

ALRA Advisor

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February 2014



ASSOCIATION
of LABOR RELATIONS
AGENCIES

ALRA in Washington, D.C.



ALRA Advisor

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



www.alra.org

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 a resolution of at least 72 jpg, preferably 500 jpg or greater. Please include Agency name in e-mail subject line.

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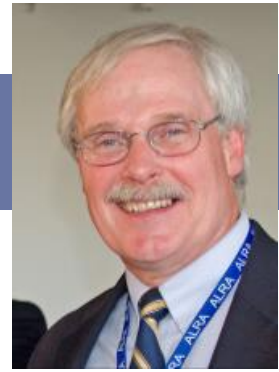
Hope we'll see you at the 2014 conference...



Lessard photo

ALRA 63rd Annual Conference — Seattle, Washington
 June 25-29, 2014

From the President...



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Kevin Flanigan

ALRA to the People

This past July, the 2013 Annual ALRA Conference was held in Washington DC. There were 92 advocates and 112 delegates in attendance on Advocates Day, entitled “*Labor Relations in Transformational Times: Complex Issues – Best Practice Solutions.*”

We heard from renowned guest speakers who skillfully connected collective bargaining with subjects ranging from the controversial, “Common Core” in education to stories of amazing turnarounds in labor-management relations by various groups of federal employees.

On the lighter side, it was an absolute treat to be addressed by the warm and humorous Canadian Ambassador to the US, His Excellency, Gary Doer, our guest luncheon speaker. Mr. Doer humorously reminded all in attendance, “Canada is the United States’ largest customer!”

Since the 2013 Conference took place in Washington D.C., it was appropriate that all levels of government from both the US and Canada participated. Clearly, there were probably more folks sporting four letter acronyms than ever seen gathered in one place!

Special thanks go to Bob Hackel, last year’s President, for pulling together federal agency leaders such as George Cohen from FMCS, Ernie DuBester from the FLRA, Elizabeth MacPherson from the Canada Industrial Relations Board, Linda Puchala from NMB, and Gary Shinnors from the NLRB. The professional development segments of the conference spanning both sides of *Advocates Day* were once again outstanding, with conference evaluations calling for more

“roundtable” and more interactive sessions where everyone receives the opportunity to interact with the world’s best practitioners!

As President beginning in July, I would like to thank the Officers and Board Members who have been both supportive and decisive. Earlier last fall, it was my honor to appoint new Committees and while I will not list all the members here, I ask readers to please go to www.alra.org to view the complete listing of ALRA Officers, Board Members and Committee Members.

The following is not the entire list but I would like to acknowledge and thank the individuals who have demonstrated their leadership by chairing or co-chairing the following ALRA Committees:

Professional Development

Ginette Brazeau, Canada Industrial Relations Board (CIRB)
Mike Sellars, Washington PERC

Program

Beth Schindler, FMCS-U.S.
Gilles Grenier, Public Service Labour Relations Board (PSLRB) Canada

Arrangements

Christy Yoshitomi, Washington PERC

Publications, Communications and Technology

Liz MacPherson, Canada Industrial Relations Board (CIRB)

Institutional Memory

Marilyn Glenn Sayan, Washington PERC

Audit

Jerald Post, Illinois Labor Relations Board

This year, it is my intention to build upon the accomplishments of my

predecessor Bob Hackel. As President last year, Bob guided the ALRA Executive Board in a special session of *Strategic Reflection*, at ALRA’s 2012 fall planning meeting. In that session, the Executive Board discussed the cuts in member agency budgets and the scarce resources available for professional development. The conclusion was that more than ever before, ALRA must find ways to deliver the best, “bang for the buck” to member agencies.

Another of Bob Hackel’s objectives, beyond running a successful annual conference, was to revitalize the *Members Only* section of the ALRA website, believing it could become a portal to the future for ALRA members. [As an aside, before ALRA’s website was officially launched in 1999, it was just a tiny link on the Vermont Labor Relations Board website. Kudos to President Elect Tim Noonan...you folks continue to show the rest of us, size is overrated!]

In recent years with the amazing stewardship of Liz MacPherson, Chairperson of the Publications, Communications and Technology Committee, the ALRA website has been very nicely redesigned and as of August 2013 the *Members Only* section of the ALRA Website became accessible. While its content is primarily archival at this time, this section of the website will allow ALRA to explore ways to deliver relevant content and foster better exchange among member agencies using up-to-date methods such as blogging, list serve, and possible interactive training modules.

At the fall planning meeting in Toronto this past October, the ALRA Executive Board reviewed and discussed the 2013 Washington D.C. Conference.

(Continued on page 4)

The discussion pointed out several new realities. By all measures, the substance of the program and delivery to members was very successful. Yet, as the theme of the 2013 Conference “...Transformational Times” reminds all of us, the institution of collective bargaining and our roles as neutrals within it, are in the midst of transformation, and unfortunately no member agency is exempt from the unprecedented challenges of today - causing our agencies to curtail and redefine programs. The 2013 Washington Conference was a microcosm of this shifting reality.

While we had an attendance of 112 delegates, including the welcome return of several state agencies that had been dormant for quite some time, rising hotel costs mean it is more and more difficult to merely break even. As an organization, the reality is ALRA must seek new ways to deliver relevant professional development and content.

Building upon the *Strategic Reflection Session*, it is essential ALRA now develop more tools to support member agencies and delegates who may be losing the

resources enabling them to attend the Annual Conference. This scenario is not likely to change anytime soon and so we need to adapt.

We hold an annual conference, but ALRA is not a *destination*. Our members must be the focus! Furthermore, while robust web presence is certainly an important element of this successful organization, that is not enough.

Before our Fall Meeting, I appointed a new *Delegate Support Committee*, co-chaired by 2015 ALRA President Elect Tim Noonan and Ontario’s Reg Pearson. Members include Liz MacPherson, CIRB and John Higgins, ALRA Past-President.

I asked them to convene and make recommendations on ways ALRA can support member agencies and delegates. As a result of only the one fall meeting, they met and made preliminary suggestions such as reducing the number but increasing the amount of travel grants for new conference attendees.

While I was facetiously hoping the new DS Committee would meet and come back with a fully-vetted recommendation to “hit-up” all wealthy ALRA Past

Presidents to finance delegate sponsorships or alternatively to at least write ALRA into their wills..., such was not the case (yet).

Nonetheless, the Delegate Support Committee has suggested the possibility that *retired* ALRA Presidents and leaders might be willing to occasionally donate their time to conduct professional development for member agencies in need, perhaps for just the cost of expenses.

[As another aside, in 1999 President Pam Talkin (currently Marshal of the US Supreme Court) called for an ALRA Speakers Bureau using various agency staff members from around the country to be, “on loan” to member agencies. To suggest such a loaned executive program from full time agency staff today would be foolhardy]. Perhaps retired practitioners might take the ALRA Academy to the agencies and thus strengthen the perceived value of ALRA.

—Kevin Flanigan



Jlessard photo

2013-14 ALRA EXECUTIVE AND BOARD MEMBERS. BACK ROW (L-R): Scot Beckenbaugh (FMCS), Pat Sims (NMB), Mike Sellars (Washington State PERC), Abby Propis Simms (NLRB), Ginette Brazeau (CIRB), Reg Pearson (Ontario Ministry of Labour), Jennifer Webster (FMCS-Canada), Jerald Post (Illinois Labor Relations Board), and Gilles Grenier (PSLRB). FRONT ROW (L-R): Robert Hackel (N.J. PERC); Kevin Flanigan (N.Y. State PERB), and Tim Noonan (Vermont Labor Relations Board).

We are very pleased to announce the **2014 ALRA Conference** will be held in **Seattle, Washington**, one of the most beautiful cities in the U.S.!

For the last several conferences, hotel negotiations have become increasingly difficult and such negotiation is clearly not everyone's forte! It would be ideal if ALRA could hire William Shatner (or perhaps even lure Bob Hackel out of retirement each year), to negotiate the hotel contract. Unfortunately, this could not be arranged this year.

Nonetheless, for 2014, ALRA has been truly blessed to have *Christy Yoshitomi* and *Mike Sellars* from the Washington PERC and *Beth Schindler* from FMCS-U.S.



