



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

Highlights

Productivity Rises

Productivity among nonfarm businesses rose at an annual rate of 2.6 percent in the fourth quarter of 2003, a bit slower than initially reported, and rose 4.4 percent for the year, 0.2 percentage point higher than earlier reported, according to Bureau of Labor Statistics figures released March 4..... **34**

Double Jeopardy Ruling

The principle of double jeopardy bars an employer from firing an employee it had already suspended for the same offense..... **36**

In the Manual

State Comparison Chart

Information on the bargaining rights of Missouri state employees is updated at 8:2926.

2003 Hourly Earnings Data

Hourly earnings data for 2003 are in industry wage pattern chapters beginning at 18:231.

February Unemployment

Unemployment data for February are added at 18:8201.

Contract Settlements

Terms of settlements reported March 2-15 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:3901.

Disney, HERE Reduce New-Hire Pay; Make Employer-Paid Health Care Available

A new four-year contract covering about 2,200 employees at three Walt Disney Co. hotels in Anaheim, Calif., makes changes in health care, includes lower pay for new hires, and reduces the workload for housekeeping staff.

The contract, ratified Feb. 19, includes employer-paid health coverage under the Hotel Employees and Restaurant Employees' health-welfare plan for all workers who want to switch from the Disney plan to the union plan. Until now, only workers at one hotel were covered by the union plan; now workers at the other two hotels can choose between the union and company plans.

Disney agreed to raise its contribution to the union health plan from \$1.97 per employee hour worked to \$2.55 over term to cover the increased cost of the plan while maintaining the current level of benefits. About 1,000 employees covered by the Disney plan will be able to save nearly \$1,700 a year if they choose the union's plan, HERE said. Under the Disney plan, employees were paying \$136 per month for family coverage and had a \$20 copayment for doctor visits. Under the union plan, they will not pay any premiums and the copayment will be reduced to \$10.

Most workers will receive hourly wage hikes of 40 cents in the first year and 45 cents in the second, third, and fourth years. The average wage for the unit is about \$10 an hour. The union said it agreed to one concession—allowing the hotels to hire new employees below current wages. New workers will receive 80 percent of the contract wage in their first year, 90 percent in the second year, 95 percent in the third year, and 100 percent in the last year.

The agreement also provides wage parity for certain workers who were not paid top rates, giving them upgrades in addition to general increases.

Because of their heavy workload, room attendants at all three hotels will receive an additional 10 cents an hour in each year of the contract, HERE said. Prior to the first increase, housekeepers earned \$9.16 an hour. In addition, the agreement lowers from 14 to 13 the number of rooms that housekeepers are required to clean during their shift.

A new provision allows immigrants whose work visas expire to return to work within one year with full seniority. A "waiver clause" in the previous contract that prevented the union from bargaining over issues not contained in the contract is deleted from the new accord, HERE said. Now, for instance, if the company decided to charge workers for parking, the union would have the right to bargain over the issue.

Two-Tier Wages, \$5,000 Lump-Sum Payments Included in New UAW, American Axle Contract

A four-year contract between American Axle Manufacturing Holdings Inc. and the United Auto Workers provides about 6,700 covered workers in Michigan and New York with \$5,000 lump-sum payments, but also introduces a two-tier wage system with lower pay rates for new hires.

In addition to an immediate \$5,000 lump-sum payment, workers receive 2 percent performance bonuses and \$1,000 holiday bonuses in 2005, 2006, and

2007. The agreement, which was ratified March 7, also provides that no plants will be closed during term.

While 68 percent of voting members approved the contract, members of the largest local, in Detroit, voted against the agreement. "American Axle is a very profitable company . . . this company can pay us all the same wages," the local said. The fact that UAW and other Big Three parts suppliers Delphi Corp. and Visteon Corp. agreed on a two-tier wage system in September 2003 (8 COBB 115, 10/2/03) "definitely hurt our bargaining power," the local added.

