



# Collective Bargaining Bulletin

**A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION**

## Highlights

### **Job Absence/Turnover Rates**

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### **Industry Chronologies**

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### **Contract Settlements**

Terms of settlements reported May 11-24 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4001.

## CWA, SBC Say Tentative Agreement Meets Objectives, Needs of Both Sides

**A** tentative five-year agreement between SBC Communications Inc. and the Communications Workers of America—reached May 25 as workers returned to their jobs following a four-day strike—meets the objectives and needs of both sides, company and union representatives said.

Nearly identical contracts covering about 32,000 employees at SBC West, 27,000 employees at SBC Midwest, 37,000 employees at SBC Southwest, and 6,000 employees at SBC East meet the union’s major goals of strengthening job security, protecting health care benefits for active and retired workers, and increasing wages and pensions, CWA said.

The contracts provide SBC with “greater control over our cost structure and flexibility to meet our competitive challenges,” the company said.

The contracts would provide wage increases of 12 percent over term, plus a 1 percent lump-sum payment in the first year and cost-of-living adjustments in the fourth and fifth years. Employees also would receive cash bonuses of \$250 in April 2006, \$375 in April 2007, and \$375 in April 2008. CWA-represented employees at SBC currently earn an average \$50,000 per year.

SBC would continue to pay the full cost of health care premiums for active and retired employees. However, copayments for doctor visits, emergency room visits, and prescription drugs would increase for most employees.

Pension benefits under the SBC West, SBC Midwest, and SBC Southwest contracts would increase 13 percent over term, and the cash balance pension plan for SBC East employees would increase benefits as well.

The settlement also would provide access and opportunity for members as they move from traditional telecommunications work to the new technologies of the industry, such as wireless Internet, video services, and business data services, CWA said. In addition, current CWA-represented employees would have a guaranteed job within the geographical area should their existing job be eliminated, and CWA and SBC agreed to work together to bring technical support jobs back from overseas.

## Provisions Designed to Increase Nurses’ Pay Negotiated at Minneapolis, Spokane Hospitals

**I**n addition to general wage raises, provisions aimed at increasing pay for registered nurses are included in new contracts covering RNs at hospitals in Minneapolis-St. Paul, Minn., and in Spokane, Wash.

Minnesota Nurses Association members May 18 approved new three-year contracts covering about 9,800 nurses at 13 Twin Cities hospitals that will increase wages by at least 13 percent.

Agreements at each hospital, which are in six health care systems represented by the Minnesota Hospital Association, increase wages 5 percent this year and 4 percent in 2005 and 2006. Most contracts also include provisions that increase pay depending on education, experience, and shifts worked. For example, nurses with baccalaureate degrees will be paid 3.5 percent more

than nurses with associate degrees, while those with master's degrees will be paid 7 percent more than those with associate degrees.

Other provisions designed to increase pay include longevity bonuses ranging from \$1,500 per year for those with 20 to 24 years' experience to \$3,500 per year for those having 40 or more years, a \$100 bonus for a holiday-exempt RN who volunteers to work a holiday, and a \$1.50 per hour differential for preceptor nurses who offer orientation for new nurses.

The contracts also preserve existing health insurance packages.

Meanwhile, members of the Washington State Nurses Association at Sacred Heart Medical Center in Spokane May 4 ratified a three-year contract that provides about 1,200 registered nurses with wage increases totaling 12 percent over term.

The contract also adds steps to the top of the pay scale, bringing the total number of steps to 30, to compensate nurses with more years of experience, the union said. Top hourly pay at step 30 was \$34 before the contract's first increase, and will be \$40 after the last increase.

RNs will continue to pay no premiums for individual health care coverage but will pay the first 7 percent of any increases in premiums for dependent coverage and half of increases exceeding 7 percent. Copayments for office visits and prescription drugs increase, and a copayment for emergency room visits is added.

