ALRA Advisor

ASSOCIATION of LABOR RELATIONS AGENCIES

February 2012

Karen Hackel photo

ALRA Celebrates 60th Year at 2011 Conference

Karen Hackel photo

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Neal Moyer photo

ALRA Advisor

www.alra.org

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

In this issue...

METRO NY-NJ 2011 CONFERENCE

Images from the 60th Annual ALRA Conference held in July 2011.

61st Annual ALRA Conference — Montréal, Canada

July 28-31, 2012

NEW Shorter 3-day conference format!

Montreal Tourisme photo

Hyatt Regency Montreal. The site of the 2012 ALRA Conference.

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

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

ARTICLES and **PHOTOS:**
All articles are subject to editing for length and clarity. Photos should be at least 200 dpi.

Submit all material to the *Editor*:
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National Mediation Board
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From the President...

Sheri King

ALRA's Executive Board and Committees met in November of 2011 in Montréal and in Washington, D.C. in February 2012 and are well into another busy year.

New ALRA Website in 2012

Last year, the Board decided that the ALRA website was overdue for a revamp. We've contracted with a web designer to update our online appearance and user interface and we hope to have a new and improved website in place before we begin the registration process for the 2012 conference.

The Board is grateful to the Publications, Communications and Technology Committee, co-chaired by Linda Puchala and Liz MacPherson, for its efforts in getting this work underway and for producing this very attractive newsletter on a regular basis.

Thanks to Dan Rainey and the National Mediation Board (NMB) for their ongoing work as ALRA website administrator, particularly Charlie Montague; and a very big thank you to Michael Wolf of the Federal Labor Relations Authority for his efforts in updating and maintaining the ALRA website over the years.

ALRA 2011 Conference in Metropolitan NY-NJ

The 2011 ALRA annual conference in Metropolitan NY-NJ was a tremendous success.

The venue, the Hyatt Regency Jersey City, offered a spectacular, panoramic view of the Hudson River and Lower Manhattan, with both the hospitality suite and the banquet room allowing delegates to take full advantage of the view.

The conference marked ALRA's 60th anniversary and a number of distinguished former ALRA presidents were in attendance.

Congratulations and thank you to then-ALRA President Les Heltzer for his many, many hours of dedicated effort, as well as the Executive Board members, and a huge shout-out to the co-chairs and members of the following committees:

- *Arrangements* (co-chairs): Bob Hackel (New Jersey Public Employment Relations Board) and Rick Curreri (New York State Public Employment Relations Board)

- *Program* (co-chairs): Marlene Gold (New York City Office of Collective Bargaining); Kevin Flanigan (New York State Public Employment Relations Board) and Jacques Lessard (FMCS Canada)

- *Professional Development* (co-chairs): Sue Bauman (Wisconsin Employment Relations Commission) and Ginette Brazeau (Canada Industrial Relations Board)

- *60th Anniversary Committee (*co-chairs): Linda Puchala (National Mediation Board) and Liz MacPherson (Canada Industrial Relations Board)

The organizers did a wonderful job of bringing real meaning to the theme "*It's Not Business as Usual*" with sessions on a wide-range of topics, all dealing with today's very challenging labour relations environment.

I'd like to gratefully acknowledge the work of the staff of the three host agencies – New Jersey Public Employment Relations Commission, New York City Office of Collective Bargaining and New York State Public Employment Relations Board – their often unseen efforts kept everything running smoothly. Special thanks to Neal Moyer (New Jersey Public Employment Relations Commission) for his huge contribution on the

technical side and to Karen Hackel for her excellent work as conference shutterbug.

61st ALRA Conference—July 28-31, 2012

The 2012 ALRA Conference, to be held July 28 to 31 at the Hyatt Regency, in beautiful downtown Montréal, Quebec, promises to be another great event.

The location is perfect; the hotel overlooks the newly reconstructed Place des Arts, the very heart of the Quartier des Spectacles, encompassing the venues which house the symphony, opera, ballet and many other dance forms, theatre, film and contemporary art as well as rehearsal halls, shops, services and a grand esplanade decorated with original fountains and water cascades.

Place des Arts is the site of many of Montréal's world-famous festivals, including the *Just for Laughs* comedy festival, which will have its closing weekend July 27-29, 2012.

The committees are hard at work and well into the planning for a great conference. The *Program Committee* is co-chaired by Reg Pearson (Ontario Ministry of Labour) and Beth Schindler (FMCS US); the *Professional Development Committee* by Ginette Brazeau (Canada Industrial Relations Board) and Tim Noonan (Vermont Labour Relations Board); and *Arrangements* by Jacques Lessard (FMCS Canada) and Daniel Cholette (Quebec Ministry of Labour).

NEW—2012 Conference—Shorter Format

We are particularly excited that the 2012 Conference will be the pilot program for a new, shorter format. The 2012 Conference will end with a closing banquet on the Tuesday evening, rather than the usual Wednesday closing. We are hopeful that the reduction in length will enable more delegates from ALRA member agencies to attend.

On behalf of the entire ALRA Executive Board, thank you for your ongoing support of the organization and we hope to see all of you in Montréal in July.

—Sheri King

Montreal Tourisme Photo © Robert Burch

Past Presidents Join in the Celebration of ALRA's 60th Anniversary!

There were many memorable times at the 60th anniversary Annual Conference in July.

The attendance at various events by 14 past ALRA presidents was a particular highlight of the conference.

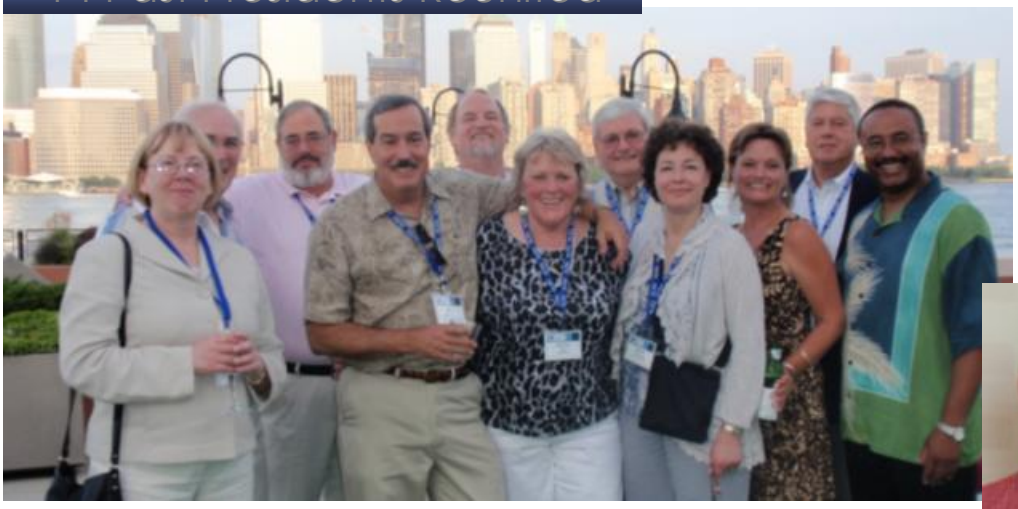
The past presidents who joined us served terms spanning the four decades from the 1970s to the 2010s. They included:

- ***Bill McCallum*** (1976-77), Nova Scotia Department of Labour;
- ***Jeff Tener*** (1979-80), New Jersey PERC;
- ***Herman Torosian*** (1980-81), Wisconsin ERC;
- ***Jim Mastriani*** (1986-87), New Jersey PERC;
- ***Jackie Zimmerman*** (1996-97), Illinois Labor Relations Board;
- ***Rick Curreri*** (1997-98) NY State PERB;
- ***John Higgins*** (1999-00), NLRB;
- ***Bob Anderson*** (2002-03), New Jersey PERC;
- ***Dan Nielsen*** (2003-04), Wisconsin ERC;
- ***Reg Pearson*** **(**2004-05), Ontario Ministry of Labour;
- ***Jaye Bailey*** (2005-06), Connecticut State Board of Labor Relations;
- ***Marilyn Glenn Sayan*** (2006-07), Washington State PERC;
- ***Phil Hanley*** (2008-09), Phoenix ERB; and
- ***Mary Johnson*** (2009-10), NMB.