Mike Sellars



Christy Yoshitomi



Beth Schindler

representing hosting agencies.

These three individuals along with the members of the Arrangements Committee truly worked, "above and beyond." They managed to achieve full consensus with members of the Executive Board (no easy task) and worked with the Seattle Hilton to hold down costs to secure a wonderful venue.

NEW FEATURES for the 2014 Conference will include the following:

- The conference will be three days (four nights) instead of four days (five nights), a reduction in hotel costs for delegates.
- The conference will be held June 25 -28, 2014 instead of in late July allowing us to take advantage of the best rates possible in the Seattle hotel market.

To give our readers a **SNEAK PEEK**, potential program topics include the *US Affordable Care Act*, collective bargaining in higher education, and

income inequality and collective bargaining in home care, child care and fast food sectors.

Topics for professional development include technology and tools available to assist us in our work, as well as the timely topic of social media in the work place.

There is also planned discussion about confidentiality in collective bargaining and protection of the process in the face of increased demands for transparent government.

All in all, with the commitment of many dedicated professionals, the 2014 Seattle Conference will be a wonderful experience. As an organization, we will continue to develop and deliver relevant content to our members, truly making ALRA the best Association of Labor Relations Agencies in the history of the world!

—Kevin Flanigan



I love ALRA because...

ALRA is unique for many reasons. **First** it is the one collective of agencies in North America doing the same work from the same vantage point as the neutral. This allows for an opportunity to see how issues have come up and been addressed by other jurisdictions. Often, ALRA is the only place to go for answers to these type of questions. **Second**, ALRA provides an opportunity to see what agencies are doing to improve how they deliver their services. **Finally**, ALRA boasts some of the more advanced practitioners in the neutral field. ALRA gives staff from member agencies the opportunity to learn from these practitioners.

And because.... of my Canadian friends. 😊 — *Mike Sellars, Washington PERC*



Legislative Proposal

A private member's bill was tabled in Parliament in June 2013 that, if passed, would change how the Canada Industrial Relations Board certifies and decertifies unions and employee associations under its jurisdiction. Bill C-525 contains proposed amendments to the *Canada Labour Code* that would eliminate the card-check certification system and replace it with a mandatory secret ballot vote process.

Specifically, upon being presented with 45 per cent membership evidence in support of unionization, a mandatory vote must be held in order to determine whether the union has majority support for certification. However, the Bill proposes that such majority will be obtained only if more than 50 per cent of the votes of the entire proposed bargaining unit favour the union, as opposed to 50 per cent of the votes cast. This potentially creates a situation where members who do not vote are effectively deemed to have cast their vote against certification. The decertification process would be similar; after demonstrating that 45 per cent of the members in the unit no longer wish to be represented by the union or employee association, a mandatory representation vote would be held to determine if the majority of the employees in the unit is in favour of revoking the bargaining agent's representation rights. Again, in all cases, the result is based not on a percentage of the votes cast but on a percentage of the unit.

The CIRB is one of five Canadian jurisdictions that currently operate under a card-based certification system. Interestingly, while there are five provinces in Canada that have mandatory vote requirements in their general private-sector labour legislation, all determine the outcome of a representation vote based on the majority of ballots cast.

The Bill has passed Second Reading in the House of Commons and has been sent to a committee for study.

Decisions of Note

Finding that the employer had failed to obey an order of the Canada Industrial Relations Board and that there was every likelihood it would fail to comply with the order in the future, the Board granted the union's application to have the Board's order filed in the Federal Court for enforcement purposes.

During the course of binding interest arbitration for the renewal of certain collective agreements, Canadian Pacific Railway Company (the employer) unilaterally issued notices cancelling virtually all "local rules" that were in place at its many terminals. Upon hearing a complaint filed by Teamsters Canada Rail Conference (the union), the Board found the wholesale cancellation of local rules by the employer to be an unfair labour practice and issued a cease and desist order against the employer. After the arbitrator's award resolving

the terms of the new collective agreements was issued, the employer again issued notices cancelling most of the local rules. The union responded by filing an application to have the Board's order filed in the Federal Court on the basis that the new notices were in defiance of the Board's cease and desist order. The Board confirmed some of the main principles underlying the provision in the *Canada Labour Code* that allows for the filing of Board orders in the Court: it is a vehicle for judicial enforcement of Board orders, where necessary; the Board has wide discretion as to whether to grant such an application; the Board's role is not to punish, but rather to remedy breakdowns in labour relations; and such a remedy is a measure of last resort. The Board found, in this case, that the employer's wholesale cancellation of the local rules, which had been negotiated and in place for many years, for the purpose of replacing them with managerial directives, was not conducive to constructive labour relations. The Board found that the employer had failed to comply with the Board's order and was likely to continue to fail to comply in the future. It concluded that filing the Board's order in the Federal Court was the only mechanism currently available to cause the employer to engage in meaningful bargaining respecting the system-wide changes it wished to implement. (*Canadian Pacific Railway Company*, 2013 CIRB 679)

Can matters relating to copyright be negotiated as part of the scale agreement between a producer and an artists' association? The Federal Court of Appeal says no.

The Federal Court of Appeal (FCA) issued a split decision in the judicial review of a decision of the Canadian Artists and Producers Professional Relations Tribunal (the Tribunal), in which the Tribunal found that the National Gallery of Canada had failed to bargain in good faith with two artists associations when it refused to continue negotiating issues relating to minimum fees for the use of copyrighted works. The majority of the FCA held that matters relating to copyright, including the imposition of minimum fees for the use of existing works, are not within the parameters of the *Status of the Artist Act*. Therefore, it concluded that the Tribunal had no authority to compel the parties to negotiate these matters and include them in their scale agreement. In arriving at this conclusion, the FCA explained that royalties and licenses for the use of existing works are governed exclusively by the *Copyright Act* and that the assignment of rights to these works gave rise to a transfer of property and could not be described as a "provision of services" for the purpose of collective bargaining under the *Status of the Artist Act*.

Accordingly, the Tribunal's decision was set aside.

The Supreme Court of Canada granted the two artists associations leave to appeal the FCA's decision. The CIRB is monitoring this case closely as it is now responsible for the interpretation and application of the *Status of the Artist Act*. ■

The National Labour Relations Conference – A Success!

The Canada Industrial Relations Board and the Federal Mediation and Conciliation Service – Canada co-hosted a national labour relations conference in the National Capital Region on September 19 and 20, 2013.

The Conference brought together representatives of labour and management from across Canada to discuss important challenges in the modern workplace. Topics included: the impacts of social media on labour relations, the mediation of high profile labour disputes, cross-jurisdictional issues, workplace psychological health, pensions and union representation models.

The newly appointed Minister of Labour, the Honourable Dr. Kellie Leitch, also addressed the conference and spoke of the importance of collaborative relationships and strong partnerships between labour and management to resolve issues at the bargaining table. She stated: “Healthy labour relations are one of the keys to a strong and productive workforce and a strong economy.”

The Conference was very well attended with over 200 registered delegates and its success is truly a reflection of the vibrant labour relations environment in the federally-regulated private sector in Canada. It demonstrates that there remains a critical need for such fora in today’s environment, where representatives of management and unions develop and solidify relationships that ultimately result in more productive and harmonious workplaces. ■



(L-R) Elizabeth MacPherson (CIRB) with the Honourable Dr. Kellie Leitch, Minister of Labour.

FEDERAL MEDIATION and CONCILIATION SERVICE — CANADA

— by Carol Wall

Latest Mediator Professional Development Initiative from the Canadian Association of Administrators of Labour Legislation (CAALL)

The first CAALL National Mediator Advanced Workshop took place from October 20 to 25, 2013, at the Kingbridge Centre in King City, Ontario.

The successful event saw a cross-section of twenty-five, experienced, skilled mediators from across Canada come together to learn from and share with each other as they worked through an interactive and challenging program.

