January 2009

ALRA Advisor

ALRA Advisor

ALRA Advisor is published for members of the Association of Labor Relations Agencies (ALRA) and their staff.

www.alra.org

In this issue...

WHAT A CONFERENCE!
The 57th Annual event, held in Burlington, Vermont , was the place to be last July.

The *ALRA Advisor* is published bi-annually (January and July). On occasion, special issues are produced on an ad hoc basis.

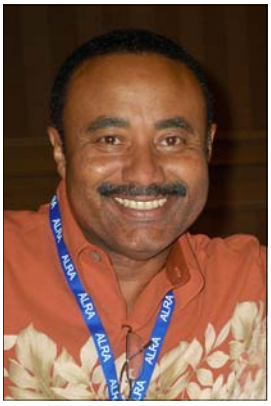
DEADLINES:
January Issue: November 1st
July Issue: May 1st

ARTICLES:
Submit material as e-mail attachments (in MS Word or WordPerfect format)

PHOTOS:
Send photos as separate digital files (jpeg, bmp, tif) at 300 dpi. Please **do not** embed/ insert photos in text document.

EDITING:
All articles are subject to editing for length and clarity.

SEND:
Forward all material to the Editor:
josee.dubois@psst-tdfp.gc.ca



From the President…

The Presidential Election is over and the people have spoken. They have elected Barack Obama as President, on a platform built on a promise of change and inclusiveness. A platform that promises to transform Wall Street and raise the standard of living for Main Street. A platform that says the wealthy in our nation cannot thrive and prosper, unless there is also prosperity abounding for the middle class. It was a platform that promises to bring back jobs that have been sent overseas and to give incentives to companies that invest in the creation of jobs in this country.

In the aftermath of this historic election, I find myself wondering what all of this might mean to the labor movement and organized labor in this country. I can't help but wonder if this might not be the beginning of a "rebirth" of sorts for unions, and better times for the working classes that they have historically represented. Only time will tell, but the possibility is exciting! Many have speculated that this administration may prove to be one of the most friendly that organized labor has seen in a long time. I, for one, certainly hope so.

Moving on to topics closer to home, I am pleased to share with you that we are well on the way to having another outstanding ALRA Annual Conference in Oakland next July. The Board, and various Committee Members, had an outstanding planning session over the weekend of October 17th.

The Program Committee chaired by our Past President, Elizabeth MacPherson, and the Professional Development Committee, which is chaired by Les Heltzer, did outstanding work in putting together what promises to be another great conference for learning and professional development. This, coupled with the social activities that are being planned by our local hosts, will make it a conference to remember. I hope you will start making plans to attend now.

Finally, on behalf of myself and the Executive Board, I would like to thank you, our members, for your continuing support and commitment to the organization. The value of what ALRA offers and represents has always been recognized, but we want you to know that your continuing support of the organization and our programs is very much appreciated. Everything we do is for our members, and we encourage you to let us know what we can do to serve you better.

It takes a lot of hard work to maintain the high quality of programs that we put on each year. If you have an idea for a program topic, a presentation or speaker, or even a future conference location, please let us know. I would also invite you to think about serving on a planning committee, or running for any future open Board seats. We strive to be inclusive, and we really do welcome new workers…

Until the next time, take care.

Phil Hanley

The 57th Annual ALRA Conference

July 20, 2008

Elizabeth MacPherson (ALRA President) welcomes attendees to the 2008 Conference.

(L-R) Guest speaker, **Jerome Lefkowitz** (Chairperson, New York State Public Employment Relations Board) presented "*A 40th Anniversary View of New York's Taylor Law*", pictured here with **Richard Curreri**, Director of Conciliation, New York State Public Relations Board.

John Higgins (Chair, Neutrality Committee, Past President, ALRA) reports on the Neutrality Project.

Executive Board Meetings and concurrent Roundtables (Generational Changes in ALRA Agencies) for Board Members; Mediators, General Counsels, Administrative Law Judges and Directors and Administrators were the order of business on the first day.

July 19 – 23, 2008, Burlington, Vermont

(*L-R*) **Tim Noonan** (Esq., Executive Director, Vermont Labor Relations Board) with Governor of Vermont, **James Douglas**, who welcomed ALRA members to this year's conference.

Advocates Day – July 21, 2008

(*L-R)* Keynote Speaker, **Buzz Hargrove**, (President, Canadian Auto Workers), pictured here with ALRA Vice-President Administration, **Bob Hackel**.

Luncheon speaker, **Wilma Liebman** (Member, National Labor Relations Board) talked on the *"Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board".*

Speakers, **Katherine Barrett** and **Richard Greene** *(above right),* Principal Authors of *Pew Center on the States Report Promises With a Price– Public Sector Retirement Benefits*; (*middle*) **James Dunn** (Esq., Mickenberg, Dunn, Lachs, Stewart & Smith); (*left*) **Jonathan Leopold** (Chief Administrative Officer, City of Burlington). **Tim Noonan** moderated.

Union Activities in the Electronic Workplace.
Jaye Bailey (*left*) (General Counsel, Connecticut State Board of Labor Relations) introduced this session. Panelists (*L-R*): **Peter Conrad** (Esq., Proskauer Rose LLP); **Barbara Camens** (Esq. Barr & Camens); and **Gilles Touchette** (Ad.E, Ogilvy-Renault). **Martin Malin** (*right*) moderated.

The 57th Annual ALRA Conference

CONCURRENT WORKSHOPS

July 21, 2008

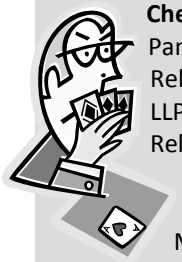
I – State of the States: State Government Budget Shortfalls and Labor Relations Implications.
Moderator: **Brian Harrington** (Field Investigator/Mediator, Massachusetts Joint Labor-Management Committee, Executive Director, New England Consortium of State Labor Relations Agencies).
Speakers: **Elizabeth McNichol** (Senior Fellow, Center on Budget and Policy Priorities, Co-Author of Center report on State Budget Shortfalls); **Marc Pfeiffer** (Deputy Director, Division of Local Government Services, New Jersey Department of Community Affairs); **Ross Hanna** (Esq., Director of Contract Administration, CSEA Local 1000, AFSCME, AFL-C10, New York).

II – Kentucky River, British Columbia Health and the Right to Organize and Bargain.
Moderator: **Reg Pearson** (Director of Dispute Resolution Services, Ontario Ministry of Labour, Past Present, ALRA)
Speakers (L-R): **Tina Coletti** (West Kootenay Region Chair, British Columbia Nurses' Union); **Peter Robb** (Esq., Downs Rachlin Martin PLLC); and **Jennifer Henry** (President, United Professions of Vermont).

III – Dealing with the Interplay of FMLA, ADA and Workers Compensation Statutes in a Union Setting.
Moderator: *(right)* **Marlene Gold** (Chairperson, New York City Office of Collective Bargaining, Executive Board Member, ALRA).
Speakers: *(middle)* **Susan Gilfillan (**Esq., McNeil, Leddy & Sheahan, Vermont); and *(at podium)* **Jules Smith (**Esq., Blitman & King, New York).

July 19 – 23, 2008, Burlington, Vermont

July 22, 2008



Who's Holding the Cards? Agency Administration of Card Check and First Contract Arbitration Statutes
Panelists: **Kevin Whitaker**, (Chair, Ontario Labour Relations Board); **John Toner** (Esq., Seyfarth Shaw LLP and former Executive Secretary, National Labor Relations Board); and **David Quinn** (Associate Counsel and Director of Litigation, New York State Public Employment Relations Board). Moderator: **Tim Noonan** (Executive Director, Vermont Labor Relations Board).