Old friends were reunited, new friendships were made. The strength of the affinity shared by all those who have participated in ALRA in times past, those who have continued to participate, and those that have participated only recently was evident.

— Les Heltzer

14 Past Presidents Reunited



Karen Hackel photo

(L-R) Mary Johnson; Bill McCallum; Les Heltzer; Rick Curreri; Dan Nielsen; Marilyn Glenn Sayan; Reg Pearson; Jackie Zimmerman; Jaye Bailey; Herman Torosian; and Phil Hanley.

Jeff Tener

Bob Anderson

Jim Mastriani

Welcome Brunch — July 24, 2011

Les Heltzer

John E. Higgins, Jr.

Guest Speaker
John E. Higgins, Jr., Esq., Professor, Catholic University of America, Columbus School of Law, National Labor Relations Board, (Retired)

Concurrent Roundtables. 1) Board and Commission Members; 2) Mediators; 3) General Counsel; and 4) Directors and Administrators

Advocates Day — July 25, 2011

Welcome and Opening Remarks
Les Heltzer, Esq., Executive Secretary, National Labor Relations Board and ALRA President; and **ALRA Host Agency Representatives** (NYS PERB, NYC OCB, NJ OCB, NJ PERC).

Plenary 1

Ten Years After 9/11: Can We afford To Bargain Public Safety?

(L-R) Moderator: **Steven Greenhouse**, Labor & Workplace Correspondent, *The New York Times*; **James F. Hanley**, Commissioner of Labor Relations for the City of New York; **Stephen Cassidy**, President, Uniformed Firefighters Association of Greater New York; **Brian J. Kronick**, Esq., Genova, Burns & Giantomasi; and **Richard D. Loccke**, Esq., Loccke, Correia, Limsky & Bukorsky.

Plenary 2

Value Added or Subtracted? How Charter Schools and Teacher Evaluation Square With Student Achievement and collective Bargaining.

(L-R) Moderator: **Prof. Martin H. Malin**, Esq., Chicago-Kent College of Law; **Kaya Kenderson**, District of Columbia Public Schools; **Vincent Giordano**, New Jersey Education Association; **Christopher D. Cerf**, Esq. , State of New Jersey; and **Rob Weil**, American Federation of Teachers.


Karen Hackel photo

Robert Batterman

Luncheon Guest Speaker: Show Me the Money: The Economic Playing Field in Professional Sports Negotiations

L. Robert Batterman, Esq., Proskauer Rose LLP, Labor Counsel to the NFL, NHL and MLS

Concurrent Sessions

1 Education—Teacher Evaluation Models and New York's New Ed Law—3012


Les Heltzer photo

Scot Beckenbaugh


Karen Hackel photo

(L-R) **Dan McCray**, Esq., Cornell University School of Industrial & Labor Relations; **Jay Worona**, Esq., New York State School Boards Association; **Pauline Kinsella**, Esq., New York State United Teachers; **Allison Armour-Garb, Esq.**, New York State Education Department. *Moderator* **Scot Beckenbaugh**, Federal Mediation & Conciliation Service.

2 Interest Arbitration in Tight Times and New Jersey's Recent Statutory Response

(L-R) Arthur R. Thibault, Esq., Liberty Corner, NJ; **Lorraine H. Tesauro**, NJ Public Employment Relations Commission; and **James M. Mets**. Esq., Woodbridge, NJ


Karen Hackel photo

3 Ethical Issues in Arbitration

Robert L. Douglas, Esq., Woodmere, NY; and

Joel M. Weisblatt, Esq., Skillman, NJ


Karen Hackel photo

Joel M. Weisblatt

Plenary

Grounded or Cleared for Takeoff? Labor Relations Implications for the Continental-United Merger

Moderator: **Patricia Sims**, Senior Mediator, National Mediation Board; **Art Luby**, Assistant Director of Representation, Airline Pilots Association; **Jeffrey Wall**, Senior Director, Labor Relations, United Airlines; and **Ed Gleason**, Staff Attorney, International Brotherhood of Teamsters

Pat Sims

Tuesday, July 26, 2011

Fireside Chat: The Changing Landscape in Wisconsin

Moderator: **Richard A. Curreri**, Esq., Director of Conciliation, NYS Public Employments Relations Board; **Susan Bauman**, Esq. (former Commissioner), Wisconsin Employment Relations Commission, WERC; **Peter Davis**, Esq., General Counsel, WERC; and **Daniel Nielsen**, Esq., Staff Attorney, WERC.

Karen Hackel photo

Sue Bauman

Peter Davis

1. **Writing Decisions that Withstand Judicial Review**
   Peter Davis, Esq., General Counsel, WERC
2. **Mediating in a Shifting Statutory Landscape**
   Daniel Nielsen, Esq., Staff Attorney, WERC

Karen Hackel photo

Richard Curreri

Les Heltzer photo

Dan Nielsen

Wednesday, July 27, 2011

Concurrent Workshops

1

Facilitating Settlements in the Adjudicative Context

Michael Franczak, Mediator, Federal Mediation and Conciliation Service, US; and **Michael Fleming**, Associate Chair, British Columbia Labour Relations Board

2

Howard Bellman

Mediation and all that Jazz

Howard Bellman, Esq. Mediator and Arbitrator, Distinguished Adjunct Professor In Dispute Resolution, Marquette University Center for Dispute Resolution Education, Madison, WI

Ethics and Values in Public Service

Lester A. Heltzer, Esq. Executive Secretary, National Labor Relations Board; and **Gilles Grenier**, Director, Dispute Resolution Services, Canada Public Service Labour Relations Board.

Les Heltzer

Les Heltzer photo

Gilles Grenier

Les Heltzer photos

Scot Beckenbaugh

Jennifer Webster

Managing Labor Relations Disputes in the Context of Social Media

Jennifer Webster (Regional Director, Ontario Region, FMCS—Canada) and

Scot Beckenbaugh (Deputy Director, FMCS-US)

60th Annual Conference — Metropolitan NY-NJ

Les Heltzer photo

(L-R) Charles Tadduni, Perry Lehrer; and Joyce Klein

(L-R) Deidre Hartman; Melissa Ferrara; James Mastriani; conference attendee—name unknown; P. Kelly Hatfield and Bob Anderson.

(L-R) Jim Mackenzie; Michael Kelliher; Gerry McGuckin; and Mike Tosi.

