ALRA Advisor

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Montréal

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ALRA ASSOCIATION of LABOR RELATIONS AGENCIES

61st Annual ALRA Conference

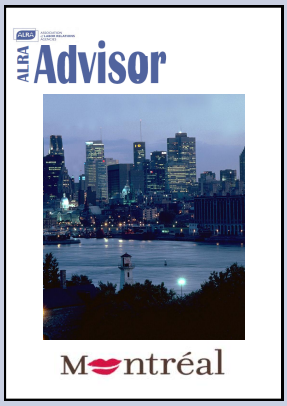
July 29-31, 2012

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...



Montreal Tourisme Photo.

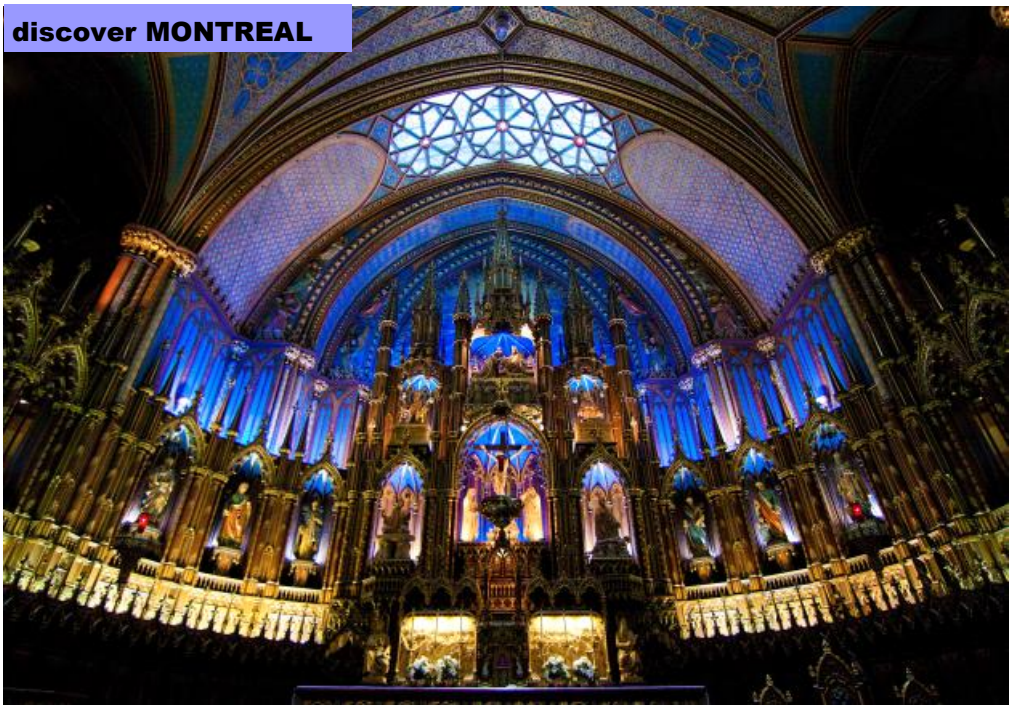
Hyatt Regency Montreal. The site of the 2012 ALRA Conference.

61st Annual ALRA Conference — Montréal, Canada

July 29-31, 2012

NEW Shorter 3-day conference format!

discover MONTREAL



Tourisme Montréal. © Pierre-Alexandre Garneau

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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From the President...

Sheri King

Welcome to / bienvenue à Montréal!

I can't imagine a more beautiful or dynamic city in which to meet for ALRA's 61st conference. I hope you'll take full advantage of the gracious hospitality and many wonderful attractions Montreal has to offer while you're here.

I'm very excited about this year's conference and our theme of navigating change in the labour relations environment. I think the conference will offer all of us opportunities to learn from each other, and from some terrific guest speakers, ways of surviving and thriving in the challenging world of today's labour relations neutral.

I'd like to acknowledge the efforts of the members of the Executive Board, and thank them for their support over the past year; I've enjoyed working with each of them: Scot Beckenbaugh, Ginette Brazeau, Les Heltzer, Bob Hackel, Kevin Flanigan, Gilles Grenier, Diane Chartrand, Steve Hoffmeyer, Patricia Sims and Danielle Carne. Paul Roose resigned from the ALRA Board in January, and I miss his enthusiasm and wisdom.

I'd like to gratefully thank the following individuals for their efforts in organizing this year's conference and other essential behind-the-scenes ALRA work: Arrangements Co-Chairs Jacques Lessard and Daniel Cholette, Professional Development Co-Chairs Ginette Brazeau and Tim Noonan, Program Co-Chairs Beth Schindler and Reg Pearson, Publications, Communications and Technology Co-Chairs Liz MacPherson and Linda Puchala and Mary Johnson of the Site Committee.

I'd also like to thank Charlie Montague of the NMB for his efforts to keep our website up-to-date and Janet Boehmer and Marisa Gebhardt for the lovely new website and the *ALRA Advisor*.

Finally, thanks to Neal Moyer for his help setting up the online conference registration forms and thanks to Linda Lusignan of the CIRB for her always efficient and cheerful support in organizing this year's conference.

The good news and the bad news about being President of ALRA is that it is a very short term. It's been a busy year, and it has truly gone by in the blink of an eye. I've so enjoyed the role and I want to thank all of you for the opportunity to preside over this wonderful and enduring organization, which has such a rich history.

ALRA has existed for over 60 years and I'm confident that it will survive for many more because of the opportunity it affords on an annual basis for wonderful, dedicated labour relations practitioners to come together to enjoy professional development, meet new people and renew warm and lasting friendships.

—Sheri King

ALRA 2012 Conference Agenda

SATURDAY, JULY 28 — REGISTRATION & RECEPTION

1:00 - 5:00	CONFERENCE REGISTRATION
6:00 - 8:00	Reception

SUNDAY, July 29 — CONFERENCE OPENING

8:30	CONTINENTAL BREAKFAST
9:15 - 10:45	CONCURRENT ROUNDTABLE DISCUSSIONS • Mediators • Board and Commission Members • General Counsel • Administrators
11:00 - 1:45	WELCOME BRUNCH — QUEBEC LABOUR SCENE • Labour Relations in the Arts Sector in Quebec • Fonds de solidarité FTQ • Replacement Workers Legislation in Quebec • The Current Social Action and Student Strike in Quebec
2:00	STRUCTURED ACTIVITES – TOUR DE VILLE

MONDAY, JULY 30

08:00 - 09:00	REGISTRATION / CONTINENTAL BREAKFAST
09:00	INITIATION of STRATEGIC INITIATIVES in a POLARIZED POLITICAL ENVIRONMENT
09:45	TOOLS and APPROACHES to SUPPORT LABOUR MANAGEMENT COOPERATION in TIMES of CHANGE
10:30	BREAK
10:45 - 11:45	THE CHALLENGES of DEALING with UNREPRESENTED, the UNPREPARED or the INEXPERIENCED A. Workshop for Mediators B. Workshop for ALJs, Counsel, Board Members

MONDAY AFTERNOON—ADVOCATES' DAY (See Separate Agenda, page 5)

TUESDAY, JULY 31, 2012
MORNING TOPIC: The Use of Technology in Collective Bargaining and the Workplace

08:00 - 09:00	REGISTRATION
09:00	THE USE of TECHNOLOGY in COLLECTIVE BARGAINING and the WORKPLACE—Set up and overview
09:10	ELECTRONIC VOTING / CASE MANAGEMENT
09:45	HOW is YOUR AGENCY USING TECHNOLOGY to FULFILL ITS MANDATE? SMALL GROUP DISCUSSION (SGD)
10:15	SMALL GROUPS DISCUSSION - REPORT OUT
10:30	BREAK
10:45	MEDIATING DISPUTES in the AGE of TECHNOLOGY
11:15	HOW DOES YOUR AGENCY DEAL with the RISKS and ADVANTAGES of TECHNOLOGY in MEETINGS? SGD
11:45	SMALL GROUPS DISCUSSION - REPORT OUT
Noon	Luncheon
1:00	AN UPDATE FROM IRELAND
1:15	ETHICS
2:15	BREAK
2:30 - 3:15	ALRA ANNUAL BUSINESS MEETING
3:30 - 4:30	BOARD MEETING
6:00 - 9:00	CLOSING RECEPTION and BANQUET

ALRA 2012 Conference Agenda

MONDAY, JULY 30

ADVOCATES' DAY

THEME:

Navigating the Changing Context of Labour Relations as Neutrals

10:30 -1:30	**REGISTRATION**
11:45	**WELCOME** **Jocelin Dumas**, Deputy Minister, Quebec Ministry of Labour
12:00	**LUNCHEON—BEYOND NAFTA: SECURING our ECONOMIC FUTURE** • **Derek H. Burney**, Senior Strategic Advisor, Norton Rose Canada LLP
1:30	**The Honourable Lisa Raitt**, Minister of Labour, Government of Canada
1:45	**WORKPLACE CHALLENGES in a GLOBALIZED ECONOMY** • **Jean Lortie**, General Secretary, Confédération des Syndicats Nationaux • **Kim Madigan**, Vice-President, Human Resources, Canadian National Railway • **Owen Herrnstadt**, Director of Trade and Globalization, International Association of Machinists and Aerospace Workers
2:45	**BREAK**
3:00	**A MOMENT of TRUTH for CANADIAN UNIONS** • **Dave Coles**, President, Communications, Energy and Paperworkers Union of Canada
3:45	**FROM HEROES to ZEROES—A WAR on PUBLIC SERVICES and UNIONS** • **Elaine Bernard**, Executive Director Labor and Worklife Program, Harvard Law School
5:00	**RECEPTION—Balmoral, Bistro du Festival**

Speakers

The Honourable Lisa Raitt

Kim Madigan

Derek H. Burney

Elaine Bernard

Owen Herrnstadt

Dave Coles

Jean Lortie

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

Canada Industrial Relations Board (CIRB)

Eduardo Buenaventura et al. v. Telecommunications Workers Union (TWU), 2012 FCA 69

Federal Court of Appeal confirms that Reconsideration Power of the Board is not a statutory appeal process

The Federal Court of Appeal dismissed an application for judicial review filed by a group of employees of Telus with respect to the Board's decision in *Torres*, 2010 CIRB 526. In that decision, the Board refused to extend the time limit for the complainants to file a duty of fair representation complaint against the Telecommunications Workers Union (TWU) and dismissed the complaint.

