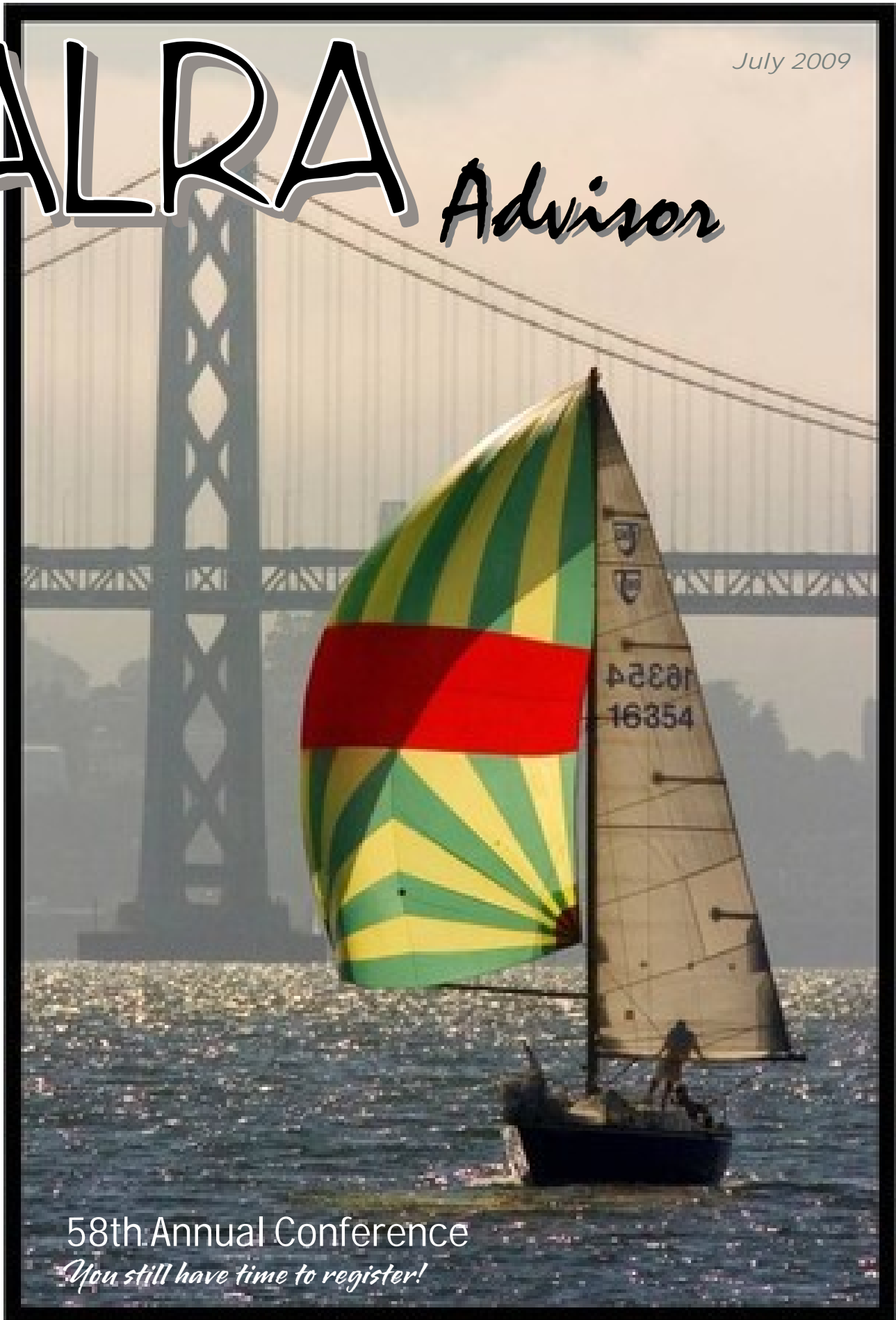


# ALRA

*Advisor*

July 2009



58th Annual Conference  
*You still have time to register!*

# ALRA *Advisor*

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



[www.alra.org](http://www.alra.org)

## In this issue...

From the President .....	3
Conference Program .....	4
Conference Highlights .....	6
ALRAcademy.....	7
Federal—United States	
National Labor Relations Board .....	8
Federal Mediation & Conciliation Service .....	11
Federal—Canada	
Canada Industrial Relations Board.....	13
Public Service Labour Relations Board .....	13
In & Around the States	
Washington.....	14
In & Around the Provinces	
British Columbia.....	15
Ontario .....	15
Quebec .....	15
Saskatchewan.....	15
Comings & Goings.....	16
Awards.....	17
ALRA Executive & Board Members.....	18
Elections .....	19
Discover Oakland .....	20



Photo: Christopher Humphrey / OCVB

**ON the COVER**  
Sailing back to Oakland

**58th Annual  
Conference**  
*You still have time  
to register!*  
[www.alra.org](http://www.alra.org)

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:** Material to the Editor: [josee.dubois@psst-tdfp.gc.ca](mailto:josee.dubois@psst-tdfp.gc.ca)

## *Oakland... Just what the doctor ordered?*



Dubois photo

I would like to start by extending a hearty greeting to one and all...I hope that this edition of the *ALRA Advisor* finds things well with you and your agencies. It has admittedly been a tough year for many of us, and it appears that we still have a ways to go before we see brighter days again.

However, while I have often been accused of being an eternal optimist, I do believe that we have many reasons to be hopeful and optimistic about the future. There are many promising signs that the worst of the current economic crisis may be behind us, and brighter days may be 'just around the corner' as they say.

Still, we understand that the current economic climate is making it hard for many of us to travel in the midst of budget cutbacks and reduced funding. Still, the upcoming annual meeting may be just the 'prescription' needed to help us shake the gloomy day-to-day blues. While it may not be easy, I am hoping that all of you will find a way to register and attend the upcoming Annual Conference.

Joining our friends and colleagues this summer in the delightful backdrops of San Francisco and Oakland, may be 'just what the doctor ordered'.

The Board and Committees have worked hard

to put together one of the finest programs that ALRA has ever put on and will feature experts known nationally and internationally. It is sure to be a symposium that will benefit all and will likely be the highlight of the year for many of us.