(L-R) Dominique Saint-Fort and Elizabeth Spector

(L-R) Doug Abel and Gregory Franklin

Kathy Wilson and Brett Hackel expertly manned the registration table.

(L-R) Réjean Bercier, Greg Harrison (Fair Work Australia) with guest Wendy; and Reg Pearson.

Photos by Karen Haskel

US National Rail Strike Averted

A potential strike of all the freight railroads in the United States was averted in December 2011.

By—NMB Counsel Norman Graber

In late 2009, five Class I railroads and many smaller railroads represented by the National Carriers' Conference Committee (NCCC) of the National Railway Labor Conference began bargaining with 11 unions representing approximately 90,000 employees.

The railroads involved were Union Pacific Railroad; BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and The Kansas City Southern Railway Company; and the following railroads: Alton & Southern Railway Company; The Belt Railway Company of Chicago; Brownsville and Matamoros Bridge Company; Central California Traction Company; Columbia & Cowlitz Railway Company; Consolidated Rail Corporation; Gary Railway Company; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; Manufacturers Railway Company; New Orleans Public Belt Railroad; Norfolk & Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation; Oakland Terminal Railway; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company (Canadian Pacific); South Carolina Public Railways; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Pacific Fruit Express; Western Fruit Express Company; Wichita Terminal Association; and Winston-Salem Southbound Railway Company.

The unions involved were Brotherhood of Railroad Signalmen (BRS) representing Signalmen; Brotherhood of Locomotive Engineers and Trainmen (BLET) representing Engineers; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED) representing Maintenance of Way employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers (IBB) representing Boilermakers; Sheet Metal Workers' International Association (SMWIA) representing Sheet Metal Workers; National Conference of Firemen & Oilers (NCFO) representing Firemen and Oilers; the Transportation-Communications International Union (TCU) representing Clerks and Carmen; American Train Dispatchers Union (ATDA) representing Train Dispatchers; International Association

of Machinists and Aerospace Workers (IAMAW) representing Machinists; International Brotherhood of Electrical Workers (IBEW) representing Electrical Workers; and Transport Workers Union (TWU) representing Carmen.

By January 2011, all of these railroads and unions were engaged in mediation with the assistance of the National Mediation Board (NMB). The mediation was conducted by NMB Sr. Mediator Terri Brown and Mediator John Livingood.

On September 2, 2011, the NMB urged the NCCC and the Unions to enter into agreements to submit their collective bargaining disputes to arbitration. On September 2, 2011, the Unions individually declined the NMB's proffer of arbitration and the NCCC accepted the NMB's proffer of arbitration. The parties were released from mediation before the NMB on September 2, 2011, and self-help became available effective 12:01 a.m. on October 7, 2011.

On October 6, 2011, President Barack Obama issued an Executive Order creating an Emergency Board, effective 12:01 a.m. on October 7, 2011, to investigate and report on the dispute. The Executive Order triggered a cooling-off period for the 30 days until the Emergency Board's Report was submitted to the President, and for an additional 30 days following the submission of the Report.

The President appointed Ira F. Jaffe, of Potomac, Maryland, as Chairman of the Board, and Roberta Golick, of Sudbury, Massachusetts, Joshua M. Javits, of Washington, District of Columbia, Gilbert H. Vernon, of Hudson, Wisconsin, and Arnold M. Zack, of Boston, Massachusetts, as Members. The NMB appointed Norman L. Graber and Susanna F. Parker as Special Counsel to the Board.
The Emergency Board held six days of hearings on the dispute between October 13 and October 20, 2011; and it issued its Report on November 5, 2011.

The Emergency Board's report made many recommendations, the most specific ones involving wages, the National Health and Welfare Plan, vacations, the supplemental sickness plan, and information.

The initial dispute confronting the Emergency Board, however, was the parties differing views of the effect of two contracts executed between the Carriers and the United Transportation Union (UTU) covering approximately 38,000, or about 30%, of the total complement of the Carriers' employees. NCCC asserted that the UTU deals constituted a pattern which should be given controlling weight for any contract reached by the other Unions. The Unions alleged that agreements with 30% of the employees did not constitute a pattern of bargaining. The Emergency Board did not find that the UTU agreements constituted a pattern, but it did accord weight to those agreements as evidence of what one union and the Carriers agreed was a fair and equitable settlement.

The Emergency Board recommended five years of wage increases with each Union choosing

(Continued on page 13)

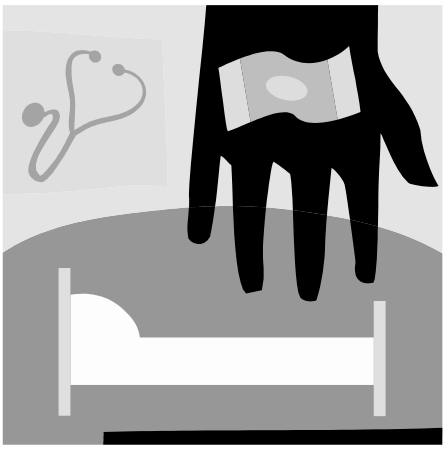
FLORIDA

Second DCA Affirms Florida Commission's Ruling on Unilateral Changes in Health Insurance Plans

In *Polk Education Association, Inc. v. School District of Polk County, Florida*, 36 FPER ¶ 260 (2010), and *Polk County Non-Industrial Employees Union, Local 2227, AFSCME, AFL-CIO v. School District of Polk County, Florida*, 36 FPER ¶ 261 (2010), the Unions alleged that in June 2009 the School District violated Section 447.501(1)(a) and (c), Florida Statutes, by unilaterally changing the terms and options for employee health insurance coverage. At the time of the change, the collective bargaining agreement had expired in the PEA case, but the three collective bargaining agreements for the employees represented by AFSCME were in effect.

The Florida PERC hearing officer found that the employee health plans adopted by the School District altered the status quo for the employees represented by the PEA. The hearing officer also found that the objective expectation of the employees represented by AFSCME was that they would continue to receive the same health care coverage for the duration of their collective bargaining agreements.

In both cases, the hearing officer considered, but rejected, the School District's affirmative defense that there were exigent circumstances which compelled a change in the health care plan. According to the hearing officer, the School District was aware of the escalating cost of its health insurance costs and potential underfunding problems as early as the summer of 2008. To further demonstrate that there were not exigent circumstances, the hearing officer identified an option available to the School District to



continue funding the existing plan. Thus, the hearing officer concluded that the School District failed to prove that exigent circumstances existed which required it to take immediate action.

In both cases, the School District also pled contractual waiver as an affirmative defense. The hearing officer and the Florida Commission applied the oft-repeated standard:

> A clear and unmistakable contractual waiver of bargaining rights is demonstrated by language that unambiguously confers upon an employer the power to unilaterally change a mandatory subject of bargaining. A waiver of this type must be stated with such precision that simply by reading the pertinent contract provision employees will be reasonably alerted that the employer has the power to change certain terms and conditions of employment unilaterally.

In both cases, the hearing officer found that the School District did not demonstrate a clear and unmistakable contractual waiver and concluded that the School District violated Section 447.501(1)(a) and (c), Florida Statutes, by unilaterally changing the existing employee health plan. He further concluded that the PEA and AFSCME were entitled to an award of reasonable attorney's fees and costs.

