

Long Island Chapter

Labor and Employment Relations Association

Newsletter

SHAPING THE WORKPLACE OF THE *FUTURE*



bug

June 2007

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PRESIDENT'S PERSPECTIVE: RESOLVING WORKPLACE CONFLICTS IN THE 21st CENTURY

Workplace conflicts will always be with us. How the American industrial system will or should resolve those conflicts is a critical question, and one that is appropriate for our organization's consideration. Failure to consider the costs and benefits of possible conflict resolution systems will, in all probability, result in our drifting into a system with unintended consequences.



Thomas J. Lilly, Jr.

During much of the twentieth century, collective bargaining played a significant role in resolving workplace conflicts. Collective bargaining provides a process that, if properly conducted, gives the employees a means to express dissatisfaction and seek redress of grievances. Whatever the virtues and flaws of collective bargaining, however, the reality is that the percentage of American workers represented by unions has decreased steadily since 1953. If this trend is not reversed, we must look elsewhere for workplace conflict resolution for most American workers.

A second possible conflict resolution system is increased government regulation combined with federal court litigation. That is, in fact, the system that has become more pervasive as collective bargaining has become less pervasive. Prior to 1960, most major federal labor and employment statutes involved collective worker rights (e.g., the Norris-Laguardia Act, the Railway Labor Act, the National Labor Relations Act, the Taft-Hartley Act and the Labor Management Reporting and Disclosure Act). Since 1960, most major federal labor and employment statutes have involved individual employment rights that are enforced by federal agencies and federal courts (e.g., the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Occupational Safety and Health Act, the Equal Pay Act, and the Family Medical Leave Act).

A national industrial system that depends on ever in-

Upcoming Chapter Meetings

Please Add These To Your Calendar

Thurs., June 14, 2007, Nassau Bar

Speaker: A. Blyer, NLRB Reg. Dir.

Wed., Sept. 25, 2007 (Suffolk)

Speaker: CSEA Region 1 Pres. N. LaMorte

Thurs., December 6, 2007 (Nassau)



President Tom Lilly presents a plaque of appreciation to past president Peter Bee.

creasing government regulation and individual litigation would seem to be in tension with popular American attitudes on business and government. It is, however, the path that we have followed for the last four decades. We should

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Winner Marianne Pizzitola

On Friday, May 4th, the chapter held its annual conference at the de Seversky Center of New York Institute of Technology. Welcoming remarks were made by chapter president Tom Lilly, Jr. and conference chair, Richard Roth, who, as chair of the chapter scholarship committee, began the program by introducing the winners of our \$1000 awards. They are Rafal Cebula from Hofstra, Joanne Thomas from NYIT and Marianne Pizzitola from SUNY, Old Westbury.

As facilitator of the first panel, he then introduced the panelists for the "Immigrant Issue and Its Impact on Long Island." The first speaker was Irv Miljoner, District Director of the Wage and Hour Division of the U.S. Department of Labor. Mr. Miljoner explained that it is the responsibility of his agency to enforce the law on behalf of all employees, including those who are undocumented. In his district they



Winner Joanne Thomas

gated suburb in the United States, this will affect the future supply of labor. Among the issues that come up in relation to immigrants is the affect on community services like education and health care. Mr. Valenzuela contends that immigrants paid \$421 billion in taxes and through their paychecks also contributed to the Social Security and Medicare funds. In

many cases, they will never benefit from the money they provide. Based upon a study done in North Carolina, immigrants contribute more than they use in services.

The last speaker on this topic was management attorney Lawrence M. Monat. Mr. Monat presented the legal framework pertaining to immigrants in the workplace. The major pieces of legislation are (8 U.S.C. 1101 et. seq.) the act that defines Aliens and Nationality, and The Immigration and Nationality Act (IRCA), 8 U.S.C., 1324a (a) (2) which pertains to unlawful employment of aliens. Also, there are rules that provide for verification of employment eligibility (8 CFR 274.az). A body of case law has evolved, with perhaps one of the most significant cases being Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 151-152 (Illegal immigrants are not entitled to back pay). In Balbuena v. IDR Realty, LLC, 6 N.Y. 3d 338, the court found that illegal immigrants are entitled to claim lost wages under NY law and that require an employer to provide a safe place of employment. (If you would like a copy of Mr. Monat's background paper with all of the citations, please send me an e-mail <jerryarb@optonline.net>).