The purpose of the workshop was to illuminate and emphasize the circumstances, considerations and factors that create or contribute to more challenging, difficult and complex conditions and situations. Participants’ experiences during the simulation were intended to:

- Enhance the skill levels of practising mediators,
- Heighten awareness, recognition and understanding of the dynamics

and factors that characterize more challenging circumstances and cases

- Hone the ability to assess and analyze such circumstances
- Anticipate and evaluate potential consequences and implications
- Identify and employ appropriate and effective strategies, approaches and techniques
- And finally and most importantly for the CAALL working group who developed this workshop, “create an opportunity for experienced practising mediators to share their experiences and perspectives, to learn from the experiences and perspectives of other experienced, practising mediators, and to consider both in the context of current mediation thought.”

The workshop was led by an inspiring video message from Guy Baron, President of CAALL and Director General of Federal Mediation and Conciliation Service.

Mediators were also fortunate to have the participation of two of Canada’s leading pension experts, Susan Rowland, Chair, New Brunswick Task

Force on Protecting Pensions and Jo-Ann Hannah, Director, Pensions and Benefits, Unifor, for a panel session on pensions, moderated by Reg Pearson, Assistant Deputy Minister, Labour Relations Solutions Division, Ontario Ministry of Labour.

The workshop was a five-day program that consisted of two mediation simulations, each lasting two days. The mediation simulation required that participants, working in teams, assume different roles typical of collective bargaining with emphasis on the understanding that these were mediation rather than bargaining simulations. Confronted with a variety of complex issues and changing circumstances, those playing the role of mediators had to exercise judgment to determine the appropriate action that the mediator ought to take. Each simulation unfolded in four phases. Each phase comprised two segments:

- Preparation for and enactment of the designated chapter of the simulation.

(Continued on page 8)



The Ontario Labour Relations Board saw the appointment of four full-time

adjudicators in the past eighteen months, adding to our complement of 14 full-time and 16 part-time adjudicators:

Matthew Wilson, from an in-house career, most recently at the Rouge Valley Health System; **Jesse Nyman**, a former law school gold medallist and partner at CaleyWray; **Roslyn McGilvery**, from Filion Wakely Thorup Angeletti, who has written extensively on labour and employment issues; and **Eli Gedalof**, partner at Sack Goldblatt Mitchell, former clerk to the Ontario Court of Appeal.

The Board's ranks were also enhanced by the part-time appointment of **Derek Rogers**, and a return to the fold of former Board Vice-Chairs **Janice Johnston, Ken Petryshen, Owen Gray, Bram Herlich and Tom Kuttner** (all on a part-time basis).

Travis Kearns is the Board's new Manager of Field Services (mediation, conciliation and votes).

The Board gamely and efficiently handled the "open period" in the construction industry—the triennial opportunity for bargaining agent changes (or even removal) as province-wide collective agreements were

statutorily coming to an end. The Board had amended its Rules and processes to facilitate the expeditious processing of these applications, refining its procedures from three years earlier, and was able to mediate or adjudicate 90% of the applications in under four months.

In *Elementary Teachers' Federation of Ontario* [2013] OLRB Rep. January/February 35, the Board determined that a scheduled "day of protest" by elementary teachers to show their opposition to the government's *Putting Students First Act* (imposing collective agreements on teachers' unions) was an illegal strike and could be in contravention of the legislation. The Board was not persuaded by the teachers' federation that Charter-protected speech outweighed any disruption to the labour relations scheme that would be caused by the one-day strike. A cease and desist order was issued.

In a not unrelated matter, *Trillium Lakelands District School Board* [2013] OLRB Rep. March/April 427, the Board subsequently held that the withdrawal of certain activities and services by teachers amounted to an unlawful strike, notwithstanding that the activities were unpaid and voluntary. Considering the statutory history and evolution of amendments to the *Education Act*, the

Board found that not only does the plain and clear working of the statute easily include the activities, but from a labour relations perspective, this was a far better interpretation, particularly in the education sector with its long history and expectations about the delivery of these types of activities. A *Charter* challenge to the legislation remains outstanding.

In *Blue Mountain Resorts Ltd.* [2013] OLRB Rep. January/February 196, the Ontario Court of Appeal overturned a Board decision (which had been upheld by the Divisional Court) that found a swimming pool was a workplace, and the drowning of a guest was reportable under the *Occupational Health and Safety Act*. The Court of Appeal found the Board's interpretation of "workplace" to be unreasonable and overly broad. The Court found that although the OHSA is remedial legislation, the Board's approach unreasonably expanded the powers of a health and safety inspector beyond what was intended and required to ensure worker safety. There must be a nexus between the hazard giving rise to the death or critical injury and a realistic risk to worker safety. There was no evidence that the pool death was caused by any hazard that could affect worker safety. ■

(Continued from page 7)

- Facilitated intra-group discussion and analysis of participants' observations, reflections and experiences.

The focus of the facilitated intra-group discussions was informed by developments during the unfolding of the chapter. The participants were faced with unexpected "breaking developments" at critical times, which further complicated the simulation and challenged the participants.

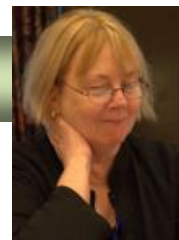
Each of the two days concluded with a facilitated plenary discussion where participants explored the issues, concepts and challenges associated with

the day's chapters of the simulation. The facilitated discussions created further opportunity for all the mediators to gain from the experiences of others, as plenary discussion teams were structured to combine members from across all the simulation enactments.

During the plenary discussions, participants were required to step out of their simulation roles in order to share their perspective on the associated mediation issues as a practising mediator. Issues encountered during the simulations and considered by the participants included relationship issues, fragmented committees, inexperienced negotiators, mediator credibility, cross-cultural and generational issues, the

impact of social media, intra-committee dynamics, absence of leadership and dealing with the media, among others.

The CAALL working group consisted of: Dayna Firth, Mediator Specialist, Manager of Interactive Solutions, Dispute Resolution Services, Ontario Ministry of Labour; Hervé Leblay, Mediator and Conciliator, Quebec Ministry of Labour; Peter Sheppit, Conciliation and Grievance Mediation Officer, Conciliation and Mediation Services, Manitoba Family Services and Labour; Carol Wall, Conciliation Officer/Mediator, Federal Mediation and Conciliation Service; and Susan Whitten, Senior Mediator, Labour Relations Agency, Newfoundland and Labrador. ■



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Recent Appointments

On August 1, 2013, **Nicholas Christopher Geale** was confirmed by the United States Senate to serve as the third Board Member of the National Mediation Board for a term expiring July 1, 2016. Incumbent Member and Chairman, **Linda Puchala**, was also re-confirmed for a term expiring July 1, 2015, and Member **Harry Hoglander** was re-confirmed for a term expiring July 1, 2014.

Member Geale was nominated by President Barack Obama, on July 30, 2013. Upon joining the National Mediation Board, he will be filling a seat on the Board vacated by Elizabeth Dougherty, who resigned from the NMB on June 2, 2012.

He was previously the Director of Oversight and Investigations for Ranking Member Lamar Alexander on the U. S. Senate Health, Education, Labor and Pensions Committee. His primary responsibilities included investigating waste, fraud and abuse in government programs, and he works with agency Inspectors General and the Government Accountability Office. He also evaluated and advised the Committee on Presidential nominees and assisted the Health, Education, Labor and Pensions policy teams in evaluating government programs.

Before becoming Director of Oversight, Mr. Geale served as Oversight and Investigations Counsel on the Committee for two years for Ranking Member Michael B. Enzi. Prior to joining the HELP Committee, he was first an Attorney/ Advisor to the Solicitor and then the Counselor to the Deputy Secretary at the U.S. Department of Labor under the leadership of Secretary Elaine L. Chao. In both those roles, Mr. Geale assisted the Department in implementing policies regarding over 180 laws under its jurisdiction and managing the Department's 15,000 employees.

Prior to federal service, Mr. Geale had six years of experience in labor and employment matters, general commercial litigation and alternative dispute resolution in private and public practice, including serving as Assistant General Counsel for the Washington Metropolitan Area Transit Authority. He graduated from Georgetown Law in 1999 and Claremont McKenna College in 1996.

Chairman Puchala is currently serving as Chairman of the Board for a second time. Nominated by President Barack Obama, Chairman Puchala was first confirmed as Member of the National Mediation Board by the United States Senate on May 21, 2009. She was sworn into office on May 26, 2009. She has previously served as Chairman from July 1, 2011 through June 30, 2012.



