

Long Island Chapter

Labor and Employment Relations Association

Newsletter

ADVANCING WORKPLACE RELATIONS



Fall 2014

Amanda Barker, President
abarker@upseu.org

www.lilera.org

Dr. Gerald Grayson, Editor
jerryarb@verizon.net

PRESIDENT'S PERSPECTIVE:

Amanda Barker, President

In my two year tenure as the president of LERA's Long Island Chapter I have used this space to address some current issues in the workplace and labor relations world, namely the downward trend in union membership and the onset of the Affordable Care Act.

Looking back, union membership statistics have not changed drastically, and some provisions of the ACA have been "kicked down the road," as the proverbial can has been. The bulk of it has been enacted and has been labeled somewhat of a success, or the beginning of the end, depending on who you are talking to.

Unions have begun to engage and assist workers in the advocacy of larger issues, without necessarily representing them, such as the recent upswing in fast food worker protests for the increase in the minimum wage. Localities around the country have taken it upon themselves to raise it, a number of them in California. New York has had a higher minimum wage than the federal threshold and the discussion continues here. As with the ACA, a higher minimum wage has resulted in a successful boost for the working class, or it is the beginning of the end, again, depending on who you are talking to.

Public sector unions also recently dodged a bullet when the Supreme Court issued a ruling on the issue of "compulsory union membership," when it addressed agency fee rules and ventured into the semantics of what a public sector union is as it pertains to agency fees. As always, LI LERA was on top of this issue when it was addressed at our recent spring conference.

I have been honored and privileged to have been a part of this organization for the past 15 years, the last two as President. I look forward to remaining a part of a group of insightful and passionate advocates, academics, arbitrators and mediators. If there are others out there with half as much integrity and insight, then I will continue to remain hopeful for



Upcoming Chapter Meetings

Wed., Dec. 10, 2014

**Davenport Press, 70 Main St., Mineola
516-248-8300**

Wed., March 11, 2015

**Bonwit Inn, 1 Vanderbilt Mtr Parkway
Commack, 631-499-2068**

Friday, May 15, 2015

**Chapter Spring Conference
Tam O'Shanter Club, Brookville, NY**

Wed., June 10, 2015

Nassau County (TBD)

tegrity and insight, then I will continue to remain hopeful for the future of the workplace.

REPORT ON 67th NATIONAL LERA MEETING IN PORTLAND, OREGON, June 1-5

by Jonathan Rubin and Jerry Grayson

This was the second LERA national meeting that was held without being a part of the annual Allied Social Sciences Association meetings in January. This year, the meeting was held in conjunction with the Industrial Studies Association, who began their meeting two days prior to the LERA meeting. The attendance exceeded 400, more than any prior LERA meeting in the organization's history. The meeting was held at the Portland Hilton and Executive Tower and the facilities were excellent.

It began with welcome remarks from Mayor Charlie Hales of Portland. He talked about Localism and Communitarianism (local good) and how it has shaped his policies as the mayor of this city. He also discussed how Sustainability also defines Portland. He was followed by Jeff Parker, President of the Industry Studies Association (ISA). The conclu-

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ding welcome came from Lisa Lynch, the LERA president.

The welcoming greetings were followed on Thursday morning, May 29 at 8:15 a.m. with the ISA/LERA Plenary: Health Care Reform and Its Impact on Labor. The first presentation was made by Rebecca Givens, of Rutgers. She said that six months into the ACA the first conclusion is that mortality is amenable to health care. Deaths should be reduced if people have access to health care. In France, the mortality rate has declined to 59 per 1,000. The U. S. is the worst. She noted that Jacob Hacker (Poli Sci, Yale) did the first proposal of the ACA. Individuals could get coverage thru the employer or they could go into the exchange. Also there was a public option (which never made it). The plan that was passed was thru the employer or through state exchanges (also some people will be Medicaid eligible). It included a subsidy to low income earners. Five million were left out due to the Supreme Court decision, as well as those undocumented. The expectation is that 37m will get coverage by 2018. States with Democratic governors have accepted Medicaid Expansion and almost all of those with Republicans have not.

