ALRA Advisor
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ALRA ASSOCIATION of LABOR RELATIONS AGENCIES

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ALRA 64th Annual Conference — Minneapolis, Minn.

July 18-21, 2015

ALRA Advisor

www.alra.org

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

In this issue...

New Editors for the *ALRA Advisor*

Jennifer Webster and **Sylvie Guilbert** have taken up the reins as *ALRA Advisor* Editors, following the footsteps of Elizabeth MacPherson.

Credit: Les Heltzer

Jennifer Webster
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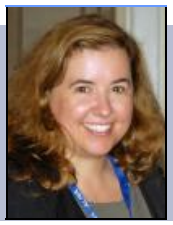

Credit: Jacques Lessard

Sylvie Guilbert
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Jennifer and Sylvie are actively seeking news from your agency to be included in future newsletters.

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

Deadline for July 2015 *Conference Issue* — May 20th

Hope we'll see you in Minneapolis, Minn. July 18-21, 2015

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

DEADLINES:
January Issue: December 1st
July Issue: May 20th

ARTICLES and **PHOTOS:**
All articles are subject to editing for length and clarity. Photos/images should be at a resolution of at least 100 kb jpg, preferably 500 kb or greater.

Submit all material to the *Editors*:
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ON THE COVER....
Minneapolis Skyline with Spoonbridge and Cherry. Claes Oldenburg and Coosje van Bruggen. Spoonbridge and Cherry 1985--1988. Collection Walker Art Center. Gift of Frederick R. Weisman in honor of his parents, William and Mary Weisman, 1988.

Meet the ALRA President ...

Inspired by the Proust Questionnaire, we asked ALRA President **Tim Noonan** to answer some questions about his life in labor relations and his involvement with ALRA.

What is your current position?

I am Executive Director of the Vermont Labor Relations Board. The Board resolves unit determination issues, conducts union representation issues and adjudicates unfair labor practice charges in the non-federal public sector in Vermont. In addition, I believe the Board is the only state labor relations board in the United States which acts like a grievance arbitrator in making final determinations on state employee, state colleges and University of Vermont grievances.

When and where did you start working in labor relations?

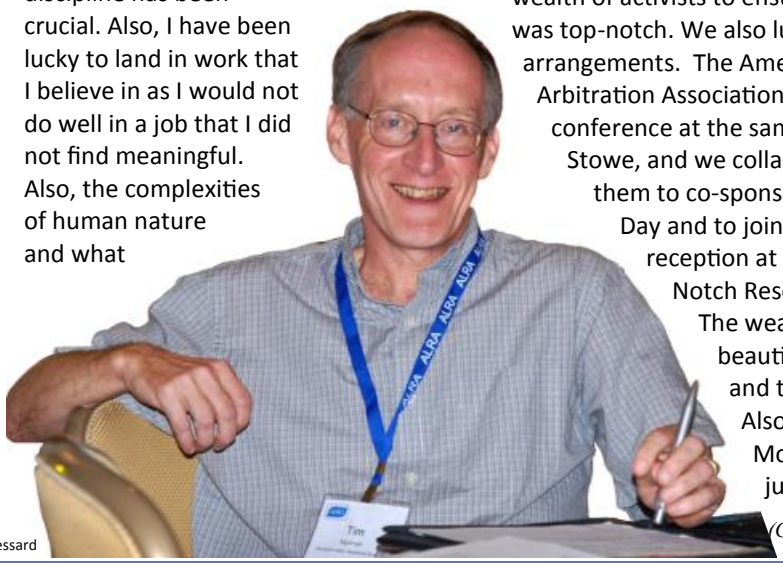
I had a few labor relations internships during my undergraduate and graduate days, but my first full-time employment in labor relations began in January 1981 when the Vermont Labor Relations Board hired me as assistant to the Board. Two and one-half years later, the Board promoted me to the newly created Executive Director position. Here I am, 32 years later, in the same position!

What sparked your interest in labor relations?

I was an Economics major at Providence College and one of the Economics electives was a course in labor relations. I took the course in the spring semester of my sophomore year and was quickly attracted to the idea of workplace democracy. It made perfect sense to me as an offshoot of political democracy. I was fortunate that Providence offered many courses in labor relations, stemming from the rich labor history of Rhode Island, and that I was able to take courses from, and serve an internship under, Francis O'Brien, Director of the Quirk Institute of Industrial Relations at the college. I took every labor relations course I could at PC, and then went on to get a Master's Degree in Labor Studies from the Labor Center at the University of Massachusetts. So an academic interest at the age of 19 has led to a nearly forty year commitment to a field that I never have seriously considered abandoning.

Which elements of your personality have been most helpful in your labor relations work?

Well, since I work for an agency that has only two employees and I am often working alone and undirected, self-discipline has been crucial. Also, I have been lucky to land in work that I believe in as I would not do well in a job that I did not find meaningful. Also, the complexities of human nature and what motivates people have always fascinated me, and labor relations is certainly one of the more interesting fields to observe human nature. Also, a sense of humor is important as a safety valve given some of the situations in which we become embroiled in labor relations.



Credit: Jacques Lessard

How and when did you first become involved with ALRA?

My first ALRA conference was in Portland, Maine, in 1984; from that point forward I embraced the value of informal interchange of ideas and experience with committed colleagues from throughout the United States and Canada. Then, the tremendous ALRA conference in 1987 in Albany, New York, inspired me to become more involved in the inner workings of the organization. In 1989, our Board put in a bid to host the 1991 ALRA conference in Vermont and I joined the ALRA Executive Board.

What is your most lasting memory of ALRA?

I guess it would be the 1991 conference which we hosted in Burlington. I believe we were the smallest agency ever to host the conference so we were nervous whether it would go well. We shouldn't have worried. ALRA then, as now, had a wealth of activists to ensure the program was top-notch. We also lucked out with arrangements. The American Arbitration Association was hosting a conference at the same time in Stowe, and we collaborated with them to co-sponsor Advocates Day and to join them for a reception at the scenic Top Notch Resort in Stowe. The weather was beautiful that evening and the entire week. Also, the Vermont Mozart Festival just happened to

(Continued on page 4)

MEET ALRA's PRESIDENT (from page 3)
be putting on a production of *Pirates of Penzance* at the conference hotel one evening of the conference and ALRA delegates were able to attend. A lasting impression of the conference was how gracious ALRA attendees were to us. All in all, the whole experience was so enjoyable and satisfying that we jumped in again to host the ALRA conference in 2008.

What do you most value in your ALRA experience?

Vermont is a very small state. As a result, there is a real danger of operating in a vacuum. It has been invaluable for me to be able to interact with committed and enthusiastic colleagues from throughout North America to trade ideas and experiences. I have always returned from ALRA conferences feeling enriched.

What do you envision for ALRA's future? In what ways would you like to see the organization grow?

It certainly is a challenging period for an organization such as ALRA where membership is spread throughout North America, since it is increasingly difficult in the current fiscal and political climate for our members to attend conferences.

One important way for the organization to benefit our members is to update and reorganize the ALRA website, and to encourage ALRA members to frequent it. I am confident we can make it a site that will be used more often, thereby enhancing the value of being an ALRA member. We can repurpose the content of the *ALRA Advisor* with a similar objective in mind. Also, our member agencies have tremendous resources which can be shared with other agencies. The website, the *ALRA Advisor*, and other electronic means can be vehicles for disseminating these invaluable tools.

All this being said, I do not believe there is a viable substitute for the value of our personal interactions at the annual conference. The conference serves as the glue of our organization and we need to continue to strive to make it accessible and affordable for all our members.

What professional development activities do you recommend to people who are starting their careers in labor relations?

That's an easy question – get involved in ALRA! There is no other organization in our field that can provide as targeted, effective and economical professional development as ALRA.

In addition, I have been fortunate to be involved for the last 34 years in the New England Consortium of State Labor Relations Agencies, a grouping of all the state labor relations agencies in New England and New York.

We have taken advantage of our close proximity to conduct training sessions and conferences on a regular basis. I would encourage persons starting their careers in labor relations (as well as the veterans!) to get together on a regional basis. A joint training session would be one means to initiating this regional interchange.

Another worthwhile activity is to attend, and get involved in the conducting of, labor relations conference in your state, province or region.


© Janet Boehmer

I typically have learned more from being involved in the planning and sponsoring of labor relations conferences than attending conferences where I have not been so involved.

Is there anything you have read that has informed your work in labor relations?

Since I love reading and believe labor history is of great value in informing the work we do, I have long thought ALRA would be an ideal forum to exchange lists of labor books that have most interested, informed and inspired us. So I am very pleased to answer this question, and hopefully begin an ongoing interchange of "good labor reads". Here, without elaboration and in no particular order, are ten well-written labor history books I would recommend:

- *Toil and Trouble: A History of American Labor*, Thomas Brooks
- *And the Wolf Finally Came: The Decline of the American Steel Industry*, John Hoerr
- *Working*, Studs Terkel
- *Hard Bargains, My Life on the Line*, Bob White
- *We Can't Eat Prestige: The Women Who Organized Harvard*, John Hoerr
- *The Jungle*, Upton Sinclair
- *The Turbulent Years: A History of the American Worker 1933-1941*, Irving Bernstein
- *Collision Course (The Air Traffic Controllers Strike)*, Joseph McCartin
- *The Brothers Reuther and the Story of the UAW*, Victor Reuther
- *The Grapes of Wrath*, John Steinbeck

Tell us about some of your activities outside of labor relations (hobbies, interests, etc.)

My main interest is enjoying time spent with my wife and two daughters.

In addition, I have been a runner for nearly four decades, and have run many marathons and other races over the years.

I have shared my passion for running with the high school girls and boys cross country teams I have coached the last six years.

My youngest daughter is a high school sophomore and I have been able to enjoy watching her development as a runner these last two years as both a coach and father.