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Prior to becoming a Member, Ms. Puchala served 10 years at the National Mediation Board as a Mediator, Senior Mediator (ADR) and the Associate Director of Alternative Dispute Resolution Services. Her prior labor relations experience includes work as International President of the Association of Flight Attendants-CWA, AFL-CIO and Staff Director, Michigan State Employees Association, AFSCME, AFL-CIO.

Member Hoglander
This is Mr. Hoglander's fourth term as Member of the Board. He was first confirmed as member of the NMB by the United States Senate on



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August 1, 2002, reconfirmed for a second term on December 8, 2006, and a third term on July 24, 2009. He has served four times as Chairman of the Board, most recently from July 1, 2012 through June 30, 2013.

Prior to joining the Board, Mr. Hoglander served as a Legislative Specialist in the office of Congressman John Tierney of Massachusetts with responsibilities in Transportation issues including aviation, rail and maritime, Labor, Defense and Veterans Affairs.

Member Hoglander has an extensive background in the aviation industry and labor relations, having flown as a Captain for Trans World Airline (TWA) and been elected Master Chairman of TWA's Master Executive Council. He was also elected Executive Vice-President of the Air Line Pilots Association. After leaving TWA, Mr. Hoglander was named Aviation Labor Representative to the United States Bi-Lateral Negotiating Team by then Secretary of State James Baker.

Mr. Hoglander was also a pilot in the United States Air Force, retiring with the rank of Lt. Colonel. He graduated from Suffolk University Law School and is a member of the Florida Bar.

United/ IAM Reach Agreement

Three agreements were ratified by United Continental Holdings with the IAMAW (International Association of Machinists and Aerospace Workers). These agreements affect over 28,000 employees.

One agreement covers fleet service employees; another covers passenger service employees; and the third agreement covers storekeeper employees. Each of these three agreements combines the workgroups of United, Continental, Continental Micronesia and MileagePlus subsidiaries.

Presidential Emergency Board 244

On November 21, 2013, President Barack Obama signed an Executive Order creating a Presidential Emergency Board to help resolve a dispute between the Long Island Rail Road Company and some of its employees. The Presidential Emergency Board will provide a structure for the two sides to resolve their disagreements. The Presidential Emergency Board will hear evidence and, within 30 days of its creation, will deliver a report to the President recommending how the dispute should be resolved. ■

Northern California BART Strike Ends with FMCS Assistance



FMCS mediators successfully assisted the Bay Area Rapid Transit District, Service Employees International Union Local 1021 and the Amalgamated Transit Union Local 1555 in reaching a tentative agreement ending a four-day strike that affected the San Francisco-Oakland metro region. The tentative agreement was reached on October 21 after extensive marathon mediation sessions that took place before the strike began and later following the tragic death of two BART workers struck by a train on the strike's second day.

Though a provision that was tentatively agreed upon prior to FMCS intervention in the high-profile negotiations remains a current issue in dispute, the parties praised the efforts of FMCS assistance when announcing their tentative agreement.

In response to the announcement, FMCS Director George H. Cohen issued a statement congratulating the parties and commending the efforts of FMCS Commissioner Greg Lim.

"I was pleased to be informed by FMCS Commissioner Greg Lim that the strike is over. The resolution of this high profile dispute not only serves the parties' best interests but the all-important public interest as well. I want to commend the Union and Management bargaining teams for their commitment to remain focused on bridging their strongly held differences in the face of tremendous pressure. It was an honor and a privilege to work with the parties and we remain grateful for their willingness to utilize the services of the Federal Mediation and Conciliation Service. I especially want to commend Commissioner Lim for his extraordinary efforts throughout the last three months. In addition, working in close coordination with myself and Deputy Director Scot Beckenbaugh over the last several days, Commissioner Lim worked tirelessly to bring about a final resolution of the remaining issues in this dispute," the Director stated. ■

FMCS Director George H. Cohen Resigns



Federal Mediation and Conciliation Service (FMCS) Director George H. Cohen resigned as head of the Agency

effective Dec. 31, 2013. Director Cohen, who was appointed by President Obama in 2009, notified the Administration of his decision the first week of November and formally submitted his resignation letter to the President on November 19.

Director Cohen noted that his decision to resign was made after consulting with family and colleagues, and determining to leave at a point that coincided with his 80th birthday. "As I have stated on numerous prior occasions, I accepted this position thinking that it would produce a new adventure for me," Cohen said. "In retrospect, I seriously underestimated what a fabulous and fascinating adventure it would turn out to be."

In a statement to the news media, Director Cohen explained that his initial focus when accepting the position more than four years earlier, was to accomplish two main objectives during his tenure at the Agency: (1) to

vigorously promote a pro-active, outreach program, extolling the virtues of a mutually respectful, problem-solving approach to collective bargaining relationships; and (2) to increase the public awareness of the extraordinary work the Agency performs by personally mediating high-profile labor disputes that impact significant sectors of the economy. In his letter of resignation to the President, Cohen commented, "I believe that I succeeded in both respects."

Prior to becoming Director, Mr. Cohen had an extensive and distinguished career as a labor lawyer, negotiator, and mediator. During the period 1966-2005, he was a senior partner at Bredhoff & Kaiser, a Washington, D.C. law firm with a national practice, specializing in representing private- and public-sector labor organizations in collective bargaining involving a wide variety of industries (including sports, entertainment, steel, airline, and rail) and government entities employing teachers, police, and firefighters. In addition, Mr. Cohen argued five landmark labor cases before the United States Supreme Court and more than 100 appellate and federal district court

cases.

In resigning, Director Cohen praised the staff of the FMCS and the work of its federal mediators. "I want to acknowledge the support and encouragement provided me by my FMCS colleagues and the skill and dedication they exhibited on a daily basis, which made my tasks as Director readily achievable," he said.

"It has been an honor and a privilege to serve with the dedicated professionals at the FMCS. I know that they will continue their work to further advance the Agency's outstanding record of accomplishment in keeping with the standards of hard work and excellence that have been long established at the Agency," Cohen said.

Director Cohen is a graduate of Cornell University and its Law School and has a LLM degree from Georgetown University Law School. Prior to entering into private practice, Director Cohen served as an appellate court attorney with the National Labor Relations Board. From the mid 1970s until 2005, he was an Adjunct Professor at Georgetown Law School.

During his tenure, Director Cohen personally mediated a number of high-

(Continued on page 11)

(Continued from page 10)

profile disputes including those between Major League Soccer and the Major League Soccer Players Union, the Metropolitan Opera and its orchestra musicians represented by American Federation of Musicians Local 802, the National Football League and the National Football League Players Association, the Federal Aviation Administration and the National Air Traffic Controllers Association, the American Red Cross and a national coalition of labor unions, and the NBA and the NBA Players Association. More recently, he mediated the talks between

the International Longshoremen's Association and the United States Maritime Alliance to avert a possible work stoppage affecting 14 U.S. Atlantic and Gulf Coast ports. He played a key role in the labor negotiations between San Francisco's Bay Area Rapid Transit system and two of its unions in 2013.

Apart from these disputes, Director Cohen has proactively pursued a program of encouraging the labor-management community to establish ongoing, cooperative committees devoted to problem solving as the most effective means for addressing complex and controversial issues that confront

employers and their unions in today's difficult economic environment. In particular, this program has been directed at health care-related issues and the need for public education reform through labor-management collaboration to advance student achievement.

For more information about FMCS and to read Director Cohen's full bio, please visit www.fmcs.gov.

FMCS Director George Cohen Hosts White House Labor and Management Partnership Summit



FMCS Director George H. Cohen praised the institution of collective bargaining at the White House December 5, 2013 as he moderated a special FMCS-sponsored summit celebrating labor-management partnerships and the virtues of union-employer negotiations. Director Cohen was joined by Secretary of Labor Thomas E. Perez and Secretary of Commerce Penny S. Pritzker in highlighting recent collective bargaining successes demonstrating the value of labor-management cooperation and joint problem solving, benefiting both unions and employers.