(L-R) Kevin Whitaker, Tim Noonan, David Quinn and John Toner

The Wizards of Ethics
Facilitators: **Dan Nielsen** (Mediator, Wisconsin Employment Relations Commission); and **Laurie Rantala** (Executive Director, Labour Services, Labour and Workforce Development, Nova Scotia).

Outgoing president, **Elizabeth MacPherson**, accepts a memento from incoming ALRA President, Phil Hanley.

July 23, 2008

View from the Top
(L-R) Moderator **Les Heltzer** (Executive Secretary, National Labor Relations Board); Panel: **Elizabeth MacPherson** (Chairperson, Canada Industrial Relations Board); and **Wilma B. Liebman** (Member, National Labor Relations Board).

Just Between You, and Me and GOOGLE . . . Balancing Privacy Considerations in the Agency Process
Panel: **Jaye Bailey** (General Counsel, Connecticut State Board of Labor Relations); and **Robert Cook** (General Counsel, Canada Industrial Relations Board).

Can I Really Wear Two Hats?
Facilitators: **Sue Bauman** (Commissioner, Wisconsin Employment Relations Commission); and **Pierre Hamel** (Executive Director and General Counsel, Canada Public Service Labour Relations Board).

CANADA INDUSTRIAL RELATIONS BOARD (CIRB)

TELUS Advanced Communications, a Division of TELUS Communications Inc. et al. (2008), as yet unreported CIRB decision no. 415.

The Telecommunications Workers Union (TWU) and TELUS Advanced Communications (TELUS) jointly applied to the Board for a declaratory opinion, pursuant to section 15.1(2) of the *Canada Labour Code* (the *Code*). The question was formulated by the parties as follows: Is TELUS under a *Code* obligation to provide to the TWU home telephone numbers and home email addresses of bargaining unit employees who are not presently members of the TWU?

The Board determined that the union has an entitlement to the basic personal contact information (i.e., the employee's name, home address and home telephone number) by virtue of its status as the accredited bargaining representative for every employee in the bargaining unit. However, the union is restricted in its use of this information—it may only use the information for the purpose for which it was collected, namely matters related to the individual's employment and the fulfillment of the union's statutory obligations in regard to that employment. Furthermore, the employer may be entitled to withhold certain basic personal contact information (for example, an unlisted telephone number) if that information was provided to the employer by the employee based on an express guarantee of confidentiality.

The Board declined to order the employer to collect employee's home email addresses solely for the purpose of providing it to the union. If the employer does not require the home email address of employees for the purposes of the employment relationship, then the union has no right to require the employer to collect this information solely for the union's benefit.

Chatellier (Pablo) and Viau (Alain) (2008), as yet unreported CIRB decision no. 417.

The Board was seized of an application for a declaration of an invalid strike vote filed under section 87.3(4) of the *Code*.

The applicants alleged that there were irregularities in the conduct of the vote, more specifically, that the list of addresses the union used for the second vote was incomplete to the extent that at least 110 employees in the Montréal region did not receive their ballots within a reasonable time to allow them to exercise their right to vote.

The Board first dismissed the preliminary objection raised by the employer and the union that the Board would not have jurisdiction under section 87.3(4) of the *Code* to deal with this application since the process followed was for a ratification vote on the employer's offers. The Board determined that, although the vote offered the voters two choices, it was still a strike vote pursuant to section 87.3(1) of the *Code*.

The Board nevertheless summarily dismissed the application pursuant to section 87.3(6) of the *Code*. In fact, this section of the *Code* provides that the Board may summarily dismiss an application to have a vote declared invalid if it is satisfied that, even if the alleged irregularities were proven, the outcome of the vote would not be different. The result of the second vote, which was being challenged, showed a difference of 426 votes in favour of the employer's offers. The Board concluded that the applicants did not provide any evidence to show that the irregularities would have made such a difference that the outcome of the vote could be challenged.

Workplace Violence

The federal government has passed new regulations under the *Canada Labour Code* that oblige all employers under federal jurisdiction to "prevent and protect against" workplace violence by taking specific measures to address "bullying, teasing, and abusive and other aggressive behaviour."

The regulations form a new Part XX of the *Canada Occupational Health and Safety Regulations* under the *Code*. Enacted pursuant to section 125(1)(z.16) of the *Code*, which provides that employers must", take the prescribed steps to prevent and protect against violence in the work place, "the new regulations were published in the Canada Gazette on May 28, and publicly announced by Labour Minister Jean-Pierre Blackburn in June 2008.

They require every employer under federal jurisdiction to develop a workplace violence prevention policy; to identify and assess risks related to workplace violence; to put preventive controls in place; to provide instruction and training to employees about the factors that contribute to workplace violence; to investigate each incident and provide a written report to a workplace committee or health and safety representative; and to review the effectiveness of its anti-violence initiatives at least every three years and update them as required.

The health and safety regulations under Part II of the *Code* cover the approximately 10% of the Canadian work force that is employed in sectors under federal jurisdiction, including banking, interprovincial and international transportation, broadcasting, telecommunications, federal Crown corporations and the federal public service. ⌘

(FEDERAL CANADA continued on page 9)

PUBLIC SERVICE LABOUR RELATIONS BOARD (PSLRB)

In ***King v. Treasury Board (Border Services Agency),*** 2008 PSLRB 64, a Board adjudicator was seized with a grievance in which the grievor was challenging his suspension without pay for 30 days. The suspension was imposed after the grievor wrote a letter to the United States Secretary for Homeland Security in his capacity as First National Vice-President of Customs Excise Union, a component of the bargaining agent representing customs officers.

In his letter, the grievor raised various points that he believed could be of interest to American officials concerning the hiring and training of Canadian customs officers.

The employer considered the letter highly inappropriate, especially in light of heightened border security sensitivities after the events of September 11, 2001.

The adjudicator found that the employer had not demonstrated that, in writing the letter, the grievor was acting outside of the scope of his duties as a union official nor that the contents of the letter were malicious or knowingly or recklessly false.

The 30-day suspension was quashed. An application for judicial review is pending. ⌘

In ***Professional Institute of the Public Service of Canada v. Treasury Board and Canada Revenue Agency***, 2008 PSLRB 13, the Board was called upon to determine whether the refusal by the employer to provide the bargaining agent with information in its possession relating to the names and home addresses of employees in the bargaining unit, constituted an unfair labour practice (interference with representation rights) under the *Public Service Labour Relations Act*.

The employer had concerns with respect to employee privacy, as well as other serious practical concerns.

The Board held that the jurisprudence of labour tribunals in other major jurisdictions and the former Public Service Staff Relations Board indicted that the employer's failure to provide employee contact information to a bargaining agent does constitute the type of interference in a bargaining agent's representation of employees that paragraph 186(1)(a) of the PSLRA was intended to prevent.

This was so especially in light of the bargaining agent's statutory obligation to conduct strike votes for all employees in the bargaining unit. In such a context, the bargaining agent's right to information will overcome normal privacy considerations. ⌘

ALRA 2008 CONFERENCE TEAM

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Richard Curreri (New York)
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Kevin Flanigan (New York)
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Marilyn Glenn Sayan (Washington)
Erica Snipes (Maryland)
Akiva Starkman (Canada)
Mark Torgerson (Alaska)

(L-R) Edward Zuccaro, Tim Noonan and Jacques Lessard

Boehmer © photo

Larry Gibbons and Pat Sims

Boehmer © photo

John Mather and Mary Beth Furanna

Les Heltzer

Reg Pearson

Thank you to everyone !