I also have been involved for many years in community and church groups addressing poverty in central Vermont.

— Tim Noonan

Canada Industrial Relations Board (CIRB)

Ms. Ginette Brazeau, Chairperson

On December 17, 2014, the Honourable Dr. Kellie Leitch, Minister of Labour for Canada, announced the appointment of Ms. **Ginette Brazeau** as Chairperson of the Canada Industrial Relations Board for a five-year term.

Ginette held the position of Executive Director and General Counsel of the CIRB since September 2012 and was first appointed as Executive Director and Senior Registrar of the CIRB in April 2008. Prior to joining the Board, she was the Senior Director of Strategic Policy and Legislative Reform with the federal Labour Department and also worked at the Federal Mediation and Conciliation Service as Director of Legislation, Research and Policy.

Ginette holds a Bachelor of Laws and a Bachelor of Social Sciences from the University of Ottawa and was called to the Bar of Ontario in 1996. Ginette assumed her new responsibilities on December 28, 2014.

Changes at CIRB

Since November 1, 2014, the CIRB obtains all its support services from the Administrative Tribunals Support Service of Canada (ATSSC). By creating the ATSSC through the *Administrative Tribunals Support Service of Canada Act,* the Government of Canada is consolidating the provision of support services, including legal and mediation and registry services, to eleven administrative tribunals into a single, integrated organization. The role of the ATSSC is to provide these administrative tribunals — including the CIRB— with the support services and facilities needed to exercise their powers and perform their duties and functions in accordance with their statutory responsibilities.

Mandatory Vote legislation passed by Parliament

In the January 2014 edition of the Advisor, the CIRB discussed a private members' Bill (Bill C-525) that was being studied in Parliament and which contained proposed amendments to the *Canada Labour Code* to eliminate the automatic card-check certification system and replace it with a mandatory secret ballot vote process for certification. This Bill has now been adopted by Parliament and received Royal Assent on December 16, 2014. It comes into force 6 months after Royal Assent, hence on June 15, 2015.

The final amendments that were adopted were different from the original proposals that had been put forward in the original Bill. Specifically, the amendments now provide that upon being presented with 40 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. The threshold has been lowered from the 45% support that was required in the initial version of the Bill. Also, the majority support will be determined on the basis of votes cast contrary to the initial proposal that provided that majority support would be determined on the basis of the number of employees in the unit.

The CIRB is currently developing its internal policies and procedures in order to implement these amendments in June 2015.

Public Service Labour Relations and Employment Board

Catherine Ebbs

The Governor in Council, on the recommendation of the Minister of Canadian Heritage and Official Languages, has appointed **Catherine Ebbs** as the new and first Chairperson of the Public Service Labour Relations and Employment Board (PSLREB), effective October 9, 2014. The appointment of Ms. Ebbs is for a period of five years. The PSLREB is the creation of a merger of the Public Service Labour Relations Board (PSLRB) and the Public Service Staffing Tribunal (PSST). It is responsible for administering the collective bargaining and grievance adjudication systems in the federal public service and in Parliament. It is also responsible for the resolution of staffing complaints related to internal appointments and layoffs in the federal public service. It can also receive complaints about appointments that were made to comply with an order in a previous PSLREB decision, as well as revocations of internal appointments. The PSLREB is also responsible for dealing with pay equity complaints filed by, or on behalf of, groups of employees pursuant to the *Canadian Human Rights Act*.

Ms. Ebbs has been Chairperson of the Public Service Labour Relations Board (PSLRB) since July 2, 2014. She came to the PSLRB from the Royal Canadian Mounted Police External Review Committee where she served as chairperson, chief executive officer and senior legal counsel. Prior to that, she was a member of the Parole Board of Canada, where she served as the vice-chairperson of its Appeals Division. Ms. Ebbs is also a former chair of the Heads of Federal Administrative Tribunals Forum. She holds a Master of Laws from Osgoode Law School, a Bachelor of Laws from the University of Ottawa, and a Bachelor of Arts from Carleton University.

ONTARIO LABOUR RELATIONS BOARD

By Voy T. Stelmaszynski

The new Case Management System we reported on in our last missive was launched at the end of July 2014. It continues to be refined and polished.

The Court of Appeal for Ontario issued two important decisions this fall, overturning rulings by the Ontario Divisional Court which had quashed the Board, and restoring the Board's original judgements.

In ***EllisDon*** **2014 ONCA 801 (CanLII),** the unions appealed a ruling of the Divisional Court quashing a Board decision which had found that the Provincial Collective Agreement was enforceable as between EllisDon and the unions (after applying a two-year estoppel), relying on the existence of a 1958 document, the Sarnia Working Agreement.

A majority of the three-person panel of the Divisional Court held that the Board was unreasonable and erred in law in accepting the business records rule and the ancient document rule to find that the SWA was proven, and that only a permanent estoppel was reasonable in the circumstances, in any event.

On appeal, the Court of Appeal stated that the adequacy of reasons is no longer a stand-alone basis for judicial review of an expert tribunal; there was nothing unreasonable in the Board's chain of reasoning about the admissibility of the SWA (notwithstanding that the Board had not adverted to the admissibility provisions of the Labour Relations Act); and, finally, the Board's reasons were not sparse, nor was its logic hidden: the reasons clearly allowed the reviewing court to understand why the Board made its decision and permitted the court to determine whether the Board's conclusion was within the range of acceptable outcomes.

Moreover, the tests considered by the Board for admitting the SWA as a business record or an ancient document were more rigorous than any test under the existing labour legislation. On the issue of the Board's imposition of a two-year estoppel, the Court of Appeal found the Divisional Court erred in failing to show due deference in finding the Board's remedy to be unreasonable and substituting a permanent estoppel. The appeal was allowed and the Board's decision restored.

In ***Terceira*** **2014 ONCA 839 (CanLII),** the Court of Appeal held that the Divisional Court had applied the wrong test in disqualifying a Vice-Chair from presiding over a proceeding before the Board.

The Divisional Court applied a test relating to the conflict of interest of a lawyer, stemming from the existence of a fiduciary relationship and a duty of loyalty owed to the client. The proper test is set out by the Supreme Court in *Wewaykum Indian Band*, which addresses a claim of apprehension of bias and includes a strong presumption of impartiality.

The Court of Appeal ruled that the lower Court failed to apply the presumption of impartiality and failed to conduct a contextual analysis. The Court of Appeal also rejected allegations that procedural fairness had been denied and that the Vice-Chair's exercise of discretion not to inquire into the matter was unreasonable. Again, the appeal was allowed and the Board's decision was restored.

the CALENDAR

April 16-17, 2015

38th Annual Labor & Employment Relations Association Collective Bargaining & Arbitration Conference. Co-sponsored by Washington PERC, the Federal Mediation & Conciliation Service and the National Labor Relations Board. Seattle, Washington. Info: www.perc.wa.gov.

May 20-23, 2015

Annual Meeting of the National Academy of Arbitrators will be held in San Francisco, Westin Street, Francis Hotel. info: http://naarb.org/coming_meetings/index.asp.

July 18-21, 2015

64th Annual Conference. Association of Labor Relations Agencies, Minneapolis, Minnesota. Info: www.alra.org.

Sept. 16-18, 2015

2015 National Industrial Relations Conference, Château Cartier Hotel, Gatineau, Quebec. CIRB will be partnering with the Federal Mediation and Conciliation Service. Info: http://www.cirb-ccri.gc.ca/eic/site/047.nsf/eng/home.

FEDERAL MEDIATION and CONCILIATION SERVICE (FMCS)

FMCS Acting Director Allison Beck nominated for Agency Director

WASHINGTON, DC — The White House announced Jan. 8 that President Obama has nominated Allison Beck, acting director of the Federal Mediation and Conciliation Service (FMCS), to be the new FMCS Director, pending Senate confirmation.

The FMCS Acting Director has served in her current capacity since September 19, 2014 when she was named by the President to lead the Agency. During her tenure with the FMCS, Ms. Beck had previously served as the agency's deputy director for national and international programs, a position she held since joining the Agency in 2010.

With Senate confirmation, she will succeed George H. Cohen, who resigned as FMCS Director in 2013.

Prior to joining FMCS, Ms. Beck was general counsel with the International Association of Machinists from 1989 to 2010 and associate general counsel from 1980 to 1989.

Credit Jacques Lessard

Allison Beck, pictured here with George H. Cohen, has been nominated for the position as the FMCS Director by President Obama.

Ms. Beck was first named to lead the FMCS in September, 2014, but the Senate adjourned in December without acting on her nomination. President Obama has nominated her for confirmation in the new Congress that convened Jan. 6.

FMCS Deputy Director Scot Beckenbaugh called to Mediate U.S. West Coast Ports Dispute

WASHINGTON, D.C. — Scot Beckenbaugh, Deputy Director of the Federal Mediation and Conciliation Service, has been called upon to mediate the continuing negotiations between the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA), affecting operations at 29 Pacific ports from California to Washington.

As reported in national news media coverage of the action, the FMCS Deputy Director has extensive experience in maritime industry negotiations and was involved in the successful mediation of the U.S. east and Gulf coast ports negotiation between the International Longshoremen's Association (ILA) and the U.S. Maritime Alliance in 2012- 2013.

FMCS Acting Director Allison Beck announced the Agency's new role in the west coast talks in a statement issued Jan. 5: "In response to a joint request for assistance from the parties, collective bargaining between ILWU and PMA representatives will continue as soon as possible under the auspices of the Federal Mediation and Conciliation Service (FMCS). We are prepared and ready to render prompt assistance," she said.

As is Agency practice, the FMCS is not commenting on meeting dates and locations. In addition, the FMCS is not commenting on the status or substance of the negotiations.

FMCS Mediates FairPoint Communications-CWA-IBEW Labor Talks

WASHINGTON, D.C. — The Federal Mediation and Conciliation Service (FMCS) has entered talks between the International Brotherhood of Electrical Workers (IBEW), the Communications Workers of America (CWA) and FairPoint Communications Inc., FMCS Acting Director Allison Beck announced Jan. 5.

