



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

Highlights

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In the Manual

Illustrative Language

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Contract Settlements

Terms of settlements reported July 6-19 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4081.

Proposed Pact at *Boston Globe* Would Cut Worker Health Premiums, Relax Seniority Rule

The *Boston Globe* and its largest union July 12 reached a tentative five-year agreement that would provide a substantial reduction in employee payments for health care in exchange for union concessions on job security.

Members of the Communications Workers of America affiliate Boston Newspaper Guild, who have been without a contract for three and one-half years, will vote on the tentative settlement Aug. 5. The agreement would cover about 1,150 reporters, photographers, editorial, and advertising employees.

Increased employer contributions to the parties' jointly administered health fund should reduce employee payments of approximately \$45 per week for individual coverage by \$20 to \$24, and payments of \$115 per week for family coverage by \$45 to \$50.

The new contract "brings stability to our health fund, which was one of our primary goals," the union said.

Pay increases over the first four years of the agreement would total 7.5 percent, matching the pattern set with other unions at the newspaper; increases totaling about 2.1 percent would be payable in 2005. Average pay on the Dec. 31, 2000, expiration of the prior contract was \$1,075 a week. The newspaper last year implemented across-the-board increases of \$23 a week for 2001 and \$19 a week for 2002. The new agreement would provide retroactive payments of \$20 a week for 2003 and \$21 a week for 2004, and increases of \$12 per week Jan. 1, 2005, and \$12.50 July 1, 2005.

The union said it resisted attempts to remove bumping rights for current workers, but agreed that new workers would not have bumping rights for five years. In addition, the company would be able to exempt about half the bargaining unit from layoff by seniority if it could demonstrate "special skill or superior ability;" decisions would be subject to grievance and arbitration.

The contract also would remove a previous agreement by the union not to seek to organize workers at an electronic publishing subsidiary of the *Globe*, and would provide a new disability benefit for part-time workers.

Union Members Ratify Freightliner Accords Nearly Restoring Concessions Made in 2001

Members of the four unions representing employees at the Freightliner Corp. truck manufacturing plant in Portland, Ore., July 6 ratified three-year contracts, averting a possible strike.

Union members June 25 rejected a tentative settlement and planned to strike when prior contracts expired July 1 because the agreement did not restore pay and benefit cuts workers accepted in 2001, the International Association of Machinists said. Wage and pension increases in the new contracts come within a dime of restoring the concessions (6 COBB 123, 10/18/01).

The plant's 1,100 hourly employees are represented by IAM, the International Brotherhood of Teamsters, the Painters and Allied Trades, and the Service Employees International Union, which bargained jointly.

In the first year, workers represented by IAM, IBT, and PAT receive wage increases of \$1.50 per hour, while workers represented by SEIU receive increases of 75 cents per hour. All workers will receive 50-cent-per-hour increases in the second and third years. The majority of production workers earned \$20.55 per hour under previous contracts.

SEIU agreed to lower wage increases in the first year because of company claims that the janitorial work could be performed by subcontractors at lower costs, IAM said.

Workers will continue making the same monthly health care premium payments first required in 2001: \$40 for individual coverage, \$90 for families of two, and \$130 for families of three or more.

Under a provision workers considered especially important, employees can take short-term disability leave without tapping into sick leave or annual leave when they qualify for individual leave under the Family and Medical Leave Act, IAM said. However, the provision would not apply to FMLA leave to care for a family member. Weekly short-term disability pay increases from \$225 for the first four weeks and \$275 for the next 22 weeks to \$250 for the first four weeks and \$300 for the next 22 weeks.

Consultant to Review Need For Worker Health Payments

Kroger Co. will continue in 2004 and 2005 to pay the full health care premium for about 9,500 workers in Alabama, Kentucky, and Tennessee under a four-year contract ratified July 2 by United Food and Commercial Workers members.

In 2006 and 2007, an outside consultant will review the joint health

care trust fund. If the consultant finds employee contributions are necessary to maintain benefit levels, part-time employees will pay \$2.50 per week and full-time employees will pay \$5 per week for single coverage. Full-time employees eligible for family coverage will pay \$12.50 per week.