On judicial review, the applicants argued that it was unreasonable for the Board not to consider the fact that they were unrepresented for most of the nine months it took them to file the complaint, which led to some difficulties in assembling the information needed and in appreciating the Board's procedures for dealing with a multiplicity of complaints.

Among a number of arguments, the TWU took the position that the Court should refuse to consider the application for judicial review because the applicants had not requested the Board to reconsider its original decision. It argued that the Board's reconsideration process is an adequate alternate remedy, which the applicants should have exhausted before filing the application for judicial review.

The Board exercised its right under section 22(1.1) of the *Canada Labour Code* to make submissions to the Court on the issue of adequate alternate remedy. It was the Board's position that its reconsideration process is not a statutory appeal process and that failure to seek reconsideration is not an impediment to judicial review.

The Court confirmed that the failure of a party to invoke the reconsideration process is not necessarily fatal to a judicial review application. The Court also confirmed that the Board's reconsideration process is not a statutory appeal process.

The Board's jurisprudence shows a consistent adherence to the principle that its decisions are final and that reconsideration is the exception rather than the norm. As such, the Board's reconsideration power is not an adequate alternate remedy.

The Court dismissed the application for judicial review on its merits. It concluded that it was reasonable for the Board to refuse to extend the time limit for the duty of fair representation complaint given the policy considerations for the statutory time limit. It also noted that laypersons should be held to the same standard as unions and employers.

Turnaround Couriers Inc. v. Canadian Union of Postal Workers, 2012 FCA 36

Federal Court of Appeal finds that local courier companies are not a "postal service"

The Federal Court of Appeal has determined that bicycle and pedestrian couriers delivering time-sensitive letters and packages exclusively within the city of Toronto are not providing a postal service and thus are within the constitutional jurisdiction of the provincial labour relations board.

The constitutional question arose from an application for judicial review filed by the employer to set aside a decision of the CIRB (*Turnaround Couriers Inc.*, 2010 CIRB 544).

In that decision, the CIRB had held that TurnAround was providing a postal service within the meaning of section 91(5) of the *Constitution Act , 1867*, and that its operations therefore fell within federal jurisdiction. As a result, the CIRB determined that it had jurisdiction under the *Canada Labour Code* to certify the Canadian Union of Postal Workers as the bargaining agent for TurnAround's couriers.

On judicial review, the Court determined that TurnAround's operations did not constitute a "postal service" for the purpose of the *Constitution Act, 1867*. The Court was of the view that "postal service" in the *Constitution Act* refers to the national delivery system, which is currently either operated directly by the Canada Post Corporation or managed by it through contracts with other entities.

The Court concluded that TurnAround Couriers Inc. was a local undertaking and was thus within provincial jurisdiction. It granted the application for judicial review and set aside the CIRB's decision and certification order.

Spragg, 2011 CIRB 610

Board finds union breached its duty of fair representation when it agreed to remove rights in collective agreement applicable to a specific group of employees in the bargaining unit

The Board was seized with a duty of fair representation complaint filed against the London Technical Employee Association (the union) by

(SPRAGG—Continued on page 25)

Decisions of Interest

John King v. Attorney General of Canada, 2012 FC 488

After the employer had changed work shift schedules for the employees, the union filed a grievance in the belief that the changes did not coincide with the terms of the collective agreement. The employer found a letter on the union's website written by the president of the union local, calling for an illegal strike. This led to him receiving a 30-day suspension. During the suspension, further publications written by the president of the union local in support of the walkout led to a decision to dismiss the employee.

Both disciplinary decisions were grieved. The adjudicator found that the employer had the power to discipline and did so in an appropriate manner based on the employee's insubordination.

The Federal Court heard the application for judicial review and confirmed the findings of the adjudicator. In short, both the adjudicator and the Federal Court found that the president of the union local had engaged in enticement of an illegal strike.

Douglas Tipple v. Attorney General of Canada, 2012 FCA 158

The Federal Court of Appeal heard an appeal based on a judicial review of a decision of the PSLRB. The dispute revolved around the dismissal of an employee from a high level position in the federal government. The Court of Appeal affirmed two unique facets of the original decision.

First, the Court of Appeal affirmed the finding of the adjudicator and agreed that the employee could receive damages for his loss of reputation resulting from the employer's bad faith in the manner of the termination of employment.

Second, the Court of Appeal asserted that, while there was no legal basis for the adjudicator to award legal costs to parties before the PSLRB, the PSLRB did possess an inherent authority to control its own process and to provide remedies in the event of abuse of that process.

In this matter, the employer had not respected various disclosure orders. The PSLRB was therefore reasonable in awarding damages to the grievor as compensation for his extra cost associated with his attempts to have the orders enforced.

Zeswick v. Deputy Head (Correctional Service of Canada), 2012 PSLRB 8

In determining that a settlement agreement was final and binding, the adjudicator found that PSLRB mediators cannot be compelled to give evidence with regards to information they receive and distribute in the discharge of their duties as mediators.

The adjudicator stated that it

"*is the nature of mediation (and negotiation) that various approaches and results are canvassed by the mediator (or even the parties) with the objective of finding a basis of agreement. What ends up being the final agreement can be based on very different considerations than some of the discussions during the mediation process. Parliament has obviously recognized the value of this process and, as a result of section 243 of the Act, the parties cannot compel a mediator to give evidence about what was said.*"

NATIONAL LABOR RELATIONS BOARD

Update: Litigation Regarding States' Constitutional Amendments

Submitted by
Abby Simms

This matter was first discussed in the July 2011 *ALRA Advisor,* and since then there have been developments but no final resolution in the lawsuit the NLRB filed against the State of Arizona. (While the Board authorized the General Counsel to also file lawsuits against the states of South Carolina, South Dakota, and Utah, and against any other states where similarly worded Constitutional amendments or statutes become effective, no such actions have yet been filed.)

In brief, on November 2, 2010, the voters of Arizona approved Article 2 § 37, entitled "Right to secret ballot; employee representation." Article 2 § 37 states "[t]he right to vote by secret ballot for employee representation is fundamental and shall be guaranteed where local, state or federal law permits or requires elections, designations or authorizations for employee representation."

On May 6, 2011, the NLRB initiated litigation against the State of Arizona seeking a declaratory judgment that Article 2 § 37 is preempted by operation of the NLRA and Supremacy Clause insofar as it applies to private sector employees, employers and/or labor organizations.

The Board's complaint asserted, alternatively, that the Arizona amendment is preempted (i) because, contrary to the State's interpretation, the Amendment's plain language—guaranteeing secret ballot elections whenever such elections are permitted under federal law—conflicts with federal law by "requir[ing] elections where federal law does not," and (ii) because even if, as the State asserted, the amendment merely supports the NLRA guarantee of a secret ballot election, the amendment is preempted under *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), since it creates a parallel state enforcement mechanism for protecting employee representation rights that Congress assigned the NLRB to protect.

The State filed a motion to dismiss arguing, among other things, that the lawsuit was premature because no state cases have been brought under the Amendment.

Save Our Secret Ballot, affiliated with the Goldwater Institute, the organization that has pushed to place this and other similar amendments on the ballots of various states, was permitted to intervene on a limited basis.

On October 13, 2011, the district court denied Arizona's motion to dismiss. The Court rejected the State's arguments that the Court lacks jurisdiction, that the Board has failed to establish any injury, and that the dispute is not ripe.

In so ruling, the Court relied exclusively on the Board's *Garmon* preemption allegation and refrained from taking a position on the dispute between the Board and the State over whether the amendment conflicted with the rights afforded employees by the NLRA.

Thereafter, with the consent of Arizona and the Intervenor, the Board amended the complaint to eliminate the conflict preemption claim and to proceed only under the *Garmon* parallel enforcement preemption claim.

On January 13, 2012 the Court issued a scheduling order providing for a short period of discovery (over the Board's objection that the issues were purely legal). While the Board continued to object to discovery, the NLRB made certain disclosures.

The parties then filed cross-motions for summary judgment on May 14. At that time, Intervenor also filed a motion to certify the preemption issue to the Arizona Supreme Court which the NLRB opposed.

No decision has yet issued. Thereafter, the United Food and Commercial Workers, Local 99 and the Arizona AFL-CIO filed a memorandum as amici in support of the NLRB's motion for summary judgment. The parties filed responses to the cross motions for summary judgment on June 13. Replies are due on July 3.

The court has scheduled a trial for November 13, 2012.

Update: NLRB Rulemaking Litigation

Notice-Posting Rule

The Final Rule requiring all employers covered by the NLRA to post a government-provided free notice of NLRA rights was published on August 30, 2011 (76 Fed. Reg. 54006).

It was immediately challenged in two lawsuits – one in the U. S. District Court for the District of Columbia by the National Association of Manufacturers, the National Right to Work Legal Defense and Education Foundation, the Coalition for a Democratic Workplace and the National Federation of Independent Business.

The second lawsuit was filed in the U.S. District Court for the District of South Carolina by the U. S. and South Carolina Chambers of Commerce.

