



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Contract Settlements

Terms of settlements reported Feb. 17-March 1 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:3881.

California Grocery Settlement Maintains Most Health Benefits, Creates Two-Tier Wages

Ending a 141-day work stoppage at three Southern California supermarket chains, United Food and Commercial Workers members Feb. 29 ratified a three-year contract and prepared to begin returning to work March 5.

Negotiations collapsed in October as the employers—Albertsons, Ralphs, and Vons—demanded a more affordable labor cost structure, citing a new competitive threat from nonunion supermarket chains and shopping outlets such as Costco and Wal-Mart, and the union sought to maintain health care benefits, describing their battle as one to preserve affordable health care for workers across the United States.

Under the agreement covering about 59,000 employees, the grocery chains will continue paying the full health insurance premiums of all covered employees—including new hires—for at least two years. In the third year, employees will have to make weekly premium payments of up to \$5 for single coverage and \$15 for family coverage unless fund trustees find such premiums are not necessary to maintain the plan's financial health.

The supermarkets agreed to keep current employees and new hires in the same health and pension fund, rather than create separate funds. The union had feared that separate funds would jeopardize benefits for current workers as their numbers decreased through attrition while their benefit costs increased as participants aged. Although new hires will have health benefits paid through the same fund as current employees, their benefits will not be as generous. Details of the differences in coverage were unavailable.

The contract also introduces a second, lower base wage tier for new hires and provides current employees with lump sums in lieu of base wage increases. A ratification bonus based on hours worked in the year prior to the work stoppage will be paid within 30 days, and an additional lump sum will be paid in March or April 2006 based on hours worked in the previous 12 months. For both payments, most workers—including food clerks, meatcutters, and pharmacy technicians—will receive 30 cents per hour worked.

The top base wage rate for new hires will be \$16.38 per hour for meatcutters, \$15.10 per hour for food clerks, and \$11.05 per hour for general merchandise and meat clerks. Individuals hired after ratification will have to work 7,800 hours to reach the top base pay rate, according to the union. UFCW told BNA that current employees' base pay tops out at \$17.90 but did not provide a breakdown by category or the length of the previous wage progression.

IUE Members OK Higher Health Payments, Stricter Drug Testing Plan at Whirlpool Plant

International Union of Electronic Workers members at Whirlpool Corp. in Evansville, Ind., Feb. 19 ratified a five-year contract that the union negotiating committee recommended despite the fact the agreement includes increased health care costs for employees. The committee realizes that "health insurance is in a national crisis situation," so members were not willing to strike over the issue, IUE said.

Employee weekly payments for health care premiums increase from a range of \$2.44 to \$7.69, depending on plan chosen; deductibles increase \$50; copayments increase \$5; and the surcharge for smokers increases from \$300 to \$500 per year. In addition to the health maintenance plan and hospital plan already offered, a lower-cost consumer-driven health plan option is added.

About 1,900 covered employees receive a ratification bonus of \$300; wage increases of 35 cents per hour in the first, third, and fifth years; and lump-sum payments of \$1,000 in the second and fourth years. Skilled trades workers will receive an additional 15-cent-per-hour increase in the first, third, and fifth years. Under the prior agreement, assemblers earned \$15.19 per hour. The hourly start rate for new-hire assemblers increases from \$10.50 to \$12.25 over term, and it now will take new hires three years to progress to top rates.

A stricter drug and alcohol policy expands the company's right to test for probable cause and for impairment due to drugs and alcohol. In addition to urinalysis, the new contract allows Breathalyzer, blood, and hair sample tests. The previous drug testing policy allowed any worker who registered an alcohol level of .10 or lower to return to work. Now a worker with a level of .02 to .05 will be sent home without pay for the duration of the shift and a worker with a level over .05 will be placed on a disciplinary suspension.

SEIU, Beverly Negotiate Master Contract for 24 Homes

Following more than a decade of legal disputes, Beverly Enterprises and the Service Employees International Union agreed to a master con-

tract covering about 1,500 workers at 24 nursing homes in Pennsylvania.

