



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Contract Settlements

Terms of settlements reported May 25-June 7 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4021.

Statewide Contract for 14,000 CHW Workers Would Enhance Employment, Income Security

Catholic Healthcare West and the Service Employees International Union have reached what the union called an “historic” first statewide contract covering about 14,000 health care workers at more than two dozen facilities throughout California, SEIU announced June 2.

If ratified in voting scheduled to conclude June 11, the four-year contract would improve wages and benefits, provide employment and income security, and grant caregivers a voice in staffing issues. The changes will help the hospitals retain and recruit workers and improve patient care, SEIU said.

Employees would receive wage increases averaging 20 percent over term, with some getting a minimum increase of 16 percent and others getting a maximum increase of 50 percent, the union said. All employees would be placed on a wage scale and would be paid based on years of service and classification. However, CHW disagreed with the union’s description of the wage package, saying the agreement would provide increases of approximately 20 percent in wages and benefits over term.

A new \$4 million training and upgrading fund would be the first ever for health care workers on the West Coast, SEIU said. The jointly administered fund would allow workers to go to school to train for new jobs as well as advance in their careers. Improvements in tuition reimbursement and “educational leave days” workers could use to attend classes also would be provided.

Employees would be allowed to transfer to any CHW facility where SEIU represents workers, and CHW agreed to make every effort to avoid layoffs for the duration of the contract.

The agreement also would provide a “strong voice” for caregivers in improving staffing levels, with disputes being resolved by a neutral third party, the union said. “CHW has come to realize that hospitals serve patients better when frontline health care workers have a voice in setting appropriate staffing levels and other patient care decisions.”

Hospitals would continue to provide 100 percent employer-paid health insurance, and the parties agreed to negotiate a retiree health care plan by 2006. The contract also would improve pension benefits.

Four-Year Contract at Maine Shipyard Cuts Employee Health Premiums, Raises Pensions

Members of the International Association of Machinists employed at Bath Iron Works in Maine May 30 ratified a new four-year contract that calls for wage increases of 13 percent over term, a doubling of employer pension contributions, and redesigned health plans.

Covering about 4,500 production workers, the contract raises hourly pay 3 percent in each of the first three years and 4 percent in the fourth year. Average hourly pay under the prior agreement was \$17.91, IAM said.

Hourly employer pension contributions rise from 65 cents to 80 cents in the first year, 95 cents in the second year, \$1.10 in the third year, and \$1.30 in the

final year. Pension benefits increase from approximately \$53 per month per year of service under the prior agreement to \$67 per month per year of service in the first year; future increases will be determined later, the union said. A 401(k) plan is expanded to allow employees to contribute up to 50 percent of their pay, and the company will continue to provide a 35 percent match of employee contributions up to 5 percent of pay.

The union agreed to limit health coverage to two plans, a physician open access plan and a primary care physician plan. IAM also agreed to increased copayments for services in exchange for reducing the share of employee premiums to approximately 9 percent of premium costs, down from 12 percent under the prior agreement. Employee premiums for family coverage will be \$24.99 per week, down from \$36.99 per week under the most comprehensive plan in the old contract but up from \$21.53 per week under another plan.

Union negotiators also elected not to take a proposed \$1,000 contract signing bonus, choosing instead to use the money to keep premium costs down. The "skyrocketing" cost of health insurance has "a great effect on how you move money at contract time," IAM said.

Other changes increase life insurance benefits from \$25,000 to \$35,000 and provide "strong" improvements in contract language covering overtime, scope of work, new technology, and subcontracting, the union said.

Harvard to Boost Funding For Child Care, Training Plans

A new three-year contract that would raise pay 6.5 percent over term and include improvements in child care, training, and education

benefits was reached May 27 by Harvard University and the Harvard Union of Clerical and Technical Workers, an affiliate of the American Federation of State, County and Municipal Employees.

If ratified in a June 17 vote, the agreement would provide about 4,800 employees with wage increases of 2 percent Nov. 15, 2 percent July 1, 2005, and 2.5 percent July 1, 2006. Nearly all employees also would receive an additional 2.2 percent increase a year in progression pay, according to the university. Under the current contract, which expires June 30, employees earn an average of \$37,000 to \$38,000 a year.

A child care program would be expanded to provide assistance for the cost of after-school programs for employees' teenage children. The university's contribution to the child care fund would go from \$325,000 to \$525,000 over term.

Harvard also would contribute \$300,000 toward job training in the first year, \$315,000 in the second year, and \$335,000 in the third year, the university said, adding that the funds also would be used to prepare for new work systems and work redesign. University payments to an education fund, which reimburses employees 50 percent of the cost of courses, would increase from \$140,000 to \$230,000 over term.

The tentative agreement also calls for the university to provide no-interest loans for employees who need assistance in obtaining rental housing and to develop a new performance evaluation system with input from supervisors, peers, and clients.

Job security would be enhanced through development of joint labor-management "case management" of employees facing layoff. The parties would collaborate to find new jobs

while employees would continue to receive pay for up to three months.

Health coverage and pension benefits would remain unchanged under the new agreement.

UNITE Members OK Contract For Workers in Men's Apparel

About 7,000 apparel employees represented by UNITE are covered by a new national master contract with the Clothing Manufacturers Association of the USA Inc. that provides a combination of general wage increases and cash payments.