ALBERTA

Biometrics-based sign-in systems

Alberta's Freedom of Information and Privacy Commissioner has found that employers' use of biometrics-based employee sign-in systems that involve scanning a hand or thumb respectively do not violate provincial privacy legislation, because the systems store only a mathematical formula based on the handprint or thumbprint, but not the print itself.

In an August 7, 2008 decision, the Commission found that a hand scanner system installed by the Southwood Care Centre nursing home in Calgary to monitor the arrival and departure of employees, for payroll purposes, does not gather a palm print or finger print; it collects hand measurements, which it translates into a unique number (the template). The template is useful only when combined with the employee's identification number and the payroll system at Intercare.

The Commission found that, while the identifying number generated by the system constituted personal information about an employee, the employer had demonstrated that the system met a reasonable need in the employment relationship because a non-biometric approach could not as effectively ensure that employees did not sign in for each other. He dismissed an employee's complaint that the new system involved impermissible collection of personal information in contravention of Alberta's *Freedom of Information and Protection of Privacy Act***.**

(Source: *Lancaster's Labour Law E-Bulletin*, Issue No. 223)

Top Court will not review decision protecting union successor rights

The Supreme Court of Canada has denied leave to appeal an Alberta Court of Appeal decision that prevents Finning International from extricating itself from a collective agreement by contracting out.

The case arose when Finning Canada, a subsidiary of Finning International, decided in 2004 to close its Edmonton component rebuild centre (CRC), at which it restored damaged parts for heavy equipment used in the mining, forestry and construction industries. Finning contracted out the work to OEM Remanufacturing, a new company created in partnership with a local financier largely for the purpose of taking on Finning's component rebuilding work. The International Association of Machinists represented the CRC's 160 employees, and a collective agreement was in place.

Despite Finning's effective veto over OEM's strategic decisions and its contribution of $87 million for OEM to build a new CRC, OEM claimed to be a separate entity not bound by Finning's collective agreement with the IAM. When OEM signed a new agreement with the Christian Labour Association of Canada, the IAM asked the Alberta Labour Relations Board for a successorship declaration binding OEM to Finning's agreement with it.

Taking into account Finning's large investment in OEM, OEM's decision-making structure and the financier's role, the Board concluded that a successorship declaration was justified. However, a Reconsideration Panel ruled that the Original Panel erred in law by failing to distinguish between Finning and "the part of the business alleged to have been transferred, namely the CRC," and concluded that OEM could not be considered a successor to Finning. In the Reconsideration Panel's opinion, the contribution of $87 million to OEM was irrelevant, as it had not come from the CRC itself. The Alberta Court of Queen's Bench upheld the Reconsideration Panel's decision.

The Alberta Court of Appeal allowed the union's appeal, restoring the Original Panel's decision. (See Lancaster's *Labour Law E-Bulletin*, November 16, 2007, Issue No. 195.) The Court held that "the Reconsideration Panel was patently unreasonable in failing to adopt the standard analytical approach that requires a broad, expansive and purposive interpretation of the legislative provisions, particularly where related parties are involved." Stating that the Reconsideration Panel took an overly restrictive approach to the successorship test by ignoring Finning's infusion of $87 million into OEM, the Court expressed the view that "[t]he focus should be on the realities of the collective bargaining framework and the true effect of the overall transaction. The complexity of modern business transactions warrants such an inquiry, and labour tribunals must be wary of creative corporate restructuring or reorganizations that undermine collective bargaining rights."

On June 12, 2008, the Supreme Court of Canada denied Finning's application for leave to appeal. As is customary, the Supreme Court gave no reasons for its decision. ⌘

ONTARIO

AEPA violates workers' right to collective bargaining

On November 17, 2008, the Ontario Court of Appeal ruled that the *Agricultural Employees Protection Act, 2002* (AEPA) denies agricultural workers the right to collectively bargain, therefore violating their freedom of association, guaranteed under section 2(d) of the *Canadian Charter of Rights and Freedoms* (the *Charter*).

In a unanimous decision, the Chief Justice (a former management side labour lawyer) wrote that the AEPA violates the agricultural workers' right to collective bargaining, which was recognized by the Supreme Court of Canada in the landmark decision of *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391 (B.C. Health Services), and cannot be justified under section 1 of the Charter.

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Background

The employer is a large mushroom producer employing nearly 300 employees, a significant majority of whom had voted to have the United Food and Commercial Workers Union (UFCW) act as their bargaining agent. However, the employer had continually refused the UFCW's offer to bargain collectively, due to the lack of an obligation on employers to bargain with unions under the AEPA. The AEPA was passed by the provincial government subsequent to a 2001 Supreme Court of Canada decision holding that agricultural workers were entitled to organize (*Dunmore v. Ontario*, 3 S.C.R. 1016). However, the AEPA excluded agricultural workers from bargaining under the Ontario Labour Relations Act (OLRA).

The union and certain of the workers challenged the constitutionality of the AEPA and section 3(b.1) of the OLRA under sub-section 2(d) and 15 of the Charter (freedom of association and equality) . The application judge dismissed the Charter challenges, but the legal landscape subsequently changed due to the decision of the Supreme Court of Canada in B.C. Health Services in 2007.

The central issues in the appeal were whether the AEPA violates section 2(d) of the Charter by "failing to provide agricultural workers in Ontario with sufficient statutory protections to enable them to exercise their freedom to organize and their right to bargain collectively." The Court held that, while the application judge correctly found that the AEPA provides the minimum requirements necessary to protect the appellants' freedom to organize, he did not have the benefit of the B.C. Health Services case to guide him on the issue of collective bargaining. The combined effect of Dunmore and B.C. Health Services is to recognize that section 2(d) protects the right of workers to organize and to engage in meaningful collective bargaining. The Court concluded that the AEPA substantially impairs the capacity of agricultural workers to meaningfully exercise their right to bargain collectively.

The Court applied the tests set out by the SCC in the recent decision of *Baier v. Alberta*, [2007] 2 S.C.R. 673, where the Court considered the circumstances in which exclusion from a particular statutory model could amount to a violation of s.2 of the Charter. Winkler J. opined that the agricultural workers' claims are not that they are simply being denied access to the OLRA, but that they are being denied their constitutional right to engage in meaningful collective bargaining grounded in the fundamental freedom of association.

In concluding that the AEPA substantially impairs the workers' rights to engage in collective bargaining, the Court ruled that without statutory supports, agricultural workers have been unable to bargain collectively with their employers. It set out the minimum statutory protections that are required to enable agricultural workers to exercise their right to engage in meaningful collective bargaining: (1) a statutory duty to bargain in good faith; (2) statutory recognition of the principles of exclusivity and majoritarianism; and (3) a statutory mechanism for resolving bargaining impasses and disputes regarding the interpretation or administration of collective agreements [para. 80].

The Court then applied Dunmore to conclude that the government could be held responsible for the inability of workers to exercise their section 2(d) rights against private employers, as the legislation was responsible for the workers' inability to engage in a meaningful process of collective bargaining.

The Court dismissed the claim that the AEPA violated the section 15 equality rights of agricultural workers. It found that although the legislation perpetuates and reinforces the pre-existing disadvantage of agricultural workers, the distinction is not based on an enumerated or analogous ground. It found that the category of "agricultural worker" does not denote a personal characteristic of the type necessary to ground a section 15 discrimination claim.

