



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

Highlights

Wages and Benefits

The all-settlements average first-year wage increase under contracts negotiated in first-quarter 2004 was 3.4 percent, the same increase reported in first-quarter 2003, BNA reports..... **45**

Prepare for Negotiations

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In the Manual

March Unemployment Data

March unemployment data are added at 18:8201; the Bureau of Labor Statistics report is available at <http://www.bls.gov/news.release/empsit.toc.htm>.

Contract Settlements

Terms of settlements reported March 30-April 12 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:3941.

Arbitration Provisions

Sample contract provisions on the time for requesting arbitration and selecting arbitrators, and the effect of missing deadlines are added at 170:4001.

Washington Hospital Center, Nurses United Reach First Accord Since D.C. Nurses Ousted

Members of the independent Nurses United of the National Capital Region March 30 ratified a three-year contract covering more than 1,200 nurses at the Washington [D.C.] Hospital Center, marking the first contract negotiated since the nurses last year ousted the incumbent District of Columbia Nurses Association, which had been their bargaining agent for 25 years.

The starting rate for new graduates will rise to \$24 an hour, up from the previous starting rate of \$19.41, an increase of 24 percent. The hospital center said the higher rate will allow it to be "a market leader in pay for new graduates," adding that the ability to "recruit more new graduates and early career nurses is considered essential" for WHC's long-term future.

The agreement provides a minimum wage increase of 3.5 percent each year for more experienced nurses, and includes a new wage scale and "a lot of equity adjustments," WHC said. With the wage increases and equity adjustments, the average pay increase is 14 percent over term, Nurses United said.

Nurses at least age 55 with 25 years of service now may work a reduced schedule of a minimum three shifts per six-week schedule and receive a contribution from the hospital of \$200 per month toward their health insurance until eligible for Medicare. Beginning Sept. 5, about 200 float pool nurses, who previously were required to work two shifts a month, will be required to work four shifts in a six-week schedule, and will receive pay increases of 1.5 percent in the first year and 2 percent in the second and third years.

Beginning in 2005, nurses will be covered by the same health insurance plan as the hospital's service and maintenance workers under a contract negotiated by the Service Employees International Union. According to the union, the new plan has lower premiums than the current plan, lower prescription drug copayments, and lower out-of-pocket expenses. Under the new plan, the hospital will pay 80 percent of the cost of premiums for individual employees, 75 percent for individual employees plus one dependent, and 68 percent for family coverage.

Scheduling and staffing changes include an increase in the number of nurses who can choose to work only the day shift and a reduction in the number of occurrences that nurses can be required to work overtime. In addition, nurses within six months will begin scheduling their own shifts.

Extension of East Coast Costco Contract Aligns Terms With Those in California Accord

Members of the International Brotherhood of Teamsters at 16 Costco Wholesale Corp. outlets on the East Coast March 31 agreed to extend a three-year contract reached last September until March 15, 2007.

The extension means contracts covering between 3,000 and 3,500 East Coast workers and 10,000 and 12,000 West Coast workers both will expire in early 2007, "allowing us to negotiate for all Costco workers at the same time," IBT said. "That strengthens our position, and will bring more consistency to the workers on a nationwide basis."

The East Coast agreement reached last September (8 COBB 117, 10/2/03) included economic terms only for the first year—semiannual bonuses totaling between \$4,000 and \$7,000 per year and a wage increase of 50 cents per hour—with the expectation that future provisions would track those negotiated for workers in California. The West Coast contract was ratified Feb. 23 (9 COBB 32, 3/18/04).

The extension continues semiannual bonuses totaling between \$4,000 and \$7,000 per year and, like the California agreement, provides hourly wage increases of 40 cents retroactive to March 15, 50 cents in 2005, and 60 cents in 2006. Currently, a top-scale meatcutter makes \$19.40 per hour, a service clerk earns \$18.07 per hour, and an assistant clerk makes \$16.47 an hour, IBT said. With Sunday premiums, full-time meatcutters can earn more than \$43,000 per year, service clerks can earn \$41,000, and assistant clerks can earn \$38,000.

Under both accords, workers now pay about 8 percent of their health insurance premiums, and employees become eligible for a fifth week of vacation after 15 years of service.

