

# Long Island Chapter

Labor and Employment Relations Association

*Newsletter*

## SHAPING THE WORKPLACE OF THE FUTURE



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### PRESIDENT'S PERSPECTIVE: THE STATE OF THE CHAPTER

Although not required by the Constitution, reason and prudence recommend that from time to time the president should report to the members on the state of the Chapter. I am happy to report to you that the Chapter is strong, vibrant and growing.



**Thomas J. Lilly, Jr.**

**Membership.** The essence of any organization is its membership. Our 2005 Membership Directory listed 156 members of LI LERA. Our next directory is scheduled to be published at the end of this year, and I am informed it will list 218 current dues-paying members. That is an increase of 40% in just two years. In addition, we have been successful in attracting younger members, older members, union members, management members, and neutral members. In short, our membership is large, growing and diverse.

Furthermore, our membership is even more impressive for its quality than for its quantity. If someone is a leader in labor and employment relations on Long Island, chances are she is a member of LI LERA. Whatever problem you may be wrestling with at work, you can probably get some good advice on how to solve it from a fellow LI LERA member.

**Meetings.** Our meetings are designed to provide our members with both useful information and an enjoyable evening. Attendance is good and is increasing.

We received positive feedback from the membership on our new Suffolk County meeting location, which is Ambrosia Restaurant, just across the street from Farmingdale State College on Route 110. We will continue to alternate meetings between Ambrosia Restaurant and the Nassau County Bar Association building in Mineola.

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## Upcoming Chapter Meetings

**Please Add These To Your Calendar**

Thurs., Dec. 6, 2007 Nassau Bar Association

Nassau D.A. Kathleen Rice

Wed., March 12, 2008 Suffolk-Ambrosia

H. Weinstein, VP, LR, Tribune Corp. &

D. Grabhorn, Pres, L406 GCC, IBT

June 11, 2008 Nassau Bar Association

Sept. 16, 2008 Suffolk-Ambrosia

Dec. 16, 2008 Nassau Bar Association



**Arbitrator Richard Adelman presenting his talk on employment and labor arbitration.**

(See article on page 2)

## DIFFERENCES BETWEEN LABOR AND EMPLOYMENT ARBITRATION

by Richard Adelman

I was a traditional labor lawyer, about 90% of my practice was labor and 10% employment. My arbitration practice is similar, mostly traditional labor cases. Since Gilmer, however, I have had more employment arbitrations.

From an arbitrator's perspective, employment arbitrations are very much like labor arbitrations - hearing, evidence, arguments, help settle, write opinions, but there are some substantial differences:

1. A majority of labor arbitrators are full-time neutrals, about 2/3 of employment arbitrators are advocates—the parties trust the advocates;
2. disclosure - more in employment because advocates and parties, especially claimants, lack familiarity with the process;
3. employment cases are much more like litigation because you won't see your adversary again;
4. discovery - in labor cases, there is very little discovery because most of that work is done in the grievance procedure, and the arbitrator knows nothing before the case begins. In employment, the arbitrator is involved throughout, and monitors discovery with frequent conference calls

Many companies have arbitration programs, some mandatory. The fair ones are mainly to avoid high jury verdicts, and some are to avoid unions. Most of the one-sided programs have been straightened out by the courts. Arbitrators sit in place of judges with the same remedial powers.

The two main types of employment arbitration are:

1. Employment agreements, where the claimants are mostly executives. These cases are often like labor cases with just cause or other contractual issues;
2. Statutory claims, usually discrimination, which are just like litigation in courts. Labor arbitrators occasionally hear statutory matters, but without the full range of remedial power such as punitive damages.

Some unions have negotiated discrimination claims into the collective bargaining agreement giving labor arbitrators authority to hear statutory cases. Some systems give employees the choice of where to file a claim, but usually if the employee goes to arbitration she must waive the right to go to court.

Just as in labor cases, the fairness of the employment process depends on the arbitrator. However, there is a protocol for arbitrators to help protect the fairness of the process.