Additionally, in true ALRA fashion, the local host committee has planned a number of social activities that will highlight some of best that the Bay area has to offer. From winery tours, to a major league baseball game, to the fine dining that the area is known for, you will not want to miss this event. Early indications suggest that many attendees will be bringing family members, and plan to extend their visits into full family vacations.

So I hope you will join us for the programs, the professional development, the peer association and networking, and did I mention the fun! I look forward to seeing everyone this summer in the cities by the Bay.

*Phil Hanley*



Oakland skyline overlooking Lake Merritt  
Photo: Natalya Goryakina / OCVB

# ALRA 2009 Conference Program

58th Annual Conference  
*You still have time to register!*

## SATURDAY, JULY 18 — REGISTRATION & RECEPTION

1:00 Conference Registration

6:00 OPENING Reception

## SUNDAY, July 19 — CONFERENCE OPENING

11:30 WELCOME Brunch — Phil Hanley

12:30 DISTINGUISHED SPEAKER — Labour History in the Bay Area — Fred Glass (California Federation of Teachers)

1:30

### CONCURRENT ROUNDTABLES (5)

I — Board Member and Commission Member Roundtable — What Does it Mean to be a Neutral?

Karen Neuwald (California, PERB), Daniel Charbonneau (CIRB, Canada)

II — Mediator Roundtable—Mediating the Division of a Shrinking Pie

Steve Pearl (CSMCS)

Jerry Allen (FMCS, US)

III — General Counsel Roundtable—Current Legal Issues

Pierre Hamel (PSLRB, Canada)

IV — ALJ Roundtable

Mary Cracraft (NLRB, San Francisco)

Bernard McMonigle (California, PERB)

V — Directors & Administrators Roundtable—Dealing with Shrinking Budgets

Joseph P. Norelli (NLRB, San Francisco)

Alan Reichard (NLRB, Oakland)



## MONDAY, JULY 20 — ADVOCATES DAY

THEME: Labour Management Relations and the Global Economic Crisis

8:30 Continental Breakfast

9:00 WELCOME — Oakland Mayor Ron Dellums

9:15 KEYNOTE SESSION—The Impacts of Globalization on Labor Relations — Katie Quan (UC Berkeley)

10:15 Break

10:30 **What Would the *Employee Free Choice Act* Mean in the Workplace?**

Panel: William Gould (former Chair, NLRB)

Employer Rep: Greg McClune (Attorney, Foley & Lardner)

Union Rep: Tho Thi Do (Secretary-Treasurer, UNITE-HERE, Local 2)

11:45 Hosted Luncheon — The Republic Windows Story — Kevin Surace (Serious Materials) and Mark Meinster (UE)

1:30 CONCURRENT WORKSHOPS (3)

I — The Canadian Experience with First Contract Arbitration and Card Check

Ginette Brazeau (CIRB); Pierre Flageole (Quebec LRB); Ken Love (Saskatchewan LRB)

II — Effect of the Stock Market Collapse on Worker Pensions

Jack Ehnes (California State Teachers Retirement System); other experts

III — Labor Law Update

Private Sector Update — Joseph Norelli (San Francisco, NLRB)

Public Sector Update — Carol Vendrillo (*CA Public Employee Relations Journal*)

3:00 Break

*(continued on page 5)*

# ALRA 2009 Conference Program

## MONDAY, JULY 20 — ADVOCATES DAY (continued)

- 3:15 **The Role of Labor in the Economic Recovery**  
Panel: Thomas Kochan; Kate Gordon (Apollo Alliance); Barry Sedlik (California Business Ventures)
- 6:00 **EVENING RECEPTION** at Rotunda Building

## TUESDAY, JULY 21 — JOINT PROFESSIONAL DEVELOPMENT & PROGRAM

- 8:30 **PLENARY SESSION — LABOUR RELATIONS and the ECONOMIC CRISIS —WHAT is HAPPENING OUTSIDE of NORTH AMERICA?**  
The European Experience in a Global Economic Crisis — Kieran Mulvey (Labour Relations Commission, Ireland)  
The Asia/Pacific Situation—Jan Sunoo (FMCS)
- 10:00 **Break**
- 10:15 **CONCURRENT WORKSHOPS (3)**  
I — Dealing with Diversity at a Hearing  
Clifford Anderson (NLRB, San Francisco)  
Ian MacKenzie (PSLRB, Canada)  
II— Emotions in Bargaining—Assets or Obstacles?  
Jacques Lessard (FMCS-Canada)  
Pat Sims (NMB)  
III — Overview of the Effects of the Economic Crisis on Collective Bargaining to Date  
Reg Pearson (Canada)  
Scot Beckenbaugh (US)
- 12:00 **Lunch** (*not provided*)
- Afternoon **Optional Activities**

## WEDNESDAY, JULY 22 — PROFESSIONAL DEVELOPMENT

- 9:30 **ALRA Annual Business Meeting**
- 11:00 **Break**
- 11:15 **PLENARY SESSION — ETHICS**  
Facilitated discussion. Series of short, snappy ethics scenarios discussed by groups at round tables. For each scenario, one table chosen randomly to give its view(s) with opportunity for comment by others.
- 12:30 **Lunch**
- 1:30 **CONCURRENT SESSIONS (2)**  
I — Legal Writing  
Mark McDonald, Senior Counsel (Canada Public Service Staffing Tribunal)  
Donn Ginoza, Administrative Law Judge (California PERB)  
II — Mediation  
Mediation training/exercises designed as a follow-up to the 2008 sessions.
- 6:00 **CLOSING RECEPTION and BANQUET**

Photo: Alison Johns / OCVB



Photo: Barry Muniz / OCVB



Monday's Evening Reception will be held at the Rotunda Building.