## NYU Adjunct Faculty Ratify 'Breakthrough' First Contract

Union members on the adjunct faculty of New York University have ratified a first contract, concluding negotiations that began in September

2002, the United Auto Workers-affiliated Adjuncts Come Together announced May 18.

In a letter to members announcing ratification, the union called the contract "a breakthrough in academic labor relations with its unique job security clause, health care subsidies for individuals and families, and employer-paid pension contribution."

Under the six-year agreement, about 2,300 part-time faculty will receive annual pay raises of 3 percent. In addition, universitywide minimums taking effect in September will bring the lowest-paid adjuncts "up to a reasonable rate, in some cases doubling their previous hourly rates," the union said. Pay for other duties, such as proctoring, advising, or tutoring, also rise by 3 percent annually.

Beginning in 2005, all adjuncts—who teach at least 40 hours of individualized instruction per year in one or more courses or at least 75 hours in a semester—who do not receive employer-subsidized benefits elsewhere will have access to the same health insurance plans as full-time faculty. In the first year, the employer will pay a subsidy of 50 percent of the cost of individual coverage for adjuncts teaching more than 84 hours per year and a subsidy of 75 percent for adjuncts teaching 126 or more hours. In the second year, the subsidies will rise 10 percent if applied to two-person or family coverage.

In the fifth year of the agreement, adjuncts with two years of service will receive a pension contribution from the university equivalent to 5 percent of salary.

Job security provisions stipulate that any adjunct having completed six consecutive semesters of teaching in the same department will be notified by May 21 of each year whether he or she will be reappointed for the

next academic year. Adjuncts who are reappointed will teach for two years, or be paid in lieu of teaching during that period. Adjuncts who are not reappointed will receive compensation equal to one year's salary.

## NLRB Rule Forbids Party From Handling Mail Ballots

A union or an employer involved in a representation election that handles or collects a voter's mail ballot commits objectionable conduct that may warrant setting aside the election, the National Labor Relations Board decided May 12, announcing "a new rule" (*Fessler & Bowman Inc.*, 341 N.L.R.B. No. 122, 5/12/04 [released 5/17/04]).

After one union solicited or collected ballots from some employees during an NLRB-conducted runoff election, the union that lost the election filed an objection.

"[T]he election environment must be one in which employees may freely and fairly express their views regarding representation," the board said. "Whenever there is an appearance of irregularity in the handling of ballots in a manual ballot election, the Board has not hesitated to find the conduct objectionable." Ballot secrecy, whether manual or mail ballots, "is a hallmark of our election procedures," the board added.

Because NLRB agents are not present when mail ballots are marked and put in the mail, the agency provides "election kits that clearly specify the precise procedure for casting and returning the ballot," the board said. "Where mail-ballot collection by a party occurs, we find that it casts doubt on the integrity of the election process and undermines election secrecy."

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# Facts & Figures

## Employee Job Absence and Turnover Rates Low in 2003

**R**ates of absenteeism remained close to record lows in 2003, according to a BNA survey. For the second straight year, median absence rates averaged 1.6 percent per month, only a tenth of a point higher than in 1997, which had the lowest year-end rate in the survey's 25-year history.

Though absence rates typically increase as winter weather approaches, in 2003 the trend was fairly moderate. Median monthly absence rates in the fourth quarter averaged 1.6 percent of scheduled workdays, up from 1.4 percent in the previous quarter and on par with the fourth quarter of 2002. The median monthly absence rate climbed from 1.5 percent in September to 1.6 percent in October where it remained unchanged through November and December.

Rates of absenteeism held steady or declined last year among the major industry sectors, but breakdowns by region and employer size reveal a more varied situation.

Median monthly rates of unscheduled absence fell from 1.6 percent in 2002 to 1.5 percent in 2003 in the nonmanufacturing sector (e.g., transportation, retail trade, finance), as well as in its finance subgroup. The year-end average of median absence rates also dropped a tenth of a point (to 1.9 percent) in the nonbusiness

sector, despite a slight increase among health care establishments (1.7 percent to 1.8 percent). Job absence was unchanged from a year ago among manufacturing companies (1.4 percent).

