

of LABOR RELATIONS ALRA Advisor



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Deadlines

- Spring Issue: January 31
- Fall Issue: August 31

Articles and Photos

All articles are subject to editing for length and clarity. Images should be high resolution.

Submit all material to

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Special thanks to

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Commission



FROM THE PRESIDENT

Happy 70th Anniversary to ALRA! So much has changed in the world of work and workplaces since 1952 when this organization was founded. Significant numbers of private-sector employees in the US and Canada were unionized and participated in collective bargaining in 1952. At the same time, collective bargaining was relatively new to public-sector employees and would not fully take hold until almost a decade later. Over the seven decades since ALRA's founding meeting, the tables turned and rates of unionization in the public sector grew while private sector unionization rates steadily declined. Many of our member agencies, north and south of the border, have experienced significant changes over these many years. However, for the most part, ALRA member agencies have withstood the ravages of time and continue to perform important work to support peaceful dispute resolution and collective bargaining. Similarly, ALRA continues to fulfill its mission to promote cooperation among labor relations agencies, high professional standards, public interest in labor relations, improved employer/employee relationships, and resolution of labor disputes.

The events of the past two years have posed unprecedented and unique challenges. However, due to an amazing group of committed and energetic professionals, we have been able to maintain the collaboration and information sharing that is so important to ALRA. While our 2021 virtual conference enjoyed a very high attendance rate, we had hoped that we could meet face to face in 2022 in Vancouver, British Columbia. Based on constraints of our hotel contract, the Executive Board needed to decide in early spring whether to hold an in-person conference. A decision was made to postpone the in-person gathering for one more year in large part due to the fiscal and travel constraints that many member agencies were facing. As a result, our conference planning committees have worked tirelessly to plan two half days of virtual programming for July 25 and 26, 2022.

This year's theme, "Redefining Connections," is a forward-looking program that will focus on the ways agencies and labor relations professionals continue to change and grow. This is an appropriate theme for an organization that has been around for 70 years and I hope that you can join us. I also encourage you to find the time and resources to travel to Vancouver in July 2023. It is an incredibly lovely city and the ability to interact face-to-face with colleagues from across the US and Canada is a feature that simply cannot be fully replicated on Zoom. Plus, let's face it—cocktails (and even ethics games) are just more fun when you are in the same room!

Behind the scenes this year, our Professional Development Committee has been planning several interesting programs for members. This is part of a new effort to





provide members with a series of free, short, virtual presentations on interesting topics throughout the year. The first presentation was held on June 13th and was on agency data collection. Finally, over the course of the last nine months, we have made positive efforts to tidy up ALRA's internal operations. Our current and former vice presidents of Finance, John Wirenius (NY PERB) and Mike Sellars (WA PERC) have set up new, more accessible bank accounts; are consolidating funds from old accounts; and are hoping to improve the annual dues collection. In addition, our Administrative Initiatives Committee—Sarah Cudahy (US FMCS), Eileen Hennessy (US NMB), Lindsey Harrington (Nova Scotia), and Christy Yoshitomi (US FMCS)—took a look at areas of administration that could use improvement. Their review and report resulted in the Executive Committee's approval to hire some outside assistance to organize ALRA's files and streamline our communication. We hope these foundational efforts will allow the Committee to turn its focus to identifying better ways to support and expand services to our members in the months ahead.

It has been an honor to serve as the president of ALRA during this significant anniversary year. The opportunity to lead and collaborate with such talented and dedicated public servants has been very rewarding. I am sad that I will not see all of you in Vancouver this year but hope the delay will mean that enthusiasm builds to attend next year's conference. Please join us for the 2022 annual conference on July 25 and 26, 2022. Registration information can be found elsewhere in the Advisor or on the website. One of the easiest ways to get involved in ALRA is to volunteer to help in planning our annual conferences. If you are interested, please email us at info@alra.org.

-Susan Panepento

DATA COLLECTION AND ANALYSIS WEBINAR

On June 13, 2022, the ALRA
Professional Development Committee, in conjunction with the ILR School,
Cornell University, was pleased to offer the first of a two-part seminar on labor relations agency data collection and analysis. This webinar was especially relevant for those who have been wondering what effect, if any, the pandemic has had on case filings, settlements, and case processing times.

The seminar was in a participatory panel format moderated by Professor Ariel Avgar, Associate Dean for Outreach and Professor Labor Relations, Law, and History at the ILR School, Cornell University (https://www.ilr.cornell.edu/people/arielavgar). It focused on the type of data our member agencies collect, how and why they collect it, and what they would like to do better.

Part II, which we will offer sometime this fall, will be a webinar on how to analyze that data to detect trends and determine if changes are statistically significant.

These webinars are offered at no cost to our members. Keep an eye on the ALRA website for registration materials for Part II.

If you have any questions, please contact the PD non-conference committee co-chairs Marjorie Wittner (Massachusetts CERB), marjorie.wittner@mass.gov or Natalie Zawadowsky@tribunal.gc.ca.



2022 ALRA CONFERENCE

Registration is now open for the 2022 ALRA virtual conference. Registration for the conference is \$50 USD. To register, visit https://ca01web.zoom.us/webinar/register/WN_thT5BQPGRAGkzjJxcgrKTA. We look forward to you joining us on July 25 and 26!

ADVOCATES' DAY AGENDA: MONDAY, JULY 25

12:30 – 12:35 p.m. EDT – Welcome and Opening Remarks from ALRA President, Susan Panepento, Chair and Director, NYC Office of Collective Bargaining

12:35–1:45 p.m. EDT – The Post-Pandemic Workplace

A thought-provoking review and commentary on the "new" workplace in a possible post-pandemic world.

Speaker: Jim Stanford, Economist and Director of the Centre for Future Work

1:45-2:00 p.m. EDT - Break

2:00–3:00 p.m. EDT – New Initiatives at the National Labor Relations Board

In July 2021, Jennifer Abruzzo was sworn in for a four-year term as General Counsel of the National Labor Relations Board (NLRB). Her role is independent from the Board and is responsible for the investigation and prosecution of unfair labor practices cases and for the general supervision of the NLRB field offices in the processing of cases. In this session, you will hear directly from the General Counsel on the various initiatives undertaken by her office.

