

ALRA **Advisor**

www.alra.org

January 2013

A large, high-quality portrait of Scot Beckenbaugh, an older man with short, light-colored hair, smiling warmly. He is wearing a dark blue suit jacket over a light blue and white plaid shirt and a light pink tie. His hands are clasped together on a dark wooden table in front of him. The background is dark and out of focus.

ALRA's *Hockey Hero Makes Super Save*

NHL LOCKOUT OVER!

FMCS-US mediator Scot Beckenbaugh stick-handles tough case and SAVES the season. *Page 5*

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

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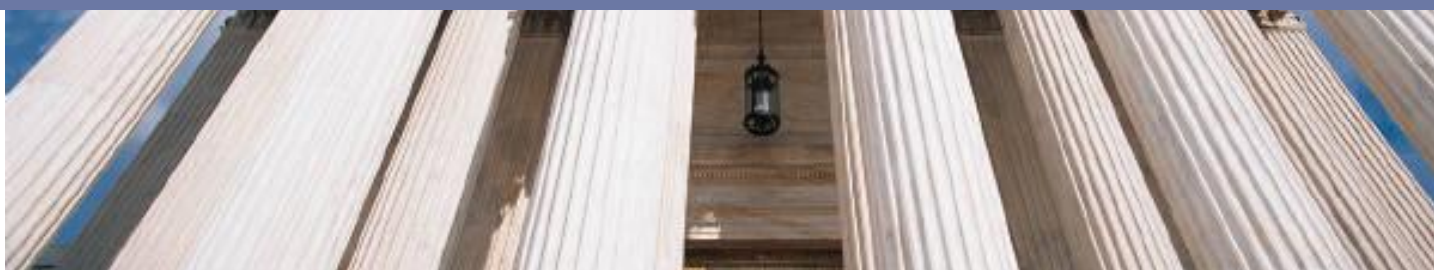
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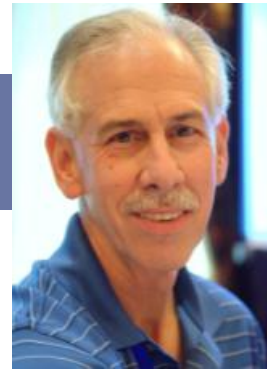
62nd Annual Conference — Washington, D.C.

July 20-24, 2013



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From the President...



Robert Hackel

Autumn is always a busy time for ALRA's officers, Executive Board and Committees. New committees were formed and Chairs/Co-Chairs appointed. I also convened a special Strategic Planning Group comprised of the Executive Board, select past presidents and an expert ALRA conference planner named Jacques Lessard.

The Strategic Planning Group met October 26 and the ALRA Executive Board and committees convened October 27. Both met at the Mayflower Renaissance Hotel in Washington, DC, site of the 2013 annual conference.

2012 Annual Conference – Montreal

So, let's look back at the 2012 annual conference as a foundation for planning and building ALRA's future.

Montreal was an exceptional conference made possible by many contributors, but none bigger than the aforementioned Monsieur Lessard.



Jacques Lessard

More than a year before the conference was held, Jacques negotiated a clause in the hotel contract to protect ALRA's financial and neutrality interests. Less than a week before commencement of the July 2012 conference, he invoked that clause due to a hotel labor dispute and moved the conference to the Intercontinental Hotel – a wonderful venue.

Les Canadiens' Ken Dryden or Patrick Roy never made a more miraculous and critical "save" in Montreal than Jacques Lessard! At least as far as ALRA is concerned. Add to the aforementioned accolades, his securing

sponsors greatly enhanced everyone's conference experience while aiding ALRA's financial well being.

Thanks for everything, Jacques, including serving in the same capacity for the 2001 annual conference also held in Montreal. Jacques plans to retire from FMCS-Canada in early 2013.

His achievements combined with the leadership of President Sheri King, the Executive Board and critical conference committees' co-chairs were the perfect formula for such a successful conference. Kudos to all for their effort and dedication to ALRA.

Special recognition is due the following committee co-chairs and the respective committee members:

Arrangements

- Jacques Lessard, FMCS-Canada
- Daniel Cholette, Quebec Ministry of Labour

Professional Development

- Ginette Brazeau, Canadian Industrial Relations Board
- Tim Noonan, Vermont Labor Relations Board

Program

- Reg Pearson, Ontario Ministry of Labour
- Beth Schindler, FMCS-US

The Arrangements Committee was duly assisted with the hard work of Rejean Bercier and Ashley Shue of FMCS-Canada and Linda Lusignan, Canadian Industrial Relations Board.

The conference theme of "Navigating the Changing Context of Labour Relations as Neutrals" included excellent program and professional development presentations that addressed current labor relations issues.

The half-day Advocates' Day program was highlighted with two

prominent speakers, Derek Burney and Lisa Raitt. Mr. Burney was the Chief of Staff to former Canada Prime Minister Brian Mulroney and served as Ambassador to the United States and Korea. He was a principal in drafting NAFTA during his tenure in the Mulroney administration. Ms. Raitt is the current Minister of Labour of Canada.

62nd ALRA Conference July 20 – 24, 2013

The 62nd annual conference will be held in Washington, D.C. from July 20-24 at the prestigious Mayflower Renaissance Hotel.

Advocates' Day is scheduled for Tuesday, July 23 to accommodate the traditional long-weekend summer vacation schedules in Washington, D.C.

This stately hotel is located within walking distance of numerous attractions and shopping with a Metro station adjacent to the hotel that provides access to most locations in the City and metropolitan Maryland and Virginia.

The 2012-13 committees are diligently working on preparations for the annual conference. The co-chairs are:

Arrangements

- Gilles Grenier, Public Service Labour Relations Board
- Mary Johnson, National Mediation Board



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(Continued on page 4)

From the President ... *(continued)*

Professional Development

- Ginette Brazeau, Canada Industrial Relations Board
- Tim Noonan, Vermont Labor Relations Board

Program

- Scott Blake, FMCS-US
- Jennifer Webster, FMCS-Canada

Strategic Planning Meeting – October 27, 2012

I convened a special strategic planning meeting immediately prior to and in conjunction with the Fall 2012 Executive Board meeting to address the following ALRA organizational objectives:

- Assess of ALRA's position in the current environment in which member agencies function.
- Promote exchange of critical ideas essential to the continued success of the organization.