We will need more health care professionals. Most large firms (over 50 employees) already offer plans to their employees. Smaller firms don't. Many will still not be covered. The second presentation was by Amy Clary of AFT Healthcare. She noted that employers are reducing workers hours to avoid giving the health care benefit. Thirty hour is the cut-off. There are still questions about ACA taxes and fees. Who pays? Will taxes be levied on the insurer or the plan sponsor. Who really pays? The goal is to lower costs and maintain quality. Threats to spousal coverage? Higher premiums for family coverage? Patient protection - get money depending on score on quality survey. Penalize hospitals for readmission within 30 days.

Critical Issues Bargaining (CIB): Enhancing Problem-Solving & Mitigating Adversarial Negotiations

Michael Franczak, a Commissioner of the FMCS from Ohio presented information on "How the parties can leverage transparency, information sharing, and problem solving at the early stages of bargaining. He discussed the Types of Conflict, the importance of Informational Meetings, the nature of Strategic sessions and working on how to Resolve Conflict. When a situation goes to arbitration, it becomes a question of who is right? Who is more powerful? The goal here is to reconcile interests. He explained how they use Interest Based Bargaining in Ohio. There are problems with language for unions and management. Based upon his experience in mediation, he uses the best practices from IBB & Traditional for: 1) Preparing to negotiate; 2) Meeting dynamics; 3) Negotiation process; 4) Final agreement. With IBB you deal with issues, not proposals. Social sciences say: ask, listen, learn, then lead. IBB Framework is that it is one team with many people. Seek Facilitation/Mediation Adaptations. He said that

he works with 6-8 issues, not more. It is critical that there be no badge of failure. Parties are better able to leverage resolution of critical language and economic issues.

The morning sessions were followed by the LERA National Policy Luncheon. The featured speaker was David Weil, Wage and Hour Administrator, U.S. Department of Labor. Dr. Weil discussed the fissured workplace and the challenges of the Wage & Hour division. He raised the issue of how the academic community can assist in having the public understand the issues. There are 7.5 million businesses and 135m people they are responsible to cover with only 1100 investigators. They focus especially on low wage workers. They are using their tools in an interactive way. Modernization of OT and home care workers. Used to have complaint driven approach and back wages. New approach is strategic enforcement. Incentive for compliance. Priority industries. Mapping. Using all penalties available. This is where he starts. Raise minimum wage to \$10.10. Use of social media, internet, etc. Enforcement is their goal.

The first panel after lunch was: Walmart: "Always Low Prices." But at What Cost? Dan Schlademan of the UFCW discussed his experience in attempting to organize Walmart workers. He was joined by David Rolf of the SEIU who is a local union president in Portland. He explained how they have organized supermarket employees and fast food workers by gaining their respect and, if necessary, striking. In Seattle they have legislated a \$15 per hour minimum wage. Ana Avandano talked about the post production, post union economy. The Discussant, Elvin Riley of Seton Hall U asked: What are the innovations needed and will the labor movement be willing to fund these things? He spoke about the need for critical analysis.

Opening up the Labor Movement: The View From the Building Trades was the next session. Artie Mendoza of the AFL-CIO Building Justice Campaign A representative of the Work Center Committee of the AFL-CIO talked about how to protect the standards for the unionized workers and lift the standards for the others. Their target is the owner building the project. Robert Bruno of U of I ILR discussed the U of Oregon Workers Center in Portland. They have tried to bring the parties together. Next was Sherry Wright, representing Working America, a part of AFL-CIO. She is a national organizer trying to connect non-union to unions. They have created a category of "Associate Members" who can get benefits. Joseph Kolick, who is General Counsel to the Painters Union said they they want the members. Greg Schrock of Portland, discussed evaluating the efficiency and equity of local opportunity targeting initiatives. What tools do local governments have to give people access to good jobs. Who gets first dibs on jobs? Do they work? What are the costs? Difficult to evaluate. Improve matching process, public return on investment, reduce negative on others. Reduce disparities. Some of the problems are based upon per-



From left to right: Bill Canak, co-chair of LERA Chapter Committee, Beverly Harrison, past president of LI chapter, Bonnie Castrey, co-chair of LERA Chapter Committee, Jerry Grayson, LI LERA chapter newsletter editor.