Speaker: Jennifer Abruzzo

3:00-3:15 p.m. EDT - Break

3:15–4:30 p.m. EDT – Mediation in a Time of COVID and Post-COVID—The limitations and opportunities of online mediation

In March 2020, mediation of collective bargaining disputes and other labor relations conflicts were thrusted into a new era of virtual work. In this roundtable panel discussion, you will hear from Canadian and American mediators at both the national and state level who took their work online and learnt some lessons along the way.

Facilitator: Nancy Rosenberg, Member, Federal Public Sector Labour Relations and Employment Board (Canada)

Speakers: Janet F. Gillman, State Conciliator, Oregon Employment Relations Board (US); Javier Ramirez, Deputy Director of Field Operations, Federal Mediation and Conciliation Services (US); and TBD, representative, Federal Public Sector Labour Relations and Employment Board (Canada)

WE NEED YOUR HELP!

This year we are inviting advocates to the first day of our virtual conference. We are hoping to capitalize on our ability to meet virtually and draw a large international crowd of labor relations professionals. We are asking you to send the flyer at https://alra.org/wp-content/uploads/2022/06/Invite-for-Advocates-Day-2022.pdf to your constituents, post it in your offices, post it on your websites, or any other place you communicate with labor relations professionals in your community. Please do so promptly and feel free to send some follow up reminders to register.



PROFESSIONAL DEVELOPMENT AGENDA: TUESDAY, JULY 26

12:30–12:45 p.m. EDT – Welcome and Opening Remarks from ALRA President, Mike Sellars, Executive Director, Washington State Public Employment Relations Commission

12:45–1:45 p.m. EDT – ALRA Updates – Overview of Developments in Labor Relations Agencies

A recap of developments (both COVID and non-COVID related) in local, state, and federal labor relations agencies in the United States and Canada.

Speakers: Ginette Brazeau, Chair, Canada Industrial Relations Board; and Lauren McFerran, Chair, National Labor Relations Board

Moderators: Lindsay Foley, Acting Regional Director and Registrar, Canada Industrial Relations Board; and Sarah Cudahy, Senior Advisor, Federal Mediation and Conciliation Service (US)

1:45-2:00 p.m. EDT - Break

2:00-3:15 p.m. EDT - Neutrality Buffet

You will be able to learn about three topics facilitated by ALRA members. The buffet options include Managing a Hybrid Team; Using Social Media as a Neutral; Return of the ALRA Book Club; Mindfulness in Your Practice; Creating Work/Life Boundaries; Diversity, Equity, Inclusion, and Accessibility; Active Adjudication; Unique Issues regarding Self-Represented Parties; Making Hybrid Technology Work in Your Practice: Lessons Learned; and Best Practices in Decision Writing.

3:15-3:30 p.m. EDT - Break

3:30-4:30 p.m. EDT - The Right to Disconnect (RDT)

In this new era of virtual work, what are the fundamentals of the RDT from work, often defined as not engaging in work-related communications, of any forms, for a certain period of time. What are the benefits, the pitfalls, and the ins and outs of policies concerning the RDT?

Facilitator: Jean-Daniel Tardif, Senior Director of Regional Operations and Senior Registrar, Canada Industrial Relations Board/Administrative Tribunals Support Service of Canada

Speakers: Michael Church, Partner at CaleyWray; and Jennifer Hodgins, Partner at Norton Rose Fulbright.

5:30-6:30 p.m. EDT - ALRA Social Hour

Join us for trivia and small group discussions!



GOT MORE BOOKS?

The ALRA Book Club made its debut at the 2019 Cincinnati conference. We are happy to report that it will be back as part of this year's Neutrality Buffet, which will take on place on July 26, 2022, from 2:00 p.m. to 3:15 p.m.

Lots has been written about labor relations, dispute resolution, and the changing world of work since our last meeting, and Marjorie Wittner, who is returning as the moderator, has already started compiling a fresh new list of books, TV shows, or movies about these timely topics.

If you would like to contribute to this list, please email suggestions to Marjorie at marjorie. wittner@mass.gov. We will publish a full list of recommendations in the post-conference ALRA Advisor. Thanks, and happy reading!



THE ASSOCIATION OF LABOR RELATIONS AGENCIES —A 70-YEAR COMMITMENT TO PUBLIC SERVICE AND LABOR RELATIONS DISPUTE RESOLUTION

The year 2022 is the 70th year after the organizational meeting of the Association of State Mediation Agencies (ASMA) held in Detroit, Michigan, in 1952. Membership at that time is lost to history other than records of the presidents included representatives of Michigan, New Jersey, California, Missouri, Minnesota, New York, North Carolina, Oregon, Wisconsin, Puerto Rico, and Connecticut. The ASMA was just one of two organizations that preceded ALRA. The second, the Association of Labor Mediation Agencies (ALMA) was founded in or around 1963. US state participants at that point included Arkansas, Pennsylvania, Alabama, Idaho, Illinois, Massachusetts, North Dakota, Ohio, Washington, and West Virginia. Member agencies from Canada included Nova Scotia, Saskatchewan, and Quebec. The National Association of State Labor Relations Agencies had a joint conference with ALMA in 1968. The first conference held in Canada was in 1975 in Halifax. During its approximate 15-year history, ALMA had several academic collaborations with the University of Wisconsin – Madison, Rutgers University, and Cornell University.

The first ALRA conference was held in 1978 in Wisconsin. Membership at that time had expanded to include Indiana, Kansas, Maine, Minnesota, Montana, Ontario, US NLRB, US FMCS, US FLRA, US NMB, North Carolina, New Mexico, Florida, Iowa, Vermont, the US Deptartment of Labor, Prince Edward Island, New Brunswick, the Canadian Public Employee Relations Board, Alberta, Canada FMCS, and British Columbia.

Throughout its 70-year history ALRA's member agencies have endeavored to meet the organization's mission "to provide an ongoing opportunity for the leadership of neutral labor relations agencies to network, in order to promote camaraderie, share information and experiences, promote high professional standards, provide training and education, and encourage inter-agency cooperation."