- Develop and/or modify policies and practices for the long term financial stability of ALRA.

The most critical recommendation of the meeting is to institute a policy establishing a three (3) day annual conference. The Executive Board at its meeting on October 27, officially adopted this recommendation beginning with the 2014 annual conference. The Board previously established a three day pilot for the 2012 conference in Montreal.

The objectives I will strive to achieve during my term as ALRA President include:

- Ensure the long-term fiscal stability of ALRA
- Enhance electronic and in-person networking and information flow amongst member agencies

- Increase number of member agency contributing authors to *ALRA Advisor*
- Control annual conference costs to ALRA, member agencies and delegates by enhancing partnerships/ sponsorships without compromising neutrality
- Maintain ALRA's integrity and neutrality during these extenuating labor relations and economic times

So, honor the hard work of the Executive Board and committees by making your plans early to attend an extraordinary 2013 annual conference in Washington, D.C.

—*Robert Hackel*

2012-13 ALRA Executive & Board Members



Back L-R: Kevin Flanigan, Gilles Grenier, Pat Sims, Kirsten Watson, Diane Chartrand; Scot Beckenbaugh
Front L-R: Abby Simms, Danielle Carne, Robert A. Hackel (President), Ginette Brazeau, Sheri King



NHL Lockout Finally Over !

“For all of us who've toiled in anonymity on this stuff, it's always nice to see one of our kindred souls get some recognition.” — Dan Nielsen (January 7, 2013)

Excerpt from Sports Illustrated on Scot Beckenbaugh's work on the NHL Lockout.

“Reaching this deal was due to a few factors.

First, was the work of Federal Mediator **Scot Beckenbaugh**. He rejoined the talks last Monday and, even following the most contentious moments, was able to get the sides to find the commonality that was so elusive during the course of these negotiations. Even this past week, when things might have derailed, Beckenbaugh worked diligently to get things back on track.

After making progress earlier in the week, relations between the sides grew very testy when the players suspected the league purposely altered the agreement document to remove penalties levied against the clubs for misreporting revenue.

As a result, the sides did not meet face to face on Thursday but Beckenbaugh shuttled between the league's offices and the hotel in Manhattan where the NHLPA had encamped and was able to get discussions moving again.

He brought the sides together on Friday afternoon to begin the final slog to the finish line. While the players always were in favor of it, the owners had resisted bringing in mediation earlier in the process, and even when Beckenbaugh first joined the talks in December, the league was not especially optimistic what he offered would be helpful. They became more supportive recently, however, and his participation—as Bettman noted in the video—was essential.” ■



Ctl+Click above image for link to video.

Heated disputes keep FMCS Mediators busy during a hot summer —by John Arnold

Mediators from the U.S. Federal Mediation and Conciliation Service were in the thick of intense bargaining that led to high-profile settlements in a number of national labor disputes grabbing summer headlines.

Lockheed Martin-IAM

As the summer began, members of International Association of Machinists District 776 ended a nine-week strike by 3,600 workers on June 28 after several days of hard bargaining when they ratified a new four-year agreement with Lockheed Martin Corp., reached with the assistance of FMCS mediators.

The 3,600 affected IAM members were employed at three Lockheed Martin locations: the defense contractor's plant

in Fort Worth, Texas, at Edwards Air Force Base, Calif., and at the Naval Air Station Patuxent River, Md.

The work stoppage reduced Lockheed Martin's production of F-35 and F-16 fighter jets from previous levels, according to news reports, although the production facility remained open with temporary workers, salaried employees and supervisors.

With word that a settlement had been reached in the dispute, Lockheed

Martin issued a company news release that praised the assistance provided by FMCS Deputy Director Scot Beckenbaugh and Commissioner Clint Hart. “We are pleased to report our discussions with the union have been productive and we reached a tentative agreement this evening to end the strike,” said Greg Karol, Lockheed Martin's Vice President of Labor Relations. “...We appreciate the assistance of the Federal Mediation and

(Continued on page 6)



FEDERAL MEDIATION and CONCILIATION SERVICE (FMCS)

(FMCS-US—Continued from page 5)

Conciliation Service in helping us work out many differences and progress to this point.”

Headquartered in Bethesda, Md., Lockheed Martin is a global security company that employs about 123,000 people worldwide and is principally engaged in the research, design, development, manufacture, integration and sustainment of advanced technology systems, products and services. The corporation's net sales for 2011 were \$46.5 billion, according to the company statement.

Consolidated Edison-Utility Workers of America Local 1-2

Similar appreciation for FMCS assistance came from Kevin Burke, Chairman and Chief Executive Officer of Consolidated Edison Company of New York, Inc., after FMCS mediators helped chart a path to a settlement July 26, ending a lockout for 8,000 Con Ed workers in the midst of a sweltering July heat wave in New York City.

In gratitude, Mr. Burke wrote to FMCS Director George H. Cohen to commend the efforts of Deputy Director Scot Beckenbaugh and Commissioners Peter Donatello and Ralph Quattrocchi for their assistance in the company's negotiations with The Utility Workers of America, Local 1-2. "We believe the efforts of your staff were instrumental in resolving many tough issues and for ultimately achieving an agreement," Mr. Burke stated.

The lockout had begun June 30, and as noted by Director Cohen, thanks to the outstanding efforts of the FMCS mediators, one of the most high-profile lockouts in U.S. labor relations history had been resolved without significant disruption to the New York City economy or daily life—as some had feared. In his message commending the mediators, Director Cohen stated, "This successful resolution is due in large measure to the herculean labors of our FMCS team, who worked tirelessly and with great skill through long days and nights with these

parties. Their efforts in this case are representative of our highest standards of perseverance and performance, and I commend them for a job very well done.”