Seven separate labor-management panels focused on major labor-management agreements showing the potential for unions and employers to work together to improve competitiveness, productivity and quality. Participating organizations included: the Federal Aviation Administration, the National Air Traffic Controllers Association, Montgomery County (MD) Public Schools, The Walt Disney Company, the Building and Construction Trades Department, AFL-CIO, 1199SEIU, Montefiore Health Systems and 1199SEIU/League Training and Upgrading Fund, the Ford Motor Company, the United Auto Workers, International Paper, the United Steel Workers, the International Brotherhood of Electrical Workers, ABC, Inc., the Communication Workers of America and the National Association of Broadcast Employees and Technicians. ■

Federal—U.S.

FMCS Commissioner Rich Giacalone Elected President of Society of Federal Labor and Employee Relations Professionals

In a recent election of officers for their organization, members of the Society of Federal Labor and Employee Relations Professionals (SFLERP) selected FMCS Commissioner Richard Giacalone as their national president for a two-year term. Commissioner Giacalone, who is based in Chesapeake, VA, is a past director of the FMCS Office of International/ADR Services and former special assistant to the director of FMCS. He was also the founding director of the FMCS Institute for Conflict Resolution. In addition, he is a recipient of SFLERP's Lifetime Achievement Award for outstanding contributions to the Federal Labor-Management Relations program.

Commissioner Giacalone's other honors include the Meritorious Civilian Service Medal for his contributions to the Department of Navy Labor and Employee Relations program. He also has been inducted into the Federal Dispute Resolution Conference "Hall of Fame."

SFLERP members include employee and labor relations professionals drawn from federal government agencies and labor organizations. Members include private legal practitioners, neutrals such as arbitrators, mediators, facilitators, judges, and conflict resolution specialists, as well as professionals at the FLRA, FMCS, FSIP, EEOC, MSPB, and the Office of Compliance. The membership also includes trainers, academics, researchers, students and retirees. ■



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New England Consortium of

State Labor Relations Agencies Celebrates 35th Anniversary

The New England Consortium of State Labor Relations Agencies, the only regional consortium of labor relations agencies in the United States, celebrated its 35th anniversary in 2013 by conducting a two-day training session in late April and a one-day labor relations conference in July. The training session for 47 staff and member of Consortium agencies was held at The Wachusett Village Inn and Conference Center in central Massachusetts. There were 150 neutral, union and management participants in the conference at Roger Williams University School of Law in Bristol, Rhode Island.

The Consortium origins date back to 1978 when New England state labor relations agencies developed a mutually beneficial arrangement for the sharing of resources and the training of its members and professional staff. The agencies joined together that year in the New England Consortium of State Labor Relations Agencies. In the mid-1980's, the Consortium expanded beyond the borders of New England when it welcomed the New York State Public Employment Relations Board as a member. The Consortium is currently comprised of the Connecticut State Board of Labor Relations, Connecticut State Board of Mediation and Arbitration, Maine Labor Relations Board, Massachusetts Department of Labor Relations and Employment Relations Board, Massachusetts Joint Labor-Management Committee For Municipal Police and Fire, New Hampshire Public Employee Labor Relations Board, New York State Public Employment Relations Board, Rhode

Island Labor Relations Board and the Vermont Labor Relations Board.

Initially, the Consortium was funded with grant monies received under the federal Intergovernmental Personnel Act ("IPA"). The primary focus of the Consortium was the identification of professional training needs and the implementation of programs designed to address those needs. Curriculum areas were designed to cover the wide range of areas where expertise was necessary to function effectively in labor relations. The programs were directed to agency members and staff.

In 1980, IPA monies ended. New concerns were presented to the member agencies. No longer could there be dependence on Federal monies. In spite of this, however, there was universal agreement that the Consortium should continue. The extensive benefits derived from interstate cooperation proved to be worth the investment of agency time and professional resources. The Consortium entered into a new era with two missions. One was to become fiscally independent. The other was to continue training for agency members and staff while concurrently expanding the training component for advocates.

A public sector labor relations conference serves the dual purpose of providing continuing educational opportunities to the New England and New York labor-management community and generating sufficient operating funds for the Consortium to conduct training for members and staff at other times during the year. The Consortium has sponsored 21 regional conferences. With modest attendance fees and staff participation from all agencies, the Consortium until recent times generally has managed to derive sufficient monies to act as seed money for future conferences and provide training. The conferences have generally attracted between 150 – 300 attendees. Conferences have been held

at various sites, both urban and rural, throughout New England.

The Consortium also was extensively involved in the 1991, 1994 and 2008 conferences of ALRA. The Vermont Labor Relations Board hosted ALRA's annual conference in 1991 and 2008 in Burlington, Vermont, and other Consortium agencies provided invaluable staffing and program assistance. The Consortium further was centrally involved in the planning and coordinating of ALRA's annual conference in 1994 in Boston.

The revenues which the Consortium has obtained from the conferences have allowed the Consortium to conduct training for its agency members and staff. The benefits of the training sessions have been well worth the investment of agency time and resources. Consortium training has encompassed the broad range of responsibilities of member agencies: addressing unit determination issues, conducting representation elections, resolving unfair labor practice charges, mediating and arbitrating grievances and negotiations disputes, and maintaining panels of mediators, fact-finders and arbitrators. Workshops in which the various approaches among states in these areas are discussed have benefited staff and members in allowing them to perform their duties in a more informed and creative way. Further, meeting colleagues from other states provides the added benefit of developing a group of resource persons to contact for guidance in resolving particular issues which come before their agency. The Consortium generally conducted two-day training sessions in the spring on an annual basis from the mid-1990's through 2009.

There was a break in the training sessions from 2010 through 2012 due largely to fiscal constraints arising from the severe economic downturn accompanied by two-day Consortium conferences in 2009 and 2010 which lost money. The Consortium took a pause in 2011 to regroup and develop a

changed blueprint for operating in a difficult fiscal environment. The Consortium decided to move from sponsoring a two-day conference at a hotel to a one-day conference with no hotel overhead. This has proved successful to date as 2012 and 2013 one-day conferences sponsored by the Consortium attracted enough management and union registrants so that revenues exceeded expenses. The 2012 conference was held on July 12 at Western New England University School of Law in Springfield, Massachusetts. Roger Williams University School of Law in Rhode Island was the site for the 2013 conference on July 19. Sufficient funds were secured to cover the costs of the Spring 2013 training session.

The Consortium now is planning a July 2014 conference at the University of New Hampshire, followed by a Spring 2015 training session. ■

AFSCME PREVAILS IN LARGEST VERMONT ELECTION

It was reported in the last issue of the *Advisor* that the Vermont Legislature passed a law this spring providing collective bargaining rights to independent direct support providers. The bill was signed by the Governor on May 24, 2013. Independent direct support providers provide home and community-based services to elderly and disabled service recipients under Medicaid programs. The statute provides that there shall only be one statewide bargaining unit for independent direct support providers, and that a representation election conducted by the Vermont Labor Relations Board shall be by mail ballot.

Upon enactment of the law, AFSCME filed an election petition to represent the approximate 7,500 providers covered by the law. SEIU filed a petition a few weeks later to intervene in the election. After election details had been worked out among the two unions, the State of Vermont and the Labor Relations Board, SEIU withdrew its intervenor petition shortly before the Board issued a notice of election. The Board then proceeded to issue a revised notice of election and conduct a mail ballot election in which the providers decided whether they wished to be represented for exclusive bargaining purposes by AFSCME.

The Board mailed ballots on September 9 to 7,573 providers. This was by far the largest number of eligible voters in any election ever conducted by the Board. The ballots were returned over the following three weeks, and were counted by the Board in early October. AFSCME prevailed in the election by a vote of 1,412 – 566. The Board certified AFSCME as the exclusive bargaining representative of the providers on October 21, 2013. ■



Lessard photo

IOWA—PERB

— Janelle Niebuhr

The Iowa Public Employment Relations Board will hold its bi-annual conference at Prairie Meadows Hotel & Casino in Altoona, Iowa (a Des Moines suburb) on September 22-23, 2014.

Celebrating the 40th anniversary of the passage of the *Iowa Public Employment Relations Act*, the conference will remember the developments of the law since 1974 and focus on the ever-evolving world of labor relations in the public sector.