"In response to a request from the FMCS, representatives of IBEW, CWA and FairPoint Communications Inc. will meet under FMCS auspices in Washington, D.C. FMCS has assigned a team of experienced mediators to assist the parties in reaching mutually acceptable agreements to resolve the work stoppage begun on October 17, 2014," she said in a media statement.

She said the Agency would not comment further regarding meeting dates and locations or regarding the status or substance of the negotiations.

FMCS Webinar "From Adversaries to Allies: An Interest-Based Bargaining Success Story"

As part of continuing efforts by the Federal Mediation and Conciliation Service (FMCS) to engage customers by leveraging new technologies, the FMCS presented a special live webinar event featuring the collective bargaining success story: "From Adversaries to Allies: An Interest-Based Bargaining Success Story" on Jan, 29, 2015.

The live webinar panel presentation followed the journey of the Southern Nevada Health District and SEIU Local 1107 from adversaries to allies through the use of interest-based bargaining. Representatives from labor and management were joined by FMCS Commissioner Lavonne Ritter, who assisted them in the bargaining. Presenters detailed the background and history of the parties, the decision to utilize an interest-based process for their last bargaining, and the methodology employed to reach agreement on economic issues. In addition, participants heard from the parties about how the process has transformed their relationship as well as how others might achieve similar outcomes.

Presenters included:

- Shirley Oakley - HR Administrator Southern Nevada Health District
- Dolores Bodie, - SEIU Nevada Local 1107, Contract Representative
- Lavonne Ritter - Commissioner FMCS
- Andy Glass – Director Administration/SNHD;
- Bonnie Sorenson – Director of Nursing & Clinical Services/ SNHD;
- Jamey Bailey – SEIU Nevada Local 1107, Contract Representative;
- Jacelyn Raiche-Curl – Supervisory Chief Steward, Local 1107, & Union Bargaining Chair for Supervisory Unit;
- Cara Evangelista – Former General Unit Chief Steward, Local 1107, & Union Bargaining Chair for General Unit, currently the Environmental Health Specialist with Accurate Building Maintenance/SNHD

For more information, contact Lynda Lee, FMCS Institute at (206) 553-2773 or llee@fmcs.gov.

FMCS Institute Seminar "Arbitration for Advocates"

The Federal Mediation and Conciliation Service (FMCS) Institute offered labor relations advocates the opportunity to immerse themselves in an intensive program designed to enhance their arbitration skills in a specially designed three-day seminar held on Feb. 18-20 2015 at the FMCS Oakland, CA Training Center.

The seminar was specially designed to appeal to even highly experienced labor relations practitioners. Attendees participated in a mock arbitration of a complex case that raises both discipline and contract interpretation issues. Seminar registrants received course texts and a specially compiled set of arbitration practice guides.

Seminar topics included:

- Educating the arbitrator prior to hearing;
- Opening the case with a winning statement;
- Structuring the order of proof;
- Proving negotiating history and past practice;
- Making and responding to evidentiary objections;
- Examining witnesses;
- Offering relevant prior precedent;
- Relying on external law to strengthen your position;
- Seeking and opposing uncommon remedies;
- Crafting effective closing arguments and post-hearing briefs.

Upon successful completion of this course, participants received an FMCS Certificate of Training.

For more info, please contact Lynda Lee at the FMCS Institute at 206-553-2773 or llee@fmcs.gov.

FMCS Online Conflict Resolution Week Training Event Attracts Hundreds

The Federal Mediation and Conciliation Service (FMCS) again demonstrated leadership in cutting-edge conflict resolution by hosting its second successful Conflict Resolution Week virtual conference, held October 14–17, 2014.

During the four-day online and in-person conference, FMCS leadership, mediators, and staff delivered and supported a total of 18 web-based training seminars and two live presentations. The sessions promoted the use of mediation and alternative dispute resolution for collective bargaining in all sectors. In addition, the conference provided professional development for the Agency's mediators.

Showcasing the Agency's training programs and services for both labor-management and ADR customers, Conflict Resolution Week covered topics from the traditional mediation basics to the cutting edge in conflict resolution. Hundreds of visitors attended the online sessions, and many FMCS employees participated in the in-person sessions held at the national office.

The October conference began with a live, kick-off event in which Acting Director Allison Beck and Deputy Director Scot Beckenbaugh discussed the history and importance of the Agency's labor-management and ADR services with national

office staff and field administrative assistants. FMCS Commissioners Paul Concordia, Gary Eder, Denise McKenney, Larry Passwaters, and Wayne Rentzel conducted a mock mediation demonstration for the benefit of FMCS headquarters staff.

On October 15, FMCS mediators facilitated "Maximizing Mediation Outcomes" webinars for the public, which focused on improving participant understanding of the mediation process, the role of the mediator and the parties, and maximizing best practices for best outcomes.

FMCS Again Highly Rated as Best Place to Work Among Small and Independent Federal Agencies

WASHINGTON, D.C. — The Federal Mediation and Conciliation Service (FMCS) has been ranked second among all small and independent federal agencies in the recently released 2014 ratings of the Best Places to Work in the Federal Government.

For 2014, the FMCS improved its ranking overall from the 2013 ratings in which the Agency was ranked third among all small and independent agencies. In the most recent ratings, the FMCS ranked just behind the Surface Transportation Board and ahead of the Peace Corps and the National Endowment for the Humanities. The FMCS ranked in the top five in every single category of evaluation. The rankings are announced by the Partnership for Public Service (PPS), a nonprofit, nonpartisan organization.

The Best Places to Work ranking measures relative strengths in a number of areas. "We see the information collected as an important opportunity in our determination to do better," said FMCS Acting Director Allison Beck. "The data will help us focus on advancing a workplace environment of greater engagement, teamwork, and employee recognition, where effective innovation, essential fairness, and responsive leadership are its touchstones."

FMCS continues its unbroken record, since comparative rankings became available, as one of the top small agencies in which to work. The rating is derived from an analysis of the Employee Viewpoint Survey (EVS), a confidential government-wide survey administered by the Office of Personnel Management (OPM) each year.

"This has been a challenging year for the FMCS and for federal workers in general," Ms. Beck said. "I am extremely proud of this Agency and the people who work here. I want to thank all our employees for their commitment and dedication to the FMCS mission and for all that they do each day to make this Agency one of the best places to work."

The complete rankings are available at: http://bestplacestowork.org/BPTW/rankings/overall/small.

With Assistance from FMCS, the Atlanta Symphony Orchestra Musicians and Management Reach Agreement

WASHINGTON, DC — The U.S. Federal Mediation and Conciliation Service (FMCS) announced on November 7, 2014 that the Atlanta Symphony Orchestra Players' Association (ASOPA) musicians had reached a settlement with management with FMCS help, ending a labor dispute that had silenced the nationally known orchestra.

FMCS Acting Director Allison Beck commended negotiators for the musicians, the Symphony and the Woodruff Arts Center for their commitment and professionalism during the lengthy and difficult negotiations. "These have been difficult times for many arts organizations nationwide," she said. "The parties have been faced with complex issues and some very tough choices, which they were dedicated to resolving. Thanks to their efforts, the multi-Grammy Award-winning Atlanta Symphony may be able to soon resume the orchestra's season."

In addition to recognizing the work of the negotiating teams, Ms. Beck also commended FMCS Commissioner Richard Giacolone for his tireless effort and the long hours he provided in assisting the musicians and symphony management in reaching agreement. "Rich's work in this negotiation was truly outstanding," she said.

FMCS to Prepare "Coaches" at FAA for Good Labor-Management Relations

The Federal Mediation and Conciliation Service (FMCS) is ramping up an innovative training program aimed at preparing "coaches" who will help labor and management groups at the Federal Aviation Administration develop and maintain cooperative partnerships.

The new FMCS initiative is a continuation of a highly successful FAA program that is now threatened by a reduction in resources. Previously, the FAA coaches training program had played a significant role in transforming the historically contentious labor-management partnership at the FAA. In helping to continue the FAA coaches program, the FMCS goal is to assist the FAA in preserving its progress in developing healthy labor-management relationships and ultimately to further develop and strengthen the FAA's labor-management relations.

(Continued on page 11)

— by Roxanne Rothschild & Jennifer Abruzzo

NLRB Issues Final Rule to Modernize Representation—Case Procedures

The National Labor Relations Board adopted a final rule amending its representation–case procedures to modernize and streamline the process for resolving representation disputes. The rule was published in the Federal Register on December 15, 2014, and will take effect on April 14, 2015.

Of the final rule, Chairman Pearce said, "I am heartened that the Board has chosen to enact amendments that will modernize the representation case process and fulfill the promise of the National Labor Relations Act. Simplifying and streamlining the process will result in improvements for all parties. With these changes, the Board strives to ensure that its representation process remains a model of fairness and efficiency for all."

The final rule was approved by Board Chairman Mark Gaston Pearce and Members Kent Y. Hirozawa and Nancy Schiffer. Board Members Philip A. Miscimarra and Harry I. Johnson III dissented. The rule includes detailed explanations regarding the rule's impact on current procedures and the views of the majority and dissenting members.

The Board believes the rule will enable the agency to more effectively administer the National Labor Relations Act by modernizing its rules in light of modern technology, making its procedures more transparent and uniform across regions, and eliminating unnecessary litigation and delay. With these amendments, the Board will be better able to fulfill its duty to protect employees' rights by fairly, efficiently and expeditiously resolving questions of representation.