The strength and success of the organization has been through the hard work of many member volunteers who freely give their time and professional skills. The commitment to public service and labor relations dispute resolution demonstrated by ALRA leadership and members deserves recognition and celebration.

Join us for the 71st ALRA Conference

Vancouver, British Columbia, Canada July 15-18, 2023

LOCATION

The <u>Pinnacle Hotel Harbourfront</u> is in the heart of downtown, in close proximity to Stanley Park and the shopping and entertainment districts. A block of city view rooms is reserved for ALRA conference delegates.





ALRA PRESIDENTS—1952 TO PRESENT

No.	Year	Conference Location	President Elected	Organization
01	1952	Detroit, MI	George Bowles	Michigan Labor Mediation Board
02	1953	Rutgers, NJ	George Bowles	Michigan Labor Mediation Board
03	1954	Madison, WI	George Bowles	Michigan Labor Mediation Board
04	1955	Ithaca, NY	Dr. Mason Gross	New Jersey State Board of Mediation
05	1956	Denver, CO	Dr. Mason Gross	New Jersey State Board of Mediation
06	1957	Monticello, IL	Glenn A. Bowers	California State Conciliation Service
07	1958	Monterey, CA	Morris Slavney	Wisconsin Employment Relations Comm.
80	1959	San Juan, P.R.	Morris Slavney	Wisconsin Employment Relations Comm.
09	1960	Old Saybrook, CN	Mabel Leslie	New York State Board of Mediation
10	1961	New York City, NY	Allan Weisenfeld	New Jersey State Board of Mediation
11	1962	Quebec City, Quebec	Robert L. Stutz	Conn. Board of Mediation and Arbitration
12	1963	Hollywood, FL	Thomas Nicolopulos	California State Conciliation Service
13	1964	Minneapolis, MN	Arvid Anderson	Wisconsin Employment Relations Comm.
14	1965	Toledo, OH	Charles T. Douds	Pennsylvania State Bureau of Mediation
15	1966	Mackinac Island, MI	Howard T. Ludlow	New Jersey State Board of Mediation
16	1967	San Francisco, CA	Arlis R. Fant	Alabama State Dept. of Labor
17	1968	Puerto Rico/Virgin Isls.	Leo W. Walsh	Michigan Labor Mediation Board
18	1969	Banff, Alberta	Paul R. Tinning	Oregon State Conciliation Service
19	1970	Hot Springs, AR	James E. Rush	Pennsylvania State Bureau of Mediation
20	1971	Fresno, CA (joint w/ NASLRA)	Robert D. Helsby	New York PERB
21	1972	Saratoga Springs, NY	Ralph Duncan	California State Conciliation Service
22	1973	Santa Fe, NM	George Meisler	New Jersey State Board of Mediation
23	1974	Des Moines, IA	Zel Rice II	Wisconsin Employment Relations Comm.
24	1975	Halifax, N.S.	Philip M. Curran	FMCS-US, Pennsylvania
25	1976	Ottawa, Ontario	William McCallum	Nova Scotia Department of Labour
26	1977	Hollywood, FL	Robert G. Howlett	Federal Service Impasse Panel
27	1978	Boston, MA	Parker A. Denaco	Maine Labor Relations Board
28	1979	Madison, WI	Jeffrey B. Tener	New Jersey PERC



No.	Year	Conference Location	President Elected	Organization
29	1980	Vancouver, B.C.	Herman Torosian	Wisconsin Employment Relations Comm.
30	1981	Great Gorge, NJ	Peter Obermeyer	Minnesota Bureau of Mediation Services
31	1982	San Francisco, CA	John F. Tesauro	New Jersey State Mediation Board
32	1983	Moncton, N.B.	Msgr. James A. Healey	New York State Mediation Board
33	1984	Kalispell, MT	Harold R. Newman	New York State PERB
34	1985	Portland, ME	Janet E. Caraway	California PERB
35	1986	St. Paul, MN	James W. Mastriani	New Jersey PERC
36	1987	Albany, NY	Marvin L. Schurke	Washington State PERC
37	1988	Seattle, WA	Robert R. Jensen	Montana Board of Personnel Appeals
38	1989	Toronto, Ont.	Diane Zaar-Cochran	Mass. Board of Arb. and Conciliation
39	1990	Cincinnati, OH	lan Deans	Public Service Staff Relations Board, Can.
40	1991	Burlington, VT	R. Douglas Collins	Los Angeles City ERB
41	1992	Milwaukee, WI	John C. Truesdale	National Labor Relations Board
42	1993	Portland, OR	Sol Sperka	Michigan Employment Relations Commission
43	1994	Boston, MA	Robert M. Glasson	New Jersey PERC
44	1995	Chicago, IL	John Cochran	Mass. Labor Relations Commission
45	1996	Ottawa, Ontario	Jacalyn Zimmerman	Illinois State Labor Relations Board
46	1997	Washington, D.C.	Rick Curreri	New York State Public Employees Relations Board
47	1998	St. Louis, MO	Pamela Talkin	Congressional Office of Compliance
48	1999	Phoenix, AZ	John E. Higgins	National Labor Relations Board
49	2000	Philadelphia, PA	Steven Meck	Florida PERC
50	2001	Montreal, Quebec	Julie Hughes	Illinois Educational Labor Relations Board
51	2002	San Diego, CA	Robert Anderson	New Jersey PERC
52	2003	Detroit, MI	Dan Nielsen	Wisconsin Employment Relations Comm.
53	2004	Halifax, N.S.	Reg Pearson	Ontario Ministry of Labour
54	2005	Seattle, WA	Jaye Bailey	Conn. State Board of Labor Relations
55	2006	Baltimore, MD	Marilyn Glenn Sayan	Washington State PERC
56	2007	Toronto, Ontario	Elizabeth MacPherson	FMCS-Canada



