ALRA Advisor
February 2011

ALRA ASSOCIATION of LABOR RELATIONS AGENCIES

2010 ALRA Conference
Ottawa was Great!

ALRA 60 1951-2011

ALRA Advisor

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

www.alra.org

ASSOCIATION of LABOR RELATIONS AGENCIES

In this issue...

COVER—Highlights of ALRA's 59th Annual Conference held in Ottawa, Canada. July 2010.

All photos in this issue, (unless otherwise noted), by Janet Boehmer ©

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ALRA 60 1951-2011

Les Heltzer

From the President...

ALRA's Officers, Executive Board and Committees have had a busy Fall.

The new officers and E-Board members, with the help and support of those who preceded them and those who continued in office, have made a smooth transition.

We've appointed co-chairs to our various committees, including to several special ad hoc committees, held E-Board and conference committee planning meetings in October and followed them up with conference calls and emails, adopted a new ALRA logo which graces the cover of this edition of the *Advisor*, and started work on updating the ALRA web site.

But, for now, I'd like to turn to the past annual conference and the upcoming annual conference.

The 2010 annual conference in Ottawa was a great success.

That success could not have been achieved without the dedication and leadership of then-ALRA President **Mary Johnson**, the Executive Board members, and particularly the co-chairs of the Program Committee—**Pierre Hamel** (Canada Public Service Labour Relations Board) and **Steve Hoffmeyer** (Minnesota Bureau of Mediation), the co-chairs of the Professional Development Committee—**Josée Dubois** (Canada Public Service Staffing Tribunal) and **Sue Bauman** (Wisconsin Employment Relations Commission), and the co-chairs of the Arrangements Committee—**Ginette Brazeau** (Canada Industrial Relations Board) and **Larry Gibbons** (National Mediation Board).

The Program and PD sessions were further enhanced by the creative contributions of committee members both in planning and participating in the sessions.

And, we note with great appreciation the helpfulness of our Canadian hosts and the support of our Canadian sponsors for making the annual conference so successful.

The 2011 ALRA Annual Conference, July 23—27, in N.J. promises to be interesting, exciting and memorable.

And, because 2011 marks *ALRA's 60th Anniversary,* it also promises be a very special celebration, joined in by former ALRA presidents, of ALRA's mission and history and a wonderful opportunity for first time attendees to learn about all that ALRA offers.

The venue, the Hyatt Regency Jersey City on the Hudson, has spectacular views of Lower Manhattan and is a mere 10-minute subway trip to New York City.

The co-chairs and committee members are moving well along in planning the conference: the Program Committee co-chaired by **Kevin Flanigan** (New York State Public Employment Relations Board), **Marlene Gold** (New York City Office of Collective Bargaining), and **Jacques Lessard** (FMCS-Canada; the Professional Development Committee co-chaired by **Sue Bauman** (Wisconsin

ALRA's new LOGO

ALRA ASSOCIATION of LABOR RELATIONS AGENCIES

The ALRA Executive Board is pleased to present the new ALRA logo, which replaces the logo that has been used since the inception of the Association.

The new logo uses two overlapping squares to represent labor and management, with the acronym ALRA in the center representing the various third party roles played by ALRA member agencies. The star and maple leaf signify the international nature of ALRA.

The Executive Board is grateful to Emily Roose for providing a number of creative designs for the new logo and to the members of the Publications, Communications and Technology committee (Paul Roose, Linda Puchala and Elizabeth MacPherson) for their assistance in completing this project in time for ALRA's 60th Anniversary celebrations.

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From the President

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Employment Relations Commission) and **Ginette Brazeau** (Canada Industrial Relations Board); the Arrangements Committee co-chaired by **Bob Hackel** (New Jersey Public Employment Relations Board and **Rick Curreri** (New York Public Employment Relations Board); and the 60th Anniversary Committee co-chaired by **Linda Puchala** of the National Mediation Board and **Liz MacPherson** (Canada Industrial Relations Board).

The topical content and the quality of the speakers for Advocates Day and of the Program sessions, and the valuable training provided in the PD sessions will make for an exceptional professional experience.

With the cold temperatures and plentiful snow of January, the July annual conference may be far from your mind. We will do our best to keep you updated about the annual conference through the ALRA web site and through contact with your member-agencies.

The Executive Board and I deeply appreciate your commitment to and continuing support of ALRA throughout the year and by your participation in the annual conference. We look forward to seeing you in July.

Les Heltzer

Thank you Sue…

We want to take this opportunity to express appreciation to Sue Bauman.

On Josée Dubois's resignation from the VP—Professional Development position, we considered giving the nod for this spot to Sue Bauman. Sue has been serving as a co-chair of the PD Committee since 2009, has been a PD Committee member several times and is well suited for the post.

However, Sue, candidly and with great consideration for the organization, advised that her term with the Wisconsin Employment Relations Commission is scheduled to expire in March, that a reappointment is unlikely and that her participation in ALRA will likely end at that time.

Happily, Sue tells us that she will be at our March 2011 meetings. As an organization, and even more for us who actively participate in ALRA, we have benefitted greatly over the years from Sue Bauman's many contributions, the ease of her friendship and her spunk.

We will all sorely miss Sue (and hubby Ellis too) and wish her the best.

VP Professional Development — Appointment

Ginette Brazeau

The officers and members of the ALRA Executive Board have overwhelmingly voted in favor of the recommendation to appoint **Ginette Brazeau** as Vice-President, Professional Development for the balance of Josée Dubois' unexpired term ending in July 2011.

Congratulations and thank you, Ginette!!

ALRA Advisor — New Editor

Linda Puchala

Linda Puchala transitioned to the position of *ALRA Advisor* Editor following in the footsteps of **Josée Dubois** (thank you Josée), who successfully held the position for two years.

Janet Boehmer

Puchala, from the National Mediation Board, along with **Janet Boehmer** (Group of One), who oversees *ALRA Advisor* production, are actively seeking news from your agency to be included in future publications (forward to puchala@nmb.gov).

Josée Dubois

Press releases, decisions, litigation updates, personnel changes/promotions/ retirements, conference information, etc. are of special interest to our readers.

Contact Linda at (202) 692-5021.

FMCS Announces Labor-Management Grants

WASHINGTON, D.C.—In mid-November, the Federal Mediation and Conciliation Service (FMCS) announced 10 grants totaling approximately $750,000 to support cooperative initiatives by labor-management groups nationwide through recognition of innovative approaches to workplace issues as well as best practices in labor relations.

This year's grant program has focused on some of the critical realities confronting labor and management. Among the most important grants awarded were those addressing health care—the single major cause of collective bargaining disputes this past year—green jobs, diversity in the workplace and the cause of and practical solutions to on-the-job injuries.

Through the years, the FMCS grants program has helped union and employee groups nationwide develop creative conflict resolution projects that improve cooperation and enhance organizational effectiveness.

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.

Applicants wishing to learn more about the FMCS labor-management grants program may call the FMCS Grants Office at 202-606-8181 or visit the agency's website at www.FMCS.gov.

Labor-Management Cooperation Grants Program — FY 2010 FMCS Funding Summaries

10-IL/I-001
Alliance for Quality Child Care and SEIU-HCII . Chicago, IL
Amount Awarded: $50,892

Problem: Owners and workers at newly organized independent Chicago-area child care centers in the Alliance for Quality Child Care lack the resources to apply for and receive ratings on Illinois‟s Quality Counts Quality Rating System (QRS).

Strategy: Form a new labor-management committee to facilitate cooperation between centers and between workers and owners, both on contract implementation and on projects of joint concern. The specific projects will be working with a consultant to help centers receive accreditation and additional reimbursements though the QRS, and develop a plan to reduce costs by developing some initial shared services arrangements.

Results: Design and implement structures and processes for workplace representation to facilitate communication and cooperation; enroll 90% of centers in the QRS system, with 50% achieving a two star rating or higher; implement shared services programs for purchasing, training and back-up staffing.

10-WA/A-002
Building Trades Labor-Management Organization of Washington State and AFL-CIO. Seattle, WA
Amount Awarded: $112,327

Problem: The construction industry is the highest risk industry in Washington State in terms of occupational safety and health. Washington's construction industry leaders—both labor and management -- have identified a lack of leadership in safety and health on the part of mid-level personnel to be a key barrier to better safety and health performance.

Strategy: The Building Trades Labor Management Organization of Washington State (commonly known as Build It Smart) proposes to reduce the incidence of occupational fatalities, injuries and illnesses in the construction industry in Washington by instilling safety and health leadership capacities at the middle supervisory level through focused training and certification.

Results: Our aim is to reduce the number of compensable fatalities, injuries and illnesses in the construction industry and associated Washington State Department of Labor and Industries (L&I) Industrial Insurance costs.

10-NY/A-003
CSEA Institute for Workers' Opportunities, Resources & Knowledge and AFSCME. Albany, NY
Amount Awarded: $104,300

Problem: CSEA has a need to enhance labor-management education and training resources for over 200,000 state and local government employees.

Strategy: A multi-module video-based component will be created and disseminated to existing and new state and local government labor-management committees. The video training will enhance and augment web-based training that allows for self-directed learning that targets visual learners.

Results: New and existing labor-management committees will receive education and training video resources to orient new committees, as well as sustain existing committees by providing a comprehensive self-directed toolkit.

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Federal—United States

FMCS

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10-IL/I-004
Chicago Labor-Management Trust and AFL-CIO, AFSCME and Local 1092.
Chicago, IL
Amount Awarded: $92,421

Problem: Steadily rising health care costs in the third largest city in the US have caused city employees to suffer in other areas such as working conditions and wages in order to maintain health benefits.

Strategy: Conduct a gap analysis to discover a number of areas in which labor and management can jointly agree to adopt initiatives that will result in savings for both the city and its employees.

Results: Reduce health care costs to 8% a year or less. Establish wellness initiatives that will improve the long-term quality of life for employees. Create more visibility and influence of the Chicago Labor-Management Trust to improve the workplace for city employees.

10-NE/A-005
City of Lincoln (Lincoln Fire & Rescue) and IAFF Local 644. Lincoln, NE
Amount Awarded: $60,268

Problem: Lincoln Fire and Rescue (LF&R) and IAFF Local 644 have determined that the need exists to increase diversity among LF&R staff, as well as address the less obvious needs for an improved workplace climate, improved communication between labor and management, genders and diverse cultures, and secure assistance to appropriately respond to changing workplace dynamics. The project‟s overarching goal is to establish a better workplace rapport within the context of a changing community.

Strategy: The project will hire an objective, independent evaluator to assess pre- and post-project attitudes, concerns and needs. A project coordinator will be hired to implement project activities. LF&R and IAFF Local 644 will also work with an FMCS mediator to bring in customized diversity and communication skills and labor-management cooperation training.