Verizon-CWA-IBEW

As the summer progressed, yet another major labor dispute captured headlines in the major metropolitan areas of the northeastern U.S., and again reached a peaceful conclusion with assistance from the FMCS. As reported September 19 by the New York Times, unions representing 42,000 workers announced tentative agreements with Verizon Communications, Inc., ending 16 months of negotiations, which included a two-week strike in 2011.

The agreements covered workers from Maine to Virginia in Verizon's landlines division and resolved longstanding differences between Verizon and the Communications Workers of America and the International Brotherhood of Electrical Workers.

Verizon issued a statement supporting the new union contracts and crediting FMCS mediators for their help. "We believe this is a fair and balanced agreement that is good for our employees as well as for the future of the wireline business," said Marc Reed, Verizon's chief administrative officer. "... The agreement was achieved through lengthy negotiations and mediation conducted under the auspices of the Federal Mediation and Conciliation Service (FMCS).

Likewise, the Communications Workers of America (CWA) also credited the FMCS for assistance in helping to bring about the agreement. "Over the

past several weeks, union and management negotiators met with Federal Mediation and Conciliation Service Director George Cohen in efforts to reach a fair settlement. CWA and IBEW appreciate the work of Director Cohen in helping to bring about a resolution after 16 months of negotiations," the CWA stated.

In his own statement, FMCS Director Cohen commended the parties for their hard work and credited the institution of collective bargaining as the keys to the resolution of a difficult negotiation. "This

successful outcome is yet another example of the fact that the process of collective bargaining—a cornerstone of our industrial democracy system—provides the parties the best opportunity to accommodate their strongly held competing positions.”

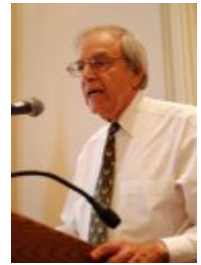
The Director continued, "It was an honor and privilege for myself,

Deputy Director Scot Beckenbaugh and Director of Mediation Services John Pinto to have assisted the Communications Workers of America and the International Brotherhood of Electrical Workers, two highly respected unions..., and Verizon Communications Inc., one of the nation's leading corporations, in this noteworthy endeavor.”

Both the CWA and IBEW later ratified the new contracts.

NFL-NFLRA

As the summer ended, FMCS mediators were again at the center of



George Cohen



Scot Beckenbaugh

(Continued on page 7)



—Mary Johnson

The FAA Modernization and Reform Act of 2012—Revisions to the Railway Labor Act

On February 14, 2012, President Obama signed a new law, the FAA Modernization and Reform Act of 2012, to authorize long-term funding for the Federal Aviation Administration. The new law provides for several revisions to Title I of the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, altering, the NMB's rulemaking and oversight of representation elections in the rail and air industries, including changes to the NMB's rules regarding showing of interest threshold and run-off elections.

NMB sought comment on revisions to Rules relating to run-off elections, showing of interest

On May 15, 2012, the NMB published a notice of proposed rulemaking (NPRM) in the Federal Register and on the NMB website to amend existing rules for handling representation disputes to incorporate statutory language added to or amending the Railway Labor Act (RLA) by the Federal Aviation Administration Modernization and Reform Act of 2012.

The NPRM proposes changes to the existing regulations pertaining to run-off elections, showing of interest for representation elections, and the NMB's rulemaking proceedings. The Board held an open public hearing during the comment period on June 19, 2012.

NMB Initiated Electronic Filing for FOIA Requests

In order to provide superior service, the National Mediation Board (NMB) began accepting Freedom of Information Act (FOIA) requests electronically, effective September 4, 2012.

NMB Co-Hosts 2012 Passenger Railroad Conference on Labor Relations

In November 2012 the NMB sponsored a Passenger Railroad Conference on Labor Relations. The two day conference was held in Washington, D.C. Featured Speakers were Joseph Boardman, President and CEO of Amtrak and Richard Trumka, President of the AFL-CIO. ■

(FMCS — Continued from page 6)

yet another high-profile dispute, this time between the National Football League and the NFL referees. The Associated Press reported the successful outcome of negotiations in ending a two-month lockout in the early morning of September 27.

As reported by the AP, the agreement was reached after two days of marathon negotiations with the help of two FMCS mediators.

In its statement on the settlement, the NFL credited the work of the FMCS: "The agreement, the longest with the game officials in NFL history, was reached in New York between the negotiating teams for the NFL and the NFLRA with the assistance of Scot Beckenbaugh and Peter Donatello of the Federal Mediation and Conciliation Service."

FMCS Director Cohen added his own words of praise for the dedicated efforts of FMCS mediators in commending the parties for their

own hard work: "With the announcement of an agreement between the NFL and the NFL Referees Association, I wish to congratulate both parties on behalf of the Federal Mediation and Conciliation Service for resolving their differences and for their commitment to and trust in the process of collective bargaining," he said in a written statement to the news media.

"I also wish to commend the extraordinary efforts of FMCS Deputy Director Scot L. Beckenbaugh and FMCS Commissioner Peter Donatello for their vital part in assisting the NFL and NFLRA in achieving this result," he concluded.

Looking back, Deputy Director Beckenbaugh reflected on his travels from dispute to dispute: "It was a heck of a summer," he said. ■





Credit: Unknown

Federal Labor Relations Authority celebrates 35th year

2013 marks the 35th anniversary of the Federal Labor Relations Authority's creation. On this occasion, the FLRA can reflect on many recent accomplishments based on an energetic three-and-a-half year period of revitalization, reinvention, and re-engagement.

Not long ago, however, the viability of the FLRA's mission was in serious doubt. As recently as 2009, for example, the Authority component had a backlog of about 450 cases. Similarly, within the office of the General Counsel (OGC), there was a backlog of 340 unfair labor practice complaints and over 800 appeals. Employee morale was at an all-time low. Illustrative of the employees' lack of job satisfaction is the 2009 Partnership for Public Service rankings which ranked the FLRA dead last (32nd of 32) among small agencies based on its 2008 employee survey scores for "Best Places to Work in the Federal Government."

In August 2009, with a new leadership team intact, the Agency's situation began to change dramatically. Fiscal Year 2010 was declared the "Year of the Employee" with an agency focus on human capital initiatives, such as training and development, performance management, and work-life balance.