Along with traditional topics such as the PERA 101, Iowa PERB will provide training for its new online case filing system and debut the electronic request for impasse services and electronic annual certified employee organization reporting systems.

Registration opens on July 1, 2014. Please check www.iowaperb.iowa.gov for updates and more information as the date approaches. We invite all of our ALRA friends to attend! ■

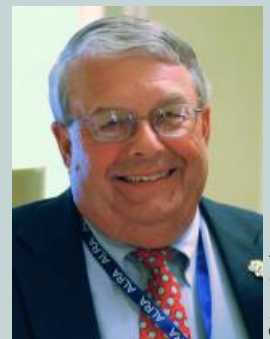
the States

NMB Director of Mediation and ADR Retires

Larry Gibbons, the NMB's Director of Mediation and ADR Services, retired in September 2013.

Mr. Gibbons joined the agency in 1997 as a Senior Mediator; became Director of Mediation Services in 2003; and Director of the Office of Mediation and ADR Services in 2011.

Gibbons brought to the Board 25 years of experience in personnel and labor relations under the *Railway Labor Act* and the *National Labor Relations Act*. Immediately prior to joining the NMB, he headed Human Resources and Labor Relations with ABX Air, Inc. (Airborne Express) for 12 years and for two years was an independent labor relations consultant. He is a past President and Member of the AIRCON Executive Board.



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"This decision was not easy nor was it made in haste. After working full time for the past 45 years, the last 16 at the NMB, it is time to slow down a bit and enjoy life, while I'm still healthy and able to do so." — Larry Gibbons



Lessard photo

Decisions of Note

Duty to Bargain Following Implementation Upon Impasse Vancouver School District, Decision 11791-A (2013).

The Commission recently affirmed an examiner's decision finding an unfair labor practice for an employer's refusal to bargain after the employer lawfully implemented layoff and recall language on impasse. Following implementation, the union requested to bargain the issue and made a proposal that showed movement from its earlier position. The employer refused to bargain, asserting its lawful implementation. The Commission found that the employer committed an unfair labor practice. The Commission held that it cannot be presumed that the parties will remain at impasse. Anything that creates the possibility of fruitful discussions, even if it does not create the likelihood of an agreement, breaks an impasse. In this instance, the union's proposal showed movement from its position when the parties reached impasse. That movement was sufficient to require the employer to resume bargaining.

Management Rights Clauses and Cost of Representation at Grievance Arbitration are Mandatory Subjects of Bargaining - City of Bellevue, Decision 11435-A (PECB, 2013).

The Commission held that a management rights clause and the cost of a representative at grievance arbitration are mandatory subjects of bargaining. Under the Washington Supreme Court's decision in *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450 (1997), a management rights proposal limiting the rights of bargaining unit employees may be a mandatory subject of bargaining that may be pursued to impasse. After comparing the management rights clause in *City of Pasco* with the management rights clause in the case before it, the Commission determined that the clause addressed many mandatory subjects of bargaining. Thus, the clause was a mandatory subject of bargaining. The Commission declined to determine whether the clause could function as a waiver of the union's rights. Language in a collective bargaining agreement grievance procedure making each party responsible for the cost of their representatives at grievance arbitration is a mandatory subject of bargaining. The grievance article is a mandatory subject of bargaining, and the Commission refused to consider whether each element of the grievance article constituted a mandatory subject of bargaining.

Representation Issues

Like much of the public sector in the US and Canada, the public sector in the state of Washington has seen a number of reorganizations, consolidations and organizational shuffling. These types of movements frequently find their way to PERC for review of the continued appropriateness of affected bargaining units.

In a series of cases involving the legislation restructuring of all or parts of five separate state agencies into one new agency, the Department of Enterprise Services, PERC ended up modifying several bargaining units and directing elections. *State - Enterprise Services*, Decisions 11652, 11654, 11656, 11660, 11663, 11665, and 11670 (PSRA, 2013). Where the incumbent union represented the majority of employees in a newly modified bargaining unit, the unrepresented employees were accreted to the bargaining unit without an election. Finally, if after modification the union represented even the slightest minority of employees in a newly modified bargaining unit, an election would be held for the entire bargaining unit because the legislation explicitly granted PERC authority to direct an election for any modified bargaining unit.

PERC has also had reorganizations that were not driven by a statutory change come before it. In *University of Washington*, 11833 (PSRA, 2013), the agency reviewed a reorganization of call center functions for the University of Washington Medical System.

The University of Washington operates several hospitals in the greater Seattle area, and has been purchasing private medical operations and consolidating those operations into its medical system. Prior to 2010, each University owned medical facility had its own polices for patient access.

In 2010, the University moved to consolidate its patient access services into a single contact center. The employees that transferred to the contact center were included in part of two different bargaining units represented by two different unions. There were also a significant portion of historically unrepresented employees. Each union claimed that the

employees at the contact center should be accreted to the existing bargaining units without the need for an election. Each union also submitted showing of interest cards demonstrating the support of some, but not all of the employees. The university claimed that all of the employees at the contact center should be treated as unrepresented.

Following a hearing, the employees at the contact center were determined to have their own community of interest. The represented employees were from the existing bargaining unit, and an election was directed for all of the employees at the contact center. ■

37th Annual Collective Bargaining Conference— April 3 and 4, 2014

The NW Chapter of the Labor and Employment Relations Association (LERA) is hosting its 37th Annual Collective Bargaining Conference on April 3 and 4 at the Seattle Convention and Trade Center. The conference is annually sponsored by PERC, FMCS-Seattle, and the NLRB.

Watch for details at www.perc.wa.gov.



Q *Can a Mandatory Bargaining Subject Become a Non-Mandatory Subject and then a Mandatory Subject Again?*

The short answer is... it depends.

In *RWDSU Southeast Council (United Food and Commercial Workers), AFL-CIO, CLC v. Clay County Board of County Commissioners*, Case No. CA-2013-008, (Fla. PERC Sept. 10, 2013), the parties were engaged in bargaining over a successor agreement. One of the disputed topics involved health insurance. On July 12, 2012, during negotiations, the County proposed increasing the monthly costs to employees under each of three health plans. Employee health insurance plans are terms and conditions of employment within the meaning of Section 447.309(1), Florida Statutes. Therefore, the employer is required to bargain with a certified union if it wishes to change the provision of those plans. See *Teamsters, Local 769 v. City of Fort Pierce*, 36 FPER ¶ 87 at 200 (2010), *per curiam aff'd*, 51 So. 3d 1158 (Fla. 1st DCA 2011).

When the Union's chief negotiator asked the County's negotiators when the increased insurance rates would become effective, they responded that the changes would be effective upon ratification or, if not ratified, upon resolution of the impasse. The Union rejected the County's proposal and offered a counter-proposal which included no insurance rate increases for FY 2011-2012. The County rejected the counter-proposal and, on July 13, the County declared an impasse in negotiations. Health insurance was one of two issues at impasse.

Notwithstanding the County's declaration of impasse and the invocation of the impasse resolution process, the parties continued negotiating, as they were required to do. In mid-August, it appeared to the County's negotiator that the

parties had agreed on the contractual language pertaining to health insurance and the special magistrate hearing was cancelled. The County prepared a Memorandum of Understanding (MOU) which increased the health insurance rates effective November 30, which is during FY 2012-2013. This modification changed the mandatory subject of bargaining into a non-mandatory subject of bargaining because it required the Union to waive its right to negotiate over the insurance rates for FY 2012-2013. When the Union rejected the County's proposed MOU, the County reasserted its July 12, 2012, proposal regarding the employees' monthly contribution rates at the special magistrate hearing and at the legislative body hearing.

The Commission agreed with the hearing officer that, after the Union rejected the proposed MOU on September 6, the County could remove the waiver language and that removal converted the proposal from a non-mandatory subject back to a mandatory subject of bargaining. Thereafter, the County could submit its July 12 proposal to the special magistrate and to the legislative body.