The Commission severed the cases because they involved different legal principles. The PEA case involved the status quo period, which is the hiatus that occurs between agreements. That is, if the agreement expires and another has not been executed, the terms of the first contract survive the contract's expiration. The AFSCME case involved three collective bargaining agreements that were in effect at the time of the change. After denying the School District's exceptions, the Commission agreed with the hearing officer's analysis of the dispositive legal issues and conclusions of law.

The School District appealed both cases to the Second District Court of Appeal. *School District of Polk County, Florida v. Polk Education Association, Inc.*, 36 Fla. L. Weekly D1808 (Fla. 2d DCA Aug. 17, 2011) and *School District of Polk County, Florida v. Polk County Non-Industrial Employees Union, Local 2227, AFSCME, AFL-CIO*, 36 Fla. L. Weekly D1810 (Fla. 2d DCA Aug. 17, 2011). The court affirmed, stating that there was competent substantial evidence to support the Commission's

determination that PEA and AFSCME did not waive their right to engage in collective bargaining and that there were no exigent circumstances providing an exception to the Unions' right to collectively bargain.

Third DCA Affirms Florida Commission's Ruling on Discriminatory Contract Provision

On December 22, 2010, the Florida Commission issued a final order directing the United Teachers of Dade to cease and desist from discriminating against non-members in contract administration and maintenance by maintaining a contract term authorizing only union representation at predisciplinary conferences-for-the-record. *Beightol v. United Teachers of Dade v. School District of Dade County, Florida*, 36 FPER ¶ 548 (2010).

The UTD appealed the Commission's order and the charging party, Shawn Beightol, cross-appealed regarding the Commission's failure to award him prevailing party attorney's fees.

On September 7, 2011, the Third District Court of Appeal affirmed the Commission's holding that UTD committed an unfair labor practice by negotiating a contract term providing a benefit available only to dues-paying members but reversed the Commission's determination that Beightol was not entitled to a fee award. *United Teachers of Dade v. School District of Miami-Dade County and Beightol*, 68 So. 3d 1003 (Fla. 3d DCA 2011).

By—William D. Salmon
Hearing Officer, Florida

US National Rail Strike Averted

(Continued from page 13)

whether to elect the sixth year raise. The five year deal represented a 15.6% wage increase (16.59% compounded); and the six year deal represented an 18.6% wage increase (20.08% compounded).

Additionally, the Emergency Board recommended that certain contract enhancements offered to UTU members, that did not pertain to the other Union members, be monetized and offered as additional payment to the employees before the Emergency Board.

The Emergency Board recommended following the changes in the health and welfare plan agreed to by the UTU, although UTU participates in a separate plan. In making its recommendations, the Emergency Board noted that UTU Plan and the National Plan were virtually identical in their design, and that negotiated changes have largely mirrored each other since 1999.

The Emergency Board, however, did recommend delaying the onset of certain increased costs for the employees in the National Plan.

Additionally, the Emergency Board recommended that the Unions' increased vacation plan benefits be withdrawn; recommended adoption of the Unions' proposal to adjust the Supplemental Sickness Benefit Plan pay to maintain the ratio of benefits to rates of pay; recommended that the Unions' proposal to receive all necessary information to administer their agreements be withdrawn; and declined to specifically rule on craft specific proposals, all of which it deemed had not been subject to protracted give and take bargaining.

Regarding the craft specific issues, the Emergency Board

generally recommended withdrawal, referral to local handling, or, in one instance, fact finding.

Following the issuance and publication of the Emergency Board's Report, all of the Unions before the Emergency Board eventually reached voluntary agreements with the NCCC and membership ratification is underway.

The full text of the Presidential Emergency Board Report can be viewed at www.nmb.gov.

MICHIGAN

SUMMARIES of NOTEWORTHY DECISIONS —

MICHIGAN EMPLOYMENT RELATIONS COMMISSION — MERC

—Lynn Morison, Staff Attorney [1]

Unfair Labor Practice not Found – *Public School Employer Subcontracting Noninstructional Support Services; No Duty to Bargain over Bidding Procedure If Union Representing Bargaining Unit Currently Providing such Services is Permitted to Bid on Equal Basis with other Bidders; Bidding Requirements and Procedures Need Not Be Tailored to Meet Characteristics of Labor Organizations; If Employer fails to Allow Union to Submit Bid on Equal Basis with Third Party Contractors, Statutory Prohibition Against Bargaining is Removed; Concessionary Proposal for a Collective Bargaining Agreement not a Bid; Failure to Submit Bid Waives Argument as to not Receiving Opportunity to Bid on Equal Basis.*

Lakeview Community Schools – *and-* Lakeview Educational Support Personnel Association, MEA/NEA & Mt. Pleasant Public Schools – *and-* Michigan AFSCME Council 25, AFL-CIO, and its Affiliated Local 2310.

Case Nos. C10 C-059 & C10 E-104, issued May 11, 2011.

The Commission affirmed the ALJ's decision and recommended order on summary disposition finding that the Respondents, both public school employers, did not violate their duty to bargain when they refused to negotiate with Unions representing their respective bargaining units over the process for submitting bids to provide noninstructional support services, under Section 15(3)(f) of PERA.

The Commission found that the Charging Party Unions failed to show that they had not been permitted to bid on an equal basis with third party bidders.

In both cases, the Employers sent out requests for proposals (RFPs) for certain noninstructional support services. Both RFPs listed qualifications that were to be met by successful bidders. The RFP's required bidders to post bonds, submit financial reports, and provide personnel. However, the RFP issued by Respondent Mt. Pleasant Public Schools (Mt. Pleasant) contained a provision allowing bidders to request exceptions to the requirements of the RFP.

In the *Lakeview Community Schools* (Lakeview) case, the Union submitted a concessionary proposal seeking to maintain the bargaining unit's employment by the school district. In the *Mt. Pleasant* case, the Union did not submit a bid. In both cases, the Unions filed unfair labor practice charges alleging violations of PERA stemming from the Employers' refusal to negotiate the process by which the Unions would bid on the RFPs.

The Commission held that §15(3)(f) of PERA did not mandate bargaining over the bidding procedures. Instead, the Commission held that the "only issue to be bargained with regard to bidding is whether the bargaining unit is to be given an opportunity to bid on an equal basis as other bidders." If such an opportunity is not provided by the employer, the prohibitions against bargaining under §15(3)(f) are removed.

The Commission rejected the Unions' arguments that they were disqualified from bidding by certain requirements of the RFPs, which were designed for third party contractors. The Commission explained:

> *It is to be expected that RFPs will be designed for a potential multiplicity of third-party contractors wishing to submit bids. That the bargaining unit will be called upon to meet some of the same conditions required of third party bidders is implicit in the statute, which provides for an equal bidding opportunity, not one that is designed for response by a bargaining unit or a labor organization.*

The Commission rejected the Unions' contention that the Employers had the burden of showing that the Unions were given an equal opportunity to bid on providing the noninstructional support services and held that the Unions bore the burden of proving that an equal bidding opportunity had not been provided.

The Commission reasoned that as the Unions sought to avoid the general prohibitions against bargaining in §15(3)(f) of PERA, they bore the burden to provide evidentiary support for their arguments.

The Commission also found that neither of the Unions submitted bids. In *Mt. Pleasant*, no bid was submitted, while in *Lakeview,* the Union submitted a concessionary proposal for a collective bargaining agreement. Therefore, the Commission concluded that both Unions waived any claim they might have that they had been denied the opportunity to bid on the RFPs on an equal basis as third party bidders.