The three-year contract, ratified May 14, provides production and warehouse employees with a 25-cent-per-hour increase Sept. 27, a \$500 lump-sum bonus Oct. 3, 2005, and a 20-cent-per-hour wage increase Oct. 2, 2006, UNITE said. Currently, the average hourly wage rate is about \$10.50, although actual rates vary by location and job classification.

Pension, vision, and disability benefits also will increase under the contract, according to UNITE.

"We are very pleased that we have been able to negotiate a reasonable and fair agreement which allows the industry to stay competitive while providing our employees with a good wage and benefit package," CMA said. "The history of cooperation between the union and the industry continues to help sustain a domestic suit industry."

"While most of the news about apparel and textile manufacturing in the USA is bad, we relish this opportunity to give American workers this good news," UNITE said.

The agreement applies to about 60 companies that manufacture men's tailored clothing at locations around the country.

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Legal Developments

Firm Illegally Removed Postings From Bulletin Board, Court Decides

A company violated federal labor law by removing union postings from a workplace bulletin board, in breach of a collective bargaining agreement, during the run-up to a decertification election, the U.S. Court of Appeals for the Seventh Circuit ruled June 3 (*ATC Vancom of Cal. L.P. v. NLRB*, 7th Cir., No. 03-3476, 6/3/04).

The parties' contract permitted the union to post notices on a bulletin board located in the break room. A union steward in November 2000 filed a decertification petition and then took action on behalf of both the incumbent union and a second union that sought to represent workers by posting notices from both unions.

In December 2000, a manager removed notices of the incumbent union, stating she had been advised by corporate officials that the company must remain neutral regarding the upcoming election. After the second union won the election in January 2001, the incumbent union filed an unfair labor practice charge. NLRB ruled that the employer violated the National Labor Relations Act by interfering with the union's communications with workers and by eliminating posting privileges.

An employer violates NLRA Section 8(a)(1) "when it interferes with its employees' right to communicate with their statutory representative" and violates Section 8(a)(5) when it unilaterally terminates or modifies a bargaining contract during its term, the court said.

The employer, which receives state funds, argued that the board erred in rejecting its defense that the California Neutrality Statute (Cal. Gov't Code § 16645) required the company to revoke the union's right to post notices on the bulletin board.

The appeals court found the company's argument "wholly without merit" because the state neutrality law "explicitly provides that it 'does not apply to an expenditure made prior to June 1, 2001, or to a grant or contract awarded prior to January 1, 2001.'" It was undisputed that the company removed the union notices and changed the bulletin board policy in December 2000, the court said.

The company also argued that it had a good-faith reason to abide by

the state law because no court had yet ruled on whether it was preempted by NLRA. However, the court decided that "a lack of guidance of the federal preemption issue is insufficient to support a good-faith belief that a law might cover conduct that took place before its effective date."

The Ninth Circuit in April affirmed a lower court ruling that portions of the state law were preempted (*Chamber of Commerce of the U.S. v. Lockyer*, 364 F.3d 1154, 174 LRRM 2876; 9 COBB 53, 4/29/04).

Dismissal of Petitions Filed Shortly After Recognition to Be Reviewed

The National Labor Relations Board June 7 voted 3-2 to review regional directors' dismissals of two decertification petitions filed a few weeks after two companies recognized a union pursuant to a neutrality agreement and card-check procedure (*Dana Corp.*, 341 N.L.R.B. No. 150, order 6/7/04).

The two companies entered into neutrality and card-check agreements with a union. Both firms recognized the union as the bargaining representative of employees after a neutral third party confirmed that the union had majority support. Within a few weeks, employees at both companies filed a decertification petition.

In both cases, an NLRB regional director dismissed the decertification petition by applying the recognition bar, which bars decertification petitions and petitions by rival unions for a reasonable period of time following an employer's voluntary recognition of a union based on a demonstration that it has the support of a majority of employees in the unit.

The board acknowledged the recognition bar precedent but said it is not based on cases such as these where the union and the employer entered into an agreement before seeking authorization cards. The increased use of recognition agreements in recent years, "the superiority of Board supervised secret-ballot elections," and the importance of employees' right to choose or reject union representation "warrant a critical look at the issues raised" in the requests for review filed by employees who filed the decertification petitions, the board concluded.

News in Brief

New York City Accords Ratified

Members of 1199 SEIU, New York's Health and Human Service Union, ratified a three-year extension of two contracts with the League of Voluntary Hospitals and Homes of New York that cover about 71,500 workers, the union said May 28. Under the accords, employees give up 1 percent of a 4 percent wage increase that was to take effect June 1, and the amount will be diverted to the 1199 SEIU National Benefit Fund (9 COBB 55, 5/13/04). Meanwhile, American Federation of State, County and Municipal Employees members ratified a three-year agreement covering about 121,000 New York City municipal employees, the union said June 2. The agreement provides wage increases and lump-sum payments, but lower pay and benefits for new hires (9 COBB 49, 4/29/04).

White-Collar Jobs Evaporating

The increasing movement of U.S. high-tech and other white-collar work overseas is reducing job opportunities for college graduates, former manufacturing workers who have retrained, and skilled professionals, AFL-CIO's Department for Professional Employees said June 4. The harmful impact of offshoring is shown by downward revisions in Bureau of Labor Statistics projections for white-collar job growth and by private studies predicting rapid increases in outsourcing of telecommunications, financial services, and other nonmanufacturing jobs, DPE said. According to BLS employment projections for the 2002-2012 period, the fastest-growing occupations are almost all low-paid, less-skilled jobs.