The Commission reiterated that during collective bargaining negotiations it is lawful for a party to propose a non-mandatory subject of bargaining. However, neither party may insist that a special magistrate consider a non-mandatory subject of bargaining and a legislative body may not impose a non-mandatory subject such as a waiver of a union's right to bargain over mandatory subjects of bargaining. ■

Commission Discusses Multi-Location Ratification Votes

In *Beightol v. United Teachers of Dade*, Case No. CB-2012-043, 40 FPER ¶ 89 (2013), the United Teachers of Dade (UTD) conducted a one-day contract ratification vote at 400 work locations for 32,000 bargaining unit employees. At the conclusion of the voting at each location, the votes cast were publicly counted and the results announced.

The UTD provided access to the results from individual ratification meetings at the polling/meeting sites when the votes were publicly counted and announced. The total number of votes cast at each location varied from more than 100 votes to as few as 1 vote. The ballots were placed in a manila

envelope and the envelope was sealed. The results were recorded on the pre-marked manila envelopes and signed by the UTD steward or member conducting the meeting and by witnesses. The ballots were taken from the on-site ratification meetings/polling locations to UTD headquarters by UTD stewards or members.

That evening, the UTD held a meeting at its headquarters which was open to the public, including bargaining unit employees. The sums of the tallies recorded on the manila envelopes at the polling sites were totaled. The UTD also removed the ballots from the sealed manila envelopes and put them through

a vote counting machine which automatically produced a final tally announced and shown to those present. However, there was a numerical difference between the total number of votes counted by machine and the sums of the tallies recorded on manila envelopes at the polling sites. The numerical difference would not affect the election results, and under either method of counting the ballots the contracts were ratified.

Beightol, a bargaining unit employee, filed an unfair labor practice charge challenging the manner in which the contract ratification vote was

(Continued on page 17)

MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)

We've *MOVED* our Lansing Office

— James R. Spalding

On August 20, 2013, the Lansing office of the Michigan Employment Relations Commission, Bureau of Employment Relations moved from its previous single-story, south-side Lansing location on S. Washington Avenue, to the imposing Ottawa Building located at 611 W. Ottawa Street, behind the Capitol in downtown Lansing. MERC's Lansing office is on the 2nd floor of the Ottawa Building.

Access to the Lansing MERC office is not quite as easy as before. The prior location had no added security checkpoints aside from Bureau Executive Secretary, Milli Kennedy, who cheerfully greeted visitors as they arrived. At the Ottawa Building, tight security is mandated as visitors are required, upon arrival, to sign in with the security guard who will call to have guests escorted to their destination. Also, only one entrance exists into the Ottawa Building which is accessible through the central courtyard at the southwest corner of the building.

The most convenient public parking to the Ottawa building appears to be in a paid lot having an entrance off W. Allegan Street, just east of Butler Street and almost directly across from the State of Michigan Library & Historical Center (worth visiting if time permits). *Note: West Allegan runs one way east-bound from M-99, Martin Luther King Blvd.*

At this writing, monthly meetings of the Michigan Employment Relations Commission scheduled for Lansing are not held in the Ottawa building. Instead they are held in the Lake Superior Room of the State of Michigan Library & Historical Center located at 702 W. Kalamazoo Street, Lansing, MI 48915. Parking to the library is conveniently available at the paid lot that is well-marked and located on West Kalamazoo Street— just east of Martin Luther King Blvd (M-99). *(Note: The library's entrance faces the parking lot on W. Kalamazoo which is a two-way street. Therefore, the parking lot can be accessed from either direction off of W. Kalamazoo).*

Along with the change in location to the Ottawa Building, please note the updated contact information for MERC's Lansing Office:

Main phone line (no change)..... (517) 373-3580

James Spalding, Mediation Supervisor (517) 335-9178

Milli Kennedy, Executive Secretary..... (517) 335-9142

FAX Line (517) 335-9181

Mail address:

MERC/BER, P. O. Box 30015, Lansing, MI 48909 U.S.A.

Bureau Director Ruthanne Okun may be reached at her telephone number in our Detroit office, which has not changed: (313) 456-3519.

Also the Lansing based Labor Mediators continue to retain their prior phone and email contact information. We look forward to seeing you at our new location in Lansing on the 2nd floor of the Ottawa building. ■

Natalie Priest Yaw New MERC Commissioner

— Ruthanne Okun

Natalie Priest Yaw, of Detroit, was recently appointed as the newest member of the Michigan Employment Relations Commission. She replaces Commissioner Nino Green whose term expired on June 30, 2013.

Commissioner Yaw has years of experience working with businesses and associations. Currently, she is vice president and legal counsel for RBS Citizens, NA, in Southfield, where she represents Citizens Financial Group and RBS Citizens on legal issues concerning claims regarding lender liability from commercial loans, retail banking customers, and consumer lending.

Commissioner Yaw previously worked at the Dickinson Wright law firm in Detroit where she managed complex litigation. She is a current member of the State Bar of Michigan, Wayne County Chapter of the Women Lawyers Association of Michigan, and the Federal Bar Association—Eastern District of Michigan. She holds a bachelor's degree from Rice University and graduated summa cum laude from the Michigan State University College of Law.

Commissioner Yaw is serving a three-year term that expires on June 30, 2016.

MERC - New Labor Mediator on Staff

I am pleased to announce the selection of **Sidney McBride** as the newest Labor Mediator with the Michigan Employment Relations Commission, Bureau of Employment Relations. This is a promotion for Sidney, who has been with the Bureau since 2009 in the positions of Departmental Specialist and Administrative Law Specialist.

During his time with the Bureau, Sidney has been very active in a number of areas within the agency. He has conducted legal research and drafted commission opinions, conducted party settlement conferences on unit clarification and representation cases. He also administered MERC's Fact Finding and Act 312 processes, participated in the revision of MERC's Act 312 and General Rules and regularly assisted Director Okun on special projects and initiatives.

Sidney's prior experience includes work as an Associate Court Administrator at the Third Circuit Court of Michigan and service as Local President and Chief Negotiator of AFSCME Council 25, Local 3309 (also while at Third Circuit Court). As local president, he served as chief grievance official handling alleged contract violations, negotiated various complex matters to facilitate the merger of multiple bargaining units following court reorganization, and conducted training initiatives on collective bargaining and grievance processing methods.

Sidney is a graduate of Wayne State's Law School and active member of the State Bar of Michigan. With his educational background, extensive experience, proven organizational skills and strong work ethic, I am confident that he will be an invaluable addition to the MERC's mediation staff.

— James R. Spalding

COMINGS & GOINGS

FMCS Canada

WELCOME—In May of 2013, **Neil McNeil** joined the FMCS staff as a conciliation officer / mediator in the Atlantic Region. Neil brings with him over twenty-five years of negotiation experience with the Nova Scotia Government Employees Union.

RETIRED—In October of 2013, **Patt Johnson** retired from her position as conciliation officer / mediator in the Northwestern Region of FMCS. Patt started with FMCS in 2001 and we wish her well in her retirement.

RETIRED—**Paul Macdonell**, a conciliation officer / mediator in the Ontario Region, retired in January 2014 after fourteen years with FMCS.

Canada Industrial Relations Board (CIRB)

GOINGS—The Canada Industrial Relations Board regrets to announce that **John Bowman's** term as a union side representative member has ended.

Mr Bowman was first appointed to the Board in November 2007 and his term was renewed for a second three-year mandate in 2010. Prior to his appointment to the Board, Mr. Bowman served as a national representative with the Canadian Association of Industrial Mechanical, and Allied Workers and the Canadian Auto Workers for 29 years.

Members and the staff of the CIRB extend their best wishes to Mr. Bowman in his future endeavours.

Let us know about your newest members, staff achievements and retirements.

WASHINGTON — PERC

WELCOME—Governor Jay Inslee appointed **Mark Brennan** of Seattle as Commissioner on the Public Employment Relations Commission. Mr. Brennan has over 30 years labor relations experience as both a neutral and an advocate.

In 2011, Governor Chris Gregoire appointed Mr. Brennan to the Marine Employees Commission. Mr. Brennan served on the Marine Employees Commission until its sunset in 2013. Mr. Brennan fills the Commission position most recently held by Pamela Bradburn, whose term recently expired. Mr. Brennan's term expires in 2018.

PSLRB — CANADA

WELCOME—Ms. **Emily M. Burke** of Vancouver, B.C., was appointed as part-time member of the Public Service Labour Relations Board on October 1, 2013 for a period of five years.