# 2009 Conference Highlights

- **Three days** devoted to cutting edge issues and professional development opportunities for government labor-management neutrals
- **“Advocates’ Day”** geared toward bringing northern California’s labor-management community together with Canadian and US neutrals around hot topics of the day
- **Keynote presentation** by management and labor on the Republic Windows sit-in and later purchase of the plant by California green company Serious Materials
- **Renowned academic speakers** such as MIT’s Thomas Kochan and UC Berkeley’s Katie Quan
- **Lively debate** by respected advocates on the issues confronting labor and management in this challenging economic climate
- **Presentations on controversial issues** such as the *Employee Free Choice Act* and labor’s role in the economic recovery
- **International speakers** to discuss the impact of the economic crisis on labor-management relations in Ireland, Vietnam, and other countries
- **Centrally-located** conference hotel a ten-minute ride on rapid transit to downtown San Francisco, easy access from San Francisco International Airport and Oakland International Airport
- Optional **“ALRA Academy”** for new labor board members and high-level staff of labor relations agencies in North America

*ALRA is the premier professional association in the US and Canada representing labor-management adjudication and mediation agencies. The annual conference is held every July in locations rotating between the US and Canada. This is the first conference in the San Francisco Bay Area since the 1980s. Conference co-hosts include the California State Mediation and Conciliation Service, the Federal Mediation and Conciliation Service, The National Labor Relations Board, and the California Public Employment Relations Board.*



Boehmer © photo



Boehmer © photo



Boehmer © photo

## THE OPENING RECEPTION...

...is an excellent opportunity to network with other professionals, catch up with old colleagues, make new friends or simply enjoy the fine cuisine.

The reception will start at 6 pm at *AJ Toppers*, at the Oakland Marriott City Center which boasts stunning views of the San Francisco Bay Area, including Lake Merritt, Berkeley Marina, and the Golden Gate Bridge.

# 2009 ALRAcademy

We are pleased to announce that the 2009 ALRAcademy will be held July 17-19, 2009, at the Oakland Marriott Center City, immediately before the ALRA Annual Conference. The Academy offers three “welcomes” to chairpersons, board and commission members, general counsels and high level agency staff: (1) a welcome to ALRA; (2) a welcome and intensive orientation on the legalities and practicalities of the labor relations world; and (3) a welcome to neutrality. Attendees typically have less than three years’ experience in their current positions.

The Academy begins on **Friday** night with introductions and a dinner for the Academy attendees, the faculty and ALRA’s Executive Board. Additionally, John E. Higgins, (NLRB Deputy General Counsel, and past ALRA president and long time ALRA colleague), will offer a few thoughts on the role and responsibilities of a “neutral.”

On **Saturday**, the Academy begins with a welcome from Phil Hanley, (Member, City of Phoenix Employment Relations Board and the current ALRA



Les Heltzer, ALRA Vice-Pres.,  
Professional Development

President), followed by a presentation by Pierre Hamel, (General Counsel and Executive Director, Canada Public Service Labour Relations Board), on the comparative labor laws of the United States and Canada and an update on recent legislative initiatives and developments in U.S. Federal labor law by Les Heltzer, (NLRB Executive

Secretary). The Academy continues with a session on the basics and developing trends in

representation cases with John Higgins and the Academy coordinator, Jackie Zimmerman, (a mediator and arbitrator and former general counsel of the Illinois Labor Relations Board), and a session on the unfair labor practices with Les Heltzer. The Academy sessions are highly interactive and provide ample opportunity for candid questions and lively discussion.



Jackie Zimmerman  
ALRAcademy Coordinator

On **Sunday** morning, the Academy begins with an interactive session on mediation concepts with Reg Pearson, (Director, Labour Management Services, Ontario Ministry of Labour), and Sheri King, (Regional Director, Federal Mediation and Conciliation Service-Canada). The Academy concludes with a round table dialogue among attendees, faculty and delegates from ALRA member-agencies about the challenges and rewards of our roles as labor relations neutrals.

The 2009 Annual Conference is open both to registrants from ALRA member-agencies and non-member agencies and different annual conference registration fees apply.

This year the Academy is also open to attendees from member and non-member agencies. There is no separate Academy fee for an attendee who has also registered for the Annual Conference.

For Academy-only attendees, the fee is one-half the applicable annual conference registration fee.

The Academy is limited to 25 attendees. ☘

*For further information, please contact:*

- ALRAcademy Coordinator **Jackie Zimmerman** ([JacalynZim@aol.com](mailto:JacalynZim@aol.com)) or
- **Les Heltzer** ([Lester.Heltzer@NLRB.gov](mailto:Lester.Heltzer@NLRB.gov))



## NATIONAL LABOR RELATIONS BOARD (NLRB)

By Les Heltzer



### *The Employee Free Choice Act as of May 2009*

On March 10, 2009, bills entitled *The Employee Free Choice Act of 2009* (EFCA) were introduced in both the U.S. House of Representatives and the U.S. Senate. The House bill, H.R. 1409, was sponsored by Rep. George Miller (D-CA) with 225 co-sponsors. The Senate bill, S.560, was sponsored by Sen. Edward. Kennedy (D-Mass) with 30 co-sponsors.

The substance and textual language of the 2009 bills are identical to the EFCA bills introduced in 2007. The 2007 House bill passed by a 241-185 margin on March 1, 2007. No floor vote was taken on the 2007 Senate bill as, on June 26, 2007, the 60 votes needed under the Senate rules to invoke cloture on debate and to send the bill to the floor were not achieved. Any further

legislative action on EFCA was to await the outcome of the November 2008 elections.

With the advent of the new Congress, and particularly a more Democratic Senate, and a Democratic President, the 2009 political landscape in Washington, D.C. is quite different than it was in 2007. It is clear that EFCA continues to be a high profile issue and that those on either side of the issue are renewing and increasing their efforts.

Proponent and opponent organizations in the private sector have marshaled millions of dollars to publicize their views on EFCA. Congressmen, Senators and other officials continue to make public statements on the legislation, numerous academics and other Board observers have written articles

on EFCA, and the legislation has been the subject of myriad newspaper and television commentary and ads. Interest groups and other Senate observers are taking and revising head counts reflecting recent developments in the Senate, both anticipated and unanticipated.

Costco, Whole Foods and Starbucks jointly have proposed what has been labeled a "more management-friendly" version of EFCA. Various other alternatives to EFCA have been suggested. Additional alternatives may yet be proposed. Blogs abound. You need only open your browser and enter "EFCA" to see the intense interest and controversy EFCA continues to generate.

But, at this time, the course EFCA will ultimately take is not certain. Perhaps by the time of the ALRA 2009 Annual Conference in July, things will be clearer. ☞

### The Two-Member Board and Challenging Times

*The National Labor Relations Act* provides for a full complement of five Board members, each appointed by the President with the advice and consent of the U.S. Senate and serving a five-year term, with the five terms staggered so that one term expires each year.