Prior contracts for each of the 24 homes were due to expire July 16, and the company said it approached the union late last year to begin early negotiations to "fend off significant health care costs for our employees."

Under prior contracts, employees contributed \$21.51 per two-week pay period for single coverage and \$64.45 for family coverage. Under the new master contract, the cost for single coverage, which had been scheduled to increase to \$56.96 per pay period in January, rises to \$26.63, and the cost of family coverage, which was due to increase to \$176.85 per pay period in January, rises to \$71.50. Beverly will continue to pay 80 percent of the benefit premium and employees will pay 20 percent, so "as rates change, so will the cost," SEIU said.

Under the new contract, ratified Feb. 16, wage increases vary by facility but average 4.5 percent each year, or \$1.45 to \$1.60 per hour over term.

Although the contract does not include a neutrality/card check authorization provision, it provides that if the union organizes other Beverly homes in Pennsylvania, the newly organized workers will automatically be covered by the master contract.

Improved protections against subcontracting and layoffs are designed to ensure that residents are cared for by a consistent, committed, experienced staff, the union said.

First Contract Takes Effect Under New Mediation Rules

Ending a 17-year labor dispute and a three-year boycott, the United Farm Workers and the management of a mushroom farm in Ventura County, California, Feb. 19 an-

nounced they have accepted terms of a contract imposed under the state's new binding mediation law.

The three-year contract between UFW and Pictsweet Mushroom Farms is the first to take effect since the mediation rules went into effect in May 2003. Another contract, between the Hess Collection Winery and the United Food and Commercial Workers, was approved by the Agricultural Labor Relations Board in October 2003 but is being challenged by the winery in court.

The regulations adopted by ALRB set the ground rules for mediation and arbitration of first contracts between farmworkers and growers when the parties reach impasse. They implement two bills signed in 2002 by former Gov. Gray Davis (D) (S.B. 1156 and A.B. 2598), which were backed by UFW and stemmed from complaints that some growers have refused to negotiate contracts for as long as 26 years after UFW has won elections (7 COBB 120, 10/3/02).

In the Pictsweet case, the parties entered into mandatory mediation at the request of the union in July. When they were unable to reach agreement on a contract, an arbitrator issued a report containing the contract terms. ALRB approved the report Feb. 13, putting the contract into effect. Neither party chose to invoke its right under the law to challenge the contract in court.

Under the contract, about 300 workers will receive raises of 2.5 percent per year, health care benefits for themselves and immediate family members, paid holidays and vacations, guaranteed seniority, grievance and arbitration protections, and a union plant safety committee.

Paul N. Wojcik,

President and Chief Executive Officer

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Publisher and Editor-in-Chief

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Robert A. Robbins, *Executive Editor*

Heather Bodell, *Managing Editor*

Carol A. Hoskins, *Copy Editor*

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Facts & Figures

Slow Wage Growth Tempers Increase in Total Compensation

Total employee compensation paid by private sector employers rose 0.4 percent in the fourth quarter of 2003 as growth in wages and salaries slowed markedly, according to figures released Feb. 26 by the Bureau of Labor Statistics.

Total compensation in private industry averaged \$22.92 per hour, up slightly from the average cost of \$22.84 per hour in the third quarter. It was the smallest quarterly increase since BLS began compiling the data on a quarterly basis in 2002.

Wages rose just 0.2 percent compared with 0.9 percent in each of the second and third quarters. The growth in benefit costs also slowed, but less dramatically, rising 0.8 percent in the fourth quarter, compared with 1.3 percent in the second and third quarters.

Over the year 2003, total compensation costs rose 3.5 percent, while benefit costs were up 5.9 percent.

Wages and salaries in private industry averaged \$16.49 per hour in the fourth quarter, and benefits averaged \$6.43 per hour. Benefit costs now account for 28.1 percent of total compensation, up from 27.9 percent in the third quarter and 27.4 percent in the fourth quarter of 2002.