Results: Improve labor-management relationships by nurturing frequent, effective and collaborative communication. Strengthen workplace climate and unit cohesiveness by supporting relationships between labor-management, genders and cultures. Enhance LF&R/IAFF Local 644‟s relationship with the public, particularly among refugee/immigrant communities, low-income neighborhoods, other minorities and women. Change the image and perception of who can have a career as a firefighter to include women and minorities.

10-NY/A-006
Consortium for Worker Education and 1199 SEIU, DC 37 AFSCME
New York, NY
Amount Awarded: $76,900

Problem: As a growing sector with a high proportion of women and single parents, health care workplaces struggle to meet the needs of their patients with a well-trained, reliable workforce able to balance work and family responsibilities.

Strategy: Build a model featuring the development and implementation of curriculum and workshops in designated facilities within the New York City public hospital system, private nursing homes and homecare agencies that can be easily and inexpensively replicated. A series of workshops with an expected participation of 600 workers and 25-30 supervisors will be conducted. Post-workshop surveys and focus groups will also be held to obtain feedback to enhance the model. “Train the trainer” sessions delivered by labor-management committees are another critical element of the model that will help develop a structure to ensure training and learning continue after the conclusion of the grant period.

Results: Demonstrate how low cost labor -management led strategies can lead to improved relationships between employees and employers regarding communication and creating a supportive atmosphere to solve work/ family issues. The expected benefits include; a reduction in absenteeism, lateness and improper use of sick time due to a lack of child care or family obligations. Additionally the model will increase the capacity of the labor-management committee to address work/family and other issues.

10-WI/I-007
Construction Professionals Association *and* International Brotherhood of Electrical Workers Local 14
Carpenters Local 1143
Bricklayers & Allied Craftworkers Local 1
Plumbers and Steamfitters Local 434
Operative Plasterers and Cement Masons Local 599
Sheet Metal Workers Local 18
La Crosse, WI
Amount Awarded: $101,400

Problem: Skilled trade workers struggle with employment in this economy due to non-unionized construction workers gaining popularity with their lower wage requirements. This is a problem when price is the only consideration in selecting a contractor for a project. Also, construction companies who utilize union labor face the challenge of recruiting suitable future employees, especially women and minorities.

Strategy: Educate owners on the benefits of the utilization of organized labor on their projects. Promote organized labor through the use of project labor agreements, and best value bidding. Recruitment of women, minorities and students through various activities, including the forming of a Construction Career Academy at a local high school.

Results: Construction Professionals Association (CPA) expects to increase by at least 15% awarded work to

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contractors in relation to non-unionized construction companies. Also increase by 25% the percentage of both women and minorities in apprenticeship programs of the skilled trades represented by CPA within 18 months.

10-MI/A-008
Education Alliance of Michigan and American Federation of Teachers
Lansing, MI
Amount Awarded: $65,000

Problem: A new law in Michigan requires that all K-12 teachers and administrators expand an annual performance evaluation system for more than 100,000 educators. 757 school districts and public school academies must develop and implement evaluations through creating new frameworks or broad guidelines already created from an education working group. There is little assistance available to local schools districts to create this framework in a consistent manner with expert guidance.

Strategy: The purpose of this grant is to support a core group of education labor and management leaders as they prepare resources and materials, and hold regional training sessions across the state for school districts and teacher unions as they create and implement their annual educator evaluation processes.

Results: Guidelines, model policies, procedures and best practices will be created for the use of 700+ school districts in Michigan.

10-NY/I-009
Lutheran Medical Center and 1199 SEIU . Brooklyn, NY
Amount Awarded: $52,325

Problem: Inadequate staffing occurs when excessive absences due to sick and extended leave arise.

Approximately 58% of the injuries are strains or sprains and 18% of injuries are contusions/ bruises/hematoma. Lutheran Medical Center has lost close to $700,000 in wages, replacement workers and lost productivity due to these work injuries.

Strategy: The labor-management committee will analyze work injury data, evaluate work sites, and design and pilot a "light duty" program which would facilitate a voluntary return-to-work program for injured workers. The project would also include a comprehensive prevention component including job description and policy and procedure review as well training for 500 workers.

Results: A comprehensive review of worker injury data by the labor-management committee will be completed. Recommendations for injury prevention will be made and an injury prevention education curriculum will be created and implemented for 500 workers. A voluntary return-to-work program for injured workers to temporary "light duty" assignments will be designed and piloted. Changes to job descriptions, policies and procedures, purchase of equipment and other tools to facilitate injury prevention and return-to work will be completed.

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FMCS Health Care Bargaining Initiative

FMCS Director George Cohen announced a special Agency outreach to labor and management representatives to encourage cooperation and collaboration in bargaining on health care issues.

The FMCS outreach program will highlight the success of cooperative labor-management efforts in health care benefits bargaining and is intended to educate unions and employers regarding best practices in addressing health care issues.

> "Health care related issues have emerged as a major cause of disputes in almost every round of collective bargaining. It is a subject chock full of economic and emotional conflict and, in addition, involves a multitude of technical nuances. So, as part of my proactive outreach approach to improving labor management relations, the FMCS has carefully designed a program to provide attendees with an information packed day on this vital topic".
>
> —George Cohen, FMCS Director

One-day seminars for unions and employers were presented during November and December at three U.S. locations (Chicago, New York City and San Francisco).

Topics addressed during each day-long seminar included all aspects of the critical health care issues confronting labor and management, with special emphasis on the key provisions of the *Affordable Care Act*. Experts and practitioners focussed on the overriding desirability of establishing joint Health Care Committees far in advance of the trauma of contract expiration.

Presenters from groundbreaking labor management teams shared the nuts and bolts of implementing comprehensive health care reform in the workplace, the successes they have achieved, specific examples of cutting edge solutions that others might learn from and adapt to their workplaces and solutions they may develop through their own ingenuity.

NATIONAL MEDIATION BOARD (NMB)

NMB Representation Rule

On November 3, 2009, the Board published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, seeking public comment on a proposed rule to change representation election procedures.

- The Board proposed to amend its election procedures to provide that, in representation disputes, a majority of valid ballots cast would determine the craft or class representative.
- In the NPRM, the Board acknowledged its long standing practice of requiring that a majority of eligible voters in craft or class cast ballots in favor of representation in order to certify a representative.
- The Board Majority stated that this practice presumes the failure or refusal of an eligible voter to participate in an election as the functional equivalent of a "no union" vote and is at odds with the modern participatory workplace and the basic principles of democratic elections.
- The Board Majority stated that the proposed rule would better fulfill the Board's statutory duty to investigate representation disputes by ensuring that each vote whether for or against representation would be regarded with equal weight.

On November 6, 2009, the Board published a Notice of Meeting in the Federal Register, inviting interested parties to attend an open meeting with the Board to share their views on the proposed rule change. The open public meeting was held on December 7, 2009.

The notice-and-comment period for the proposed rule closed on January 4, 2010.

On May 11, 2010, the Board published a Final Rule in the Federal Register, adopting the proposed rule in its entirety. The Board majority stated its view that the change to the election procedures will provide a more reliable measure/indicator of employee sentiment in representation disputes and provide employees with clear choices in representation matters.

- Under the Final Rule, in all representation disputes, a majority of the valid ballots cast will determine the craft or class representative.
- Under the Final Rule, employees will have the option to vote "no" or against representation.
- The Final Rule does not affect the Board's rules regarding run-off elections and showing of interest requirements.
- The Final Rule does not alter the Board's longstanding practice of allowing write-in votes.

The Final Rule was to become effective on June 10, 2010. However, on May 17, 2010, a lawsuit was filed in the United States District Court for the District of Columbia alleging that the Final Rule violates the *Administrative Procedure Act* and the *Railway Labor Act* and seeking to enjoin the implementation of the Final Rule. Based on the court's calendar, the Board agreed to a 20 day delay in the effective date of the Final Rule.

On June 21, 2010, Judge Paul Friedman of the United States District Court for the District of Columbia heard oral argument and, on June 25, 2010, entered judgment in favor of the National Mediation Board, concluding that the Board did not violate either the *Railway Labor Act* or the *Administrative Procedure Act* in issuing its new rule.

- The Final Rule does not conflict with the plain meaning of the RLA. The court rejected Air Transport Association's argument Section 2, Fourth of the RLA unambiguously provides that a representative can be certified only if a majority of eligible employees in the craft or class vote in favor of representation. Instead, the court concluded that the relevant case law, structure of the statute as a whole and legislative history support the Board's view that the statutory language is ambiguous.

The Final Rule is a reasonable interpretation of the RLA and entitled to deference. The court concluded that the Board's explanation for adopting the Final Rule shows that the Final Rule is compatible with the Board's statutory mission to investigate representation disputes and to determine the employees' selection of a representative.

The Final Rule was not arbitrary and capricious. The court concluded that the Board's stated reason for changing its election procedures – that it better measured employee intent – is consistent with the Board's mission under the RLA and provided a neutral and rational basis for the rule change.

- The Board's decision not to change its decertification procedure or run-off procedures was not arbitrary and capricious. The court concluded that the Board satisfied the requirements of the *Administrative Procedure Act* by considering the requests made by commenters regarding decertification and run-off elections, weighing the reasons given by the commenters, and explaining the reasons for not adopting those suggestions.

The Final Rule became effective on July 1, 2010. On July 21, 2010, ATA filed a notice of appeal of the District Court's opinion in the United States Court of Appeals for the District of Columbia Circuit. ATA did not seek to stay the effective date of the Final Rule.

On August 9, 2010, the Board authorized the first election to be held under the new voting procedure. The election involved employees in the Mechanics and Related craft or class at Atlantic Southeast Airlines, sought to be represented by the International Brotherhood of Teamsters.

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On September 23, 2003, under the provisions of the *Congressional Review Act*, the Senate debated Senate Joint Resolution 30, providing for congressional disapproval of the Final Rule.

- The resolution was introduced on May 11, 2010 by Senator Johnny Isakson of Georgia.
- The resolution stated: *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the National Mediation Board relating to representation election procedures . . . and such rule shall have no force or effect."
- Under the provisions of the Congressional Review Act, 30 Members can demand discharge from committee and floor consideration.

The Congressional Review Act also limits Senate debate on the resolution (preventing filibuster) and does not allow motions to amend or postpone the resolution.

- Such a resolution is effective only if it passes by a majority vote of both Houses and is signed by the President or on a two-thirds vote in both Houses to override a veto by the President.
- Congress has only disapproved one rule under the *Congressional Review Act.* In 2001, at the start of his administration, President Bush signed a joint resolution passed by the Republican-controlled Congress to repeal Clinton administration regulations setting new workplace ergonomic rules to combat repetitive stress injury.

