuing service on a contractual basis through the July 2006 annual ALRA meeting and will provide assistance to ALRA as a member of its program committee.

MICHIGAN

MERC CORNER

Ruthanne Okun
Bureau of Employment Relations Director

You may have heard that the "gavel has changed hands" at the Michigan Employment Relations Commission (MERC).

For more than 10 years, the Commission included Chair Star Swift and Commissioners Barry Ott and Harry Bishop. In July of 2003, longtime MERC Administrative Law Judge Nora Lynch, who retired from State service in 2002, returned to the labor relations arena and was appointed Commission Chairman. One year later, in June of 2004, Escanaba attorney Nino Green joined the Commission, with the laudable distinction of being its first Upper Peninsula Commissioner. As this publication proceeds to print, we anticipate the imminent appointment of MERC's third member.

Ruthanne Okun

It would be difficult to find an attorney more familiar with the Bureau and with public sector labor law in Michigan than Nora Lynch. Chairman Lynch first joined the Bureau when Robert Pisarski was the Bureau Director and Robert Howlett was Commission Chairman, and served as an ALJ for over 25 years. When Judge Lynch retired from the Bureau in November of 2002, she began a labor arbitration practice, which she continues in the private sector at this time. Chairman Lynch is currently on the arbitration rosters for the American Arbitration Association and the Federal Mediation and Conciliation Service. She resides in West Bloomfield with her husband, Mark Rubin, an Administrative Law Judge with the National Labor Relations Board.

Commissioner Nino Green is president and shareholder in the Escanaba law firm of Green, Weisse, Rettig, Rademacher, Clark & Bray P.C., and has extensive experience in labor relations. He is the former executive director of U.P. Legal Services and the current chairman of its successor organization, Legal Services of Northern Michigan. He is MERC's first commissioner from the Upper Peninsula, demonstrating Governor Granholm's strong commitment to inclusiveness by broadening the Commission's representation from across the State. Commissioner Green brings a unique perspective to MERC decision-making, sharing his varied background and experience representing labor organizations and individuals.

Chairman Lynch's appointment is for a three-year term, which expires on June 30, 2006. Commissioner Green's three-year appointment expires on June 30, 2007. For more information about MERC and the future Commission appointment, visit http://www.michigan.gov/merc.

Congratulations

Congratulations to Lynn Morison, of the Michigan Bureau of Employment Relations, who has been selected to participate in its Government Fellowship Program by the American Bar Association Section of Labor & Employment Law. Lynn's Fellowship as a member of the State & Local Government Bargaining and Employment Law Committee will be for a three-year term running through August 2008.

The Fellowship Program was implemented by the ABA Section to provide selected government lawyers who are members of the Section the opportunity to participate in its activities, including Section outreach initiatives. While active participation in all the activities of the Section is encouraged during the three-year fellowship term, Lynn will attend the midwinter meetings of the committee, which will take place in January of 2006, in Cancun, Mexico. As a participating Fellow, all expenses to attend the Midwinter Meeting will be reimbursed by the Section.

This is a unique opportunity and a recognition of Lynn's abilities and outstanding qualities. All of us at the Michigan Employment Relations Commission and the Bureau of Employment Relations congratulate Lynn and wish her the best on this well-deserved honor.

MERC AND COURT DECISIONS

Case Summaries Prepared by
D. Lynn Morison, Brendan Canfield, Christopher W. Bowman, Joseph W. Uhl, Elisabeth Van Houwelingen, and Elizabeth A. Dunlap

I. UNFAIR LABOR PRACTICE CHARGES

A. COURT OF APPEALS DECISIONS

American Association of University Professors, Northern Michigan University Chapter, -and- Joseph Sabol,
MERC Case No. CU03 A-007, issued September 10, 2004, 17 MPER 57 (2004)
Reconsideration denied, issued January 28, 2005, 18 MPER 9 (2005)
Court of Appeals No. 260751, issued July 12, 2005

In an unpublished opinion, the Court of Appeals affirmed MERC's grant of summary disposition to the American Association of University Professors (Union). The Union represents instructors, professors, librarians, counselors, and adjunct faculty employed by Northern Michigan University (NMU). NMU hired Sabol to fill a one-year teaching position beginning in August 2001. In early 2002, NMU initiated a search to fill the position as a tenured position for the following school year; Sabol was a semifinalist. However, in May 2002, NMU converted the vacancy from a tenured position to a term position. Subsequently, NMU filled the position with an outside candidate.