The Court found that the violation of section 2(d) was not saved by s.1 of the Charter, as there are less intrusive ways to meet the pressing and substantial objective of protecting the family farm and farm production/viability than the "wholesale exclusion" of all agricultural employees from collective bargaining.

The Court suspended the declaration of invalidity of the AEPA for 12 months to give the provincial government time "to determine the method of statutorily protecting the rights of agricultural workers to engage in meaningful collective bargaining"[para. 139]. ⌘

Fraser v. Ontario (Attorney General), November 17, 2008, per Winkler C.J.O.

For the complete decision, click:

http://www.ontariocourts.on.ca/decisions/2008/november/2008ONCA0760.htm

Arthurs Commission Releases Final Pension Report

Ontario's Expert Commission on Pensions, headed by Professor Harry Arthurs, has released its report, "*A Fine Balance*", on Ontario's occupational pension system – the first such review in over twenty years. (Report summary, click here. Full report on Commission's website, click here.) ⌘

QUEBEC

At-home Daycare Workers

A judgment by the Quebec Superior Court will allow at-home daycare workers to join a union.

"This is a historic judgment and a great victory for us," said Louise Chabot, vice president of the Centrale des syndicats du Québec.

About 40% of all daycare spaces are at home-based daycares. There are 15,000 at-home daycare workers, most of whom

(Continued on page 12)

are women. Chabot said they work more than 60 hours per week and earn a salary of $14,000 per year from the province.

The CSQ and several other unions had challenged a law passed by the provincial government in 2003 that prohibited at-home workers to unionize. The unions had said the law was unconstitutional, and on October 31, 2008, the Quebec Superior Court agreed with that assessment. ⌘

Source: The Gazette, November 3, 2008.

SASKATCHEWAN

Unions File Court Challenge

Following the passage of major changes to Saskatchewan's labour relations legislation, the Saskatchewan Federation of Labour has filed a court challenge to the new legislation's constitutional validity.

Bill 5, the *Public Service Essential Services Act*, and Bill 6, the *Trade Union Amendment Act, 2007*, were introduced by the Saskatchewan Party and passed by the province's Legislative Assembly on May 8 and May 14, 2008. Bill 5 prohibits public sector workers performing essential services from engaging in a strike. The bill defines essential services broadly, and applies to all public employers. Bill 6 changes the *Trade Union Act* to expand employers' rights, e.g. by eliminating card-based certification, expressly protecting employers' rights to communicate facts and opinions to their employees, and setting a 90-day time limit on allegations of unfair labour practices. At the same time that it introduced Bills 5 and 6, the government fired the Chair and Vice-Chairs of the Labour Relations Board on March 6, 2008, naming a new Chair but not replacing the Vice-Chairs.

The SFL, which represents nearly 95,000 unionized workers from 37 affiliated unions in Saskatchewan, has filed a statement of claim with the Saskatchewan Court of Queen's Bench alleging that the two bills violate workers' rights to bargain collectively, and to form unions. Over half of the SFL's affiliates have added their name to the challenge. The SFL asserts that Bills 5 and 6 infringe the right to freedom of association set out in section 2(d) of the *Canadian Charter of Rights and Freedoms*.

The National Union of Public and General Employees has also filed a formal complaint with the International Labour Organization challenging the new labour laws. NUPGE's complaint to the ILO, a specialized agency of the United Nations that formulates minimum labour standards, alleges that Bills 5 and 6 violate the principle of freedom of association as set out in ILO Convention No. 87 and the ILO's Declaration on Fundamental Principles and Rights at Work. ⌘

CANDID CAMERA

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

New Rules for Arbitrators

The Federal Mediation and Conciliation Service (FMCS) Office of Arbitration Services maintains a Roster of approximately 1,400 arbitrators qualified to hear and decide disputes over the interpretation or application of collective bargaining agreements; provides the parties involved in collective bargaining agreements with lists and panels of experienced arbitrators; and appoints arbitrators following their selection by the involved parties. On August 6, 2008, the FMCS proposed to amend its rules relating to arbitrators' inactive status, removal, appointment, referral and obligation to provide FMCS with information.

Submitted to the Federal Register in August, the proposed rules also address the appointment of arbitrators where a party has failed to pay fees in previous cases. In addition, the proposed rule raises the annual listing fee for arbitrators on the FMCS Roster.

Specifically, the proposed rules:

- Allow arbitrators to be placed in an inactive status on a temporary basis because of illness, vacation, or other reasons for a period of up to two years without paying the annual listing fee. Should the arbitrator remain inactive for more than two years without paying the listing fee, the arbitrator will be removed and must reapply to the FMCS Roster.
- Outline the process to submit a complaint regarding an arbitrator on the FMCS Roster.
- Encourage arbitrators whose schedules do not permit cases to be heard within six months of assignment to make themselves temporarily inactive until their caseload permits the earlier scheduling of cases.
- Provide the parties with options of selecting an arbitrator when the contract language is silent on the selection process.
- Permit FMCS to decline services to a party based on non-payment of arbitrator fees.
- Provide for suspension or removal of arbitrators who establish a pattern of not notifying FMCS of their selection by parties to an FMCS case.
- Raise the listing fee for the first business address to $150.00 – up from $100.00.

The proposed rules are subject to a public comment period prior to being recorded with the Federal Register. ⌘

For more information, questions or comments, contact:

VellaTraynham,
Office of Arbitration Services
(202) 606-5111
vtraynham@fmcs.gov

Director welcomes Mediator Class of 2008

A new class of FMCS mediators was officially sworn into service by Director Arthur F. Rosenfeld during a commissioning ceremony held on August 18, 2008.

The mediator class, selected competitively from a nationwide pool of applicants, includes Anthony Bauman, Matthew Cockroft, Dennis Dougherty, Douglas Drake, Charles Evans, Daniel Hilbert, Randall Larson, Teresa Phillips, Richard Queer, and Rosa Tiscareno.

New mediator training was provided throughout the week to help familiarize the class with everything from FMCS policies, ethics and communication to bargaining techniques and case management; to prepare them for the real world challenges of collective bargaining and conflict resolution issues they will face in the field.

Commissioners Dan LeClair, Andy Hall, and Jim Schepker, served as trainers and mentors for the group. ⌘

FMCS Director Arthur Rosenfeld, FMCS Deputy Director Scot Beckenbaugh; Commissioners: Anthony Bauman, Matthew Cockroft, Dennis Dougherty, Douglas Drake, Charles Evans, Daniel Hilbert, Randall Larsson, Teresa Phillips, Richard Queer, and Rosa Tiscareno, Mentor: Dan LeClair Trainers: Andy Hall and Jim Schepker.

FMCS (Continued from page 11)

Boeing/Machinists Strike

FMCS (JUS) assisted in the resolution of the Boeing/Machinists strike. Director Arthur Rosenfeld called the parties in to DC to reconvene talks and the strike was resolved with a new deal approved by the International Association of Machinists as of November 1, 2008 permitting its 27,000 members to return to work. This was a major case for the FMCS, given its implications for the economy. ⌘

Award

FMCS Commissioner **Herb Fetty** recently received the prestigious Eagle Award in recognition of his 36 years of "exemplified and dedicated service to the labor and management community in Tennessee and Kentucky."

Named to honor individuals for outstanding leadership efforts to benefit labor and management in the United States, the Eagle Award was presented to Herb at the 21st Annual Tennessee Labor-Management Conference in Nashville.

The conference is sponsored by the Tennessee Center for Labor Management Relations, a consortium of the Tennessee Department of Labor and Workforce Development, Middle Tennessee State University and the Tennessee Board of Regents.