Amtrak Service Workers Agree to 9.5 Percent Increase

After four years of talks, members of three Amtrak unions ratified a contract covering some 2,000 on-board service workers that boosts wages 9.5 percent by the end of the year and requires employee contributions to health insurance premiums for the first time.

The five-year contract, running from Jan. 1, 2000, to Dec. 31, 2004, covers chefs, food specialists, and other attendants represented by the Transport Workers Union, the Trans-

portation Communications Union, and the Hotel Employees and Restaurant Employees.

The current wage scale of between \$17.21 and \$20 per hour, depending on classification, will rise to between \$18.86 and \$21.93 per hour. Employees will receive a \$400 signing bonus.

A requirement that employees pay \$50 per month initially towards insurance premiums, rising to \$75 on Oct. 1, is based on a contract reached last fall between Amtrak and a group of about 5,000 TCU-represented employees (8 COBB 97, 8/21/03).

Five-Year Contract Reached For 1,600 Nicor Gas Workers

International Brotherhood of Electrical Workers members April 7 approved a five-year contract with Naperville, Ill.-based gas distribution company Nicor Gas covering about 1,600 workers.

The long-term agreement is a departure from traditional three-year contracts between the parties, according to a union official. "But we felt in the current environment—with respect to health care costs, layoffs, and other economic conditions—a five-year agreement would be in the best interests of the members of IBEW Local 19."

The agreement, which covers clerical employees, technicians, mechanics, and system operators, provides annual wage increases of 3.5 percent during each of the first two years and 3.25 percent in the third, fourth, and fifth years.

Company contributions to the pension plan and each employee's personal retirement account increase. However, employees will have to pay more out of pocket for health care coverage, the union said.

News in Brief

Health Workers' Contract Funded

Washington Gov. Gary Locke (D) April 1 signed legislation (Engrossed H.B. 1777) implementing and funding the state's first contract for about 26,000 independent home health care workers represented by Service Employees International Union. The law provides \$45.8 million in state and federal funds to raise workers' hourly pay from \$8.43 to \$8.93 Oct. 1, and to make contributions of \$400 per month for health care benefits through a Taft-Hartley Act trust effective Jan. 1, 2005. In November 2001, state voters approved a measure authorizing the workers to unionize and bargain under the state's public employees' collective bargaining law.

Software on LMRDA Regs Available

Computer software designed to help unions adhere to the new financial reporting requirements under the Labor-Management Reporting and Disclosure Act now is available from the Labor Department. The software is intended to ease unions' compliance with requirements that they break down expenses on the annual LM-2 financial forms by functional categories. The software is available at <http://www.olms.dol.gov>.

FMCS Seeks Grant Applicants

The Federal Mediation and Conciliation Service April 6 announced that it has begun accepting applications for its 2004 labor-management cooperation grants program. Requests for grants of up to \$125,000 are due June 30. For information, contact FMCS at (202) 606-8181 or visit <http://www.fmcs.gov>.

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Facts & Figures

First-Year Wage Hike of 3.4 Percent Reported in First Quarter

The all-settlements average first-year wage increase under contracts negotiated in first-quarter 2004 was 3.4 percent, the same increase reported in first-quarter 2003. The second-year average increase reported in the first quarter of 2004 was 3.2 percent, the same as that bargained for in first-quarter 2003, and the third-year average increase was 3.3 percent, compared with 3.4 percent reported in 2003.

The median first-year increase in agreements reported in first-quarter 2004 was 3.1 percent, the same as that negotiated in first-quarter 2003. Second- and third-year median increases in agreements reported in the first three months of 2004 each were 3 percent, the same increases negotiated a year ago.

The weighted average first-year wage increase in agreements reported in the first quarter of 2004 was 1.8 percent, compared with 2.4 percent in first-quarter 2003. The second-year weighted average increase in agreements reported to date in 2004 was 2.3 percent, compared with 2.6 percent reported in the same period of 2003, and the third-year weighted average increase was 2.2 percent, compared with 3.8 percent.

The analysis was based on a database of 165 agreements covering more than 308,000 workers reported

in CBNC's Table of Contract Settlements (tab 19) during the first quarter of 2004. Not included in tabulations of averages, medians, and weighted averages were wage increases of unspecified amounts and cost-of-living adjustments.