Notwithstanding that, the Board has had less than the full complement of Board members for over much of the last 25 years.

Since January 1, 2008 through at least the end of May 2009 when this article was prepared, the Board has been comprised of two members, Wilma B. Liebman and Peter C. Schaumber.

During this 17-month period, the two-member Board issued decisions or orders in over 400 contested representation and unfair labor practice cases all in which the two members have agreed on the disposition.



Wilma B. Liebman



Peter C. Schaumber

In its decisions or orders the two-member Board has included a footnote regarding its statutory authority to act containing the following language:

*(Continued on page 9)*





## NATIONAL LABOR RELATIONS BOARD (NLRB)

(Continued from page 8)

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007.

Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group.

As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Section 3(b) of the NLRA provides, in pertinent part:

**(b) [Delegation of powers to members...]** The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise... . A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. (Bolding in original)

As of the time this article was prepared, the issue of the authority of the two-member Board has been decided or is pending before 10 different circuit courts and in more than 40 cases. (Although the two-member Board issued over 400 cases, representation cases are not directly appealable to the circuit courts and only those unfair labor practice decisions constituting final orders are directly appealable.

Further, many of the unfair labor practice final order cases issued by the two-member Board have been closed on voluntary compliance with the Board’s order, are in some stage of the compliance process or have been appealed to circuit courts on grounds other than a challenge to the two-member Board’s authority.) Three circuit courts have ruled on the issue.

On March 13, 2009, the First Circuit issued its opinion in *Northeastern Land Servs., Ltd. v. NLRB*, 560 F.3d 36 (1st Cir. 2009), *reh’g denied*, No. 08-1878 (May 20, 2009) in which it found that the Board’s “delegation of its institutional power to a panel that ultimately consisted of a two-member quorum because of a vacancy was lawful under the plain text” of Section 3(b).

On May 1, 2009, the D.C. Circuit, in which an appeal from any NLRB final order may be filed, issued its opinion in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 546 F.3d 469 (D.C. Cir. 2009). D.C. Circuit concluded that the two-member Board did not have authority to

issue decisions emphasizing the Section 3(b) language that three members . . . “shall, at all times” constitute a quorum and concluding that the “plain meaning” of the statute required having three members on the overall Board.

Also on May 1, the Seventh Circuit issued its opinion in *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), *petition for cert. filed* (U.S. May 27, 2009) (No. 08-1457), in which it concluded, in agreement with the First Circuit, that the plain meaning of Section 3(b) gives the Board “the power to delegate its authority to a group of three members” and allows the Board “to continue to conduct business with a quorum of three members but expressly provides that two members constitute a quorum where the Board had previously delegated its authority to a group of three members.”

In a May 18 press release (R-2693, available on the NLRB web site, [www.nlr.gov](http://www.nlr.gov)), Chairman Liebman and Member Schaumber issued a statement concerning the D.C. Circuit’s *Laurel Baye* opinion.

Their statement indicated that after very careful consideration they had determined to continue to issue decisions as a quorum of the Board, noting that the First and Seventh Circuits had upheld the authority of a two-member Board, that the issue was pending before other circuits, and that their original determination to act as a two-member Board was supported by a legal opinion that

(Continued on page 10)



## NATIONAL LABOR RELATIONS BOARD (NLRB)

(Continued from page 9)

the Board had sought in 2003 from Department of Justice’s Office of Legal Counsel. ([http://www.usdoj.gov/olc/2003/nlrq/nlrq\\_03042003.pdf](http://www.usdoj.gov/olc/2003/nlrq/nlrq_03042003.pdf))

In addition, they stated:

“...We believe that the Board has an important public duty to keep functioning, and to avoid an indefinite shutdown in its decision-making, where (as here) there is a reasonable legal basis for concluding that the Board can act.

“We remain convinced, as the First Circuit and Seventh Circuits have held that such a basis for action exists under our statute. And we believe that by continuing to act on

cases, we will be able to finally resolve a substantial number of those disputes.

“The parties in many cases that have been decided by the Board have accepted the Board’s decisions. In other cases, while the merits of the Board’s decision have been challenged, the authority of the Board, as now constituted, to act has not been attacked.

“With great respect for the District of Columbia Circuit Court and the panel that decided *Laurel Baye Healthcare*, we believe that the panel decision was incorrect.

“Accordingly, we intend, by the end of May, to petition the panel,

and the full Court, to revisit the panel’s ruling.”

Subsequently, on May 20, the First Circuit denied the petition for rehearing filed by the employer in *Northeastern Land Services*, on May 27, the employer in *New Process Steel* filed a petition for certiorari with the U.S Supreme Court in light of the split on the issue in the circuit courts, and, also on May 27, the Board filed with the D.C. Circuit a petition for rehearing in *Laurel Baye*.

Further developments are awaited. ☹



E-Board meeting, Phoenix, February 2009

Photo: Joséé Dubois



## FEDERAL MEDIATION & CONCILIATION SERVICE (FMCS)

### FMCS Labor-Management Grants Program Accepts Applications for FY 2009

The Federal Mediation and Conciliation Service has opened its labor-management grants application period for fiscal year 2009.

Grants are awarded by the Agency to promote best practices in labor-management cooperation as a way of improving collective bargaining and proactively mitigating labor-management disputes.

The grant program supports the establishment and operation of joint labor-management committees at the company level, on a community or area-wide basis, within a particular industry, and for public sector employees.

Grant applications may be submitted until August 15, 2009. Application forms and information about how to apply can be obtained

online at the agency's Web site: [www.fmcs.gov](http://www.fmcs.gov). Interested parties are urged to contact the FMCS Grants Office at (202) 606-8181 with any questions they might have.

FMCS Acting Director Scot Beckenbaugh said the past success of Agency grants has shown the benefits of labor-management partnerships.

"The FMCS grants program in the past has provided valuable support for labor-management projects around the country and has been the source of numerous success stories that illustrate the benefits of cooperation and collaboration in resolving workplace issues," Beckenbaugh said.

"We hope labor-management committees at any level with innovative ideas will take advantage of this opportunity to apply. The

benefits of the program multiply when other parties see the results and adopt similar practices."

The grants program, which began in 1981 under the authority of the *Labor-Management Cooperation Act* of 1978 (PL 95-524), has funded a broad range of projects including outreach, communications, strategic planning, minority recruitment and process development.