"This agreement represents a balanced solution that provides our associates with the high-quality health care and a competitive wage they need, at a cost that is fair to everyone involved," Kroger said.

Hourly pay for full-time employees at the top of the wage progression increases \$1 over term, and wages for part-time employees at the top of the scale increase 90 cents over term. Department managers will receive a \$1.30-per-hour increase over term.

Employees hired before July 5, 1987, are eligible for a sixth week of vacation, and workers hired on or after that date are eligible for a fourth week of vacation.

Pension contributions for courtesy clerks, which Kroger had sought to eliminate, are maintained, UFCW said, and contributions for other employees are increased. The contract also provides stewards with a paid day off for training.

Strike-Ending Maytag Accord Provides Lump-Sum Payments

A strike at Maytag Corp.'s Newton, Iowa, appliance manufacturing plant that began June 10 ended after United Auto Workers members July 2 ratified a new four-year agreement covering about 1,525 employees.

Issues still on the bargaining table when the strike began were wages, insurance benefits, pensions, and job security, according to the union.

The contract provides lump sums in lieu of base wage increases for the first three years of the agreement: a \$500 ratification bonus, another \$500 in January 2005, \$550 in June 2005 and December 2005, and \$600 in June 2006 and December 2006. A 2.5 percent base pay increase is payable in July 2007.

Covered workers also will continue receiving quarterly cost-of-living payments. However, some of those payments will be diverted to fund health reimbursement accounts, the union said. Employees will receive \$450 deposits in their accounts in 2005, \$500 in 2006, \$550 in 2007, and \$600 in 2008.

Employees currently have completely employer-paid health care coverage. Starting in 2005, employees will have to choose from a variety of plans requiring larger copayments, and beginning in 2006, employees will begin paying a share of health insurance premiums.

Monthly pension benefits per year of service increase from \$35 to \$36 initially, to \$36.50 in June 2005, to \$37.50 in June 2006, and to \$38 in June 2007. Retirees will receive a \$250 lump sum in January 2005.

SPEEA Unit at Boeing Approves Third Contract Offer

After rejecting two previous Boeing Co. offers for a contract to replace one that expired Feb. 19, members of the Society of Professional Engineering Employees in Aerospace July 7 ratified a four-year agreement the union described as the best that could be achieved without a strike at the company's Wichita, Kan., facility.

Just over 3,400 covered workers are provided with a \$1,800 ratification bonus and wage increases of 3.5

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News in Brief

percent in the first year, retroactive to March 5, with a guaranteed minimum of \$750 for individual employees; 3 percent in the second year, with a minimum \$500; and 3 percent in the third year, with no guaranteed minimum. In the fourth year, wage increases will be determined by Boeing's analysis of market conditions, but employees are guaranteed a minimum of \$750, the union said. The average annual salary of employees in the unit is \$59,000.

The contract also includes an incentive plan, under which workers in productive business units will receive additional payouts of between 2.5 percent and 5 percent of their annual pay, according to SPEEA.

Worker premiums for the traditional medical plan rise from 3 percent to 12 percent initially, and to 18 percent beginning in the second year. However, workers will be permitted to choose a no-premium plan with a similar range of coverage and similar copayments and deductibles.

Contractor, Hawaii Trades Sign 50-Year PLA for Housing Work

A total of \$5.1 billion in construction and renovation work for military housing in Hawaii is covered by a project labor agreement spanning 50 years that was signed June 29 by developer Actus Lend Lease and the Hawaii Building and Construction Trades Council.

The Ohana Stabilization Agreement applies to all construction and renovation work under the U.S. Army's Hawaii Residential Communities Initiative Project, covering seven military installations on Oahu, according to a copy of the agreement's executive summary obtained by BNA.

The initial, 10-year phase of the RCI project will cover approximately \$1.7 billion in construction or renovation of about 7,900 housing units and supporting community facilities. Agreement terms will remain in effect for another 40 years to coincide with the 50-year duration of Actus Lend Lease's ground lease. The agreement is subject to reopener negotiations on the 10th anniversary of the signing at the request of either party and every five years thereafter.