Following floor debate, the Senate Joint Resolution 30 failed on a vote of 56 against, 43 for.

As of December 1, 2010, the NMB has conducted eight representation elections under the Final Rule.

- Five of these elections resulted in certification: Piedmont Fleet and Passenger Service, Continental Ground Instructors, Atlantic Southeast Stock Clerks, OpenSkies Flight Attendants, and Atlantic Southeast Mechanics and Related.
- A majority of eligible employees have participated in all of the elections under the New Rule. Voter participation rates have ranged from 63 percent (Piedmont Fleet & Passenger Service) to 94 percent (Delta Flight Attendants) of eligible employees voting.

Photo credit — n/a

Federal—United States

NATIONAL LABOR RELATIONS BOARD (NLRB)

By Les Heltzer & Hank Breiteneicher

During 2010 the National Labor Relations Board issued notices and invitations to parties and interested amici to file briefs in a number pending cases raising significant issues in involving the potential reconsideration of Board precedent. It further published a Notice of Proposed Rulemaking involving the posting of notices of employee rights by employers and unions.

On **May 14, 2010**, the Board issued a notice and invitation to file briefs in three pending cases on the issue of whether Board-ordered remedial notices to employees should be posted electronically, such as through a company-wide email system.

Under longstanding Board law and policy, these remedial notices historically have been posted on workplace bulletin boards or, in some cases, mailed to employees' homes. After briefs were filed and considered, the Board ruled, in *J. Picini Flooring*, 356 NLRB No. 9 (October 22, 2010), that employers who customarily communicate with their employees electronically will be required to post remedial notices advising employees of the Board's order in the same way, in addition to posting a paper notice on a company bulletin board.

This new policy will also apply to union respondents who customarily communicate with their members electronically.

Chairman Liebman and Members Becker and Pearce were in the majority; Member Hayes dissented.

Also on **May 14**, the Board invited parties and interested amici to file briefs in three other cases on the issue of whether the Board should change its established practice and routinely order compound interest on backpay and other monetary awards in unfair labor practice cases and, if so, whether the standard period for compounding should be daily, quarterly, or annually. After briefs filed by the parties and amici were considered, the Board, in a unanimous decision issued October 22, modified its remedies in unfair labor practice cases by providing that interest on backpay and other monetary awards shall be paid with interest compounded on a daily basis.

Kentucky River Medical Center, 356 NLRB No. 8.

On **August 31**, the Board issued a Notice and Invitation to File Briefs in *Lamons Gasket Company,* in which it has been asked to reconsider *Dana Corp.*, 351 NLRB 434, (2007), which modified the Board's recognition bar principles.

In *Dana*, the Board held that, after an employer has voluntarily recognized a union based on authorization cards, the employer must post a notice advising the unit employees that they have the right—within 45 days of the notice—to file with the NLRB a petition for an election to decertify the recognized union or to support a representation petition filed by a rival union.

If the notice is posted and no petition is filed within 45 days, the recognized union's majority status will be irrebuttably presumed for a reasonable period of time to permit the parties to engage in bargaining.

Chairman Liebman and Members Becker and Pearce; Member Hayes had dissented from the majority's earlier decision to grant review in Lamons.

Also on **August 31**, the Board invited parties and interested amici in two other cases to address the issues of whether the Board should modify or overrule *MV Transportation*, 337 NLRB 770 (2002), and whether and how *MV Transportation* otherwise applies in a "perfectly clear" successor situation.

In *MV Transportation*, the Board reversed the "successor bar" doctrine set forth in the in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Under the "successor bar" doctrine, once a successor employer's obligation to recognize an incumbent union attached, the union was entitled to a reasonable period of time for bargaining without challenge to its majority status.

In *MV Transportation*, the Board held that "an incumbent union in a successorship situation is entitled to—and only to—a rebuttable presumption of continuing majority status, which will not serve to bar an otherwise valid decertification, rival union, or employer petition, or other valid challenge to the union's majority status."

The "perfectly clear" successor situation was defined by the Supreme Court in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), and in subsequent Board precedent. The pending Board cases covered by the Notice and Invitation to File Briefs are *UGL-UNICCO Service Company*, Case 1-RC-22447 and *Grocery Haulers, Inc.*, Case 3-RC-11944.

Chairman Liebman and Members Becker and Pearce; Member Hayes had dissented from the majority's earlier decision to grant review in the two cases.

On **November 12, 2010**, the Board invited parties and interested amici to file briefs in *Roundy's Inc.*, Case 30-CA-17185, involving an employer's denial of access to the premises of two of its retail stores to nonemployee union agents.

The union agents sought to distribute handbills asking consumers not to patronize the stores because the employer allegedly used nonunion contractors that did not pay prevailing wages and benefits to build and renovate its stores.

The Board asked parties and amici to address the question of what legal standard should be applied in determining whether an employer has

(NLRB—Continued from page 10)

violated the NLRA by denying non-employee union agents access to its premises while permitting other individuals, groups, and organizations to use its premises for various activities.

Specifically, the Board solicited the views of the parties and amici on the applicability of the Board's decisions in *Sandusky Mall Co.*, 329 NLRB 618 (1999) and *Register Guard*, 351 NLRB 1110 (2007) on the Board's standard for finding unlawful discrimination in nonemployee access cases.

On **December 22, 2010**, Board in a published decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 356 NLRB No. 56, invited parties and interested amici to file briefs addressing the appropriateness of units in nursing homes and other non-acute care facilities in the health care industry.

In that case, a regional director found appropriate the petitioned-for unit of certified nursing assistants and rejected the Employer's position that the only appropriate unit consisted of all nonprofessional service and maintenance employees at the nursing home.

The Board's 1989 final rule regarding appropriate units in the health care industry was limited to acute care facilities and determinations of appropriate unit determinations in nursing homes and other non-acute care facilities were t be decided through the adjudication process.

Subsequently, the Board in *Park Manor Care Center*, 305 NLRB 872 (1991), indicated that it preferred to take a broader approach to units in non-acute care facilities by applying the traditional community-of-interests analysis but to also consider other background information and noted its expectation that as future cases were litigated and decided factual patterns would emerge that would illustrate typically appropriate units.

In *Specialty Healthcare* the Board asked the parties and interested amici to address specific questions regarding, among other things, their experience under *Park Manor*, the patterns of units that may have emerged in the various types of non-acute care facilities, how the rules for appropriate units in acute care facilities should be used for proposed units in non-acute care facilities, as well as certain questions concerning appropriate units generally in other industries.

Chairman Liebman and Members Becker and Pearce; Member Hayes, dissented.

Although not involving a notice and invitation to file briefs, an additional case warrants mention. On **October 25, 201**0, the Board issued an Order in *New York University*, 356 NLRB No. 7, granting review of the case and directing a regional director to reinstate a petition, conduct a hearing, and issue a decision in a representation case that implicates the continuing validity of *Brown University*, 342 NLRB 483 (2004).

In *Brown*, the Board held that graduate students performing teaching and research services at a university are not employees within the meaning of the NLRA.

Members Becker and Pearce; Member Hayes, dissenting, would have denied the request for review as the regional director's dismissal of the petition was consistent with Board precedent and no compelling reason to reconsider any Board rule or policy.

Finally, on **December 22, 2010**, the Board published in the Federal Register a notice of proposed rulemaking and request for comments on its Proposed Rules Governing Notification of Employee Rights under the National Labor Relations *Act* (Federal Register / Vol. 75, No. 245 /80410).

The proposed rule would require employers subject to the NLRA, including labor organizations in their capacity as employers, to post notices informing employees of their rights under the *Act*.

The Board noted its belief that many employees protected by the *Act* are unaware of their rights and stated the intended effects of the proposed rules are to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions.

The proposed rule establishes the size, form, and content of the notice, and sets forth provisions regarding sanctions and remedies that may be imposed if an employer fails to comply with its obligations under the rule including the finding of an unfair labor practice, tolling the statute of limitations for filing unfair labor practice charges against employers and considering it as evidence of unlawful motive in unfair labor practice cases.

The due date for the Board's receipt of comments is February 22, 2011.

Chairman Liebman and Members Becker and Pearce; Member Hayes, dissenting, stated his view that the Board lacks the statutory authority to promulgate or enforce the type of rule proposed.

The above summaries are not intended as a substitute for reading the decisions and notices themselves, which will afford a fuller understanding of the significance of the policy issues involved and the reasoning of the majority and any dissent.

The decisions and notices are available on the Board's web site, www.nlrb.gov.

MICHIGAN

Michigan Employment Relations Commission (MERC)

By Ruthanne Okun, Bureau Director

Commission Revokes 1978 *Act 312* Election Bar Policy

At its November 8, 2010 meeting, the Michigan Employment Relations Commission considered the case of *City of Detroit – and – Police Officers Association of Michigan – and – Detroit Emergency Medical Services Association*, Case No. R10 F-065, ("the *Demsa* case"). By its decision in the *DEMSA* case, the Commission revoked its Act 312 election bar policy, adopted in 1978, which barred the processing of an election petition after the filing of a request for Act 312 arbitration.

In the *Demsa* case, the Police Officers Association of Michigan (POAM) had been certified as the exclusive bargaining representative of the bargaining unit on June 1, 2009, but had not yet reached a collective bargaining agreement with the employer. The unit consisted of about 180 non-supervisory emergency medical service personnel employed by the City of Detroit. Under the express terms of the Public Employment Relations Act (PERA), a newly certified union is protected against rival union petitions for one year following the initial certification. In this case, during the year after certification, no across the table bargaining had taken place and no bargaining proposals had been exchanged; nor had any mediation occurred. Yet, on June 11, 2010, POAM filed with the Commission a Petition for Act 312 interest arbitration. Some two weeks later, on June 28, 2010, the Detroit Emergency Medical Services Association (DEMSA) filed a Petition for Representation proceedings, seeking to be recognized as an independent labor organization and to replace the incumbent POAM union. POAM sought dismissal of the representation petition based on the Act 312 election bar policy.

POAM asserted that the filing of a timely and proper Act 312 petition should, under most circumstances, bar the filing or processing of an otherwise valid petition for representation proceedings. Noting that a fifteen day period was present in this case between the expiration of the initial certification year and the date that the Act 312 arbitration petition was filed, POAM asserted that such a time period was a sufficient window to file a representation petition.

DEMSA, on the other hand, argued that employees' right to freely select a bargaining representative is PERA's primary value and that it supersedes any interests of an incumbent union. DEMSA further asserted that the Commission's adoption of such a blanket bar to an election was improper and exceeded the parameters set forth by the legislature, which had already enacted several specific periods during which such election petitions were barred, e.g. the three year contract bar and one year certification bar periods. Finally, DEMSA argued that the Act 312 policy should not be applied in this case where the POAM had not bargained with the employer prior to the filing of its Act 312 petition. Hence, DEMSA asserted that the petition for arbitration was defective as it was not in compliance with Act 312 rules which require that the petition include "a copy of the last offer made by each party to settle the agreement."