After a coffee break, Jerry Grayson introduced the speakers for the panel on "Health Care and Health Costs - Seeking Answers." The first presenter was Dr. Carol Smith Pincus, a retired professor of Internal Medicine at the Einstein College of Medicine. She is now president of the Long Island Coalition for a National Health Plan. Dr. Smith Pincus and her group favor the approach contained in HR676, the US National Health Insurance Act introduced by Rep. Conyers. It is called the Medicare for All bill and would include dental, vision and



Richard Roth, Tom Lilly, winner Rafel Cebula, Greg Defreitas

do over 500 investigations a year with a shrinking staff. Some of the violations they have uncovered include pay as low as \$1.50 per hour. The most common are employers not paying overtime. Director Miljoner said that violations are frequently brought to the district's attention by other employers who are faced with unfair competition.

The next presenter was Luis Valenzuela, Executive Director of the Long Island Immigrant Alliance. He said that of the 32 million foreign-born individuals in the United States, about 12 million are undocumented, and the majority of those are Latino. Mr. Valenzuela noted that there are two broad groups of immigrant workers; those who are highly skilled and those who are unskilled. There is a shortage of both on Long Island, but since Long Island is the third most segre-

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related to medical costs. Businesses, both large and small and large and small unions are wrestling with the costs of health care for current employees and retirees. In addition, there are serious consequences in terms of our ability to compete on the international scene. In conclusion, he talked about Governor Spitzer's plan to enroll 400,000 children in New York and efforts to reduce paperwork and use electronic technology to produce a more efficient health care system for our nation.

mental health without deductibles or co-payments. There would be no insurance companies or HMOs involved in the health care system.



Jerry Laricchiuta, the president of CSEA Local 830 emphasized the fact that the members of his union and other unions throughout the country receive the health benefits that they get because they were negotiated at the collective bargaining table. In order to get these benefits there were other things (especially wages) they they had to give up. He described the benefits that his members receive and stated that if costs go up it is the employer's responsibility to figure out how to deal with that.

Jerry Grayson

George Babitsch, who is Senior V.P. for Sales and Account Management for Group Health Insurance, told us that health care costs are increasing too quickly and that there are still 47 million not insured. Twenty percent of those are children. Mr. Babitsch believes that preventive medicine is the key with a system where everyone is covered. He noted that about fifty percent of the personal bankruptcies in the U.S. are



Roger Clayman

Lunch was served in the lovely glass covered dining room where Roger Clayman, Executive Director of the Long Island Federation of Labor, gave the keynote address. Mr. Clayman spoke about the significant income divide that has developed in the U.S. While productivity, corporate profits and executive salaries and perks are reaching astronomical heights, the chasm is getting larger. He believes that changes in the way that workers can be organized will help to reduce these inappropriate figures. The conference concluded with the presentation of the LILERA MacGregor award to John R. Durso, president of the Long



Upper left: Monat, Valenzuela, Miljoner. Above: Smith Pincus, Laricchiuta, Babitsch Below: Lilly presenting MacGregor to Durso



Island Federation of Labor. Mr. Durso emphasized the importance of the LI Federation and other labor organizations making every effort to represent their members and to organize new members.

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consider whether it is the path we want to follow.

A third possible method of resolving workplace conflict is increased use of arbitration by individuals against employers. That is the method that former National LERA President David P. Lipsky believes is emerging to fill the conflict resolution vacuum. Certainly, it is an increasing phenomenon that has gotten substantial support from the federal courts.

A fourth possible method is, of course, that the employer simply resolves all workplace conflict as it sees fit, and the employee must either accept that resolution or quit. This system has certain efficiencies, but it also has costs that should not be ignored, as was illustrated by a recent news story here on Long Island.

According to reports published in *Newsday*, Avalon Gardens Rehabilitation Center recruited ten nurses from the Philippines to come work on Long Island. After taking up their new jobs, the nurses were unhappy with their wages, hours and working conditions. The employer took the position that their complaints were unsubstantiated. The nurses were not satisfied with the employer's position. So one day, to the extreme consternation of their employer, they left. Avalon Gardens contends that the nurses' abrupt departure endangered patients. The nurses dispute that contention.