Within the benefits category, employer costs for insurance benefits averaged \$1.62 per hour, up from \$1.59 per hour in the third quarter.

Of the insurance costs, health insurance accounted for \$1.50, according to BLS. Health insurance costs rose 1.3 percent in the fourth quarter, the smallest quarterly increase in a year. Still, health insurance costs were 11.1 percent higher than a year earlier, and accounted for 6.5 percent of compensation. A year ago, health insurance made up 6.1 percent of all compensation costs.

Hourly retirement and savings costs rose from \$0.68 in the third

quarter to \$0.70 in the fourth. Legally required benefits, including Social Security, unemployment insurance, and workers' compensation contributions, rose from \$1.95 per hour to \$1.96 per hour. Over the year, required benefit costs rose 5.9 percent.

Employer costs for union workers in private industry continued to outstrip those for nonunion workers. Compensation for union workers averaged \$31.82 per hour in the fourth quarter, compared with \$21.85 per hour for nonunion workers.

Within state and local government, compensation costs rose 0.9 percent for the quarter and stood at \$33.91 per hour, 4.9 percent higher than in the fourth quarter of 2002, when total compensation was \$32.32 per hour.

The report on compensation costs is available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

Employer Costs Per Hour Worked for Employee Compensation

Private Industry Workers by Bargaining Status, December 2003



Source: Bureau of Labor Statistics
NOTE: The sum of individual items may not equal totals due to rounding.

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Facts & Figures

Big Layoffs Occurred in Smaller Numbers in Fourth Quarter

In the fourth quarter of last year, both the number of extended mass layoffs and the number of workers affected fell to their lowest levels since 1999, figures released Feb. 12 by the Bureau of Labor Statistics show.

BLS said that in the fourth quarter of last year, there were a total of 1,956 mass layoffs (involving 50 or more workers for at least 31 days) that resulted in job losses for 359,085 people. Both figures were down substantially from a year earlier, when there were a total of 2,257 events involving 469,739 workers.

In addition, the fourth quarter saw a much larger percentage of employers expecting to recall laid-off workers (62.2 percent) than the third quarter (37.5 percent).

For all of 2003, the agency said there were a total of 7,245 extended mass layoff events involving 1.45 million people. These totals were down from 2002, when there were 7,295 events involving 1.54 million workers. Since 2001, the number of layoffs has fallen 13 percent and separations 17 percent.

Permanent business closures accounted for 13 percent of extended mass layoffs in 2003, resulting in job losses for 210,884 people. Compared with 2002, permanent closures were down 22 percent, and there were more than 92,000 fewer job losses. Since the recession year of 2001, when permanent closures were at their highest, the number has fallen 26 percent and the total of related layoffs was down 44 percent.

Completion of seasonal work accounted for 50 percent of extended layoff events and 55 percent of workers affected in the fourth quarter. Although seasonal layoffs usually peak in the fourth quarter, they were at the lowest level since 1999 in the final quarter of 2003.

