



ASSOCIATION
of LABOR RELATIONS
AGENCIES

ALRA Advisor

See you in



VANCOUVER, BC!



December 2022

IN THIS ISSUE

ALRA NEWS

FROM THE PRESIDENT3

**2022 CONFERENCE: REDEFINING CONNECTIONS
.....4**

**"GOOD LABOR READS"—POST-CONFERENCE
EDITION9**

ALRA MEMBER UPDATES

CANADA..... 13

• Ontario Labour Relations Board.....13

UNITED STATES 14

• Police Arbitration Reform Legislation—Two Years
Later14

• Federal Labor Relations Authority..... 16

• National Mediation Board17

• Washington State Public Employment Relations
Commission..... 19



ASSOCIATION
of **LABOR RELATIONS**
AGENCIES

The ALRA Advisor is published biannually (early spring and fall). On occasion, special issues are produced on an ad hoc basis.

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

Travis Kearns
travis.kearns@ontario.ca

Special thanks to

Travis Kearns
Ontario Labour Relations
Board

Vanessa Smith
Executive Assistant,
Washington State Public
Employment Relations
Commission

SAVE THE DATE!

71st Annual ALRA Conference
Vancouver, British Columbia
July 15-18, 2023

[Pinnacle Hotel Harbourfront](#) 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.



Photo Credits: Tourism Vancouver

FROM THE PRESIDENT

If all ALRA agencies have one thing in common, it is adaptability. Member agencies have honed and tapped into this skill for decades. New trends, issues, and government initiatives or restrictions affecting workplaces in each of our jurisdictions have demanded it. When our agencies had to pivot to fully remote and virtual work in 2020, adaptability was key. It is helping us now in the move to hybrid work settings or services. And this quality will only continue to serve us as we face new issues in an ever-changing labor relations world.

With that adaptability, however, there is a constant—an unwavering need for entities like ours to help parties with workplace issues, even as the nature of the workplace evolves. The collective bargaining framework and the dispute resolution mechanisms therein are currently viewed more positively and as necessary tools. At the same time, there are fascinating discussions about how that framework can be refined to more appropriately reflect the nature of twenty-first-century work. Many member agencies are at the forefront of those discussions.

My year as president coincides with about a decade of personal involvement with ALRA. For me, the value of ALRA has been immeasurable. ALRA offers the only forum where I can interact with people who do what my agency does. It is the only place where the unique issues of a neutral in a neutral agency can really be discussed. My own agency has utilized those discussions to be ready for issues that might come our way in Washington State. It has also gladly adopted best practices and innovative ideas presented by others. Finally, the relationships I have developed with the people of ALRA are the most resonating.

To that end, I want to thank the two most recent ALRA presidents, Scot Beckenbaugh and Susan Panepento. Scot and Susan had the unenviable task of leading ALRA through the pandemic and changing nature of our work. Scot, as always, provided his steadying guidance and foundation. Susan took advantage of the situation to move ALRA into providing more virtual services. This has long been a goal of ALRA, as we recognize not all can attend an in-person conference.

But, we will have an in-person conference in 2023! I think the conference, and an in-person conference at that, is still a vital feature of ALRA. Being in the same room as our peers allows for more organic information and best-practice sharing as well as relationship development. The 2023 conference will be held July 15 to 18 in Vancouver, British Columbia. Our conference committees have begun the work of planning the conference. There is always room for more volunteers on these committees. If you have an interest in participating, reach out to me at info@alra.org. Information about the conference will be shared on our website, www.alra.org. We hope you are planning to attend.

—Mike Sellars



Mike
Sellars

2022 CONFERENCE: REDEFINING CONNECTIONS

By Susan Panepento and Sarah Cudahy

ALRA's second virtual conference, which began on July 25, 2022, was a great success with high member-agency participation and several advocates and practitioners. The first day's program had three engaging panels, and the second day followed with skill-development programs.

The conference kicked off welcoming back economist Jim Stanford to speak about what the post-pandemic workplace will look like. Stanford focused on the new workforce demographics and whether employers and jobs will be able to adapt to changing needs of workers.

The second panel's speakers, General Counsel Jennifer Abruzzo and Deputy General Counsel Peter Sung Ohr from the US National Labor Relations Board, explained various new policy initiatives that the agency is taking under the Biden Administration, including improvements in case processing and expanded efforts to prosecute unfair labor practices. Some of these changes involve rule-making on the joint-employer standard and elections and interpretations of the law involving workplace rules that limit union activity.

The last panel of the day focused on modern approaches to mediation. Nancy Rosenberg, a



member of the Canadian Federal Public Sector Labour Relations and Employment Board, moderated a lively discussion with Janet F. Gillman, State Conciliator, Oregon Employment Relations Board; Javier Ramirez, Executive Manager of the Division of Agency Initiatives and Nominee for Director of the US Federal Mediation and Conciliation Service; and Tom Clairmont, a mediator from the Canadian Federal Public Sector Labour Relations and Employment Board. The panel compared and contrasted pre-pandemic mediation with current best practices in mediation by video and in person.

The Professional Development program on July 26, 2022, was similarly well attended. The day started with a panel reporting on updates from our member agencies hosted by Lindsay Foley, Regional Director & Registrar, Canada Industrial Relations Board, and Sarah Cudahy, Associate Deputy Director of Field Operations – National, US Federal Mediation and Conciliation Service. The panel consisted of Ginette Brazeau, Chair, Canada Industrial Relations Board; Lauren McFerran, Chair, National Labor Relations Board; and Darnice Marsh, Labor-Management Partnership Coordinator, Office of Labor Management Standard, Department of Labor.

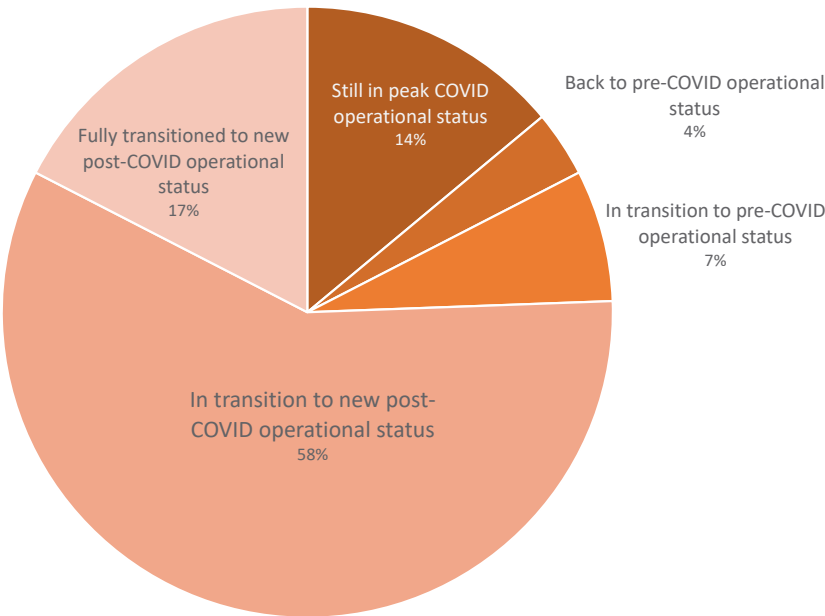
The session covered developments (both COVID and non-COVID related) in ALRA agencies. As part of the session, we conducted a poll of the attendees regarding developments in their agencies. The results are on the following pages.

(Update continued on page 9.)