HMO Rates Will Increase in 2005

Preliminary 2005 health maintenance organization premium rates will increase almost 14 percent, continuing a trend of double-digit health care cost increases, according to data released June 3 by Hewitt Associates. However, premium rates are showing signs of moderation: Hewitt data show that initial HMO rate increases for next year are averaging 13.7 percent, compared with 17.5 percent at the same time last year. The data are available at <http://was4.hewitt.com/hewitt/resource/newsroom/pressrel/2004/06-03-04.htm>.

Facts & Figures

Productivity Grew Faster in First Quarter Than First Reported

Labor productivity among nonfarm businesses grew faster in the first quarter of 2004 than initially reported, and unit labor costs have risen in two consecutive quarters for the first time in four years, according to figures released June 3 by the Bureau of Labor Statistics.

Productivity, or output per hour, increased at a seasonally adjusted annual rate of 3.8 percent at nonfarm businesses in the first quarter, faster than the 3.5 percent reported in BLS's preliminary estimate in May. The higher productivity was the result of a larger upward revision in output than in hours worked.

Revised data also show that unit labor costs—a closely watched indicator of wage pressure that measures the amount of labor compensation to produce one unit of output—rose 0.8

percent in the first quarter, compared with the preliminary figure of 0.5 percent. The revision was the result of a 4.6 percent increase in hourly compensation—larger than the initial estimate of 4 percent—which offset the revised gain in productivity.

Revised figures for the fourth quarter of 2003 show that unit labor costs increased 1.7 percent. Initially, BLS had estimated that unit labor costs were flat in the fourth quarter.

The last time unit labor costs rose in two consecutive three-month periods was during the last quarter of 1999 and the first quarter of 2000.

Unit labor costs fell 2.5 percent in 2002 and had declined in four of the five quarters preceding the final three months of 2003, a trend that analysts attribute to a generally weak labor market. Even with the gains, unit la-

bor costs were down 0.9 percent for all of 2003 and still are 0.8 percent below the level of the first quarter a year ago.

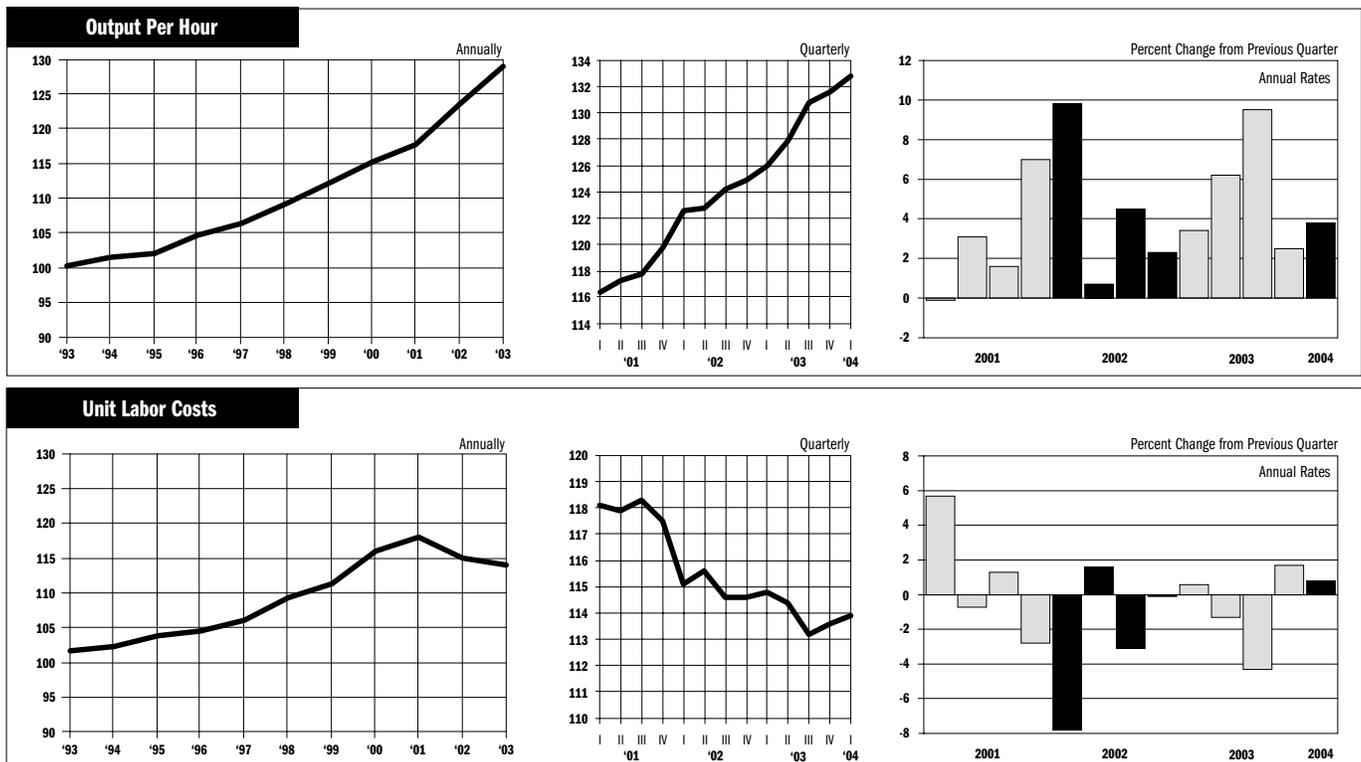
In the manufacturing sector, productivity growth for the first quarter was revised downward from 3.1 percent to 2.9 percent as hours worked increased from the initially reported 2.7 percent to 2.8 percent and output growth was unchanged at 5.8 percent. Growth in manufacturing unit labor costs was revised upward from 2 percent to 3.1 percent due to a change in hourly compensation growth from 5.2 percent to 6.2 percent, according to BLS.