Two-tier wage agreements are particularly difficult for UAW members to accept because new hires often are family members of current workers, according to Sean McAlinden, an economist at the Center for Automotive Research in Ann Arbor, Mich.

American Axle and UAW still need to determine the exact wage levels under the new two-tier wage system.

Workers receive a health care package similar to that included in last fall's accords between UAW and the Big Three automakers (8 COBB 115, 10/2/03) and with Delphi and Visteon. Those contracts continued fully employer-paid insurance premiums but shifted some other copayments to workers.

Shaw's Workers Maintain Employer-Paid Health Care

United Food and Commercial Workers members at 23 Shaw's Supermarkets in Connecticut March 7 ratified a four-year contract for 2,500 workers that provides an across-the-board increase of \$100 per week for full-time workers over term.

Shaw's said the contract offers wages and benefits that are competi-

tive with any in the industry and region. "Shaw's is facing increased competition across New England, and we approached negotiations with a clear understanding of what it takes to compete and be successful in today's business environment. Everyone in the food business is competing for fewer shopping dollars at a time when costs across the board are rising. Together with [the union], we have focused on remaining competitive for our future success."

Full-time workers receive wage increases of \$25 per week each year, and part-time workers receive hourly increases of 30 cents initially and 25 cents in 2005, 2006, and 2007. Classified employees, including deli, bakery, grocery, customer services, produce, and meat and assistant meat managers received an additional \$1 per hour increase March 7. Prior to the first increase, pay for meat cutters was approximately \$21 to \$22 per hour, while pay for clerks averaged \$18 to \$19 per hour.

The employer's monthly pension contribution for full-time workers rises from \$135 to \$136.67, and benefits for future years of service increase to \$82 per month. Monthly contributions for part-timers increase from \$20 to \$23.02.

The contract also increases employer contributions to the union's health and welfare trust fund. For full-time workers, monthly contributions rise to \$500 April 1, \$540 April 1, 2005, \$575 April 1, 2006, and \$625 April 1, 2007. For part-time workers, monthly contributions rise to \$130, \$140, \$150, and \$160 on the same dates. No copays are called for, the union noted.

This accord covering workers in Connecticut is the second agreement negotiated with a retail food chain in New England in recent weeks. On

Feb. 15, members of five UFCW locals in Southern New England overwhelmingly ratified new three-year contracts covering about 42,000 workers at 220 Stop & Shop grocery stores (9 COBB 20, 2/19/04).

Costco Employees Remain Highest Paid in Grocery Sector

Members of the International Brotherhood of Teamsters ratified a three-year contract with Costco Wholesale Corp. that "makes sure that Costco employees remain the highest paid workers in the grocery industry," IBT announced Feb. 24. The union said the agreement covers about 12,000 workers at 39 warehouses in California, while the company put the number of workers closer to 10,000.

The contract provides hourly wage increases of 40 cents in the first year, 50 cents in the second year, and 60 cents in the third year, and annual bonuses ranging from \$2,800 to \$5,500. Service clerks—who constitute about 60 percent of the covered workers—will earn up to \$40,000 a year after the first year, IBT said.

Costco agreed to increase its pension contribution by 12 percent, while the Teamsters agreed to employee contributions toward their health insurance premiums for the first time. Employee contributions will total approximately 8 percent of premiums, IBT said, adding that copayments for doctor's visits and prescription drugs will increase.

Employees with 10 years of service still will receive four weeks of vacation, but employees with 15 years of service will receive a fifth week of paid leave. The union said it also secured improvements in grievance procedures and seniority protection.

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News in Brief

A three-year contract covering IBT-represented workers at Costco warehouses on the East Coast that was ratified last September (8 COBB 117, 10/2/03) contained a provision that economic issues would be revisited in the second and third years as part of an effort to make the East and West Coast contracts more similar.

Steel Unions Ratify Accords At Oregon Steel, Weirton Steel

A five-year agreement to end an extended work stoppage at Rocky Mountain Steel Mills of Pueblo, Colo., was approved in a mail ballot referendum concluded March 12, the United Steelworkers announced.