For FY 2009, applicants will compete for grants in the amounts of \$65,000 to \$125,000. Grantees will share \$650,000 approved for this year's program. ☘

**Contact:** Linda Stubbs, Labor-Management Grants, Phone: (202) 606-8181

Visit [www.fmcs.gov](http://www.fmcs.gov) for more details and grant application materials.



Dubois photo

*The Federal Mediation and Conciliation Service, created in 1947, is an independent U.S. government agency whose mission is to preserve and promote labor-management peace and cooperation.*

*Headquartered in Washington, DC, with 10 district offices and more than 68 field offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities.*

## discover OAKLAND



Photo: Barry Muniz / OCVB

USS Potomac



Photo: Oakland Film Office / OCVB

Oakland's Chinatown



Photo: Patrick Feyh / OCVB

Lake Merritt fountain with necklace of lights





## CANADA INDUSTRIAL RELATIONS BOARD (CIRB)

### Viterra Inc. (2009) CIRB decision no. 442

The Board was seized of three applications, all of which were related to the Saskatchewan Wheat Pool's (SWP) acquisition of all of the shares of Agricore United (AU), which then became Viterra Inc. (Viterra).

The Grain Services Union (ILWU - Canada) (GSU) filed two applications pursuant to section 18 of the *Canada Labour Code* (the *Code*), requesting a



change of the scope of an office bargaining unit, an amalgamation of its Country Operations bargaining unit and Maintenance bargaining unit, and a declaration that former AU employees working in Saskatchewan now fall within the GSU's existing bargaining units.

Viterra filed a separate application under sections 18.1 (bargaining unit review), 35 (single employer) and 44 (sale of business) of the *Code* to consolidate its existing bargaining units into a single bargaining unit and asked for a representation vote.

With regard to the Country Operations unit and Maintenance unit, the Board concluded that it can no longer combine bargaining units using its general review power under section 18 of the *Code*. This can only be accomplished through a section 18.1 application and by satisfying the criteria for one of the other three routes that allows the Board to intervene.

The Board also decided that the scope of each unit was intended to apply only within Saskatchewan, and that former AU employees working in Saskatchewan, performing bargaining unit work, would be

swept in. The Board also stated that the number of in-scope employees significantly outnumbered the AU employees who would be added.

The Board dismissed Viterra's single employer application and decided that a sale of business had taken place. Because of the impact of the sale on the employees, the Board decided to conduct a bargaining unit review, pursuant to section 45. Having decided to conduct a review, the Board found it unnecessary to decide whether the existing units were inappropriate for collective bargaining, to satisfy the test under section 18.1(1), and declined to decide the issue of the description of the office unit pending the bargaining unit review. ☹

### City of Ottawa (2009) CIRB decision no. 447



On December 29, 2008, the Minister of Labour referred to the CIRB the question of the application of section 87.4(1) of the *Code* and requested that the Board determine the action, if any, required in order for the employer, the union and the employees in the bargaining unit to comply with section 87.4(1) during the work stoppage involving the City of Ottawa (OC Transpo) and the Amalgamated Transit Union, Local 279, which represents a unit of OC Transpo drivers and mechanics.

This referral represents the first time that the Minister of Labour has requested the Board to make a maintenance of activities determination after a work stoppage has actually commenced. In addition, the matter was an unusual one, in that there did not appear to be any

dispute between the parties with respect to the issue of maintenance of activities.

The Board, exercising its powers under section 16 of the *Code*, solicited public input. It then heard the parties on January 28, 2009, and a decision was rendered from the bench. Based on all of the evidence provided, the Board was satisfied that the verbal agreement between the parties regarding the services to be provided, coupled with the mitigation measures adopted by the City of Ottawa and the availability of adequate alternative services, was sufficient to satisfy the requirements of section 87.4(1) of the *Code*, and that no further actions were required by the employer, the union or the employees in the bargaining unit to prevent an immediate and serious danger to the safety or health of the public. ☹



### RCMP have right to unionize, Judge declares

In a 37-page ruling, an Ontario judge has held that, under the *Canadian Charter of Rights and Freedoms*, Canada's 20,000 RCMP officers are entitled to decide whether they wish to bargain with the force's management through a union of their own choice.

At present, they are limited to a consultative Staff Relations Representative Program under management's control. The federal government has filed an appeal of the decision. ☹

The full report: <http://www.lancasterhouse.com/>



## PUBLIC SERVICE LABOUR RELATIONS BOARD (PSLRB)



### Federal Government Amends Pay Equity Legislation

Among the most contentious provisions relating to federal employees in the more than 500-page-long omnibus Bill C-10, implementing the federal government's 2009 budget, is Part 11, the *Public Sector Equitable Compensation Act*.

This new Act, which was approved by the Senate and received Royal Assent on March 12, 2009, removes pay equity issues in the federal public sector from the purview of the *Canadian Human Rights Act*, and makes them subject instead to the collective bargaining process in the case of unionized employees, and to complaints to the Public Service Labour Relations Board in the case of non-unionized workers.

A consequential amendment, s.399 of the omnibus bill, amends the *Canadian Human Rights Act* to explicitly remove the jurisdiction of the Canadian Human Rights Commission to hear pay equity complaints regarding employees covered by the federal *Public Sector Equitable Compensation Act*.

The new legislation does not use the term "pay equity," referring throughout instead to "equitable compensation." Section 4(1) of the proposed *Public Sector Equitable Compensation Act* provides that "[a]n equitable compensation assessment under this Act assesses, without gender bias, the value of work performed by employees in a job group or a job class and identifies, by taking into account the prescribed factors, whether an equitable compensation matter exists."

Section 4(2) states that "[t]he criteria to be applied in assessing the value of the work performed by employees in a job group or a job class are

- (a) the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed; and
- (b) the employer's recruitment and retention needs in respect of employees in that job group or job class, taking into account the qualifications required to perform the work and the market forces operating in respect of employees with those qualifications."

Section 2(2) of the Act defines a "female predominant" job group or class as one composed of at least 70 percent female employees.

The *Public Sector Equitable Compensation Act* essentially leaves the issue of "equitable compensation" to be dealt with by the parties as a bargaining issue.