Both lawsuits challenged, *inter alia*, the Board's authority to issue the Rule, the constitutionality of the Rule, its neutrality, the factual support for the Rule, and two of the enforcement mechanisms, one concerning unfair labor practice liability and one concerning equitably tolling the Act's 6 month statute of limitations. In addition, the South Carolina lawsuit questioned the Rule's compliance with the Regulatory Flexibility Act, 5 U.S.C. 611.

On March 2, 2012, in *National Association of Manufacturers, et al., v. NLRB, et al,* No. 11-1629 (D.D.C. March 2, 2012), the D.C. District Court upheld the Board's Notice-Posting Rule but enjoined the unfair labor practice and equitable tolling remedies. In addition, the District Court denied certain plaintiffs' motion to supplement their complaints to add allegations challenging the recess appointments to the Board. Later, the District Court denied plaintiffs' motion for an injunction pending appeal.

In contrast, in *Chamber of Commerce, et al., v. NLRB, et al.,* No. 11-2516 (D.S.C. April 13, 2012), the District Court for the District of South Carolina rejected the D.C. District Court's approach and found that the Board lacked the requisite statutory authority to promulgate the rule. Thus, the court found the rule to be unlawful.

NAM et al filed a notice of appeal and request for injunction in the D.C. Circuit. In light of the conflicting district court decisions, the D.C. Circuit granted NAM's motion for an injunction pending appeal, thus delaying indefinitely the effective date of the Rule. The Board has filed a notice of cross-appeal as to the D.D.C. rulings on the unfair labor practice and equitable tolling provisions. The D.C. Circuit also ordered briefing on an expedited basis, which is now in progress, and that argument will be heard in September 2012. Additionally, in June 2012, the Board filed its notice of appeal to the Fourth Circuit Court of Appeals regarding the District Court for South Carolina's ruling.

On December 22, 2011, the Board published a final rule amending its representation procedures. *Representation—Case Procedures*, 76 Fed. Reg. 80138. The details of the Rule were described in the July 2011 *ALRA Advisor.*

Representation Procedures Rule

The U.S. Chamber of Commerce and the Coalition for a Democratic Workplace filed a lawsuit in the U. S. District Court for the District of Columbia challenging the rule (*Chamber of Commerce v. NLRB,* D.D.C., No. 1:11-cv-02262). (The American Hospital Association is participating as amicus in support of the Chamber.) The Plaintiffs argue, inter alia, that the Board lacked a quorum to issue the rule and that its procedural changes violate the NLRA and the U.S. Constitution. The parties filed cross-motions for summary judgment and opposition pleadings.

On May 14, 2012, the District Court for the District of Columbia held that the Rule was invalid because only two members participated in final approval of the Rule and therefore the Rule had not been properly adopted by a quorum of three Board members.

On June 11, 2012, the Board filed a motion to alter or amend judgment under FRCP 59(e) asking the Court to reconsider its ruling. On June 26, 2012, the Chamber filed a memorandum in opposition to the Board's motion. The Board will have an opportunity to reply.

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

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

2012 Education Conference Showcases Labor-Management Effort to Strengthen Teaching Profession

FMCS Director George H. Cohen signs the Shared Vision for the Next Generation of Teaching at the U.S. Department of Education 2012 Labor-Management Conference

FMCS Director George Cohen joined Education Secretary Arne Duncan, national education leaders and over 100 district and state leadership teams in Cincinnati May 23 -24 for the U.S. Department of Education's two-day 2012 Labor-Management Conference, "Collaborating to Transform the Teaching Profession."

The second nationwide meeting of its kind, the conference again focused on efforts to improve student achievement by dramatically increasing the stature of the teaching profession and the number of highly effective teachers in the nation's schools.

During the conference, Secretary Duncan joined seven fellow national education leaders in signing a shared vision for the future of the teaching profession. The shared vision focuses on three main goals, which include ensuring all students are challenged to meet a high bar that prepares them for college, career, and citizenship; narrowing the opportunity and access gap between more and less privileged populations of students; and, preparing all students to be globally competitive.

Co-signers of the historic document were the eight partners—who were also the hosts of the Labor Management Conference:

- Secretary of Education Arne Duncan
- FMCS Director George Cohen
- American Federation of Teachers President Randi Weingarten
- National Education Association President Dennis Van Roekel
- National School Boards Association Executive Director Anne L. Bryant
- American Association of School Administrators Executive Director Daniel A. Domenech
- Council of Chief State School Officers Executive Director Gene Wilhoit
- Council of the Great City Schools Executive Director Michael Casserly

"The quality of any school relies on the strength of its educators at the front of the classroom," said Secretary Duncan. "Across the country, there are remarkable success stories shaping the next generation of teaching. The goal of this year's conference is to help their colleagues learn from one another and take this work to the next level."

At the conference, Charlie Rose, former General Counsel of the Department of Education, and Director Cohen conducted several well-attended workshops entitled: "Effective Techniques that Support Collective Bargaining and Problem Solving."

That occasion was used to emphasize the constructive "hands-on" role mediators can play in facilitating critically important discussions between the parties focused on reforming public education to advance student achievement through labor-management cooperation.

Participants – teams of state and district school chiefs, union leaders, and school board leaders from over 100 states and districts — were encouraged to exchange ideas, share lessons learned, and develop similar efforts in their home communities.

The first conference took place last year in Denver. "Advancing Student Achievement through Labor-Management Collaboration," gathered superintendents, union leaders, and school board presidents committed to building collaborative labor-management relationships, policies, and agreements centered on improving student achievement."

During the conference, Secretary Duncan stated, "President Obama and I are convinced that labor and management can collaborate to solve many of our nation's enduring educational challenges. And we believe that progress more often follows tough-minded collaboration than tough-minded confrontation."

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FMCS to Inform Federal Agencies and Their Unions Concerning Important Services Our Agency Can Provide

This summer, Federal Mediation and Conciliation Service representatives will introduce Agency services, including specialized training and facilitation services aimed at improving labor-management cooperative relationships in the federal sector, at a series of town hall meetings to be hosted by the Federal Labor Relations Authority's Office of General Counsel in each of the FLRA's regional office cities.

These town hall meetings are just the most recent example of the significant contribution FMCS field mediators are making to the effective functioning of the federal government's Labor-Management Forums required by President Obama's Executive Order.

The public meetings will provide an introduction to OGC's information and training resources, an FLRA Unfair Labor Practice and Representation case law update, and a question-and-answer session with the general counsel, deputy general counsel, and regional director.

In addition, the Town Hall meetings will introduce participants to a new web-based training course developed by the FLRA's OGC.

Click http://www.flra.gov/webfm_send/609 to access the FLRA news release which includes the dates and locations of the regional town hall meetings.

FMCS Institute Hosts Mediation Skills Training for the National Bar Association

On May 17-21, the FMCS Institute proudly hosted a mediation skills training at the National Office for the National Bar Association (NBA). The training was developed by Commissioners Peggy McNeive, Josh Flax, and Human Resource Development Specialist (E&T) Israel Nuñez, and assisted by Commissioners Laura Poppendeck and Nicole Davis, and Director of Education and Training Heather Butler.

"This training presented a wonderful opportunity for us to partner with such an historically significant organization," said Commissioner Flax. "It was very important work and there was a tremendous amount of mutual learning between us and the participants."

FMCS training has long been recognized as the gold standard among labor and management organizations seeking to improve skills for members and employees. The selection of FMCS as the provider for National Bar Association mediation skills training is yet another example of recognition for the Agency from a prestigious national group.

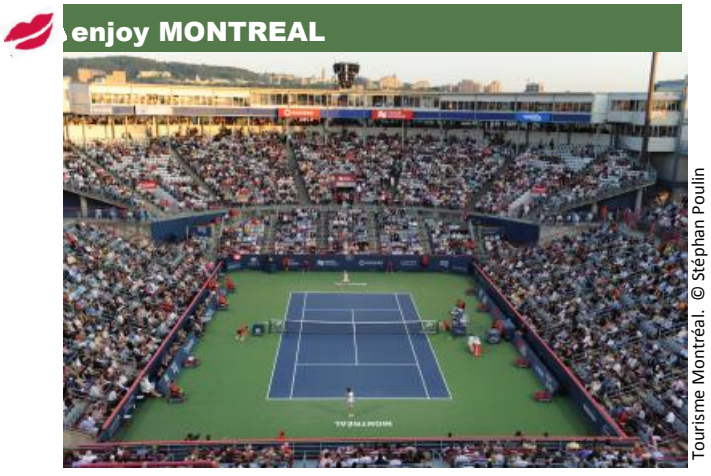
The National Bar Association was founded in 1925 to represent the interest of African-American attorneys. While only 120 members comprised the NBA at its inception, the NBA now boasts a membership of more than 20,000 lawyers, judges, educators, and law students.

USW Magazine Credits FMCS Training in Union-Employer Turnaround

USW@Work, a quarterly magazine distributed by the United Steelworkers to more than 1 million USW members and retirees, offers an article in the current spring 2012 issue that credits the assistance of FMCS in improving labor-management relations at the Elliott Group, a 100-year-old maker of advanced centrifugal compressors, and its USW workforce in Western Pennsylvania.

FMCS Commissioners Jacques Wood and Jack Yoedt provided training on problem-solving techniques and cultivating collaborative approaches to bargaining.

Click http://www.usw.org/media_center/publications_usw_at_work?id=0144 to access the article in *USW@Work* magazine.



Tourisme Montréal. © Stéphan Poulin

NOVA SCOTIA CANADA

DEPARTMENT of LABOUR and ADVANCED EDUCATION

Department Mandate

The Department of Labour and Advanced Education works to develop a competitive workforce by making strategic investments in people, programs, services and partnerships.