The Master Agreement between the Union and NMU provided that persons employed on two-year term appointments shall be given "first consideration" for newly authorized two-year appointments, if they meet the qualifications specified for the position. Based on this provision, Sabol contacted the Union's grievance officer in order to inquire about filing a grievance against NMU. After the Union's executive committee unanimously decided not to pursue a grievance on Sabol's behalf, he filed a charge against the Union alleging breach of the duty of fair representation.

The Court agreed with MERC that Sabol did not show that the Union's failure to file a grievance on his behalf was based on personal hostility, indifference, negligence, or arbitrary refusal and that Sabol's charge did not allege that the Union acted arbitrarily or in bad faith. The Court further agreed with MERC's determination that the section of the Master Agreement covering term appointments did not apply to Sabol. The Master Agreement governed the procedure for two-year appointments, but was silent on the reappointment of one-year appointees, such as Sabol, to additional one-year terms. Inasmuch as the Master Agreement did not support Sabol's claim of entitlement to first consideration for the position, the Union had no obligation to attempt to compel NMU to give such consideration to Sabol. Nevertheless, Sabol did receive first consideration before NMU conducted an outside search. The Court noted that NMU had adequate grounds to perform an outside search after its consideration of Sabol given his poor performance evaluations. Based on these findings, the Court concluded that the Union's decision not to pursue a grievance on Sabol's behalf was made in good faith. The Court emphasized that the Union is to be afforded latitude to investigate and assess grievances made by its members and is not obligated to pursue frivolous grievances merely because of a member's insistence. Inasmuch as the evidence did not establish that NMU had breached the Agreement, the Court found that the Union's decision not to pursue Sabol's grievance was reasonable and did not violate its duty of fair representation.

Further, the Court addressed the issue of whether MERC erred in refusing to grant Sabol's motion for reconsideration of the Commission's decision and motion to reopen the record. The Court found no error in MERC's denial of both motions. The Court reasoned that in his exceptions Sabol failed to provide argument or authority supporting his position that denial of his motion was erroneous, thereby waiving the issue. Further, the Court determined, as MERC did, that the evidence submitted in support of reopening the record would add nothing to the substance of Sabol's charge against the Union.

B. NOTEWORTHY COMMISSION DECISIONS

Compliance Petition Dismissed – Status Quo Ante Restored by Rescission of Unlawful Promotions; ALJ's Compliance Order Went Beyond Status Quo Ante

City of Detroit (Police Department) -and- Detroit Police Officers Association
Case No. C02 K-249A (Compliance), issued August 30, 2005

On compliance, the Commission defined the requirements of the *status quo ante* remedy it had issued previously in this case. The Commission found that City of Detroit (Police Department) complied with its earlier

order to restore the *status quo ante* when it rescinded improper promotions that affected members of the Charging Party.

Initially, an Act 312 arbitration hearing was held between the City of Detroit and the Detroit Police Lieutenants and Sergeants Association (DPLSA), which resulted in the City being directed to promote certain DPLSA members ahead of DPOA members, despite the fact that the DPLSA members were not next on the Eligible Register for a promotion. The DPOA then filed a charge and the ALJ held that the Act 312 award did not relieve the City of its duty to bargain with the DPOA, stating that the promotion of DPLSA individuals ahead of DPOA members on the Eligible Register was a unilateral change in a mandatory subject of bargaining and, thus, an unfair labor practice and a violation of PERA. Moreover, the ALJ stated that an Act 312 arbitrator is not empowered to direct changes in conditions of employment that affect more than one bargaining unit without the consent or a comparable and consistent Act 312 Award governing the other affected units, which is what the Act 312 arbitrator sought to do in this case. The City is not absolved of its bargaining duty because a statutorily created Act 312 arbitrator changed the promotional procedure. Consequently, Respondent was ordered, *inter alia*, to restore to DPOA members to the terms and conditions of employment that were applicable prior to the issuance adopted the ALJ's Recommended Decision and Order.