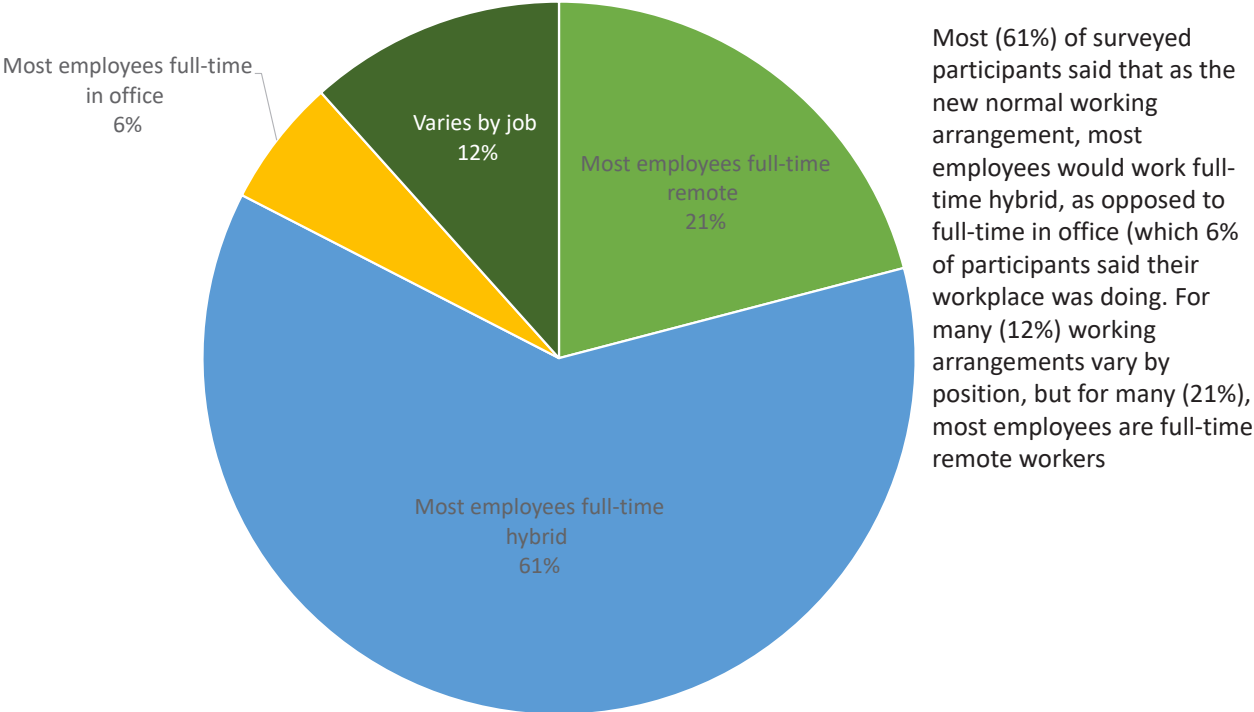


What is your current operational status?

While most (58%) of surveyed participants said that their workforces were currently in transition to a new post-COVID operational status, many (17%) had already transitioned to their new post-COVID operational status, and many (14%) were still in peak COVID operational status. A few number of participants (4%) said that their workplace was back to pre-COVID operational status, and more (7%) are in transition back to pre-COVID operational status

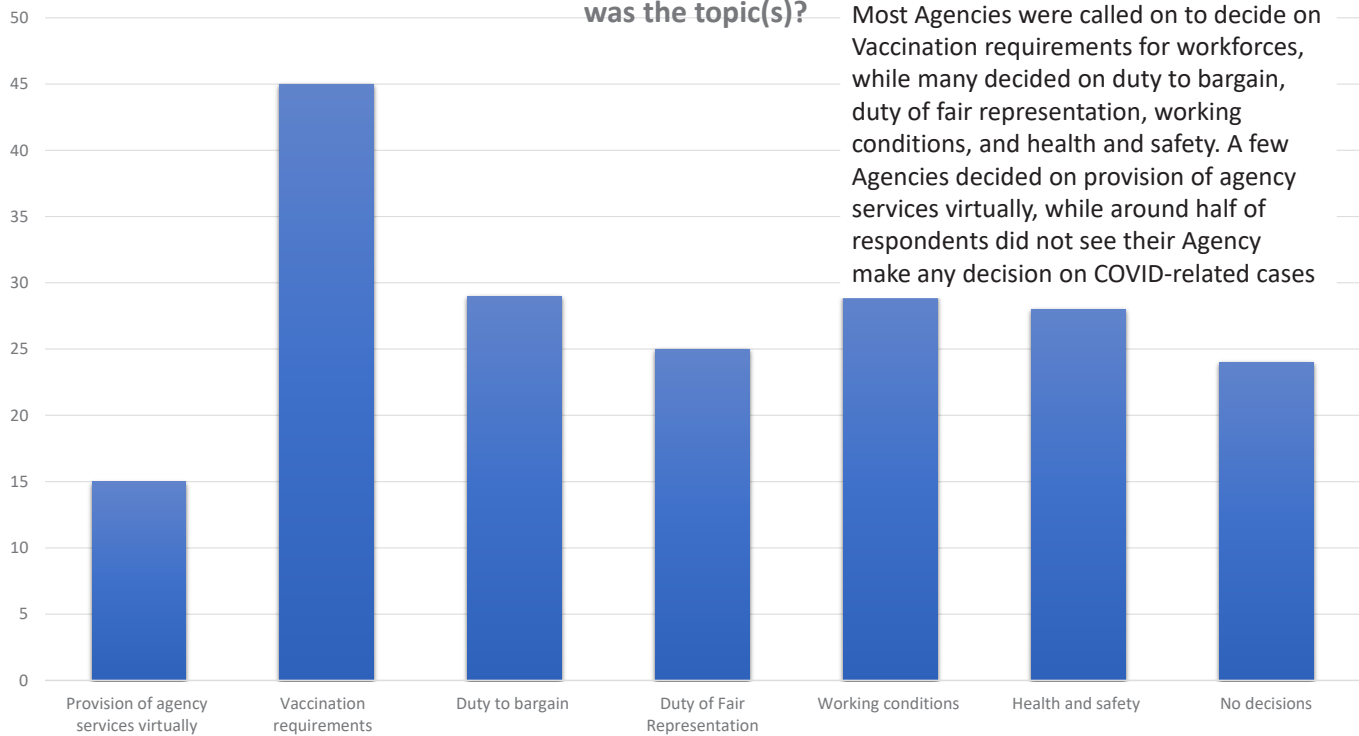


What is or will be the new normal working arrangement?



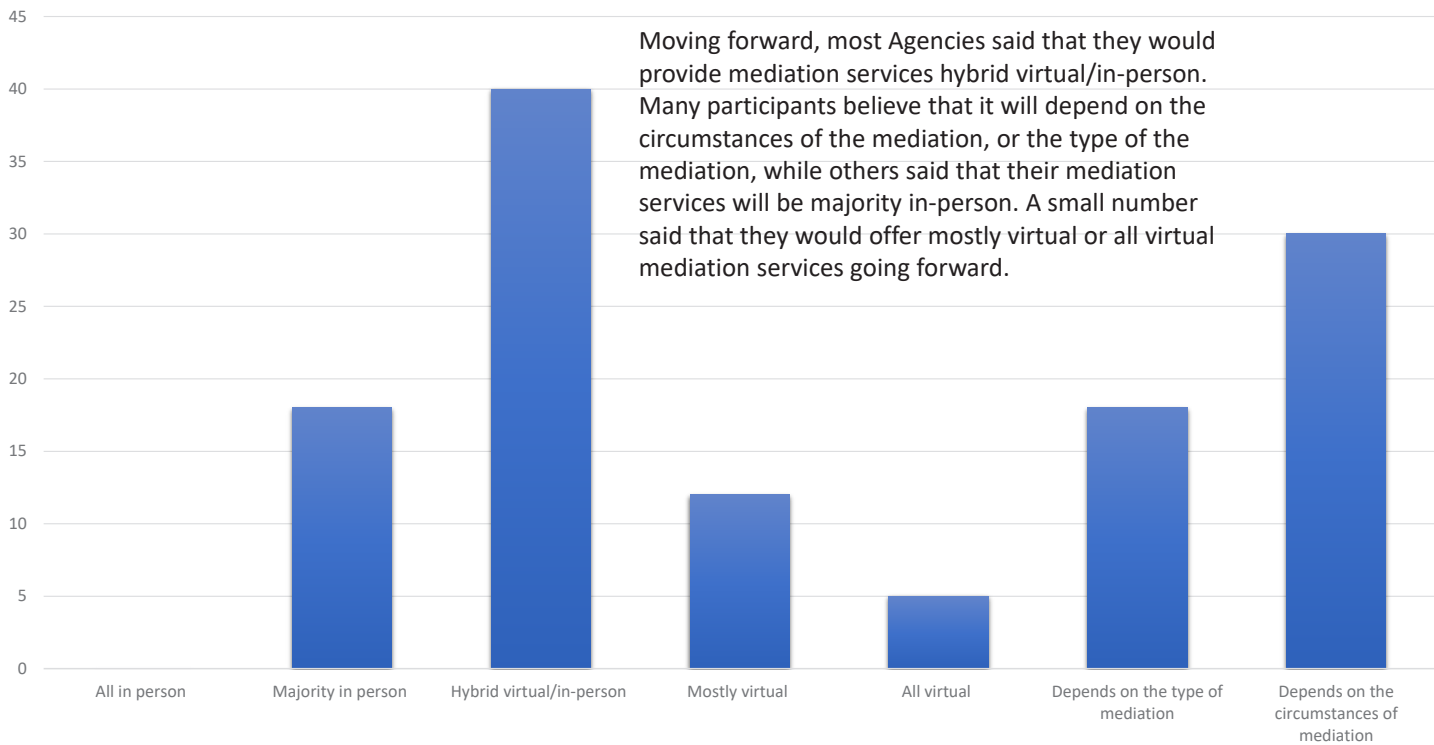
Most (61%) of surveyed participants said that as the new normal working arrangement, most employees would work full-time hybrid, as opposed to full-time in office (which 6% of participants said their workplace was doing. For many (12%) working arrangements vary by position, but for many (21%), most employees are full-time remote workers