In reaching its decision to revoke the Act 312 election bar policy, the Commission noted that the policy was adopted by resolution in 1978. It was in addition to the "election year bar" which was part of the original statute from 1965 and the "contact bar" that was added by amendment to the statute in 1976. Yet, the Act 312 election bar policy was not included in the Act 312 rules when they were adopted by the Commission pursuant to the APA in 1995 or in the administrative rules that were similarly adopted in accordance with the APA in 2002. Moreover, the policy was adopted without explanation.

The Commission recognized that the starting premise on any representation case decision is reaffirmation of PERA's fundamental function to recognize and codify the right of public employees to collectively designate an exclusive agent for collective bargaining and to compel an employer to deal through that agent. In creating (without explanation) the Act 312 election bar, the Commission "impermissibly elevated the administrative interest in labor relations stability and the interests of a potentially unwanted incumbent union, over the statutory right of employees to freely designate their own exclusive representative."

MERC noted in its decision that this case squarely presents the issue of whether the Act 312 election bar policy must yield to its requirement that an employer maintain strict neutrality when the continuing majority status of an incumbent union is at issue. Finding that these twin obligations are irreconcilable, the Commission concluded that "the Act 312 election bar must yield to the duty of an employer to maintain neutrality where the incumbent's majority status is legitimately in dispute."

The Commission held:

> For all of the above reasons, having thoroughly re-examined the matter, and finding that the 1978 policy deters rather than advances the interests protected by PERA as well as those protected by Act 312, we hereby revoke the 1978 resolution establishing a categorical bar to the processing of election petitions during the

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pendency of Act 312 arbitration proceedings.

The Commission stated that even if it were not setting aside the 312 bar policy, it would not apply it to bar an election in these circumstances. "Even if we allowed this policy to stand, we would not find that an undisclosed two week window period for the filing of an election petition was a reasonable opportunity for employees to exercise their Section 9 rights."

The Commission further held, as a reason for not applying the Act 312 election bar to these facts, that "[r]ules or practices rewarding race-to-the-courthouse conduct should not be encouraged by the Commission, where a statutory goal is the promotion of voluntary good faith resolution of disputes by the parties, rather than gamesmanship designed to secure tactical advantage."

The Commission concluded:

> The paramount function of a representation election is to provide an opportunity for employees to select, or reject, a union to serve as their exclusive representative. Depriving employees of the right to pursue an election for the purpose of freely selecting their own representative must be seen as an extraordinary, and therefore rare, outcome. Here, an election must be ordered, as the petition raises a question concerning representation regarding an undisputedly appropriate bargaining unit.

MERC, therefore, directed an election in the bargaining unit and further ordered that all proceedings related to the previously filed petition for Act 312 arbitration be held in abeyance pending resolution of the question concerning representation.

Significantly, the Commission found that the revocation of the policy does not preclude the Commission or its agents from acting administratively on a case by case basis to block an election for various reasons, including that the parties have negotiated a tentative agreement for a contract and that TA has not been submitted for ratification. Finally, the Commission suggested that "[c]orollary situations could arise where Act 312 proceedings were so close to conclusion to be the equivalent of a tentative agreement, and it may be appropriate to give brief additional time to conclude those proceedings without the disruption inherent in a representation proceeding."

(FMCS —Continued from page 7)

10-OH/I-010
Ohio Electrical Labor-Management Cooperative Committee and IBEW, NECA . Hamilton, OH
Amount Awarded: $34,167

Problem: The Ohio Electrical Labor Management Cooperative Committee faced with the need to build a harmonious relationship between labor and management in the new "green" construction industry, was awarded a grant for the purpose of establishing the first IBEW/NECA Ohio Energy Summits to go statewide.

Strategy: It was identified that labor and management are often coming to "green jobs" from different and sometimes destructive positions. These summits will bring together contractors, IBEW Locals, NECA members, end users, manufactures, distributers, and community leaders to learn together what the particular needs of the „green" economy will be. This series of five statewide summits will feature "Green Technology Roundtables" that will help introduce this new technology to all participants by providing discussions on such issues as energy audits, green marketing and smart grid technology.

Results: The ability for all participants to learn together about "green" technology will assist in quieting some of the fears voiced by both management and labor over the technology. The information provided by these summits will be captured and placed on the web site of the OELMCC so that all future employers and employees can benefit from these five summits.

Harrison Community Schools –and- Harrison Educational Support Personnel Association, MEA/NEA
Case No. C07 G-164

The Commissioners agreed with the ALJ's conclusion that Harrison Community Schools (Employer) violated its duty to bargain under PERA by deciding to subcontract services provided by its aides without giving Harrison Educational Support Personnel Association, MEA/NEA (Union) the opportunity to bargain over this decision.

The Employer claimed that it had no duty to bargain, contending that the aides, provide non-instructional support services and, pursuant to Section 15(3)(f) of PERA, the subcontracting of non-instructional support services is a prohibited subject of bargaining. The primary issue before the Commission was whether the aides in question perform non-instructional support services.

The Employer contended that the ALJ erred in her interpretation of Act 112 of 1994, which amended PERA to add Section 15(3)(f). Since the final version of the draft of Act 112 deleted specific illustrative examples of non-instructional support services, the Employer argued that the Legislature intended that all services performed by support staff would be treated as non-instructional support services. The Commission disagreed and found that the deletion of illustrative examples indicated the Legislature's intent for that determination be made based on the particular facts and the specific duties performed by the positions involved. To assume otherwise would go against accepted rules of statutory construction.

The Employer further alleged that the ALJ failed to properly consider and apply various statutes in interpreting Section 15 (3)(f) of PERA. In support of its allegation, the Employer pointed to certain sections of the Revised School Code, MCL 380.1229 & 380.1231, regarding the obligation of a school board to hire a superintendent and teachers. Because such obligation does not extend to personnel other than the superintendent and teachers, the Employer assumed that all other services provided by the school employees are non-instructional and can be subcontracted without the duty to bargain with the employees' union representatives.

The Employer argued that services provided by the aides cannot be considered instructional because aides cannot legally provide instructional services, lacking the proper education and training, etc. The Commission disagreed with that assertion and explained that, under the appropriate factual circumstances, services provided by a paraprofessional working under the direction of a certified teacher may include such services as providing supplemental group instruction and individual tutoring on academic subjects, all of which can be considered to be instructional support services. The Commission, agreeing with the ALJ, found that instructional support services may be provided by employees who are not certified teachers, and the duty to bargain extends to employer's decisions regarding subcontracting their services.

In support of its position, the Employer also pointed to Commission decisions in which the Commission found that aides cannot be included in a bargaining unit of professional teachers. However, the cases cited by the Employer focus on the issue of community of interest, which is not relevant in determining whether the support services provided by the aides are instructional or non-instructional.

Finally, the Commission disagreed with the Employer's allegation that the ALJ failed to properly consider affidavits of its witnesses, who claimed that aides do not provide instruction. The affidavits provided by the Employer's witnesses clearly indicated that aides do, in fact, provide instructional services ranging from assisting students with their lessons to tutoring students and providing individual instruction, all performed under the supervision of a certified teacher.

In this case, the Commission found that, with the exception of the aides providing only health and personal care, the services provided by the aides are instructional support services. Therefore, the Employer had a duty to bargain before deciding whether to subcontract the aides' services. It violated that duty when the Employer decided to subcontract the aides' services without first giving the Union notice and an opportunity to bargain.

Unfair Labor Practice Found *- Violation of the Duty to Bargain; Employer Decision to Subcontract Services Provided by Bargaining Unit Members is Generally Mandatory Subject of Bargaining; Where Employer is Public School Employer and Services to be Subcontracted are Non-instructional Support Services, Decision to Subcontract is a Prohibited Subject of Bargaining; Determination of Whether Services are Non-instructional Support Services Must be Made on Case-by-Case Basis; Aides in this Case Perform Instructional Support Services; Subcontracting of Such Services is a Mandatory Subject of Bargaining*.

Case No. C08 – A-019

The Commission reversed the ALJ's Decision and Recommended Order, and found that Respondents, Kalamazoo County and Kalamazoo County Sheriff, violated PERA by unilaterally repudiating a contract provision in which it agreed not to challenge Act 312 eligibility for certain classifications of employees. The Commission held that the parties' agreement was designed to extend binding interest arbitration to classifications of employees who were not eligible for Act 312 arbitration and the parties' mutual intent should be effectuated. However, to the extent that the provision calls for

the Commission to expend public funds to extend Act 312 arbitration to ineligible employee classifications, the provision is unenforceable.

Charging Party, Kalamazoo County Sheriff's Deputies Association, filed exceptions to the ALJ's Decision and Recommended Order. In response, Respondents filed a brief in support of the ALJ's Decision and Recommended Order. Subsequently, Charging Party filed a motion to strike portions of Respondents' brief contending that those portions improperly asked the Commission to reject certain findings by the ALJ. On that same day, Charging Party also filed a reply brief in support of its exceptions.

The Commission found that under Commission Rule 176, any argument which disagrees with the ALJ's findings must be made as an exception or cross-exception. Thus, the Commission granted Charging Party's motion to strike and the portions of Respondents' brief in support of the ALJ's Decision and Recommended Order that disagreed with the ALJ's findings were stricken. The Commission also declined to consider Charging Party's reply brief in support of its exceptions, because the Commission rules do not provide for the filing of a reply to a response to exceptions.

Charging Party represents a bargaining unit of Respondents' employees that includes positions designated as deputy sheriff, sergeant, and corrections deputy. The deputy sheriff and sergeant position may be assigned to work in the law enforcement division or the jail division. The corrections deputy works only in the jail division. In the late 1970's, Respondents created two new bargaining unit positions, corrections officer (CO) I and CO II to staff the jail division. The CO Is were not required to be certified police officers. Upon the completion of certain training, CO Is were automatically promoted to CO IIs at a pay grade equivalent to that of deputy sheriffs.

In 1999, nearly all the CO Is had taken the requisite training to become CO IIs. Respondents told Charging Party that it would no longer hire COs, because it was more economically efficient to hire deputies to staff jail division since deputies could be shifted to the law enforcement division and CO IIs, who were paid the same as deputies, could only work in the jail.