Although the Act provides that both non-unionized and unionized employees would be able to file complaints with the Public Service Labour Relations Board in specified circumstances, they would have to do so on their own, with unions prohibited from assisting their members in this regard.

Section 36 states that "[e]very employer and every bargaining agent shall refrain from engaging in any conduct that may encourage or assist any employee in filing or proceeding with a complaint under this Act," and s.41 imposes a fine of up to \$50,000 for any breach of this prohibition.

The 166,000-member **Public Service Alliance of Canada (PSAC)** has voiced a strong protest: "Pay equity is a fundamental human right that should not be taken away at a bargaining table where the employer historically holds the balance of power," said PSAC National President John Gordon.

"The *Public Sector Equitable Compensation Act* is a regressive piece of legislation that threatens to widen the income gap between women and men in the federal public sector.... It won't help the economy or save jobs. It will prevent women in the federal public sector from demanding equal pay for work of equal value. It has no place in the budget." ❧

### Federal Government Rolls Back Public Service Wage Increases

The *Expenditure Restraint Act*, passed in March 2009, not only caps, but rolls back, negotiated wage gains for federal public sector employees.

Section 16 of this Act provides that, "[d]espite any collective agreement, arbitral award or terms and conditions of employment to the contrary ... the rates of pay for employees [covered by the Act] are to be increased, or are deemed to have been increased, as the case may be, by the following percentages for any 12-month period that begins during any of the following fiscal years: the 2006–2007 fiscal year, 2.5%; (b) the 2007–2008 fiscal year, 2.3%; (c) the 2008–2009 fiscal year, 1.5%; (d) the 2009–2010 fiscal year, 1.5%; and (e) the 2010–2011 fiscal year, 1.5%.

(Continued on page 17)

## WASHINGTON

The **Washington State Public Employment Relations Commission** recently issued two unfair labor practice decisions regarding collective bargaining for state employees.

### CASE #1:

**State – Office of the Governor, Decision 10353 (PSRA, April 1, 2009)**, Service Employees International Union, Healthcare 1199NW filed a complaint alleging that the Governor committed an unfair labor practice when she failed to submit a request to the Legislature for funds necessary to implement the agreed-upon compensation and fringe benefit provisions for the parties' 2009-2011 collective bargaining agreement.

Under RCW 41.80.010, the Governor may only submit a request to the Legislature for funds necessary to implement a collective bargaining agreement if a) the request is submitted to the Director of the Office of Financial Management by October 1 prior to the legislative session at which the request is to be considered, and b) certified as being financially feasible for the state.

Although the Governor's negotiators indicated during bargaining that the negotiated cost-of-living increase would be financially feasible for the state despite what was then a projected \$3.2 billion revenue shortfall, by December

2008, the revenue forecast significantly worsened, based upon new data indicating the revenue shortfall would be \$5.7 billion, the Director of the Office of Financial Management did not certify the collective bargaining agreement as being financially feasible.

The Commission, relying upon existing agency precedents, held that the employer did not commit an unfair labor practice when the employer withdrew from its tentative agreement based upon drastic changes in economic circumstances between the time the contract was negotiated and the time the employer was required to submit a request for funds necessary to implement that agreement.

The stipulated facts and accompanying exhibits demonstrated that the employer's reasons for withdrawing from the tentative agreement were not so illogical as to warrant an inference that the employer did so in bad faith or to punish the union. However, the Commission ruled that the employer did commit an unfair labor practice when it failed to request further bargaining with the union.

The employer's good faith obligation required it, as the party withdrawing from a tentative agreement, to request that the union return to the table and continue the collective bargaining process. The Commission directed the employer

to immediately make a request to the union to return to the bargaining table to negotiate a new collective bargaining agreement.

### CASE #2:

**State – Office of the Governor, Decision 10313-A (PECB, April 21, 2009)**, the Washington State Troopers Association alleged that the Governor's repudiation of an interest arbitration award based upon the unprecedented economic downturn was an unfair labor practice.

The Examiner found that under RCW 41.56.473, if a collective bargaining agreement is completed through the statutory interest arbitration process, the Governor is bound by the award and must submit a request to the Legislature for funds necessary to implement the award.

The examiner also noted that although interest arbitration is generally a binding process, the relevant statutory scheme does not bind the Legislature to interest awards, and the Legislature, but not the Governor, is free to exercise its judgment and not fund the award.

Accordingly, the examiner found the Governor committed an unfair labor practice by not submitting a request to the Legislature for funds necessary to implement the interest arbitration award.

On appeal, the Commission affirmed the Examiner's decision in its entirety. ☞

discover  
OAKLAND



Giraffes at the Oakland Zoo

Photo: Barry Munitz / OCVB



Oakland Museum of California

Photo: Barry Munitz / OCVB



Runner in Oakland

Photo: Brooke Anderson / OCVB

## BRITISH COLUMBIA

### Labour Mobility Bill

British Columbia has introduced legislation providing full labour mobility for skilled trades and professions.

*Bill 9* will allow a person certified in any Canadian jurisdiction to be recognized and able to practice their profession in any Canadian jurisdiction, and is similar to legislation being enacted or revised in other provinces.

Under the national Agreement on Internal Trade (AIT), each province will continue to be responsible for maintaining and monitoring the requirements that are in place through provincial legislation for regulated occupations, such as doctors, lawyers, engineers and certified trades. ☞

For more info:

[http://www.aved.gov.bc.ca/labourmobility/docs/ga\\_labourmobility.pdf](http://www.aved.gov.bc.ca/labourmobility/docs/ga_labourmobility.pdf)

[www.leg.bc.ca/38th5th/1st\\_read/gov09-1.htm](http://www.leg.bc.ca/38th5th/1st_read/gov09-1.htm)

## ONTARIO

### Supreme Court to Hear Appeal in Farm Workers' Rights Case



Photo: Landreville

The Supreme Court of Canada has granted an application by the Ontario government for leave to appeal the decision of the Ontario Court of Appeal in *Fraser v. Attorney General of Ontario*.

In that decision, the Court of Appeal had found that the

*Agricultural Employees' Protection Act, 2002* severely limited the collective bargaining rights of agricultural workers in Ontario, and violated workers' freedom of association under s.2(d) of the *Canadian Charter of Rights and Freedoms*.