In 2011, the FLRA was named the Most Improved Small Agency by the Partnership for Public Service. Building upon this success, in 2011, the FLRA received the #7 small agency ranking in the Best Places to Work in the Federal Government survey and was identified as an "agency on the rise." Most notable were the rankings for certain "Best in Class" categories- taking 2nd, 3rd, and 4th place in teamwork, effective leadership, and employee skills/mission-match, respectively.

In 2012, the FLRA again placed in the top 10 overall, receiving a #3 ranking in the specific categories of teamwork and effective leadership.

The FLRA's accomplishments in this regard are in large part the result of the agency's focus on mission performance and the recognition that one of the most important ways in which the FLRA can support the Federal sector's Labor-Management community is through sound, timely decision-making.

Reflecting a commitment to a strong and effective enforcement of the Federal Service Labor-Management Relations Statute, the General Counsel eliminated the backlog of over 340 unfair labor practice cases and 800 appeals by March 2010- within six months of taking office. The OGC has continued to maintain its

productivity increases since that time. In 2012, the OGC closed more than 4,300 unfair labor practice complaint cases and held trials in 36 cases. The OGC also closed nearly 300 representation cases and conducted more than 50 elections. Moreover, the OGC has also dramatically improved its performance on the timeliness of its case processing.

The Authority also eliminated its huge backlog of cases and has issued over 800 decisions since the beginning of FY 2009. This is more than the prior six years combined, and nearly three-and-a-half times the number of decisions issued in the prior four fiscal years. And, as of the end of September 2012, the Authority has completely eliminated its overage cases- those over 180 days old. Thus, the FLRA has gone from having 269 cases over 180 days old in 2009 to NONE. And, the average age of the FLRA's cases has been reduced by almost 85%- from close to 300 days old to about 50 days.

Yes, the FLRA is back in business. And, hopefully, the themes of revitalization, reinvention, and re-engagement will serve as the blueprint for the future for years to come. ■

FLRA Trains Tens of Thousands

One way the FLRA has re-engaged with the Federal sector's Labor-Management community, exercising its statutory responsibility to provide leadership in labor-management relations, is by delivering training. This includes traditional training, as well as outreach and facilitation sessions.

In the last three-and-a-half years, tens of thousands have received training in a variety of areas, including training on statutory rights and responsibilities and on alternative dispute resolution techniques such as interest-based bargaining, consensus decision-making, and facilitation.

The FLRA also partnered with the FMCS to provide training concerning both statutory rights and the fundamentals of establishing and maintaining effective Labor-Management Forums as required by the President's Executive Order 13522.

Another training area covers the FLRA's recent Arbitration Initiative. The FLRA handles appeals of arbitration cases in the Federal sector. The Arbitration initiative made changes in the FLRA's arbitration regulations and in how the Authority reviews such appeals.

Last October, moreover, the FLRA unveiled *Web-Based Comprehensive Arbitration Training*, which is the fifth web-based training module the FLRA has made available to the public, bringing all of its major training programs right to the desks of those the FLRA serves. Developed in cooperation with the Department of Veterans Affairs, this interactive, computer-based training is hosted on the web page of the Office of Personnel Management's Human Resources University at www.hru.gov. The public can also access the course on a

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Veterans' Affairs web page at www.vahracademy.com/flra.html.

Other web-based FLRA courses that are available include training on Executive Order 13522—Creating Labor-

Management Forums, Bargaining over 5 U.S.C. § 7106(b) Matters, Basic Statutory Training, and a Federal Service Impasses Panel Process and Procedures Training.

Additional web-based courses are in the works. ■

Historic First Agreement Reached after Largest Representation Election

On November 30, 2012, the Transportation Security Agency (TSA) and the American Federation of Government Employees, AFL-CIO signed an historic agreement covering approximately 44,000 Transportation Security Officers working in airports throughout the United States and its territories. This monumental collective-bargaining achievement occurred after a representation election conducted by the FLRA in 2010 - the largest representation election ever conducted in North America using internet, electronic, and telephonic voting (IETV).

After consulting with the National Mediation Board, an agency that has used IETV to conduct representation

elections for several years, the FLRA in 2010 became a pioneer in utilizing IETV in Federal sector representation elections. Between 2010 and 2012, the FLRA has conducted 24 elections using IETV.

Like the Canada Industrial Relations Board, which began using IETV procedures in 2009, the FLRA considers whether to use IETV on a case-by-case basis after evaluating several factors. The IETV process is a more timely and less expensive option than conducting a representation election by paper mail service or, in many circumstances, by in-person voting. IETV also makes participation in the election process

more accessible than in-person voting to employees who are widely dispersed.

The TSA election is a vivid example of how this process saves time and money, and achieves effective results. Over 17,000 ballots were cast in both the original and the runoff elections. The mere task of issuing, collecting, and counting paper ballots would have taken several FLRA agents days to accomplish had the IETV process not been used.

Since the TSA election, the FLRA has continued to use IETV with great success. ■

FLRA's Impasses Panel Continues Use of Med-Arb to Resolve Bargaining Disputes

When Federal agencies and unions representing Federal employees bargain in good faith but are unable to reach agreement, either party may seek the assistance of the FLRA's Federal Service Impasses Panel to resolve their impasse. Composed of a Chairman and six other Members who are appointed by the President based on familiarity with government operations and knowledge of labor-management relations, the Panel essentially administers a mandatory alternative dispute resolution process to break bargaining impasses in the Federal sector.

Pursuant to a unique statutory provision that is contained in the Federal Service Labor-Management Relations Statute (5 U.S.C. Sec. 7119), the Panel is given almost unlimited discretion to employ a variety of impasse resolution techniques. Under the Obama Administration, the Panel returned to use of mediation-arbitration as its preferred procedure to assist parties in resolution of impasses. This is consistent with the longstanding philosophy that voluntary settlements of Federal

sector bargaining impasses are in the best interest of the parties and the public.