At the national LERA meeting in Portland.

ception, tradition and ignorance. Representing contractors, Steve Burton said that union contractors must be competitive. He said that they must have different rates.

The last panel of the afternoon was New Forms to Settle Old Scores: Non-traditional Forms of Membership in Labor Unions. The chair opened the session discussing the decline in union density. Phil Kugler of the AFT reported on 17 states with no teacher CB. The AFT is focusing their attention on a few states where they have achieved good results. They have gained 150,000 members in these states. Some are associate members at low dues. David Wehde of Working America told of the attempt to reach out to non-union workers. 3m have joined. It is a way to create a path to unions. Organizers go from door to door.

The first day's program concluded with the Welcome Reception jointly hosted by University IR/HR programs, LERA and ISA. The next day's program began with a panel on Public Sector Labor Law: Reform or Attack? Fredrick P. Kessler, Arbitrator and Member of the Wisconsin State House of Representatives, described the events that occurred (of which he was a part) in the Wisconsin legislature when the governor and Republican majority removed many of the rights that civil service unions had in that state. The Democratic members of the state senate left the state to avoid a quorum, but eventually the legislation was passed and the attempt to recall the governor failed. Michael Tedesco, a union attorney added to the discussion, as did Todd Lyon, a management attorney.

Progressive Labor Market Institutions in the U.S.: New Evidence on State and Local Policy.

C. Tilly – UCLA, chair. William Lester – UNC. San Francisco has higher pay, the restaurant industry has become less-charming, and more "professional." Greg Schrock – Portland, spoke about evaluating the efficiency and equity of local opportunity targeting initiatives. What tools do local governments have to give people access to good jobs? Opportunity

targeting initiatives. Who gets first dibs on jobs? Do they work? What are the costs? Difficult to evaluate. Improve matching process, public return on investment, reduce negative on others. Reduce disparities. Policy has withered and no real measures of results.

New Developments in Arbitration. David Stiteler, arbitrator, chair. Carrie Donald and Aaron Stephenson, U of Louisville presented their paper entitled, "Assessing Just Cause for Insubordination in Unionized Environment: A Study of Arbitration Decisions from 1995 – 2011." Henry Drummonds, a professor at Lewis and Clark Law School presented his paper on "A Reinterpretation of the Public Policy Exception to Labor Arbitration Award Enforcement." Mr. Drummond put forth his view that, especially in employment arbitration cases, there should be room for the public policy perspective.

The day's program concluded with a performance of "From Wharf Rats to Lords of the Docks." A live performance about West Coast labor leader Harry Bridges, followed by Q & A. The portrayal of Harry Bridges was done excellently by Ian Ruskin, of *The Harry Bridges Project*.

The first meeting on Saturday was of the National Chapter Advisory Council. The first topic was Chapter Building moderated by Eric Duchinsky, LERA Exec. Dir. For tax purposes, he recommended that the LI and FL chapters should use the EZ 990. He also suggested that the FL chapter do the application for 501C3. Chapters should require two signatures on checks. They should be cautious about conflict of interest when using members for service to the chapter. Chapter should try a bid policy. Expenses should always be transparent. Any chapter member who is providing a service should recuse her/him from vote on the matter. Some computer software programs that may be useful: Wordpress, Member clix, EPRN, Wildapricot, Doodle. Try to maintain a group of officers on chapter exec board that represent unions, mgmt, academics and neutrals. Try to do surveys af-

ter the program to evaluate the results. Try Webinars.