The productivity report for the first quarter of 2004 is available at <http://www.bls.gov/news.release/pdf/prod2.pdf>.

Productivity and Costs, First-Quarter 2004

Seasonally Adjusted, 1992 = 100

Nonfarm Business Sector



Source: Bureau of Labor Statistics

A BNA Graphic/cbn412g1

Arbitrating the Contract

Severance Not Triggered By Shutdown But No Job Loss

An employer that had two plants about nine miles apart closed one plant and transferred all employees from that plant to the other. Employees who had worked at the closed facility were represented by the International Brotherhood of Teamsters, while employees at the remaining plant were represented by the International Union of Electronic Workers. The Electronic Workers won a representation election held for all employees at the remaining plant, and was certified as the exclusive bargaining representative for the employer's entire workforce.

After the election but prior to certification, the Teamsters filed a grievance claiming severance benefits for the relocated workers. The union's contract provided that employees "who lose their jobs permanently as a result of a full or partial plant closing or other permanent layoff and due to no fault of their own, will receive the severance benefits described herein."

The union argued that because the plant closing occurred during the contract term, and workers permanently lost their jobs because of the employer's action, the employees were entitled to severance benefits.

The employer argued that the employees were not entitled to severance benefits because they continued to work for the company, albeit at a different location, and thus they had not lost their jobs.

Award: An arbitrator denied the grievance (*Steris Corp.*, 117 LA 1447 (Draznin, 2002)).

Discussion: As a threshold matter, the arbitrator ruled that the dispute was arbitrable because the Teamsters filed the grievance in a timely manner, before the board certified the election results, and the grievance concerned a matter that arose while the union's contract was in effect.

Turning to the merits, the arbitrator agreed with the employer that the employees had not suffered a "permanent job loss" that would entitle them to severance pay under the contract. She pointed out that all employees of the closed plant were shifted to the other plant without loss of work, position, or status.

The arbitrator rejected the union's argument that relocation of the workers was tantamount to permanent job loss because benefits under the new contract were inferior to benefits under the Teamsters accord, saying this loss "was occasioned not by the plant closing but rather by the Teamsters loss of the representational election."

Pointers: Other arbitrators have wrestled with the issue of whether employees affected by department or plant closure or sale should get severance pay even though they continued to work.

One arbitrator found that employees of a division sold to a purchaser that hired them as its own employees at the same facility were entitled to severance benefits because under the contract they were "severed through no fault of their own" (*Atlantic Richfield Co.*, 91 LA 835 (Nelson, 1988)).

Employees who were transferred to other jobs when their former jobs were abolished due to technological changes were not entitled to severance pay because they had not been "displaced" pursuant to the contract, another arbitrator ruled (*Celanese Corp.*, 13 LA 501 (Jaffee, 1949)).

Employees were entitled to severance pay after their plant was sold, even though the purchaser agreed to employ them for at least two years, one arbitrator held (*Ward Foods, Inc.*, 61 LA 1032 (Dash Jr., 1973)).

Another arbitrator ruled that employees who accepted employment with a successor employer after a merger were not entitled to severance pay, even though they lost contract rights and benefits (*Dillingham Shipyard*, 86 LA 811 (Tsukiyama, 1986)).

In another case, an arbitrator awarded severance pay to employees of a closed department who were allowed to use their seniority to bump into other jobs that paid less (*Allegheny Ludlum Steel Corp.*, 86 LA 492 (Mullen Jr. 1986)).

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 severance pay, see CBNC chapter Severance Pay at 10:1701, and for sample language, see five chapters beginning with Severance Pay in General at 200:5301.

Conferences

Arbitration for Advocates, July 14-16, Anchorage, Alaska; price: \$750. Presented by Federal Mediation and Conciliation Service Institute, (202) 606-3627.

Negotiating Labor Agreements: New Strategies for Achieving Better Collective Bargaining Outcomes, July 14-15, Sept. 9-10, Cambridge, Mass.; price: \$1,950, with group discounts. Presented by the Program on Negotiation at Harvard Law School, (781) 239-1111.

Contract Language: Working Within It, Making It Work for You, July 26, Ithaca, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (607) 255-9298.

Labor-Management Negotiations, July 26-30, Washington, D.C.; price: \$700. Presented by Federal Mediation and Conciliation Service Institute, (202) 606-3627.

Labor Relations Law, July 27-28, Ithaca, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (607) 255-9298.

Current Developments in Employment Law, July 29-30, Santa Fe, N.M.; price: \$995. Presented by ALI-ABA, 800-253-6397.

Interest-Based Bargaining, July 29-30, Ithaca, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (607) 255-9298.

Labor Relations Training for Managers and Supervisors in a Unionized Setting, Aug. 3-4, Milwaukee, Wis.; price: \$895. Presented by the University of Wisconsin-Milwaukee, (414) 227-3200.

Dealing With the Union—With Confidence!, Aug. 16-19, Milwaukee, Wis.; price: \$1,595. Presented by University of Wisconsin-Milwaukee, (414) 227-3200.