The Commission noted the Unions' exceptions to the ALJ's suggestion that labor organizations form corporations or create other entities for the purpose of bidding for contracts to provide noninstructional support services. The Commission found the suggestion raised an issue not before the Commission, that is, the issue of whether the equal bidding opportunity preserved for the bargaining unit by statute is transferable to another entity.

Therefore, the Commission also rejected the Unions' arguments related to the ALJ's suggestion and found that neither the Michigan Contracts of Public Servants with Public Entities Act nor the Employer's vendor relations policies had any bearing on the matter.

Finding no evidence that the Unions had been denied an equal opportunity to bid on providing noninstructional support services, the Commission dismissed the charges.

Unfair Labor Practice Found: *Successor Employer Unlawfully Repudiated Collective Bargaining Agreement; Successor Employer Failed to Recognize Accrued Sick Time and Make Longevity Payments Required by Contract; Successor Employer Admitted that it is Bound by Contract Between Charging Party and Previous Employer; Compliance with Separate Agreement Between Previous Employer and Successor not Justiciable Issue Under PERA. Summary Judgment Proper; Employer's Filing of Motion for Summary Judgment Indicated that there was no Factual Dispute; Employer Further Failed to Allege any Disputed Fact.*

Detroit Regional Convention Facility Authority
–and-
AFSCME Council 25 and its Affiliated Local 1220

Case No. C10 C-072, issued June 22, 2011.

The Commission affirmed the ALJ's Decision and Recommended Order finding that the Detroit Regional Convention Facility Authority (DRCFA) was a successor employer and, thus, bound by the contract between AFSCME and the City of Detroit. Therefore, the ALJ found that the DRCFA repudiated the contract when it refused to recognize employees' accrued sick time and failed to make longevity payments as required by the contract.

Under the Regional Convention Facility Act, the City of Detroit transferred responsibility for Cobo Hall to the DRCFA. Under the Act, the DRCFA was bound to the collective bargaining agreement between AFSCME and the City of Detroit. The collective bargaining agreement itself also contained a successor clause that provided that no employee would be detrimentally affected by the transfer of control of Cobo Hall.

When DRCFA assumed responsibility for Cobo Hall, Respondent became the employer of fourteen individuals who previously had been employed by the City in the bargaining unit represented by Charging Party.

While the DRCFA conceded that it was bound by the existing collective bargaining agreement as a successor employer, it asserted that since the employees had been laid off the day before it assumed control of Cobo Hall, the employees were not transferred within the meaning of the Regional Convention Facility Act. Based on that premise, the DRCFA claimed that the employees were new hires and had not accrued any time under the collective bargaining agreement.

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Recognizing that the DRCFA was a successor to the City in the collective bargaining agreement with AFSCME, the Commission based its decision on DRCFA's obligations under that contract. The Commission, therefore, did not find it necessary to interpret the DRCFA's obligations under the Regional Convention Facility Act.

Despite the DRCFA's contrary representations, the Commission noted that AFSCME had alleged that the DRCFA's actions constituted a repudiation of the collective bargaining agreement. The Commission found that, as the DRCFA was the successor employer, it was bound to accept without change the obligations that had accrued under the contract. Because of this, the DRCFA's refusal to recognize accrued sick time and the failure make longevity payments constituted a repudiation of the collective bargaining agreement.

The Commission also dispensed with the DRCFA's argument that it was not responsible for sick leave and longevity payments because the City of Detroit had agreed to pay those benefits to the employees. Any such agreement between the City and DRCFA failed to raise an issue justiciable under PERA; the Commission is not the proper forum in which to bring such a claim.

Finally, the Commission found that summary judgment was proper, as the question to be decided is a matter of law. The DRCFA itself brought a motion for summary judgment and, by doing so, implicitly represented that no material facts were in dispute. Further, the Commission found that the DRCFA did not identify any additional facts it would seek to prove should the Commission remand the case for an evidentiary hearing.

Karen Hackel photo

Direction Of Election- *Election Directed to Allow All Adjunct Faculty Who Taught a Minimum of 8 Credit Hours in the Previous 3 Consecutive Academic Sessions to Determine Whether They Will be Accreted to the Existing Unit of Full -Time Faculty; Those Adjuncts Teaching Less than 8 Credit Hours in 1 Year were deemed to lack a Sufficient Community of Interest with Full Time Faculty*

Northern Michigan University – *and-* American Association of University Professors, Northern Michigan University Chapter

Case No. R10 E-054 issued August 10, 2011.

The Commission held that a question concerning representation exists under Section 12 of PERA and all adjunct faculty of Northern Michigan University (Employer) who have been employed to teach a minimum of 8 credit hours over the previous 3 academic sessions will vote on whether they wish to be accreted to the bargaining unit of full-time faculty represented for purposes of collective bargaining by the American Association of University Professors, Northern Michigan University Chapter (Union).

The Union filed an election petition seeking to accrete to its unit of full-time faculty all adjunct faculty members who have taught a minimum of 16 credit hours in the previous two years, a group of approximately 86 employees. The Employer, challenging only the minimum credit hour component, asserted that the unit should be comprised of all adjunct faculty teaching a minimum of 12 credit hours over the previous two years, which would add about 118 employees to the existing unit.

Since there is no difference between the unit definitions proposed by the Union and the Employer, other than the number of credit hours taught by the positions in question, the Commission had to determine whether the difference in credit hours would affect the appropriateness of the unit. To determine whether the proposed unit was appropriate, the Commission examined whether the positions are part-time with a substantial and continuing interest in employment or

casual with no real continuing interest in the terms and conditions of their employment.

The Commission reviewed its past decisions on the criteria under which part-time college or university faculty could be included in a bargaining unit with regular part-time faculty or in a unit with full-time faculty.

In the most recent of those cases, *Macomb Cmty Coll*, 16 MPER 35 (2003), the Commission relied on past NLRB decisions finding part-time faculty members who worked 25% of the workload of full-time faculty members could be considered regular part-time employees with a substantial and continuing interest in employment such that they could form an appropriate bargaining unit.

The Union asserted that adjunct faculty teaching less than 16 credit hours are less likely to become full-time faculty and are not as fully integrated into the university community as the regular part-time faculty.

The Employer argued that teaching 12 credit hours in the prior two years was sufficient to have a community of interest with the full-time faculty in the existing unit and asserted that the 25% formula for inclusion of adjunct faculty relied on in *Macomb Cmty Coll* should apply here.

The Commission distinguished this case from *Macomb* on the grounds that *Macomb* involved part-time faculty seeking to create a unit including only part-time faculty. The Commission also noted that in *Macomb*, one of the reasons it had relied on the particular NLRB cases applying the 25% formula, instead of other NLRB cases that applied different criteria, was the fact that the proposed unit did not include full-time faculty.

Unlike *Macomb*, this case involved the potential accretion of part-time faculty to an existing unit of full-time faculty. The Commission also pointed out that another significant difference between this case and *Macomb* was the evidence in *Macomb* that more than half the proposed bargaining unit had a history of more than 10 years of continuous employment with that employer; there was no comparable evidence in this case.

On review of the data stipulated to and submitted by the parties showing the number of credit hours taught by adjuncts during the previous four years, the Commission found that the unit configuration proposed by the Employer would result in the inclusion of casual employees in the unit.