No.	Year	Conference Location	President Elected	Organization
57	2008	Burlington, VT	Philip E. Hanley	Phoenix Employment Relations Board
58	2009	Oakland, CA	Mary Johnson	National Mediation Board
59	2010	Ottawa, Ontario	Lester A. Heltzer	National Labor Relations Board
60	2011	Jersey City, NJ	Sheri King	FMCS-Canada
61	2012	Montreal, Quebec	Robert Hackel	New Jersey PERC
62	2013	Washington, DC	Kevin Flanagan	New York State PERB
63	2014	Seattle, WA	Tim Noonan	Vermont Labor Relations Board
64	2015	Minneapolis, MN	Pat Sims	National Mediation Board
65	2016	Halifax, N.S.	Ginette Brazeau	Canada Industrial Relations Board
66	2017	Portland, OR	Marjorie Wittner	Massachusetts Comm. Emp. Rel. Brd.
67	2018	Boston, MA	Peter Simpson	FMCS-Canada
68	2019	Cincinnati, OH	Scot Beckenbaugh	FMCS-US
*	2020	*	Scot Beckenbaugh	FMCS-US
69	2021	Virtual	Susan Panepento	New York City Office of Collective Bargaining
70	2022	Virtual		

*2020 Conference, Annual Business Meeting, and Election of Officers were postponed until 2021 due to COVID-19 Pandemic.









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CONFERENCE MEMORIES

























































CANADA

Alberta ALBERTA MEDIATION SERVICES

Did you know that the Government of Alberta's Mediation Services provides a monthly Bargaining Update publication? It provides key collective bargaining activities in Alberta and relevant jurisdictions and timely statistics, such as

- current, major negotiations underway in Alberta
- recent Alberta wage settlements
- · quarterly private and public settlement trends

- latest Alberta Average Weekly Earnings data
- settlements and labour relations developments in other provinces/territories
- Consumer Price Index (CPI) inflation information

Access the most recent update at https://www.alberta.ca/labour-relations-publications.aspx. Some sample tables from their January 2022 report are below:

Agreements Ratified				
Cattlement Mathed	2021		2022	
Settlement Method	CBAs	EEs	CBAs	EEs
Negotiation	185	20,376	1	49
Mediation	71	41,200	6	32,369
Arbitration	6	594	0	0
Total	262	62,170	8	32,418

Wage Settlements in Alberta Weighted Average % Annual Change by Sector 2019-2023

Wage data reflects the average yearly % change taking effect in the indicated year.

	Sector	Agreements	Employees	Weighted Average % Annual Change
	Private Sector	545	105,975	1.07
2020	Public Sector	295	106,962	0.56
	All Settlements	840	212,937	0.81
	Private Sector	459	107,143	1.13
2021	Public Sector	212	71,617	0.72
	All Settlements	671	178,760	0.97
	Private Sector	251	63,582	0.96
2022	Public Sector	102	61,127	0.84
	All Settlements	353	124,709	0.90
	Private Sector	112	25,590	1.08
2023	Public Sector	43	55,490	2.20
	All Settlements	155	81,080	1.85
	Private Sector	48	17,453	1.68
2024	Public Sector	8	259	1.60
	All Settlements	56	17,712	1.68



LRB BRITISH COLUMBIA LABOUR RELATIONS BOARD

After serving the Labour Relations Board for eight years, Jacquie de Aguayo decided to not to seek renewal of her appointment as Chair of the Board. Jacquie is pursuing a new opportunity as a labour arbitrator. The Board is very grateful for her leadership and wishes Jacquie the best of luck in her future endeavors. Jennifer Glougie was appointed as the new Chair of the Board effective February 5, 2022. Brett Matthews, a Vice-Chair of the Board, was promoted to the role of Associate Chair, previously held by Jennifer.

CMS CONCILIATION AND MEDIATION SERVICES-NOVA SCOTIA

Video Series Lessons Learned

In January 2022, Conciliation and Mediation Services–Nova Scotia launched a video series, where staff discuss our programs and services and other topics relevant to the local labour community. The idea to create these videos had been percolating for a number of years, but the pandemic provided the extra push needed to make them a reality.

So far, three videos have been filmed and edited, with three additional in-progress. The released videos are as follows:

- Key Considerations Preparing for Conciliation Process
- What to Expect in a Grievance Mediation
- <u>Labour Management Committee Best Practices</u>

Forthcoming videos include:

- Relationship Development for Workplace Leaders
- Can you Really Mediate a Termination?
- · Position versus Interest-Based Bargaining

Each staff member had the opportunity to propose topics, revise the guiding questions before filming, and film multiple takes 'on set.' Once topics were selected, we utilized Halifax Central Library's free-of-charge media studio for filming in the fall of 2021. From there, video editing options were assessed. We chose Canva to add music, introductory voiceovers, and title and end screens for a nominal cost.









Having a technically proficient employee with a willingness to learn was paramount in making these videos a reality.

The next step for us is exploring how accessibility features, including transcripts and closed captioning, can be added to our videos on the LinkedIn platform. LinkedIn is a new medium for our office. Discovering how to grow an audience

and incorporate platform-supported accessibility features have been the biggest challenges and learning opportunities.

We've had incredibly positive feedback so far and look forward to exploring how we can connect to clients with video and social media further in 2022.



NEW BRUNSWICK INDUSTRIAL RELATIONS BRANCH

There is no doubt that everyone has experienced significant changes in the past year. The team at the Industrial Relations Branch is no different!

- Paula Ultican and Lise Laforge have exchanged roles for a period of 12 months.
 Paula has returned to her first love, Mediation, while Lise is Acting Director of both the Industrial Relations and Employment Standards Branches. This is certainly a unique situation and will be a great experience for us and for them.
- Michèle Savoie joined our team this past April as a Mediator, replacing Lyne Légère who joined the Employment Standards team last October as Deputy Director. Michèle comes from our human resources team where she gained much experience in labour relations. We are very fortunate to have her now on our team.
- Pamela Lindsay, our Labour Relations Analyst with over 20 years with the Branch, decided to retire after 46 years of service to the Province. We quickly grabbed Andrew Baird, who possesses the same interest as Pam in labour data collection while also bringing his knowledge of labour relations from the front lines.
- In May 2020, our long-time administrative support person, Bernice Kelly, retired after 41 years of service to the Province. We were happy to welcome Sonya Main, who joined the team in June 2020.
- Let's not also forget the rest of our team:
 Rick Merrill, Deputy Director/Mediator
 and John Green, Mediator and Chair of the
 Minister's Advisory Committee on Expedited
 Arbitration.