Unscheduled absence rates hit rock bottom among Northeastern employers, as the 12-month average of median absence rates fell from 1.5 percent in 2002 to 1.3 percent in 2003, the lowest year-end average ever recorded. North Central employers also experienced lower absenteeism than in 2002, with a decline from 1.7 percent to 1.6 percent. In contrast, Western employers saw a surge in absenteeism (1.8 percent to 2.2 percent), and Southern organizations experienced a moderate increase (1.5 percent to 1.6 percent).

Absence rates among small and medium-sized employers rose last year after shrinking the previous year. The 12-month average of median absence rates grew two-tenths of a point among organizations with 250 to 499 employees (to 1.9 percent) and 500 to 999 workers (to 1.7 percent), following one-tenth-point declines from 2001 to 2002. Among the smallest establishments (fewer than 250 workers), median monthly absence rates averaged 1.5 percent of scheduled workdays, up a tenth of a point from 2002. Conversely, job ab-

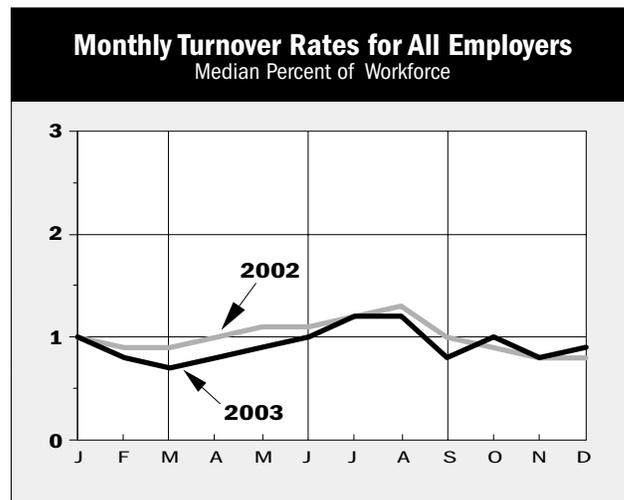
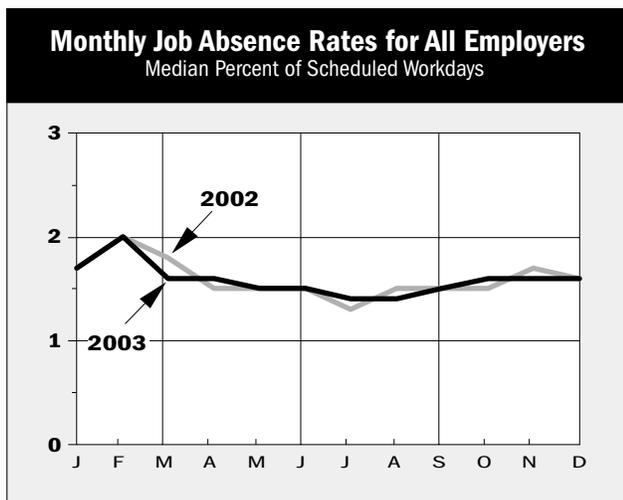
sence rates plummeted among companies with 1,000 to 2,499 employees (2 percent to 1.6 percent). The 12-month average held steady among organizations with 2,500 or more workers at 1.4 percent.

### Turnover Rates Continue to Fall

Worker attrition in 2003 continued a downswing that began in 2000. Median turnover rates—excluding layoffs, staff reductions, and departures of temporary workers—averaged 0.9 percent of employers' workforces per month last year, falling from 1 percent in 2002 to reach the lowest level since 1996.

Median turnover rates also averaged 0.9 percent per month during the fourth quarter of 2003. The fourth-quarter rate is down from 1.1 percent in the third quarter but up marginally from the fourth quarter of 2002. The fourth quarter began with an upward bounce from 0.8 percent in September to 1 percent in October, then closed with lower monthly medians of 0.8 percent in November and 0.9 percent in December.