The broad mandate of the department includes:

- Regulatory responsibility for occupational health and safety, building, fire and technical safety, pensions, workers' advisers program, labour relations, and labour standards.
- Improving access among Nova Scotians to labour market information, employment services and learning programs that support their labour market attachment and growth. Strategic action is taken to align the needs of employees with those of employers to help all Nova Scotians prepare for, find and keep employment.
- Providing opportunities for individuals to advance at home, in the community or in the workplace through adult learning, literacy and essential skills, apprenticeship and skills development programs.
- Developing a supportive environment for volunteers and developing non-profit and voluntary sector capacity.
- Providing funding, services, and support to post-secondary institutions to maintain access to high quality post-secondary education and information.
- Attracting, integrating and retaining immigrants and improving the status of women.

The department faces increased budget challenges as it attempts to achieve the Government's Back to Balance plan by 2014.

The Government has announced that there will be reductions of 1000 FTE's (employees) by 2014 across Government, and has announced the decentralization with Agriculture, Fisheries and Justice moving over 100 staff to centers outside of Halifax.

This makes the value of conferences like ALRA all the more important as jurisdictions share their experiences and findings in dealing with expenditure reductions.

Strategic Initiatives 2011-12

New Labour Management Review Committee created

The Minister appointed the Labour Management Review Committee (LMRC) effective March 29, 2011.

The LMRC is a consensus-based, bi-partite committee made up of unionized labour and employers whom are appointed by the Minister.

Rick Clarke, President of the NS Federation of Labour and Phil Veinotte, VP of the VON, are the labour and management co-chairs.

Its purpose is to improve labour relations and collective bargaining in the province.

The Committee reviewed First Contract Arbitration legislation and hosted a Study Day for stakeholders in September 2011. No consensus was reached on the first contract issue, but the Government proceeded to pass First Contract provisions that are very similar to Manitoba. One difference is that in NS, the Conciliation Division is required to offer education and training on first contract after a union and employer have become certified.

Once a new union is certified, the parties must use a conciliator if they cannot agree to a first contract, and at least 90 days must pass from the appointment of the conciliator before an application can be made to the Labour Board for first contract settlement.

The first contract provisions were proclaimed on January 23, 2012, and to the end of June, 2012, only 4 new workplaces have been certified.

Offers of education and training have been made to these workplaces, but none have requested the training.

(Continued on page 13)

(Continued from page 12)

Important Labour Board Decisions

A key decision was made by Bruce Archibald, Vice-Chair of the Labour Board in the ***Egg Films*** case in April, 2012.

This decision looked at whether technical employees working on a commercial advertisement were dependent contractors, and whether they could be unionized.

The Board's decision is available on www.Canlii.org and is currently under appeal.

Recent Contractual Settlements

A number of key contractual adjustments were made in 2011-2012.

The Conciliation Division was successful in negotiating several key agreements in the pulp and paper sector, which is currently under massive pressure as world markets decline.

NewPage Port Hawkesbury and CEP were able to achieve a collective agreement, pending on the outcome of CCAA proceedings.

Northern Pulp was also able to achieve a collective agreement in June, 2012.

The ***Bowater/Resolute Paper agreement*** was achieved in December 2011, but continuing market losses required the company to announce a closure in June, 2012.

The ***Capital District Health Authority and NSGEU agreement*** was subject to mediation for 5 days with experienced mediator Bruce Outhouse, QC, and the parties agreed to go to arbitration, provided any wage increase had to be within the parameters of a 6.5% to 9.05% increase over 3 years. Thomas Kuttner was the arbitrator, and ruled on June 15, 2012 that the increase would be 7.5%. This decision impacts over 3,500 employees.

Occupational Health and Safety

The department has committed to developing a new workplace safety strategy for the next five years in partnership with the Workers' Compensation Board (WCB).

The department and WCB will collect input from stakeholder groups to identify the most important areas to help improve workplace health and safety.

The strategy is expected to be rolled out by the end of 2012.

Occupational health and safety administrative penalties have been in place since 2010, and one court challenge is currently being decided at the Court of Appeal.

Immigration Strategy

NS released an immigration strategy in April 2011 to guide the province's efforts to attract and retain immigrants, engage more employers, and market the province internationally.

Highlights of the strategy include marketing, targeting international students and temporary foreign workers, credential recognition, and integrating newcomers.

The strategy aligns with province's strategy, *jobsHere*, focusing on attracting, integrating and keeping the skilled workers needed to grow the economy.

The main goal of the immigration strategy is to achieve government's commitment to double the number of immigrants to 7,200 by 2020.

An implementation plan has been developed along with a five-year timeline.

Workforce Strategy

Nova Scotia launched a workforce strategy in November 2011 as part of the *jobsHere* plan to grow the economy.

The workforce strategy sets out a number of actions under three priority areas: learning and skills development in the workplace; helping Nova Scotians connect with good jobs; and growing the workforce.

The strategy will help individuals and businesses adapt to the economic challenges presented by a shrinking workforce and help Nova Scotians acquire the right skills for good jobs.

Since the launch of the strategy almost all of the component initiatives have been launched or implemented.

Apprenticeship Review

The department launched a comprehensive review of the province's apprenticeship training system in December 2011.

It had been more than 10 years since the last complete review of the system.

A report is being drafted that synthesizes key findings and recommendations for strategic investment and identification of possible structural and administrative changes.

(Continued on page 14)

NOVA SCOTIA CANADA

Legislation, Legislative Amendments & Regulations

Pensions Benefit Act

The provincial legislature passed a new *Pensions Benefit Act* in the fall of 2011, modeled on the Ontario legislation.

Under this Act, private sector pension plan members and retirees will know more about their pensions and employers will have more plan design options including jointly sponsored pension plans and target benefit plans.

The former Act only recognized two categories of pension plan participants (members and former members), the new Act adds retirees as a third category, and allows at least two retirees to sit on an advisory committee that will make recommendations to the plan administrator.

On March 8, 2012, the Government announced that Universities with DB plans would be exempt from the solvency test. This was a crucial announcement which helped to avert a strike at the largest university in Atlantic Canada, Dalhousie University.

Temporary Foreign worker Legislation

(amendments to the Labour Standards Code)

The legislature voted to amend the *Labour Standards Code* to provide certain protections for temporary foreign workers (TFW's). The amendments (modeled on Manitoba's legislation):

- Prohibit the charging of recruitment fees to all workers
- Prohibit employers from eliminating or reducing a benefit or condition of a TFW's employment
- Prohibit employers and recruiters from holding a TFW's work permit, passport or other documents (these first 3 provisions were proclaimed on June 30, 2011)
- Require that recruiters of TFW's obtain a licence from the department (anticipated proclamation date in the Spring of 2012)
- Require employers who want to recruit TFWs to register with the Director of Labour Standards (anticipated proclamation date in the summer of 2012).

Regulations are being developed to enhance and clarify the legislative changes.

Consultation is underway on the proposed regulations, which will include provisions on:

- Categories of workers to be included in the foreign worker protections
- Recruiter licensing
- Employer registration and record keeping
- protection of foreign workers' wages and benefits

The department is currently negotiating an information-sharing agreement with Human Resources and Skills Development Canada (HRSDC), which will allow detailed information-sharing between the department and HRSDC on employers who have hired or are planning to hire TFW's. The department is creating capacity to administer the new legislation and related initiatives, and will work closely with federal counterparts and community partners. Three full time equivalent positions and $300,000 have been allocated for this.

Minimum Wage increase

(amendments to the Labour Standards Code)

In February 2011, the independent Minimum Wage Review Committee (MWRC) (appointed in 2004, consisting of employer and labour representatives) released a report which recommended: increasing Nova Scotia's minimum wage to $10 / hour as of October 1, 2011; indexing the minimum wage to the low-income cut-off (LICO) line for a person working full time in a community of 30,000 to 99,999 people starting April 1, 2012; and re-indexing the minimum wage to LICO each subsequent April based on the national annual Consumer Price Index for the previous year.

The government accepted the committee's recommendations. Under this new approach, increases to the minimum wage will be announced to the public in January of the year in which they are to take effect.

The MWRC also reviewed the economic and labour market situation in 2011, and in their January 12, 2012 report recommended no change to the indexing formula.

Based on this, Nova Scotia's minimum wage increased to $10.15 / hour on April 1, 2012 (the third highest minimum wage in Canada, behind Ontario and Nunavut).

There are no plans to proceed with a differential minimum wage for employees who receive tips.

The inexperienced minimum wage rate will continue to remain $0.50 below the regular minimum wage rate.

(Continued from page 14)

Citizenship Ceremony Leave *(amendments to the Labour Standards Code)*

The provincial legislature voted to amend the *Labour Standards Code* to give employees the right to take time off work to attend a citizenship ceremony.

Like all protected leaves, this will be unpaid, but will protect the employee's job security.

The leave applies to unionized and non-unionized workers and would likely be incorporated into collective agreements as they are (re)negotiated.

These amendments were modeled after similar provisions adopted in Manitoba in 2011.

Private Career Colleges *(revisions to existing Act)*

The department is reviewing the *Private Career Colleges Regulation Act*.

The aim is to develop a clearer legislative authority to consider the labour market and new standards when approving and reviewing individual programs.

Nova Scotia School for Adult Learning (NSSAL) Regulations

The provincial legislature passed the *Adult Learning Act* in December 2010.

The Act formalizes NSSAL's role as a vehicle for adult learning in Nova Scotia, reaffirms the government's commitment to adult learning, increases governance and accountability, and helps raise awareness of the importance of literacy and essential skills development.

Memorandums of Understanding (MOU's)

Relationship with Universities

NS negotiated a new MOU with the Council of Nova Scotia University Presidents, which took effect on January 1, 2012.

The new MOU reflects Nova Scotia's priorities with respect to higher education and the province's fiscal and demographic realities.