Wage Freeze in 12 Percent.

Fifty-eight percent of contracts reported to date in 2004 called for first-year wage increases in the more than 2 percent to 4 percent range, 23 percent called for increases of more than 4 percent, 7 percent called for increases of up to 2 percent, and 12 percent called for a wage freeze.

The manufacturing average first-year increase in contracts reported in the first quarter of 2004 was 2.6 percent, compared with 1.8 percent in first-quarter 2003, and the median increase was 2.5 percent, compared with 2.4 percent.

The nonmanufacturing (excluding construction) average first-year increase in first-quarter 2004 was 4 percent, compared with 3.9 percent in first-quarter 2003, and the median increase was 3.4 percent, compared with 3.5 percent.

Construction contracts reported to date in 2004 showed an average first-year gain of 3.4 percent, the same increase reported in the first quarter of

2003, and a median increase of 3.2 percent, compared with 4.1 percent.

State and local government contracts reported in the first three months of 2004 provided an average first-year increase of 3.2 percent, compared with 3.5 percent a year ago, and a median increase of 3 percent, compared with 3.5 percent.

Lump-Sum Provisions Up.

Lump-sum payment provisions were found in 15 percent of contracts reported in first-quarter 2004, compared with 11 percent reported in the first quarter of 2003 and 13 percent reported in the first three months of 2002.

The all-settlements average first-year wage increase with lump-sum factoring was 3.8 percent in first-quarter 2004, compared with 3.4 percent in the comparable period of 2003. The median increase with lump-sum factoring in all settlements reported in first-quarter 2004 was 3.3 percent, compared with 3.1 percent in the year-ago period.

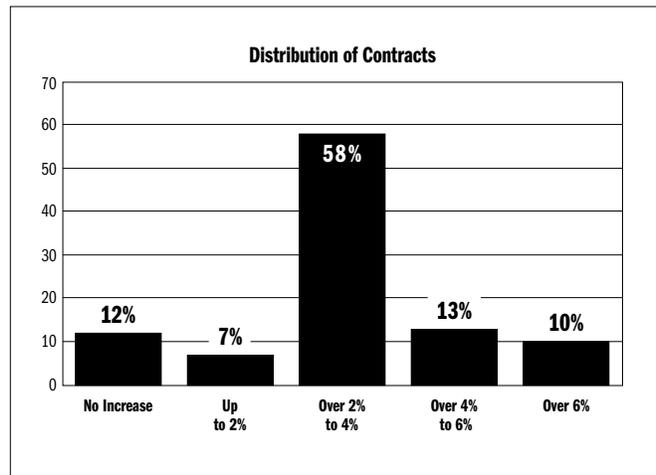
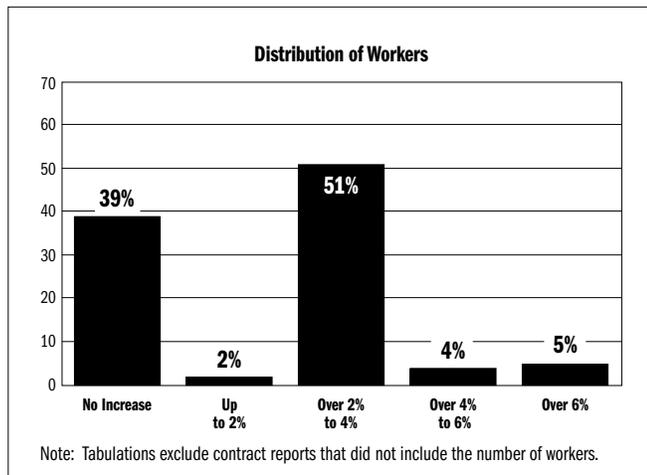
Benefit changes were detailed in 92 contracts, or 56 percent of settlements reported in first-quarter 2004. Most often mentioned was insurance, found in 75 percent of contracts itemizing changes.