UNITED STATES

ATTEMPTS TO ENJOIN VACCINE MANDATES FOR NEW YORK CITY AND STATE EMPLOYEES

By Kasey Baker and Michael Fois

While there was some success at the earliest phases, attempts at enjoining vaccine mandates for New York City and State employees have been unsuccessful. Courts have repeatedly found that the loss of employment for not complying with a vaccine mandate does not constitute irreparable harm because, while significant, it is compensable by money damages and reinstatement. Courts have also found that claims based on the State and Federal Constitutions and State law were unlikely to succeed and that the balance of equities favored public safety. This article summarizes several of the pertinent decisions.

Taylor Law Injunction Requests regarding the New York State United Court System's Vaccine Mandate

The New York State Uniform Court System (UCS) instituted a vaccine mandate, with an effective date of September 27, 2021, for nonjudicial employees. Several unions representing nonjudicial UCS employees were granted permission by the New York State Public Employment Relations Board (PERB) to seek injunctive relief under the Taylor Law. The Taylor Law injunction standard, CSL § 209-a(4)(b), requires a showing of irreparable harm but, instead of showing a likelihood of success on merits, requires only that there is a reasonable cause to believe that an improper practice has occurred. It also differs from the traditional injunction standard by not requiring a balancing of the equities.2

The unions claimed that the UCS violated the Taylor Law when it failed to bargain over the unilateral implementation of its vaccine mandate. In addition to discipline, including loss of employment, for noncompliance, the unions alleged as irreparable harm an invasion of bodily integrity due to being forced to vaccinate. State Supreme Courts granted the requested temporary restraining orders (TROs). See, e.g., Civ. Serv. Empl. Assn. v. New York State (Unified Ct. Sys.), 73 Misc.3d 643 (Sup. Ct., Albany Co. 2021) (finding reasonable cause to believe that an improper practice had occurred because the vaccine mandate "potentially implicates a variety of terms and conditions of employment ... including ... discipline and termination for noncompliance"). Among the irreparable harms found by the Courts at the TRO stage was that employees would be subjected to an involuntary, physically invasive medical procedure if forced to comply with the vaccine mandate and that a union would "suffer irreparable harm to its fundamental purpose and diminish the trust of those it represents if UCS is allowed to even temporarily circumvent" bargaining required by the Taylor Law. Id. at 648.

The matters were consolidated and transferred to a new Supreme Court judge who, in October 2021, denied the unions' requests for a preliminary injunction and lifted the TROs. See Civ. Serv. Empl. Assn. v. New York State (Unified Ct. Sys.), 73 Misc.3d 874 (Sup. Ct., Albany Co. 2021). The Court determined that under the Taylor

¹ An injunction under the Taylor Law can only be sought if permission to do so is granted by PERB. PERB granted the request of six unions but denied the initial request of a seventh because it only alleged economic consequences as irreparable harm.

² There is currently a proposed amendment to the Taylor Law which would amend the definition of irreparable harm for the purposes of securing an injunction thereunder to explicitly include the "loss of employment, actions that adversely affect the health and welfare, or permanent loss of an employee right or privilege established pursuant to a collective bargaining agreement." NY S. 8182 (available at https://www.nysenate.gov/legislation/bills/2021/S8182).



Law there was a "relatively low standard of establishing a potential improper practice" which the unions may have satisfied but that there was "a relatively high standard of establishing irreparable harm" which the unions had failed to meet. *Id.* at 887-888.

The Court rejected the violation of bodily integrity argument, finding that the vaccine mandate did not force employees to be vaccinated but only to choose between vaccination and loss of employment. The Court found that the loss of employment, while a substantial hardship, does not meet the standard for irreparable harm as the affected workers would be entitled to reinstatement and backpay if they ultimately prevailed on the merits. With respect to alleged harm to the unions or labor relations process, the Court found that mere frustration with the amount of time it takes to resolve a dispute does not establish irreparable harm, nor do conclusory allegations of lost confidence in a union.³

Injunctions Requests Related to the Vaccine Mandate for NYC Department of Education Employees

Effective in September 2021, the Commissioner of the City's Department of Health and Mental Hygiene (DOHMH) imposed a vaccine mandate on Department of Education (DOE) employees.

The Municipal Labor Committee (MLC) filed an Article 78 petition to enjoin the vaccine mandate. The Court found that the MLC could not establish a likelihood of success on the merits because the Fourteenth Amendment Due Process Clause only "secures the liberty to pursue a calling or occupation, and not the right to a specific job" and that while employees who chose not to be vaccinated may find it "more difficult to pursue

their calling," they were not barred from doing so. *NYC Municipal Labor Committee v. City of New York*, 73 Misc.3d 621, 627 (Sup. Ct., NY Co. 2021) (quoting *Maniscalco v. NYC Dept. of Educ.*, 2021 WL 4344267, *2-3 (EDNY Sept. 23, 2021), *affd.*, 2021 WL 4814767 (2d Cir Oct. 15, 2021), *cert denied* 2022 WL 1131378 (2022)). The Court found that irreparable harm was not established because loss of employment is compensable by money damages and reinstatement and noted that unvaccinated employees "are still entitled to contest any negative outcome through their union procedures and additionally are able to pursue their profession outside of those schools impacted by the Order." *Id.* at 628.