The Commission also found that 6 of the 86 adjuncts who would have been included in the unit configuration proposed by the Union were also casual employees. However, the Commission concluded that the remaining 80 employees identified by the Union consistently taught 8 or more credit hours within the previous three consecutive academic sessions and, therefore, had a substantial and continuing interest in their employment.

Thus, the Commission determined that the appropriate criteria for accretion of adjuncts to the unit of full-time faculty was that the adjunct teach 8 or more credits in the previous three consecutive terms.

Unfair Labor Practice Not Found- *Employer's Decision to Subcontract Non-Instructional Support Services is a Prohibited Subject of Bargaining; Issue of Lawfulness of Employer's Decision to Subcontract Raises Questions of Fact, Which Could Not be Decided on Summary Disposition; Charging Party Failed to Show Employer's Decision to Subcontract Non-Instructional Support Services was Motivated by Anti-Union Animus.*

Southfield Public Schools – and- Southfield Michigan Educational Support Personnel Association

Case No. C08 F-115, issued October 17, 2011.

The Commission agreed with the ALJ's conclusion that Southfield Michigan Educational Support Personnel Association's (MESPA/Union), did not show that Southfield Public Schools (Employer), discriminated against the Union's members by deciding to subcontract noninstructional support services. The Commission adopted the ALJ's recommended order to dismiss the unfair labor practice charge.

PERA §15(3)(f) provides that a public school employer's decision to contract with a third party for noninstructional support services is a prohibited subject of bargaining. That, however, does not mean that the Employer's decision to subcontract is not subject to review.

(Continued on page 25)

NATIONAL LABOR RELATIONS BOARD

Updates on Rulemaking Initiatives

The July 2011 *Advisor* included an article on the two NLRB notices of proposed rulemaking initiative.


Les Heltzer

Since that time, the Board has issued its final rule requiring employers under its jurisdiction to post notices of employee rights under the NLRA (76 FR 54006).

The final rule, which adopted the proposed rule with few modifications, was published in the Federal Register on August 30, 2011, with an effective date of November 14.

The Board subsequently extended the effective date to January 31, 2012 for the stated purpose to "allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses.

The Board later postponed the effective date of its notice-posting rule at the request of the federal district court in Washington, DC hearing a legal challenge to the notice posting rule and in order to facilitate the resolution of that and other legal challenges filed regarding the rule.

The new implementation date is April 30, 2012.

In a public meeting held November 30, 2011, the Board (Chairman Mark Gaston Pearce and then-Member Craig Becker; Member Brian E. Hayes dissenting) voted to proceed to publication of a final rule on representation procedures on a much more limited basis than the original notice of proposed rulemaking and on portions considered "less controversial'" and to leave the remainder of the proposed rule to further deliberation.

On December 22, 2011, the Board adopted a final rule amending its election case procedures to reduce unnecessary litigation and delays (76 FR 80138).

The rule, which is to take effect on April 30, 2012, focuses primarily on procedures for the minority of cases in which parties cannot agree on issues.

The revised procedures include the limitation of hearings by the regional offices to issues relevant to the question of whether an election should be conducted; the consolidation of all appeals of regional director decisions to the Board into a single post-election request for review; and making review of regional directors' decisions discretionary by the Board.

The rules in their entirety can be found at the above citations to the Federal Register.

Additional information is available on the Board's web site www.nlrb.gov.

Memories of Metro NY-NJ


Karen Hackel photo

(L-R) Louis Lacroix, Susan Mailer, and Alan Willard


Karen Hackel photo

(L-R) Jerry Post; Joe Tansino; and Martin Kehoe

Amos v. Canada (Attorney General)
2011 FCA 38

During a mediation process, the parties settled a 20-day suspension individual grievance that had been referred to adjudication before the PSLRB. After the settlement was reached, the grievor alleged that the employer was in breach of the settlement agreement. At the time these allegations were made, the grievor had not withdrawn his grievance before the PSLRB.

The adjudicator determined that he had jurisdiction to decide whether a settlement agreement was final and binding and whether a party was non-compliant with the settlement agreement. He then issued a remedial order to deal with the non-compliance with the settlement. The adjudicator's decision was reviewed by the Federal Court of Canada and by the Federal Court of Appeal of Canada.

The Federal Court of Appeal determined that, indeed, an adjudicator maintains jurisdiction over disputes relating to settlement agreements entered into by parties in respect of matters that can be referred to adjudication. The appellant's settlement agreement dispute was intrinsically related to his underlying and persisting grievance, originally referred to adjudication, and properly within the jurisdiction of the adjudicator. As such, the adjudicator could make a remedial order to ensure compliance with the settlement. The Federal Court of Appeal confirmed that the PSLRB's system was created to ensure an exclusive and comprehensive regime for resolving disputes, including matters related to settlement of grievances.

Canada (Attorney General) v. Robitaille
2011 FC 1218

In the previous newsletter, we had mentioned that the adjudicator had awarded punitive damages to a grievor on a finding that the employer had breached various duties in the handling of a harassment complaint.

In its judgment on judicial review of the adjudicator's decision, the Federal Court of Canada confirmed that the PSRLB had powers to award punitive damages. The Court noted that, in the circumstances, the evidence supported the adjudicator's finding that there existed a separate actionable wrong resulting from the employer's malicious conduct. As such, punitive damages ordered against the employer were appropriate.

We note that the decision of the Federal Court is currently being appealed before the Federal Court of Appeal on a part of the decision unrelated to the issue of punitive damages. ■

Memories of Metro NY-NJ

Karen Hackel photo

(L-R) Steve Banks; JP Kernisan; and Desiree Busching

Neal Moyer photos

National Mediation Board conference attendees

APPOINTMENTS

NLRB Board Back to Full Strength

(L-R) Board Members: Brian E. Hayes; Sharon Block; Chairman Mark Gaston Pearce; Terrence F. Flynn; and Richard F. Griffin, Jr.

The NLRB at full strength consists of five Board Members. With the expiration of former Member Craig Becker's recess appointment on January 3, 2012, the Board was comprised of Chairman Mark Gaston Pearce and Member Brian E. Hayes.

On January 4, President Obama recess appointed three new Board Members, the first full five-member Board since August 2010.

Richard F. Griffin Jr. Prior to his appointment to the Board, Member Griffin, a Democrat, served as General Counsel for the International Union of Operating Engineers (IUOE), having held a number of previous leadership positions with IUOE since 1983. He also served on the board of directors for the AFL-CIO Lawyers Coordinating Committee since 1994. From 1985 to 1994, Mr. Griffin served as a member of the board of trustees of the IUOE's central pension fund. From 1981 to 1983, he served as a Staff Counsel to NLRB Board Members. Member Griffin holds a B.A. from Yale University and a J.D. from Northeastern University School of Law.

Terence F. Flynn Prior to his appointment to the Board, Member Flynn, a Republican, served a detail as a Chief Counsel to Board Member Hayes. Member Flynn previously held the position of Chief Counsel to former Board Member Peter C. Schaumber. Before coming to the NLRB in 2003, Member Flynn practiced labor law in Washington, D.C. as Counsel in the Labor and Employment Group at Crowell & Moring from 1996 to 2003, as a Litigation Associate at David, Hager, Kuney & Krupin from 1992 to 1995, and as an Associate at Reid & Priest from 1990 to 1992. Member Flynn holds a B.A. degree from the University of Maryland, College Park and a J.D. from Washington & Lee University School of Law.