Employees with big claims probably do better in court, since arbitrators may want to be picked again by the repeat-player employer, but the average employee cannot get an attorney to take his/her claim so at least they get a day in court through the arbitration process. Potential remedies

are the same in arbitration as court, including attorney fees, punitive damages and allocation of costs. Whether you get them depends on the case and may also depend on the arbitrator.

Arbitrators almost always write reasoned opinions, unless the agreement only calls for an award. The decision is final and binding, unless there is proof of fraud, conflict, and "manifest disregard of law."

I think allowing an arbitrator to make statutory decisions which are final and binding is wrong, that it is wrong to have lay people make policy decisions with no judicial review. It can't be what Congress intended, but the courts are pushing everything to arbitration to help clear their dockets. Nevertheless, I don't see much more growth. Employers seem to be rethinking the wisdom of arbitration because of the cost and delay of the process, especially when there are three neutral arbitrators on a case.

One final note. The National Academy of Arbitrators did not vote to include employment cases as countable cases the same as labor cases for membership in the NAA as Tom Lilly reported in the recent newsletter. At best, a small number of employment cases may be counted in the future.

*Members present at our September meeting*



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**RADICAL LABOR BOARD RULING  
UNDERMINES ORGANIZING EFFORTS**

by Workers' Rights Watch-Eye on the NLRB

Until now, workers have successfully formed unions through voluntary recognition, a process where employers agree to recognize a union once a majority of workers sign cards. This peaceful, swift, and non-disruptive organizing method provides an alternative to the flawed National Labor Relations Board (NLRB) election process. However, workers and employers who use this method are now undermined by a major ruling of the NLRB. **The Republican majority of the Board sided with anti-union groups in radically changing the law.** Without providing legitimate factual evidence to justify reversing 40 years of precedent, the Board exposed its real political motivations.

The Dana Metaldyne decision concerns the longstanding voluntary recognition bar, which for nearly 40 years protected a newly-formed union from an immediate threat of decertification. This protection allows stability during the bargaining of a first contract. In the current case, both Dana Corp. and Metaldyne Corp. voluntarily recognized that a majority of their workers formed unions with the United Auto Workers. When the Regional NLRB Director dismissed decertification petitions filed by anti-union employees a few weeks after recognition was granted, the anti-union National Right to Work Legal Defense Foundation filed charges on behalf of these employees to challenge this longstanding protection.

In its decision, the Republican majority of the Board created a 45-day window in which as few as 30 percent of anti-union employees can sign a petition triggering an election to decertify the union. As the dissenting Board members wrote, **a minority of anti-union employees can now "hijack" this important period of time when an employer and union need to begin bargaining a contract,** potentially destabilizing their relationship.

According to the dissent, this ruling is detrimental to voluntary recognition: "One important reason employers choose voluntary recognition is to avoid the time, expense, and disruption of an election. That rationale, however, is critically undermined by the majority's modifications. An employer has little incentive to recognize a union voluntarily if it knows that its decision is subject to second-guessing through a decertification petition."

More and more workers seek alternatives to organizing through the lengthy, conflict-ridden NLRB election process. When unions and employers can come together to agree on a peaceful process of organizing, the Board should promote this progress in labor relations. **Instead the Board turned on its own mission to promote collective bargaining, and is aiding the right-wing attack on the freedom of association.** This ruling further underscores the

*cont. from p. 1* **THE STATE OF THE CHAPTER**

**The Spring Conference.** The Spring Conference is our major annual event. As someone who has been attending for more than a decade now, I can personally attest to the quality of the presentations. Last year's topics, immigration on Long Island and controlling health care costs, were timely and of great interest. Attendance was up, and nature cooperated by providing a beautiful day at the de Seversky Center.

**Pro bono publico.** We significantly increased our scholarship program this year, awarding three \$1,000 scholarships to labor relations students here on Long Island. We presented the scholarships at the Spring Conference, at which time the recipients briefly addressed the membership. All three recipients were impressive, and their remarks were a highlight of the day. In addition to our scholarships, we offer all students membership in the Chapter for greatly reduced dues, and we subsidize their attendance at dinner meetings.

**National recognition.** In 2007, we received the Star Award, the highest honor that National LERA awards to a local chapter. We have been nominated for several awards in 2008.