It includes a number of pillars including a broad change mandate and a commitment to achieving long-term reform of the funding formula, and ongoing partnership board between the province and the universities, and $25 million over three-years to support innovation in university operations and programs.

Off-campus work permits

NS signed a 3-year extension to an existing MOU with the federal government allowing international students attending post-secondary institutions to work off-campus.

This provides students with the opportunity to work without the requirement of an HRSDC labour market opinion, and helps them gain valuable Canadian work experience which will benefit the province if they decide to apply for permanent residency.

discover MONTREAL

The Montreal Museum of Fine Arts, Jean-Noel Desmarais Pavilion

MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)

— Lynn Morison, Staff Attorney [1]

SUMMARIES of NOTEWORTHY DECISIONS

A Unfair Labor Practice Charges Regarding the Duty to Bargain

University of Michigan –and– University of Michigan Skilled Trades Union

MERC Case No. C10 H-192, issued February 21, 2012

Unfair Labor Practice Not Found. *Employer Had No Duty to Bargain Over Installing Hidden Surveillance Cameras in a Room in Which Employees Did Not Perform Assigned Duties and Did Not Occupy With the Employer's Approval or Acquiescence; Area Where the Camera Was Installed Was Not Part of the Work Environment; Employees Had No Legitimate Expectation of Privacy in the Location Where the Hidden Camera Was Installed.*

The Commission adopted the ALJ's recommendation to dismiss the Union's charge alleging that the Employer breached its duty to bargain in good faith when it installed a hidden surveillance camera on its premises.

The University of Michigan Skilled Trades Union (Union) filed an unfair labor practice charge alleging that the University of Michigan (Employer) breached its duty to bargain when it installed a hidden surveillance camera without first bargaining with the Union. The Employer installed the camera in a room constructed on the Employer's premises by unknown persons without the Employer's knowledge. After installing the camera, the Employer discovered that the room was being used by two members of the bargaining unit represented by Charging Party. The two employees were engaging in unauthorized leisure activities when they were supposed to be working.

Finding that the use of a hidden camera was within the Employer's managerial right to supervise its employees, the ALJ found that the Employer had no duty to bargain over the installation of the camera and recommended that the Commission dismiss the charge. The ALJ also refused to apply federal case law holding that the installation of hidden surveillance cameras is a mandatory subject of bargaining.

In its exceptions, the Union contended that the ALJ erred by holding that the Employer had no duty to bargain over the installation of the hidden surveillance camera. The Union argued that the ALJ erred by refusing to follow NLRB precedent providing that the use of video surveillance is a mandatory subject of bargaining.

The Union contended that *Colgate-Palmolive Co,* 323 NLRB 515 (1997); *Brewers and Maltster's, Local No. 6 v NLRB*, 414 F3d 36 (DC Cir 2005); and *National Steel Corp* v NLRB, 324 F3d 928 (CA 7, 2003) each require an employer to bargain before installing a surveillance camera. In the cases that Charging Party relied on, matters were found to be mandatory bargaining subjects where they were "germane to the working environment and outside the scope of management decisions lying at the core of entrepreneurial control." In those cases, it was recognized that in the work environment, employees had legitimate privacy concerns and hidden surveillance cameras had the potential to affect employees' job security.

The Commission found the facts of this case to be distinguishable from the NLRB cases cited by the Union. In each of the three cases relied on by the Union, the hidden cameras were in locations considered to be part of the working environment and were placed where they would record the activities of employees who were legitimately at those locations. Here, the Employer installed a single camera for the limited and temporary purpose of discovering two specific things: the identity of persons frequenting a room that had been surreptitiously constructed without the Employer's knowledge or consent; and the nature of the activities occurring in that room. The room was located in an area in which employees did not perform assigned duties and did not otherwise frequent or occupy with the Employer's approval or acquiescence. The employees caught by the

[1] *Appreciation is extended to Sidney McBride, Joshua Leadford, Iryna Sazonova, Simon Haileab, and Emily Warren for their assistance with the preparation of these case summaries.*

Employer's camera, had no legitimate expectation of privacy and the hidden room was not part of the "working environment." The Commission agreed with the ALJ that the Employer's use of a hidden camera in an area that is not part of the working environment is within management's right to supervise its employees during work time. Under these circumstances, the Employer did not have a duty to bargain over the placement of the surveillance camera.

Southfield Public Schools –and- Michigan Educational Support Personnel Association (MESPA) –and- Educational Secretaries of Southfield.

Case Nos. C09 B-017 and C09 B-019, issued November 15, 2011

Unfair Labor Practice Found. *Unilateral Change; Employees' Receipt of Paid Association Release Time was Established Term or Condition of Employment; Employer Violated Duty to Bargain By Eliminating Paid Association Release Time Without First Giving Unions Notice and Opportunity to Bargain.*

The Commission adopted the ALJ's factual findings and legal conclusions in support of its decision holding that Southfield Public Schools (Employer) violated its duty to bargain in good faith.

The Michigan Educational Support Personnel Association and the Educational Secretaries of Southfield (Unions) each alleged that the Employer violated its duty to bargain by discontinuing its practice of providing the Unions' members with paid association release time without first giving the Unions notice and an opportunity to bargain over the matter. The Employer asserted that paid association release time was not an established term or condition of employment because the parties' collective bargaining agreements unambiguously provided that only the Unions' presidents would be paid for release time. The Employer also asserted that even if it did have a duty to bargain over the elimination of paid association release time, the Unions waived their rights by failing to make a timely demand to bargain over the issue.

Paid time to engage in union activities during working hours is a mandatory subject of bargaining. The Commission agreed with the ALJ that the provisions of the parties' collective bargaining agreements were ambiguous as to whether the Employer was required to pay association release time, and that Employer's practice of paying for this time was not contrary to the clear language of the contract. The record showed that Respondent had consistently paid association release time to the Unions' officers and members over at least twenty years for the MESPA unit and at least ten years for the ESOS unit. Therefore, the Commission agreed with the ALJ's conclusion that the past practice of paying association release time to employees had become an established term or condition of employment for both bargaining units.

Without having previously raised the issue at the bargaining table, the Employer notified the Unions of its decision to end its long-term practice by sending the Unions a letter a few days before decision's effective date. The Commission further agreed with the ALJ that merely giving notice to the Unions that the Employer was terminating the past practice was not sufficient. The Employer had an obligation to give the Unions an opportunity to bargain before it eliminated the practice.

The Commission also agreed with the ALJ's rejection of the Employer's argument that the Unions had waived their right to bargain over the matter by failing to make a timely demand. In cases where a bargaining demand would be futile because the employer had already made a final decision on the issue when it notified the union of the change, the union has no obligation to demand bargaining.

In this case, the Employer's letter notified the Unions of the effective date of the change in practice, but said nothing about giving the Unions an opportunity to bargain over the issue. The Employer's notice invited the Unions to call if they wished to discuss the matter, but did not indicate that implementation of the change was conditioned on the parties failing to reach agreement on the issue.

When the Unions contacted the Employer to object to the change prior to its effective date, the Employer merely replied that it was following the contract. Thus, it was clear from the Employer's notice to the Unions and their subsequent discussion that the Employer's decision was final and a demand to bargain would be futile. When the Unions made a subsequent demand to bargain over paid association release time, the Employer claimed the demand was untimely and refused to bargain. Accordingly, the Commission found that the Unions did not waive their right to bargain over the elimination of paid association release time.

The Commission, therefore, adopted the ALJ's recommended order requiring the Employer to cease and desist from making unilateral changes in terms and conditions of employment and to reinstate the practice of paying for association leave time until it has satisfied its obligation to bargain with the Unions over the issue.

(Continued on page 18)

MICHIGAN

B Unfair Labor Practice Charges Regarding Interference with or Discrimination for Protected Concerted Activity

(Continued from page 17)

Macomb Academy –and- Macomb Academy Education Association, MEA/NEA.

Case No. C09 I-173, issued January 13, 2012

Unfair Labor Practices Found. *Respondent Interfered With, Restrained, and Coerced Employees Engaging in Protected Concerted Activity; Employer's Actions, including Departing from its Established Practice of Giving Employees Notice Regarding Staffing Decisions Would Give Employees Reasonable Cause to Believe That Engaging in Protected Concerted Activity Would Jeopardize Their Employment; After Union Was Elected As the Employees' Representative, Employer's Announcement of Its Intention to Hire Any New Employees As Contract Employees, Who Would Be Excluded from the Bargaining Unit, Would Give Employees Reasonable Cause to Believe That Engaging in Union Activity Was Futile. Employer Violated Duty to Bargain; Employer had Duty to Maintain Status Quo While Parties were Bargaining First Contract; Employer's Power to Implement Unilateral Changes In Terms and Conditions of Employment of At-Will Employees Does Not Continue after Employees Have Union Representation*.

Macomb Academy (Employer) is a school that provides instruction in daily living and employment skills to young adults with cognitive impairments. Prior to the events that gave rise to this case, the teachers working for the Academy were unrepresented.

In 2008, one of the employees (L) received a write up from the school's superintendent. Several teachers accompanied L to speak with the school board. One of those teachers (M) also spoke to the board on L's behalf. After the board's decision not to intervene, another one of the teachers contacted the Macomb Academy Education Association, MEA/NEA (Union) about obtaining representation. On April 28, 2009, the Union filed a petition for a representation election. On June 8, 2009, the Union was selected as the exclusive bargaining agent in a unit of the Employer's full-time and part-time teachers from which contract employees were excluded.

The Commission agreed with the ALJ's conclusion that the Employer restrained and coerced its employees in the exercise of their §9 rights by withholding from its employees the benefit of knowing whether or not they would continue to be employed by the academy; by impliedly threatening to retaliate against its employees if they chose union representation; by announcing its decision to hire all new employees as contract employees; and by terminating the employment of two of its teachers as a result of their protected concerted activity or perceived union involvement.