Approval of the agreement, which was reached in January (9 COBB 8, 1/22/04), is a major step in ending a six-year strike at the subsidiary of Oregon Steel Mills Inc.

However, several procedures still must be taken before the agreement becomes final, including approval by Oregon Steel's board of directors and shareholders, the company said. The agreement also needs National Labor Relations Board approval and dismissal of various pending legal actions between the parties.

Meanwhile, International Steel Group, which is seeking to acquire bankrupt Weirton Steel Corp., has reached a tentative agreement with the Independent Steelworkers Union under which the West Virginia mill would lose 1,000 jobs but remaining workers would earn more, the union said March 8.

The agreement reached with its prospective employer would reduce the number of jobs to about 2,100 and compress the number of job categories from 32 to five, "in keeping with the ISG model," the union told BNA.

On the plus side, the five-year contract would improve overall wages, with hourly rates at the beginning of the contract ranging from \$14 for a utility person to \$19.50 for a senior operations technician. Over term, incremental raises would kick in at 12 months, 30 months, and 46 months, resulting in an end salary range of \$16.39 to \$22.40 per hour.

In addition to wage increases, the contract contains financial incentives tied to production, including bonuses and quarterly profit-sharing.

ISG has signed an asset purchase agreement offering \$255 million for most of Weirton's assets. The auction process can take 30 to 45 days and

during the process, other companies can try to outbid ISG. "But in order to operate the company, they'd have to have an agreement with the union," Weirton said.

The union is urging acceptance of the contract in balloting to conclude March 29 "even though we know it means a lot of change and, in some cases, pain. That said, we also know it means the preservation of steel-worker jobs."

Streamlining the workforce is central to ISG's efficiency model, the union said. This tactic, used successfully at the former LTV and Bethlehem steel mills (8 COBB 55, 5/15/03) that ISG owns, stresses flexibility and team responsibility. Weirton workers have expressed no objections to this approach, the union added.

In an effort to reduce the size of the workforce, ISG would offer Weirton employees a "transitional benefit" that basically is a severance buy-out. Once ISG assumes ownership, it would have to meet certain conditions before any workers could be laid off, the union said, including reduced use of private contractors, minimal overtime, and "shared sacrifice by management."

Health care coverage with no premium payments on the part of employees would continue.

Pay for Federal Worker Averaged \$56,400 in 2002

In 2002, the average individual non-Postal Service federal worker had a General Schedule grade of 9.6 and earned \$56,400 per year in base pay, according to the Office of Personnel Management's annual fact book on federal civilian employment released Feb. 20.

In addition, among all non-postal employees, the average employee was 46.5 years old with 16.8 years of federal service, according to the OPM report, which is based on federal employment as of Sept. 30, 2002.

The report also showed that 11 percent of all federal employees were supervisors or managers, 75 percent were employed in the competitive service, 88 percent were in white collar positions, and 94 percent worked full-time for the federal government.

The "Federal Civilian Workforce Statistics: The Fact Book, 2003 Edition" is available at <http://www.opm.gov/feddata/factbook/index.htm>.

AFL-CIO Issues Membership Data

Although affiliates of AFL-CIO organized about 400,000 members last year, the pace of organizing did not keep up with membership losses, according to the federation's membership report for 2003, released March 10. The total average membership of the unions affiliated with AFL-CIO in 2003 was 13,133,209, a net decrease of 39,439 members from the prior year. Twenty national unions had membership increases in 2003, while 26 unions had losses.

Federal Pay Up 4.1 Percent

Federal employees received a 4.1 percent average pay increase in 2004, retroactive to the first pay period in January, under an executive order signed by President Bush March 3. The 4.1 percent average raise will consist of an across-the-board increase of 2.7 percent plus a 1.4 percent locality component, meaning that actual salary increases will vary from area to area based on the federal government's locality pay formula. The 2004 federal pay charts are available at <http://www.opm.gov/oca/04tables/index.asp>.