Thus, the final rule:

- Provides for electronic filing and transmission of election petitions and other documents;
- Ensures that employees, employers and unions receive timely information they need to understand and participate in the representation case process;
- Eliminates or reduces unnecessary litigation, duplication and delay;
- Adopts best practices and uniform procedures across regions;
- Requires that additional contact information (personal telephone numbers and email addresses) be included in voter lists, to the extent that information is available to the employer, in order to enhance a fair and free exchange of ideas by permitting other parties to the election to communicate with voters about the election using modern technology; and
- Allows parties to consolidate all election-related appeals to the Board into a single appeals process.

More information is available on a fact sheet on the Agency's website, including a link to the final rule in the Federal Register, the majority views, and the dissenting views. (http://www.nlrb.gov/news-outreach/fact-sheets/nlrb-representation-case-procedures-fact-sheet).

Purple Communications, Inc.

(361 NLRB No. 126, 2014)

All five Board members of the National Labor Relations Board reviewed the Administrative Law Judge's finding that the Respondent's electronic communications policy, which prohibits employees' non-business use of its email network, was lawful and not objectionable under *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).

A Board majority consisting of Chairman Pearce and Members Hirozawa and Schiffer overruled *Register Guard*'s holding that employees have no statutory right to use their employer's email system for Section 7 purposes. The majority concluded that an employer that gives its employees access to its email system must presumptively permit the employees to use the email system for statutorily protected communications during nonworking time.

But an employer can rebut the presumption by showing that special circumstances make its restrictions necessary to maintain production and discipline.

The majority concluded that *Register Guard* had focused too much on employers' property rights and too little on the importance of email as a means of workplace communication. Instead, the majority adopted an analysis that accommodates the competing rights under an approach based on that of *Republic Aviation*, 324 U.S. 793 (1945). Acknowledging that an email system differs from real property in significant respects,

(Continued on page 11)

the majority applied *Republic Aviation* and related precedents by analogy in some but not all respects.

Based on Board and Supreme Court precedents, the majority rejected arguments that *Republic Aviation*'s presumption should apply only if employees would otherwise be entirely deprived of their statutory right to communicate and that employees' alternative means of communication (such as by personal email or social media accounts) made the presumption inappropriate.

The majority also explained that its decision was limited: it applies only to email, only to employees who use their employer's email system for work, and only to employees' nonworking time. Employers may still monitor email use for legitimate management reasons and tell employees that they have no expectation of privacy when they use the email system.

The majority rejected claims that the decision violates employers' free-speech rights.

Rather than ruling on the Respondent's electronic communications policy at this time, the Board remanded the case for the Respondent to present evidence of special circumstances justifying its restrictions on employees' use of the email system.

In separate dissents, Members Miscimarra and Johnson contended that *Register Guard* was correctly decided and should not be overruled. Member Miscimarra argued that the majority's decision: (1) improperly presumes that employees need to use employer email systems to engage in protected conduct; (2) does not properly balance employees' statutory rights against employers' property rights; (3) adversely affects other legal requirements and creates significant problems for employees, employers, unions, and the Board; and (4) replaces a clear rule with one that makes it impossible for parties to understand their rights and obligations.

Member Johnson argued that the majority: (1) misunderstands the differences between email and physical space and, as a result, undermines employers' rights to own and operate email networks; (2) wrongly rejects precedents stating that employees have no right to use employer equipment and relies on employees' convenience; (3) misapplies *Republic Aviation* by failing to consider employees' other communication options, failing to limit the property intrusion to what is adequate for employees' effective exercise of their rights, and failing to follow the principle that "working time is for work"; (4) wrongly disregards employees' alternative means of communication; (5) violates the First Amendment by forcing employers to subsidize hostile speech; and (6) creates an unworkable rule.

FMCS *(Continued from page 9)*

The FMCS is currently developing curriculum materials for a six-month training that will enable participants at the FAA to function as internal "coaches" with labor and management groups, teaching them important relationship skills such as communication and leadership. The FAA training is set to begin in March with a half-dozen FMCS mediators in periodic training sessions with an equal number of FAA participants, through August. During part of the training, FAA trainees will shadow FMCS mediators as they perform meeting facilitation and coaching duties.

FMCS also is developing training booklets, presentations and other materials for use by the FAA as the FAA continues and expands its coaches program.

MERC *(Continued from page 17)*

The ALJ found that neither the letter nor the Ground Rules were clear and explicit notices of intent to terminate the collective bargaining agreement. Because the agreement remained in effect, Respondent violated its duty to bargain in good faith when it refused to process and arbitrate a grievance filed by Charging Party.

The Commission rejected Respondent's exceptions, which argued that the ALJ erred in finding that the collective bargaining agreement did not terminate on April 30, 2012. Respondent also argued that the case relied upon by the ALJ, *36th District Court v AFSCME Council 25, Local 917,* 295 Mich App 502 (2012), was distinguishable. The Commission also rejected that argument, finding that the Court's holding, that a notice to terminate must be clear and explicit, was applicable to the facts of this case.

Electronic Filing at Iowa PERB *by Janelle Niebuhr*

With the start of the New Year, the Iowa Public Employment Relations Board began a new era in case management and document retention. All documents filed in cases initiated after January 1, 2015, must be filed on Iowa PERB's new online filing system unless specifically exempted by rule. PERB has accepted documents filed voluntarily via the online filing system since September 24, 2014.

In 2012, PERB began exploring the idea of a paperless agency, including moving to electronic filing. PERB developed a set of goals for a web-based filing system, which were cost containment, ease of use for both constituents and staff, and comprehensiveness. In the view of these goals, PERB began investigating various options for electronic filing systems.

At the same time, the Iowa Judicial Branch was implementing a comprehensive online filing system for all courts (Small Claims, District, Appeals, Supreme, etc.) in the state after undertaking a multiyear bidding process to select a vendor. After attending a CLE introducing the system to attorneys, Board Member Janelle Niebuhr and Administrative Law Judge Susan Bolte contacted the Judicial Branch to learn more about the system and learn from their experience with development and implementation.

PERB consulted with the Executive Branch's information technology and procurement departments and the State Chief Information Officer to determine the procedures necessary to obtain an electronic filing system similar to the Judicial Branch's. Based upon PERB's goals and budget, it became clear that PERB should use Tybera Development Group, the same vendor as the Judicial Branch, because PERB could realize a much better price due to the Judicial Branch's contract and attorneys using PERB's system would also likely be familiar with the Court's electronic filing system, making the skills transferable between the two systems. PERB entered into a contract with Tybera shortly thereafter.

Over the next year, Tybera worked with PERB staff to design an all-inclusive system for the filing, service, management, and storage of all documents in adjudicatory proceedings before the agency. Three distinct technological products comprise the e-filing system: an online filing interface, a case management system, and a document management system.

The document management system stores all documents filed with the agency. The case management system stores the data associated with a case and allows for queries to be run against that data. The online filing interface interacts with the document management system and the case management system to recall information for the user to access and allows the user to submit information and documents to the document management system and case management system. The online filing interface is accessible through the "eFiling" link on the PERB website's homepage. Neither the case management system nor the document management system is accessible to the public.

During the development of the system, the Board simultaneously worked with legislators and the Governor to pass a bill amending PERB's enabling act. The bill required PERB to establish an electronic filing system by rule. *See* H.F. 2172, 85th Gen. Assem., 2014 Reg. Sess. (Ia. 2014), available at https://www.legis.iowa.gov/docs/IowaActs/85/2/pdf/2014%20Iowa%20Acts.pdf, pp. 3-4. Prior to the amendment, the statute specifically required the Board to serve documents in cases via restricted certified mail. The language of the bill required PERB to establish by rule an electronic system for the filing and service of all documents in cases. Due in large part to the leg work of the Board, the bill passed the legislature with bipartisan support and without any amendments to the bill.

Upon the bill's passage, PERB staff began working on rules governing the use of the electronic filing system. These rules were based primarily on the Judicial Branch's rules. Prior to adoption, PERB also received input from constituents. PERB administrative rules 621—chapter 16 (Electronic Document Management System) took effect on September 24, 2014 and are available on our website, www.iowaperb.iowa.gov.

Before the system went live on September 24, 2014, a group of volunteers from PERB's constituency group filed test documents. In addition, the State's Internet Security Office put the system through a series of rigorous security tests. PERB trained constituents at its 2014 conference on September 22-23, 2014. PERB plans to hold several online trainings in the coming months.

We anticipate that PERB's electronic filing system will improve workflow and reduce the costs associated with paper filings for both PERB and its constituents. More importantly, it will grant the public real-time access to all case filings, unless otherwise protected by law. We invite you to look at PERB's system at https://perb.iowa.gov/efiling where you are welcome to request a non-filer user account

Plans to accept requests for impasse services, requests for grievance arbitrator lists, statutorily-required certified employee organization reports, and contracts via the system are being considered, which will make Iowa PERB virtually paperless.

Electronic/Telephonic Election Pilot Study Well Received

—by Mike Sellars

In September, the Washington State Public Employment Relations Commission (Washington PERC) piloted an electronic/telephonic representation election with a bargaining unit of 1,300 medical residents and fellows at the University of Washington. The University of Washington runs a medical school and operates a large health care system.

Following the Canada Industrial Relations Board's (CIRB) presentation on electronic/telephonic elections at the 2012 ALRA Conference, Washington PERC had a number of discussions with the CIRB regarding electronic/telephonic elections. Those discussions continued this summer and included the outside entity that the CIRB uses to administer the electronic/telephonic election.

Washington PERC's rules provides that all elections will be conducted by mail ballot. So, the parties agreed to pilot the electronic/telephonic election. Washington PERC contracted with Intelivote, the company utilized by the CIRB when it conducts electronic/telephonic elections, to provide the tool to run the election.

Washington PERC supplied the names and addresses of the eligible voters to Intelivote, as well as the text of the ballot and ballot instructions. Intelivote prepared and mailed out the correspondence containing the unique personal identification number that allows each voter to vote. The correspondence was on PERC letterhead and contained the PERC return address. To the recipient, it was a mailing from PERC. As with the CIRB, Washington PERC conducted the vote and Intelivote provided the tool.