Did your agency decide any major COVID-related cases in the past year? If so, what was the topic(s)?



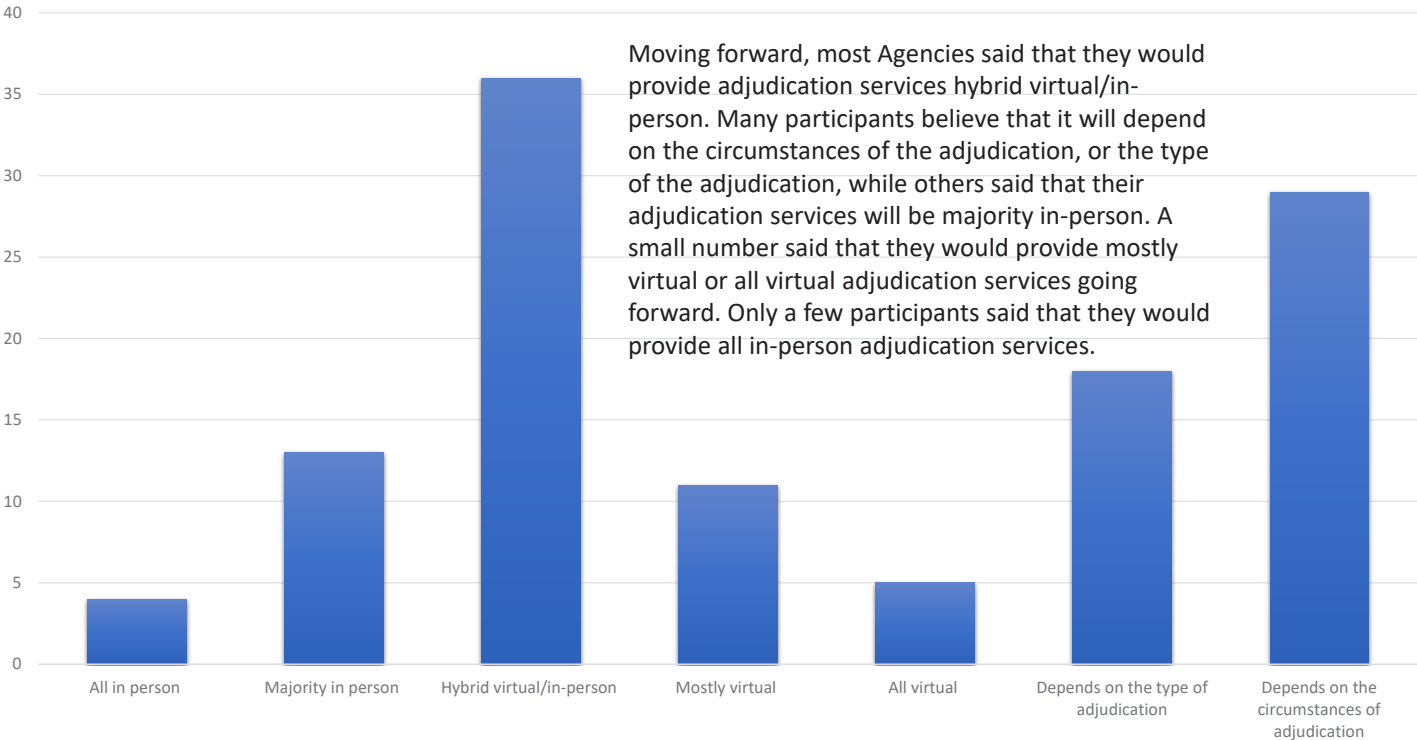
Most Agencies were called on to decide on Vaccination requirements for workforces, while many decided on duty to bargain, duty of fair representation, working conditions, and health and safety. A few Agencies decided on provision of agency services virtually, while around half of respondents did not see their Agency make any decision on COVID-related cases

In the future, will your agency provide mediation services?