Recent results are dramatic. Since November 2009, the Panel has used Med-Arb to resolve 115 impasses, resulting in 66 voluntary settlements. And even in the 49 impasses that required issuance of an arbitration award by a Panel Member, the disputes were usually narrowed to the most significant issues.

Two recent examples where the mediation process did not result in complete settlements of the parties' impasses and a Panel Member issued an arbitration award to resolve the disputes are, Department of the Air Force, Lackland Air Force Base, Lackland, TX and Local 1367, American Federation of Government Employees, AFL-CIO, Case No. 12 FSIP 57 (July 25, 2012) and Department of Homeland Security, Bureau of Customs & Border Protection, Washington, DC and National Treasury Employees Union, Case No. 12 FSIP 60 (August 5, 2012). ■

More FLRA coverage on page 10

FLRA Reaffirms Recent Adoption of Rigorous “Abrogation” Standard Limiting Management-Rights Disapprovals of Negotiated Contract Provisions

In late 2012, the FLRA rejected a Federal agency challenge to the FLRA’s recent adoption of “abrogation” as the standard for reviewing Federal agency heads’ disapprovals of negotiated contract provisions because of the provisions’ effects on management rights. *NTEU*, 66 FLRA 1030 (2012) (*NTEU II*). The FLRA adopted the abrogation standard for use in contract-review cases in *NTEU*, 65 FLRA 509 (2011) (*NTEU I*), *pet. for review dismissed sub nom. U.S. Dep’t of the Treasury, Bureau of the Pub. Debt, Wash., D.C. v. FLRA*, 670 F.3d 1315 (2012).

Under the abrogation standard, an agency head may not disapprove, on management-rights grounds, “arrangements” the parties have agreed to at the bargaining table for employees adversely affected by the agency’s exercise of its management

rights, unless the agreed-upon arrangement “abrogates, or waives, a management right.” *Id.* at 515. The abrogation standard that the FLRA adopted in *NTEU I* for use in contract-disapproval cases replaced the less rigorous “excessive interference” standard that the FLRA previously applied. To determine whether a contract provision “excessively interfered” with a management right, the FLRA balanced the provision’s benefits to employees against its burdens on management. *Id.* at 511.

In *NTEU II*, the FLRA concluded that the agency was merely attempting to relitigate matters resolved in *NTEU I*, and accordingly that the agency did not establish grounds for returning to the excessive-interference standard. *Id.* at 1031. ■

APPOINTMENT

On January 15, 2013, President Obama designated **Ernie DuBester** as Chairman of the FLRA.

Ernie has been serving as a Member of the FLRA since August 2009. His extensive experience in labor-management relations includes serving as Chairman and Member of the National Mediation Board (NMB) from 1993-2001 during the Clinton Administration.





— Mike Sellers

PERC Jurisdiction Increases

On July 1, 2011, the Washington PERC assumed jurisdiction of the marine employees of the Washington State Ferry System.

From 1983 to 2011, the Washington Marine Employees Commission regulated labor relations for marine employees and the state ferry system.

In 2011, the state legislature moved to consolidate this work under the Washington PERC. The Marine Employees Commission became the Marine Division of the PERC. The three gubernatorially appointed MEC

Commissioners hear appeals from decisions made by PERC examiners. Absent any further legislative action, the Marine Division will sunset on July 1, 2013, and PERC will assume complete jurisdiction over the marine work.

The Washington State Ferry System is the largest ferry system in the United States with approximately 1,800 employees and seven different unions representing those employees.

During this first year following the consolidation, the number of cases filed involving the marine employees

accounted for less than 10% of PERC's work. Regardless, PERC and the clientele have diligently worked to ensure a seamless integration while ensuring that the uniqueness of the work and the labor issues are continue to be accounted for.

Additionally, legislation passed during this past legislative session giving collective bargaining rights to post-doctoral employees at the University of Washington and Washington State University who were not already considered employees under our various statutes. ■

Decisions of Note

CITY OF VANCOUVER, DECISION 10621-B (PECB, 2012)

The Vancouver Police Guild filed an unfair labor practice complaint alleging that the police chief's decision to not select an officer for a position on the motorcycle unit was based upon the union animus of several members of the interview committee who made recommendations to the chief. While the chief himself did not display any union animus in his decision making, the Commission found that City engaged in discrimination because the decision to not select the officer was influenced or tainted by the union animus of the interview committee.

In reaching this decision, the Commission adopted the "cat's paw" doctrine set forth in *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011).

In that case, involving claims of discrimination under the *Uniformed Services Employment and Reemployment Rights Act*, the United States Supreme Court stated that a motivating factor of discrimination exists in an employment action even where the decision making official has no discriminatory animus, but

is influenced by an action that is the product of a subordinate's animus.

In that situation, the employer can escape liability if it can demonstrate that the decision maker independently reached the same conclusion free of discriminatory animus. Applying these same principles, the Commission concluded that the chief's decision was tainted and that the employer discriminated against the employee due to union activities.

[Case is currently on appeal to Washington Court of Appeals.]

WASHINGTON STATE FERRIES/ INLAND BOATMAN'S UNION, CASE 24905-A-12-1513

PERC staff member Lisa Hartrich issued an arbitration decision in the above case.

The parties entered into a memorandum of understanding (MOU) in 2011 where the parties agreed to request a review by the US Coast Guard of staffing levels for certain classes of vessels.

The MOU stated that it resolved the staffing level issues for the collective

bargaining agreement and that the Coast Guard's determination of staffing levels constitutes a safe level of staffing. The Coast Guard completed its review, and the state ferry system began implementing those staffing levels which resulted in the elimination of 27 full-time positions.

The union challenged the implementation on several fronts. The arbitrator concluded that the MOU was clear, stood on its own and delegated to the Coast Guard the authority to determine what constituted safe staffing levels. Accordingly, the employee did not violate the MOU when it implemented the new staffing levels.

As a postscript, following this decision there appeared to be an increase in the number of late or cancelled sailings due to staffing issues.