Labor Law for Non-Lawyers, Sept. 13-14, Milwaukee, Wis.; price: \$995. Presented by University of Wisconsin-Milwaukee, (414) 227-3200.

BNA Interview

Appeal of Coalitions Grows As Health Care Costs Soar

Many jointly trustee health and welfare funds now view health care purchasing coalitions as a viable and cost effective way to slow the steep rate of increase in health care costs that have stymied the efforts of many contract negotiators.

As defined by the International Foundation of Employee Benefit Plans, a health care coalition is a membership organization established by purchasers, whether employers or union-management jointly administered funds, to use their collective purchasing strength to negotiate more effectively with medical care providers and insurers. Coalitions offer patient volume and administrative efficiencies in exchange for negotiated fees.

One such group is the Labor Management Health Care Coalition of the Upper Midwest, headquartered in Minneapolis. Using group purchasing leverage to provide the highest quality care at the lowest price, the coalition has consistently gotten better rates for the same or better coverage than individual health-welfare funds, Coalition Executive Director Sean Kenney told BNA in a May 26 interview.

Strength in Numbers

"We are simply a group purchasing cooperative," Kenney said, explaining that the coalition can negotiate a far lower price for services for several hundred thousand workers instead of for an individual health-welfare fund. The bigger the coalition, the more clout it has in bargaining with other health care providers.

"Our approach is to get upstream from collective bargaining and work on the purchasing side," Kenney said. "This is a win for contractors and their workers."

Trustees of health-welfare funds established under the Taft-Hartley Act are free to take a look at rates for services available through the coalition and compare them with their funds. "The decision is in their lap," Kenney said, explaining that participation in the coalition does not encroach on a plan's autonomy.

Established in 2001, the coalition initially was composed of construction industry health-welfare funds in Minneapolis and St. Paul, Minn., and now has expanded to include similar funds in the rest of Minnesota, other states, and in other sectors. The coalition now has 32 health-welfare funds covering about 400,000 workers and their dependents as participants.

Kenney said he expects that by the end of this year, 35 funds covering about 500,000 employees and dependents will be participating in the coalition. Participants will include funds in the construction and retail food industries and in the public sector, including education.

In its first year, the coalition focused on reaping savings from such "low-hanging fruit" as prescription drug costs, which have experienced the steepest price increases and therefore were most likely to provide savings from group purchasing, Kenney said. The coalition then moved on to negotiating lower rates for dental and vision services.

Best Outcomes, Best Cost

The coalition is focused on negotiating "the highest quality for the lowest cost," Kenney said. Health care providers are evaluated for refusing to provide allegedly "unnecessary care" and for registering the highest number of "correct outcomes." The lowest fee for a heart bypass operation may turn out to be the most expensive if the operation is not performed correctly, Kenney said, adding that construction workers and their employers know how expensive "re-work" can be.

Managed care is "rightly viewed" as restricting an employee's choice of health care to save money, Kenney said. "Our model is to restrict [an employee's] choice to get a better quality outcome." Experts agree that between 30 percent and 40 percent of the total outlay for health care is for ineffective or poor quality services, he noted.

As the coalition has matured, its focus has shifted to addressing issues

underlying the fact that 20 percent of medical cases account for 80 percent of medical costs, according to Kenney. These cases typically arise in four areas: cardiac care, organ transplants, cancer treatment, and high-risk pregnancies.

Because cardiac surgery has the highest net profit of any medical specialty and is the largest cost item of the four, the coalition decided to target this area first, Kenney said.

Health care consultants have helped the coalition develop quantifiable measurements to assess cardiovascular providers and grant performance certification, Kenney said. An evaluation of 13 open-heart surgery centers in Minnesota found that only two meet the coalition's criteria for providing significantly better care in terms of making the correct initial diagnosis, eliminating unnecessary procedures, and having the lowest number of post-operation complications.

Alaska Group Holding Down Costs

Another health care coalition in Alaska, the Health Care Cost Management Corporation, started in 1994 and now has 22 participating organizations covering more than 60,000 workers and members of their families, according to Dave Ford, the group's president. Ford also is the business manager for Bridge, Structural and Ornamental Iron Workers Local 751 in Anchorage.

Health care costs continue to climb, Ford said, "but not as much as they would have risen without our negotiated discounts." This means a greater percentage of wage and benefit increases negotiated in collective bargaining agreements can be allocated to wages.

One of the largest health care purchasing coalitions is the Delaware Valley Health Care Coalition, which covers all of Pennsylvania and parts of New Jersey. Founded in 1995, the coalition has 121 participating health care funds covering about 1,858,000 workers and dependents, according to coalition documents.



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A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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FMCS Labor-Management Relations Conference

Discussions of challenges facing contract negotiators, the need for mediation services, the value of labor-management cooperation, costing-out the contract, and arbitration of attendance control programs were featured at the 12th National Labor-Management Conference, sponsored by the Federal Mediation and Conciliation Service in Chicago June 2-4.

FMCS conference reports on bargaining in several industries will appear in the COBB issue dated June 24.

Globalization, Technology Among Challenges Facing Negotiators, FMCS Head Tells Meeting

The elimination of economic borders, technology, and changes in attitudes about collective organizations are some of the outside factors driving collective bargaining today, according to Federal Mediation and Conciliation Service Director Peter J. Hurtgen.

He told those attending the agency's biennial labor-management conference that the meeting's theme was "challenges and opportunities for a changing global economy." At the same time, he acknowledged that "the reality is that it is mostly challenges" that employers and unions are facing, adding that this is probably the most difficult time for labor relations he has seen in his 38 years of work in the field.