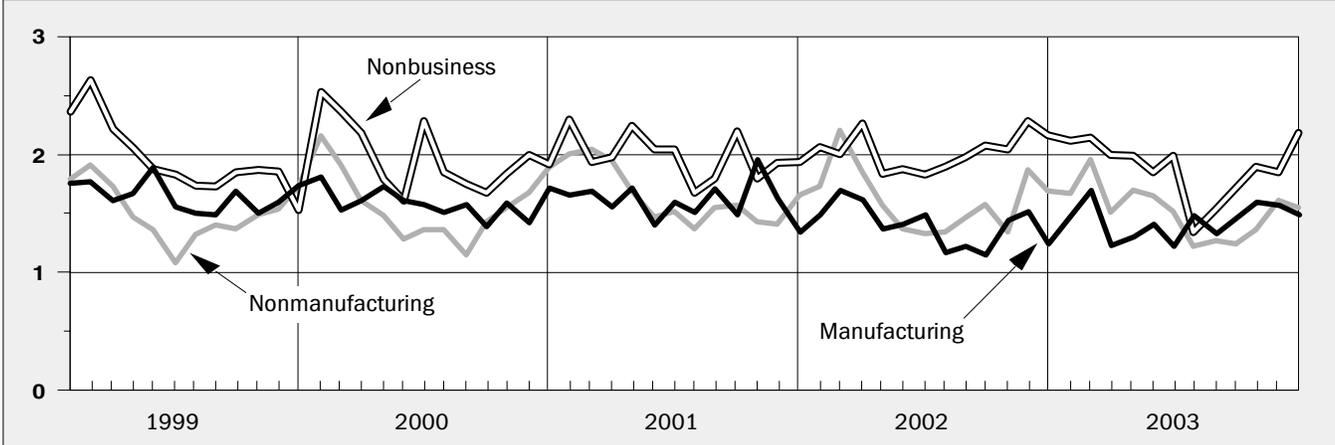
The sluggish economy and weak job market apparently dissuaded employees from leaving their jobs in 2003, as turnover rates continued to shrink for employers in most regions and industries.



A BNA Graphic/cbn411g1

### Monthly Job Absence by Industry

Median Percent of Scheduled Workdays



A BNA Graphic/suq104al

Employee turnover dropped for the second year in a row in nearly every region, falling to levels last seen in the mid-1990s. Median departure rates averaged 0.8 percent of the workforce per month among Northeastern employers in 2003, compared with 0.9 percent in 2002 and 1.1 percent in 2001. Similar declines occurred among North Central employers and Western establishments, with 2003 median monthly turnover rates averaging 0.8 percent and 0.9 percent, respectively. After falling a tenth of a point from 2001 to 2002, the turnover rate among Southern employers remained unchanged at 1.1 percent in 2003.

Among manufacturers, the 12-month average of median separation

rates, excluding layoffs, reductions-in-force, and departures of temporary staff, shrank from 0.8 percent in 2002 to 0.7 percent in 2003, the lowest year-end average since 1993. The median turnover rates dropped from a year-end average of 1.1 percent in 2002 to 1 percent in 2003 for the non-business sector as a whole, and from 1.3 percent to 1.2 percent for health care facilities. The year-end average of median turnover rates remained unchanged from last year both in the nonmanufacturing sector and its finance subgroup (1 percent and 1.1 percent, respectively).