The election was conducted over 14 days. Washington PERC staff had access to the database of voters maintained by Intelivote. Agency staff fielded questions and assisted eligible voters. Agency staff, when necessary, retrieved a voter's personal identification number, disabled and assigned a new personal identification number. Agency staff did not have the ability to see how the employee voted.

Of the 1305 eligible voters, 697 voted: 641 voted online and 56 voted telephonically. The employees overwhelmingly voted in favor of representation. The first vote was registered within minutes of the election opening, and the last was registered 9 minutes before the election closed. The results were available within 30 minutes of the election being closed. The turnout was comparable to the turnout with other similarly situated employees, such as teaching assistants at the University of Washington.

The electronic/telephonic election was easier to administer, more efficient and comparable in cost to a similarly sized mail ballot election. Equally important, however, is that conducting the election by mail ballot would have required the utilizing other staff not normally assigned these duties.

More significant than the cost comparisons was the impact on the ability of eligible employees to vote. Based upon when new PIN numbers requested and when ballots were cast, we estimate approximately 200 voters would not have gotten their ballot in on time to be counted in a mail ballot election. In addition to the increase in ease and efficiency, the electronic/telephonic vote lead to greater enfranchisement of the employees.

Washington PERC will continue to look for other opportunities to conduct electronic/telephonic elections. This election was one of the bigger elections conducted by Washington PERC. In smaller elections, the cost of an electronic/telephonic election is still currently higher. Yet, opportunities to conduct additional electronic/telephonic elections will exist. With some of clientele, it may be feasible to send the personal identification number and ballot instructions via email rather than regular mail. This will drive down the cost even further. As the mail system in the US endures further cutbacks, including potentially eliminating a day of delivery, alternatives such as electronic/telephonic elections will definitely need to be considered.

Many thanks to our friends and colleagues at the CIRB. This success would not have been possible without their willingness to share and their support throughout the process. Special thanks to former Chairperson Elizabeth MacPherson, current Chairperson and former Executive Director Ginette Brazeau and CIRB staff Warren Nelson, Lisa Rotatore and Natalie Zawadowsky.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION—MERC

Noteworthy Decisions

—Lynn Morison, Staff Attorney

Pontiac Education Association, MEA/NEA-and -Pontiac School District, Case CU12 J-047, issued December 18, 2014

Issues: Duty to Bargain; Prohibited Subjects of Bargaining; 2011 PA 103; Filing and Maintenance of Lawsuit as an Unfair Labor Practice

Charging Party and Respondent were parties to a 2007-2011 collective bargaining agreement that expired on August 31, 2011.

In March 2012, Charging Party announced the layoff of certain teachers, effective April 16, 2012. As a result, on May 2, 2012, the Respondent Union filed a Complaint for Injunctive Relief in Oakland County Circuit Court alleging that the layoffs violated the expired contract. The Union sought an injunction requiring the Employer to restore the status quo, but the Court refused to grant injunctive relief. The Union, however, continued with the suit and commenced conducting discovery.

Charging Party responded by filing the instant unfair labor practice charge alleging that the Union's filing and continued pursuit of the lawsuit constituted an unlawful attempt to enforce a contract provision pertaining to a prohibited subject of bargaining in violation of the Union's duty to bargain.

The ALJ rejected the Charging Party's contention that the Union violated its duty to bargain by filing and pursuing a baseless lawsuit.

On exceptions, Charging Party argued that the ALJ erred in concluding that it would be improper to find the Union guilty of pursuing a baseless lawsuit where the meaning of §15(3)(k) had not yet become established law. Charging Party also argued that the ALJ erred in dismissing the charge instead of finding a violation and ordering an appropriate remedy.

The Commission found no merit to Charging Party's exceptions. Initially, the Commission noted that that the Employer had no duty to bargain over the procedures used to lay off teachers in April 2012 as those procedures were prohibited subjects of bargaining under § 15(3)(k) of PERA. The Commission, however, further noted that a Charging Party must prove that a lawsuit was filed with a retaliatory motive and lacked a reasonable basis in order to establish that the filing of the lawsuit was itself an unfair labor practice.

In this case, the Commission found that Respondent's lawsuit had a reasonable basis because there were no reported decisions by either the Commission or any of its ALJs on the meaning and scope of §15(3)(k) at the time the lawsuit was filed. The interpretation of the applicable law was therefore uncertain at the time that the suit was filed and the suit could not be considered frivolous or plainly foreclosed. The Commission further noted that the evidence was not sufficient to show that Respondent's motive, in filing suit, was specifically to retaliate against Charging Party for its exercise of protected rights. Under such circumstances, the Commission affirmed the ALJ's Decision and Recommended Order.

County of Macomb—and—Michigan AFSCME, Council 25, AFL-CIO, and its Affiliated Local 411, Case C11 L-215, issued September 26, 2014

Issues: Duty to Bargain; Information request, Confidentiality; FOIA

The Commission reversed the ALJ's finding that Respondent violated its duty to bargain by refusing to provide Charging Party with copies of employment interview questions.

Respondent's Department of Facilities and Operations was seeking to fill the promotional position of Custodian I. Respondent interviewed five individuals for the position, including Green, a member of the bargaining unit represented by Charging Party. Upon completion of the interview process, Green was not selected for the Custodian I position. As a result of Green's denial, Charging Party filed a grievance contending that pursuant to the terms of the parties' collective bargaining agreement, Green met the posted qualifications, had the highest seniority, and therefore, should have received the position. Citing that the interview of Green was subjective, Charging Party requested a copy of the interview questions from Respondent, as well as any written notes the interviewers made during Green's interview. Upon Respondent's refusal to provide physical copies of the interview questions and requested documentation, Charging Party filed its unfair labor charge against Respondent.

The ALJ agreed with Charging Party and found that Respondent was

obligated to supply the requested information in order for Charging Party to move forward in processing its grievance involving Green. The ALJ found that while the Michigan Freedom of Information Act (FOIA), MCL 15.243 provides for some exceptions to the rules surrounding providing information to parties', it did not mean that a public employer may not be required to provide that information to the union that represents its employees under PERA. The ALJ concluded that Respondent did not assert a legitimate and substantial interest in keeping the information confidential, and violated it duty to bargain to failing to provide the interview questions and notes to Charging Party.

In its exceptions, Respondent claimed that the ALJ erred by ordering it to disclose the written interview questions to Charging Party, and by failing to find Respondent's offer to permit Charging Party to review, but not photocopy, the interview questions to be sufficient. Respondent maintained that the interview questions were confidential and that it was exempt from providing them under § 13(1)(k), (l), and (m) of FOIA.

The Commission agreed with Respondent, and found its exceptions to be meritorious. The Commission disagreed with the ALJ's rejection of Respondent's offer to compromise with Charging Party as untimely and insufficient, as Respondent promptly objected to Charging Party's information request. The Commission concluded that Respondent's offer to permit Charging Party to physically see, but not photocopy, the interview questions was reasonable, and reasoned that the offer both satisfied Charging Party's information request, and preserved the confidentiality of the interview questions by ensuring they were not shared to bargaining unit members outside of the Union's leadership. The Commission noted that under PERA, Respondent was only required to offer the information for review, as it did. and Charging Party failed to explain why the physical copies of the questions or interview notes were necessary.

In supporting Respondents position that the interview questions were exempt from disclosure under FOIA, the Commission reasoned the ALJ's conclusion that interview questions and "test questions," as provided under § 13 (1)(k) of FOIA, were not related was unfounded. The Commission found that interview questions were analogous to test questions which help the employer to discern an applicant's qualifications for the position. Rather, the Commission found the interview questions to fall within the phrase "…other examination instruments or data used to administer… public employment…" and were further protected under FOIA because of their confidentiality. Therefore, in reversing the ALJ's ruling, the Commission found that Respondent did not violate its duty to bargain with Charging Party by failing to provide the written interview questions and notes as requested, and ordered the unfair labor practice charge to be dismissed.

Wayne County—and—Michigan AFSCME Council 25 and its Affiliated Local 25, Case C13 E-090, issued September 26, 2014

Issues: Duty to Bargain; Information Request; Confidentiality

In its Decision and Order, the Commission reversed the ALJ's finding that Respondent breached its duty to bargain by refusing to supply a copy of a photograph, related to an employee's discipline, to Charging Party.

Charging Party's bargaining unit member, Myers, allegedly assaulted an employee (complainant) of a pizza restaurant while he was conducting an inspection. A witness stated that Myers placed his hands around the neck of the complainant, causing a red mark. The complainant provided Respondent with a written statement and a color photograph that purportedly showed the red marks around her neck. Respondent suspended Myers for twenty days. Charging Party filed a grievance over Myers' discipline.

At the disciplinary hearing, Respondent showed Charging Party a color photograph of the marks on the complainant's neck and written witness statements. Charging Party requested the information from Respondent in order to process its grievance. Respondent permitted Charging Party to view the original photograph and agreed only to supply a redacted photo eliminating the complainant's face to protect her privacy. Additionally, Respondent stated it would only release the redacted photograph if Charging Party signed a non-dissemination agreement to limit viewing of the photo to union representatives, experts, witnesses or investigators. Charging Party refused to sign the non-dissemination agreement because it had never been required to do so in the past.

The ALJ found that Respondent violated its duty to bargain by refusing to supply Charging Party with an unredacted copy of the photograph of Complainant's injury.

On exceptions, the Commission Majority agreed with Respondent that by affording Charging Party multiple opportunities to view the original color photograph, and by agreeing to release the redacted photograph upon receipt of a signed a non-dissemination agreement, it fulfilled its duty to bargain.. The Majority agreed with Respondent that the case should have been evaluated under the analysis set forth in *Detroit Edison Co v NLRB*, 440 US 301 (1979), where the employer was found to have no obligation to provide information to the union because it demonstrated the need for confidentiality regarding employee tests and answer sheets to protect the integrity of the test. The Commission determined that, based on

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the ruling in *Detroit Edison*, Respondent was justified in trying to preserve the complainant's privacy and the confidentiality of the photograph.