Federal Courts also denied injunction requests of the DOHMH order. See Maniscalco, supra: Kane v. de Blasio, 2021 WL 5909134, *4 (SDNY Dec. 14, 2021), affd., 2022 WL 619694 (2d Cir. Mar. 3, 2022), cert denied 142 S.Ct. 1226 (2022). In Maniscalco, the Eastern District denied the injunction request filed by a group of teachers and paraprofessionals because the plaintiffs failed to show a likelihood of success on the merits as the vaccine mandate only applied to City public schools and did not prevent plaintiffs from otherwise pursuing their professions. See 2021 WL 4344267, *2-3.4 In Kane, the Southern District denied the injunction requests of several individual DOE employees that alleged that the DOHMH Order violated the Free Exercise Clause of the US Constitution. The Court found that there was no irreparable harm because the consequence of being placed on leave without pay (LWOP) was economic and remediable. See 2021 WL 5909134, *4. Moreover, the Court found that plaintiffs had not shown a likelihood of success on the merits. Id. at *5.5

³ Individuals subsequently filed an Article 78 non-Taylor Law injunction request of the UCS vaccine mandate which was denied in April 2022. The Court found that there was no irreparable harm, that the mandate did not force employees to be vaccinated but instead to choose between continued employment and vaccination, that petitioners were unlikely to succeed on the merits, and that the balance of the equities favored the UCS. *See Brignall v. New York State (Unified Ct. Sys.)*, Index No. E2022-0241civ, NYSCEF Doc No. 57 (Sup. Ct., Steuben Co., April 13, 2022).

⁴ The Court in *Maniscalco* did not analyze irreparable harm other than to note that violations of the US Constitution constitutes irreparable harm. The Court also found that the vaccine mandate was rational and that the balance of equities favored public safety.

⁵ See also Broecker v. NYC Dept. of Educ., 2021 WL 5514656 (EDNY Nov. 24, 2021); Broecker v. NYC Dept. of Educ., 2022 WL 426113 (EDNY Feb. 11, 2022). The Broecker cases concerned individual DOE employees seeking to enjoin



After the City informed DOE employees that they were scheduled for termination for failure to meet the vaccine mandate, there was another unsuccessful injunction request, denied for the reasons described in the summary of the other cases above. See NYC Municipal Labor Committee v. City of New York, 2022 WL 1195428, * 3-4 (Sup. Ct., NY Co. April 21, 2022) (finding no likelihood of success on the merits as "every court that has considered this question has reached the same conclusion" that vaccine mandates are a condition of employment, there is no irreparable harm, and the balance of the equities favored public health) (citations omitted).

Other Attempts to Enjoin New York City Vaccine Mandates

In December 2021, an Article 78 injunction request by the Police Benevolent Association (PBA) was denied. The Court found that the PBA was not likely to succeed on the merits because the City "provided a reasoned and rational justification" for its vaccine mandate. Police Benevolent Assn. v. de Blasio, Index No. 85229/2021, NYSCEF Doc No. 32, *9 (Sup. Ct., Richmond Co., Dec. 6, 2021). The Court rejected the PBA's argument that the City failed to provide a reasonable basis for abandoning its earlier policy that employees either had to be vaccinated or undergo weekly testing. The Court noted that two of the PBA's arguments that the nature of police officers' work does not put them at risk for COVID because they wear masks and patrol areas outdoors, and that approximately one-third of officers have "natural immunity" from previous COVID infections were "directly at odds with each other." Id. at *7. The Court rejected the PBA's assertion that the effects of loss of employment stemming from a failure to vaccinate outweigh the benefits of the vaccine mandate, stating that "[w]hile the loss of employment is a potentially significant harm, a policy designed to protect the public health from serious illness and death arguably strikes that balance." Id. at *8. The Court found that there were adequate remedies at law for most of the

alleged harm, and that even if the loss of medical benefits would be irreparable, "equity must favor a policy which respondents have enacted to decrease serious illness and death." *Id.* at *9.6

The Uniformed Firefighters Association (UFA) filed an injunction request which was denied in December 2021. The UFA alleged (i) that the vaccine mandate is irrational as applied to firefighters, provides unreasonably short deadlines for submitting requests for reasonable accommodation, and fails to provide a reasonable or lawful penalty for refusing vaccination; (ii) that the process for applying for a reasonable accommodation violates the State and City Human Rights Laws; and (iii) that firefighters' due process rights and property interests in their employment under the State Constitution were violated. After a virtual hearing, the TRO request was denied, without a written decision. After a second hearing was held, the Court denied the preliminary injunction request. See Ansbro v. de Blasio, 2021 WL 6005291 (Sup. Ct., NY Co. Dec. 20, 2021). The Court found that the UFA unsuccessfully "strain[ed] to distinguish" its claims from similar injunction requests that courts had denied. Id. at *4 (citing Maniscalco, 2021 WL 4344267; NYC Municipal Labor Committee, 73 Misc.3d 621). The Court held that it "cannot and will not substitute [the UFA's] judgment for that of [City's] public health experts' vested with the authority to safeguard the public health amid an ongoing global pandemic." Id. at *5 (quoting NYC Municipal Labor Committee, 73) Misc.3d at 631).

In December 2021, the Eastern District of New York denied the injunction request filed by several FDNY officers, firefighters, and Emergency Medical Service (EMS) employees who had not received at least one dose of the COVID-19 vaccine. See Garland v. NYC Fire Dept., 2021 WL 5771687 (EDNY Dec. 6, 2021). The Court recognized that plaintiffs have protected property interests in their pay and continued employment but found that they

the interest arbitration award between the City and the United Federation of Teachers regarding implementation of the DOHMH Order. These injunction requests were denied for reasons similar to those discussed in the other cases.

⁶ In February 2022, the underlying Article 78 petitions were denied. *See Police Benevolent Assn. v. de Blasio*, Index No. 85229/2021, NYSCEF Doc No. 51 (Sup. Ct., Richmond Co., Feb. 16, 2022).



were not deprived of that interest without a constitutionally adequate process. Noting the more transmissible nature of the Delta and Omicron variants, that the jobs at issue required the employees to interact with the public on an emergency basis, and that plaintiffs live in close quarters during their shifts, the Court found that it was within the powers of the City Health Commissioner to mandate the vaccine as a qualification of employment.7 Having failed to satisfy this condition of employment, the Court found that the plaintiffs rendered themselves no longer qualified employees. The Court rejected plaintiffs' US Constitution arguments because the Second Circuit "has held on several occasions that there is no due process violation where, as here, pre-deprivation notice is provided and the deprivation at issue can be fully remedied through the grievance procedures provided for in a collective bargaining agreement." Id. at *6 (quotations and editing marks omitted). The Court found that plaintiffs had not demonstrated irreparable harm because loss of employment has long been found to be "definitionally

reparable" and that the balance of equities favored the importance of safeguarding public health and safety. *Id.* at *8.