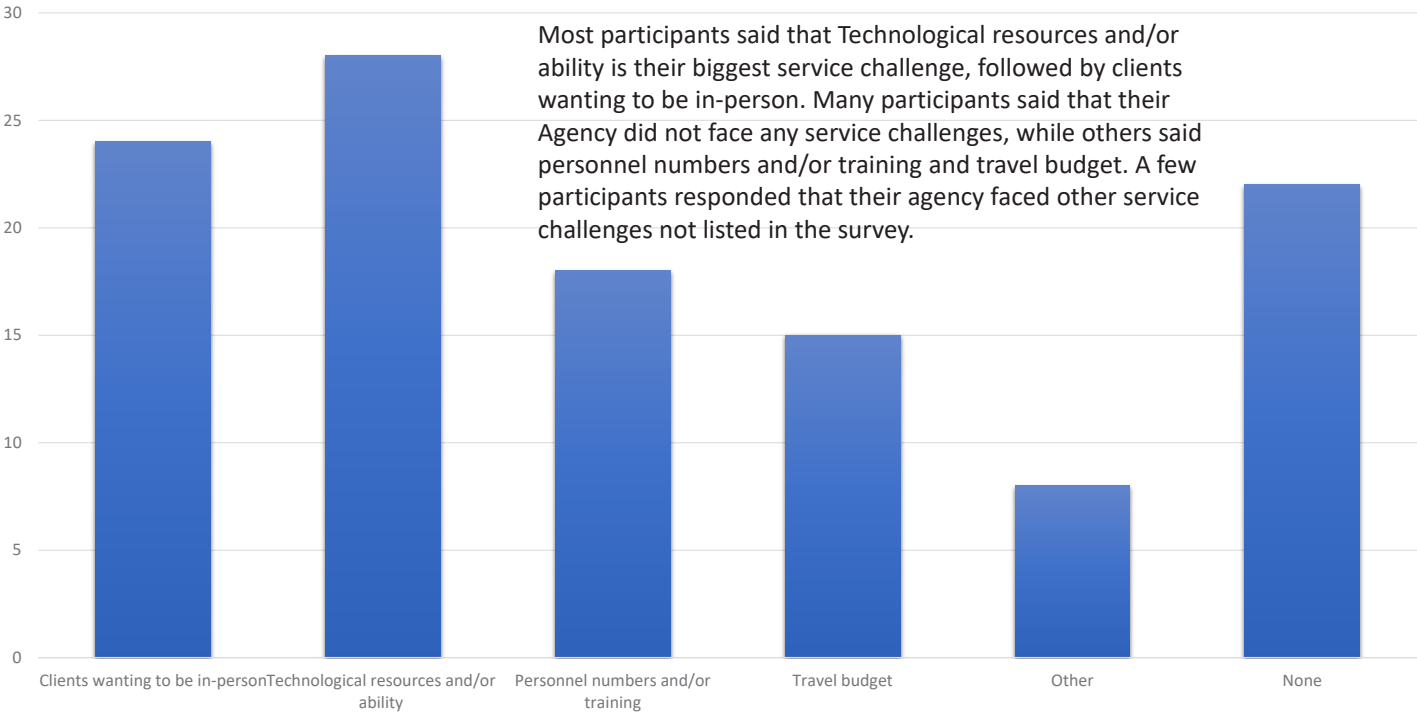


Moving forward, most Agencies said that they would provide mediation services hybrid virtual/in-person. Many participants believe that it will depend on the circumstances of the mediation, or the type of the mediation, while others said that their mediation services will be majority in-person. A small number said that they would offer mostly virtual or all virtual mediation services going forward.

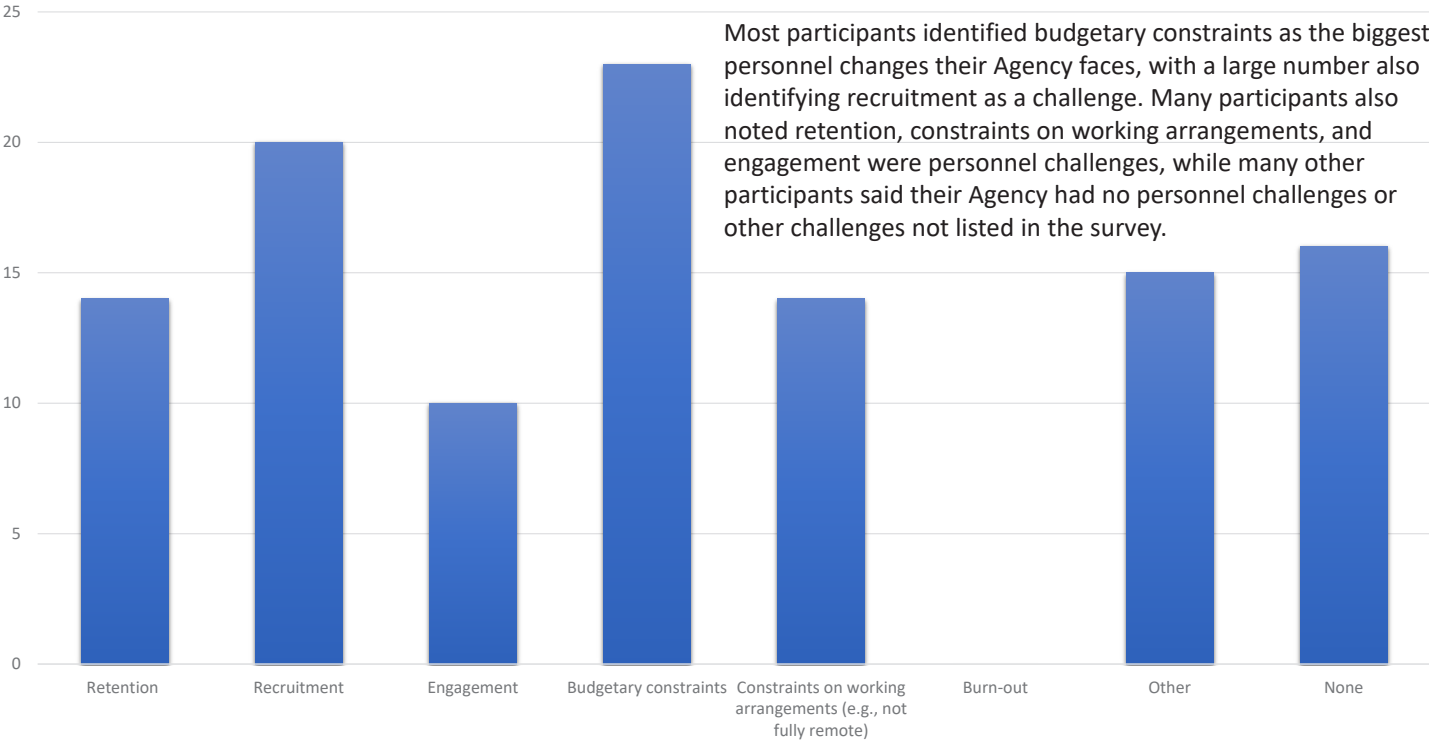
In the future, will your agency provide adjudication services?



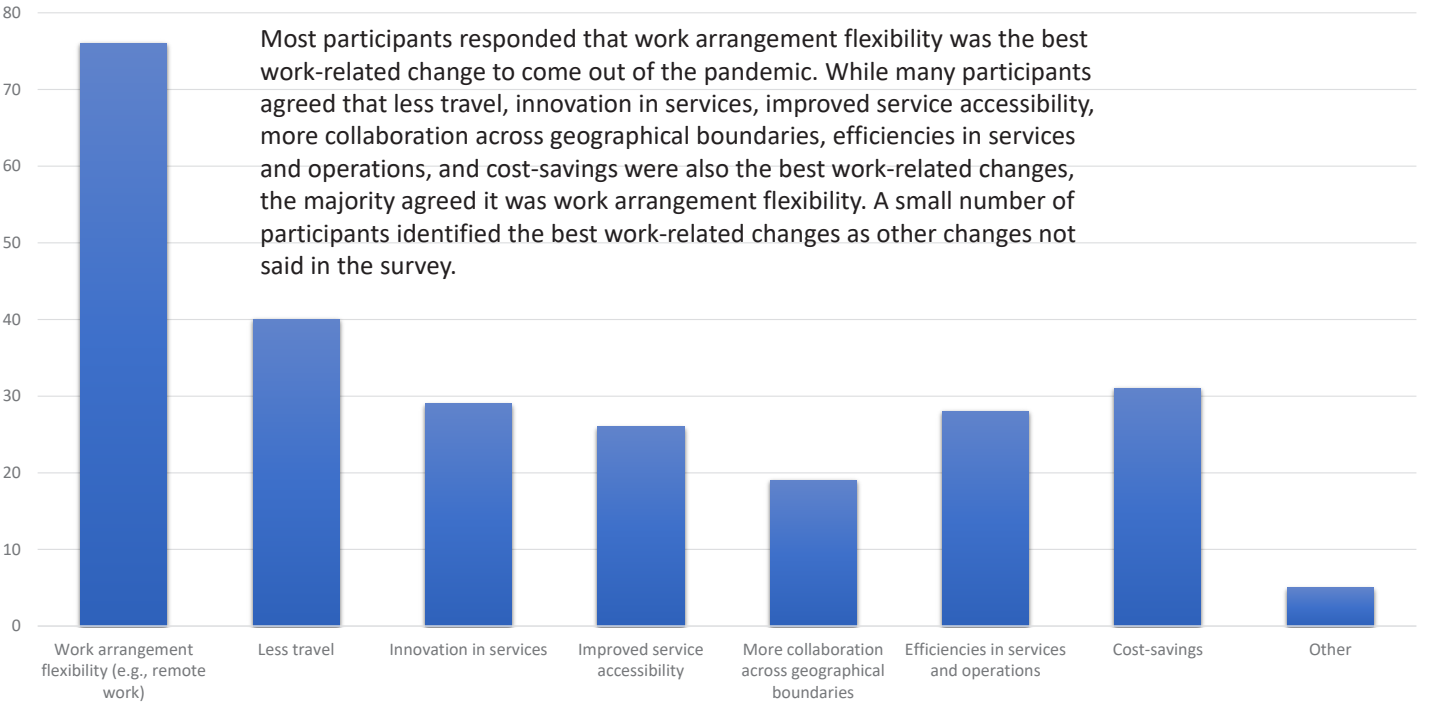
What’s the biggest service challenge your agency faces?