The local media began tracking the matter, and found that from June through October 2012, sixty sailings were late or cancelled due to staffing issues. The employer questioned whether the union was engaging in a work action or work slow down. The union denied that any such actions

(WASHINGTON—Continued on page 12)

Federal Mediation and Conciliation Service Canada (FMCS)

FMCS Canada presents New Collective Bargaining Workshop

— Sheri King



The Federal Mediation and Conciliation Service of Canada has recently added a new workshop to its menu of client services. Titled **Labour Relations and the Negotiation Cycle**, the new workshop is intended to give labour and management representatives from a variety of workplaces an opportunity to come together to hone their negotiation skills and to learn from other labour relations practitioners.

The genesis for the workshop was the idea that traditional approaches to labour relations and collective bargaining may not always be the best way to resolve today's complex workplace issues. As well, the generational change in leadership taking place in businesses and unions alike is



Labour Relations and the Negotiation Cycle—FMCS

both a training challenge and an opportunity for change.

This two day workshop, with an optional third day consisting of a full-day bargaining simulation, explores the negotiation process, both best practices and new approaches. Emphasis is placed on using the closed period of the collective agreement to lay the ground work for effective collective bargaining by

finding opportunities to work on issues and improve the union-employer relationship during the term.

The workshop is highly interactive; participants are put into new groups for activities several times in order to exploit the opportunity to exchange ideas and hear from peers in other

industries. The workshop is facilitated by experienced mediators.

This workshop represents a new delivery model for FMCS. Unlike the traditional workshops, delivered for a union-management pair at a single workplace, the new workshop is offered on an open registration basis. This provides an opportunity for client representatives to sample the wares before committing to a full-blown, customized workshop for their workplace.

The new workshop enables union and management practitioners from a variety of sectors and industries to share their experiences and learn from one another.

Client feedback on the new workshop has been overwhelmingly positive. ■



(WASHINGTON—Continued from page 11)

were occurring. The union contended that implementing staffing levels that contained only the minimum number of positions required in order to sail caused the increase in late or cancelled sailings because if one staff member was late or absent the ferry could not sail.

At the end of October, the Coast Guard revised its requirements and required the state ferry system to increase the number of crew members in order to improve safety. ■

Canadian Merchant Service Guild v. Teamsters, Local Union 847, 2012 FCA 210

In a unanimous decision, the Federal Court of Appeal (the “Court”) upheld the Board’s decision to give standing to a union that had an interest in ensuring that individuals who supported its unsuccessful displacement application would not be subject to reprisals from the incumbent union.

The Teamsters had brought an unfair labour practice complaint before the Board alleging that the Guild had breached the *Canada Labour Code* (“Code”) by laying by-law charges against three of its members for their active participation in the Teamsters, Local Union 847’s (the “Teamsters”) unsuccessful campaign to displace the Guild as the bargaining agent for the marine engineers and electricians employed by Upper Lakes Shipping Limited.

The Guild objected to the Teamsters’ standing to bring the complaint to the Board on the ground that it did not have the requisite authorization from the individual members to do so.

The Board dismissed this objection on the ground that it did not, as a matter

of course, require statements of authorization to be filed by a union representing individuals in a complaint. The Board granted the Teamsters’ application on behalf of the members finding that the members should be afforded the necessary protection from reprisals for exercising their rights to change unions.

The Board ordered that the penalties issued to the individual members be rescinded and any fines paid be refunded. However, the Board refused to certify the Teamsters as the bargaining agent and did not order another representation vote.

The Guild challenged the Board’s decision on three grounds: standing, timeliness and an error of law. The Court dismissed the timeliness and error of law arguments.

With regard to the remaining issue, the Court explained the concept of standing, which allows only those with a real and legitimate interest in a matter to initiate, obtain notice of or participate in a proceeding. Therefore, it is necessary to review the party’s interest and rights to determine whether such interests

could be prejudiced or affected by the proceeding.

In the present case, the Court found that the individuals should be represented by the union that they supported during the certification process. The union had a separate and distinct interest in ensuring that the individuals who assisted it in a legitimate certification campaign were not subject to reprisals by either their employer or a rival union since this may affect future certification proceedings initiated by that union in the future. Consequently, the Court upheld the Board’s decision that the Teamsters had standing to initiate the complaint.

The Court did not accept the Guild’s flood gate argument since the Board’s decision was limited to complaints made by an unsuccessful union concerning reprisals by a rival union following an otherwise legitimate certification campaign.

The Court dismissed the Guild’s application with costs. ■



The 61st annual ALRA conference was held in Montréal, Quebec from July 29 to 31, 2012. The conference was a huge success, despite having been moved to a new venue, the lovely Intercontinental Hotel, three days in advance, when a work stoppage began at the Hyatt Regency Montreal.

The conference was attended by 101 delegates, 46 from Canadian agencies, 54 from the United States, and one international guest, Freda Nolan of the Labour Relations Commission of Ireland. Sessions and events were all very well attended; the conference theme of Navigating the Changing Context of Labour Relations as Neutrals seemed to resonate with delegates in these challenging times.

A lively and well-attended Advocate's Day was held on Monday, July 30. There were a total of 73 advocates, with a good mix of employer and union representatives, legal counsel and neutrals. Highlights of the day included addresses by Derek Burney, former Canadian Ambassador to the United States and the Honourable Lisa Raitt, Minister of Labour, Government of Canada. An evening reception was held in the lovely Maison du Festival, headquarters of the renowned Montréal Jazz Festival, overlooking Place des Arts.

Congratulations to the organizers, particularly Jacques Lessard of FMCS Canada, on a terrific conference!