One preliminary injunction request is pending at the time of this article, filed in December 2021 by the Correction Officers Benevolent Association (COBA). COBA alleged that the vaccine mandate lacked a rational basis and is arbitrary and capricious because of its impact on Correction Officers' (COs) workload, including that, because many COs were placed on LWOP for noncompliance, COs who chose to vaccinate were forced to work additional hours. COBA claims that the vaccine mandate violates the Due Process Clause of the State Constitution because it infringes on COs' rights to bodily integrity and their right to pursue their profession. The Court, without a decision, denied COBA's TRO request and ordered oral argument as to the preliminary injunction request, scheduled for May 18, 2022. See COBA v. City of New York, Index No. 161034/2021, NYCEF Doc No. 15 (Sup. Ct., NY Co. Dec. 10, 2021).

7 In holding that the requirement to be vaccinated was a condition of employment, the Court relied upon *We The Patriots USA v. Hochul*, 17 F.4th 266, 287 (2d Cir. 2021), *clarified* 17 F.4th 368 (2d Cir. 2021), *injunction request pending appeal denied* 142 S.Ct. 552 (2021). In *We The Patriots USA*, the Court denied an injunction of the State's vaccine mandate for healthcare workers, finding no likelihood of success on the merits, no irreparable harm because employment consequences of noncompliance were compensable by money damages and reinstatement, and that the balance of equities favored the mandate.







Highlights of Cases Issued November 2021 through March 2022

Interference with Protected Activities

City of Detroit (Fire Department) -and- Detroit Fire Fighters Association International Association of Fire Fighters, Local 344, Case No. 19-L-2233-CE, issued November 4, 2021 (no exceptions)

The union alleged that the employer had repeatedly interfered with the ability of several union officers to reasonably exercise protected activity related to contract grievances and unfair labor practices. The Administrative Law Judge (ALJ) concluded that the employer had engaged in conduct and other activity intended to harass certain bargaining unit members based on their roles as union officials. The ALJ also found the employer's history of prior unfair labor practice violations to be relevant in determining the underlying motivation of this subsequent conduct.

Non-Conforming Exceptions

Wayne County Department of Public Services -and- James Berry, Case No. 21-A-0017-CE issued November 12, 2021

Charging party alleged he was disciplined in retaliation for prior harassment complaints he made against his coworkers, one of whom was his supervisor. During the evidentiary hearing before the ALJ, charging party was unable to provide evidence to support a claim that any discipline he had received was actually in retaliation to any Public Employment Relations Act (PERA) protected activity. The ALJ recommended summary dismissal for failure to state a claim. Charging party then sent the Commission a document requesting to "appeal" the ALJ's conclusions. After review, the Commission found the document to be severely deficient and noncompliant with the requirements for exceptions under the agency's general rules. As such, the Commission rejected charging party's "exceptions" and upheld the ALJ's dismissal determination.

Changes Due to COVID-19

Wayne County Community College District -and-Wayne County Community College Professional and Administrative Association, American Federation of Teachers Michigan, Local 4467, Case No. 20-I-1436-CE, issued December 17, 2021

The union sought to bargain over several health and safety concerns related to COVID-19 and its unit members. The employer refused the union's request, arguing that the labor contract already addressed the issue of employee health and safety conditions. The union filed a charge alleging a refusal to bargain. The ALJ recommended dismissal of the charge, finding the matter was "covered by" the collective bargaining agreement based on language that addressed the employer's obligation regarding employee health and safety concerns. The Commission agreed with the ALJ and dismissed the charge. Notably, the ALJ opined that "[the union's] attempt to avoid its contractual obligation [under the current language due to the COVID-19 pandemic] . . . is no different than [situations] where a public employer has sought to justify making a unilateral reduction in wages or [working hours] because of an alleged unforeseen financial crisis—claims which the Commission has consistently and repeatedly rejected."

Severance and Accretion of Unit Positions

Independence Township -and- International Association of Fire Fighters -and- Michigan Association of Fire Fighters, Case No. 21-A-0108-RC, issued December 17, 2021

Petitioner sought to sever the job classification of Captain from the existing bargaining unit of firefighters and create a standalone unit of supervisory firefighter personnel. Based on the stringent standard for severance, the



Commission determined the evidence presented did not reveal that a sufficient divergence of interest existed between the Captain positions and the remaining positions in the bargaining unit to conclude that the Captains no longer shared a community of interest with the remaining unit members. The Commission denied the election petition as there was insufficient basis to justify severance of the Captain positions from the bargaining unit which had been in existence for decades.

Alpena County -and- Technical, Professional and Officeworkers Association of Michigan (TPOAM), Case No. 20-J-1586-UC, issued December 17, 2021

The Commission denied the unit clarification petition which sought to accrete into the bargaining unit the job classification of Network Technician, based in part on the argument that the petitioner, a successor union, was previously unaware of the existence of the position. The Commission concluded the petitioner had knowledge of the existence of the position and its historical exclusion from the unit for several years prior to filing the petition and that the job duties and responsibilities of the position had not recently changed sufficiently to warrant a finding of an overwhelming new community of interest with the remaining bargaining unit job classifications. Accordingly, the Commission determined that the petitioner failed to present adequate grounds to alter the historical exclusion of the position from the existing bargaining unit.

Charter Township of Meridian -and- Technical, Professional and Officeworkers Association of Michigan, Case No. 20-L-1782-UC, issued December 17, 2021

The Commission granted the unit clarification petition to accrete the newly created full-time Accountant position into the existing bargaining unit. The Commission found the existence of a community of interest with the other positions in the unit represented by the petitioner based on similar duties and responsibilities, supervision, skills, work location, and wages of the disputed Accountant position, along with similarities between the new position and the former

part-time accountant classification which had been included in the unit.