All contractors on the project must execute a letter of assent to be bound by the agreement and pay wages and benefits at prevailing rates required under the Davis-Bacon Act. Non-union contractors who sign the

agreement can hire an employee who has worked for that employer for an aggregate of six months in the past five years without going through the union hiring hall.

Job priority is given to Hawaii residents and workers referred through the unions' "Helmets to Hardhats" program. Employees of all contractors, whether union or nonunion, must pay union dues or fees, and strikes and lockouts are prohibited.

Employees hired directly by non-union contractors can request that employer benefit fund contributions be made to union benefit funds, be applied to the employer's own benefit funds, or be paid directly to the employees as additional wages.

Planned 2005 Pay Hikes Little Changed From 2004

Despite the improving economy, employers remain cautious in setting pay-increase budgets, Mercer Human Resource Consulting's 2004/2005 U.S. Compensation Planning Survey released July 14 shows.

U.S. employers plan to grant pay increases averaging 3.3 percent in 2004, and raises likely will average 3.5 percent in 2005, according to the survey based on responses from nearly 1,600 employers. This year's expected pay percentage increase is the same percentage employers granted in 2003, according to Mercer.

"The year 2005 will mark the fourth consecutive year that pay increases have averaged less than 4 percent," Mercer said. From 1996 through 2001, annual average pay increases were above 4 percent. In 2002, they dipped below 4 percent and have stayed there since.

Similarly, a survey released by the Conference Board June 23 said that despite this year's relative speed-up in economic growth, annual salary increases budgeted by U.S. companies for 2004 and 2005 average 3.5 percent, unchanged from last year.

For the second consecutive year, median salary increases remain below 4 percent for all employee groups, the data show. Last year, budgeted salary increases fell significantly below 4 percent for the first time in a decade, the board said.

Information on the Mercer report is available at <http://www.imercer.com/cps>, or call (800) 333-3070. The Conference Board report is available by e-mail at charles.peck@conference-board.org.

UNITE and HERE Merge

Two of the most activist unions in the labor movement—the Union of Needletrades, Industrial and Textile Employees and the Hotel Employees and Restaurant Employees—July 8 merged to become a union known as UNITE HERE. Composed of UNITE's 180,000 members and HERE's 260,000 members, the merged union is headquartered in New York City. UNITE President Bruce Raynor is general president of the new union.

Construction Pay Down Over Year

First-year wage and benefit increases in new construction bargaining agreements negotiated so far this year average \$1.38 per hour or 4 percent, compared with \$1.45 per hour or 4.3 percent for the same period last year, according to Construction Labor Research Council data released July 2. Lower average increases also were found in the second and third years of new agreements negotiated this year compared with a year earlier. This first bargaining report of the year from the research council was based on 89 contract settlements covering 102,524 union building trades workers. Contact CLRC at (202) 467-5680.

MARBA, CJA Extend Contract

The Carpenters and Joiners of America and the Mid-America Regional Bargaining Association July 1 agreed to extend by three years to May 2008 a contract covering about 30,000 workers in metropolitan Chicago. The extension will provide additional wage-benefit increases of \$2.65 per hour June 1, 2005, \$3 per hour June 1, 2006, and \$3.25 per hour June 1, 2007. "The agreement extension provides security for our members and their families and stability within the construction industry throughout Northeast Illinois," the union said.

CPI Up 0.3 Percent in June

The consumer price index increased 0.3 percent in June after seasonal adjustment, following a 0.6 percent increase in May, 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/cpi.nr0.htm>.

Facts & Figures

Employment Outlook Shows Improved Prospects Over 2003

Third-quarter hiring prospects show improvement over last year, according to projections from the 147 respondents to BNA's latest quarterly employment survey.

Job prospects for production and service workers have shown steady improvement, with 16 percent of employers planning to add new staff in the third quarter, up from 15 percent in the second quarter and 14 percent in the third quarter of 2003.

The outlook for office and clerical workers is not as promising. Nine percent of employers anticipate hiring office and clerical workers—a two-point decline from 11 percent for each of the first two quarters of this year but up two points from 7 percent for the third quarter of last year.