In accordance with the Decision and Order, and to return to the *status quo ante*, the City rescinded the promotions of ten (10) individuals who were not on the Eligible Register to be promoted. The DPOA then petitioned for a hearing on compliance arguing that the City had not complied with the Commission's Decision and Order, and that ten (10) additional persons from the DPOA should have been promoted to fill the ten (10) vacancies as a result of the recession. Before the Compliance Decision, an Umpire's Opinion and Award was issued for a grievance hearing ordering that thirty-three (33) persons from the Eligible Register be promoted to the rank of sergeant, effective March 1, 2004. The persons promoted pursuant to the aforesaid Opinion and Award included nine of the ten persons originally identified by the DPOA as being entitled to promotion in the aforementioned compliance petition (the tenth had since retired.)

Thereafter, the compliance hearing was held, and the ALJ directed that Respondent promote to sergeant the ten (10) officers and investigators stipulated as being eligible for promotion, as well as moving the effective date of the promotion from March 1, 2004 to February 6, 2004. The City filed exceptions stating the ALJ's recommendation went beyond the *status quo ante,* and the Commission agreed as to both the ten individuals receiving promotions and the effective date of the promotion.

The Commission stated that restoration of the *status quo ante* was originally ordered because the promotions were not a result of bargaining with Charging Party, but instead resulted from an Act 312 Award issued between the City and the DPLSA. The Commission further found that the City was not required to promote the next ten individuals on an expired October 17, 2000 eligibility roster in order to restore the *status quo ante*. The Commission concluded that there was no showing that the City would have promoted ten employees, but for the requirements of the improper Act 312 award; therefore, the Charging Party's request for further relief was dismissed.

Unfair Labor Practice Found – City's Failure to Give Notice and Opportunity to Bargain Over New Promotional Standards for Sergeant Rank is Unfair Labor Practice After Union Had Relied On Previous Act 312 Arbitration Award and Had No Reason to Bargain Initially; Circumstances Changed After Act 312 Arbitrator Declared to Have Lacked Authority

City of Detroit (Police Department) -and- Detroit Police Lieutenants and Sergeants Association
Case No. C04 C-085, issued August 30, 2005

The Commission found that the City violated Section 10(1)(e) of PERA when circumstances changed and it failed to give the Detroit Police Lieutenants and Sergeants Association (DPLSA) notice and opportunity to request bargaining over the implementation of new promotional criteria for the rank of Sergeant.

The Commission concluded that the City had a duty to inform the DPLSA of its intention not to comply with an Act 312 Arbitration Award that was issued between the parties, which mandated certain promotions to the rank of Sergeant. At the time of the special conference regarding the promotional criteria for the rank of Sergeant, the DPLSA had an opportunity to bargain as to what the criteria would be established for promotions and the DPLSA elected not to bargain. However,

the DPLSA had a reasonable basis to believe the City would honor the Act 312 award, which stated that all Investigators would be promoted to Sergeant. Due to the fact that the DPLSA had no membership below the rank of Sergeant, it had no interest in the promotional criteria for the Sergeant position. Thereafter, an ALJ Decision was issued and adopted by the Commission stating that the Act 312 arbitrator lacked authority and the award was contrary to PERA. Consequently, circumstances changed and the Commission held that the City should have notified DPLSA of the change that affected the DPLSA members and given them an opportunity to bargain as to the promotional criteria for the rank of Sergeant.

In the decision, the Commission disagreed with the ALJ's finding that the DPLSA had effectively agreed on new standards for promotion to the rank of sergeant because it did not request an opportunity to bargain over them. The Commission found that the City gave no indication of its intent not to comply with the Act 312 award until it rescinded promotions made under the award as the result of the ALJ's recommended order in Case No. C02 K-249 between the City and another Union, the Detroit Police Officers Association (DPOA). The Commission further found that Charging Party had adequate basis to rely on the City's intention to honor the Award, including a Memorandum of Understanding executed by the parties regarding implementation of the Award, and the promotion of ten (10) individuals in compliance with the Award. As a result of the impact that the City's change in position would have on the DPLSA, the City had a duty to inform the DPLSA of its change in position and give the DPLSA notice and the opportunity to request bargaining over promotional criteria for the rank of sergeant.