What’s the biggest personnel challenge your agency faces?



What do you think has been the or some of the best work-related changes to come out of the pandemic for your agency?



After the updates, attendees participated in our annual Neutrality buffet. This year's break out topics included

- 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; and
- Making Hybrid Technology Work in Your Practice: Lessons Learned and Best Practices in Decision Writing.

Participants were able to attend three topics.

The final presentation was entitled "The Right to Disconnect (RDT)." This discussion examined a new law in the province of Ontario that grants employees the right to disconnect from work or not engage in work-related communications for a period of time. The discussion also looked at the benefits, pitfalls, and ins and outs of RDT policies. This discussion was facilitated by Jean-Daniel Tardif, Senior Director of Regional Operations and Senior Registrar, Canada Industrial Relations Board/Administrative Tribunals Support Service of Canada, and included panelists Michael Church, Partner at CaleyWray, and Jennifer Hodgins, Partner at Norton Rose Fulbright.

The last hour of the professional development program was a virtual social hour where attendees circulated in rooms to greet old friends and colleagues and get to know some new ones. ■

"GOOD LABOR READS"—POST-CONFERENCE EDITION

Labor History

BEN FLETCHER: THE LIFE AND TIMES OF A BLACK WOBBLY, Peter Cole, Ed. (PM Press, 2021). Fletcher (1890-1949) was known as a brilliant union organizer and humorous orator. He helped found and lead Local 8 of the IWW's Marine Transport Workers Industrial Union, unquestionably the most powerful interracial union of its era.

FIGHT LIKE HELL: THE UNTOLD HISTORY OF AMERICAN LABOR, Kim Kelly (Atria/One Signal Publishers, 2022). A revelatory and inclusive history of the American labor movement, from independent journalist and Teen Vogue labor columnist Kim Kelly.

WORKERS ON ARRIVAL: BLACK LABOR IN THE MAKING OF AMERICA, Joe William Trotter (University of California Press, 2021). Charts the black working class's contributions to the making of America since Africans were first brought to Virginia as slaves in 1619 to the present.

MEATPACKING AMERICA: HOW MIGRATION, WORK, AND FAITH UNITE AND DIVIDE THE HEARTLAND, Kristy Nabhan (Warren, University of North Carolina Press, 2021). Native Midwesterner Kristy Nabhan-Warren spent years interviewing lowans who work in the meatpacking industry, both native-born residents and recent migrants from Latin America, Africa, and Asia. In

Meatpacking America, she digs deep below the stereotype and reveals the grit and grace of a heartland that is a major global hub of migration and food production—and also, it turns out, of religion.

OUT IN THE UNION: A LABOR HISTORY OF QUEER AMERICA, Miriam Frank (Temple University Press, 2014). Out in the Union tells the continuous story of queer American workers from the mid-1960s through 2013, chronicling the evolution of labor politics with queer activism and identity formation, and showing how unions began affirming the rights of lesbian, gay, bisexual, and transgender workers in the 1970s and 1980s.

HARD BARGAINS, MY LIFE ON THE LINE, Bob White (McCelland and Son, 2005). This is a fascinating biography by the president of the Canadian Auto Workers Union when it split from the United Auto Workers.

LOCKED IN THE CABINET, Robert Reich (Vintage Books, 2013). Reich's interesting and humorous memoir on his four years as President Clinton's Secretary of Labor.

MURDER IN THE GARMENT DISTRICT, THE GRIP OF ORGANIZED CRIME AND THE DECLINE OF LABOR IN THE US, David Witwer and Catherine Rios (The New Press, 2020). In 1949, in New York City's crowded Garment District, a union organizer named William Lurye was stabbed to death by a mob assassin. Through the lens of this murder case, prize-winning authors David Witwer and Catherine Rios explore American labor history at its critical turning point, describing how congressional anti-corruption hearings gripped the nation and forever tainted the reputation of American unions.

THE RADIUM GIRLS, THEY PAID WITH THEIR LIVES; THEIR FINAL FIGHT WAS FOR JUSTICE, Kate Moore (Simon & Shuster, 2016). In the early 20th century, one of the best jobs young girls and women in America could have involved painting sparkling, glowing and beautiful radium on watch dials, sometimes holding their paintbrushes with their teeth. Initially told by the factory owners that radium wasn't dangerous, this

harrowing story describes the struggle of a few brave women who took their case to court after they learned that radium was slowly killing them.

AMERICAN LABOUR'S COLD WAR ABROAD: FROM DEEP FREEZE TO DÉTENTE, 1945-1970, Anthony Carew (AU Press, 2018) A lively and clear account of how the AFL-CIO cooperated closely with the US government on foreign policy during the Cold War. The activities of its international staff, and especially the secretive work of Jay Lovestone and Irving Brown – whose biographies read like characters plucked from a Le Carré – exerted a major influence on relationships in Europe and beyond.

Labor, Class, and Working Conditions

WORKED OVER: HOW ROUND-THE-CLOCK WORK IS KILLING THE AMERICAN DREAM, Jamie K. MacCallum, (Basic Books, 2020). Most Americans work too long and too hard, while others lack consistency in their hours and schedules. Worked Over traces the varied reasons why our lives became tethered to a new rhythm of work, and describes how we might gain a greater say over our labor time—and build a more just society in the process.

THE FIGHT FOR \$15: THE RIGHT WAGE FOR A WORKING AMERICA, David Rolf (The New Press, 2015). A blueprint from a labor union leader on how to successfully mount campaigns for substantial increases in the minimum wage.

WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR, William Julius Wilson (Knopf Doubleday, 1997). Although this classic is not a recent book (published in 1996), sadly there is much in it to apply to the reality of persistent joblessness particularly among persons of color in the inner cities.

LABOR AND THE CLASS IDEA IN THE US AND CANADA (Cambridge Studies in Contentious Politics, Barry Eidlin (Cambridge University Press, 2018). Systematic analysis of archival and statistical data presents a novel explanation for why unions are weaker in the US than in Canada, two otherwise similar countries. Defying conventional wisdom that points to differences in political cultures, party systems, and labor laws, Eidlin contends that the difference resulted from different ruling party responses to worker upsurges during the Great Depression and World War II.

ON THE LINE: A STORY OF CLASS, SOLIDARITY, AND TWO WOMEN'S EPIC FIGHT TO BUILD A UNION, Daisy Pitkin (Algonquin Books, 2022). On the Line takes readers inside a bold five-year campaign to bring a union to the dangerous industrial laundry factories of Phoenix, driven by two women, the author and a second-shift immigrant worker.

The Pandemic

THE PLAGUE YEAR: AMERICA IN THE TIME OF COVID, Lawrence

Wright (Penguin Random House, 2021.) From the fateful first moments of the outbreak in China to the storming of the U.S. Capitol to the extraordinary vaccine rollout, Lawrence Wright's *The Plague Year* tells the story of Covid-19 in authoritative, galvanizing detail and with the full drama of events on both a global and intimate scale, illuminating the medical, economic, political, and social ramifications of the pandemic.

SHUTDOWN: HOW COVID SHOOK THE WORLD'S ECONOMY, Adam Tooze (Viking, 2021). Tooze's special gift is to show how social organization, political interests, and economic policy interact with devastating human consequences, from your local hospital to the World Bank.

Managing Employees, Work from Home and Hybrid Work

WAIT, I'M THE BOSS?!? THE ESSENTIAL GUIDE FOR NEW MANAGERS TO SUCCEED FROM DAY ONE, Peter Economy, (Career Press, 2020). This helpful guide explores the fundamental skills that every new manager needs to understand, practice, and master.

OUT OF OFFICE: THE BIG PROBLEM AND BIGGER PROMISE OF WORKING FROM HOME, Charlie Warzel and Anne Helen Petersen (Penguin Random House, 2021). *Out of Office* is a book for every office worker – from employees to managers – currently facing the decision about whether, and how, to return to the office.