The Characterization of Labor, and perhaps, Management, in the Media. Journalists view of labor coverage. Media has not done a good job of covering labor in the new economy. Matthew Sottong (BNA), discussed some of the current topics that have been in the media including Workplace Flexibility Programs and the SHRM study of Perceived Organizational Support. There have also been recent studies of characteristics of satisfaction at work, whose results have appeared in the press. Control over breaks, family time, flextime are some of the issues discussed. Media does not report on changes in work but reacts. Everyone agreed that the research done by LERA members should get out! David Lewin commented on the mass coverage of the situation with the NW football players and the NCAA. Another issue that has gotten press coverage is the problem of poaching of high tech workers.

Presidential Luncheon. Incoming LERA president Martin Mulloy (Ford Motors) presented an award to Lisa Lynch, outgoing president. Mr. Mulloy also presented a LERA Lifetime Achievement Award to **Wilma Liebman**, former chair of the NLRB. Ms. Liebman made remarks about the need to reduce unemployment, to avoid inflation, and lauded the advances that women have made in the labor force. However she emphasized the point that we need to create jobs. All our stakeholders need to work together to solve the economy's problems. It should provide an opportunity to organize.

Variation in Access to Justice in Workplace Dispute Resolution. Alexander Colvin, Cornell. Presented a paper on "Inequality in Justice in the American Workplace: Towards a New Conceptual Model," that was based upon his research. He discussed individual rights in employment relation structures, substantive protections, processes of enforcement (investigation- adjudication). He also researched mechanisms of representation, unions, union variants, and worker centers. In many cases, private attorneys are the sources of power. Options include legal claims, litigation, altering patterns of employment practices. He concluded that in terms of achieving justice, there is a high degree of variation. Ariel Agvar (U of I-ILR) presented his research findings on "Why do firms adopt ADR practices and what type?" Bundling practices such as conflict management systems. Strategic underpinnings of why. should there be a new social contract, with the decline of labor movement. Adopt ADR either as reactive response or strategic choice: Strategic Orientation - What will they get? Commitment - efficiency, litigation avoidance, management control. He followed up on the first survey by Lipsky, et. al in 1997. His work was done in 2010-2011. Regression results are in tables. His conclusion was that there should be more ADR! Mark

Gough - "The High Costs of an Inexpensive Forum." It is expensive for non-union workers who go to arbitration. Contractual and statutory arbitration. 25% of nonunion employees win rates and award amounts. 30% arbitrated, 70% litigated. Awards are larger in court. Based upon his research he concluded that outcomes in arbitration are inferior to litigation. Todd Dickey, Cornell. "The justice gold standard?" Integrated Claims Management System, because it is: 1) available to all employees; 2) multiple access points; 3) multiple options; 4) Integration; 5) Culture. His study was on the U.S. Dept. of Interior. Influence on the individual, the office and the department. COREPLUS is the name of the Federal rights based process. Wide variations in results. What would a mature ICMS process look like and mean? Seems ICMS is not changing the workplace culture.

This is just a sample of the many excellent presentations that were on the program. Next year's national meeting will take place in June in Pittsburgh. .

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

ANNOUNCEMENTS, NOTICES

If you have an announcement or job posting that you would like to have published in our newsletter, send it for consideration to the editor at:
<jerryarb@verizon.net>.

LI LERA
43 Northcote Drive
Melville, NY 11747-3924
The Long Island LERA Newsletter is a quarterly publication of the Long Island chapter of the Labor and Employment Relations Association.
President Amanda Barker
President Elect Thomas B. Wassel
Past President Ernesto Mattace, Jr.
1st Vice President Elizabeth Pearsall
2nd Vice President Paula Clarity
Secretary Jeffrey Naness
Treasurer Eugene S. Ginsberg
Newsletter Editor Gerald H. Grayson

Notices of address change should be sent to Membership Chairman, Thomas B. Wassel
<twassel@cullenanddykman.com>. Inquiries about this publication, as well as submissions, etc., should be sent to Jerry Grayson at <jerryarb@verizon.net>.