NEW MEXICO

NEW JERSEY

NEW JERSEY DEVELOPMENTS

Bob Anderson

The New Jersey Legislature has amended section 5.3 of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., to authorize an employee organization to obtain certification as the majority representative based on a card check rather than an election if no other organization is seeking to represent the negotiations unit and if a majority of employees in the unit have signed cards authorizing such representation. The Public Employment Relations Commission has proposed regulations for implementing this new form of jurisdiction. The law also allows for card-check certifications by the New Jersey State Board of Mediation in those private sector cases that are not subject to the jurisdiction of the National Labor Relations Board.

The Legislature has also enacted a law, P.L. 2005, c.42, limiting the number of negotiations units of civilian State employees to the ten units already existing. Employees in new or existing titles may be added to these units through the Commission's unit clarification procedures. This new law effectively ended an attempt by the Public Sector Managers Association to be certified as the majority representative of 2000 or so managers who were allegedly not managerial executives excluded from the Act's coverage or employees already included in units of primary-level and higher-level supervisors represented by CWA.

In State v. Williams, 184 N.J. 432 (2005), the Supreme Court held that a mediator appointed by a court pursuant to Rule 1:40 could not testify in a subsequent criminal proceeding regarding a participant's statements during mediation. The Court reasoned that the defendant who wished to call the mediator had not shown a need for that testimony sufficient to overcome the privilege of mediation confidentiality under the Court rule or that the evidence was not available from other sources. The Court stated:

Successful mediation, with its emphasis on conciliation, depends on confidentiality perhaps more than any other form of ADR. See Foxgate Homeowners' Ass'n, Inc. v. Bramalea Cal., Inc., 25 P.3d 1117, 1126 (Cal. 2001) ("[C]onfidentiality is essential to effective mediation . . . .").

Confidentiality allows "the parties participating [to] feel that they may be open and honest among themselves . . . . Without such assurances, disputants may be unwilling to reveal relevant information and may be hesitant to disclose potential accommodations that might appear to compromise the positions they have taken." Final Report of the Supreme Court Task Force on Dispute Resolution 23 (1990); see also Prigoff, supra, 12 Seton Hall Legis. J. at 2. ("Compromise negotiations often require the admission of facts which disputants would never otherwise concede.").

Indeed, mediation stands in stark contrast to formal adjudication, and even arbitration, in which the avowed goal is to uncover and present evidence of claims and defenses in an adversarial setting. Mediation sessions, on the other hand, "are not conducted under oath, do not follow traditional rules of evidence, and are not limited to developing the facts." Rinaker v. Superior Court, 74 Cal. Rptr. 2d 464, 467 (Ct. App. 1998). Mediation communications, which "would not [even] exist but for the settlement attempt," are made by parties "without the expectation that they will later be bound by them." Prigoff, supra, 12 Seton Hall Legis. J. at 2, 13. Ultimately, allowing participants to treat mediation as a fact-finding expedition would sabotage its effectiveness. See id. at 2 (warning that routine breaches of confidentiality would reduce mediation to "discovery device"). If mediation confidentiality is important, the appearance of mediator impartiality is imperative. A mediator, although neutral, often takes an active role in promoting candid dialogue "by identifying issues [and] encouraging parties to accommodate each others' interests." Id. at 2. To perform that function, a mediator must be able "to instill the trust and confidence of the participants in the mediation process. That confidence is insured if the participants trust that information conveyed to the mediator will remain in confidence.

Neutrality is the essence of the mediation process." Isaacson v. Isaacson, 348 N.J. Super. 560, 575 (App. Div. 2002) (interpreting Rule 1:40). Thus, courts should be especially wary of mediator testimony because "no matter how carefully presented, [it] will inevitably be characterized so as to favor one side or the other."

Prigoff, supra, 12 Seton Hall Legis. J. at 2 (emphasis added); see also In re Anonymous, 283 F.3d 627, 640 (4th Cir. 2002) ("If [mediators] were permit-

ted or required to testify bout their activities, . . . not even the strictest adherence to purely factual matters would prevent the evidence from favoring or seeming to favor one side or the other." (alteration in original) (quoting NLRB v. Macaluso, Inc., 618 F.2d 51 (9th Cir. 1980)); Ellen Deason, The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?, 85 Marq. L. Rev. 79, 82 (2001) ("[I]f a mediator can be converted into the opposing party's weapon in court, then her neutrality is only temporary and illusory.").