The situation is further complicated by the presence of societal changes that negotiators cannot control, Hurtgen said.

The collective bargaining process arose as a way for management and labor to establish the terms of employment, Hurtgen said. However, now the elimination of economic borders not only affects trade in products and services, but also labor markets. As a result, parties may find during contract negotiations that their true adversary is not across the table, but across an ocean.

"If we are to deal with the effects [of globalization] in our workplaces, in our society . . . collaboration is going to have to take on a new level of activity," Hurtgen said.

Conference coverage by Eric Lekus and Mike Bologna.

Technology Seen as Friend, Foe

Improvements in technology also are changing how, when, and where people work, Hurtgen said. Although employers are adopting new technology to improve their productivity, companies also must deal with the effects of technology on the competitive marketplace. Technology "is your friend or enemy depending on how you use it and how competitors use it," according to Hurtgen.

There also has been a change in attitudes among the general public that favors the rights of the individual over the rights of representational entities such as unions, governments, and churches, Hurtgen said. This shift in values makes it harder for negotiating parties to generate support for common positions.

Although Hurtgen did not identify health care as an issue of societal change, he said it is another issue that negotiators cannot control. Health care costs were a dominant issue in the recent four-month strike and lockout in Southern California that pitted the United Food and Commercial Workers against three supermarket chains (9 COBB 25, 3/4/04), as well as in separate negotiations between the Communications Workers of America and Verizon Communications Inc. (8 COBB 109, 9/18/03) and SBC Communications Inc. (9 COBB 61, 5/27/04).

Bargainers cannot change trends toward rising health care costs, the system of health care delivery, or the quality of health care, Hurtgen said. They only can try to agree on solutions for their individual workplaces that reflect those outside forces.

Battista Sees Controversy Over Card Checks

National Labor Relations Board Chairman Robert J. Battista and National Mediation Board Chairman Ed-

ward Fitzmaurice gave overviews of trends at their agencies.

Gaining in prominence is the increased demand from labor organizations for card check and neutrality agreements, Battista said. The card check process allows employers to voluntarily recognize unions as workers' exclusive bargaining representative based on the showing of signed authorization cards from a majority of eligible workers, while neutrality agreements provide that employers will not publicly encourage their workers to vote one way or the other during union organizing campaigns.

Sixteen states have adopted laws regarding neutrality. A California law prohibiting employers that receive more than \$10,000 in state funds from using that money to deter employees from unionizing recently was struck down by the U.S. Court of Appeals for the Ninth Circuit, which ruled that it was preempted by the National Labor Relations Act (9 COBB 53, 4/29/04). The case may well go to the Supreme Court, and likely will draw a lot of attention, according to Battista.

Another issue for NLRB arises from the fact that collective bargaining agreements increasingly are in place for more than three years, Battista said. He cited statistics that the percentage of contracts lasting four or more years has risen from approximately 14 percent in 1995 and 1996 to 27 percent in 2004.

Board precedent stipulates that decertification elections normally may be held only just before the expiration of a collective bargaining agreement, or every three years, whichever comes first. This is known as the "contract bar." NLRB now will have to consider whether it is necessary to change this policy, Battista said.

Fitzmaurice said one trend facing NMB has been the increased use of telephonic voting in representation campaigns. NMB was able to smoothly manage elections involving a 17,000-person bargaining unit and an 11,000-person bargaining unit in the same calendar week through the use of telephonic voting, he said.

Effects of Decreased Private Sector Unionization

Asked how the decrease in the percentage of union-represented workers in the private sector has affected their agencies, Hurtgen said FMCS is involved in fewer negotiations, although such talks have become more contentious because of the presence of outside factors such as globalization and health care. Agency mediators are having to become more creative in their search for solutions, and so are receiving training on the special concerns of specific economic sectors, such as defense and aerospace, health care, telecommunications, utilities, and construction, he said.

"Each of them has sufficiently different issues and different problems at the bargaining table that our mediators need to know more about those sections of the economy" and how they work, Hurtgen said.

Battista said with the drop in private sector union representation, NLRB has seen its case intake of unfair labor practice charges decrease from approximately 33,000 in the mid-1990s to 28,000 in fiscal year 2001 and a projected 30,000 in fiscal 2004. Requests for representation elections have remained steady at about 5,500 per year, while NLRB's workforce has decreased from 2,000 in fiscal 2001 to 1,875 currently.

Labor-Management Tensions High; Need For Mediation Services Strong, FMCS Finds

Labor-management relations across the country are highly polarized, and in many instances collective bargaining negotiations may require mediation services in order to come to successful fruition, according to a survey released at the conference by FMCS.

Survey respondents were asked about the likelihood of a strike, lockout, or arbitration without mediation efforts. Fifty percent of both private sector union and management respondents said a work stoppage or arbitration was likely if there were no mediation. In the public sector, 52 percent of management respondents and 62 percent of union respondents said such a result was likely without mediation.

The survey results demonstrate that "the collective bargaining process is not doing so well," Hurtgen said. "It needs help."

Professors Thomas Kochan and Joel Cutcher-Gershenfeld of the Massachusetts Institute of Technology conducted the survey, which was based on information from the FMCS case database, and involved 1,168 matched pairs of representatives from labor and management. Union and management representatives were asked whether or not they used FMCS services, their assessment of the services they received, the issues and challenges faced during negotiations, and the nature of collective bargaining relationships.