The Employer argued that it refused to reveal which employees would continue to be employed because doing so might be seen as a threat. The Commission rejected the Employer's argument in light of the Employer's past practice of giving ample, advance notice of its staffing decisions. Such a departure from the established practice, according to the Commission, was a reminder to the employees that they were dependent on the Employer's good will, which might be forfeited if they chose Union representation. The Employer also contended that there was no evidence that it was motivated by anti-union animus. The Commission explained a violation of §10(1)(a) does not require a showing of animus. An employer's actions violate §10(1)(a) when they may reasonably be said to have interfered with the free exercise of the rights protected by §9.

The Commission also held that the Employer's resolution to hire all new employees as contract employees violated §10(1)(a) because it gave notice to the employees that their unionization efforts would be wasted, since the Employer was taking action that would cause the bargaining unit to disappear through attrition.

The Employer commonly allowed its teachers to work without a special education endorsement and to do the student teaching necessary to meet the requirements for a special education endorsement while in its employ. Nevertheless, in April 2009, L was denied the opportunity to complete the student teaching she needed to do to fulfill the requirements for a special education endorsement. Although the Employer's review of L's teaching performance was positive, the Employer asserted that it denied L the opportunity to do her student teaching because L had not demonstrated strong teaching skills. On June 16, 2009, the Employer discharged L because she did not have a special education endorsement. On the same day, M was notified that her contract would not be renewed for the following year.

The Employer asserted that M's employment was terminated because she was one of the highest paid teachers at the academy. However, when the decision regarding M was made, she was being paid less than two other teachers. Although M's evaluations were excellent, one of the two higher paid teachers who were retained was on an improvement plan because of performance problems. The Commission found that the protected concerted activity in which both L and M engaged motivated the Employer to deny L the opportunity to do student teaching and to discharge both L and M.

In addition, the Commission found that the Employer violated its duty to bargain by: unilaterally establishing a new interim pay schedule; reducing the salaries of several of its employees; altering the time of staff meetings; and implementing a new professional liability insurance plan. The Commission found no merit in the Employer's argument that its unilateral changes were not changes to the status quo because it made changes to terms and conditions of employment before the Union was elected to represent the employees. It is well established that an employer violates its duty to bargain when it institutes changes in mandatory subjects of bargaining while the parties are bargaining a first contract. The Employer's failure to maintain terms and conditions of employment in this case constitutes a violation of the duty to bargain.

C Procedural Issues

This case is currently on appeal to the Michigan Court of Appeals.

Detroit Public Schools -and- Teamsters Local 214 – and- Denise Greer and 194 Members of Teamsters Local 214,

Case No. C07 K-252, issued April 17, 2012

Motion to Intervene Denied. *Proposed Intervenors Have no Standing to File a Charge Alleging a Violation of the Duty to Bargain and, Therefore, no Right to Intervene; The Duty to Bargain Runs Between the Union and the Employer and not Between Individual Employees and the Employer; the Union is the Only Entity with the Authority to Pursue Claims against the Employer Related to the Collective Bargaining Agreement.*

The Commission denied the proposed intervenors' Motion to Intervene and Motion for an Extension of Time to File Exceptions and Brief and adopted the ALJ's recommended order.

The ALJ concluded that the Detroit Public Schools (Employer) and Teamsters local 214 (Union) entered into a concession agreement, which provided that employees' wages would be reduced until the expiration of the agreement. The ALJ found that the Employer failed to timely restore pre-concession wage rates to the employees after the agreement's expiration and failed to timely correct that deficiency upon the demand of the Union. The ALJ held that the Employer violated its duty to bargain by continuing to apply the wage reduction to the employees' wages after the expiration of the concession agreement. However, the ALJ did not recommend an award of back pay because, after the parties reached an impasse in negotiations, the Employer imposed the wage rate proposed by the Union. That wage rate took into account the Employer's failure to end the wage reduction as agreed and brought the bargaining unit into close parity with the concessions given by other units.

Neither the Employer nor the Union filed exceptions to the ALJ's Decision and Recommended Order. However, a group of employees in the bargaining unit represented by the Union sought to intervene and file exceptions to the ALJ's Decision and Recommended Order protesting the ALJ's refusal to award back pay. The proposed intervenors argued that their Union failed to adequately represent their interests in the charge against the Employer, persistently denied their requests for information, and rejected their efforts to have input in the dispute with the Employer.

In denying the motion to intervene, the Commission explained that under PERA §10(1)(e), the Employer has a duty to bargain with the representatives of its employees and not with the *individual* employees. It is the employees' bargaining representative, not the employees, that has the right to file an unfair labor practice charge against the employer for an alleged breach of the duty to bargain. Therefore, proposed intervenors have no standing to file a charge alleging that the Employer violated its duty to bargain by unilaterally extending the wage concession agreement and no right to intervene in the charge filed by the Union. Accordingly, the Commission denied the motion to intervene. In the absence of timely exceptions by either of the parties, the Commission adopted the ALJ's recommended order.

FLORIDA

1st DCA Affirms General Counsel's Summary Dismissal of Libel/Coercion Charge

The Sheriff of Broward County (Sheriff) filed an unfair labor practice charge alleging that the Federation of Public Employees (Union) engaged in a pattern of public and private statements about and to the Sheriff that constitute libel per se and were intended to interfere with and coerce the Sheriff in the exercise of his management duties and to disrupt the workplace.

Among the statements was a correspondence to bargaining unit members stating that the Sheriff had hate in his heart toward them and attributing malevolence and vindictiveness to the Sheriff.

There was also a text message to the Sheriff from an agent of the Union stating that he had the ability to absolutely destroy the Sheriff and would do so if the Sheriff said or did anything against the Union.

The General Counsel summarily dismissed the charge because the allegation of libel was supported by only two specific incidents in the charge itself – another incident was only included in the supporting documents and was more than six months old – and the charge lacked the requisite specificity because it only paraphrased the allegedly libelous statements.

Further, the General Counsel determined that, in the absence of any objective supporting facts, the allegation that the "hate in your heart" statement was intended to incite employees and disrupt the workplace was conclusory.

The Sheriff appealed the General Counsel's summary dismissal to the Commission and the Commission affirmed the General Counsel.

The Sheriff appealed the Commission's order to the First District Court of Appeal, which affirmed the Commission's order per curiam.

Sheriff of Broward County v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees, AFL-CIO, 77 So. 3d 184 (Fla. 1st DCA 2012), *per curiam aff'g* 38 FPER ¶ 24 (2011), *aff'g* 37 FPER ¶ 135 (G.C. Summary Dismissal 2011). Mandate has issued.

4th DCA Finds Hybrid Charge Timely **By Hearing Officer Carlos R. Lopez**

Esteban Cabo, who was president of AFSCME Local 3041 (Local 3041), filed unfair labor practice charges against Florida Public Employees Council 79, AFSCME, AFL-CIO (AFSCME Council 79), and the Department of Children and Families (DCF).

Capo alleged that DCF dismissed him without "just cause" and that he requested AFSCME Council 79 to file a grievance challenging his dismissal.

He further alleged that AFSCME Council 79 breached its duty of fair representation by failing to timely appeal his grievance to step three, which resulted in an arbitrator denying his grievance as untimely filed without extenuating circumstances.

Capo also alleged that the vice president of Local 3041 drafted a letter, with improper assistance from AFSCME Council 79 staff members, informing Capo that he was being suspended from Local 3041 for non-payment of dues, which prevented him from standing for re-election.

The Commission's General Counsel summarily dismissed the charge against Council 79 as untimely filed and factually deficient.

Capo filed an amended charge asserting, among other matters, that his original charge was timely filed because the charges against AFSCME Council 79 and DCF resulted in a hybrid cause of action, such that the six-month statute of limitations period began on the date he knew or should have known of AFSCME Council 79's final action or DCF's final action, whichever was later.

Capo argued that the limitations period did not begin to run until the date the arbitrator issued her decision dismissing his grievance.

Rejecting Capo's hybrid cause of action for establishing the statute of limitations period, the General Counsel issued a partial summary dismissal concluding that the amended charge was untimely filed except for the portion alleging that Capo was suspended from Local 3041 for non-payment of dues.

Capo appealed the General Counsel's partial summary dismissal of the amended charge to the Commission. The Commission affirmed the General Counsel's partial summary dismissal. Capo then withdrew the portion of the amended charge that had been found sufficient.

Capo appealed the partial summary dismissal of the amended charge to the Fourth District Court of Appeal.

The court concluded that hybrid causes of action for establishing the

(Continued from page 20)
statute of limitations period apply to the Commission, that Capo's charge was a hybrid cause of action against DCF and AFSCME Council 79, which represented Capo throughout the arbitration procedure; that the six-month limitations period began to run when the arbitrator dismissed Capo's grievance; and that, therefore, the unfair labor practice charge was timely filed.

The court reversed the partial summary dismissal of Capo's unfair labor practice charge and remanded for further proceedings.

Capo v. Florida Public Employees Council 79, AFSCME, 37 Fla. L. Weekly D521, 2012 WL 635929 (Fla. 4th DCA 2012), *rev'g* 36 FPER ¶ 486 (2010), *aff'g* 36 FPER ¶ 386 (G.C. Summary Dismissal 2010). Mandate has issued.