ONTARIO

FINAL BIG THREE CONTRACT SETTLED AS GM RATIFIES AGREEMENT

With the GM agreement ratified by CAW members in Oshawa, St. Catharines, Windsor and Woodstock on October 1 and 2, bargaining with Canada's Big Three auto producers is complete. Although the GM agreement follows the pattern previously bargained at Ford and Daimler Chrysler, job security issues were more difficult at GM and stretched bargaining until an hour before a midnight strike deadline. The CAW press release estimates that about 1,000 jobs might be eliminated at GM Canada by 2008 when the contract expires, mostly through attrition. Al Green, VP of Personnel for General Motors in Canada states in a Toronto Star article that between 1,000 and 2,000 jobs could be eliminated, though it has not yet been determined how those losses will be distributed between Canadian and U.S. plants. (The contract between GM U.S. and the UAW expires in 2007). Buzz Hargrove, president of the CAW, has stated that the union's next priority will be to press for changes to trade rules for the auto industry. Students of collective bargaining will examine the recent Big Three round on many fronts, including the surprising choice of Ford Canada as the lead company in pattern bargaining. The bargaining climate at Ford was a factor in that choice; also notable - the skills of the Ford Canada's lead negotiator. According to Virginia Galt in the Globe and Mail, "Stacey Allerton Firth quietly became the newest Canadian industrial relations idol." Buzz Hargrove, CAW President, states: "I say, with the greatest sincerity I can muster, that Stacey Allerton Firth is one of the best company negotiators I have ever worked with".

TORONTO POLICE REACH AGREEMENT

On November 8th the Toronto Police Association and the City of Toronto reached an agreement in their contract dispute. A ratification vote will be held this week, at which time details will be made public. The police had been without a contract since December 2004 and have been engaged in job actions for the past several weeks. On Nov. 2, more than 1,500 officers participated in a demonstration at Nathan Phillips Square in front of Toronto's City Hall, with an estimated 150 officers wearing police uniforms and guns in defiance of the Police Chief's order.

EMPLOYER MUST PAY ONTARIO'S HEALTH PREMIUM TAX ACCORDING TO DIVISIONAL COURT

In the first court decision regarding Ontario's Health Premium tax (introduced in May 2004) , the Ontario's Divisional Court has ruled that Arbitrator Anne Barrett's award of October 6, 2004 was "not patently unreasonable" , and has upheld the arbitrator's order that the LaPointe Fisher nursing home must pay the provincial health premium tax on behalf of its employees. The judgment in the case is based on the particular wording of the collective agreement between the nursing home and the U.F.C.W. Local 175/633 and uses the standard of review of "patent unreasonableness". The issue of who should pay the tax has been controversial; a Fasken Martineau Alert on the topic lists 17 arbitration awards that concluded that employers were NOT responsible to pay the health tax.

HYDRO ONE DISPUTE GOES TO ARBITRATION FOR SETTLEMENT

The dispute between Hydro One and the Society of Energy Professionals has reached its final stage with the parties' acceptance of mediator William Kaplan's Sept. 12 recommendation to send all outstanding bargaining items to arbitration. The Globe and Mail reports that Kevin Whitaker, Chair of the Ontario Labour Relations Board, has been appointed as arbitrator. The 14-week dispute at Hydro One has centred on two main issues: a management proposal to increase the base workweek to 39 hours (from 35 or 37.5 hours) without increased compensation, and establishment of a two-tier wage and benefit schedule in which employees hired on or after April 1, 2005 would receive 10%

Kevin Whitaker

lower wages and lower pension and benefit provisions. These same new employees would also be excluded from a provision prohibiting involuntary layoffs during the 3-year term of the agreement. Employees represented by the Society are scientists, accountants, IT specialists, engineers, and electricity system planners and supervisors. Hydro One has taken the position that they are already highly paid; the Society has countered with a Fact Sheet on Members' Salaries, which argues that the 328 Society members who earned more than $100,000 in 2004 were largely pushed past that threshold by overtime payments "that reflect the severe understaffing of Hydro One operations." The Society argues that their members have received lower salary schedule increases than Hydro One workers represented by the Power Workers Union, and further, calculates that the average annual compound pay increase for Hydro One Senior Executives since 1999 has been 32.5%, compared to 2.6% for Society members.