**Goals for the future.** LI LERA is without doubt one of the strongest LERA chapters in America. There are, however, several areas that we will be working to improve on in the coming year. In particular:

- There are still some labor and employment professionals on Long Island who have not yet joined LI LERA. We need to reach out to these individuals and invite them to join.
- Most members still do not attend our quarterly meetings, even if they do attend the Spring Conference. We need to encourage members who have not attended a meeting recently to do so. Experience shows that if someone attends one meeting, he will probably then attend regularly.
- It would be a significant benefit to our members who are attorneys if we could get Continuing Legal Education credit for our Spring Conference. We will be working on this in the coming year.

2007 was a great year for LI LERA, and all indications for the future are positive. If you are a LI LERA member and would like to get more involved, I encourage you to do so by attending our quarterly meetings and expressing an interest. New ideas are always welcome.

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***If you have a different view of the issue in the column to the left please submit to the editor for future publication.***  
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need for Congress to pass the Employee Free Choice Act, which would allow workers to more freely form unions.

## MODERN LABOR HISTORY

### ISRAEL KUGLER, UNION OFFICIAL WHO LED STRIKE AT ST. JOHN'S, DIES AT 90

by Dennis Hevesi (Reprinted from The New York Times)

Israel Kugler, a union organizer for college teachers who became prominent in the mid-1960s when he led an 18-month strike by faculty members at St. John's University, died on Oct. 1 at his home in Chevy Chase, Md. He was 90. The cause was pneumonia, his son Daniel said. In the mid-1950s, as an official of the American Federation of Teachers, Dr. Kugler called on the union to suspend the charters of locals in the South that barred black teachers from membership.

A teacher of social science at New York City Community College (now known as New York City College of Technology), Dr. Kugler was president of the United Federation of College Teachers when, in 1965, 31 faculty members at St. John's were dismissed without hearings. The union, an affiliate of the American Federation of Teachers, contended that the dismissals were in retaliation for the teachers' demands for academic freedom and a voice in university policy.

The president of St. John's at the time, the Rev. Joseph T. Cahill, said the teachers had used their classrooms for propaganda purposes and challenged the responsibilities of the school's administrators. He insisted that "academic freedom exists at St. John's."

On Jan. 4, 1966, some members of the faculty began a strike that lasted until June 1967. By then, 13 of the dismissed faculty members had accepted the university's offer of binding arbitration, others had found positions elsewhere and the university had agreed to greater faculty participation in policymaking. But the union did not gain recognition at St. John's.

Still, under Dr. Kugler's leadership, it helped organize

## ANNOUNCEMENTS, NOTICES

### AMENDMENT TO CHAPTER BYLAWS

The following motion was passed by the Executive Board at its last meeting and is presented to the membership for a vote at the meeting of December 6, 2007. This would be an addition to ARTICLE II PURPOSE.

*In the event of dissolution, any assets remaining after the payment of all obligations shall be conveyed to the New York City chapter of the Labor and Employment Relations Association, or, if it is no longer in existence, then to the national Labor and Employment Relations Association.*

locals at other schools, including the Fashion Institute of Technology, Nassau Community College and Westchester Community College.

In 1972, Dr. Kugler and Dr. Beller Zeller, the president of the Legislative Conference of the City University, long a rival to the United Federation of College Teachers, agreed to a merger that created the Professional Staff Congress. The congress now represents more than 20,000 faculty and staff members of the City University of New York.

Dr. Kugler, whose parents were Philip and Anna Senitzer Kugler, was born in Brooklyn on June 13, 1917. He graduated from City College in 1938. After serving in the Navy during World War II, he earned his doctorate at New York University.

In addition to his son Daniel, of Washington, Dr. Kugler is survived by his wife of 66 years, the former Helen Barkan; another son, Philip, of Silver Spring, Md.; a sister, Frances Brill of Queens; and two grandsons.

*Editor's Note:* At NYCCC Is Kugler and I were colleagues and friends. I was his department chair for eight years and he was my mentor for many decades. He was a pioneer in the unionization and establishment of collective bargaining for college faculty in the United States.

**The Long Island LERA Newsletter** is a quarterly publication of the Long Island Chapter of the Labor and Employment Relations Association.

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