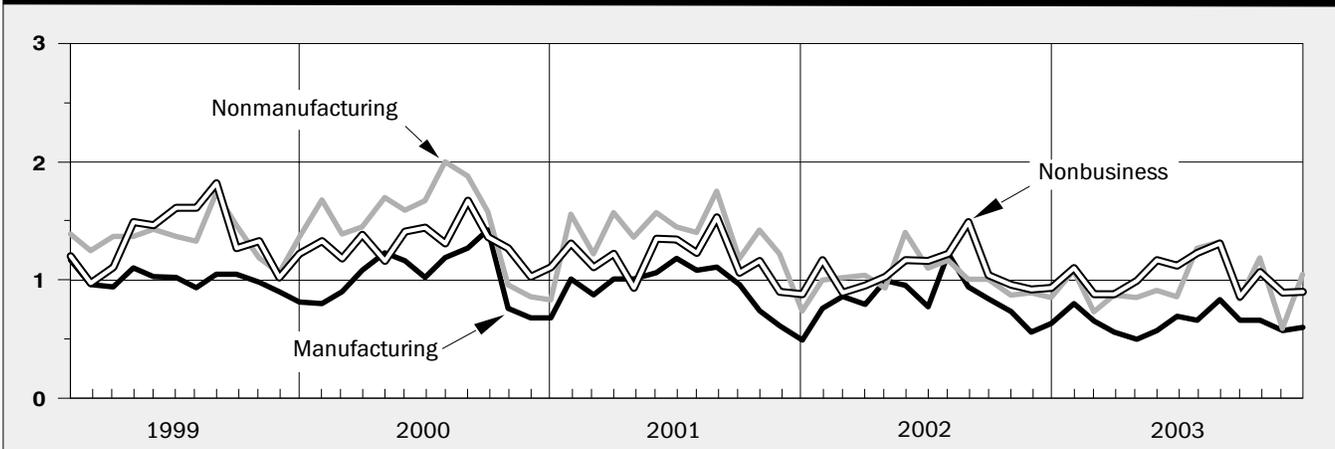
Among organizations with fewer than 250 workers, the 12-month average of median departure rates fell from 0.8 percent in 2002 to 0.6 per-

cent in 2003. Organizations with 500 to 999 employees also experienced a decline of two-tenths of a point (to 0.9 percent). Employers with 250 to 499 workers experienced a slightly smaller decline in turnover (1 percent to 0.9 percent), while the 12-month average remained unchanged at 1 percent among the largest establishments (2,500 or more workers). The year-end rate edged up slightly among employers with 1,000 to 2,499 workers (1.1 percent to 1.2 percent).

*For more information or copies of previous reports, contact BNA PLUS at 800-452-7773, or 202-452-4323 in the Washington, D.C., area.*

### Monthly Turnover by Industry

Median Percent of Workforce



A BNA Graphic/suq104tl

## Legal Developments

### Court Says Union Cannot Retreat From Accord It Appeared to Accept

A union is bound by the quid pro quo portions of a contract despite its decision to back out of that part of the agreement and not put those terms to a ratification vote, the U.S. Court of Appeals for the Seventh Circuit ruled May 13 in enforcing a National Labor Relations Board order (*NLRB v. General Teamsters Union Local 662*, 174 LRRM 3060, 7th Cir., No. 03-3699, 5/13/04).

In negotiations to end a strike, the company offered a quid pro quo that allowed four workers who had crossed the picket line to remain on the job while guaranteeing that four strikers would be rehired. In exchange, the union agreed to have four employee-representatives the company had been having problems with sign waivers agreeing to resign their union positions. The two sides shook hands on the agreement and announced the offer to the media.

Before the ratification vote, two of the employee-representatives decided that they no longer wanted to resign their union positions and the union decided that the membership should not vote on the quid pro quo provisions. The ratified contract included the quid pro quo provisions, but the union had instructed employees not to vote on those issues.

After discovering that one of the employee-representatives was signing grievances and that the union did not submit the quid pro quo provisions to the employees for ratification, the company filed an unfair labor practice charge.

Finding that contract terms requiring the four representatives to waive their right to hold union office were not a "condition precedent" of ratifying the contract, the Seventh Circuit agreed with NLRB that the union was bound by its agreement with the company and that the employee-representatives who continued as officers despite the agreements had to leave their positions with the union.