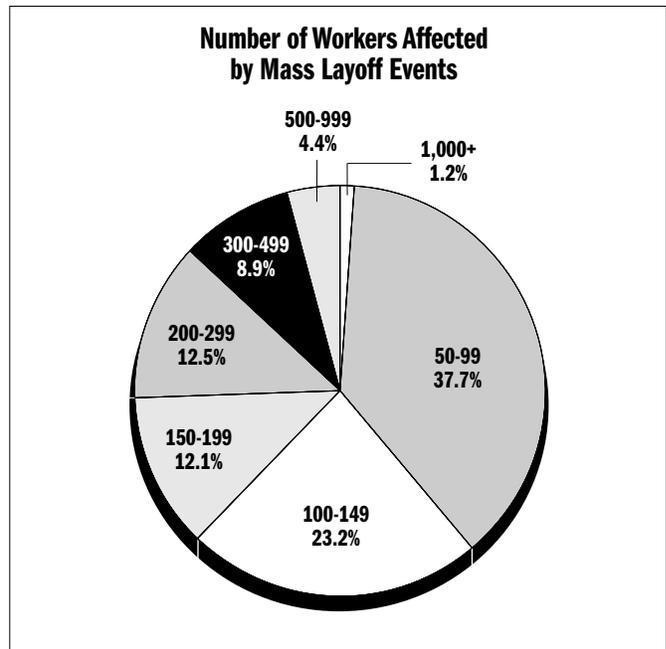
Internal company restructuring (bankruptcy, ownership change, financial difficulty, and reorganization) accounted for 14 percent of layoff events and resulted in 49,019 jobs lost in the fourth quarter of 2003. These layoffs were mostly in telecommunications, administrative and support services, credit intermediation, and computer and electronic product manufacturing.

The BLS layoff report is available at www.bls.gov/news.release/pdf/mslo.pdf.

Extended Mass Layoff Activity, Fourth-Quarter 2003

Industries With Most Extended Mass Layoffs		
Industry	Mass Layoff Events	Separations
Construction	452	63,382
Agriculture, Forestry, Fishing, & Hunting	310	72,338
Administrative & Waste Services	182	30,275
Manufacturing: Food	117	26,167
Retail Trade	72	23,008
Accommodation and Food Services	58	11,842
Government	54	10,100
Manufacturing: Nonmetallic Mineral Products	51	7,429
Information	44	11,473
Finance and Insurance	44	6,376

Source: Bureau of Labor Statistics



A BNA Graphic/cbn405g1

Arbitrating the Contract

Employer Not Required to Give Janitor Job to Disabled Worker

An employee suffered a disabling shoulder injury and was off work for 18 months. The company then made a janitorial position available to her, conditioned on her obtaining medical clearance. Included with the offer was a job description stating that janitors had to be able to lift material weighing up to 60 pounds.

Because the employee's physician restricted her to lifting no more than 13 pounds overhead, pushing and pulling up to 30 pounds, and carrying up to 28 pounds for one third of the day, and restricted her ability to bend, squat, overhead reach, carry, stoop, push, and pull to no more than one third of the day, the employer decided that the employee could not be placed in the janitor's job.

The contract between the employer and the union representing the employee prohibited discrimination on the basis of disability. The agreement also stated that the employer "may adopt policies and/or procedures necessary to adhere to all federal, state and local laws and ordinances, including the Family Medical Leave Act of 1993 and the Americans with Disabilities Act."

The union grieved, claiming that the employer violated ADA and state law because the grievant was qualified for the position and it failed to make a reasonable accommodation for her physical limitations.

The employer contended that it did not discriminate against the employee, saying its failure to return her to the janitor position was in accordance with ADA since the grievant was not disabled as defined by the law. Even if the grievant were considered disabled, she would not have a claim for discrimination since she was not qualified for the position because she could not lift 60 pounds.

Award: An arbitrator denied the grievance (*Parkersburg Bedding*, 118 LA 1788 (Zobrak, 2003)).

Discussion: Noting that arbitration is not the proper forum for determining whether the employer violated ADA and state law since they "are separate and distinct from the Agreement . . .," the arbitrator said nevertheless the parties agreed to apply the

ADA definition of discrimination in determining whether the employer discriminated against the grievant in failing to return her to work.

Pursuant to the ADA, the company "was only required to make reasonable accommodations for an otherwise qualified individual with a disability," the arbitrator said. Based on restrictions as determined by her doctor, the grievant was not capable of performing the job, and therefore was not qualified to be a janitor.

"Regardless of whether the Grievant's restrictions met the definition of a disability, the Company did not discriminate against her since she was not qualified to perform the janitor position," the arbitrator concluded.

Pointers: Several arbitrators have addressed the issue of work by employees with disabilities.