In determining that Respondent had a legitimate concern about the potential liability that could result if the photograph ended up in the wrong hands, the Commission Majority found that Respondent was also justified in insisting on the signing of a non-dissemination agreement. The Commission found that Respondent's actions in showing Charging Party the photograph, and, its offer to release a redacted version of the photo upon receipt of a signed non-dissemination agreement, fulfilled its obligation to provide the information requested by Charging Party, and therefore, did not violate its duty to bargain.

Commission Chair, Edward Callaghan, dissented from the Majority, reasoning that Respondent breached its duty to bargain by refusing to supply an unredacted copy of the photograph to Charging Party. Chair Callaghan stated that the color copy of the photograph was essential to the processing of Charging Party's grievance since the marks on the complainant's neck were the basis for Myers' discipline.

Further, Chair Callaghan stated that since Charging Party's representatives had already met with the Complainant, those representatives would have been familiar with her appearance, so a redacted copy of the photograph was unwarranted. Moreover, there is no evidence that the complainant imposed conditions on the use or disclosure of the photograph when she provided it to Respondent, and there are no any indications in the record that she expressed concerns about her privacy.

Therefore, Chair Callaghan noted that this case is distinguishable from *Detroit Edison* because the evidence does not support Respondent's assertion of an overriding, legitimate interest in the complainant's privacy which mandates withholding a copy of the photograph or requiring a non-dissemination agreement. Lastly, Chair Callaghan concluded that Respondent had no reason to believe that Charging Party would have misused complainant's photograph.

University of Michigan—and—Graduate Employees Organization/AFT,

Case R11 D-034, issued June 19, 2014

Issues: Representation, Public Employee Status, Students, Motion for Reconsideration

On reconsideration the Commission dismissed the Graduate Employees Organization's (Petitioner or Union) petition for representation election upon finding that Graduate Student Research Assistants (GSRAs) at the University of Michigan (the University) are not employees under PERA.

In April 2011, the Union filed a petition for representation election, which MERC dismissed based on its finding in *Regents of the University of Michigan*, 1981 MERC Lab Op 777 that the GSRAs are not employees. The Commission dismissed the petition despite the University's agreement to a consent election.

After considering the Petitioner's motion for reconsideration, the Commission referred the matter to an administrative law judge (ALJ) for an evidentiary hearing. The Commission instructed the ALJ to give the Petitioner the opportunity to prove a material change of circumstances, since the Commission's 1981 decision in *Regents of the University of Michigan,* that would warrant a finding that some or all of the GSRAs are employees.

After reviewing the record developed by the ALJ, the Commission noted there been some changes in the circumstances of GSRAs since its 1981 decision. The University now acknowledges the GSRAs to be employees and treats them as such.

The University establishes a minimum wage for GSRAs. GSRA stipends are subject to federal tax because the stipends are considered compensation for services rendered to the University. GSRAs with full-time appointments also receive employer-paid health and life insurance, dental insurance, travel accident insurance, paid tuition, and up to three weeks of sick leave within a twelve month period. The GSRAs are also subject to many University rules applicable only to employees.

However, the Commission explained that although the University considers the GSRAs to be employees, that is not determinative of whether the GSRAs are employees under PERA. Despite the changes since the Commission's 1981 decision, the work of the GSRAs remains primarily for the advancement of the GSRAs educational goals.

A GSRA appointment closely tracks a student's own specific academic goals. Projects sought by GSRAs generally serve as the basis for their dissertations, GSRAs develop a one-on-one relationship with a dissertation or thesis advisor, and GSRAs hope to publish papers and complete a dissertation that makes a real contribution to his or her area.

Although GSRAs often switch projects, that simply underscores the importance of the student finding the right project. There was no evidence that GSRAs are ever randomly assigned to work on projects that have no academic relevance to their specific area of interest.

The Commission noted that while eighty percent of the money paid to GSRAs for their work on research projects comes from externally funded grants, GSRAs generally use information, methodology or data from those research projects on their dissertations. While the University provides the granting entities with the product of the research in exchange for the grant funds, significant byproducts of the research are GSRAs' dissertations. Moreover, once the research project is completed,

the GSRA receives a grade for his or her research work on the same basis as receiving a grade for a class.

In summary, it is the relationship between the GSRAs' research work and their academic goals that led to the Commission to conclude that they are not employees under PERA – not whether their work benefited the University. GSRAs are required to maintain a close faculty relationship in order to find a dissertation topic, bring their dissertation to fruition, and build an academic reputation. Although an individual can be both an employee and a student at the same educational institution, the GSRAs' research work cannot be effectively separated from the role of this work in the attainment of the GSRAs' academic goals.

Pontiac School District-and-Pontiac Education Association, MEA/NEA,

Case C13 B033, issued May 21, 2014

Issues: Duty to Bargain; 2011 PA 103; Prohibited Subjects of Bargaining; §15(3)(j); Repudiation.

The Commission affirmed the ALJ's Decision and Recommended Order finding that the Employer did not breach its duty to bargain when it repudiated a grievance settlement that acknowledged the recall rights of several teachers.

Charging Party represents a bargaining unit of teachers and instructional personnel. The parties entered into a letter of agreement in June 2008 in which Respondent agreed to make every effort to hire only certified teachers to fill vacant positions and accepted limitations on its use of long-term substitutes.

In 2012, Charging Party filed a grievance contending that Respondent was violating the 2008 letter of agreement. The parties' written settlement of the grievance acknowledged the recall rights of certain named grievants. Several days after signing the agreement, Respondent repudiated it.

Charging Party contended that Respondent breached its duty to bargain when it unilaterally repudiated a grievance settlement agreement. Respondent did not dispute that it had repudiated the grievance settlement but contended that the agreement was unenforceable because it covered a prohibited subject of bargaining.

Repudiation of a valid contract is unlawful and it makes no difference whether that contract is a full collective bargaining agreement or a grievance settlement as in this case. However, the Commission found that the grievance settlement agreement was unenforceable because it required Respondent to recall laid off teachers and place them in vacant positions.

The Commission explained that such an agreement cannot lawfully be bargained under § 15(3)(j) of PERA. Pursuant to 2011 PA 103, public school employers and the unions representing their employees are prohibited from bargaining over decisions regarding teacher placement, layoffs, and recalls.

Section 15(3)(j) of PERA gives public school employers broad discretion in making decisions regarding teacher placement and indicates the Legislature's desire to make public school employers solely responsible for such decisions. A contract on prohibited subjects of bargaining is unenforceable. Therefore, Respondent did not breach its duty to bargain by repudiating the unlawful grievance settlement agreement.

Maud Preston Palenske Memorial Library-and-AFSCME Council 25, Local 2757.09 and Local 2757.10,

Case C12 K-223, issued April 10, 2014

Issues: Duty to Bargain; Repudiation; Unilateral Change; Grievance Arbitration; Arbitrability

Employer violated § 10 of PERA by repudiating the terms of its contract with Charging Party. The contract had an expiration date of April 30, 2012 and would renew automatically "unless either party hereto gives the other party at least sixty (60) days' written notice … before the end of the term of this Agreement." A letter given to Respondent by Charging Party's representative on March 20, 2012 stated, in pertinent part, that "… we hereby serve notice that the Local Union wishes to engage in negotiations with the Employer or its authorized representatives."

After the parties began negotiating, Charging Party drafted, and both parties signed, a document entitled "Ground Rules". That document stated, in pertinent part: "The Union is here to negotiate with the Employer in good faith to reach an agreement which is acceptable to both. The Current Agreement will terminate in April 2012 and the parties are here by mutual agreement to seek the modification of, or changes to, the Collective Bargaining Agreement." The Ground Rules also stated that "[i]f either party wishes to terminate the Agreement after the expiration date they shall provide thirty (30) days written notice."

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The Public Employees Relations Commission after 40 Years

The Genesis

In 1968, Florida went through a State Constitutional revision which added the phrase to Article 1, Section 6, that public employees do not have the right to strike. In a landmark decision in *Dade County CTA v. Ryan*,[1] the Florida Supreme Court held that this provision, read in pari materia with the rest of Article 1, Section 6, meant that, with the exception of the right to strike, public employees have the same right of collective bargaining as private employees and that this right shall not be denied or abridged. It further held that the Florida Legislature must enact appropriate legislation setting standards for public sector collective bargaining. This did not immediately occur.

In 1972, the same union involved in *Ryan* filed a petition for mandamus requesting the Florida Supreme Court to compel the Legislature to enact public sector collective bargaining guidelines. While the Court declined to do so based upon separation of powers concerns, it warned the Legislature that, if it did not act within a reasonable period of time, the Court would fashion guidelines to enforce the constitutional requirements.[2] Judicial enforcement, however, imposed major issues regarding state-wide uniformity in applying these rights.

Facing significant political pressure, in 1974 the Legislature created the Public Employees Relations Act, Chapter 447, Part II, Florida Statutes, (the Act). The Act became effective January 1, 1975, also established the Public Employees Relations Commission (PERC) to administer and enforce the Act. Coupled with the creation of the Act and PERC, the first Public Employee Labor Relations Forum was held 40 years ago.

Chapter 447, Part II, as Originally Enacted

Upon enactment of the Act, PERC was originally organized similar to aspects of the National Labor Relations Board. It had just nine employees, including the Chairman who was the administrator. There were four part time Commissioners who were highly regarded nationally recognized labor experts.