The Commission Interprets Section 447.4095, Florida Statutes "Financial Urgency"

By Hearing Officer William D. Salmon

Section 447.4095, Florida Statutes (2011), states:

In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission. The parties shall then proceed pursuant to the provisions of s. 447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

In *Walter E. Headley, Jr., Miami Lodge #20, Fraternal Order of Police Inc. (FOP) v. City of Miami,* Case No. CA-2010-119 (Fla. PERC March 27, 2012), the FOP alleged that the City violated Section 447.501(1)(a) and (c), Florida Statutes, by: (1) improperly invoking Section 447.4095, Florida Statutes (2011), because a financial urgency did not exist; (2) failing to follow the procedures in the financial urgency statute by unilaterally changing the terms and conditions of employment of bargaining unit employees before completing the impasse resolution procedure set forth in Section 447.403, Florida Statutes (2011), Resolution of Impasses; (3) improperly applying the financial urgency statute to the status quo period; and (4) engaging in bad faith or surface bargaining because it never intended to reach an agreement with the FOP during bargaining for a successor agreement.

Following an evidentiary hearing, the Commission-appointed hearing officer found that the City was experiencing financial urgency and concluded that the City did not violate Section 447.501(1)(a) and (c), Florida Statutes. The FOP filed exceptions to the recommended order; the City filed a response to the exceptions.

Prior to resolving the FOP's exceptions, the Commission majority described the purpose of Section 447.4095, Florida Statutes. The Commission stated that Section 447.4095, Florida Statutes, is a legislative exception to its body of law concerning unilateral change, i.e., an employer is prohibited from unilaterally changing a wage, hour, or term and condition of employment. The other three exceptions are: waiver, exigent circumstances requiring immediate action, or legislative resolution of an impasse pursuant to Section 447.403, Florida Statutes.

The FOP alleged that the City improperly invoked the financial urgency statute because a financial urgency did not exist. To determine whether Section 447.4095, Florida Statutes, was invoked improperly required a finding of whether the City was experiencing a financial urgency. The Commission's first step was to define "financial urgency." After considering the parties' and the hearing officers' proposed definitions as well as the

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FLORIDA

(FINANCIAL URGENCY—Continued from page 21)
dictionary definitions of the words "financial" and "urgency," the Commission defined financial urgency as a financial condition demanding prompt and decisive action which requires the modification of an agreement; however, it is not necessarily a financial emergency or bankruptcy. After defining financial urgency, the Commission agreed with the hearing officer that a determination of financial urgency requires a close examination of the employer's complete financial picture on a case-by-case basis.

The Commission's next step was to develop a standard to determine when an agreement could be modified. The FOP sought to apply the test applied by the Florida Supreme Court in *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993): a governmental employer may not modify an agreement unless the employer first demonstrates that there exists "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part." According to the FOP, financial urgency was improperly invoked because the City could raise taxes and increase revenue from other sources.

The hearing officer rejected the FOP's proposed standard. He noted that in *Manatee Education Association, FEA, AFT (Local 3821), AFL-CIO v. School Board of Manatee County*, 62 So. 3d 1176 (Fla. 1st DCA 2011), *aff'g in part and rev'g in part*, 35 FPER ¶ 46 (2009), the court specifically rejected the union's request to hold that the *Chiles* decision provided the test for financial urgency within the meaning of Section 447.4095, Florida Statutes.

However, the hearing officer agreed with the FOP that the City had to demonstrate a compelling interest in reopening its contract and altering provisions which related to the employees' wages and pension benefits.

As part of the compelling interest, the hearing officer found that the City did not raise taxes because it believed City residents could not afford additional taxes or fees.

At the time it declared financial urgency, the City's overall unemployment rate was approximately 13% and in some areas the rate was 25% to 30%.

After considering the competing standards, the Commission developed the following standard stating, in pertinent part:

Resolving a financial urgency case requires a finding that the financial condition of the employer constituted a compelling governmental interest, which required immediate modification of the parties' agreement. When invoking Section 447.4095, Florida Statutes, the employer is held to the standard of good faith as defined in Section 447.203(17), Florida Statutes. Good faith is a matter of intent; it is a state of mind which is usually determined by inference from a party's conduct. *See, e.g., City of Hialeah v. Hialeah Association of Fire Fighters Local 1102 of the International Association of Fire Fighters of Hialeah, Florida*, 38 FPER ¶ 111 (2011).

The Commission continued by stating that, in charging an employer with a violation of Section 447.501(1)(a) and (c), Florida Statutes, for declaring a financial urgency, evidence must be provided that the financial assessment at the time financial urgency was declared was incorrect and/or that the employer was not acting in good faith when it declared financial urgency.

A successful unfair labor practice charge could result in a finding of an unlawful unilateral change or a failure or refusal to bargain in good faith with appropriate penalties, such as a requirement that the employer return to the status quo as it existed prior to the unlawful declaration of financial urgency, the posting of a cease and desist order (Notice to Employees), and an award of attorney's fees and costs.

The Commission reasoned that this standard implemented the legislative policy enacted in Section

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447.4095, Florida Statutes, and protected the parties' respective constitutional rights.

The Commission's next step was to determine if a financial urgency existed in the case at hand. The hearing officer found that the City's personnel costs consumed more than 80% of its operating budget.

To effectuate a city-wide reduction in expenses, pursuant to Section 447.4095, Florida Statutes, the City implemented modifications to employee wages, health care, and pension benefits for FY 2010-2011.

Had the City failed to act, its personnel costs would have exceeded all revenues by consuming a staggering 101% of the City's budget. In that instance, the City would have been in the untenable situation of being unable to pay for essential governmental purchases, such as improvements, electricity, and fuel for City vehicles.

The City would not have been able to operate or maintain its buildings, and its pension costs would have depleted approximately 25% of the City's budget.

The City also considered additional layoffs in lieu of reductions in pension and personnel costs; however, this would have necessitated the layoff of 1,300 employees or one-third of the City's workforce.

These layoffs would have depleted hundreds of police and fire positions, impacted essential services to the citizens, and potentially endangered the health and safety of City residents.

The Commission agreed with the hearing officer that the City demonstrated a compelling governmental interest requiring immediate modifications to employee benefits for the next fiscal year: a financial urgency existed.

In its next allegation, the FOP alleged that if financial urgency exists, the public employer and the bargaining agent must negotiate how the urgency would impact the agreement.

The FOP further argued that if no agreement was reached, the statutory impasse process set forth in Section 447.403, Florida Statutes, must be utilized prior to modifying the agreement. The hearing officer rejected this statutory interpretation.

Because of the statute's specific references to "impact" and "negotiate," the hearing officer applied the impact bargaining procedure used by the Commission in circumstances when a public employer seeks to impose a management right.

The Commission's impact bargaining procedure is that a public employer need only provide notice and a reasonable opportunity to bargain before implementing its decision concerning a management right, but it is not required to submit an impasse in negotiations to the statutory resolution process prior to implementation.

The Commission stated that the employer's announcement of financial urgency provided notice to an employee organization of impending modifications to the parties' agreement.

The fourteen day period reserved for negotiations provided a reasonable opportunity to bargain over the impact of those modifications. The employer's implementation of the changes provided the prompt and decisive action necessitated by financial urgency.

Any impasse in negotiations occurring after implementation would be resolved by the legislative impasse resolution procedure contained in Section 447.403, Florida Statutes.

Next, the FOP alleged that the City improperly applied the financial urgency statute to the status quo period. The status quo period refers to the hiatus period that occurs between collective bargaining agreements. That is, if the agreement expires and another has not been executed, the terms of the first contract survive the contract's expiration.

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FLORIDA

(Continued from page 23)

The FOP argued that Section 447.4095, Florida Statutes, may be invoked, by definition, only for the purpose of modifying the terms of a collective bargaining agreement, and is inapplicable to alter the status quo after a contract's expiration. It contended that the City improperly invoked Section 447.4095, Florida Statutes, to modify terms and conditions of employment for FY 2010-2011 because no agreement existed covering that period.

The hearing officer found that the FOP and the City were signatories to a three-year collective bargaining agreement. Negotiations for a successor agreement began on April 12, 2010, when the FOP presented its initial proposal to the City. On July 28, 2010, after five bargaining sessions, the City declared financial urgency.

On September 30, 2010, the day the contract expired, the City's modifications to the agreement became effective, and on October 1, 2010, the parties' status quo period began. Based on the hearing officer's findings of fact, the Commission determined that the declaration of financial urgency did not occur during the status quo period.

The FOP alleged that the City engaged in bad faith or surface bargaining because it never intended to reach an agreement with the FOP during bargaining for a successor agreement. In support of this allegation, the FOP contended that the City failed to inform it that it would invoke Section 447.4095, Florida Statutes. Moreover, after the City declared financial urgency, it did not change its bargaining proposals and it was not until shortly before the City Commission vote that the City Manager visited the FOP's president and chief negotiator at his home and presented to him, as a fait accompli, the modifications that the City Commission intended to impose including changes to pension benefits and wages that had never been presented at the bargaining table.

The hearing officer was not persuaded by this contention. According to the hearing officer, there is no requirement in Section 447.4095, Florida Statutes, that labor organizations receive prior notice that the employer intends to invoke the provision. The provision states that, "In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible." The FOP received written notice of the City's declaration of a financial urgency on July 28, 2010, and the parties met twice within the statutorily prescribed fourteen-day period. Furthermore, the City was not required to change its bargaining proposals after invoking Section 447.4095, Florida Statutes. The Commission agreed with the hearing officer's conclusion that the FOP failed to prove by a preponderance of the evidence that the City engaged in bad faith or surface bargaining in violation of Section 447.501(1)(a) and (c), Florida Statutes.

Commissioner John Delgado concurred in part and dissented in part with the majority. He agreed with the majority that any interpretation of Section 447.4095, Florida Statutes, must begin with the definition of financial urgency, but he disagreed, in part, with the majority's definition of financial urgency.