The Supreme Court gave no reason for its decision to grant leave to appeal the Court of Appeal's decision. ☞

## QUEBEC



### Update—

#### Walmart Litigation in Canada

A Quebec arbitrator imposed the terms of a two-year collective agreement on Walmart and Local 501 of the United Food and Commercial Workers in April 2009.

One hundred and eighty employees are in the bargaining unit, which was certified in January 2005.

## SASKATCHEWAN

### Dismissal of Provincial Labour Board Members Legal

The Saskatchewan court of Queen's Bench dismissed an application by the Saskatchewan Federation of Labour and several unions to quash an order-in-council by the province's newly elected government dismissing and replacing the chair and two vice-chairs of the provincial Labour Relations Board.



The unions argued that the dismissals and appointments of replacement members constituted an illegal interference with the impartiality of the Board and an improper attempt to influence its policy direction.

In 2008, a newly elected government passed an Order-in-Council terminating the appointments of the incumbent chair and two vice-chairs of the Board, and replacing them with a new chair and two vice-chairs.

The displaced chair had been appointed on August 14, 2007 to serve "at pleasure" for a term not exceeding October 1, 2008, and the two displaced vice-chairs were appointed "at pleasure" for terms not exceeding July 1, 2009 and May 16, 2012 respectively. The replacements were likewise appointed "at pleasure" for specified terms.

The unions argued that statements by Saskatchewan Party politicians about wanting to encourage a "balanced" approach to labour relations were contrary to the spirit and intent of the Act, which was intended to promote the rights of employees and unions.

Therefore, they submitted, the government had passed the order-in-council for an unlawful or improper purpose or motive, namely to interfere with the fundamental rights of employees and unions as set out in the Act.

In dismissing the application, Justice Ted Zarzeczny noted that the dismissed appointees were "at pleasure" officeholders, and s.20(1) of the provincial *Interpretation Act* specifically provided for changes of appointees upon the election of a new government.

As for the unions' allegation about the government's motives for the changes, the Court held that, while courts must determine

*(Continued on page 17)*



# Comings & Goings

## CANADA INDUSTRIAL RELATIONS BOARD (CIRB)

### Appointment



On February 17, 2009, the Honourable Rona Ambrose, Minister of Labour, announced the appointment of **William G.**

**McMurray** as Vice-Chairperson of the CIRB for a term of five years, effective March 31, 2009.

Since 1986, Mr. McMurray has been practising administrative law, specializing in labour and employment law. He has acted as counsel for some of Canada's largest employers in the federal transportation and telecommunications industries.

He has appeared, and successfully handled numerous complex cases, before the Canada Industrial Relations Board, the Canada Appeals Office (on

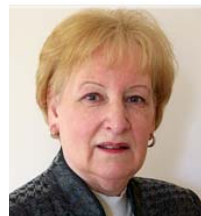
occupational health and safety), the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission and the Canadian Human Rights Tribunal.

Mr. McMurray studied common law and civil law at the University of Ottawa and studied political science at the Université Laval. Mr. McMurray has been teaching law courses at McGill University since 2000. ☞

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## NATIONAL MEDIATION BOARD (NMB)

### Puchala new NMB Member



The National Mediation Board (NMB) is pleased to announce that **Linda A. Puchala** was confirmed as a new Member of the

Board by the U.S. Senate on May 21, 2009. She was nominated by President Barack Obama and was

sworn in as Chairman on Tuesday, May 26.

Ms. Puchala replaces outgoing Chairman Read Van de Water. Ms. Elizabeth Dougherty and Mr. Harry Hoglander remain as the other two Members of the Board.

Linda Puchala served as the Sr. Mediator (ADR) and the Associate Director of Alternative Dispute Resolution Services of the National

Mediation Board. She joined the agency in May, 1999, as a Mediator.

Ms. Puchala has 40 years of experience in Labor Relations, including work as International President of the Association of Flight Attendants-CWA, AFL-CIO, and Staff Director, Michigan State Employees Association, AFSCME, AFL-CIO. ☞



ALRA Member "served" in Phoenix



### CANDID CAMERA

ALRA E-Board meeting  
Phoenix Arizona, February 2009



Dubois photo

Dubois photo



# Awards

## FMCS Commissioner Rich Giacolone Receives Lifetime Achievement Award

FMCS Commissioner **Rich Giacolone** recently was honored with the *Lifetime Achievement Award* from the Society of Federal Labor and Employee Relations Professionals (SFLERP) at its 36th Annual Symposium on Federal Labor and Management Relations in Washington, DC. The award was presented by SFLERP President Abbot Kominers in recognition of Commissioner Giacolone's contributions to the Federal Labor Relations Program and to the Society. Rich is a mediator in the Chesapeake, Virginia field office of FMCS and also serves as the president of the Hampton Roads chapter of SFLERP.

On receiving the prestigious award, Giacolone acknowledged that the honor is as much for him as it is for all of the FMCS mediators and the important work that they do. "It is a remarkable confirmation of the Agency's significance and the important role we play," said Giacolone.

SFLERP was originally established in 1973 as the Society of Federal Labor Relations Professionals (SFLRP) and composed of professionals engaged in federal labor-management relations in all three segments: management, organized labor, and neutrals. In 2001 the



(L-R) SFLERP President Abbot Kominers presents FMCS Commissioner Rich Giacolone with Lifetime Achievement Award.

Society's name was expanded to include employee relations practitioners in recognition that the core competencies of these professionals are interchangeable.

Rich Giacolone joined FMCS in 1995, after holding positions as a Labor Relations Advisor with Department of the Navy; Head of Labor Relations at Norfolk Naval Base; and Labor Relations Specialist at the Norfolk Naval Shipyard. He has over 20 years experience resolving disputes in a variety of areas, teaches courses in collective bargaining, and was formerly responsible for the FMCS's International/ADR Department, the FMCS Institute and FMCS Activities in the Republic of Panama relating to the transition of the Panama Canal. ☞

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### FEDERAL CANADA *(Continued from page 13)*

" The Act applies retroactively to any public sector pay increases due after December 8, 2008, even if they were originally to be more than 1.5 percent, a rollback that would affect some 50,000 federal public sector employees.

**The Union of Canadian Correctional Officers**, which represents some 6,000 prison guards who were to get a 2 percent increase for 2009, says that it will challenge in court the constitutionality of the wage provisions. The union issued a statement alleging that the government's move "violates constitutional rights to freedom of association, which includes the right to collectively negotiate a labour contract."