In a unionized workplace, even if there was not a collective bargaining agreement in place, such a precipitous walk-out would be illegal. Any work stoppage would have been preceded by required notices and, in all likelihood, negotiation and mediation. Avalon Gardens, however, was not unionized. Under those circumstances, as National Labor Relations Board Regional Director Alvin Blyer commented, "If you walk out to protest working conditions, that kind of subject matter is a legitimate basis of protest."

On June 14, 2007 Regional Director Blyer will speak at Long Island LERA's quarterly meeting at the

Nassau County Bar Association building. He is an engaging speaker, and always receptive to questions from the labor and employment community. Please join us for what is sure to be an informative evening, and bring your questions with you.

ANNOUNCEMENTS, NOTICES

***If you have a job vacancy you are trying to fill or an announcement you would like published in the LI LERA Newsletter, please forward the relevant information to:
jerryarb@optonline.net***

***You can write, I can edit and publish.
Let's get together.
Have you had a case or incident in your practice that would provide insight to other practitioners? Have you read a book or article in a professional journal that you believe others might learn from and enjoy reading?
Let's get together. Send me your manuscript via email to:
jerryarb@optonline.net***

<p>The Long Island LERA Newsletter is a quarterly publication of the Long Island Chapter of the Labor and Employment Relations Association.</p> <table border="0"> <tr><td>President</td><td>Thomas J. Lilly, Jr.</td></tr> <tr><td>President Elect</td><td>Beverly E. Harrison</td></tr> <tr><td>Ist Vice President</td><td>Ernesto Mattace, Jr.</td></tr> <tr><td>2nd Vice President</td><td>Amanda Barker</td></tr> <tr><td>Secretary</td><td>Thomas Wassel</td></tr> <tr><td>Treasurer</td><td>Eugene S. Ginsberg</td></tr> <tr><td>Newsletter Editor</td><td>Gerald H. Grayson</td></tr> <tr><td>Associate Editor</td><td>Beverly E. Harrison</td></tr> </table> <p>Notices of address change should be sent to Membership Chairman, Richard Roth at <richarbit@aol.com>. Inquiries about this publication, as well as submissions, etc. should be sent to Jerry Grayson at <jerryarb@optonline.net>.</p>	President	Thomas J. Lilly, Jr.	President Elect	Beverly E. Harrison	Ist Vice President	Ernesto Mattace, Jr.	2nd Vice President	Amanda Barker	Secretary	Thomas Wassel	Treasurer	Eugene S. Ginsberg	Newsletter Editor	Gerald H. Grayson	Associate Editor	Beverly E. Harrison	<p>LI LERA 43 Northcote Drive Melville, NY 11747</p>
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**LONG ISLAND CHAPTER
LABOR AND EMPLOYMENT RELATIONS ASSOCIATION**

**GENERAL MEMBERSHIP MEETING
THURSDAY, JUNE 14, 2007**

PLACE: Nassau County Bar Association
15th and West Streets
Mineola, New York
Tel:(516) 747-4070

DATE: Thursday, June 14, 2007

TIME: 4:30 p.m., Executive Board Meeting
5:30 p.m., Social Hour (cash bar)
6:30 p.m., Dinner

SPEAKER: Hon. Alvin P. Blyer, Regional Director
Region 29, NLRB

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RESERVATION FORM

Please register the following person(s) for the June 14th meeting. I understand that the fee for dinner for members is \$35 if prepaid, and \$40 at the door. For non-members the fee is \$45. Dinner checks should be made payable to L.I. L.E.R.A.

**TO: EUGENE S. GINSBERG, 300 GARDEN CITY PLAZA, 5TH FLOOR,
GARDEN CITY, NEW YORK 11530**

Call (516) 746-9307 or email <Esginsberg@aol.com> to reserve

please cut coupon and return with your payment or reserve and pay at the door

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Number of Persons: _____ Check Amount: _____ Telephone: _____

DUE TO THE POPULARITY OF THIS EVENT, PREREGISTRATION IS RECOMMENDED