NATIONAL LABOR RELATIONS BOARD

By Les Heltzer

In 2007, more so than in any other year since the failed attempts at Labor Law Reform some 30 years ago, the Congressional spotlight was turned on the National Labor Relations Act (NLRA).

More than a dozen bills proposing amendments to the NLRA were introduced in either the House or the Senate and intense, and at times, contentious debate over the proposed legislation reverberated in the halls of Congress, and among practitioners of labor law, academics, and interest groups. None of the 2007 proposed legislation was passed by the Congress.

Among the bills introduced were:

- the *Labor Relations First Contract Negotiations Act* (providing for mandatory mediation if no collective bargaining agreement is reached within 30 days after the union's certification, and for mandatory arbitration 30 days after mediation);
- the *Secret Ballot Protection Act* (to amend 8(a)(2) to prohibit recognition of a union other than through a Board-conducted election); the *Workplace Representative Integrity Act* (attestation and proof of lawful citizenship or legal resident alien status required for any union authorization by employees other than through an NLRB-conducted election);
- *Truth in Employment Act* (salts—to provide that nothing in the NLRA shall require an employer to employ any person seeking employment in furtherance of other employment or agency status);
- the *Tribal Labor Sovereignty Act* (excluding from the definition of "employer" any enterprise or institution owned and operated by an Indian tribe and located on Indian lands); and
- the *National Right to Work Act* (deleting exemptions from 8(a)(3) and 8(b)(2) for union security agreements).

Of all the bills introduced during 2007, the proposed legislation with the widest and most dramatic potential impact on the NLRA was the *Employee Free Choice Act* (EFCA) and *Re-empowerment of Skilled and Professional Employees and Construction Tradeworkers Act* (RESPECT Act).

EFCA (Senate Bill 1041, introduced March 29, 2007 by Sen. Kennedy D-MA) would provide, among other things, for:

- Board certification of a collective-bargaining representative based on Agency conducted card-checks,
- mandatory mediation and arbitration through the FMCS if the parties are unable to reach agreement on an initial contract,
- mandatory petitions for injunctions based on a determination following investigation of charges that there is reasonable cause to believe that certain alleged unfair labor practices have been committed between the beginning of organizing activity, and
- the entering into of an initial agreement and additional remedies, including double back pay and civil penalties, where such unfair labor practices are found.

The RESPECT Act (Senate Bill 939, introduced March 22, 2007 by Senator Dodd D-CT) would amend the NLRA by deleting from the definition of "supervisor" the authority to assign or to responsibly direct employees and to provide that supervisory authority must be exercised "for a majority of the individual's work time."

There has been little, if any, legislative activity involving the NLRA since the fall of 2007 as resources and energies have been directed to the presidential and Congressional election campaigns.

Assessments of different legislative strategies based on the

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(Continued from page 14)

potential outcomes in the elections have undoubtedly been considered by organized labor and management groups since last fall.

With the results of the elections now in, it will not be long before reassessments are made and plans of action are adopted. ⌘

NATIONAL MEDIATION BOARD (NMB)

As part of the National Mediation Board's five-year Strategic Plan, the agency has committed to expand the use of electronic systems to further streamline operations and reduce costs.

This process began in 2002 when the NMB switched from mail ballot representation elections to Telephone Electronic Voting (TEV). In late 2007, the NMB added an Internet voting component to the TEV process. The addition has been truly seamless. The added internet component has ensured that eligible voters who are deployed overseas on military duty are able to participate in representation elections.

The NMB is further expanding its use of electronic systems by implementing a trial period for electronic "E-filing" in representation cases. The trial period began on December 1, 2008, and will continue for at least three months. During this period, the NMB will test the new system for representation cases filed with the Office of Legal Affairs (OLA) and continue to accept paper submissions via mail or facsimile for all representation matters.

The Board will also accept any comments from those participating in the trial through February 2009. Participation during the trial period is voluntary but the NMB hopes participants will actively assist in testing the new system.

The NMB gratefully acknowledges the assistance received from Les Heltzer and the National Labor Relations Board during the development of the E-filing system. ⌘

The Bay Area in 2009

Preparations are underway for the 2009 ALRA Annual Conference, to be held at the Marriott Oakland City Center Hotel from July 19 - 22, 2009.

Located in Old Oakland, the Marriott is a short BART (Bay Area Rapid Transit) ride from the San Francisco International Airport (SFO) and walking distance to Chinatown, the waterfront and Jack London Square.

The Program and Professional Development Committees are working hard to design an interesting and informative Conference.

We look forward to seeing you there!

Bay Area photos by Liz MacPherson

In & around the States...

CALIFORNIA

State Mediation and Conciliation Service (SMCS)

By Paul Roose

In calendar year 2008, SMCS mediators mediated 214 **contract negotiations disputes** in the public sector, and reported agreements reached in 143 of those (68%).

In addition to the contract disputes, SMCS continues to handle **grievance dispute mediations** for labor-management parties in both the public and private sectors. We mediated 426 grievance disputes, reporting settlements in 60% of those. We also did 29 **"preventive" cases** (training of labor-management parties), and 125 **elections / representation disputes.**

Highlights for the year include our success at mediating after a transit job action. After a sickout by **Sacramento Regional Transit** light rail and bus mechanics represented by **IBEW Local 1245**, the parties contacted state mediation. After three mediation sessions, agreement was reached and ratified by the union membership. This averted further job actions and requests for governor intervention.

State mediation also helped avert the state takeover of a financially struggling school district. The **Aromas San Juan Unified School District (San Benito County)** and the **California Teachers' Association** declared impasse and a state mediator intervened. Without an agreement reducing teachers' compensation, the District would have been unable to obtain a county loan and would have been taken over by the State Superintendent of Schools. After six mediation sessions, the parties reached an agreement that was later endorsed by a state-appointed fact finder and ratified by the teachers and the school board.

SMCS helped to avert many strikes this year.

- Under a strike threat, **San Mateo County Transit (SamTrans) and ATU Local 1574** (representing 400 bus drivers and mechanics) reached an agreement with the assistance of SMCS.
- **The Santa Clara Valley Transit Authority (VTA) and the Amalgamated Transit Union** reached agreement, averting a strike vote and possible request for governor intervention. A state mediator was involved.
- A state mediator assisted in post fact finding settlements reached between the **CA Teachers' Assoc**. and two school districts – **Wheatland Elementary School District** and **Travis Unified School District.** All post fact-finding settlements are notable because the union is at that point able to call a legal strike.
- **Contra Costa County – Deputy District Attorneys Assoc.** – A settlement after eight mediation sessions helped avert a threatened strike or other work action by deputy district attorneys in this large Bay Area county.
- **San Diego Transit and the Amalgamated Transit Union** – A state mediator assisted these parties in reaching a contract agreement and avoiding a possible request to the Governor for intervention.
- **University of CA – California Nurses' Assoc. –** With the assistance of state mediation and factfinding, the parties settled their contract dispute. This averted a possible walkout by 8,000 registered nurses at five UC medical centers.

Other notable items: A grand jury in Nevada County issued a report calling for the over-turning of an agency shop election conducted by SMCS staff on behalf of Nevada County and the Stationary Engineers Local 39. The Board of Supervisors of Nevada County considered and rejected the grand jury report, finding that the election was conducted properly.