In one case, an arbitrator found that an employer properly discharged a worker with a disability after two attempts at accommodation failed: the employee refused one job outside the bargaining unit and left another after reinjuring himself. The arbitrator also found that the employer had a record of terminating employees who cannot perform, with accommodations, the tasks of assigned positions (*Maintenance & Indus. Servs. Inc.*, 116 LA 293 (Hart, 2001)).

In another case, an arbitrator found that an employer improperly disqualified an epileptic driver from driving intrastate, observing that the Federal Motor Carrier Safety Regulations, which prohibited the use of epileptic drivers, only applied to interstate drivers. Interstate drivers work long hours, eat irregularly, experience increased stress, and are frequently deprived of sleep, all of which increase the risk of epileptic seizures, the arbitrator said (*Coca-Cola Bottling Co. of Mich.*, 116 LA 737 (Sugerman, 2001)).

The case discussion above is designed to illustrate how arbitrators resolve disputes. "LA" references are to BNA's weekly Labor Arbitration Reports. For a discussion of ADA, see CBNC chapter Americans with Disabilities Act at 7:301, and for sample contract language on rights of employees with disabilities, see Physical Disability at 200:4201.

News in Brief

Mid-Term Concessions Accepted

Members of 10 unions at the Pittsburgh Post-Gazette Feb. 22-23 voted to accept concessions midway through four-year contracts due to higher-than-expected costs facing the newspaper, the council representing the unions said. About 1,100 workers will lose a \$10 weekly pay increase scheduled for July 1, pay \$10 more for each drug prescription filled, and give up one week of paid leave in 2005. Rising health care costs, low returns on stock market investments that have hurt the pension plan, and decreased demand for advertising have hurt the company, the council said. The paper also is investing \$25 million in improving its printing capabilities. "They're making an investment in our future, and we're making one in theirs," the council said.

CLRC Releases Wage Prediction

Wage and benefit rates negotiated in construction collective bargaining agreements in 2004 are likely to increase at about the same or a slightly lower rate than in recent years, according to the Construction Labor Research Council's bargaining outlook for 2004, released Feb. 18. For the five-year period ended Jan. 1, CLRC found wage and benefit rates in construction increased 21.6 percent, or about 4 percent annually. Contact CLRC at (202) 467-5680.

UNITE, HERE Announce Merger Plan

The Hotel Employees and Restaurant Employees and the Union of Needletrades, Industrial and Textile Employees Feb. 26 announced that their executive boards have agreed to merge the two unions into a new union called UNITE HERE. If approved by union members at a joint convention this July in Chicago, UNITE HERE will represent about 440,000 active members and more than 400,000 retirees throughout North America. The new union will attempt to make service jobs into "good jobs," HERE said. The strengths of the two unions include "digging in for the long haul" in organizing, with the fight not over until there is a signed contract, UNITE said. Both unions could go along as they are, but both are committed to organizing and can do "more and bigger organizing" by merging.

In the Courts

Age Bias Claims by Workers Denied Contract Benefit Rejected

Rejecting Age Discrimination in Employment Act claims by workers in their 40s who will not receive retiree health benefits given to their older colleagues under terms of a collective bargaining agreement, the U.S. Supreme Court Feb. 24 ruled that the statute does not bar employers from favoring older workers over younger ones (*General Dynamics Land Sys. Inc. v. Cline*, 93 FEP Cases 257, U.S., No. 02-1080, 2/24/04).

The company and a union entered into a contract that provided retiree health benefits only to those workers who were age 50 or older by July 1, 1997. The ADEA lawsuit was brought by about 200 workers who were in their 40s on the trigger date and therefore no longer qualified for retiree health benefits, which they had been entitled to under the previous bargaining contract. The ADEA protects employees age 40 or older.

A district court called the claim one of "reverse age discrimination," upon which, it said, no court had ever granted relief under the ADEA.