DIGITAL BODY LANGUAGE: HOW TO BUILD TRUST AND CONNECTION, NO MATTER THE DISTANCE, Erica Dhawan (2021). Filled with practical strategies to foster authentic conversations, this is a useful resource for anyone who struggles with online communication.

REIMAGINING COLLABORATION: SLACK, MICROSOFT TEAMS, ZOOM AND THE POST-COVID WORLD OF WORK, Phil Simon, (Motion Publishing, 2021). Tips on using these platforms to create more collaborative work environments, increase organizational transparency, reduce manual work, and make our work lives less stressful.

COVID-19 RESOURCE REPOSITORY - The Council of Canadian Administrative Tribunals (ccat-ctac.org)

Compilation of decisions and articles addressing virtual hearings, Guidelines and Best Practices, International Best Practices/Resources.

Mediation and Negotiation

MEDIATING HIGH CONFLICT DISPUTES, Bill Eddy and Michael Lomax (Unhooked Books, 2021). The authors, supportively and repeatedly, remind the reader that most of the unhelpful conflict that arises when dealing with High Conflict Persons (HCP) is created by the HCP, not by the practitioner. The authors give practical ways to maneuver around the limitations of the HCP so as to increase the practitioner's effectiveness in helping the disputants reach agreements—

no matter the context of the dispute.

NEVER SPLIT THE DIFFERENCE, NEGOTIATING AS IF YOUR LIFE DEPENDED ON IT, Chris Voss (Harper Business, 2016). A former FBI hostage negotiator offers a new, field-tested approach to negotiating, effective in any situation.

[The 10 Best Negotiation Books of 2022 - ADR Times](#)

[10 Best Mediation Books of All Time - ADR Times](#)

Investigations, Hearings and Legal Writing

THE NATURE OF INQUISITORIAL PROCESSES IN ADMINISTRATIVE REGIMES, (Global Perspectives, Laverne Jacobs, Sasha Baglay (Routledge, 2020). "Inquisitorial Processes" refers to the inquiry powers of administrative governance. This book examines the use of these powers in administrative law across seven jurisdictions.

STORYTELLING FOR LAWYERS, ANNOTATED EDITION, Philip N. Meyer (Oxford University Press, 2014). Offers a basic yet comprehensive explanation of the central role of narrative in litigation. Book includes a "tool kit" and practical tips for crafting legal stories.

TV Series

SEVERANCE (Streaming on Apple+). A dystopian thriller about a team of office workers whose memories have been surgically divided between their work and their personal lives.

THE BEAR (Streaming on FX on Hulu) -The series explores the food industry and restaurant culture through the lens of a talented chef who returns to Chicago to run his older brother's restaurant.

SUPERSTORE (2015-2021). A very popular workplace comedy set in a fictional big box retailer chain called Cloud 9. Several episodes involve a union organizing campaign.

Movies

NOMADLAND (2021). This Academy-award winning film starring Frances McDormand was praised for its sensitive, authentic portrayal of Americans living in the gig economy, traveling from place to place while working season jobs in factories, farms and Amazon fulfillment centers.

BLUE COLLAR (1978). Directed by Paul Schrader, this well-received film starred Richard Pryor, Yaphet Kotto and Harvey Keitel who are members of the "American Auto Workers" union who are dissatisfied with both management and their union. After they rob a safe at the union headquarters, they uncover evidence of union corruption.

PRIDE (2014). U.K. gay activists work to help miners during their lengthy strike of the National Union of Mineworkers in the summer of 1984. Based on a true story.

CRADLE WILL ROCK (1999). Directed by Tim Robbin, this movie tells the story of the opening night of the

Depression-era production of Marc Blitzstein's class-conscious musical "The Cradle Will Rock." Federal authorities, suspicious that the theater company was harboring Communist influences, padlocked the theater where the musical was set to open, but the show managed to go on.

Labor in Fiction

THE COLD MILLIONS, Jess Walter (Harper Collins, 2020). This historical novel traces the adventures of two vagabond brothers in the context of a landmark free speech protest that erupted in Spokane, Wash., in 1909 and 1910 after Spokane instituted a ban on public speaking in response to the orations of Wobbly organizers who were trying to break the grip of corrupt employment agencies.

WHERE THE TRUTH LIES, Karina Kilmore (Simon Schuster Australia, 2020). A crime novel involving a faceoff between Melbourne's unions and big business after the death of a dockworker.

OUTSIDE, INSIDE, LeUyen Pham (Roaring Book Press, 2021) (Ages 3-5). From Caldecott honoree LeUyen Pham, Outside, Inside is a moving picture book that captures the unforgettable moment during the pandemic when people all over the world came together. It celebrates the essential workers, frontline workers, and communities that worked with each other to protect our loved ones.

Books by ALRA Officers and Speakers

ECONOMICS FOR EVERYONE: A SHORT GUIDE TO THE ECONOMICS OF CAPITALISM, 2nd Edition, Jim Stanford (Fernwood Publishing, 2015) (ALRA Keynote Speaker, 2021 and 2022). Economics for Everyone has quickly become a standard reference for economics literacy and popular education. Now published in six languages, the book is used in higher education, trade unions, and community education initiatives around the world. This new second edition has been completely revised and updated, with new statistics, cartoons, and anecdotes. The book also includes several all-new chapters – on inequality, on racism and discrimination, and on the lasting consequences of the 2008-09 global financial crisis.

PHINEAS AT BAY, John Wirenius (2014). (NY PERB Chair and ALRA Board Member). Set in 1890s England, Phineas at Bay picks up where Anthony Trollope's Palliser series left off: now two decades after the unconventional marriage of Phineas Finn, an Irish Catholic, to the Viennese Jewish widow Marie "Madame Max" Goesler. Scholar and lawyer John F. Wirenius sets the Victorian-era author's pointed satire loose on today's political and social excesses, creating a novel that can be read alone or in conjunction with Trollope's novels. ■

CANADA



ONTARIO LABOUR RELATIONS BOARD

New Chair and Alternate Chair at the OLRB

Early in 2022, the Ontario Labour Relations Board (OLRB) welcomed a new Chair of the Board, Brian O'Byrne. Mr. O'Byrne comes to the Board with many years of labour relations experience and is widely recognized as a leading labour law practitioner in Ontario. Prior to his appointment, Mr. O'Byrne was a senior partner and National Group Chair for the Labour, Employment and Human Rights group at Fasken, a large national law firm. He is a graduate of both the University of Toronto as well as Osgoode Hall Law School. Mr. O'Byrne took office on February 28, 2022.

In November 2022, the OLRB was happy to announce that Lindsay Lawrence had been appointed as Alternate Chair of the OLRB. Ms. Lawrence is well respected in the labour law community, with a long history as counsel and as a neutral. Prior to her appointment as alternate chair, Ms. Lawrence had initially come to the OLRB as Board solicitor in 2020 and then had been appointed as a Vice Chair in 2021. Before coming to the OLRB, Ms. Lawrence had been a partner at Goldblatt Partners, where she practiced exclusively in the area of labour law. She is also a contributing editor for the leading text, Ontario Labour Relations Board Law and Practice.

The OLRB has also added three new Vice Chairs, three new Mediators, and one Board solicitor in the past year to replace retiring staff.

Open Period

The Ontario Labour Relations Act provides for a period every three years where all provincial

collective agreements in the construction sector expire. This results in lots of bargaining new collective agreements, along with the possibility of strikes and lockouts, and also the possibility of unions displacing one another's bargaining rights or having their rights terminated. This period fell between March and April of 2022 and resulted in 82 applications for votes to the OLRB during that two-month window, which is a slight decline from previous open periods. The OLRB conducted all of the open period votes electronically, for the first time ever.