Sharon Block Prior to her appointment to the Board, Member Block, a Democrat, held the position of Deputy Assistant Secretary for Congressional Affairs at the U.S. Department of Labor. Between 2006 and 2009, she served as Senior Labor and Employment Counsel for the Senate Health, Education, Labor & Pensions Committee (HELP), where she worked for Senator Edward M. Kennedy. She previously held positions at the NLRB as Senior Counsel to former Chairman Robert J. Battista from 2003 to 2006, and as an Attorney in the General Counsel's Appellate Court Branch from 1996 to 2003. From 1994 to 1996, she served as Assistant General Counsel at the National Endowment for the Humanities, and from 1991 to 1993, she was an Associate at Steptoe & Johnson. Member Block received a B.A. in History from Columbia University and a J.D. from Georgetown University Law Center, where she received the John F. Kennedy Labor Law Award.

The confirmed term of **Chairman Mark Gaston Pearce** expires August 27, 2013 and **Member Brian E. Hayes'** confirmed term expires December 16, 2012. Absent subsequent confirmation by the Senate, the new Board Members appointments run until the U.S. Senate adjourns the session that is anticipated to end sometime in December 2013.

Controversy has arisen between Congress and the White House over whether a valid recess existed on the date the President exercised his Constitutional authority to make recess appointments and the issue has been raised by parties or interest groups involved in federal court litigation of NLRB matters.

By—Les Heltzer

Bon voyage ...

Les Heltzer photo

(L-R) Cathy Callahan and Marilyn Glenn Sayan

Right about the time you're reading this article, **Cathy Callahan** will have retired from Washington State PERC and will be lounging on the beaches of Costa Rica enjoying her first post-retirement vacation.

When she announced that she was retiring effective January 1st, we at PERC had mixed emotions—saddened by her departure but excited for her about her new adventures.

Cathy has devoted her entire career to the collective bargaining process and the administration of the NLRA and Washington State's many different labor statutes. She's shown the ability to maintain neutrality and develop good relationships with all parties while still seeing that the laws are enforced and applied even handedly. Her enthusiasm, her desire to reach out, and her overall respect for the process has resulted in PERC becoming an agency which now offers assistance to the parties and not one that solely adjudicates disputes.

Cathy intends to stay in Olympia for now and says that when she's not traveling, she plans to grow things at her Frog Hollow Farm. So although we may be losing our professional partner, we're definitely not going to lose our good friend.

Cathy's leaving will create a void and she'll truly be missed. And finally we say, *Bon Voyage, Cathy*—PERC is a better place because you were here!

—Marilyn Glenn Sayan

Dear ALRA Colleagues:

In looking back on my career, first with the National Labor Relations Board and now with Washington State PERC, I am particularly struck by the fact that I have worked with so many amazingly brilliant and dedicated professionals. I am extremely grateful to all of you for what I learned over the years.

I extend heartfelt thanks to Commission Chair Marilyn Glenn Sayan, Commissioners Bradburn and McLane, and former Commissioner Mooney, for providing me the opportunity to direct this agency and its staff a little over 5 years ago. I also thank my US and Canadian colleagues for their support and fellowship during my tenure as Executive Director. I am confident that my successor, Mike Sellars, will do a fine job administering the statutes and upholding the principles that we share as neutrals in our profession. Budget permitting, you will all enjoy getting to know Mike at the next ALRA conference.

ALRA is truly the only place where we, as colleagues, can meet and share our experiences and expertise as neutrals in the collective bargaining arena. We are the only ones who really "get" what we do. The advice I leave for you, as colleagues, is that you share your experiences and challenges, whether they be with budget, legislation or best practices. While your experiences may include some defeats, as well as successes, as long as you have ALRA, you are not alone. That is why I urge all of you to become and/or stay involved with ALRA and work together to ensure that collective bargaining, the mainstay for ensuring labor peace, remains alive and well.

Farewell dear colleagues and thank you!

—Cathy Callahan

APPOINTMENTS

Public Service Labour Relations Board (Canada) PSLRB

Renaud Paquet was appointed as Vice-Chairperson for a period of five years.


Renaud Paquet

Mr. Paquet has extensive knowledge and experience in labour relations, which he gained throughout his career. Prior to joining the PSLRB as a full-time Board Member in 2008, Mr. Paquet taught collective bargaining and labour relations at the Université du Québec. Before that, he held numerous positions in the federal public service. From 2002 to 2008, he was also an arbitrator in the private sector. His appointment was effective March 3, 2011.


Linda Gobeil

Linda Gobeil was appointed Vice-Chairperson for a period of five years.

Ms. Gobeil has many years of experience in labour relations, as well as human resources and collective bargaining.

A public servant for more than two decades, she is a member of the Barreau du Québec and has held many senior positions in various departments and agencies, honing her skills in labour relations, human resources and collective bargaining. Her appointment was effective April 28, 2011.

Sylvie M.D. Guilbert was appointed to the position of General Counsel of the PSLRB effective October 11, 2011.


Sylvie Guilbert

A member of the Ontario and the British Columbia law societies, Ms. Guilbert has considerable experience in labour and employment law, including the areas of collective bargaining, grievance arbitration, human rights and pay equity. Prior to joining the PSLRB, Ms. Guilbert worked as a lawyer in private practice in both Ottawa and Toronto. She also served as General Counsel at a crown corporation and as a law professor at the University of Ottawa.

Ms. Guilbert holds a Bachelor's Degree in Social Sciences (History and Political Science) and an LL.B from the University of Ottawa and an LL.M. from the University of Cambridge in the United Kingdom.

Steven B. Katkin was appointed as a full-time Board Member for a period of five years. Mr. Katkin was initially appointed as a part-time Board Member of the PSLRB in April 2010.

A member of the Barreau du Quebec who has worked for over 30 years in the field of labour law, Mr. Katkin has been working in private practice in labour and employment law for the last 10 years. His appointment was effective on September 1, 2011.

Canada Industrial Relations Board (CIRB)


Louise Fecteau

The Governor in Council has reappointed **Louise Fecteau** as Vice-Chairperson of the Board for a third term, expiring November 30, 2014. The Board congratulates Ms. Fecteau on her reappointment and looks forward to continuing to work with her over the next three years.


Patrick Heinke

The term of office of **Patrick Heinke**, an employer representative member of the Board, ended on May 10, 2011. Mr. Heinke, who served two terms with the Board, made a significant contribution to the resolution of many difficult labour relations matters during his time with the Board. We wish him well in all his future endeavours.

Nova Scotia

Douglas Ruck has been appointed as Chairperson of the newly established Nova Scotia Labour Board. Prior to accepting his appointment as Chairperson of the Nova Scotia Labour Board, Mr. Ruck held the position of Vice-Chairperson at the Canada Industrial Relations Board.

Florida PERC Gets New Chair and Commissioner

On July 28, 2011, Governor Rick Scott appointed **Joseph Michael (Mike) Hogan** as Chairman of the Florida Public Employees Relations Commission and appointed **Donna Maggert Poole** as a Florida PERC Commissioner. The Commission staff looks forward to working with both of these well-seasoned labor professionals.

Chair Hogan managed labor relations for BellSouth for many years.