NLRB Permits E-Filing

Parties with representation cases pending before the National Labor Relations Board now may file all documents electronically, the board announced March 2. The board is expanding a pilot "e-filing" project begun last June that allowed the filing of only certain documents—requests for extension of time, to exceed page limitations, or to file amicus briefs—in both representation and unfair labor practice cases (8 COBB 77, 6/26/03). The latest step allows electronic filing of all documents in representation cases. Information is available at <http://gpea.nlr.gov>.

UFCW Gets New Leader

Joseph T. Hansen assumed the office of president of the United Food and Commercial Workers after being elected March 2 to fill the remainder of Douglas H. Dority's term. The union said Dority officially announced his retirement to the union's international executive board the same day. Hansen had been secretary-treasurer of the 1.4 million-member union since 1997.

Facts & Figures

Productivity Rose in Fourth-Quarter, Full-Year 2003

Growth in labor productivity among nonfarm businesses in the fourth quarter of 2003 was a bit slower than initially reported, as the Bureau of Labor Statistics March 4 revised downward its estimate to an annual rate of 2.6 percent.

The new figure is a slight drop from the initial estimate of 2.7 percent reported in February. The data showed the rate of growth in output was lower than the prior estimate—4.1 percent versus 4.2 percent—while growth in hours worked remained the same at 1.5 percent.

Meanwhile, the annual average rate of productivity growth for 2003 was revised upward, from an initial 4.2 percent to 4.4 percent, as the average number of hours worked fell

0.7 percent, not 0.5 percent as reported in February, and output growth remained at 3.7 percent.

As for costs of production, unit labor costs did not fall as much in the fourth quarter as initially reported because growth in hourly compensation was revised upward by 0.9 percentage point.

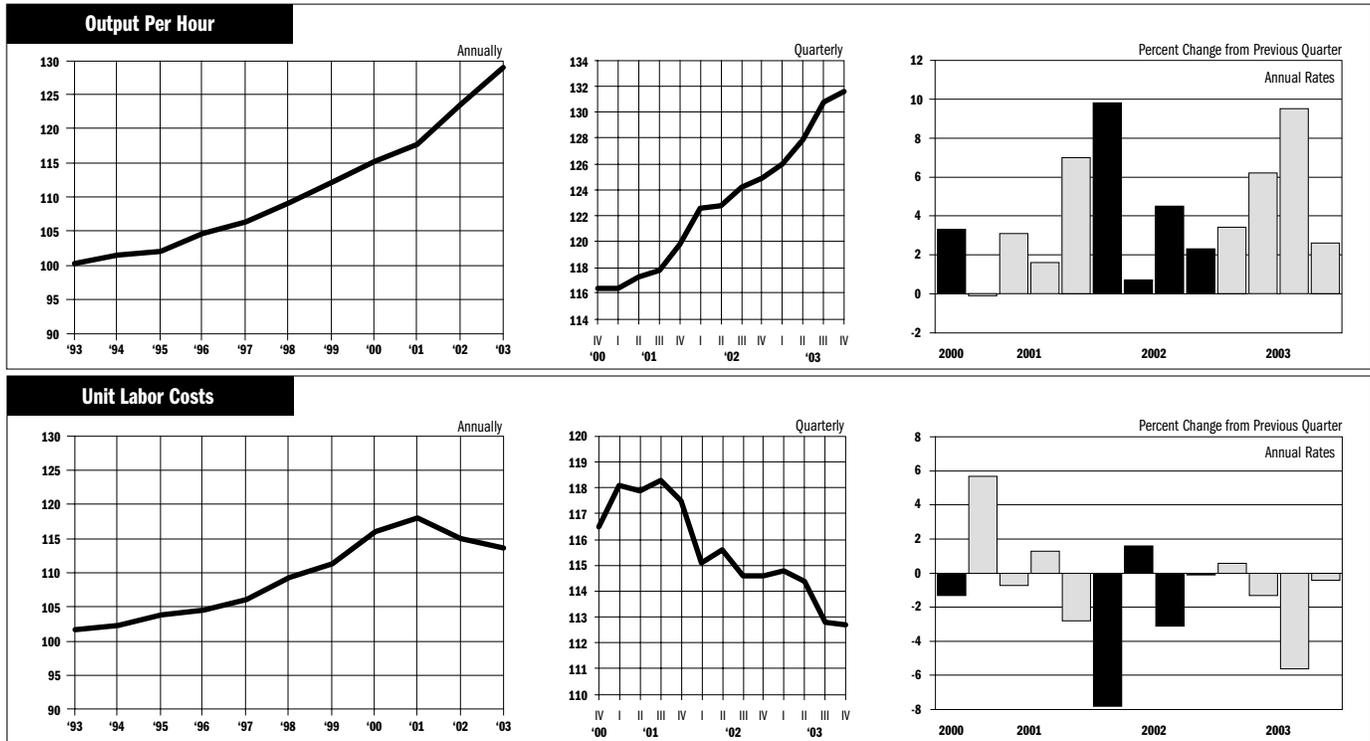
Compensation grew at an annual rate of 2.2 percent, not 1.3 percent as initially reported. That means that unit labor costs—the amount of labor compensation required for each unit of output—fell 0.4 percent in the fourth quarter, not 1.3 percent, BLS said. The annual average for unit labor costs for 2003 was unchanged, as costs declined by 1.2 percent.