The U.S. Court of Appeals for the Sixth Circuit reversed, saying that the act's prohibition covering discrimination against "any individual . . . because of such individual's age," is so clear on its face that if Congress had meant to limit its coverage to protect only older workers against younger workers, it would have said so.

The Supreme Court reversed the appeals court, ruling that the act's "text, structure, and history point to the ADEA as a remedy for unfair preference based on relative youth, leaving complaints of the relatively young outside the statutory concern."

All organizations that filed amicus briefs in the case—including AARP, AFL-CIO, the Equal Employment Advisory Council, the HR Policy Association, the U.S. Chamber of Commerce, and the ERISA Industry Committee—favored reversal of the Sixth Circuit's decision.

AFL-CIO Associate General Counsel James B. Coppess said he is "pleased that the court took this common-sense approach to interpreting the statute." The federation's

amicus brief, which the union in the case joined, said all workers should receive retiree health benefits but no law currently requires it. Employers and unions are free to negotiate health insurance plans that favor older workers, which is specifically allowed by the ADEA, the brief said.

Employer Ordered to Return Work

A company must return work transferred away in violation of a bargaining contract and rehire the laid-off workers, the U.S. Court of Appeals for the Seventh Circuit ruled Feb. 12, upholding an arbitrator's decision in favor of the union (*Ganton Technologies Inc. v. UAW*, 174 LRRM 2289, 7th Cir., No. 03-2925, 2/12/04).

The contract covering two plants barred "the Company" from transferring work to "any other Company owned facility" if the transfer would result in job losses.

The dispute arose after Ganton, the owner of the two plants that in turn is owned by a parent company, laid off workers and transferred work to various facilities owned by the parent. The union filed two grievances.

The arbitrator, finding that the work-transfer provision's reference to "Company owned facility" means all facilities owned by the parent, said that Ganton violated the contract.

The appeals court agreed with a district court that Ganton waived an argument—that the work-transfer provision's reference to "company" includes only Ganton-owned facilities and does not prohibit the transfer of work to parent-owned facilities—by not raising the argument during the arbitration proceeding and could not now raise the argument in court.

"The failure to pose an available argument to the arbitrator waives that argument in collateral proceedings to enforce or vacate the arbitration award," the court said.

The court rejected Ganton's argument that it adequately apprised the arbitrator of the argument by offering into evidence a copy of the bargaining contract that included an "agreement" provision defining "company" as the Ganton plants.

"Ganton claims that, to preserve an argument for presentation in an enforcement proceeding, a party need only present the information that underlies the argument at the arbitration proceeding," the court said. "If, as Ganton suggests, the mere submission of the collective bargaining agreement, union grievance, and the employer's response to the grievance was adequate to preserve all arguments arising from the text of a collective bargaining agreement, then it would be impossible for this Court to find waiver in any enforcement proceeding."

Supplemental Clarifying Award OK

An arbitrator's supplemental award was designed to clarify an earlier ruling and did not exceed the arbitrator's authority, the U.S. Court of Appeals for the Sixth Circuit ruled Feb. 3 (*Sterling China Co. v. Glass, Molders, Pottery, Plastics, and Allied Workers Local 24*, 174 LRRM 2177, 6th Cir., No. 02-3773, 2/3/04).

The parties' contract assigned each job a wage grade. After the company began a new product line and assigned workers a wage grade, the union filed a grievance claiming a higher grade should be assigned. An arbitrator agreed, and ordered that employees be paid the difference between the wage rate they received and the higher rate.

After the parties were unable to agree on how much back pay employees were entitled to, the union went back to the arbitrator. The company made no appearance other than to say that the arbitrator had no authority to hold an additional hearing. After the arbitrator issued a supplemental award outlining appropriate pay, the company filed a lawsuit.

"Given the need for the award's clarification with respect to the proper compensatory remedy, in addition to the arbitrator's power to properly go back and clarify any inconsistencies of interpretation, the supplemental award is appropriate and valid under" state law regarding the authority of arbitrators, the Sixth Circuit ruled.