And state mediators spent hundreds of hours working with the **University of CA** and **AFSCME Local 3299** to resolve their contract talks**.** While the union did conduct a five-day strike of its service unit, the patient care unit stayed on the job and ultimately reached an agreement. ⌘

ARIZONA

Phoenix Employment Relations Board (PERB)

By Paula Alberts

Electronic Processing/Archiving

The Phoenix Employment Relations Board has come full circle and now has a complete electronic system for the filing of all documents. Gone are the multiple copies required when filing paper documents. Each party has the ability to file any document through an FTP upload site specifically assigned to that entity, each with its own access code and password. Those not wishing to use the FTP upload site assigned to them are able to send their scanned documents through email to the PERB office where the date and time of the email becomes the official filing stamp.

Electronic processing is also used for service of all documents originating from the PERB office, including but not limited to orders, agendas, minutes, reports and in most cases, correspondence. Service upon all interested parties of any charge or petition is done electronically. Once a charge or petition is filed with the PERB, it is a matter of 10-15 minutes before the proper parties are served and confirmation of such service is on file. The PERB utilizes scanning/.pdf formatting of documents to serve via email.

A revamping of the PERB web site (available to all parties and any employee of the City of Phoenix) incorporated forms used for the filing of any matter before the PERB and each document has been made .pdf fillable.

The move into the electronic age has decreased the operating cost of the PERB

(Continued on page 17)

significantly and has expedited the processing of all PERB issues. Incorporated into the electronic process is the ability to keep accurate databases regarding all aspects of the PERB, along with historical archiving which in the past has been quite costly. ⌘

MICHIGAN

Michigan Employment Relations Commission (MERC)

by Ruth Anne Okun

Berrien County Intermediate School District -and- Michigan Educational Support Personnel Association -and- Berrien County Intermediate Paraprofessional Personnel Association. Case Nos. C04 G-203 and C04 H-206, issued April 16, 2008.

> ***Unfair labor practice not found.*** Employer did not breach its duty to bargain when it refused to bargain over change from fully insured to self-funded health insurance coverage; collective bargaining agreement between the parties waived the right to further bargaining over anything covered in the agreement; change to self-funded plan did not change employees' benefits, coverages, claim processing, or adjudication procedures. In the absence of a substantive change to terms and conditions of employment, there was no duty to bargain.

Lansing School District -and- Lansing Educational Assistants, MEA/NEA. Case No. C05 B-029, issued April 16, 2008.

> ***Unfair labor practice not found***. Employer did not breach its duty to bargain; employer refused to bargain over an unlawful proposal; union proposed that employer pay employees' membership dues and representation fees directly, instead of deducting them from employees' pay; employer's payment of union dues and fees would give employer control over union's finances and would violate section 10(1)(b) of PERA.

36th District Court - and - Michigan AFSCME Council 25 and Local 3308. Case No. C05 G-139, issued April 9, 2008.

> ***Unfair labor practice found.*** Employer unilaterally changed terms and conditions of employment during term of contract; reduction in workweek is distinguishable from layoffs or reduction in force and significantly changes employees hours, take home pay, and working conditions; change in workweek is contrary to clear and unambiguous language of contract; no bona fide dispute over the interpretation of the contract; mid-term contract modifications must have consent of both parties.

Eaton County Transportation Authority (EATRAN) -and- Amalgamated Transit Union, Local 1761. Case No. C05 D-079, issued June 20, 2008.

> ***Unfair labor practice found***. PERA protects the rights of public employees to participate in union activities free from unlawful interference by employer; credible testimony indicated that employer threatened to discharge an employee because of his union involvement; such a threat constitutes a violation of employee's rights under PERA.
>
> ***Unfair labor practice not found.*** Charging party failed to establish that employer's discharge of employee was motivated by anti-union animus; establishment of prima facie case of discrimination requires showing that employee would not have been discharged absent his or her protected union activity; employee would have been discharged regardless of his protected union activity, given his negligence and fault in a serious accident while driving employer's vehicle.

Interurban Transit Partnership - and- Amalgamated Transit Union, Local 836. Case No. C05 I-202, issued August 22, 2008.

> ***Unfair labor practice found.*** Subcontracting of bargaining unit work without giving union notice and an opportunity to bargain violates PERA; transfer of union work is a mandatory subject of bargaining where bargaining unit members exclusively performed the work before it was diverted; work at issue had not previously been performed by nonunit labor and was of the same type as work performed by bargaining unit, thus transfer of that work to nonunit labor is a mandatory subject of bargaining

Kent County (Gerald R. Ford International Airport) -and- Gerald R. Ford International Airport Command Association. Case No. R07 C-028, issued August 22, 2008.

> ***Certification of representative amended***. In the absence of a county -wide or airport-specific supervisory unit, airport security coordinator position must be included in unit with which it has a community of interest; airport security coordinator position shares community of interest with positions in newly certified supervisory unit; community of interest between bargaining unit positions does not mean that positions must have identical interests. ⌘

Commission Revises Arbitrator Selection Process

In June 2008, the Michigan Employment Relations Commission recently adopted a revision to its policy concerning Grievance Arbitration Services.

Pursuant to its authority to assist parties to resolve labor disputes (Section 10 of the *Labor Mediation Act*, 1939 PA 176, as amended, MCL 423.10), MERC maintains a list of skilled arbitrators qualified to perform grievance arbitration in the field of labor relations. MERC will assist parties to a grievance dispute

(MICHIGAN-Continued on page 18)

(*MICHIGAN—Continued from page 17*)

to select an arbitrator according to the terms of their contract and, thereafter, will appoint the arbitrator to hear the case.

In the past, when one party failed to return the list of proposed arbitrators or otherwise objected to the arbitrability of a grievance, MERC would take a "hands off" approach. Absent the consent of both parties, MERC would refrain from appointing an arbitrator. This was different from the approach followed by the American Arbitration Association and the Federal Mediation and Conciliation Service.

Also, it was not in accord with the established premise that the arbitrability of a grievance is a matter for the arbitrator or the courts to decide.

For these and other reasons, MERC adopted a revision to the Arbitrator Selection Process. MERC's process is especially attractive, because the Commission will assist parties to select and, thereafter, will appoint an arbitrator **without** charge. ⌘

OKLAHOMA

Public Employees Relations Board (PERB)

Oklahoma Adopts ALRA Neutrality Report

FILED
AUG 14 2008
Public Employees Relations Board

STATE OF OKLAHOMA
PUBLIC EMPLOYEES RELATIONS BOARD

IN RE: NEUTRALITY

PERB No. GO-08-1

GENERAL ORDER

The State of Oklahoma Public Employees Relations Board ("PERB") adopts the Final Report of the Neutrality Project approved July 28, 2008 by the membership of the Association of Labor Relations Agencies (the "Neutrality Report") to serve as its code of conduct and standard of ethics. The Neutrality Report will govern the actions of PERB, its members and staff, and all other representatives of PERB.

ORDERED this 14th day of August, 2008.

Craig W. Hoster, Chair
Public Employees Relations Board

Larry W. Gooch, Member
Public Employees Relations Board

Linda Samuel-Jaha, Member
Public Employees Relations Board

2008 ALRA GRADUATES

Dubois photo

"ALRA Academy Class of 2008" and their instructors.

Comings and Goings...

CANADA INDUSTRIAL RELATIONS BOARD (CIRB)

On October 30, 2008, Prime Minister Stephen Harper announced the appointment of the **Honourable Rona Ambrose** (left) as Minister of Labour. The CIRB reports to Parliament through the Minister of Labour, who is responsible for recommending individuals for appointment to the Board.

After working for the CIRB for the past four years, **Rob Cook** (General Counsel and Director of Legal Services) retired in early November 2008 after 30 years of dedicated public service.