By 2002, there was a high concentration of deputies staffing the jail division. In 2002, while bargaining a successor collective bargaining agreement, Respondents expressed the need to reduce operating costs by staffing the jail division entirely with CO Is and ending the past practice of automatically promoting CO Is to CO IIs. In exchange for agreeing that CO Is would no longer be automatically promoted, Charging Party requested that Respondents agree not to challenge COs' eligibility for Act 312 arbitration. The parties' agreement was incorporated into their 2003 -2004 collective bargaining agreement, which addressed Act 312 eligibility issues in Article 24, Section 6, as follows:

> Employees in the Corrections Deputy (F-17) classification and employees in the F-19 and F-22 classifications assigned to the jail will be included within the jurisdiction of Act 312 arbitration to the same extent as Deputies on road patrol and the Employer will not challenge their Act 312 eligibility at any time so long as road patrol Deputies have Act 312 arbitration or similar interest arbitration.

When the parties negotiated a new agreement two years later, Article 24, Section 6, was not discussed and was incorporated into the 2005-2007 contract. However, during negotiations in 2007 for a successor agreement, Respondents informed Charging Party that they believed Article 24, Section 6, covered a permissive subject of bargaining, that they would not agree to include that provision in the successor agreement and that the COs were not eligible for Act 312 arbitration. Charging Party then filed an Act 312 petition, which Respondents answered by stating that the corrections deputies and deputies and sergeants assigned to the jail were not Act 312 eligible. Subsequently, Charging Party filed this unfair labor practice charge alleging that Respondents violated their duty to bargain in good faith by repudiating Article 24, Section 6.

The Commission agreed with the ALJ's finding that the parties intended to invoke Act 312 or similar interest arbitration procedures with respect to corrections deputies and deputies and sergeants assigned to the jail, regardless of how the Commission or courts read Act 312. The Commission also agreed with the ALJ's finding that the parties intended the provisions of Article 24, Section 6 of their collective bargaining agreement to apply beyond the expiration date of the contract. Inasmuch as there were no exceptions taken to those findings of the ALJ, the Commission found that the main issue before it is whether Respondents' repudiation of a provision contained in the parties' agreement, extending Act 312 arbitration to classifications that may not otherwise be covered by Act 312, is an unfair labor practice.

The Commission held that interest arbitration is a permissive subject of bargaining. Parties are not required to bargain permissive subjects and may take unilateral action on permissive subjects in the absence of an agreement on the matter. However, when a permissive subject is embodied in an agreement neither party may take unilateral action regarding the permissive subject. Further, the Commission reasoned that when a permissive subject and a mandatory subject are intertwined, repudiation of the permissive subject is repudiation of the entire package. Here, the parties agreed that Respondents would not challenge the Act 312 eligibility of certain classifications in exchange for Respondents ability to staff the jail with CO Is at reduced costs as Respondents were

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no longer obligated to promote them to CO IIs. The Commission explained that under such circumstances, to allow one party to renege on its negotiated promise would frustrate the bargaining process and undermine the goal of good faith bargaining.

The Commission also held that Respondents' challenge to Charging Party's Act 312 petition was a repudiation of the parties' bargaining agreement and a breach of Respondents' duty to bargain in good faith. The Commission explained that the parties could not, by their agreement, extend Act 312 arbitration to ineligible employee classifications. To do so would require the expenditure of public funds in ways not authorized by the legislature.

However, it was obvious from their agreement that the parties intended to submit to binding interest arbitration if unable to resolve differences in negotiating their successor agreement.

Therefore, the Commission ordered that the Respondents submit to binding interest arbitration, which must be conducted in accordance with those provisions of Act 312 that do not require action by the Commission.

Unfair Labor Practice Found *-- Respondents Violated Duty to Bargain in Good Faith; Respondents Repudiated Contract Provision; Act 312 Arbitration is a Permissive Subject of Bargaining; Permissive Subjects of Bargaining Embodied in a Collective Bargaining Agreement Cannot be Unilaterally Repudiated; Parties Intent to Settle Successor Agreement by Binding Interest Arbitration Recognized; Parties Agreement to Submit to Act 312 Arbitration Upheld to the Extent that Expenditure of Public Funds is Not Required.*

City of Roseville –and- AFSCME Council 25 and its Affiliated Local 520
MERC Case No. C08 I-196

MERC reversed the ALJ's Decision and Recommended Order, which recommended dismissal of the charge, and held that the City of Roseville (Respondent) had committed an unfair labor practice.

In 1992, Respondent and Charging Party (AFSCME) signed a letter of understanding in which they agreed that Respondent could subcontract bargaining unit work provided that no bargaining unit member would be laid off as a result of the subcontracting and that Respondent maintained a minimum number of employees in the bargaining unit. The parties agreed that the letter of understanding, which was never incorporated into the collective bargaining agreement, would be in effect as long as Respondent utilized subcontractors.

During contract negotiations in 2008, Respondent announced that it would no longer recognize the letter of understanding and proposed a new contract provision recognizing staffing as a management right. Respondent declined Charging Party's requests to negotiate over the issue, and contended that the matter is a permissive subject of bargaining.

The ALJ determined that because the letter of agreement's subject matter covered bargaining unit size, a permissive subject of bargaining, Respondent could repudiate the agreement. The ALJ relied on *Chemical & Alkali Workers of America v Pittsburgh Plate Glass*, 404 US 157 (1971), for the proposition that a mid-term repudiation only violates PERA when it involves a mandatory subject of bargaining.

MERC noted that "although we give federal precedent great weight in interpreting PERA, this Commission is not bound to follow its every turn and twist." MERC phrased the issue as "whether an agreement on the permissive subject of staffing can be unilaterally withdrawn when it is given in exchange for agreement on a mandatory subject of bargaining" and determined it could not.

Because the agreement regarding the permissive subject of bargaining was intertwined with the agreement over the mandatory subject of bargaining a repudiation of part of the agreement would be a repudiation of the entire agreement. The *quid pro quo* was a promise to maintain staffing levels in exchange for a concession on the subject of subcontracting; to allow repudiation would undermine the entire collective bargaining process.

MERC concluded that the breach of an agreement, allowing subcontracting as long as the bargaining unit was maintained at a certain level, would have a substantial and significant impact on the bargaining unit. Thus, MERC concluded that Respondent unlawfully repudiated the letter of agreement and violated its duty to bargain in good faith under Section 10(1)(e) of PERA.

Unfair Labor Practice Found *– Failure to Bargain in Good Faith; Where an Agreement on a Permissive Subject of Bargaining is the Quid Pro Quo for an Agreement on a Mandatory Subject of Bargaining, Respondent's Repudiation of the Agreement is Unlawful.*

TurnAround Couriers Inc.
2010 CIRB 544
Board's Jurisdiction - Postal Services

This matter concerned an application to reconsider a Board order certifying the Canadian Union of Postal Workers (CUPW) as bargaining agent for a unit of employees working for TurnAround Couriers Inc. (TurnAround or the employer) in the City of Toronto. The employer challenged the Board's constitutional jurisdiction to issue the certification order on the basis that TurnAround carried on business solely within the province of Ontario and therefore fell under provincial jurisdiction and the jurisdiction of the Ontario Labour Relations Board.

The Board first considered the union's objection that the application was untimely. It found that there were exceptional circumstances that warranted extending the time for filing the application for reconsideration. The exceptional reasons were that, at the time of the original application, the employer was without the benefit of legal advice, and as a result, it failed to address the critical issue of whether the Board had jurisdiction to entertain the application then before it.

On the issue of jurisdiction, the Board determined that TurnAround's operations were not interprovincial in nature as the pickup and delivery services took place solely within the Greater Toronto Area. As such, they were not captured by section 92(10) of the Constitution Act. However, the Board found that TurnAround was engaged in the provision of "postal services" within the meaning of section 91(5) of the *Constitution Act* and therefore, its activities fell under federal jurisdiction and were subject to the Canada Labour Code.

In making this determination, the Board found that Parliament, when it created by statute the Canada Post Corporation (CPC), intended that CPC be one, but not necessarily the sole, provider of postal services in Canada and contemplated that other enterprises could and would be involved in the provision of postal services within the meaning of section 91(5) of the *Constitution Act*. In looking at the nature and scope of the services provided, the Board found that the pith and substance of TurnAround's operations was the "same-day" collection, transportation and delivery, for a fee, of small items such as letters and small packages that are "mailable matter" within the meaning of the Canada Post Corporations Act. But for their time sensitive nature, the items handled by TurnAround were items that could be carried by CPC in the normal course of its business.

The Board concluded that TurnAround was engaged in providing a postal service, its operations fell within federal jurisdiction and therefore the Board had the requisite authority to issue the certification order in question. It dismissed the application for reconsideration.

A.S.P. Incorporated
2010 CIRB 538
Review on the Board's own Motion - Employees' Right to Notice

This was a decision of the Board regarding whether it should, on its own motion, review one of its orders, which had consolidated two existing bargaining units of employees of A.S.P. Incorporated (A.S.P.), both represented by Teamsters Local Union 847.

In response to an application to review the structure of the bargaining units within the workplace filed jointly by the employer and the bargaining agent, the Board's order merged two units of A.S.P. employees working at Lester B. Pearson International Airport (Pearson Airport) and Toronto City Centre Airport (City Airport). The order also terminated the Pearson Airport collective agreement and extended the City Airport collective agreement to the new, merged bargaining unit.

The issue arose when the National Automobile, Aerospace, Transportation and General Workers Union of Canada (the CAW) filed an application for certification to represent the A.S.P. employees at Pearson Airport and applied for a review of the order merging the two units. It became evident from that application that the rights of some of the affected employees may have been impacted by the Board's decision to consolidate the units and then terminate the Pearson Airport collective agreement.

The Board held that section 11 of the Board's Regulations supports and gives practical effect to the audi alteram partem principle of natural justice. The Board rejected the notion that employees are not entitled to notice in matters regarding bargaining unit definition and found that it is preferable that employees be given notice of such applications so that if any feel they have interests adverse to those put before the Board, they may seek intervenor status.

The specific employee interest at stake here was the early closure of an open period, affecting the right of employees at the Pearson Airport to change bargaining agents. Since notice had not been given, this issue had not been before the Board when it made its decision to consolidate the units and to abridge the open period. The Board found that the employees should have been given notice. Noting that the principle of finality must give way to the requirements of natural justice, the Board ultimately found that the failure to give notice had resulted in a denial of natural justice, which required the rehearing of the application upon giving proper notice to the employees.

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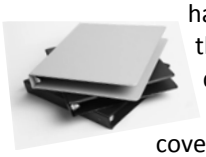
PUBLIC SERVICE LABOUR RELATIONS BOARD (PSLRB)

Disclosure

At issue in Hopwood-Jones v. Deputy Head (Department of Transport), 2010 PSLRB 45, was whether the adjudicator had the authority to order the disclosure of a document that the employer alleged was covered by section 38 of the *Canada Evidence Act*. That section concerns disclosure of sensitive or potentially dangerous information (relating to national security) and provides a mechanism for disclosure involving review by a Federal Court judge of the information before it is disclosed.