FIRST-YEAR WAGE INCREASES IN PERCENT—FIRST QUARTER OF 2004 AND 2003

	All Settlements			All except Construction/Govt.			Manufacturing			Nonmfg. except Construction			Construction			State/Local Government		
	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median
Without lump sums:																		
2004 Year to Date	1.8	3.4	3.1	1.5	3.6	3.1	1.9	2.6	2.5	1.5	4.0	3.4	2.9	3.4	3.2	2.3	3.2	3.0
2003 Year to Date	2.4	3.4	3.1	1.8	3.3	3.0	4.6	1.8	2.4	1.4	3.9	3.5	3.4	3.4	4.1	3.2	3.5	3.5
With lump sums:																		
2004 Year to Date	2.4	3.8	3.3	2.4	4.1	3.4	4.2	3.6	3.2	2.0	4.3	3.5	2.9	3.4	3.2	2.3	3.2	3.0
2003 Year to Date	2.4	3.4	3.1	1.8	3.4	3.0	4.6	2.0	2.4	1.4	3.9	3.5	3.4	3.4	4.1	3.2	3.5	3.5

NOTE: The statistical summary above is subject to revision as more information becomes available. The summary does not include automatic increases effective after 12 months (designated as deferred increases) or cost-of-living adjustments. Portions of construction wage increases may be diverted to benefits.

First-Year Wage Settlements—First-Quarter 2004



Source: BNA PLUS® Database
 Note: Sums may not add to 100 percent due to rounding.

A BNA Graphic/cbn408g1

Of 69 contracts specifying insurance changes, the most frequently modified benefits were life insurance and dental insurance (each 12 percent), followed by prescription drug insurance (9 percent) and sickness and accident insurance (7 percent). Twenty contracts contained measures to control health care costs.

Pension plans were altered in 33 contracts reported in first-quarter

2004. In seven contracts specifying increases, benefit payments by end of term were to average \$44 per month per year of service. Increases in benefits over term were to average \$5.10 per month per year of service under five contracts specifying amounts.

New or revised 401(k) plans were called for in 5 percent of first-quarter 2004 contract reports, compared with

10 percent reported for first-quarter 2003 contracts.

Duration of settlements reported to date in 2004 broke down as follows: terms of more than three years, 31 percent; three-year terms, 52 percent; two-year terms, 12 percent; and terms of one year or less, 6 percent. Six agreements extended the contract term by an additional time ranging from one year to five years.

FIRST-YEAR WAGE INCREASES AND REVISED BENEFITS¹ BY REGION—FIRST QUARTER OF 2004

	Middle Atlantic	Midwest	New England	North Central	Rocky Mountain	Southeast	Southwest	West	Multistate
Total contracts ²	30	13	22	42	2	20	5	21	10
First-year increase (wgt avg).....	2.9%	3.2%	3.6%	0.5%	2.6%	3.1%	0.1%	0.8%	1.6%
First-year increase (avg).....	3.6%	2.9%	4.1%	2.7%	1.4%	3.4%	2.7%	4.9%	2.7%
First-year increase (median).....	3.8%	2.8%	3.1%	3.0%	1.4%	3.1%	3.9%	4.3%	2.4%
Deferred increase.....	29	12	18	39	1	19	5	19	10
Cost-of-living clauses.....	—	—	1	1	—	—	—	—	—
Vacations.....	3	—	1	3	—	1	—	6	—
Holidays.....	1	1	1	5	—	3	—	7	1
Pension plans.....	3	3	5	7	—	4	1	7	3
Insurance.....	14	4	12	22	—	11	2	9	5

¹ Figures pertain to new or revised benefits implemented over the term of the contract.

² Includes some contracts carrying wage increases of unspecified amounts, which are not included in tabulations of weighted averages, averages, or medians.

Conference Report

Prepare in Advance for Success in Negotiations, Attorney Says

Public sector employers should prepare for their next round of bargaining a year or more in advance if possible, James Baird, an attorney with Seyfarth Shaw in Chicago, said at the National Public Employer Labor Relations Association's annual conference held in Washington, D.C., March 28-April 1.

During this time, employers should determine their bargaining priorities, research comparables and costs, examine the union's bargaining history, confer with elected officials, meet with union officials to establish a positive relationship, set up a negotiating team with well-defined individual roles, and begin a "quiet campaign" to educate stakeholders about the employer's primary concerns, according to Baird.

Putting Together a Team

The composition of the employer's bargaining team is of crucial importance, Baird said. The team leader should determine the ideal size of the team and the expertise needed, while taking into consideration other factors, such as whether elected officials will be involved in bargaining.