Rob's contribution to ALRA, particularly the workshop on "*De Facto 'Discovery' and the Adjudication Process*" he co-hosted with Douglas Ruck and Jaye Bailey at the ALRA 2007 Conference and his presentation at the 2008 Conference on the "*Use of Personal Information in Tribunal Decisions – Finding the Balance*," will be greatly missed.

Boehmer © photo

Rob Cook

Many thanks, Rob, and we wish you a long and healthy retirement!

Susan Nicholas will be Acting General Counsel until the position is staffed permanently.

Patrick J. Heinke (right) has been reappointed as full-time Member of the CIRB effective May 9, 2008, for a term of three years.

The term of **Douglas G. Ruck**, full-time Vice-Chairperson, ended in June 2008.

Andrew L. Sims' term as a part-time Vice-Chairperson ended in September 2008, and part-time Vice-Chairpersons **Stan Lanyon** and **Maureen Flynn** resigned in April 2008.

PUBLIC SERVICE LABOUR RELATIONS BOARD (PSLRB)

Gilles Grenier has been appointed as Director of Dispute Resolution Services for the (Canada) Public Service Labour Relations Board in Ottawa.

Gilles was Deputy Director of that Directorate since 2000 and succeeds to Guy Baron, who became Director General, FMCS in June of 2008. Gilles is responsible for the delivery of the Board's mediation services to the Public Service of Canada, to assist the parties in their collective bargaining and in relation to grievances, complaints and other proceedings before the Board.

Michel Paquette was appointed as member with the PSLRB, effective September 2, 2008, for a term of five years.

Michel Paquette

Mr. Paquette, throughout his long career, was called upon to deal with federal public service human resources and labour relations matters. Prior to his appointment, Mr. Paquette held the position of Regional Representative with the National Capital Regional Office of the Professional Institute of the Public Service of Canada (PIPSC), the bargaining agent for over 63,000 professional employees in the Public Service of Canada.

Since 1999, he managed a team, including legal professionals, which provided representational services to 25,000 PIPSC members. Prior to this he served as Employment Relations Officer with the PIPSC. Mr. Paquette also worked on the management side, as Head of Personnel with the Office of the Commissioner of Official Languages, earlier in his career.

As a result of this appointment, all 10 Board members positions, including the Chairperson and three Vice-Chairpersons, are presently filled.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)

On July 3, 2008, Michigan Governor Granholm re-appointed **Eugene Lumberg** to a three-year term as a Commissioner on the Michigan Employment Relations Commission.

Commissioner Lumberg, an attorney in private practice, has represented both employers and labor organizations in the public sector. He represented the Cities of Southfield and Clawson in labor matters and was the attorney for public safety units in various municipalities. He has served on MERC's panel of neutrals in Act 312 and Fact Finding matters and is an arbitrator, as well as a mediator and facilitator in the Oakland and Wayne County Circuit Courts.

Commissioner Lumberg is currently and has been the long-time City Prosecutor for Oak Park and Huntington Woods. He also worked in the Oakland County Prosecutor's office. Prior to practicing law, Commissioner Lumberg was a teacher in the Oak Park Public Schools and was a member of the Michigan Education Association and the American Federation of Teachers.

Commissioner Lumberg's appointment expires on June 30, 2011.

Jim Amar, a long-time mediator in the Detroit office of the Bureau of Employment Relations, has been appointed to serve as the Division Administrator and Supervisor of the mediation staff in the Bureau's Lansing office. In this capacity, Jim will be responsible for the efficient operation of and for managing, planning and directing mediation functions for that office. He also will be responsible for handling a case load for mediating collective bargaining and grievance disputes, often of a high profile nature.

Josée Dubois Photo

Jim's background and experience in various capacities/locales of the Bureau will serve him well. He has worked as a mediator in both the Detroit and Lansing offices and served as the Executive

(Comings & Goings—Continued on page 20)

(Continued from page 19)
Assistant to prior bureau directors. Jim will complete his active Detroit-area cases, while he transitions into his new responsibilities in the Lansing office.

Miles Cameron joined the Lansing office of the MERC mediation staff in early July 2008. Prior to joining MERC, Miles was a representative of the United Steel Workers of America, which he joined at the age of 18. Since that time, has dedicated himself to working collaboratively to resolve labor issues. ⌘

MINNESOTA

James A. Cunningham, Jr. was appointed to the Tenth Judicial District trial court bench in the city of Anoka in Anoka County.


Boehmer © photo

Mr. Cunningham is the commissioner of the Minnesota Bureau of Mediation Services, a position he has held since 2003. He was an assistant Minneapolis city attorney from 1999 to 2003, an assistant district counsel with the Minneapolis Public Schools from 1993 to 1999, an associate attorney with the Rider Bennett law firm in Minneapolis from 1990 through 1992, and a law clerk to U.S. District Court Judge Charles E. Clevert in Milwaukee, Wisconsin from 1989 to 1990. Mr. Cunningham earned his juris doctorate degree (1989) and his Bachelor of Arts degree (1986) from the University of Wisconsin, Madison.

Mr. Cunningham is an adjunct professor in the Hamline University Graduate School of Education, has been an instructor at the Hamline University School of Law, and an adjunct professor at St. Mary's University in Minneapolis. He is a member of the Minnesota State Bar Association, the Association of Labor Relation Agencies, and the Association for Conflict Resolution. He is also chair of the Fremont Community Health Services Board, and chair of the Center for Communication and Development/ KMOJ Radio Board.

Steven G. Hoffmeyer has been appointed to head the state's Bureau of Mediation Services, replacing James Cunningham. Mr. Hoffmeyer had previously been Deputy Commissioner of the Bureau, a post he held since 2003.


Boehmer © photo

Mr. Hoffmeyer graduated from Augsburg College and Hamline University School of Law. He became a licensed attorney in 1982, and has been actively engaged in human resources and labor relations work since 1985.

He initially practiced with a private law firm, then served as a Minnesota Human Rights enforcement officer and mediator for six years beginning in 1985. In 1991, he began serving as Senior Human Resources Representative, EEO Specialist and Supervisor for Hennepin County. He later became Labor Relations Advocate for the county in 1995, responsible for contract administration, bargaining and grievance activity. Mr. Hoffmeyer has been with the Bureau of Mediation Services since 2002. ⌘

MARYLAND STATE LABOR RELATIONS BOARD

In Memory

Allen Siegel (*right*), Interim chair of the Maryland State Labor Relations Board, passed away suddenly in late July. Allen was well liked by all Board member and staff, and was a wonderful leader on our Board—very knowledgeable in our field, and he is very much missed by all of us.

Sonya Spielberg has recently left the Maryland State Labor Relations Board.

The Boad's new counsel is **Joseph K. Pokempner.**

June Marshall has been appointed as board member. ⌘

MASSACHUSETTS

In 2008, Massachusetts Governor Deval Patrick made two crucial appointments to the Commonwealth of Massachusetts Employment Relations Board (CERB), the three-member board charged primarily with hearing appeals of dismissals and Hearing Officer decisions.

On August 20, 2008, Governor Patrick appointed **Elizabeth Neumeier**, Esq., as the first *per diem* Member of the CERB, and on October 27, 2008, he appointed **Marjorie Wittner** as Chair of the CERB. With the two appointments, the CERB now has a quorum and will begin conducting business, particularly as it relates to the issuance of final decisions and the consideration of backlogged probable cause determinations of cases filed prior to the enactment of the legislation that reorganized the Commonwealth's labor relations agencies into the Division of Labor Relations.