In the manufacturing sector, productivity growth in the fourth quarter was unchanged in the revised figures at 4.8 percent. On an annual average, BLS revised the rate of productivity growth upward from 4.3 percent to 5.1 percent in manufacturing, as hours worked fell 4.8 percent, not 4 percent, while growth in output was pegged at 0.1 percent in both the initial and revised estimates.

Average annual growth in unit labor costs for manufacturing was revised up slightly from 0.3 percent to 0.4 percent.

The latest productivity and costs report is available at <http://www.bls.gov/news.release/pdf/prod2.pdf>.

Nonfarm Business Sector Productivity and Costs, Fourth-Quarter 2003



Source: Bureau of Labor Statistics

A BNA Graphic/cbn406g1

Legal Developments

Firm That Granted Wage Hikes May Have Adopted Disavowed Pact

By implementing new wage and benefit provisions of a multiemployer agreement with a union, a contractor may have adopted the agreement despite the firm's protests that it was not a party to it, the U.S. Court of Appeals for the Ninth Circuit ruled Feb. 25 (*Southern Cal. Painters & Allied Trades Dist. Council No. 36 v. Best Interiors Inc.*, 174 LRRM 2422, 9th Cir., No. 02-55028, 2/25/04).

The Painters union for many years was a party to contracts with a multiemployer association in which the employer is a member. The agreement covered drywall workers. The contractor also was signatory to a contract with the Carpenters and Joiners of America that provided it would also cover drywall finishers if the contractor was not a signatory to an agreement with the Painters.

In May 2000, the contractor informed the Painters that it planned to withdraw from the multiemployer agreement when it ended in September 2000. However, the contractor increased the wages and benefits it paid to finishers to the same levels negotiated in the new agreement.

During subsequent negotiations, the contractor asked the Painters for modifications to the terms in the new joint agreement, and the parties reached some compromises. The two sides shook hands over the deal, but when the union attempted to obtain a signed copy, it was informed by the contractor that it had signed an agreement with the Carpenters to represent all its employees.

The Ninth Circuit agreed with the union that a reasonable jury could find that the firm assented to the new agreement by its statements and conduct at the conclusion of negotiations when the two sides shook hands.

The court rejected the contractor's argument that adopting the wage provisions was merely an attempt to maintain the status quo and that its continuing negotiations with the Carpenters demonstrated it had no intention of consenting to the joint agreement with the Painters.