The survey is the third FMCS has conducted to fulfill the requirements of the Government Performance and Results Act.

Study Finds Tensions Rising

The researchers concluded that there is increased polarization in labor-management relations. The percentage of union respondents who said labor-management relations in general were very cooperative dropped from approximately 35 percent in 1996 to around 16 percent in 2003, while the percentage who said relations were somewhat or very adversarial increased from approximately 20 percent to 35 percent over the same time period, the survey showed.

The percentage of management respondents who said labor-management relations remained very cooperative dropped slightly from about 38 percent in 1996 to around 35 percent in 2003; the percentage reporting that relations were somewhat or very adversarial increased from approximately 15 percent to nearly 20 percent over the same time period, the report said.

Pressure on benefit costs is the most dominant issue in contract negotiations, the survey found, with falling real wage levels and concerns over work rule flexibility also serving as major points of contention. The report also found that there has been a decrease in the formation and maintenance of strategic partnerships following negotiations. Fewer profit-sharing, joint committees, team-based work systems, and other cooperative initiatives are being launched, it said.

"Less emphasis is placed on labor-management strategic partnerships, such as joint task forces, employee involvement in decisionmaking, or increased worker involvement in operation decisions to improve the workplace," according to FMCS. "Labor and management respondents reported increasing degrees of contentiousness," the agency said, adding that "a heightened

level of labor-management tension means a greater need for agency services to assist in resolving complex workplace problems.”

The percentage of contracts settling on time dropped from approximately 55 percent in 1996 to less than 45 percent in 2003, according to the survey. Respondents reported that more than 50 percent of contracts were settled more than one month after the previous agreement expired, compared with between 30 percent and 40 percent of contracts in 1996.

Familiarity with interest-based bargaining is high, but the preference for using this approach is declining, the researchers also found. For example, the percentage of union respondents who prefer to use interest-based bargaining has decreased from about 55 percent in 1996 to 38 percent in 2003; management's preference for using the approach dropped from 80 percent to 65 percent over the same time period.

FMCS Customers Pleased

Users of FMCS services in general have been happy with results, the survey found: 90 percent of management representatives and 92 percent of labor representatives have a positive view of FMCS's work in collective bargaining mediation. In addition, 84 percent of union respondents and 70 percent of management respondents rated FMCS mediation excellent or very good, and nearly all union officials and 96 percent of management officials would use FMCS mediation services again.

More Employers Should Embrace Value Of Labor Cooperation, Buffenbarger Says

Labor, management, and government officials need to take more active roles in promoting cooperative relationships that can improve the lives of working Americans and help make companies more competitive, International Association of Machinists President R. Thomas Buffenbarger said.

IAM has lost nearly 25 percent of its active membership over the last two years, according to Buffenbarger, who last month said that the union is down to 376,000 dues-paying members.

The 2001 terrorist attacks on the United States devastated two core IAM industries—airline transportation and civil aircraft production—Buffenbarger said. However, manufacturing in the United States has been struggling for years, and the recent economic recession has exaggerated the impact.

During the past seven years, several companies whose workers were IAM-represented have closed or shifted some of their operations to other countries, Buffenbarger said. “Each time a company takes the low road, the stock market cheers.” But while such employers may see short-term gains in their stock price from cutting labor costs, their long-term competitiveness suffers when they cut “the heart and soul, the brains and muscle, that built their enterprises.”

Government policies also have hurt manufacturing, Buffenbarger said. For example, despite the existence of a fund created after the terrorist attacks to provide airlines with financial support, the Bush administration in general has left the industry at the mercy of market forces. Even with concessions by workers and creditors, a number of airlines still are struggling to survive.

Need for Leadership

Buffenbarger called on business leaders to stop bashing unions and to instead realize that they can be critical business partners. In some cases, they have done so, he said. For example, Milwaukee Cyclinder Co. recently reached an agreement with IAM to create a high-performance work organization, and Harley Davidson has long had a strong partnership with the union. In addition, Boeing recently agreed on a contract for IAM-represented workers in St. Louis that defers some cost-of-living increases to build a trust fund that will help pay for retiree health care. Workers thus were able to help secure their retirement without adding to Boeing's financial liabilities.

“These examples show that opportunities do exist for labor and management to work together to help workers while keeping companies competitive,” according to Buffenbarger.

The IAM president also called on political leaders to take a leadership role in promoting labor-management cooperation, later telling BNA that up until now, “there have been no great shakers from either side of the aisle” on the issue.

Buffenbarger also called on labor to be more active. IAM has been critical of the National Mediation Board for refusing to release several thousand railroad employees from mediation, which would allow them to start the countdown toward a possible strike. Buffenbarger raised the possibility of civil disobedience to force the issue.

Number-Crunching Should Be Simplified In Contract Negotiations, Consultant Says

Determining the cost of a labor contract can be a challenging endeavor even for experienced labor and management negotiators, but a consultant specializing in collective bargaining issues told conferees that number-crunching does not have to be an exercise in frustration.

Moira Kelly, founder of Milwaukee-based Kelly Consulting LLC and an adjunct professor at Marquette University Law School, said contract negotiations often run into problems as the parties try to assign costs to wage and benefit proposals. In many cases these problems stem from inconsistent data sets used by labor and management, misinterpretations of the data underlying a proposal, and miscommunication between the parties. Other problems can occur when negotiators make the number-crunching overly complicated.