"There was a meeting of the minds when the parties shook hands agreeing to the contract terms and the Union promised it would have a ratification vote on those terms," the court said. "The fact that the Union later broke its promise does not invalidate the original agreement."

### Company Did Not Engage In Surface Bargaining, NLRB Says

A company did not engage in surface bargaining with a union during negotiations for a first contract, the National Labor Relations Board decided May 12 (*St. George Warehouse*, 341 N.L.R.B. No. 120, 5/12/04 [released 5/17/04]).

The union won a representation election among 42 employees in 1999 but was not certified until 2000. By then, the number of employees in the bargaining unit had been reduced to 19 because the company had filled vacant positions with temporary agency employees.

The company refused to negotiate, and NLRB issued a bargaining order. The parties began bargaining in October 2001 and talks continued at least until May 2002. The union then filed charges with the board alleging that the company engaged in surface bargaining and unlawfully transferred unit work to temporary agency employees without bargaining.

The board found that the employer violated the National Labor Relations Act by unilaterally transferring unit work to temporary agency employees without giving the union the opportunity to bargain.

However, NLRB ruled that the company had not improperly engaged in surface bargaining. In determining whether a party is engaged in surface bargaining, the board said it must determine whether the party is "engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement."

In reaching its decision that the company did not engage in surface bargaining, the board said that company officials met with the union's bargaining committee, made some concessions, and reached agreement on a number of issues. The company also gave explanations for some of its bargaining positions, and did not engage in regressive bargaining or propose reductions in existing benefits.

"The totality of the Respondent's conduct shows the Respondent did nothing more than 'engage in hard but lawful bargaining to achieve a contract that it considers desirable,'" the board concluded.

## News in Brief

### Timken to Close Plants

Timken Co. May 14 announced plans to close three plants in Canton, Ohio, and said officials soon will meet with the United Steelworkers to discuss timing of the shutdown and other closure details. The company said the closure decision, which will eliminate 1,300 jobs, comes after negotiations with USW failed to result in an agreement to improve productivity at the plants. Discussions between the parties were not formal negotiations, USW said, adding that Timken never submitted any proposals to the union nor did it suggest re-opening the current contract.

### Agreement on Benefit Cuts Reached

United Airlines has reached an agreement with the Aircraft Mechanics Fraternal Association that will permit the carrier to trim retiree health benefits, the company announced May 21. Details of the agreement were included in a brief filed with the U.S. Bankruptcy Court for the Northern District of Illinois (*In re: UAL Corp.*, N.D. Ill., No. 02 B 48191, brief filed 5/21/04). United is seeking similar agreements with unions representing retired pilots, flight attendants, and support employees as a prerequisite to its plan for emerging from bankruptcy this summer.

### BLS to Publish Outsourcing Data

The Bureau of Labor Statistics soon will publish more extensive data on U.S. layoffs related to work that is outsourced either in the United States or abroad, the agency said May 18. BLS's quarterly report on extended mass layoffs until now has generated information only on layoffs due to work that is transferred to a different location within the same company. Beginning with the second-quarter report published in August, it will be expanded to include information on layoffs due to work transferred to other companies in the United States or foreign countries.

### CPI Rises in April

Consumer prices rose a seasonally adjusted 0.2 percent in April, the Bureau of Labor Statistics reported. Monthly data are in *Consumer Price Index for 2004* in the manual; the BLS report is available at <http://www.bls.gov/news.release/pdf/cpi.pdf>.

# Special Report

## E-Mail, Internet Are Turning Unions Into Desktop Organizers

The changing nature of the workplace—specifically increased employee e-mail and Internet access—requires new approaches from employers in dealing with union solicitation and distribution of union materials, according to attorneys.

Adapting current labor laws to deal with the use of technology means labor lawyers and the National Labor Relations Board must move beyond traditional ideas of what defines “work and nonwork,” “employee,” and “work area,” the attorneys said at an American Bar Association conference on technology in employment and labor law held in Miami Beach April 21-23.