"To determine whether a party has adopted a contract by its conduct, the relevant inquiry is whether the party has displayed 'conduct manifesting

an intention to abide by the terms of the agreement,'" the court said, quoting *NLRB v. Haberman Constr. Co.*, 641 F.2d 351, 106 LRRM 2998 (5th Cir. 1981) (en banc). Here, the firm's "conduct is similar to other employers' actions where the Board or a court has found that an employer adopted a contract by its conduct."

Contractor Must Forward Dues To Union, Compensate Workers

A contractor violated federal labor law when it stopped forwarding dues to a union local and failed to pay contractual wages while continuing to operate in the local's jurisdiction, the National Labor Relations Board ruled March 5 (*Cray Constr. Group LLC and Laborers Int'l Union Local 130*, 341 N.L.R.B. No. 50, 3/5/04).

The contractor signed an area collective bargaining agreement with the local that ran until April 30, 2003, unless one party provided the other 60 days' termination notice.

The employer never notified the union of its intent to terminate the agreement, but stopped forwarding dues to the union and stopped paying contractual wage rates for unit members on or about April 15, 2003.

The union filed unfair labor practice charges with the board, and the NLRB general counsel issued a complaint. The contractor did not respond to the complaint and did not respond to subsequent notices that the general counsel had filed a motion for default judgment against it and that an order transferring the case to the board had been issued.

The board found that the contractor violated National Labor Relations Act Section 8(a)(1) and 8(a)(5) by unilaterally disregarding the collective bargaining agreement and not providing the union an opportunity to bargain over the employer's actions.

In addition, because the firm did not respond to any board notice within the allocated time, NLRB said, all allegations in the complaint are deemed to be admitted as provided under Board Rules and Regulations.

The board ordered the contractor to cease and desist violating the contract, to forward to the union all dues deducted from the employees' pay checks since April 15, 2003, and to compensate employees for lost wages and benefits.

Conferences

UALE/AFL-CIO Education Conference, April 14-18, Chicago, Ill.; price: \$225 members, \$250 nonmembers. Presented by UALE/AFL-CIO, (301) 431-5420.

Strategic Employee Compensation Issues, April 21-23, Milwaukee, Wis.; price: \$995. Presented by the University of Wisconsin-Milwaukee, (414) 227-3200.

Labor Relations for Managers: Managing Effectively in a Unionized Environment, April 27-28, Long Island, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (631) 420-5040.

Contract Language: Working Within It, Making It Work for You, April 29, Buffalo, N.Y.; May 10, New York, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191, (212) 340-2802.

Effective Grievance Handling: From Step One to Arbitration, April 29, Buffalo, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Preparation for Collective Bargaining, May 3-4, New York, N.Y.; price: \$1,195. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Collective Bargaining: Tactics, Techniques and Table Manners, May 3-5, Milwaukee, Wis.; price: \$1,165. Presented by University of Wisconsin-Milwaukee, (414) 227-3200.

The Dynamics of Labor Negotiations, May 5, New York, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

FMCS Arbitration Symposium, May 6-7, Atlantic City, N.J.; price: \$100. Presented by the Federal Mediation and Conciliation Service, (202) 553-2773.

Interest-Based Bargaining, May 6-7, New York, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Increasing Effectiveness in Arbitration, May 10-12, New York, N.Y.; price: \$1,395. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Arbitrating the Contract

Two Penalties for One Offense Prohibited by Double Jeopardy

A bus driver with a history of discipline for running ahead of schedule and deviating from his route was suspended for departing from a stop five minutes early. The driver's employer advised him in writing that he was suspended for six days, to be determined by a supervisor, and he accepted the discipline.

The driver continued to work for about a week, at which point the employer told him that he was being terminated for an accumulation of offenses, including his latest infraction.

The employer's discipline code has eight categories of offenses and specifies sanctions for committing particular offenses, including suspension for running ahead of schedule and termination for accumulation of four suspension offenses in a year.

The union grieved, arguing that the driver's discharge was barred by the concept of "double jeopardy."