Rather, he defined financial urgency as a financial condition that: (1) calls for immediate attention; (2) requires a close examination of the employer's complete financial picture on a case-by-case basis; (3) requires the modification of an agreement after a proceeding pursuant to the provisions of Section 447.403, Florida Statutes; and (4) is neither a financial emergency as described in Section 218.503, Florida Statutes, nor bankruptcy, as provided through Section 218.01, Florida Statutes.

He agreed with the majority that the hearing officer's facts demonstrated that the City's financial condition called for immediate attention. However, he disagreed that the City's financial conditions was such that it required modification of the existing collective bargaining agreement.

According to Commissioner Delgado, the City could implement a red-light camera program, change the pension funding method from "aggregate" to "entry age normal," freeze the cost of living adjustment, and raise the millage rate from 7.6 mils to the maximum allowable rate of 10 mils. Applying the Supreme Court's standard in *Chiles*, Commissioner Delgado concluded that the City had funds available from these other reasonable alternative sources and, therefore, improperly invoked Section 447.4095, Florida Statutes, and violated Section 447.501(1)(a) and (c), Florida Statutes.

Commissioner Delgado also disagreed with the majority that the hearing officer had properly applied Section 447.4095, Florida Statutes. In his opinion, the correct application requires that, after impasse is declared, the parties

(Continued on page 25)

Canada Industrial Relations Board (CIRB) *continued*

*(SPRAGG—**Continued from page 6)***
nine home entertainment specialists (the HES technicians) working for Rogers Cable Communications Inc. (the employer). The complainants alleged that the union had acted in an arbitrary and bad faith manner by failing to bargain on behalf of the HES technicians and by agreeing to remove all reference to them in the new collective agreement.

The union did not pursue any demands on behalf of the HES technicians during the round of collective bargaining that took place following certification. Consequently, the collective agreement that was negotiated did not contain any of the references to the HES technicians that had been contained in the previous collective agreement.

The Board found that the union made a conscious decision during bargaining that, despite its certification order, it did not wish to represent the HES technicians. Rather than taking steps to remove itself as the exclusive bargaining agent for these employees, it simply abandoned them.

The Board found that, not only did the union fail to advance the interests of the HES technicians during bargaining, it actively participated in depriving them of the few rights that they did have under the previous collective agreement.

The Board found no evidence that the union endeavored to maintain the existing terms and conditions of employment for the HES technicians, let alone to improve them. On the contrary, the union ensured that all mention of the HES technicians was removed from the collective agreement, with no reasonable explanation.

The Board found no evidence that the union's decision was taken in bad faith, but concluded that it was arbitrary and discriminatory, and therefore breached the duty of fair representation that the union owed the HES technicians, in violation of section 37 of the *Canada Labour Code*.

As remedy for the union's violation of the *Code*, the Board directed the union to meet with the employer for the purpose of negotiating appropriate amendments to the collective agreement to include the HES technicians.

New Responsibilities for the CIRB

The federal government's 2012 *Budget Implementation Act* contains amendments to the *Status of the Artist Act* that will, once proclaimed in force, make the Canada Industrial Relations Board the tribunal responsible for administering Part II of that Act.

As a result, the CIRB will take on all the duties and responsibilities formerly performed by the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT).

The *Status of the Artist Act* establishes a framework for the conduct of professional relations between independent professional artists and producers within the federal jurisdiction.

The Act guarantees the right of artists to join associations that can represent their professional interests and the right to bargain collectively with producers for the purpose of reaching agreement on the minimum terms and conditions under which an artist will provide services to those producers.

The Act also permits producers to form associations for the purposes of bargaining and entering into scale agreements. Although scale agreements set the minimum terms and conditions applicable in a particular artistic sector, artists are still free to negotiate individual contracts that provide more favourable rights and benefits.

Officials of the CIRB and CAPPRT have begun the work necessary to ensure a seamless transition for the communities they serve.

(FLORIDA—FINANCIAL URGENCY—Continued from page 24)
proceed pursuant to Section 447.403, Florida Statutes, through the special magistrate procedure and a hearing before the City's legislative body before contract modifications may be imposed. Thus, he concluded that the procedure utilized by the City violated Section 447.501(1)(a) and (c), Florida Statutes. Commissioner Delgado agreed with the majority that neither party was entitled to an award of attorney's fees and costs.

Comings & Goings

Appointments

Canada Industrial Relations Board (CIRB)

New Member of the Board

The Governor-in-Council recently appointed **Robert Monette** as a full-time member of the Board, serving as an employer representative.

Mr. Monette has specialized in labour law matters since 1972 and over the course of his career, has represented many key Canadian employers.

He retired from full-time law practice in 2009, and until his appointment, remained actively involved in federal labour matters as a senior counsel with Norton Rose LLP.

New Regional Director of Ontario Region

Natalie Zawadowsky was appointed Regional Director of the Ontario Region on December 29, 2011. Natalie had worked as an Industrial Relations Officer with the CIRB since 2009.

Prior to joining the Board, she worked with the Federal Mediation and Conciliation Service, the Ontario Human Rights Commission and with Lang Michener LLP in Toronto.

She holds a Bachelor of Arts degree (Psychology) from Queen's University and a Bachelor of Laws degree from the University of Toronto.

The Board congratulates Natalie on her appointment and is confident that she will ensure the highest quality of services to the client community.

Resignation

After two and one-half years as an employer-side representative member, **David Olsen** has resigned from the Board in order to accept a position as Vice-chair of the Public Service Labour Relations Board. Our loss is the PSLRB's gain, and we wish Mr. Olsen every success in his new position.

Public Service Labour Relations Board (PSLRB)

Margaret Shannon was appointed as a full-time Board Member for a period of five years. Ms. Shannon has extensive experience in the fields of labour relations, both within Canada and internationally, as well as employment law and human resources.

She was Special Advisor, Strategic Business Integration at the Canada Revenue Agency and previously Director of Collective Bargaining, Interpretation and Recourse at the Agency.

Her appointment was effective as of April 16, 2012

Michael F. McNamara was appointed as a full-time Board Member for a period of five years. He has extensive experience in negotiating collective agreements in the federal public service, as well as under several other federal statutes.

Mr. McNamara comes from the Public Service Alliance of Canada, where he spent more than two decades negotiating collective agreements.

His appointment was effective as of June 1, 2012.

Awards

Federal Mediation and Conciliation Service (FMCS)

DMS Jack Sweeney Honored for Milestone Year of Federal Service

Director of Mediation Services **Jack Sweeney** was honored with an award in recognition of his completing 30 years of federal service. Director George Cohen presented Jack with the framed award at a National Office meeting on April 3, 2012.

DMS Jack Sweeney (left) receives his service plaque from FMCS Director George Cohen.

Jack has held a number of positions during his federal career, including serving more than two years in the U.S. Army before working as a mediator in New York in 1984. In 1996, Jack was appointed Director of Mediation Services by former FMCS Director John C. Wells.

When asked to reflect on his long career as a mediator, Jack fondly remarked, "I've enjoyed each year at FMCS." Jack said he has no immediate plans to slow down either. "Over the years I've seen a lot of changes. Today's climate has brought about some of the toughest times I've seen while doing this job. I think I'll keep on going."

FMCS congratulates Jack on reaching this service milestone and wishes him well as he continues with the important work of the Agency.

Arnie Powers


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The ALRA community was deeply saddened by the sudden death of our dear friend, Arnie Powers, of heart failure, on March 17, 2012 at the age of 65.

Born in Winnipeg, Manitoba in 1946, Arnie retired as Ontario Regional Director with Federal Mediation and Conciliation Service of Canada (FMCS) in 2009 after an illustrious career that saw him sit on both sides of the collective bargaining table, as well as in the mediator seat.

He began his career as an aircraft mechanic at Air Canada, where he became active in the International Association of Machinists and Aerospace Workers.

His thirst for knowledge led him to pursue a Bachelor of Commerce degree at Sir George University while working full time and raising two young children with his wife, Rose.

In 1978 Arnie graduated *summa cum laude* and went to work in the Finance Department of Air Canada until, as he often said, they realized he couldn't count and ran him out; he transferred to Labour Relations.

Arnie loved Labour Relations and he excelled at it, first as a negotiator for Air Canada and then as a mediator and regional director for FMCS.

Arnie's unique combination of intelligence, integrity, compassion and unfailing humour made him very effective and much-loved by management and union representatives alike.

His colleagues frequently sought his advice on files and he was a generous mentor to many other mediators. He was instrumental in the creation of an internship program at FMCS for new mediators.

In 2011, Arnie was awarded the W.P. Kelly Award for Lifetime Achievement as a Labour Mediator in Canada.

Arnie was an active and enthusiastic supporter of ALRA for many years and worked as an organizer and speaker at many conferences. He was also a key member of the ALRA Neutrality Committee which produced the highly respected Neutrality Report to guide ALRA agencies through the murky waters of neutrality.

He will be best remembered by many of us, however, as a really fun guy. Arnie could usually be found in the hospitality suite at the end of the day, where he would have everyone in stitches with his tales from the trenches of a long labour relations career. He was very much the life of the party.


(1946—2012)

Arnie is sorely missed by those of us who were privileged to know him and work alongside him, and by his loving family: Rose, his devoted wife of 41 years, daughters Lisa and Jodi and their husbands and children and his mother, Lita.

Robert Cook

Former General Counsel
Canada Industrial Relations Board, 2004—2008


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(1950—2012)

Dear friends and family

Rob made his final journey on July 5, 21012, surrounded by his family at home as he wished.

He had no regrets and was happy remembering people and events which brought smile to his face.

During his illness Rob was always very touched by the letters, anecdotes and good wishes send to him. It often brought tears to his eyes to read that he meant so much to others.

Time left was a gift to him and to us. We are grateful that all was said and done. Thank you again for your love, support and appreciation of Rob.

— Ginette, Martin, Melanie Giroux-Cook

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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.

Photos courtesy of Tourisme Montréal

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