The document in question was a binder containing the no-fly list and other secret documents pertaining to air travel and the protection of Canada. The grievor had been dismissed because at one point she had left her post with that document, thus creating a dangerous situation.

The grievor argued that she should have a copy of the document so that the bargaining agent could determine if the document appeared secret on its face and whether it contained any directions on how the information it contained should be stored, retrieved and used.

The employer argued that the content of the document was not relevant to the merits of the grievance, since the termination was based on the grievor abandoning her post; the document had only compounded the misconduct.

The employer agreed to disclose some of the contents of the document but stated that, were the adjudicator to order the disclosure of the entire document, it would apply to the attorney general for a review by a Federal Court judge.

The adjudicator stated in her decision that, although she had the authority to compel disclosure based on relevance, the *Canada Evidence Act* removed from her the authority to determine whether a document contained sensitive or potentially dangerous information. That determination could be made only by a Federal Court judge in accordance with the *Canada Evidence Act*.

In another decision dealing with disclosure matters, the Board had to decide in Zhang v. Treasury Board (Privy Council Office). 2010 PSLRB 46, on the correctness of another ground for refusing disclosure, labour relations privilege.

The employer argued that all communications made in the context of litigation are privileged. In this case, the grievor was seeking communications between labour relations officers and management in relation to the implementation of a prior order of the Board.

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CIRB (continued)

(Continued from page 17)

A.S.P. Incorporated
2010 CIRB 546
Statutory Open Period

This decision follows upon the above decision and deals with the Board's review of its previous order after providing notice to the affected employees.

The Board confirmed the first part of the original order that consolidated the two bargaining units. It found that, in the circumstances, there was no strong rationale for maintaining two separate units. The employer had structured its operations to allow for centralization, and some sharing of resources between the locations. The Board found a shared community of interest amongst the employees who were performing essentially the same work at the two locations, which required the same skills and qualifications and determined that a combined unit would offer more job protection, would be more viable and would facilitate collective bargaining.

The Board concluded, however, that it was improper for the Board to have abridged the statutory open period for the employees in the Pearson Airport and City Airport units because it deprived those employees of the opportunity to exercise their right to express their wishes to select the bargaining agent of their choice. The Board emphasized that the "open period" is a vital and essential feature of the collective bargaining process and defines the only periods during which employees have the opportunity to exercise their right to change bargaining agents. That right was abrogated by the Board's original decision.

The Board thus confirmed its decision to consolidate the two units, but ordered that the open periods for both units in effect at the time of the Board's order be restored.

CIRB Newslink

The CIRB has now published two issues of its semi-annual newsletter, *CIRB Newslink*, in June 2010 and January 2011.

This initiative is the result of the CIRB's priority to consult with the labour relations community on a regular basis and commitment to provide updates on the progress being made to improve the timeliness of Board decisions and procedures. This newsletter will be published twice a year and will serve to inform the labour relations community on developments and initiatives at the Board.

The newsletter can be found on the CIRB's Website at: http://www.cirb-ccri.gc.ca/publications/newsletter-bulletin_eng.asp?lang=eng

(Continued from page 18)

The employer objected because the communications related to the litigious matter of the grievance. The employer stressed the importance for management to have complete and frank discussions with labour relations officers in the context of labour disputes and made the analogy between labour relations privilege and solicitor-client privilege. The grievor argued that the communications were relevant to the grievance.

The adjudicator first ruled that the requested documents were relevant and then applied the **Wigmore** test to determine if they were privileged, after deciding that a class privilege of labour relations on par with the solicitor-client privilege did not exist. Rather, it was a matter of deciding if in this case the documents should remain confidential.

The following four conditions apply to find a document protected under the **Wigmore** test: 1) the authors of the communications trusted that they would remain confidential; 2) the element of confidentiality is essential to the relationship in which the communication arises; 3) this relationship is perceived as important by the community; and 4) the injury caused to the relationship is greater than the benefit of disclosure.

The adjudicator was willing to agree that the first three criteria favoured the employer. However, the decision turned on the fourth factor and, specifically, that the issue is whether the parties complied with an order made by an adjudicator under the *Act*. What made the disclosure necessary was the proper administration of justice. The adjudicator ordered the disclosure of the documents, albeit with some safeguards to protect their confidentiality beyond the disclosure to the grievor and her bargaining agent.

Privacy

In **PIPSC v. Canada Revenue Agency**, 2008 PSLRB 58, the Board issued a consent order for the employer to provide personal information about employees to the bargaining agent. The information would allow the bargaining agent to contact employees in the event of a strike vote.

In an earlier decision, the Board had emphasized that privacy considerations were to be taken into account, and in the consent order, several safeguards were spelled out to ensure the protection of the personal information.

A bargaining unit employee who was directly affected by the order, although not a party to the original case, filed for judicial review to have the consent order quashed, on the basis that her privacy rights were violated.

In **Bernard v. Attorney General of Canada**, 2010 FCA 40, the Federal Court of Appeal found that the Board had erred in not exercising its jurisdiction by accepting without any modification the agreement proposed by the parties and by not reviewing the agreement in light of privacy considerations.

Therefore, the Court returned the consent order to the Board to be considered in terms of privacy concerns, with the Privacy Commissioner to be given full intervenor status to represent the interests of Ms. Bernard and others in the same situation, i.e., employees who do not want to share their personal information with the bargaining agent. The impugned decision was not the only one of its kind. Other agreements were reached between other bargaining agents and employers to similar effect. Therefore, the *Bernard* decision will have considerable ramifications.

Redress & Remedial Action

In a decision which received wide press coverage nationally (**Tipple v. Deputy Head (Department of Public Works and Government Services,** 2010 PSLRB 83), the grievor challenged the early termination of his three-year term by the Department of Public Works and Government Services, as a senior advisor to the deputy minister.

The employer objected to the Board's ability to hear the grievance, alleging that the termination was a layoff for lack of work.

The adjudicator found that he had jurisdiction because the deputy head's contrived reliance on the lay off provisions of the *Public Service Employment Act* was a sham or a camouflage. He found the termination unlawful. The adjudicator awarded damages for lost wages, lost performance bonus, lost employee benefits, loss of reputation and psychological injury, with interest. He further awarded damages for obstruction of the adjudicative process, the employer having failed to comply with disclosure orders in a timely way.

In another recent decision (**Robitaille v. Deputy Head** (Department of Transport) 2010 PSLRB 70), an adjudicator from the Board upheld the grievor's claim that there were no grounds for the harassment complaint against him that had led to his reassignment to a different job and found that a number of measures imposed on the grievor by his employer were not justified.

The adjudicator also found that, in handling the harassment complaint, the employer breached its duties of transparency, diligence, prudence and impartiality, which had caused harm to the grievor. The adjudicator reinstated the grievor in his management position and awarded him compensatory and punitive damages.

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Quebec Farm Workers Can Unionize; Ontario Farm Workers Still In Limbo

Prior to 1964, Quebec law denied collective bargaining rights to all farm workers. When the Quebec government extended bargaining rights to agricultural workers in, it attempted to make an exception for small family farms by providing in s.21(5) of the *Code* that "[p]ersons employed in the operation of a farm shall not be deemed to be employees for the purposes of [certification of a bargaining unit] unless at least three of such persons are ordinarily so employed."

A year later, after the Quebec Labour Relations Board of the day interpreted "ordinarily" to mean that workers who worked each year for as little as a week on an apple or strawberry harvest could qualify for certification, the government added a requirement that the persons be "ordinarily and continuously so employed."

In subsequent years, this provision prevented certification of bargaining units not only of farm workers who were employed during a brief harvest period, but also of those who were employed throughout the farming season but not during the winter months. Although Quebec farms employ large numbers of seasonal migrant workers, primarily from Latin America and currently an estimated 6,000 such workers a year, the requirement for continuous employment continued to preclude their unionization.

However, shortly after the Supreme Court of Canada ruled in its landmark decision in *Health Services and Support-Facilities Subsector Bargaining Association v. B.C.*, [2007] 2 S.C.R. 391 that collective bargaining rights are part of the freedom of association guaranteed by s.2(d) of the *Canadian Charter of Rights and Freedoms,* the United Food and Commercial Workers (UFCW) applied to the Quebec Labour Relations Board for certification of a bargaining unit composed of six Mexican migrant workers employed each year from mid-March to late October on a cabbage and cauliflower farm known as Ferme L&L.

When the employer objected to the Board that it continuously employed fewer than three workers and was therefore exempt pursuant to s.21(5) of the *Code*, the union added a challenge to the constitutionality of this provision.

The union argued that, by effectively denying certification for all seasonal farm workers, s.21(5) of the Quebec *Labour Code* breached the constitutional right to collective bargaining guaranteed by s.2(d) of the *Charter*. It also alleged a breach of the same freedom of association guarantee in s.3 of the *Quebec Charter of Human Rights and Freedoms*. The union also argued that the denial of collective bargaining rights to seasonal farm workers was a breach of their equality rights under s.15 of the *Charter*.

As remedy, it asked the Board to declare s.21(5) unconstitutional and inoperative, and to grant certification for the proposed bargaining unit which otherwise met all statutory requirements.

Although the Board dismissed the union's argument based on equality rights, it held that "the exclusion of these seasonal farm workers from the general regime of union representation that is established by the *Code* prevents them from enjoying the freedom of association guaranteed by the Canadian and Quebec *Charters.*" As a result, Quebec Labour Relations Board Vice-Chair Robert Côté ruled that the provision was unconstitutional and inoperative, and certified the proposed bargaining unit at Ferme L&L.

Meanwhile, farmworkers in Ontario are still waiting for a decision from the Supreme Court of Canada in a case involving the constitutionality of special legislation enacted by the provincial government to govern their labour-management relations.

In response to a 2001 Supreme Court of Canada decision (*Dunmore* v. *Ontario (Attorney General))*, which ruled that the exclusion of agricultural workers from Ontario's *LRA* violated the right of these workers to freedom of association under s. 2 (*d*) of the *Charter,* the Ontario government enacted the *Agricultural Employees Protection Act*, *2002.*

The UFCW challenged the AEPA, alleging that it violates the right of agricultural workers to freedom of association under s. 2(*d*) of the *Charter* because it is underinclusive in a manner that substantially impedes the exercise of freedom of association and sustains the violation of agricultural workers' freedom of association.

In particular the UFCW alleges that the legislation substantially impedes the right of agricultural workers to organize, form and maintain employee associations; fails to protect democratic choice of association by employees; fails to provide a mechanism to verify the legitimacy of an employee association; and fails to provide adequate protection from employer influence over employee associations.