**PSAC**, which represents more than 29,000 Canada Revenue Agency employees who were to receive a 2.5 percent increase in November 2009 under a contract negotiated in 2007, says that it will go to court on the same grounds. ☞

*Source: Lancaster's Labour Law E-Bulletin, April 8, 2009, Issue No. 232.*

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### IN & AROUND the PROVINCES *(Continued from page 15)*

whether a cabinet has the statutory authority for any given action, "[i]t is not for the courts to adjudicate upon the wisdom [or] the policy reasons motivating any decision that has been taken.... Social, economic or politically partisan considerations may be involved [;] however, if the Cabinet has the statutory authority to make the decision made by the Order-in-Council and the decision made is consistent with that authority, neither the motives or reasons for the decision nor the wisdom or merits of it can or should be subjected to the court's review."

The Court dismissed the application finding no basis to interfere with the government's actions. ☞



See the full text of the Saskatchewan Court of Queen's Bench decision in *Saskatchewan Federation of Labour v. Saskatchewan (Attorney General, Department of Advanced Education, Employment and Labour)* <[http://onlinedb.lancasterhouse.com/images/up-KQB\\_Saskatchewan.pdf](http://onlinedb.lancasterhouse.com/images/up-KQB_Saskatchewan.pdf)>.

# ALRA Executive



Phillip Hanley  
President

## President

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[TERM ENDS JULY 2010]

## Immediate Past President

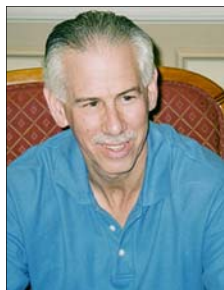
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[TERM ENDS JULY 2009]



Elizabeth MacPherson  
Past President



Robert Hackel  
VP—Administration



Scot Beckenbaugh  
VP—Finance



Les Heltzer  
VP—Prof. Development



Mary Johnson  
President-Elect

# Board Members



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[TERM ENDS JULY 2010]



Paul Roose



Sheri King



Marlene Gold



Josée Dubois



Pierre Hamel



# Elections



The Nominating Committee (*Dan Nielsen, Elizabeth MacPherson, Pierre Hamel, Mary Johnson and Phil Hanley*) has completed its work, and the 2009/10 nominees for election to the ALRA Executive Board are:

## President

- Mary Johnson (National Mediation Board)

## President-Elect

- Les Heltzer (National Labor Relations Board)

## VP Administration

- Bob Hackel (New Jersey PERB)

## VP Professional Development

- Josée Dubois (Public Service Staffing Tribunal)

## Board Members

- Sue Bauman (Wisconsin Employment Relations Commission)
- Kevin Flanigan (New York PERB)
- Steve Hoffmeyer (Minnesota Bureau of Mediation Services)

## DESCRIPTION OF DUTIES

### President

The President serves a one year term immediately following a year of service as the President Elect of the Association, appoints all committees, and leads and sets the agenda for board meetings and the annual meeting of the Association.

### President-Elect

The President-Elect is elected to a one year term, chairs the Policy and Constitution Committee, prepares a financial plan with the Vice President-Finance, and performs duties of the President in the President's absence.

### Immediate Past President

The Immediate Past President serves a one year term immediately following a year of service as the President of the Association and like all officers, is a member of the Executive Board.

### VP—Administration

The VP—Administration is elected to a two-year term, keeps minutes of association and executive board meetings, chairs the Publications and

Communications Committee, maintains all association records, prepares association correspondence, and coordinates publication of the ALRA Advisor.

### VP—Finance

The VP—Finance is elected to a two-year term, receives revenues, pays bills, invests assets, chairs the Membership Committee, and maintains association financial records.

### VP—Professional Development

The VP—Professional Development is elected to a two-year term, chairs the Professional Development Committee, receives training grant requests, coordinates ALRAcademy, oversees development of conference training programs, and maintains a listing of available training materials.

### Board Members

There are six Board Members who are elected to staggered, two-year terms, serve on various committees by appointment of the President, and serve as members of the Executive Board which is empowered to transact the business of the Association between meetings of the membership.



Boehmer © photo



Boehmer © photo



MacPherson photo

**HOPE TO  
SEE YOU  
IN  
OAKLAND!**

# discover OAKLAND

## There's so much to do and see in the Bay Area

*How tall do the coastal redwoods get in the Oakland hills? Where in Oakland can you have a pint where Jack London once drank? When did Lake Merritt become North America's first wild-life refuge? (see answers below)*

Don't worry if you don't know the answers. While visiting Oakland, you'll find experts on hand to offer insight into historic, scientific, and cultural sites during one of the many tours offered throughout the city.

The city of Oakland offers free 90-minute walking tours of areas including Chinatown, Preservation Park, and Old Oakland. Oakland Heritage Alliance tours highlight places such as Mountain View Cemetery, Chapel of the Chimes, and historic house tours. Explore Oakland and its environs with the Oakland Museum of California's bike-tripping docents. The Mormon Temple, Dunsmuir Historic Estate, and the Paramount Theatre are landmarks that provide looks behind the scenes. The Port of Oakland offers free tours by boat through the summer.

Answers: (100 feet, Heineold's First and Last Chance Saloon, 1870).



Photo: Barry Manitz/OCVB

Oakland City Center



A sailboat on the S.F. Bay with the Oakland skyline behind/OCVB photo

## City Center

Serving more than 50,000 office workers, Oakland's City Center helps make sure their days aren't spent with all work and no play. City Center is home to more than three dozen restaurants, shops, and services.

On Wednesdays from June to September, the plaza comes alive with the Summer Sounds concerts that take place from noon to 1 p.m.

Text Source: Destination Oakland. Visitor Industry News, Vol. 6, Number 3 and Vol. 7, Number 3



Photo: Jeff Deussen/OCVB

Jazz at Yoshi's



Photo: Dunsmuir Historic Estate/OCVB

Dunsmuir House

**Oakland has an abundance of intriguing, enlightening, and just plain fun things to see and do for people of all ages and interests. For full details check out: [http://oaklandcvb.com/visiting\\_arts\\_attractions.cfm](http://oaklandcvb.com/visiting_arts_attractions.cfm)**