Video Hearings, Mediations and Electronic Votes

As with most agencies, the OLRB has been conducting all hearings, mediations, and votes electronically since the pandemic started and has enacted a number of rule changes to deal with staff working remotely. This process has been very successful. While staff have begun working in the office again, the Board has not yet returned to doing any of these activities in person. The OLRB is planning on stakeholder consultations to determine the roadmap for returning to performing some activities in person, but it is also looking for feedback about what processes are worth keeping for the future, as some of the new processes have resulted in increased efficiency, improvements in speed and access to OLRB services, and a notable rise in voter turnout in elections. The OLRB is currently re-equipping some hearing rooms so that parties will be able to continue to have the option to participate electronically, even after in-person hearings resume. ■

UNITED STATES

POLICE ARBITRATION REFORM LEGISLATION—TWO YEARS LATER

By Mike Sellars and Todd Doncavage

While many states have enacted police reform legislation in the last few years, two states have enacted laws specifically addressing the grievance arbitration process for police officers and other law enforcement personnel. In 2020 and 2021, respectively, the Minnesota and Washington State legislatures enacted laws limiting who may conduct disciplinary grievance arbitrations for law enforcement personnel and specifying a process for appointing the arbitrators.

The Minnesota statute requires the Bureau of Mediation Services (BMS) to create and maintain a six-person Peace Officer Grievance Arbitration Roster in consultation with community and law enforcement stakeholders. When making appointments to the roster, the BMS commissioner may consider the BMS's qualifications—under BMS rules—for appointment to its regular arbitration roster. The commissioner may also consider an applicant's familiarity with labor law, the grievance process, and the law enforcement profession or their experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences. Arbitrators on the roster may only arbitrate peace officer disciplinary grievance cases—that is, they cannot be members of the BMS's general arbitration roster or any other labor arbitration roster or panel.

Within six months of being appointed, new roster appointees must complete and pay for training that comprises

1. at least six hours on cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and

2. at least six hours on the daily experience of peace officers, which may include ride-alongs with on-duty officers or other activities that provide exposure to the environment, choices, and judgments required of officers in the field.

In June 2022, the BMS completed a rulemaking proceeding to further detail requirements on this training.

A full term is for three years, but the commissioner may remove an arbitrator for cause in accordance with BMS rules for removing arbitrators from its regular arbitration roster. And unlike for the arbitrators on the BMS's regular roster, the commissioner sets the fee schedule for the arbitrators on the Peace Officer Grievance Arbitration Roster.

The Washington statute similarly requires the Public Employment Relations Commission (PERC) to create and maintain a Law Enforcement Arbitrator Roster to conduct disciplinary grievance arbitrations involving law enforcement personnel. The Commission—the part-time appellate and rule-making body of the agency—may appoint up to 18 individuals to this roster. Washington's statute specifies the criteria to be considered by the Commission when making the appointments. For example, the Commission may appoint only persons who have at least six years' experience as a full-time labor relations advocate who has been the principal representative for either labor or management in at least 10 arbitration proceedings, a full-time labor mediator, an arbitrator who has decided at least 10 collective bargaining disputes, or a practitioner or full-time instructor of labor law or industrial relations. The Commission must also, as applicable, consider the following:

- a candidate's familiarity, experience, and technical and theoretical understanding of and experience with labor law, the grievance process, and the field of labor arbitration;
- a candidate's ability and willingness to travel through the state, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties;
- a candidate's experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- a candidate's familiarity and experience with the law enforcement profession, including ride-alongs with on-duty officers, participation in a citizens' academy conducted by a law enforcement agency, or other activities that provide exposure to the environment, choices, and judgments required of officers in the field.

Appointments to the roster will generally last three years. Individuals may be reappointed by the Commission, and there is no limit on the number of terms an individual may serve. The Commission may remove individuals from the roster by a majority vote. The Commission sets the fee schedule for arbitrations conducted under the statute. Within six months of appointment to the roster, individuals must complete training developed, implemented, and required by the executive director. PERC may charge the arbitrators for the cost of the training, and the training must include at least the following:

- six hours on the topics of cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- six hours on topics related to the daily experience of law enforcement officers, which may include ride-alongs with on-duty officers, participation in citizens' academies conducted by law enforcement agencies,

shoot/don't shoot training provided by a law enforcement agency, or other activities that provide exposure to the environment, choices, and judgments required of officers in the field.

Assigning Arbitrators to Cases

Both the Minnesota and Washington statutes specify how arbitrators are assigned to cases, providing that the BMS commissioner and the PERC executive director must appoint arbitrators on a rotating alphabetical basis. Neither statute grants any discretion to the parties to select or influence the selection of an arbitrator. Both statutes have processes for dealing with conflicts of interest. Also in Washington, if the arbitrator cannot hear the case within three months of appointment, the parties may request that the executive director make another appointment.

PERC must post any arbitration decision on its website with the names of the grievant and witnesses redacted. In Minnesota, no such requirement exists, although the BMS posts decisions unless the arbitrator reverses all aspects of the disciplinary action. This exception stems from Minnesota's data-practices law.

Implementation

Minnesota

Given the statewide interest in police reform, the BMS worked quickly to solicit applications and appoint well-qualified individuals to the roster so they could start hearing peace officer disciplinary grievance cases. Despite this initial interest and a requirement that peace officer collective bargaining contracts follow the new grievance procedure, few cases have gone to hearing and received a decision. As of November 2022, three cases have resulted in a public award.

Despite the slow uptake, the BMS continues to implement other aspects of the law by setting an annual fee schedule for the roster and creating a new internal policy for managing the roster. The BMS also ensures that the public can easily understand and track the actions of the new roster by maintaining a separate database for roster decisions and presenting information on arbitration and the roster in plain language.

Receiving the required training and submitting proof of completion is the arbitrators' responsibility, but the BMS ensures accountability by documenting and checking that the required training has been completed in compliance with BMS rules. The BMS has also partnered with experienced arbitrators from its regular roster to provide additional training for the new arbitrators.

Washington

PERC solicited applications for appointment to the roster in June 2021, and over 30 applications were received. The Commission set the fee schedule for these arbitrations and, in September 2021, appointed 18 arbitrators to the roster. The arbitrators, many of whom were already on PERC's regular panel of arbitrators, are located throughout the United States.

PERC selected a contractor to provide training on cultural competency, racism, and implicit bias, and the training was provided via Zoom. PERC specified that the six hours of training on the daily experience of a law enforcement officer would be satisfied by participating in six hours of ride-alongs, citizens' academies, or simulator training conducted by Washington law enforcement jurisdictions. The members are now completing that training.

Unlike Minnesota's statute, Washington's statute does not preclude arbitrators from serving as arbitrators in other labor arbitrations. However, the Commission recently adopted a rule

precluding PERC Commissioners from serving on the roster.

The provision requiring PERC to appoint arbitrators to conduct disciplinary grievance arbitrations of law enforcement personnel took effect on January 1, 2022. To date, 19 appointments have been made. In some instances, the employer has argued that the grievance was not disciplinary, but PERC has no role in determining arbitrability. There have also been questions in some cases whether the grievant met the statutory definition of law enforcement personnel. Washington's statute specifically includes officers of the Washington State Department of Fish and Wildlife as well as corrections and community corrections officers at the Washington State Department of Corrections. However, other officers performing similar functions to those specifically included officers, such as county corrections officers or liquor and cannabis control officers, do not meet the definition of law enforcement personnel.

As of November 2022, five decisions have been issued. PERC maintains the decisions in a newly added database on its website.

Conclusion

It is neither agencies' role to say whether the two statutes have had the intended effect since their passage. There is some greater degree of transparency in the process than before the statutes were passed. Both agencies have continued to implement the laws and refine their processes as necessary. ■



FEDERAL LABOR RELATIONS AUTHORITY

Susan Tsui Grundmann Sworn In as Member of the FLRA

On May 17, 2022, Susan Tsui Grundmann was sworn in as a member of the FLRA.