Ms. Neumeier is a well-respected Arbitrator, Mediator and Facilitator with many years of labor experience. She holds a BA in Economics from New York University and a Juris Doctor from Boston University. Prior to becoming a full-time arbitrator, she served as Counsel for the Association of Flight Attendants and as an attorney with the Federal Labor Relations Authority. Since 1993, she has been nationally renowned arbitrator, serving on permanent panels such as the United Steel & United Steelworkers of America, MLB & the MLB Players' Association, and the NHL & the NHL Players Association. She is a member of the National Academy of Arbitrators and the Association of Conflict Resolution. Her term will expire on August 25, 2011.

Ms. Wittner, has been appointed to a five-year term as the full-time Chair of the CERB.

In addition to a BA from Brandeis, she holds a Masters Degree in Industrial and Labor Relations from Cornell. Prior to getting her law degree from New York University, Ms. Wittner served as a Field Examiner with the National Labor Relations Board where she investigated unfair

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labor practices and conducted representation elections. After law school, she entered private practice which was devoted almost exclusively to labor and employment matters. She commenced employment with the former Labor Relations Commission in 2001 where she served as a hearing officer responsible for investigating prohibited practice charges and presiding over hearings. During her tenure at the Commission, she also served as Chief Counsel responsible for litigating appeals of Commission decisions before the Appeals Court. Recently, she has been in private practice as an attorney and arbitrator.

In addition to her experience, Ms. Wittner is the author of numerous articles and is a former Board Member of the New England Consortium of Labor Relations Agencies. ⌘

International Co-operation, courtesy of ALRA

In November 2008, representatives of the Canada Industrial Relations Board (CIRB) visited their counterparts at the National Mediation Board and the National Labour Relations Board (NLRB) to discuss issues of mutual interest.

NLRB photo

(L-R) Peter Suchanek (CIRB), Ginette Brazeau (CIRB), John Higgins (NLRB), Elizabeth MacPherson (CIRB), Peter Schaumber (Chairman, NLRB), Wilma Liebman (NLRB), and Les Heltzer (NLRB).

Goodbye...

Jaye Bailey

Long time ALRA member and former President Jaye Bailey has accepted a position as General Counsel at the University of Connecticut, effective February 13, 2009.

Jaye has been a dedicated member of the E-Board and a key member of ALRA Academy.

Goodbye and good luck Jaye - we will miss you!

New NLRB Chairman

Wilma Liebman

On January 20, 2009, President Barack Obama designated Wilma B. Liebman, a Member of the National Labor Relations Board, as Chairman of the Board.

Chairman Liebman has served on the Board since November 14, 1997. First appointed by President Clinton, she is now serving her third term, which will expire on August 27, 2011.

Before joining the Board, Chairman Liebman served from 1994 to 1997 at the Federal Mediation and Conciliation Service, first as Special Assistant to the Director and then as Deputy Director. She began her legal career as an NLRB staff attorney in 1974, then served on the legal staff of two labor unions: the International Brotherhood of Teamsters (1980-1989) and the International Union of Bricklayers and Allied Craftsmen (1990-1993).

A native of Philadelphia, Chairman Liebman holds a B.A. from Barnard College and a J.D. from the George Washington University Law Center.

WALMART'S EXPERIENCES with CANADIAN LABOUR LAW

Walmart has continued to resist unionization of its Canadian stores, and has come into conflict with unions representing its Canadian workers.

Citing the cost of rising wages, Walmart closed a tire and lubrication shop at its store in Gatineau, Quebec in October 2008, after a provincially appointed interest arbitrator set the terms of a first collective agreement and ordered that the wages of the lowest paid unionized workers be increased by almost 43% over three years (from $8.50 per hour to $12.13). The company offered the employees jobs in other stores. Union leaders are accusing the U.S. retail giant of breaching provincial labour laws and the *Canadian Charter of Rights and Freedoms*.

However, in December 2008, the 195 workers at the store won bargaining rights from the Quebec labour board based on union membership evidence, three years after a majority of them had signed union cards. Walmart has refused to start bargaining for a first collective agreement and has asked a Quebec court to order a secret ballot.

An appeal by workers at the Walmart store in Jonquière, Quebec, who lost their jobs when the store was closed four years ago, was heard by the Supreme Court of Canada on January 21, 2009. The court is considering whether Walmart violated Quebec labour laws and the workers' constitutional rights by shutting its store during negotiations for a first collective agreement. A key question before the Supreme Court is whether the permanent closure of a store constitutes "good and sufficient reasons" for terminating employment, the standard in the Quebec *Labour Code*.

Walmart closed the Jonquière store on April 7, 2005, putting some 190 employees out of work, after the union was certified by the labour board but before a first contract could be imposed. Walmart claimed that the closing was due to lack of business, but several employee complaints were filed with the Quebec Labour Relations Board alleging an unfair labour practice. In one case, Board Vice-Chair Pierre Flageole dismissed the complaint, holding that an employer was legally entitled to close down a business for any reason, provided only that the closing was genuine and not a sham, and that there was no reason to doubt the genuineness of the Jonquière store closing, and hence no basis for the Board to interfere. This ruling was upheld by the Quebec Superior Court and by the Quebec Court of Appeal.

However, in a subsequent and separate case, Vice-Chair Flageole found that the closing and resulting dismissal of employees was a breach of the prohibition in the Quebec *Labour Code* against reprisals or sanctions against employees for union activity, and that that the closing of the store was not "real, genuine and definitive" because, since the closing, the building had neither been sold nor demolished and the company had made no real effort to find another tenant for the property. The Quebec Superior Court dismissed an application for judicial review of this decision, but the Quebec Court of Appeal allowed Walmart's appeal, ruling that Flageole had unreasonably reversed the burden of proof by requiring Walmart to prove the genuineness of the closing.

"Walmart closed the Jonquière store on April 7, 2005, throwing some 190 employees out of work, after the union was certified by the labour board but before a first contract could be imposed."

With more than two million employees worldwide, Walmart has been fighting unionization in various Canadian courts and labour tribunals in recent years, but it is the first time the Supreme Court of Canada has agreed to tackle the issue.

Meanwhile, in Saskatchewan, the Saskatchewan Labour Relations Board has agreed to hear a union complaint that Walmart breached Saskatchewan labour law when it closed the store in Jonquière, Quebec. The unusual complaint by the United Food and Commercial Workers alleges that the Quebec store closing is an unfair labour practice under Saskatchewan's *Trade Union Act* because it was intended to intimidate employees not only in the province where it occurred, but also everywhere else in Canada where attempts were being made to organize, including at three Walmart stores in Saskatchewan.

The Saskatchewan Board has issued a certification order for one of the stores in the province. Walmart is challenging the Board order. ⌘

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Phillip Hanley
President

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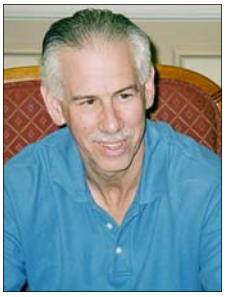
Elizabeth MacPherson
Past President



Robert Hackel
VP—Administration

Scot Beckenbaugh
VP—Finance

Les Heltzer
VP—Prof. Development

Mary Johnson
President-Elect

ALRA Board Members

Sue Bauman

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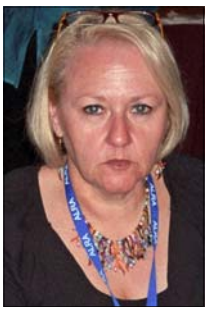

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