Statute of Limitations & COVID-Based Filing Extension

Allen Park Public Schools -and- Allen Park Education Association of Michigan, Case No. 20-I-1406-CE, issued January 14, 2022

The union filed a charge challenging the district's unilateral elimination of the consult hour previously allowed for certain special education high school teachers. The employer responded that the matter was untimely filed, that the union failed to make a bargaining demand, and that the change was permitted under the terms of the parties' existing contract. The ALJ held the charge was time-barred and rejected the union's contention that the statute of limitations under PERA had been extended by one of the Governor's COVID-19 executive orders that extended filing deadlines and/or statutes of limitations for civil and probate court matters. Although the union argued that it did not have notice of the change until a date within the six-month statute of limitations period, the ALJ concluded that there was sufficient notice to the union of the change more than six months prior to the filing of the charge based on the meetings and other communications between local union representatives and district managers. The union filed exceptions on the same grounds as had been presented to the ALJ which the Commission rejected, and the Commission upheld the ALJ's dismissal due to the union's failure to file the charge within the six-month statute of limitations period.

Remand from Michigan Court of Appeals

City of Detroit (Fire Department) -and- Detroit Fire Fighters Association, Local 344, Case No. 19-C-0479-CE

On February 2, 2022, the Michigan Court of Appeals reversed the prior Commission decision in this case. The Commission decision had held that the City of Detroit Fire Department violated PERA by unilaterally changing the terms and conditions of employment when it used available data from its newly acquired Zoll X Heart Monitor to discipline two bargaining unit employees without first bargaining with the union over the



use of the data. The Court of Appeals disagreed with the Commission. In doing so, the appellate court reached the factual conclusion that the data being used from the new Zoll Monitor was the same data already available from the prior monitoring equipment, and therefore, did not constitute a unilateral change of a mandatory subject of bargaining. On this basis, the appellate

court remanded the case for the entry of a Commission order in favor of the City of Detroit (Fire Department). Notably, the appellate court refrained from deciding whether the use of previously unavailable data from the Zoll Monitor for disciplinary purposes would constitute a mandatory subject of bargaining.



NATIONAL MEDIATION BOARD

New National Mediation Board Member Hamilton Sworn In

New National Mediation Board (NMB) Member Deirdre Hamilton was confirmed by the United States Senate on December 7, 2021. She was sworn in and assumed her position with the NMB on January 25, 2022.

Prior to becoming a Member, Ms. Hamilton worked as a staff attorney at the International Brotherhood of Teamsters (IBT), working exclusively with the IBT's Airline Division. At the IBT she represented most of the crafts or classes within the airline industry—including pilots, flight attendants, technicians, and aircraft cleaners—at both commercial and cargo air carriers. Before that, Ms. Hamilton was a staff attorney at the Association of Flight Attendants.

In her career, she has handled a wide range of legal matters including NMB elections and mediation, collective bargaining support, contract enforcement, and litigation of Railway Labor Act issues. Ms. Hamilton began her career as a legal fellow in the General Counsel's office at the International Association of Machinists and Aerospace Workers.

Ms. Hamilton has been an active member of the Railway Labor Act legal community. She has served as a panelist at meetings of the American Bar Association's Labor and Employment Law Committee and the Railway and Airline Labor Law Committee. She has also served as a Senior Editor for the ABA Railway Labor Act Treatise.

Ms. Hamilton is a graduate of Oberlin College and the University of Michigan Law School.



WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION

The Washington State Public Employment Relations Commission (PERC) launches The PERColator Podcast, hosts monthly lunch Zooms with clientele, and pivots to 100% virtual training during the pandemic to further its conflict prevention mission and promote professional development and sense of community within the public-sector labor relations community in Washington State.

The Negotiation Project and The PERColator Podcast

A few years ago, PERC launched the Negotiation Project as an innovative conflict prevention



program exploring the intersection between academic negotiation research and theory and everyday labor relations practice, particularly in the context of Washington State public-sector collective bargaining. The in-person components of the project, including the development of a multiday negotiations course, were put on hold during the pandemic. However, we were able to launch a couple initiatives to keep up momentum.

First, in what might be a first for labor relations agencies (prove us wrong!), the Negotiation Project launched <u>The PERColator Podcast</u>. In each episode, cohosts Chris Casillas, Emily Martin, and Matt Greer, along with occasional guests, spend about 20 minutes discussing a negotiation theory topic and tie it to collective

bargaining practice. The team is releasing an episode every couple weeks or so.

Recent episodes
have covered such
wide-ranging topics as
the role of small talk in
the bargaining process,
how to discuss interests
without "talking about
interests," and guest speaker

and longtime negotiator and arbitrator Bob Oberstein sharing his experience developing and using a system to aid the negotiation process and better capture bargaining intent. We are also very excited to have noted author Annie Murphy Paul join Chris to discuss how the concepts and theories she describes in her book *The Extended Mind* apply in the collective bargaining setting.

If you or your agency have an idea that would make for a good episode and want to partner up, let us know. In the meantime, subscribe on your favorite podcast service and rate us 5 stars!

The Lunch Zooms

Initially, the Negotiation Project produced a series of on-demand video lessons, presented topics at a local labor relations conference, and was gearing up to conduct a multiday in-person negotiations course. Plans for the in-person course were put on indefinite hold due to the pandemic.

With the pandemic leading to remote working by many, some labor relations folks were interested in opportunities to get together in a less formal setting than Zoom negotiation sessions, mediation, or hearings. To meet that need, the Negotiation Project began hosting monthly lunchtime Zoom get-togethers, open to any interested labor relations folks. The Zooms offer a loose agenda item for learning but are primarily intended to be a casual venue to connect with each other.

PERC Pivots to Online Training

PERC's training team has long served its clientele's training needs by providing a range of training and facilitation services. These include interest-based bargaining trainings and facilitations, bargaining launch trainings, labor-management committee trainings, and substantive trainings on topics of interest such as understanding and avoiding unfair labor practices. PERC trainers conduct training and facilitations in addition to their mediation and adjudication roles.

Although PERC had never conducted live training online before, the training team quickly pivoted once the pandemic hit, with the first Zoom-based training taking place in April 2020. Since then, we have conducted trainings and facilitations virtually with great success. All of our training offerings can be tailored to be provided virtually.

PERColator

Podcast