Hiring plans for technical and professional employees have dipped from 18 percent of employers in the second quarter to 13 percent in the third quarter. At the same time, how-

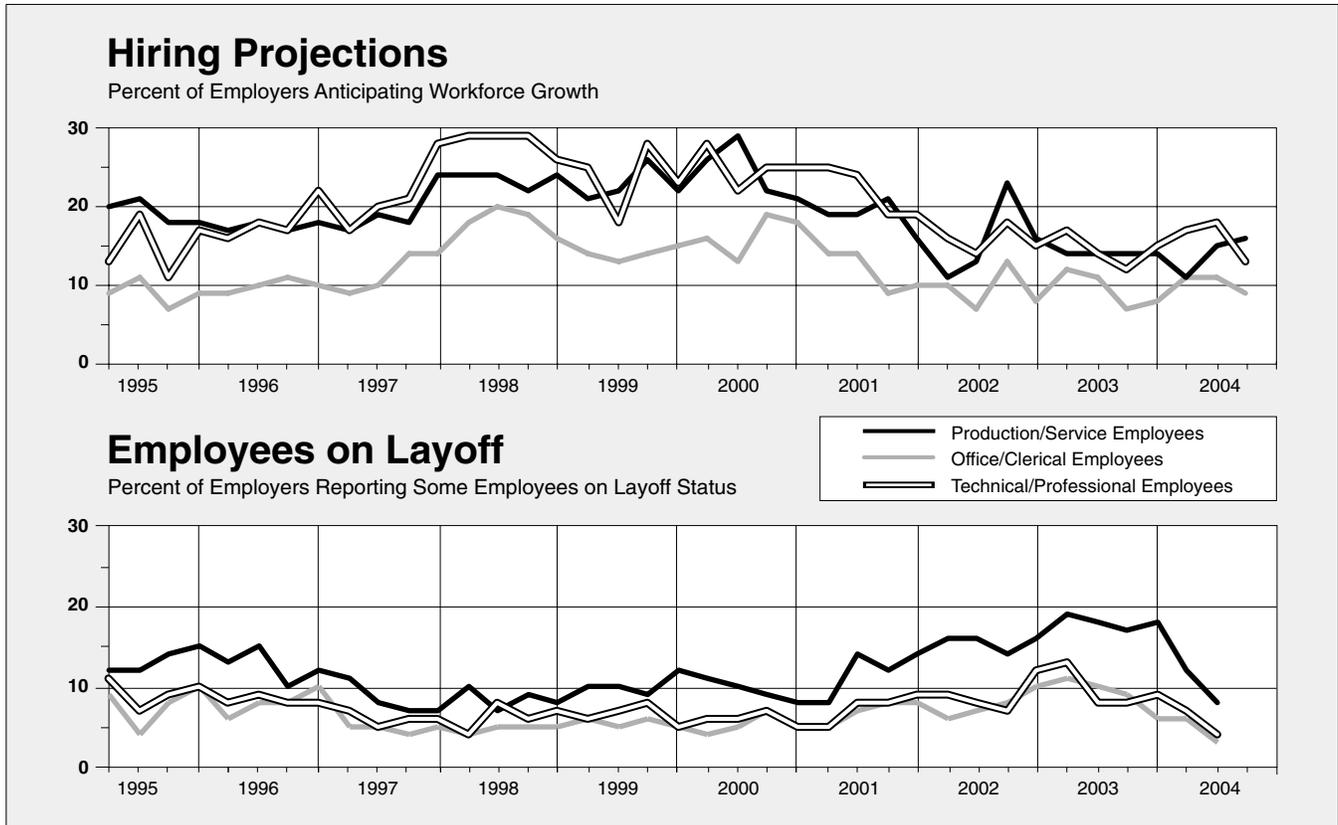
ever, projected job cuts in technical and professional staff now account for a smaller part of the overall employment picture for these employees. As a result, the percentage of employers with hiring plans for these workers outpaces the percentage planning cuts.

From the third quarter of 2003 to the third quarter of 2004, hiring projections for production and service employees have increased among large organizations (from 10 percent to 16 percent), while edging down marginally among small organizations (from 17 percent to 16 percent). By industry, the share of employers reporting hiring plans for production and service employees has climbed in manufacturing (from 21 percent to 28 percent) and nonmanufacturing (from 15 percent to 18 percent) but declined in the nonbusiness sector (from 7 percent to 2 percent).