Prior to her swearing in, Member Grundmann served as the Executive Director and Chief

Operating Officer of the Office of Congressional Workplace Rights, where she oversaw the administrative-dispute-resolution process and provided education to both employing offices and labor unions that



represent employees in the legislative branch. Before that, she served as a member and chairman of the Merit Systems Protection Board.

Member Grundmann has also served as General Counsel to the National Federation of Federal Employees (NFFE), which represents 100,000 federal workers nationwide and is affiliated with the International Association of Machinists and Aerospace Workers. At NFFE, she successfully litigated cases in the US District Court for the District of Columbia and the US Court of Appeals for the District of Columbia Circuit. She represented NFFE and the United Department of Defense Workers Coalition, which consists of 36 labor unions, and served on the Coalition's litigation team in a coordinated response to proposed personnel changes at the Department of Defense (DoD). In addition to DoD employees, Member Grundmann represented employees in

the Forest Service, Department of Agriculture, Passport Service, Veterans Administration, General Services Administration, and some 25 additional federal agencies.

From 2003 to 2009, she was a regular instructor on federal-sector labor and employment law at the William W. Winpisinger Education and Technology Center in Hollywood, Maryland. Prior to joining NFFE, Member Grundmann served as General Counsel to the National Air Traffic Controllers Association. She began her legal career as a law clerk to the judges of the Nineteenth Judicial Circuit of Virginia and later worked in both private practice and at the Sheet Metal Workers' National Pension Fund.

Member Grundmann earned her undergraduate degree at American University and her law degree at Georgetown University Law Center. ■



NATIONAL MEDIATION BOARD

Puchala Assumes NMB Chairmanship

Washington, D.C. – The National Mediation Board (NMB) is pleased to announce that Ms. Linda A. Puchala has been named chairman of the National Mediation Board, effective July 1, 2022. Mr. Gerald W. Fauth III and Ms. Deirdre Hamilton remain as members of the Board.

Chairman Puchala was first confirmed as a member of the NMB by the United States Senate on May 21, 2009. Ms. Puchala previously served as chairman from May 2009 through June 30, 2009; July 1, 2011, through June 30, 2012; July 1, 2013, through June 30, 2014; July 1, 2016, through June 30, 2017; and July 1, 2019, through June 30, 2020. Her most recent Senate confirmation came on November 2, 2017. Puchala has been re-nominated to her position by the Biden-Harris Administration.

Puchala has held various positions at the NMB during her 23-year tenure. Prior to serving as a

Board member for 13 years, Ms. Puchala served 10 years as a mediator and then as senior mediator (ADR) and the Associate Director of Alternative Dispute Resolution Services. Ms. Puchala's prior labor relations experience includes serving in various elected union positions before becoming the International President of the Association of Flight Attendants-CWA, AFL-CIO. Ms. Puchala also served as Staff Director, Michigan State Employees Association, AFSCME, AFL-CIO which represents members in the labor and trades and safety and regulatory fields.



A native of Michigan's Upper Peninsula, Ms. Puchala now resides in Glen Burnie, Maryland. She holds a Bachelor's degree in Business Administration from Cleary University in Howell, Michigan.

Presidential Emergency Board Created in Class I Rail Dispute

Pursuant to the Railway Labor Act, the National Carriers' Conference Committee (NCCC) of the National Railway Labor Conference (NRLC) representing Class I railroads BNSF Railway Company; CSX Transportation, Inc.; The Kansas City Southern Railway Company; Norfolk Southern Railway Company; and Union Pacific Railroad Company; and certain other railroads and the following twelve unions:

- American Train Dispatchers Association (ATDA),
- Brotherhood of Locomotive Engineers and Trainmen (BLET),
- Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED),
- Brotherhood of Railroad Signalmen (BRS),
- International Association of Machinists and Aerospace Workers (IAMAW),
- International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers (IBB),
- International Brotherhood of Electrical Workers (IBEW),
- National Conference of Firemen & Oilers, District of Local 32BJ, SEIU (NCFO),
- International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department (SMART-MD),
- International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (SMART-TD),
- Transportation Communications Union/IAM (TCU/IAM), and
- the Transport Workers Union of America (TWU)

were released by the NMB from statutory mediation on June 17, 2022, and a 30-day cooling-off period began on June 18, 2022. In an effort to assist the parties further in reaching agreements, the NMB scheduled public interest

meetings commencing on July 12, 2022. These meetings were not open to the public.

In total, the NCCC is representing the following Class I railroads: BNSF Railway Company; CSX Transportation, Inc.; The Kansas City Southern Railway Company; Norfolk Southern Railway Company; and Union Pacific Railroad Company; and the following railroads: Alameda Belt Line Railway; Alton & Southern Railway Company; The Belt Railway Company of Chicago; Bessemer and Lake Erie Railroad Company d.b.a. C.N.; Brownsville and Matamoros Bridge Company; Cedar River Railroad Company; Central California Traction Company; Consolidated Rail Corporation; Delaware & Hudson Railroad Company d.b.a. C.P.; Gary Railway Company; Grand Trunk Western Railroad Company d.b.a. C.N.; Idaho & Sedalia Transportation Company; Illinois Central Railroad Company d.b.a. C.N.; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; New Orleans Public Belt Railroad Corporation; Norfolk and Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District; Palmetto Railways; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company d.b.a. C.P.; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Railroad Company; Western Fruit Express Company; Wichita Terminal Association; Winston-Salem Southbound Railway Company; and Wisconsin Central Ltd. d.b.a. C.N

President Joseph R. Biden, Jr. established Presidential Emergency Board No. 250 (PEB 250) effective July 18, 2022, and appointed the following arbitrators as members to Emergency Board 250: Ira F. Jaffe, Chairman; Barbara C. Deinhardt, Member; and David P. Twomey, Member. The objective of PEB 250 was to investigate the collective bargaining disputes between the railroads represented by the NCCC and certain of their employees represented by the labor organizations listed above.

The Emergency Board conducted in-person, closed hearings in Washington, D. C. from July 24–28, 2022, and made a recommendation for settlement in a report to the President on August 16, 2022. Pursuant to the Railway Labor Act, no work stoppages, and no changes in the conditions out of which the disputes arose (except by agreement of the parties), are permissible following the creation of the Emergency Board and for the 30 days following the date the Emergency Board submits its report to the President.

During the 30 days following the issuance of PEB 250's report, the parties reached tentative agreements (TAs) or ratified agreements with all of the carriers/unions in national bargaining. As of November 7, 2022, the current status is as follows:

Status (Number of Unions)

- Agreement ratified (7)
- Tentative agreement pending ratification (3)
- Not ratified / status quo maintained (2)

The following is a list of the ratification status for each union or the expected date of the ratification tally for the TA:

- TCU – Ratified
- BRC – Ratified
- IBEW – Ratified
- ATDA – Ratified
- BMWED – Not ratified / status quo maintained
- SMART-M – Ratified
- NCFO – Ratified
- BRS – Not ratified / status quo maintained
- IAM – Ratified
- IBB – November 14
- BLET – November 21
- SMART-TD – November 21

Access to PEB 250's Report to the President can be found on the NMB's website, www.nmb.gov, under the "What's New" heading. ■



WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION

New Commissioner



In October, Governor Jay Inslee appointed Liz Ford to the Commission to fill the unexpired term of Ken Pedersen, who resigned from the Commission in July. Ford is a Distinguished Practitioner in Residence at Seattle University School of Law, where she teaches the Workers'

Rights Clinic as well as Legal Writing. Ford previously taught at the University of Washington School of Law where she also served as Assistant Dean. Ford has also served as Chief Counsel for

the Washington State Nurses Association, as the Director of Labor Relations for King County, and as a partner at a labor-side law firm representing unions and individuals. Additionally, Ford has served on many boards and commissions, including the Marine Employees Commission and Seattle Civil Service Commission.

PERC Completes Comprehensive Rules Revisions

At its November 8, 2022, meeting the Commission adopted comprehensive rule changes. The rule changes conclude a years-long effort by PERC to engage with stakeholders, agency staff, and the Commission to streamline and modernize the rules. ■