Years ago, the common wisdom was that there was no place for elected officials at the bargaining table, Baird said. "Since then, I have decided that this isn't the rule anymore, [although] it may be the general principle. . . . [S]ome of the most successful bargaining situations I've been involved with have been situations where there was an elected official at the table, because it was the right person, it was a good person, it was a person who would spend the time and effort, they were dedicated to the management position, and they were sensational because the union ended up radicalizing them."

If the employer's bargaining board includes elected officials who are union supporters or who cannot be trusted with confidential information, it is advisable to create a collective bargaining subcommittee to handle day-to-day bargaining while supplying the bargaining board with more general information, he added.

Baird said he prefers to have at least three people but no more than six on his bargaining teams. But if the union brings in a large group, the employer may want to counter with its own extended team.

Publicizing Employer Concerns

Especially when preparing for negotiations with large unions, employers can benefit from a "quiet campaign" in which they inform employees, unions, elected officials, the media, and the public in advance about the employer's concerns and goals, Baird said.

"You want to create an environment so by the time the negotiations come, the union knows what the problems are, everybody knows what the problems are, but none of it has been tied to negotiations or collective bargaining," he said.

If the employer expects a strike, it is best to keep strike preparations—such as plans to hire temporary replacement workers—under wraps, Baird said. But if a strike is only a possibility, letting the union know the employer is prepared for such an action can be a powerful deterrent.

Employers ideally should get the union to agree to bargain on the employer's own turf, as opposed to renting a neutral location, Baird said.

"Why not on our turf?" he said. "It's free and it's home field to us."

In one case, Baird said, he was representing an employer in negotiations with a union that refused to bargain at a village hall that had been home to their negotiations in past years. The employer refused to bargain at any other location, and eventually the union agreed to negotiate at the village site after an initial meeting at another site that was designed as a "face saver" for the union.

If the employer feels bound by past practice to negotiate at a neutral location, it should work to change this practice in future negotiations, Baird said.

He also urged employers that pay union negotiators for their time to reconsider this practice, asserting that it serves as a disincentive for unions

to consider settling within a reasonable time period. "If you start putting them on the clock, they start getting serious about everything," he said.

To end the practice of paying the salaries of union negotiators, the employer in the next bargaining round at least should strive to limit the number of union negotiators who are being paid by the employer or the number of hours for which the employer will pay.

Exchanging Proposals

Employers should bring a number of proposals to the table to avoid being outnumbered by union proposals, Baird said.

He recommended that the employer have both "on-the-record" and "off-the-record" proposals. Just as unions often will lead with unreasonable proposals so that the resulting compromises will fulfill their true goals, employers also should come in with proposals that will give them room to trade and compromise.

Baird offered in example an employer that wants to modify its practice of paying 100 percent of retiree health insurance premium costs. The employer might have an on-the-record position of wanting to eliminate this policy immediately, and an off-the-record position of being willing to continue paying 100 percent of retiree premiums for the next three years in exchange for future concessions.

Employer bargaining teams should rank both their own and the union's proposals in order to establish their priorities, Baird said.

One way to accomplish this is to use a ranking system of one to five, where the top ranking of five means "go to war" for the employer proposal or against the union proposal, Baird said. Proposals should be ranked independently rather than in relation to each other, he added, meaning that if the union puts forth a set of unreasonable proposals, the employer should not hesitate to rank all of them as "fives."

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The employer should consider not only its own view of each union proposal, but also the union's likely view of the proposal, Baird said. There are some union proposals—such as “fair share” fees for nonunion members—that may be very important to the union, but do not affect the employer directly. The employer should be prepared to use these issues as bargaining chips to force concessions on issues it considers important.

When presented with an unreasonable union proposal, the employer counterproposal should reflect the employer's goals and not simply be a reaction to the union proposal, Baird recommended.

Off-the-Record Compromises

If there is a reasonable level of trust between management and union negotiators, management representatives should be able to suggest off-the-record compromises to their union counterparts as a way of reaching mutual agreement on contentious issues, Baird said.

For example, a management representative might inform a union representative off the record that the employer had reached agreement with two other unions on 3.5 percent annual pay increases and would be willing to agree to the same terms in the current negotiation. This could be communicated in a sidebar and would not affect the management team's official position on what it is willing to offer.