Compared with the third quarter of last year, projected job cutbacks have diminished slightly for production and service employees (from 8 percent to 6 percent), office and clerical employees (from 7 percent to 5 percent), and technical and professional employees (from 8 percent to 5 percent).

Employer reports of workers on layoff have shown across-the-board declines from both the previous quarter and a year ago. Overall, 8 percent of employers reported workers on layoff in April and May of 2004. This represents a four-point decline from January and February and matches the lowest layoff figure in the last three years.

For more information, call BNA PLUS at 800-452-7773 or in Washington, D.C., call (202) 452-4323.



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Arbitrating the Contract

No Authority to Arbitrate Under Expired Agreement

In January, a union terminated a collective bargaining agreement that had expired three months earlier, but employees continued working without an agreement. In April, an employee grieved his firing after an argument with his supervisor. A new contract was ratified in July, and two months later the company held a meeting to hear the grievant's version of the events, but it refused to reinstate him.

The contract terminated in January allowed the employer to discharge employees for just cause, but allowed employees to challenge such action through a grievance procedure that culminated in arbitration.

The company argued that the arbitrator was not authorized to hear the grievance because the contract had not been in effect when the grievant was fired. The union had terminated the contract and had not made the successor contract retroactive to include the April incident, the company said, so it could not be compelled into arbitration.

The union countered that the parties had agreed verbally to extend the expired contract to cover grievances that arose between January and July. In addition, the union claimed the company consented to arbitration of such grievances as *quid pro quo* for securing the union's recommendation for ratification of the contract. Pointing to other grievances that arose during the January-July period and had been settled, the union argued that the company would not have settled those grievances unless it had felt an obligation to do so.

Award: An arbitrator denied the grievance (*Republic Waste Serv.*, 119 LA 1105 (Oberdank, 2004)).

Discussion: The arbitrator ruled that no matter what he thought of the merits of the grievance, he did not have the authority to arbitrate it. Arbitration "is a creature of contract and neither party can be forced to accept the Arbitrator's authority unless it has agreed to do so."

Both parties had admitted that there was no contract in effect in April when the grievant was fired and that the grievance did not involve any

events occurring or rights accruing while the contract was in effect, the arbitrator said. Thus, the company could not be compelled to arbitrate the dispute "unless that obligation is demonstrated by subsequent events," and "no compelling evidence suggests this is the case."

Both parties were represented by experienced negotiators who understood the importance of reducing an understanding to writing but inexplicably failed to produce evidence of an agreement to extend the expired contract or to make the new contract retroactive, the arbitrator said.

Further, the company's settlement of other grievances that arose between January and July did not prove the company had agreed to arbitrate all such disputes since the facts of those cases were not put into evidence and there was no way of knowing whether they involved circumstances that arose before the contract ended, the arbitrator concluded.

Pointers: One arbitrator similarly found that he did not have the authority to rule on the merits of a grievance involving an employee who was discharged for alleged misconduct during a strike that followed an impasse in negotiations for a new collective bargaining agreement. Like the arbitrator in *Republic Waste*, the arbitrator here ruled that the merits of a grievance cannot be considered where there is no contract in effect between the parties (*Walker Mfg. Co.*, 60 LA 269 (Simon, 1973)).

In contrast, another arbitrator ruled that a grievance protesting discipline occurring several months after a contract expired was nonetheless arbitrable. The employer had never refused to arbitrate any dispute under a post-expiration working agreement that it had implemented unilaterally, and thus the employer's conduct reasonably led the union to believe that the grievance would be decided on its merits, the arbitrator said (*Snow Mountain Pine Co.*, 94 LA 929 (Levak, 1990)).

The case discussion above is designed to illustrate how arbitrators resolve disputes. "LA" references are to BNA's weekly Labor Arbitration Reports. For sample language on arbitrability of grievances, see Conditions to Arbitration in General at 170:2601.

Conferences

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

Variable Pay, Aug. 26-27, Brookfield, Wis.; price: \$775 members, \$875 non-members. Presented by the International Foundation of Employee Benefit Plans, 888-334-3327.