R. Michael Fischl, a law professor at the University of Miami, said that because employees no longer are working just in factories, but instead also are working in front of computers with continual access to e-mail and the Internet, employers have a more difficult time controlling how union solicitation and distribution of union materials takes place. The difficulty is created because the line is blurrier than ever between working and nonworking and whether a workplace is limited to one’s cubicle or also extends to online work done while at home, Fischl said.

“The distinctions established by traditional rules were designed to reflect realities of [an] industrial setting that has changed dramatically in the past two decades,” he said. “Efforts to apply those distinctions to the modern workplace increasingly resemble an effort to fit a square peg into a round hole, and applying traditional distinctions to e-mail is particularly problematic.”

### Leafletting v. E-Mail

While it is clear when leafletting is occurring in a traditional organizing effort, it becomes much more difficult to define when solicitations occur over e-mail and are done by employees inside the workplace instead of by organizers, Fischl said.

Those changes have been especially problematic for NLRB when attempting to interpret National Labor

Relations Act Section 7 rights in the context of e-mail communication and access to computers, said Jennifer Burgess-Solomon, an NLRB attorney in Miami. Section 7 defines protected activity, and essentially gives employees the right to self-organize, form, join, or assist labor organizations.

“Where e-mail systems have become almost the exclusive vehicle of communication available to employees in a facility, a serious question arises regarding whether an employer can, in effect, silence employees to the point where their Section 7 rights become solely an academic guarantee with little or no application to reality,” Burgess-Solomon said.

### Cases Are ‘Challenging’ for NLRB

Although the board has not ruled on the legality of prohibiting employees’ use of e-mail for organizing or other Section 7 purposes, in cases regarding discriminatory prohibitions, NLRB has looked at the number of employees with computers in their work area and the frequency of computer use to determine whether the computer is a work area and therefore a place where union solicitation can take place, according to Burgess-Solomon.

In most of the cases that have made their way to NLRB, the problem has been employers limiting e-mail communication for organizing in workplaces where there are no other limits on employee use of e-mail or where there is widespread access to computers and no significant, enforced prohibitions to accessing computers for personal reasons, both Burgess-Solomon and Fischl said.

While employers can limit e-mail sent from outside organizers to employees, things become more challenging when an employee forwards an e-mail from an outside organizer or when an e-mail is printed on a company-owned printer, Burgess-Solomon said. Employers may argue that there are all sorts of potential problems with mass mailings, but there needs to be something more than speculation for such mailings by

employees or union members to be banned, she said.

### Personal v. Business Use

“The cost of monitoring e-mail access or policing how much personal online work is being done on company computers is very expensive and difficult to perform,” said Julia Akins Clark, general counsel of the International Federation of Professional and Technical Engineers in Washington, D.C.

Employees have increased productivity when they are allowed to do online activity at work, Clark said. In addition, absenteeism is decreased when employees can take care of some personal matters online while at work instead of taking time to do it in person. Nonbusiness use of computers occurs at all levels of the company, and further weakens an employer’s justification for limiting access, she noted.

Adding to the blurring of lines on personal and business use of computers is that employers frequently use e-mail as their primary means of communicating with employees about business matters, work assignments, and activity tracking, she said.

“Employees in these workplaces typically conduct both business and personal conversations, transactions, research, and other projects rapidly and cheaply, dozens or even hundreds of times a day from their computer workstations,” Clark said. As a result, employers find it difficult to draw the line between what is permissible and what is impermissible.

The lack of consistent monitoring and policies, the attorneys agreed, weakens an employer’s position when attempts are made to stop union solicitation.

“The truth is,” Clark said, “I can always find discriminatory treatment of e-mail usage when solicitation questions are raised. If that’s the case, then maybe it is time to question whether that’s even the proper question to ask or whether the NLRB needs to consider a new way of thinking about solicitation.”