The legal staff investigated and brought unfair labor practice charges and these and representation cases were litigated before hearing officers at the Division of Administrative Hearings (DOAH), which was also newly-created. Predictably, this process was cumbersome for a number of reasons. The law was broad in application and major policies, which are now well established, were heavily litigated by very divisive litigants. Many issues were elevated to the District Courts of Appeal and the Florida Supreme Court, creating years of litigation. There was a huge rush for new public sector unions to become certified so they could attain dues paying members. The unions were understandably frustrated with delays. There was also a perception that PERC's role in unfair labor practice cases of investigating, prosecuting, and deciding these cases showed a pro-union bias.

In short, the operation was not efficient. During this era, PERC had a staff of highly motivated and dedicated personnel who subsequently became successful labor and employment practitioners, including Thomas W. Brooks, William E. Powers, Gene "Hal" Johnson, Patricia A. Renovitch, Rodney W. Smith, Curtis L. Mack, Jack L. McLean, Jr. Richard T. Donelan Jr., Bruce A. Leinback, Anthony C. Cleveland, Jane Rigler, Errol H. Powell, and I. Jeffrey Pheterson. However, they were understandably overwhelmed by the huge influx of representation cases, compliance with the public meetings (Sunshine) law, the sporadic meetings of the part-time Commissioners, and compliance with the APA requiring hearings at DOAH. The Commission was deciding cases, but written orders were not being issued. When finally drafted, the orders sometimes did not correctly state what the Commission had decided.

Despite these initial challenges, there were notable aspects to the Act from the beginning. It contained an automatic dues deduction provision for employees who are members of employee organizations certified as bargaining agents of a unit of public employees.[3] It required collective bargaining agreements to contain grievance procedures culminating in binding arbitration.[4] It also contained an election of remedies provision which required employees to select between a civil service appeal procedure and a contractual grievance procedure.[5]

1977 and 1979 Changes to the Act

In 1976, Leonard A. Carson (*at left*), who was Chairman of the Industrial Relations Commission, was appointed by then Governor Reubin Askew, as PERC Chairman. Chairman Carson was charged with fixing what was perceived to be a broken operation that had an important constitutionally based function. His immediate goal was to get PERC out of the role of investigating and prosecuting cases, and organize it as a purely quasi-judicial entity as was the IRC. He redefined PERC with a number of structural changes based upon lengthy and studious examinations of public sector labor relations laws in other states, including New York, New Jersey, Michigan, and Wisconsin.

The first changes were legislatively initiated in 1977, in which PERC attained a full time Commission with two important members, Michael M. Parrish and Jean K. Parker. These Commissioners were known by Carson as being scholars

FLORIDA PERC (Continued from page 18)

in Florida law, who would make up for any lack of labor experience with their intellect and work habits. Chairman Carson also attained an exemption from DOAH of hearings in representation cases with PERC legal staff conducting these hearings. This proved to be a much more efficient operation.

PERC Commissioners began to conduct hearings in unfair labor practice cases. This all had the effect of exponential growth in policies in significant areas not directly addressed in the statute, such as development of the status quo period after expiration of a contract, the concept of the insulated period and quasi-judicial impasse resolutions before legislative bodies, and requiring contractual waivers to be clear and unmistakable.[6] The integrity of PERC's decisions attained significant judicial acknowledgement during this time period as well. [7]

PERC was also the first agency in the state to have its decisions published and indexed in compliance with the Administrative Procedure Act (APA). This resulted in greatly reducing litigation due to predictability.

Significantly, PERC's deliberations are held outside of the public. Draft orders are not subject to public disclosure. PERC's decisions are not rules under the APA.

Chairman Carson continued his modifications to PERC in 1979, when he proposed and the Legislature enacted legislation that allowed PERC to operate as a truly quasi-judicial body. The parties are the advocates and all hearings are held by PERC. PERC's hearing officers are required to be attorneys. This again bolstered the Commission's case handling in the areas of efficiency, soundness, and professionalism.

PERC's Additional Jurisdictions

Based upon PERC's case handling performance in the labor arena, which featured no discovery absent exceptional circumstances, between 1986 and 1992, it attained jurisdiction over employment cases, including state Career Service appeals,[8] Veterans' Preference Appeals,[9] Drug-Free Workplace Act Appeals,[10] Forced Retirement Appeals,[11] certain Age Discrimination Appeals,[12] and Whistle-Blower Act Appeals.[13] This was done with no increase in hearing officer staff. Michael Mattimore was first a Commissioner and later the Chairman during this era.

The Career Service Appeals resulted in a huge increase in hearings. There were then approximately 600 case filings a year with a 230 case backlog. There was a statutory requirement that the cases be set for hearing within 30 days of filing. PERC was able to eliminate the backlog and bring all cases current within one year.

While attaining this goal was an attestation to PERC's performance, it had the unfortunate consequence of distracting from its significant labor legacy. PERC is considered to be a model for public labor relations on a national level. This is based on extraordinary evaluation of organization, significant participation in state and national labor and legal organizations, and proven performance. However, it is not an uncommon public perception that PERC is largely focused on employment cases.

PERC's Performance

As previously mentioned, PERC had its hearing functions removed from DOAH and conducts its own hearings. It currently has eight hearing officers with an average experience of well over twenty years. It has an internal appeal feature with each case being resolved with a final order by the two Commissioners and Chair that is appealable to a District Court of Appeal. This results in uniformity of decision making throughout the State consistent with established precedent.

The Commission's unfair labor practice cases are streamlined by the sufficiency review process performed by the General Counsel pursuant to Section 447.503, Florida Statutes. This results in the early dismissal of numerous cases with insufficient factual details to cogently describe the complained of conduct or not being supported by existing case law.

All labor cases are scheduled for hearings within 30 to 45 days of sufficiency. Career Service cases are statutorily required to be set for hearings within 60 days of filing.

Beginning in the mid-1990s, the Commission is legislatively required to issue final orders in labor cases within 180 days of filing. Employment cases are required to be completed within 105 days of filing. These deadlines include all aspects of case processing, such as motion practice, preliminary hearing officer orders, hearings, hearing officer's recommended orders, exceptions, oral argument before the Commission when necessary, and the Commission's final order.

Each year the Commission's performance is legislatively evaluated on three criteria: Meeting the time limit in Labor cases; meeting the time limit in Employment cases; and number of cases affirmed on appeal, dismissed, or withdrawn. Historically the Commission has attained these standards in over 90% of its cases.

In closing, PERC has recently had significant challenges. Due to a major reduction in state revenue over the past decade, PERC has been forced to repeatedly reduce staffing from a high of 42 full-time employees to the current staff of 26. Also, the Commissioners have again been made part-time employees. Notwithstanding this, PERC's operations have remained efficient.

With its incomparable statistics, which are largely attributable to an experienced staff, design, and technological advancements, we look forward to the next 40 years of serving the state.

This article was presented on October 23, 2014, at the 40th Annual Public Employment Labor Relations Forum in Orlando, Florida. It was principally written by Stephen A. Meck, with significant input by the three panel members, Thomas W. Brooks, Leonard A. Carson, and Michael Mattimore.

(Continued on page 22)

Appointments

Canada Industrial Relations Board

On the recommendation of the Minister of Labour, the Governor in Council has appointed Ms. **Allison Smith** for a five-year term as a full-time Vice-Chairperson, effective January 5, 2015. Ms. Smith is a skilled labour and employment lawyer with a mix of private and public practice experience, and comes to the Board from Canada Post Corporation where she worked as Senior Legal Counsel since 2007.

The Governor in Council also appointed Ms. **Annie Geneviève Berthiaume** to a five-year term as a full-time Vice-Chairperson, effective January 26, 2015. Ms. Berthiaume is an expert labour and employment lawyer with extensive experience in providing strategic advice and guidance to management. She is currently a partner with the Ottawa firm Bird Richard and has also practiced with Norton Rose Canada, Heenan Blaikie and Nelligan O'Brien Payne. She is a member of both the Ontario Bar Association and the Barreau du Québec.

The Board was also pleased to learn that the Governor in Council reappointed Ms. **Louise Fecteau** as Vice-Chairperson for a three-year term ending on November 30, 2017.

As a result of Ginette Brazeau's appointment as Chairperson of the Board, **Sylvie Guilbert** has now taken the responsibilities of the Executive Director and General Counsel of the CIRB Secretariat effective December 29, 2014. Sylvie was previously the Executive Director and General Counsel with the Public Service Labour Relations and Employment Board.

Michigan Employment Relations Commission

Edward D. Callaghan

Edward D. Callaghan, the Chair of the Michigan Employment Relations Commission was reappointed for a second term on June 6, 2014. Dr. Callaghan was originally appointed as Chair of MERC on June 20, 2011. His second term expires June 30, 2017.

Dr. Callaghan has been a full time faculty member at Oakland Community College (OCC) since 2005. He previously served as President of OCC's Orchard Ridge campus and as Vice Chancellor for Human Resources and College Communications. Chair Callaghan has negotiated labor contracts in the public sector for more than 30 years representing public employers, including: the Dearborn Public Schools, Wayne County Community College, Henry Ford Community College and Oakland Community College

Dr. Callaghan's extensive collective bargaining experience includes: handling MERC elections, unfair labor practice claims, and mediation cases. He has also served as an Act 312 arbitrator for municipal police and fire department labor disputes and as a fact finder for governmental units in negotiations with labor unions – both on behalf of the Michigan Employment Relations Commission.

Federal Mediation and Conciliation Service (FMCS)

Commissioner **David Born** will assume the duties of the Director of Mediation Services in the Chicago sub-region, and Commissioner **Peter Cheng** will take on responsibility for the Southeastern sub-region as Director of Mediation Services. Both Commissioner Born and Commissioner Cheng compiled outstanding records as mediators during their years of exceptional service to the FMCS.

FMCS – Canada

We were pleased to welcome **Michelle Glubrecht** as a mediator in our Calgary office in early 2014. Michelle comes to FMCS from the Teamsters.

Carol Wall, a mediator in the Ottawa office, transferred to Toronto to fill the vacancy created by Paul Macdonnell's retirement.