CLERGY FAIL TO UNIONIZE

The union organizing drive in the United Church Of Canada failed to sign up enough clergy by yesterday's (04-Nov) deadline to trigger a certification vote for the Ontario ministers.

The general secretary of the Country's largest Protestant Christian church said he wasn't surprised the drive failed. But the organizers said it is not a matter of "if" but "when" the clergy organize, and Buzz Hargrove, president of the Canadian Auto Workers, (UAW) said he will meet with organizers shortly to kick off a new drive.

Under Ontario labour law, 60 per cent of the work place members have to sign union membership cards within a 12-month-period to initiate certification. If that percentage in not reached, the signed cards become void and the organizers have to start over.

Although the pro-union clergy eventually want to form a national body, they decided to campaign province by province because union organizing rules vary in each province.

The institutional United Church and the CAW have been political, economic and social allies for so long that they are reluctant to criticize each other publicly.

— Michael Valpy,
The Globe and Mail

QUEBEC

QUEBEC PUBLIC SECTOR UNIONS PREPARE FOR ROTATING STRIKES

Quebec public-sector employees held large demonstrations in Montreal and Quebec City on Saturday, October 29th. The demonstrations were organized by Quebec's two largest labour federations, the Confederation of National Trade Unions and the Quebec Federation of Labour, to protest the lack of progress in contract negotiations. The Common Front is asking for salary increases of 13.5% (excluding pay equity increases) over the four year period 2004 to 2008; the provincial government position is to freeze wages for 2004 and 2005, with 2% per year thereafter. The federations, representing approximately 500,000 public sector workers, have a mandate to begin rotating strikes on November 10th.

A September 15 decision of the Labour Relations Commission of Quebec ruled that Wal-Mart failed to demonstrate that it had not closed its store in Jonquiere to avoid unionization. Wal-Mart had closed the store in April 2005 after the United Food and Commercial Workers Union Local 503 had been certified to represent the 190 employees and while negotiations for a first collective agreement were underway. The Board has not yet determined appropriate remedies, which may include compensation for the 79 employees who had filed complaints for illegal dismissal.

In a second ruling on September 15, the Quebec Labour Relations Commission refused Wal-Mart's request for the lists of names of people who had signed union cards at their stores. The board ruled that such names must be kept secret to prevent possible reprisals.

Lancaster House,
September 19, 2005

JOHANNESBURG (Reuters) – South Africa's state-funded labour mediators, who usually work to end other people's industrial disputes, went on strike on Wednesday after their own pay talks deadlocked.

The Commission for Conciliation, Mediation and Arbitration (CCMA) has helped end a series of damaging strikes in the key gold mining and other industrial sectors in the past few weeks, but its own workers finally ran out of patience and walked out after the commission refused their pay demands.

"They embarked on industrial action this morning. They are picketing outside the offices of the CCMA in the various provinces," acting director Mo Ally told Reuters.

Ally said the commission would continue its work using part-time employees and contractors, but said damage to the commission's image was inevitable.

"Peaple say 'You guys can't resolve your own dispute'," he said. "We're not happy with the strike, but that's their right.

Paul Gardner, Jim Breckenridge, Fred Long, Reg Pearson and Bill McCallum

ALRA Academy: July 21st-23rd

ALRA Academy is a course of instruction and orientation for new Board Member and Commissioners, General Counsels and Agency Administrators. It is offered without charge as a service to member agencies. Anyone interested in this year's Academy in Baltimore should complete the following form and mail or fax it to the Academy Coordinator:

Jacalyn Zimmerman, General Counsel, Illinois Labour Relations Board
160 North LaSalle, Suite S-400, Chicago IL 60601 Phone (312) 793-6480 Fax (312) 814-4447

NAME: _____

TITLE: _____

AGENCY: _____

Years with Agency: _____ Years in Current Title: _____

Direct Phone Number: _____ Fax: _____

E-Mail Address: _____