He was previously a City Council member for the City of Jacksonville from 1991 until 1999, before being elected to the Florida House of Representatives, where he served from 2000 to 2003.

Joseph (Mike) Hogan

He was the Tax Collector for Duval County from 2003 until 2011.

Chair Hogan is very active in numerous civic and community service organizations.

Donna Maggert Poole

With her appointment by Governor Scott, Commissioner Poole begins her fourth term of service with the Commission.

She was initially appointed as a Commissioner by Governor Martinez in 1988. Governor Chiles specially appointed her as a Commissioner in the mid-1990s. Governor Bush appointed her as Chair in 1999 to conclude the term of Lacy Mahon, Jr.

Thereafter, Commissioner Poole was appointed to her first full four-year term as Chair in 2000 and served in that capacity for more than eight years.

Nevada — Employee Management Relations Board (EMRB)

The State of Nevada's Local Government Employee Management Relations Board (EMRB) has hired **Brian Scroggins** as it's new Commissioner. It this capacity Scroggins will oversee the day-to-day operations of the agency.

Mr. Scroggins comes from a private sector background and has spent over ten years serving on local and state boards and commissions including the Nevada State Contractors Board and the Nevada Nuclear Projects Commission.

The Employee Management Relations Board works with all local government agencies throughout Nevada and their respective unions and employee associations. The goal of the EMRB is to foster the collective bargaining process, to provide support to those involved in said process, and to settle disputes as they arise in a neutral and timely manner. For more information please go to www.emrb.state.nv.us.

Washington State PERC

Michael P. Sellars has joined the staff as the new Executive Director. Mike comes to PERC from his position as Deputy Director of the Washington State Department of Personnel. Prior to that, he served for over 14 years in the State Attorney General's Office, the last 4 years as the Chief of the Labor& Personnel Division. Hopefully, you'll have an opportunity at the next ALRA Conference to get to know Mike.

Marilyn Glenn Sayan (Chair, Washington State PERC) writes: "I've been reappointed to the Commission by Governor Gregoire for another five-year term so I guess you're not free of me yet!

Montréal
ALRA July 28-31, 2012

RETIREMENTS


Dan Butler

Dan Butler retired on October 7, 2011 after six illustrious years as a full-time Board Member of the Public Service Labour Relations Board (PSLRB).

Prior to his appointment to the PSLRB, Mr. Butler occupied various positions within the Canadian public service, including serving as General Secretary of the National Joint Council of the Public Service of Canada, and with the Professional Institute of the Public Service of Canada.

Peter Suchanek recently retired from his position as the Regional Director, Ontario Region, at the Canada Industrial Relations Board after 28 years of service with the Board. Peter joined the (then) Canada Labour Relations Board on August 2, 1983, as a Labour Relations Officer. He became Regional Director of the Toronto Region in 1990 and of the newly created Ontario Region in 2009. During Peter's career with the Board, he built a reputation for excellence as a mediator, establishing great credibility with both labour and management representatives. Peter has our sincere wishes for success in all his future endeavours.


Peter Suchanek

Harvey Farysey retired from his position as an Industrial Relations Officer in Vancouver, British Columbia on July 29, 2011. Harvey joined the (then) Canada Labour Relations Board (CLRB) on March 10, 1975, as a Labour Relations Officer. At that time, the Board was decentralizing some of its operations and Vancouver was the first regional office opened by the CLRB. As the Board's longest serving Industrial Relations Officer, Harvey had worked with every Chairperson appointed to both the CLRB and the CIRB and witnessed the Board's evolution first hand. He was regularly contacted by his colleagues for advice on the Board's jurisprudence and practices. Labour relations practitioners routinely called on Harvey to share his wealth of knowledge. We wish Harvey a very long and happy retirement.


Harvey Farysey

Allan Hope retired as a part-time Vice-Chairperson of the Board on November 17, 2011. Mr. Hope has been a highly respected arbitrator and mediator in hundreds of labour, environmental and commercial disputes for over 45 years. He had been a member of the Board since January 14, 2010. Board members and staff would like to extend their very best wishes to Mr. Hope for a happy and healthy retirement.

Washington State PERC

Katrina Boedecker and **Ken Latsch**, two veteran adjudicator/mediators who many of you know, will be leaving at the end of the year as well. Katrina and Ken both have been involved in ALRA functions since they joined the PERC staff.

Katrina came to PERC in 1978 and served as a Field Services Manager and is highly regarded by the clientele for her mediation expertise. Ken started at PERC in 1979 and has served in several positions, including Operations Manager and Special Projects Manager. They are to be congratulated for their long and successful careers, their commitment to the field of collective bargaining, and their many contributions to PERC.

We wish Katrina and Ken the best for retirement days and since they are in the state system, we remind them of the greatest benefit of retirement: **You get paid just to stay alive!**

Happy sailing . . .

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California — Mediation & Conciliation Service

Paul Roose of the California State Mediation and Conciliation Service (SMCS) has resigned his seat on the ALRA Executive Board as he is leaving the SMCS in the spring to go into private practice as a labor-management neutral. Paul has contributed many good ideas and much hard work during his term on the ALRA Board and his energy and enthusiasm will be missed.

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Paul Roose

"I have truly enjoyed the time I have spent with my ALRA colleagues. It has been invaluable to learn from the many talented and dedicated neutrals from the US and Canada. ALRA's Neutrality Guidelines are now an integral part of our mediator training. ALRA fills a unique niche in North American labor relations, and I have high hopes that it will grow and prosper.

I look forward to seeing many of you at other events such as NAA and LERA meetings."

— Paul Roose

MICHIGAN EMPLOYMENT RELATIONS COMMISSION — MERC

(Continued from page 17)

A decision, which may otherwise be within the Employer's authority, may be an unfair labor practice if the decision is motivated by unlawful discriminatory intent. The question of the Employer's intent is one of fact and required an evidentiary hearing. Therefore, Commission upheld the ALJ's denial of the Employer's motion for summary disposition.

Where an allegation of unlawful discrimination is made, the burden is on the party making the claim to demonstrate that protected conduct was the motivating factor in the respondent's decision. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1982).

In this case, the Union did not establish a prima facie case of discrimination as it failed to show that the Employer was motivated by anti-union animus. The evidence that the Union offered, which included statements by a school principal and by a school board member regarding privatization could not be directly linked to the deliberations of the school board or its decision.

The Commission rejected the Union's argument that the ALJ erred by not drawing an adverse inferences from the Employer's failure to have its chief negotiator testify.

The Union contended that the negotiator was likely to have knowledge of facts to either refute or support Charging Party's allegation of discrimination. However, as the Commission pointed out, the Union did not specify any facts that could properly be inferred from the Employer's failure to have the negotiator testify.

The Commission could not infer discrimination without facts to support that legal conclusion. Accordingly, the Commission affirmed the ALJ's Decision and Recommended Order and dismissed the unfair labor practice charge.

[1] *Summaries prepared with the assistance of law students Joshua Leadford and Iryna Sasonova.*

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July 28-31, 2012

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- *Explore* centuries of history in Old Montréal.
- *Dine* at one of the area's many restaurants.
- *Attend* one of the many summer festivals; Montréal is known as the "City of Festivals." The final weekend of the renowned *Just for Laughs* comedy festival will be July 27-29, 2012.

Caleche. © Ron Stern

Experience Old Montreal from a horse-drawn carriage.

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