In November 2014, **Kathy Peters** *(at right)* was appointed as Regional Director in the Pacific Regional office to replace Bill Lewis.

© Janet Boehmer

Ontario Labour Relations Board

Catherine Gilbert was appointed to Director/Registrar replacing Peter Gallus.

Former Assistant Field Services (Mediation) Manager **Ursula Boylan** won the competition for the Deputy Registrar's position.

The Board welcomes **Michael McFadden** as a new full-time Vice-Chair. Michael joins us from Norton Rose Fulbright Canada LLP.

Washington—PERC

Retirements have created opportunities.

Adjudicator/Mediator **Jessica Bradley** was promoted to fill David Gedrose's position.

Lisa Hartrich was promoted to fill Joel Greene's position, and **Joye Rolfer** was promoted to fill Majel Boudia's position.

Iowa—PERB

On May 1, 2014, **Mike Cormack** commenced his first term as Board Chair following nomination by the Governor and unanimous confirmation from the Iowa Senate.

Mike joins Iowa PERB after stints as an Iowa House Representative; middle school teacher, coach, and athletic director; small-town mayor; and, most-recently, legislative liaison for the Iowa Department of Education.

RETIREMENTS

Canada Industrial Relations Board (CIRB)

Credit: Jacques Lessard

At the end of 2014, **Elizabeth MacPherson** completed her tenure as Chairperson of the Canada Industrial Relations Board (CIRB), after seven (7) years in this position. In this capacity, she adjudicated and settled over 1,000 cases, a remarkable accomplishment that helped stabilize the Board's case load and provide clients with timely dispute resolution services.

Prior to her appointment as Chairperson, Elizabeth served as Director General of Federal Mediation and Conciliation Service (Canada) where, as the government's chief mediator, she was called upon to resolve the most difficult labour disputes in sectors critical to the Canadian economy.

While at Federal Mediation and Conciliation Service (FMCS), Elizabeth was instrumental in the design and implementation of an internship program through which nine (9) interns were hired for two-year assignments with FMCS. Through this program, each intern was provided a placement with a union, with an employer, at the CIRB, and at FMCS. Each of the nine interns have continued to work in labour relations after the program.

Elizabeth has provided tremendous contributions to ALRA throughout her years at FMCS and the CIRB. She was the President of ALRA in 2008 when the annual conference was held in Burlington, Vermont. Elizabeth worked tirelessly on the Publications, Communications and Technology Committee to ensure that the website and ALRA Advisor were meeting the needs of ALRA members.

For the past few conferences, Elizabeth has co-facilitated the New Members sessions at the ALRA conference. She has shared her years of valuable experience in ALRA and in public service with newer members and provided strong mentorship to our next generation of labour relations practitioners.

On behalf of ALRA, FMCS, and the CIRB, we would like to thank Elizabeth for her years of service and her contributions to our organizations. We wish her all the best in her future endeavours.

Federal Mediation and Conciliation Service (FMCS)

The end of the calendar year is often a time of transition, and that was certainly the case at the Federal Mediation and Conciliation Service (FMCS), which bid farewell to two long-serving Directors of Mediation Services, who retired, and announced promotions for the two FMCS mediators who succeeded them as sub-region supervisors

Longtime Directors of Mediation Services **Tom Summers** and **Sergio Delgado**, well known in the labor relations community for having served with distinction for many years in their respective sub-regions, announced their retirements with the end of the year.

Tom Summers led the FMCS Chicago sub-region for more than six of his 22 years of service to the Agency. Sergio Delgado headed the FMCS Southeastern sub-region from Orlando for nearly 19 of his 30 years of service to FMCS.

Washington—PERC

Washington PERC has seen a number of retirements in the past few months. **David Gedrose** and **Joel Greene** retired in September. Collectively, David and Joel have 25 years of experience with PERC. David managed the unfair labor practice filings and reviewed them for legal sufficiency. Joel supervised a team of adjudicators/ mediators.

Commission Clerk and Executive Assistant to the Executive Director **Majel Boudia** retired at the end of 2014. Majel had 40 years of state service, 35 with PERC. There was not a process in the agency that Majel had not touched.

PERC faces another retirement in April when **Mark Downing** retires after almost 30 years with PERC. Mark supervises a team of adjudicators/ mediators.

Ontario Labour Board

Director/Registrar **Peter Gallus** retired in the fall of 2014.

FMCS – Canada

In January of 2014, **Paul Macdonell** retired from his mediator position in the Ontario Regional office after fourteen years with FMCS. Paul joined FMCS in 2000 after holding various positions with the Amalgamated Transit Union. We wish Paul health and happiness in retirement.

In other retirement news, **William (Bill) Lewis** retired in January 2015 after over 35 years with FMCS. Bill was the Regional Director in the Pacific Regional office. Prior to that he worked as a mediator in the Regional office. FMCS thanks Bill for his many years of service and congratulates him on his retirement.

More Retirements on page 22.

Staff Transitions and Awards Announced at the Federal Mediation and Conciliation Service

Recently, Commissioner **David Born** was the 2014 recipient of the Agency's Director's Award, the FMCS's highest honor, awarded at the Agency's recognition day ceremony October 30. Commissioner Peter Cheng was also a recipient of the Agency's Director's Award in 2000. More recently, he was recognized by the Tennessee chapter of LERA with the organization's Life Time Achievement Award.

FMCS Employees Recognized for Exemplary Service at Annual Awards

The annual FMCS Employee Recognition awards ceremony was held on October 30 at the national headquarters of the Federal Mediation and Conciliation Service (FMCS). Acting Director Allison Beck and Deputy Director Scot Beckenbaugh expressed their appreciation for individual staff achievements, highlighted the contributions of each FMCS office, and recognized two employees with the 2014 Director's Award.

The ceremony was followed by a luncheon reception where FMCS colleagues celebrated with award winners. "It's wonderful to be here today to celebrate each of you and express appreciation for all you do," Acting Director Beck told employees during the ceremony. "Together, we've endured many challenges and had great moments of achievement. Let's continue to work together and share our talent and skills to make an even better product."

During the ceremony, Ms. Beck acknowledged FMCS staff members' recent Length-of-Service awards for milestone anniversaries as federal employees. Commissioners **Eileen Hoffman** and **David Born** were presented with the Director's Award—the Agency's highest honor—in recognition of their many years of federal service and extraordinary contributions to the organization.

Commissioner **Eileen Hoffman** has served the FMCS for 40 years in various positions including general counsel, district director, and international projects director. In her remarks, Acting Director Beck described Commissioner Hoffman as an extremely dedicated employee, who "always steps up and never says no."

Recently named as Director of Mediation Services in the Chicago sub-region, **David Born** "surpasses in every area we expect mediators to perform," said Acting Director Beck. Education and outreach, FLRA investigator training, and the Haiti training program are among his many accomplishments, she said.

Delayed by Sequestration, the 2013 Director's Awards Bestowed on Honorees at Sub-region Meeting

Delayed by sequestration and a government shutdown, the 2013 Director's Awards at the Federal Mediation and Conciliation Service (FMCS) at last have been awarded. On December 16, 2014, the FMCS honored two of its' finest as recipients of the "2013 Director's Award".

Commissioners **Carolyn Brommer**, of the Cleveland sub-region, and **Javier Ramirez**, of the Chicago sub-region, received the Agency's highest award for their outstanding and exemplary performance across the full spectrum of services that they have delivered in support of the FMCS mission. Awarding of this FMCS recognition was delayed by the requirements of the 2013 sequestration order and government shutdown.

The postponed awards were delivered belatedly to Commissioners Brommer and Ramirez at the joint, professional development meeting of the Pittsburgh and Cleveland sub-regions by FMCS Deputy Director Scot Beckenbaugh.

RETIREMENTS—*(Continued from page 21)*

Iowa — PERB—After 14 years of service on the Iowa Public Employment Relations Board, **Jim Riordan** retired on April 30, 2014 upon the expiration of his last term as Board Chair. He is enjoying life as a grandfather and volunteering at his church and a non-profit organization that helps victims of violent crimes. PERB staff had a booth at his favorite restaurant, Sambetti's, named after him.

Credit: Jacques Lessard

FLORIDA—PERC *(Continued from page 19)*

Footnotes: [1]*Dade County CTA v.* Ryan, 225 So. 2d 903 (Fla. 1969). [2]*Dade County CTA v. Legislature*, 269 So. 2d 684 (Fla. 1972). [3] § 447.303 Fla. Stat. [4] *City of Casselberry v. Orange County Police Benevolent Association*, 482 So. 2d 336 (Fla. 1986). [5] § 447.401, Fla. Stat. The initial election of remedies required employees to choose between filing a grievance or a career service appeal. Later, following the Commission's decision in Williard v. HRS, 14 FPER ¶ 19154 (1988), the Legislature amended Section 447.401, Florida Statutes, to include unfair labor practice charges in the choice of remedies provision. [6] *Florida School for the Deaf and the Blind Teachers United v. Florida School for the Deaf and the Blind*, 11 FPER ¶ 16080 (1985), *aff'd*, 483 So. 2d 58 (Fla. 1st DCA 1986); *Boca Raton Fire Fighters, Local 1560, Inc. v. City of Boca Raton*, 4 FPER ¶ 4040 (1978); *Palowitch v. Orange County School Board*, 3 FPER 280 (1977), *aff 'd*, 367 So. 2d 730 (Fla. 4th DCA 1979). [7] *Pasco County School Board v. Public Employees Relations Commission*, 353 So. 2d 108 (Fla. 1st DCA 1978). [8]*See* Article III, § 14 of the Florida Constitution as implemented in Section 110.227, Fla. Stat. [9]*See* Chapter 295, Fla. Stat. [10] § 112.0455, Fla. Stat. [11] § 110.124, Fla. Stat. [12] § 112.044, Fla. Stat. [13] § 112.31895, Fla. Stat.