Ms. Burke has extensive experience as an arbitrator in the public and private sectors, providing arbitration, dispute resolution and investigative services in the areas of labour and employment. Prior to serving as Vice-Chairperson of the B.C. Labour Relations Board for nine years, Ms. Burke practised labour and employment law for a private firm, was a lawyer at the B.C. Labour Relations Board, and Vice-President of the B.C. Council of Administrative Tribunals.

A seasoned lecturer and labour relations author, she was part of the team that adapted and developed the Foundations of Administrative Justice course, which she taught in B.C. and the Yukon, as well as at universities, colleges, and professional regulatory tribunals.

Ms. Burke holds a Bachelor of Laws degree from Dalhousie University and she was called to the British Columbia Bar in 1982. She has also completed Harvard Law School Mediation Training and various courses in advanced mediation, arbitration and dispute resolution.

(FLORIDA — Continued from page 15)

conducted. The Commission agreed with Beightol's exception that the UTD erred by adding a step not contemplated by Florida Administrative Code Rule 60CC-4.002(4), which provides:

Where it is necessary to conduct more than one ratification meeting, each such meeting shall be conducted pursuant to the foregoing requirements [requiring a public count and announcement of the vote], provided that the combined results of voting conducted at the several meetings shall be announced within three (3) days after the final ratification meeting.

The Commission held that the UTD should not have recounted all of the ballots at its headquarters to verify the on-site tallies. The meeting at the UTD's headquarters was not a ratification meeting because votes were not cast at that meeting; rather, it was a meeting called by the UTD to announce the combined results of the 400 ratification meeting sites. The combined results of the ratification meeting sites announced at the UTD headquarters constituted competent substantial evidence that the employees overwhelmingly ratified the contract modifications.

The Commission affirmed the hearing officer's conclusion that the manner in which the UTD conducted a multiple-site contract ratification vote did not violate Section 447.501(2)(a), Florida Statutes. ■

2013 WASHINGTON Conference Highlights



Moderator *Allison Beck* (FMCS—U.S.) with *Advocates' Day Guest Speaker Max Stier* (The Partnership for Public Service).



LUNCHEON GUEST SPEAKER — His Excellency *Gary Doer*, Canadian Ambassador to United States pictured here with Moderator *Jennifer Webster* (FMCS-Canada).



Administrators Roundtable. *Tim Noonan* (Vermont Labor Relations Board); and *Josée Dubois* (Public Service Staffing Tribunal).



Board and Commission Members Roundtable. Facilitators *James Riordan* (Iowa Public Employment Relations Board); and *Elizabeth MacPherson* (CIRB).



The Importance of Labor-Management Collaboration to Improve Student Achievement. PANEL (L-R) *George H. Cohen* (FMCS-U.S.) *Charlie Rose* (Drinker, Biddle and Reath, LLP); and Moderator *Scott Beckenbaugh* (FMCS-U.S.).



2013 WASHINGTON Conference Highlights



Implementing Labor-Management Innovations in Education. PANEL (L-R) *Joshua Starr* (Montgomery County); *Dennis Van Roekel* (National Education Association); *Rob Weil* (American Federation of Teachers); and Moderator *Kevin Flanigan* (NY State PERB).

Workplace Bullying and Labor Relations. Speaker Professor David C. Yamada (Suffolk University Law School) with Moderator Abby Propis Simms (NLRB) .



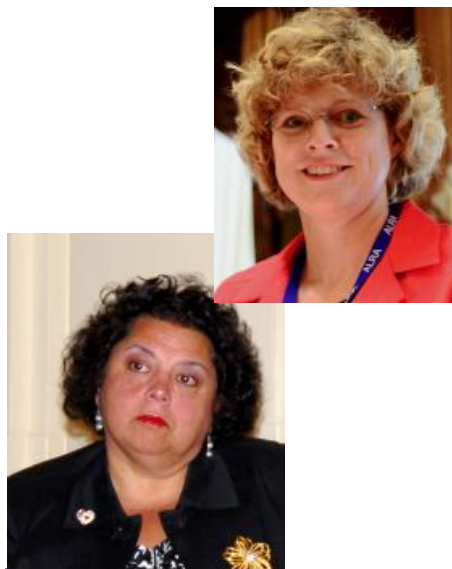
A Day in the Life of an ALRA Guest Speaker....

We invite our readers to link over to Professor Yamada's Blog for his warm, (and flattering) review of his experience as a Guest Speaker at ALRA's Annual conference held in July 2013. Check out his comments at:

<http://newworkplace.wordpress.com/2013/07/24/workplace-bullying-addressing-the-annual-conference-of-the-association-of-labor-relations-agencies/>



WORKSHOP SPEAKERS (L-R) *J. David Cox* (American Federation of Government Employees); *Julia Clark* (FLRA), *Colleen Kelley* (National Treasury Employees Union); and 2012-13 ALRA Past President, *Robert Hackel* (N.J. Public Employment Relations Commission).



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Mediators Roundtable. (L-R) *Lorraine Tesauro* (NJ Public Employment Relations Commission); *Sheri King* (FMCS-Canada); and (not pictured) Moderator *Scot Beckenbaugh* (FMCS-U.S.).



ADVOCATES' DAY SPEAKERS — Why Labor-Management Forum Cooperation Works. (L-R) *Patricia Gilbert* (National Air Traffic Controllers Assoc.); *Michael Huerta* (Federal Aviation Administration); Moderator *Ernie DuBester* (Federal Labor Relations Authority); *Howard Friedman* (National Treasury Employees Union, Ch.245); and *Teresa Rea* (U.S. Patent & Trademark Office).

2013 WASHINGTON Conference Highlights



Social Media and Labor Law: Can't Escape from the Memory. (L-R) Lafe Solomon (NLRB); William Herbert (NY State PERB); and Moderator Kevin Flanigan (NY State PERB).



Ethis and Social Media. LORI KETCHUM (NLRB); and Moderator ABBEY PROPIS SIMMS (NLRB).



Do you have an AVATAR? Using Technology to Advance an Agency's Objectives. PANEL (L-R) Sylvie Guilbert (Public Service Labour Relations Board); and Daniel Rainey (National Mediation Board).



Collective Bargaining in Professional Sports. PANEL (L-R) George H. Cohen (FMCS-U.S.); L. Robert Batterman (Proskauer); and Moderator Scot Beckenbaugh (FMCS-U.S.).



Luncheon Speaker John Higgins (former Counsel, NLRB and ALRA Past President) delivers talk to ALRA attendees on Agency Ethics.



Mediation in the Adjudicative Context. PANEL (L-R) Gary Shinnors (NLRB); Margie Gaines (NLRB); and Erica Crystal (Massachusetts Department of Labor Relations). Moderator Tim Noonan (Vermont Labor Relations Board).



Critical Issues Bargaining: Enhancing Problem-Solving & Mitigating Adversarial Negotiations. Speaker Michael Franczak (FMCS-U.S.).

The Reception — National Geographic Museum (125th Anniversary Exhibit)

Lessard photo



HARRY and MRS. HOGLANDER at the controls on an interactive display at the National Geographic Museum reception.



(L-R) Sylvie Guilbert (PSLRB); Gilles Grenier (PSLRB); Réjean Bercier (FMCS-Canada); and Josée Dubois (Public Service Staffing Tribunal of Canada).



Les Heltzer (Former Executive Secretary, NLRB and a past ALRA President); and Marjorie Wittner (Commonwealth Employment Relations Board).



(L-R) Linda Gonzalez (FMCS-U.S.); Hervé Leblay (Ministère du travail du Québec); and Reg Pearson (Ontario Ministry of Labour).



(L-R) Douglas Fisher (CN Railways); and Cathy Cortez (CN Railways).

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THE LADIES in RED with KEVIN (L-R) Diane Chartrand (CIRB); Sylvie Guilbert (PSLRB); Ginette Brazeau (CIRB); Kevin Hawkins (FMCS-U.S.); Elizabeth MacPherson (CIRB); Sheri King (FMCS-Canada); and Josée Dubois (Public Service Staffing Tribunal of Canada).



Memories of **WASHINGTON 2013 Conference**