Baird said he is a believer in “creative packaging,” where the employer bundles together a group of proposals rather than introducing them individually. “You need to establish that everything is a trade,” he said. “Nothing's for free.”

In response to union counterproposals, the employer should adjust its package rather than deal with issues separately, Baird said.

Having senior department heads and elected officials rank union and management proposals early in the process is particularly useful in the home stretch, where eagerness to settle on an agreement may affect senior officials' judgment, Baird said. When the pressure is on but the agreement is not yet satisfactory for the employer, it is useful to show wavering team members what their judgment had been earlier in the process. “If it's not there, I don't want them blowing the deal,” he said.

In the Courts

Worker Who Used Racist Term Properly Reinstated by Arbitrator

An arbitrator's reinstatement of an employee accused of making racial remarks did not violate public policy because the arbitrator punished the employee and considered his behavior in reinstating him, the U.S. Court of Appeals for the Sixth Circuit ruled April 7 (*Way Bakery v. Truck Drivers Local No. 164*, 6th Cir., No. 02-2051, 4/7/04).

After being suspended for making a racially abusive comment to a coworker, the worker filed a grievance under terms of a bargaining agreement. The employer denied the grievance, and fired the worker. The grievance then went to arbitration.

The arbitrator found for the employee, reducing his discharge to a six-month unpaid suspension and reinstating him. However, the arbitrator placed the employee on probation for a period of five years.

The employer sued to vacate the award, alleging that the award violated public policy, exceeded the scope of the arbitrator's authority, and did not draw its essence from the collective bargaining agreement.

Affirming a district court, the Sixth Circuit found that the arbitrator followed the essence of the contract in reinstating the employee and that he did not exceed his authority.

The court also said there was no public policy violation in reinstating the employee because the arbitrator considered the employee's actions in conditioning reinstatement on him serving a suspension and probation.

“[T]he arbitration award in the present case did not condone [the employee's] behavior, but rather punished him by depriving him of his salary for six months and placing him on probation for five years,” according to the court. The employer “cites no case, nor have we found any, that establishes a public policy of flatly prohibiting the reinstatement of a worker who makes a racially offensive remark.”

The Sixth Circuit explained that the Supreme Court has emphasized that the public policy question is not whether the employee's actions violate public policy, but whether the arbitrator undermined public policy through his ruling. Because the arbi-

trator recognized what the employee did was improper and reinstated him only with conditions that reflected that belief, there was no public policy violation, the court concluded.

Justices Let Stand Rulings On Arbitration, Grievance Rep

The U.S. Supreme Court April 5 let stand an appeals court ruling ordering a hospital to arbitrate claims that it violated an agreement covering conduct during an organizing campaign (*St. Vincent Med. Ctr. v. Service Employees Int'l Union, U.S.*, No. 03-1083, cert. denied 4/5/04).

The U.S. Court of Appeals for the Ninth Circuit decided that it had jurisdiction under Section 301 of the Labor Management Relations Act because the dispute “is primarily contractual, not representational,” and that the dispute is covered by the arbitration clause in the agreement (8 COBB 117, 10/2/03).

The employer challenged the ruling, urging the justices to find that the union should have taken the dispute to the National Labor Relations Board, rather than to arbitration.

The union argued that there was no issue here appropriate for review because the dispute arose from a private labor agreement, and the court's decision was “wholly consistent with the clear law of this Court and with circuit court precedent.”

On the same day, the Supreme Court refused to review an appeals court ruling that, under an NLRB rule, a company must allow an employee to choose the specific union representative to accompany him to a disciplinary meeting (*Anheuser-Busch Inc. v. NLRB, U.S.*, No. 03-949, cert. denied 4/5/04).

The refusal lets stand a U.S. Court of Appeals for the Fourth Circuit ruling that absent extenuating circumstances, a union member exercising rights outlined in *NLRB v. J. Weingarten Inc.*, 420 U.S. 251, 88 LRRM 2689 (1975), not only has a right to union representation, but also may choose his or her particular representative. The appeals court explained that the National Labor Relations Act “attempts to rectify the inherent power imbalance of the workplace, and an employee's ability to choose his own union representation serves this goal.”