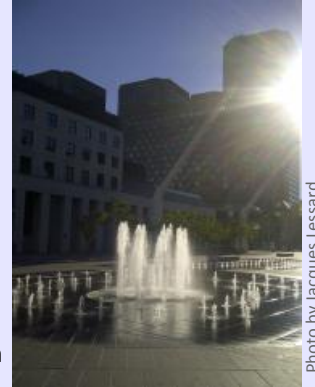


Photo by Jacques Lessard

Place des Arts

Concurrent Roundtable Discussions

July 29, 2012

Mediators

- **Gilles Grenier**, Director, Dispute Resolution Services, PSLRB
- **Beth Schindler**, Director, Mediation Services—Northwestern States, FMCS-US

Board and Commission Members

- **Elizabeth MacPherson**, Chair, Canada Industrial Relations Board
- **Marjorie Wittner**, Chair, Massachusetts Division of Labor Relations

General Counsel

- **Mary Johnson**, General Counsel, National Mediation Board
- **David Demirkan**, General Counsel and Director of Legal Services, Canada Industrial Relations Board

Administrators

- **Josée Dubois**, Executive Director and General Counsel, Public Service Staffing Tribunal
- **Les Heltzer**, Executive Secretary, National Labor Relations Board



Gilles Grenier and Josée Dubois



Beth Schindler



Les Heltzer



David Demirkan and Mary Johnson



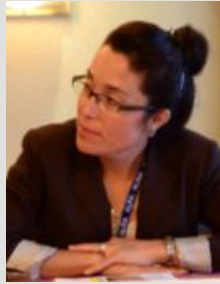
Board and Commission Members Roundtable

61st Annual Conference — Highlights — Montreal, Canada

Welcome Brunch & Quebec Labour Scene



Daniel Bourcier



Mylène Alder

July 29, 2012



Michel Seymour



Louis Garant



Roger Lecourt

Labour Relations in the Arts Sector in Quebec

- **Mylène Alder**, Commissioner, Quebec Labour Relations Board

Fonds de solidarite FTQ

- **Daniel Bourcier**, Development Officer, Fonds de Solidarité FTQ

Replacement Works Legislation in Quebec

- **Louis Garant**, Commissioner, Quebec Labour Relations Board

The Current Social Action and Student Strike in Quebec

- **Michel Seymour**, Professor, Department of Philosophy, University of Montreal

Moderator: **Roger Lecourt**, International Labour Relations Consultant

July 30, 2012

Initiation of Strategic Initiatives in a Polarized Political Environment

- **Scot Beckenbaugh**, Deputy Director, FMCS - US



Tools and Approaches to Support Labor Management Cooperation in Times of Change



Daniel Cholette



Pat Sims



Kevin Flanigan

- **Daniel Cholette**, Director General of Labour Relations, Quebec Ministry of Labour
- **Patricia Sims**, Mediator, National Mediation Board
- **Kevin Flanigan**, Assistant Director of Conciliation, New York State Public Employment Relations Board

Moderator: **Scot Beckenbaugh**, Deputy Director, FMCS - US

The Challenges of Dealing with the Unrepresented, the Unprepared or the Inexperienced

Workshop for Mediators

- **Barney Dobbin**, Regional Director, FMCS - Canada
- **Josh Tilsen**, Commissioner, Minnesota Bureau of Mediation Services



Barney Dobbin

Workshop for ALJs, Counsel, Board Members

- **Tim Noonan**, Executive Director, Vermont Labor Relations Board (VLRB)
- **Sylvie Guilbert**, General Counsel, Public Service Labour Relations Board



61st Annual Conference — Highlights — Montreal, Canada

July 31, 2012

The Use of Technology in Collective Bargaining and the Workplace

Set up and overview

- **Jennifer Webster**, Regional Director, FMCS - Canada

Electronic Voting / Case Management

- **Mary Johnson**, General Counsel, National Mediation Board
- **Abby Simms**, Deputy Assistant General Counsel, National Labor Relations Board
- **Ginette Brazeau**, Executive Director, Canada Industrial Relations Board

Mediating Disputes in the Age of Technology

- **Scot Beckenbaugh**, Deputy Director, FMCS – US
- **Kathy Peters**, Conciliation Officer/Mediator, FMCS - Canada

An Update from Ireland

- **Freda Nolan**, Director of Advisory Services– Labour Relations Commission of Ireland

Ethics

- **Gilles Grenier**, Director, Dispute Resolution Services, PSLRB
- **Les Heltzer**, Executive Secretary, National Labor Relations Board



Kathy Peters



Abby Simms



Jennifer Webster



Les Heltzer



Freda Nolan



Ginette Brazeau



July 30, 2012

ADVOCATES' DAY

Welcome

- **Sheri King**, President, ALRA
- **Jocelin Dumas**, Deputy Minister, Quebec Ministry of Labour



Jocelin Dumas



Sheri King

Beyond NAFTA: Securing our Economic Future

- **Derek H. Burney**, Senior Strategic Advisor, Norton Rose Canada LLP

Moderator:

Elizabeth MacPherson, Chair, Canada Industrial Relations Board



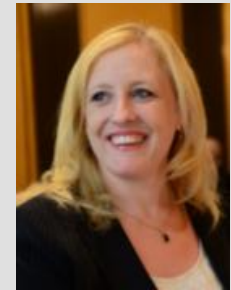
Derek H Burney



Elizabeth MacPherson

Speaker:

The Honourable Lisa Raitt, Minister of Labour, Government of Canada



Workplace Challenges in a Globalized Economy



Jean Lortie



Owen Herrnstadt



Kim Madigan



Ernie DuBester

- **Jean Lortie**, General Secretary, Confederation des Syndicats Nationaux
- **Kimberly A. Madigan**, Vice-President, Human Resources, Canadian National Railway
- **Owen Herrnstadt**, Director of Trade and Globalization, International Association of Machinists and Aerospace workers

Moderator: **Ernest DuBester**, Federal Labor Relations Authority



Elaine Bernard



Reg Pearson

From Heroes to Zeroes — A War on Public Services and Unions

- **Elaine Bernard**, Executive Director, Labor and Worklife Program, Harvard Law School

Moderator: **Reg Pearson**, Director, Dispute Resolution Services, Ontario Ministry of Labour



Dave Coles



Guy Baron

A Moment of Truth for Canadian Unions

- **Dave Coles**, President, Communications, Energy and Paperworkers Union of Canada

Moderator: **Guy Baron**, Director General, Federal Mediation and Conciliation Service

Comings & Goings

National Mediation Board (NMB)



Harry R. Hoglander (*left*) was named Chairman of the National Mediation Board, effective July 1, 2012 through June 30, 2013. Mr. Hoglander, a Member of the National Mediation Board since August 6, 2002, has previously served as Chairman: in 2004-2005, 2007-2008, and 2010-2011. He was first confirmed by the United States Senate on August 1, 2002, reconfirmed for a second term on December 8, 2006 and a third term on July 24, 2009.