The UFCW alleges that the statute substantially impedes the ability of agricultural workers to maintain employee associations and exercise the "collective dimension" of freedom of association and therefore fails to protect their right to engage in collective bargaining. It submits that the AEPA creates an illusory right of representation which invites employer actions to ignore or subvert the free exercise of association by employees.

The Ontario Superior Court found that the UFCW had not demonstrated a violation of sections 2(*d*) or 15 of the *Charter*, and dismissed the appeal. However, the Ontario Court of Appeal found that the AEPA substantially interferes with the

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Charter-protected right to freedom of association (section 2(d)) and that this violation could not be justified under section 1 of the Charter (reasonable limits). In a unanimous decision, the Court of Appeal allowed the appeal and declared that the AEPA is unconstitutional, as it substantially impairs the right of agricultural workers to bargaining collectively and provides no statutory protection for collective bargaining.

The Court declared the AEPA invalid and ordered the government to provide agricultural workers with sufficient protections to enable them to exercise their right to bargain collectively. The declaration was suspended for 12 months to permit the government time to determine the method of statutorily protecting the rights of agricultural workers to engage in meaningful collective bargaining.

The Court held that it was up to the legislature to assess the options, taking into account constitutional, labour relations and other factors, and to design a constitutionally acceptable model.

The Ontario government has appealed this ruling to the Supreme Court of Canada, which heard arguments in December 2009 and has reserved judgment.

Saskatchewan LRB's Decision Regarding Walmart Upheld

The Saskatchewan Court of Queen's Bench has upheld a decision by SLRB holding that the U.S. parent of Wal-Mart Canada is not an "employer" in Saskatchewan. The Court also upheld the Board's policy decision that, when attempting to determine the "employer" in the province and confronted with an international corporation and its Canadian subsidiary, the Canadian subsidiary is to be preferred.

In 1992, the United Food and Commercial Workers, Local 1400 (UFCW), obtained certification to represent employees at the F.W. Woolworth store in Moose Jaw, Saskatchewan. That store closed in 1994 and the F.W. Woolworth Company was subsequently purchased by Wal-Mart Canada Corp. ("Wal-Mart Canada"), a New Brunswick corporation and wholly owned subsidiary of a U.S. parent, Wal-Mart Stores Inc. ("Wal-Mart U.S.") of Arkansas.

In 1999, Wal-Mart Canada built a store in Moose Jaw. In 2004, the UFCW sent Wal-Mart Canada a letter, claiming successor rights and stating that the employees at its Moose Jaw store were covered by the union's 1992 certification. Wal-Mart Canada disagreed.

The union applied to the Saskatchewan Labour Relations Board naming both Wal-Mart Canada and Wal-Mart U.S. as respondents. The SLRB initially accepted the naming of both companies, but later granted Wal-Mart Canada's request for reconsideration. Following a rehearing, the SLRB decided that Wal-Mart U.S. was not properly named as a respondent.

The Board found that Wal-Mart U.S. had no connection to the province and that it would be inappropriate to name it as a respondent. In the Board's view, to do so would unnecessarily complicate its proceedings, and there were other avenues available to get any required information from Wal-Mart Canada's American counterpart.

In addition, the Board held that, when determining whether a Canadian or an international corporation was the employer, as a matter of policy it preferred the former to the latter. In particular, the Board held:

> *"Even if it could be argued that the union was, in effect, asking the Board to determine, as between the two (2) corporations, which was the successor, as a matter of general policy (and to a certain degree common sense), in determining the appropriate employer as between an international corporation (a corporation owning and operating discount retail department stores throughout the world) and that corporation's Canadian subsidiary (a corporation created for the purpose of conducting that corporation's affairs in Canada), this Board will prefer the Canadian subsidiary, who is the actual employer."*

Justice Grant Currie of the Saskatchewan Court of Queen's Bench dismissed the union's application for judicial review and found that the Board's decision was reasonable:

> *"The range of acceptable and rational outcomes in this matter includes the Board's decision to avoid unnecessarily complicating its proceedings with the involvement of a foreign corporation that has no apparent connection to the proceedings. That was the decision made by the Board, justified by the evidence that the 1994 purchase was made by Wal-Mart Canada, not by Wal-Mart U.S., and by the evidence that it is Wal-Mart Canada, not Wal-Mart U.S., who built and operates the Moose Jaw store and employs people in Saskatchewan. The Board further justified the decision with the "practical and obvious" reasons set out [earlier in] its decision."*

Comings & Goings

Quebec

On December 1, 2010, the government of Quebec appointed Mr. **Robert Côté** as Chairperson of the Quebec Labour Relations Commission for a five year term.

Mr. Côté was previously a vice-chair at the Commission and replaces **Andrée St-Georges**, who will continue as a member of the Commission. On the same date, **Pierre Flageole** resigned as administrative vice-chair of the Commission and the government named **Hélène Fréchette** and **Irene Zaïkoff** to the two vacant vice-chair positions. Mr. Flageole, who has frequently spoken at ALRA conferences, will remain a member of the Commission.

Ontario

On December 17, 2010, the government of Ontario announced the nomination of respected labour lawyer **Bernard Fishbein,** as Chair of the Ontario Labour Relations Board (OLRB), replacing Kevin Whitaker who was appointed to the Ontario Superior Court earlier in the year. The nomination is subject to review by the Standing Committee on Government Agencies.

Photo credit — n/a

Bernard Fishbein

Mr. Fishbein has over 30 years of experience as a labour lawyer in Ontario. After graduating from the University of Toronto with a law degree and a master's degree from Harvard University, he began his law career articling at the Ontario Labour Relations Board before joining Koskie Minsky LLP.

Along with appearing at the OLRB for more than 30 years, Mr. Fishbein has taught employment and labour arbitration law at the University of Toronto. He is also a former member of the Ontario Grievance Settlement Board and former Chair of the Labour Law Section of the Canadian Bar Association.

Diane Gee and **Brian McLean** will continue as the Interim Chair and Interim Alternate Chair respectively until Mr. Fishbein's anticipated arrival in February 2011.

Public Service Labour Relations Board (Canada)

Retirements

Pierre Hamel

It will require two people to replace **Pierre Hamel** (currently Executive Director and General Counsel of the Board, when he retires on April 1, 2011 after 33½ years of service in the Public Service. We always knew that it would be tough to fill his shoes.

Guy Lalonde (*see below*) will take over as Executive Director when Pierre steps down. A General Counsel for the PSLRB will be named at a later date.

Dan Quigley, Board member, retired from the Board on July 16, after 34 years of service in the Public Service of Canada, including 8 years as a Board member.

Appointments

Guy Lalonde was appointed to the position of Executive Director of the Board effective February 7, 2011.

Mr. Lalonde holds a Bachelor's Degree in Social Sciences (Political Science, Public Policy and Management) and has a diversified experience with various departments and agencies of the Public Service of Canada, which have in common mandates relating to labour relations in the public and private sectors.

Vice-Chairperson **Marie-Josée Bédard** was appointed to the Federal Court of Canada on May 14, 2010.

Catharine (Kate) Rogers was appointed as Board member on September 1, 2010 for a term of five years.

Canada Industrial Relations Board (CIRB)

Reappointment

The Honourable Lisa Raitt, Canada's Minister of Labour, announced the reappointment of **Richard I. Hornung** to the CIRB as part-time Vice-Chairperson for a term of three years, effective June 27, 2010.

Photo credit — n/a

Richard Hornung

National Mediation Board (NMB)

On July 12, 2010, the National Mediation Board (NMB) announced the selection of **Daniel Rainey** as the agency's new Chief of Staff. Mr. Rainey will oversee the Mediation, ADR, Arbitration and Administrative functions of the NMB. Legal Affairs and Representation matters will remain under the supervision of General Counsel, Mary Johnson.

Daniel Rainey

Michigan Employment Relations Commission (MERC)

Nino E. Green of Escanaba was first appointed as a Commissioner on the Michigan Employment Relations Commission on July 1, 2004 and was re-appointed on July 20, 2007 and on March 31, 2010. He is MERC's first commissioner from the Upper Peninsula.

Commissioner Green was admitted to the practice of law in Michigan in 1964. He is the former executive director of U.P. Legal Services and the current chairperson of its successor organization,

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Legal Services of Northern Michigan. He has broad experience representing labor unions.

Commissioner Green has practiced before the NLRB and MERC and all of the district and circuit courts in the Upper Peninsula, as well as the United States District Courts for the Eastern and Western Districts of Michigan and the District of Minnesota. He has appellate court experience before the Michigan Court of Appeals, the Michigan Supreme Court, and the U.S. Sixth and Eighth Circuit Courts of Appeal. He is admitted to practice before the United States Supreme Court.

Commissioner Green's appointment is for a three-year term, expiring on

(PSLRB—Continued from page 19)

Those two cases illustrate the increasing willingness of arbitrators to award remedies which they feel fully address the matter before them and which many considered to be in the exclusive province of the Courts. Both decisions are the subject of an application for judicial review before the Federal Court.

New Legislation

On June 17, 2010, the Government of Canada tabled Bill C-43 (the *Royal Canadian Mounted Police Modernization Act*) in the House of Commons. If passed by Parliament, the Act will provide a collective bargaining framework for members of the RCMP, under which they will have the right to join an employee association to represent them in collective bargaining with their employer.

The Act also provides for an adjudication procedure for grievances of RCMP members relating to termination, demotion, disciplinary action and collective agreement interpretation, before the Public Service Labour Relations Board.

Former ALRA President Retires from the National Labor Relations Board (NLRB)

by *Abby Simms* (NLRB)

This past December, **John Higgins** retired after 46 years of service with the NLRB.

John began his career in 1964 as a Field Attorney in the Board's Memphis, Tennessee regional office following his graduation from Boston University Law School. In 1969, after being promoted to supervisory attorney and receiving a Masters degree in collective bargaining from Cornell University, John transferred to the Agency's Washington DC headquarters where he joined the General Counsel's Division of Advice and quickly rose to key managerial positions.

Photo credit — Josée Dubois

John Higgins

In recess appointments by Presidents Ronald Reagan and Bill Clinton, John served in the position of Board member. And President George W. Bush appointed him to act as General Counsel during the transition period between administrations. John has also served twice as the Board's Solicitor, its chief legal advisor, and as the Agency's Inspector General. His most recent position was Deputy General Counsel—a position in which he served four General Counsels in the past.

Most of us know John best as for his enthusiastic dedication and great contributions to ALRA. From 1999-2000, John served as ALRA President. He has also served on the faculty of the ALRA Academy for many years. More recently, he chaired the Neutrality Project, where he led the successful effort to articulate the standards of conduct which ALRA believes best ensures a high level of confidence by the public and the parties in the fairness of the process and the integrity of ALRA's member agencies.