Strive for Simplicity

But the process does not have to be complicated or controversial, Kelly said, noting that there are several standard strategies for costing bargaining proposals. Bargainers simply should choose one and be willing to discuss inconsistencies with negotiators on the other side of the table when snags occur. Above all, negotiators should strive for simplicity, Kelly said.

“This is not hard, but it can get complicated if you start trying to over-think it or you start trying to make it perfect,” Kelly said. “It isn't going to be perfect. You have permission not to be perfect.”

There are four primary methods for analyzing costs within collective bargaining agreements, Kelly said. An-

nual costing reflects the total sum expended on a given benefit over a single year. Another analysis evaluates the cost of a particular benefit per person per year. Under a third analysis, a benefit is analyzed as a percentage of the overall organization's payroll. Finally, a "cents-per-hour" analysis reflects the total cost of a benefit divided by the total productive hours worked by all employees during a year.

Any one of these methods will provide negotiators with a basis for evaluating the cost of current operations against the cost of various proposals presented during the course of bargaining, Kelly said. For the sake of simplicity and efficiency, she suggested that bargaining teams pick one method and stick with it throughout the bargaining process.

After a method is chosen, bargainers need to cost out current operations, Kelly said. A key element in this process is to pick a starting date for the evaluation and gather the information needed for a complete annual evaluation. Bargainers also need to keep a source log. At all times, bargainers must understand the source of their data and where to find it again if and when the numbers come into question.

"Pick a method that works for you," Kelly said. "There are lots of different methods out there. But keep track of where your information is coming from."

Negotiators Should Use Technology

Kelly also suggested that negotiators use technology to assist them as they develop bargaining proposals and evaluate the other side's proposals. Once reliable data is entered into a spreadsheet, negotiators can generate dozens of hypothetical bargaining positions for evaluation before final bargaining proposals are crafted.

Finally, Kelly told negotiators to be aware of the analytical methods and data sources being used on the other side of the table. All too often, negotiators find themselves either offended or scratching their heads over a proposal presented to them, not realizing the proposal was based on a slightly different data set or time frame.

Effective bargaining can occur only when each side fully understands the implications of their bargaining positions and negotiators are able to evaluate multiple proposals on an apples-to-apples basis, Kelly said.

Arbitrators Turning to FMLA To Interpret Attendance Policies

Whether parties to collective bargaining agreements like it or not, arbitrators increasingly are providing contract interpretations of attendance control policies focused through the lens of the Family and Medical Leave Act, according to two labor law experts.

Martin Malin, a professor of labor law at the Chicago-Kent College of Law, said arbitrators increasingly are using external law in the form of FMLA as a tool when adjudicating grievances pertaining to attendance and leave policies. This trend brings additional unpredictability to the arbitration process, and also tends to frustrate representatives of both labor and management who viewed their bargaining agreement as their most reliable tool in an arbitration.

"We don't want to lose sight of the fact that we're still operating under a collective bargaining agreement," Malin said. "We don't want the FMLA tail to wag the dog of the collective bargaining agreement."

Traditionally, requirements created under negotiated attendance plans governed the grievance process when employers sought to discipline employees over alleged leave abuses, Malin said. If the issue had to be adjudicated, arbitrators used guidelines created under the collective bargaining agreement to make their decision.

In cases where there were no negotiated attendance plans, Malin said management used its authority to impose a policy on its workforce. In discipline matters, however, management was required to meet the "just cause" standard.

"What this leads to in the traditional realm of arbitration is a very fact-specific and a very relationship-specific inquiry into the existence of just cause for discipline or discharge," Malin said.

However, in recent years, arbitrators have begun using FMLA as a tool for contract interpretation, Malin said. Some contracts actually encourage such interpretation. But even in contracts containing scant or no references to FMLA, arbitrators are looking to the federal statute for guidance.

"What we are starting to see is the FMLA is being used as an independent basis for decision even if it is only marginally related to the contract," he said.

For example, the U.S. Court of Appeals for the Seventh Circuit recently supported this trend in a case involving Butler Manufacturing Co. (*Butler Mfg. Co. v. United Steelworkers of America Local 2629*), 172 LRRM 3129, 7th Cir., No. 02-1952, 7/17/03), Malin said.

In *Butler*, a union member was terminated for excessive absenteeism. The union filed a grievance, and an arbitrator found that several of the absences qualified as leave under FMLA. As a result, the arbitrator ordered reinstatement and back pay. The company then filed suit in federal court seeking to vacate the award. A judge agreed, finding that the arbitrator had acted outside of his contractual authority by interpreting FMLA.

But the appeals court reversed the district court and affirmed the arbitrator's finding. Among other things, the Seventh Circuit found that the collective bargaining agreement gave the arbitrator ample authority to take FMLA into account in his decision.

Negotiators Being More Explicit

Jeanne Vönhoff, a Chicago-based arbitrator and mediator, said she has seen a growing number of cases that consider FMLA's role in corporate attendance policies. While these cases run the gamut, a very large percentage touch on some of the same issues argued in the *Butler* case, she said. In this regard, the cases involve requests for a review of the grievant's absences to determine whether there had been FMLA coverage.

To avoid some of the confusion over FMLA's proper role in arbitrations, Vönhoff said labor and management negotiators are being more explicit about family leave when crafting their contracts.

"One of the things that is coming into play with the Family and Medical Leave Act is that more contracts are containing negotiated provisions governing attendance," she said. "This was an area unions tended to stay out of in the past."