Linda Puchala remains as a Member of the Board.

Elizabeth Dougherty resigned from the Board effective June 2, 2012.

Federal Mediation and Conciliation Service of Canada (FMCS)

FMCS-Canada added five new mediators to its staff in 2012. These individuals bring a wealth of experience to the Service from a variety of industrial sectors.

The Northwestern Office, located in Calgary, welcomed **Daniel Shewchuk**, formerly a representative with Teamsters Canada Rail Conference, while the Toronto Office added **Kim Beemer**, who joined FMCS from the Communications, Energy and Paperworkers Union, by way of the Public Service Alliance of Canada. The Montreal Office welcomed **Richard Pagé** from the United Steelworkers and **Michel Bibeault** from the Canadian Union of Public Employees and **Elizabeth Spinney** joined the Halifax Office from Bell Aliant, Atlantic Canada's largest telecommunications provider.

Retirements...

On the "Goings" side, **Murray Keans** retired in late 2011 as Regional Director of the FMCS Atlantic Region and mediator **Michel Ste-Marie** retired from the Montreal Office in August of 2012. We wish them both a long and happy retirement.

Departures...

We also extend our best wishes to **Caroline Caverhill Mann**, who left her position as mediator with the Halifax Office to join the Canada Industrial Relations Board and Calgary mediator **Stephanie Stone**, who accepted a position with Mount Royal College.

BYE



Alan Dean

Patric F. Whyte

Canadian Industrial Relations Board (CIRB)

The Minister of Labour has announced the appointment of **Mr. Patric F. Whyte** as a Vice-chair of the Canada Industrial Relations Board for a five year term effective November 5, 2012.

In the course of his career, Mr. Whyte has represented unions and employers. He was most recently an arbitrator in private practice in Toronto. The Board welcomes Mr. Whyte to its ranks.

Public Service Labour Relations Board (PSLRB)

Mr. John G. Jaworski was appointed as a full-time Board Member on November 5, 2012 for a period of five years. He brings to the PSLRB extensive experience in labour- and employment-related litigation and mediation in the public sector, most recently as senior counsel at the Department of Justice. Before joining the federal public service, he worked as a practicing lawyer in the private sector in Ottawa, at the Superior Court of Ontario and at the Ontario Court of Appeal.

A seasoned instructor in the areas of litigation and business law, including the Bar Admissions Course for the Law Society of Upper Canada, Mr. Jaworski holds a Bachelor of Laws (LL.B.) degree from the University of Ottawa and a Bachelor of Arts degree in political science from Carleton University.

On August 27, 2012, **Mr. David Paul Olsen** was appointed as a Vice-Chairperson to the PSLRB for a period of five years. He brings to the PSLRB more than 35 years of experience in the

areas of labour, employment and human rights law. Most recently, he was a full-time member with the Canada Industrial Relations Board.

Mr. Olsen began his public service career in 1974 as counsel for the Department of Justice, specializing in labour law and civil litigation. He also held progressively senior positions within Canada Post, including Assistant General Counsel, in which he had national responsibility for the corporation's legal practice.

He holds a Masters of Law from McGill University, a Bachelor of Law from Queens University and a Bachelor of Arts from Carleton University. A long-standing member of the Law Society of Upper Canada, he was a part-time professor of labour law at the Faculty of Law, University of Ottawa, and he is an occasional lecturer for continuing education seminars and conferences on labour, employment and human rights law, as well as pay equity.

Comings & Goings

Washington Public Employment Relations Commission

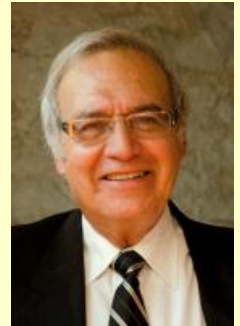
We recently welcomed three new adjudicator/mediators to our staff. **Page Garcia, Matt Greer** and **Dianne Ramerman** recently joined or re-joined the agency. Page has experience as a staff representative for a union; Matt worked an adjudicator/mediator with the Wisconsin Employment Relations Commission, and Dianne previously worked as an adjudicator/mediator with PERC. These appointments fill the vacancies created by retirements and promotion from the beginning of the year. We are excited to have Dianne, Matt and Page aboard.

Awards

Public Service Labour Relations Board (PSLRB)

It gives us great pleasure to announce that **Mr. Casper Bloom**, Chairperson of the Public Service Labour Relations Board (PSLRB) has been awarded the prestigious *Queen Elizabeth II Diamond Jubilee Medal* in recognition of his outstanding service to his peers, his community and to Canada.

This distinguished award was created to commemorate the 60th anniversary of Her Majesty the Queen's ascension to the Throne, and was presented to Mr. Bloom by His Excellency, The Right Honourable David Johnston, the Governor General of Canada, on behalf of the Queen in the fall of 2012.



Casper Bloom

Three ALRA Past Presidents Retire

Dear Friends—

Happy New Year to all! May 2013 bring you health and happiness and only marginally reduced agency budgets.

After more than 40 years with the NLRB, my last official day was January 3, 2013. I have been incredibly fortunate to have spent my professional career at the NLRB and no less so for being able to say that I am retiring not because I cannot stand the thought of going to the office each day nor because someone else thinks it is time for me to retire. Rather, I am retiring because I am satisfied and complete and look forward to retiring.

Before some of you start sobbing uncontrollably, this is not a "good-bye" email. Now more than ever the wisdom of an earlier E-Board to afford past presidents who no longer are employed by a member-agency the opportunity to continue to contribute to ALRA is clear to me.

I look forward to seeing you at the 2013 ALRA Annual Conference in DC. — Les

retired Jan. 3, 2013



Les Heltzer
ALRA President, NLRB, 2010-11

retired Sept. 1, 2012



Jacalyn Zimmerman, Illinois, ALRA President 1996-97



Richard Curreri, NY PERB, ALRA President 1997-98