John may have retired from the NLRB but, not surprisingly, he continues his energetic involvement in the law and the field of labor relations.

He has been an adjunct Lecturer at Catholic University School of Law for 30 years, and will be increasing his teaching course load. He also is continuing his active participation in the American Bar Association's Section of Labor & Employment Law and will serve as Editor-in-Chief of two BNA publications, *The Developing Labor Law* and *How to Take a Case Before the NLRB*, the comprehensive references on substantive law under the NLRA and procedures for practice before the Board.

And, good news for us, as a former ALRA president, John continues to participate in ALRA. He is currently serving on the 60th Anniversary Committee and plans to continue as a faculty member of *ALRA*cademy.

2010 OTTAWA Conference

July 25, 2010

*ALRA President, **Mary Johnson**, welcomes attendees to the 2010 Annual Conference.*

*Moderator **Elizabeth MacPh**erson (Chair, Canada Industrial Relations Board) introduced Guest Speaker **Ken Clavette**, Labour Historian.*

CONCURRENT ROUNDTABLES

These sessions provide an opportunity for each group to share and exchange views on a variety of subjects in their areas of practice.

Board and Commission Members

*Facilitators: **Elizabeth MacPherson** (Chair, Canada Industrial Relations Board); and **Linda Puchala** (Member of the National Mediation Board).*

Mediators

*Facilitators: **Beth Schindler** (Director Mediation Services (Seattle), Federal Mediation and Conciliation Services-U.S.); and **Gilles Grenier** (Director Dispute Resolution Services, Public Service Labour Relations Board).*

General Counsel

*Facilitators: **Kate Dowling** (Associate General Counsel, National Mediation Board); and **David Demirkan** (General Counsel, Canada Industrial Relations Board).*

Directors and Administrators

*Facilitators: **Ginette Brazeau** (Executive Director, Canada Industrial Relations Board); and **Scot Beckenbaugh** (Deputy Director, Federal Mediation and Conciliation Service-U.S.)*

Photos by Janet Boehmer ©

July 26, 2010—ADVOCATE's DAY

WELCOME REMARKS – CHAIRS OF THE 5 HOST AGENCIES
(L-R) ***Guy Baron*** *(Federal Mediation and Conciliation Service;* ***Elaine Kierans*** *(Canadian Artists and Producers Professional Relations Tribunal); Guest Speaker—The Honourable Justice Louis LeBel (Supreme Court of Canada);* ***Casper Bloom*** *(Public Service Labour Relations Board); and* ***Guy Giguère*** *(Public Service Staffing Tribunal). At podium, Elizabeth MacPherson (Canada Industrial Relations Board).*

GUEST SPEAKER ***George H. Cohen***
(Director, Federal Mediation and Conciliation Service).

Moderator ***Scot Beckenbaugh*** *(Deputy Director, Federal Mediation and Conciliation Service-U.S.)*

KEYNOTE ADDRESS *by* ***The Honourable Justice Louis LeBel****, Supreme Court of Canada explained the role that the Supreme Court of Canada played in the evolution of Labour Law in Canada through its key decisions relating to the freedom of association and freedom of expression as protected by the Canadian Charter of Rights and Freedoms.*

Moderator ***Casper Bloom*** *(Chair, Public Service Labour Relations Board).*

COLLABORATION VS CONFRONTATION — SHOULD UNIONS AGREE TO REOPEN CONTRACTS TO AVOID LAY-OFFS OR BANKRUPTCIES?

(L-R) ***Scott Morey*** *(Vice-President, Labour Relations, Air Canada); Moderator* ***Sheri King*** *(Regional Director, Federal Mediation and Conciliation Service-Canada); and* ***Dave Coles*** *(President, Communications, Energy and Paperworkers Union of Canada).*

CONCURRENT WORKSHOPS

1. PRIVATE SECTOR WORKSHOP. LABOUR-MANAGEMENT CO-OPERATION TO ACHIEVE RESULTS IN DIFFICULT ECONOMIC TIMES

A. Joint Efforts to Influence Public Policy

(L-R) ***Richard Dixon*** *(Chair, Federally-Regulated Employers, Transportation and Communications (FETCO)); and* ***Hassan Yussuff*** *(Secretary-Treasurer, Canadian Labour Congress) (with* ***Reg Pearson****).*

B. Relationship Improvement Initiatives and their Positive

(L-R) ***Elizabeth Cameron*** *(Assistant Vice-President, Labour and Employee Relations, NAV CANADA);* ***Greg Myles*** *(President, Canadian Air Traffic Controllers Association); and Moderator* ***Elizabeth MacPherson****, Chair, Canada Industrial Relations Board.*

2010 OTTAWA Conference

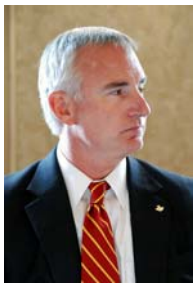
July 26, 2010—ADVOCATE's DAY *(continued)*

2. PUBLIC SECTOR: NEW TECHNOLOGIES AND THE PROTECTION OF PRIVACY



(L-R) ***Jennifer Stoddart*** *(Privacy Commissioner of Canada);* ***William Herbert*** *(Deputy Chair and Counsel, New York State Public Employment Relations Board); and* ***Barbara McIsaac*** *(Q.C., Counsel, Borden, Ladner, Gervais). Moderated by* ***Pierre Hamel*** *(Executive Director and General Counsel, Public Service Labour Relations Board).*

PLENARY SESSION - RESTRUCTURING IN THE AIRLINE INDUSTRY UNDER THE THREAT OF BANKRUPTCY


(L-R) ***The Honourable James M. Farley****, Q.C. (Senior Counsel, McCarthy Tétrault);* ***Lee Moak*** *(Chairman, Delta Master Executive Council, Air Line Pilots Association); and* ***Michael Campbell*** *(Executive V.P. of Human Resources and Labor Relations, Delta Airlines). Moderator:* ***Jacques Lessard*** *(Regional Director, Federal Mediation and Conciliation Service-Canada).*

Tuesday, July 27, 2010

USE OF TECHNOLOGY IN LABOR RELATIONS: FRIEND OR FOE?

This three presentation session was moderated by ***Josée Dubois*** *(Executive Director and General Counsel, Public Service Staffing Tribunal).*

Serge Roy *(Director of Dispute Resolution Services, Public Service Staffing Tribunal) discussed how to overcome the challenges of telephone mediation.*

Stephanie Stone *(Conciliation Officer/ Mediator, Federal Mediation and Conciliation Service-Canada) discussed the impact of social media on collective bargaining mediation.*

(L-R) ***Cathy McCann*** *(VP PEOPLE, American Eagle Airlines);* ***Andy Nordgren*** *(AirLine Pilots Association Negotiations Committee Chairperson, American Eagle); and* ***Linda Puchala*** *(Member of the National Mediation Board). The panel spoke about the positive use of technology in collective bargaining.*

STRATEGIC REALIGNMENT OF LABOR RELATIONS SERVICES – RE-ENGINEERING OF AGENCIES OR PROCESSES TO DO MORE (OR THE SAME) WITH LESS



(L-R) ***Paul Roose*** *(Director of the California Mediation and Conciliation Service);* ***Paul Lordon*** *(Arbitrator and former Chair of the Canada Industrial Relations Board and of the New Brunswick Labour and Employment Board); and Moderator* ***Pierre Hamel*** *(Executive Director and General Counsel, Public Service Labour Relations Board).*

Wednesday, July 28, 2010

CONCURRENT WORKSHOPS

1. DECISION WRITING - HOW TO WRITE A BETTER STORY (NOT A LONGER DECISION)

Athanasios Hadjis *(Legal Counsel, Public Service Staffing Tribunal).*

2. MEDIATION IN THE CONTEXT OF INTEREST ARBITRATION - IS IT REALLY ALL THAT DIFFERENT?

Jennifer Webster *(Regional Director, Federal Mediation and Conciliation Service-Canada); and*

Sue Bauman *(Commissioner, Wisconsin Employment Relations Commission).*

ZAP THE GAP? UPDATES ON GENERATIONAL EXPERIENCES IN COLLECTIVE BARGAINING, DISPUTE RESOLUTION, AND ORGANIZATIONAL CULTURES

(L-R) ***Rosa Tiscareno*** *(Commissioner (Chicago), Federal Mediation and Conciliation Service-U.S.); and* ***Eileen Hoffman*** *(Commissioner, ADR and International Dispute Resolution Services, Federal Mediation and Conciliation Service-U.S.). Moderator* ***Les Heltzer*** *(Executive Secretary, National Labor Relations Board).*

THE METAPHYSICS OF ETHICS - ETHICAL ISSUES IN MEDIATION AND ARBITRATION

Les Heltzer *(Executive Secretary, National Labor Relations Board); and*

Gilles Grenier *(Director, Dispute Resolution Services, Public Service Labour Relations Board).*

CANDID CAMERA

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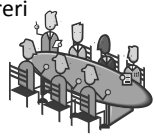
Co-Chair: Rick Curreri
Larry Gibbons
Phil Hanley
Sue Mailer



PROGRAM
Co-Chair: Kevin Flanigan
Co-Chair: Marlene Gold
Co-Chair: Jacques Lessard
Diane Chartrand
Steve Hoffmeyer
Tim Noonan
Reg Pearson
Beth Schindler
Pat Sims
Peter Suchanek
Jack Sweeney

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Co-Chair: Phil Hanley
Co-Chair: Abby Simms

60th ANNIVERSARY COMMITTEE
Co-chair: Liz MacPherson
Co-Chair: Linda Puchala
John Higgins

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Co-Chair: Ginette Brazeau
Co-Chair: Jackie Zimmerman
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Hank Breiteneicher
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ALRA ACADEMY CO-ORDINATOR
Cristina Bonaca

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National Academy of Arbitrators: Marlene Gold

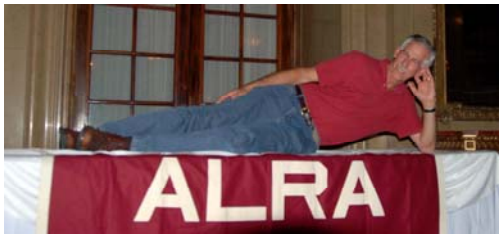
Canadian Association of Administrators of Labour Legislation: Sheri King

American Bar Association–Labor Law Section: Mary Johnson

Association of Conflict Resolution: *Vacant*

International Labor Relations Organizations: Scot Beckenbaugh

Memories of OTTAWA 2010 Conference



Reception for Delegates and Advocates held at the National Gallery of Canada.

Sponsored by: Les Fonds de Solidarité, NavCanada and the Canadian Air Traffic Controllers Association, Local 5454 CATCA).