The employer argued that under its disciplinary code, the driver was subject to termination for an accumulation of offenses and that determination of the penalty for misconduct was a function of management.

Award: An arbitrator sustained the grievance (*Transit Auth. of River City*, 118 LA 939 (Goggin, 2003)).

Discussion: There was no evidence presented which would indicate that the employer did not have the authority to discipline the employee, the arbitrator said. However, he agreed with the union that the employer's decision to discharge the bus driver after it already had suspended him for the same offense was barred by the concept of double jeopardy.

The employer had no right to increase the penalty from suspension to discharge absent additional facts, where the driver accepted his suspension and the employer knew of its rights under the disciplinary code when it suspended him, the arbitrator reasoned. The employer was familiar with the driver's record at the time it suspended him, the suspension was imposed by officials who had authority to take disciplinary action against the driver, and the employer waited almost a week after suspending the

driver before it discharged him, the arbitrator noted.

Applying the principle of double jeopardy, the arbitrator concluded that the employer lacked proper cause to discharge the driver. The employer was ordered to reinstate the grievant with lost wages.

Pointers: It is a well recognized principle that discipline should be reasonably prompt and that a penalty, once announced, should not be increased absent evidence that the offense was more serious than it looked at first.

The principle of double jeopardy has been cited in several arbitration decisions.

The arbitrator in *Transit Auth. of River City* relied upon an award by an arbitrator who invoked the principle of double jeopardy to overrule the discharge of an employee after he was sent home for leaving his truck idling and then sent back to work by a supervisor with full knowledge of the facts (*Hub City Jobbing Co.*, 43 LA 907 (Gundermann, 1969)).

In another case, an arbitrator found that a city employee who made hang-up calls to the mayor was not subjected to double jeopardy when she was discharged after she had been suspended pending investigation for possible termination (*City of Virginia*, 108 LA 59 (Daly, 1997)).

An arbitrator held that the transfer of a police officer after being disciplined for failing to process a crime scene did not constitute double jeopardy, ruling that the transfer was not discipline (*City of Topeka*, 118 LA 519 (Erbs, 2003)).

Double jeopardy did not apply to an employee charged with an unexcused absence for punching out early because he did not want to perform an assigned task, and later suspended for insubordination, since leaving work early and not completing an assignment constituted separate misconduct, an arbitrator found (*Acme Eng'g & Mfg. Corp.*, 81 LA 564 (Schedler Jr., 1983)).

A driver who was suspended pending possible discharge for failing to properly restrain an elderly passen-

ger, and thereafter told that as part of her discipline she had to complete two hours of training, was subjected to double jeopardy when she was ultimately discharged for the same incident, another arbitrator ruled (*Laidlaw Transit Svcs. Inc.*, 114 LA 612 (Imundo Jr., 2000)).

An arbitrator ruled that double jeopardy barred an employer from discharging an employee for an incident of sabotage that the employer had raised in a previous grievance hearing as support for his earlier discharge for an alleged assault (*Crown Cork & Seal Co.*, 111 LA 83 (Harris Jr., 1998)).

One arbitrator pointed out that the double jeopardy rule assumes that a full hearing has been held and that disclosures at that hearing are the basis for the penalty imposed. But "normal industrial plant disciplinary procedures" do not contemplate the kind of hearing which is the basis of the legal rule, he said, upholding the discharge of employees who already had been suspended for participating in a wildcat strike where evidence obtained after the suspension showed that they were leaders in the strike (*International Harvester Co.*, 13 LA 611 (Wirtz, 1949)).

The fact that an employee has paid a fine or served a jail sentence for acts committed in connection with employment does not preclude management from imposing discipline for the same acts. However, an arbitrator may consider the legal punishment in determining the severity of the penalty imposed by management (*Westinghouse Electric Corp.*, 26 LA 836 (Simkin, 1956)).

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 discharge and discipline issues, see CBNC chapter Discipline and Discharge at 9:501, and for sample contract language, see 10 chapters beginning with Discharge, Discipline, and Work Rules in General at 200:1501.