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

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

Contract Language: Working Within It, Making It Work for You, Sept. 14, Buffalo, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Increasing Effectiveness in Arbitration, Sept. 21-23, Buffalo, N.Y.; price: \$1,395. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Labor Relations Law, Sept. 27-28, New York, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Effective Discipline: Best Practices for a Unionized Environment, Sept. 29-30, New York, N.Y.; price: \$995. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Arbitration for Advocates, Sept. 29-Oct. 1, Clearwater Beach, Fla.; price: \$750. Presented by Federal Mediation and Conciliation Service Institute, (202) 606-3627.

ADR: Effective Dispute Resolution Options, Oct. 1, New York, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Legal Developments

In Two Cases, NLRB Reverses *NYU*, Upholds Firing of Strikers

Graduate students at Brown University who serve as teaching assistants, research assistants, or proctors have a predominantly academic relationship with their school and do not have the right under federal labor law to bargain collectively, the National Labor Relations Board ruled July 13 (*Brown Univ.*, 342 N.L.R.B. No. 42, 175 LRRM 1089, 7/13/04).

The decision overturned NLRB's ruling in *New York Univ.*, 332 N.L.R.B. 1205, 165 LRRM 1241 (2000), which held that graduate assistants are employees within the meaning of Section 2(3) of the National Labor Relations Act and therefore have the right to organize (5 COBB 135, 11/16/00).

The three Republican appointees making up the board majority returned to the approach taken in *Leland Stanford Junior Univ.*, 214 N.L.R.B. 621, 87 LRRM 1519 (1974), that graduate student assistants primarily are students, not employees, and that they "have a predominately academic, rather than economic, relationship with their school."

The day after making the *Brown* decision public, the board July 16 remanded the remaining pending cases on the issue of graduate assistants to regional directors for further consideration consistent with *Brown*. The remanded cases involve organizing drives at Columbia, Tufts University, and the University of Pennsylvania, and campaigns at three different locations at the Research Foundation of the State University of New York.

After the United Auto Workers filed a petition to represent Brown graduate assistants, the private university argued to the regional director that the circumstances are different from those in *NYU* because most of its academic departments require graduate students to serve as a TA or RA to obtain their degree. The university also argued that the graduate assistants' pay constitutes financial aid.

The regional director ordered a representation election, but ballots from the December 2001 vote were impounded pending resolution of the university's appeal to the board.

Board Returns to *Leland Stanford*

In deciding to return to the pre-*NYU* status of graduate student assistants, the board said, "The Supreme Court has recognized that principles developed for use in the industrial setting cannot be 'imposed blindly on the academic world.'" The rationale of *Leland Stanford* is "wholly consistent with the overall purpose and aim of the [NLRA]," the board said.

The statute "was premised on the view that there is a fundamental conflict between the interests of the employers and employees engaged in collective bargaining," NLRB said. "The Board's longstanding rule that it will not assert jurisdiction over relationships that are 'primarily educational' is consistent with" NLRA's premise that it is designed to cover economic relationships.

The student-teacher relationship "is based on 'the mutual interest in the advancement of the student's education,' while the employer-employee relationship is 'largely predicated on the often conflicting interests' over economic issues," the board said, quoting *St. Clare's Hosp.*, 229 N.L.R.B. 1000, 95 LRRM 1180 (1977). "Because the collective-bargaining process is fundamentally an economic process, the Board concluded that subjecting educational decisions to such a process would be of 'dubious value' because educational concerns are largely irrelevant to wages, hours, and working conditions," NLRB said.

"Imposing collective bargaining would have a deleterious impact" on educational decisions by Brown faculty and administration, including class size, time, length, and location and the graduate assistants' duties, hours, and stipends, NLRB said.

"Although under a variety of state laws, some states permit collective bargaining at public universities, we choose to interpret and apply a single federal law differently to the large numbers of private universities under our jurisdiction," NLRB concluded.

Strikers Legally Fired

A company legally fired 42 economic strikers after a union clerical error resulted in failure to notify the Federal Mediation and Conciliation Service of the existence of a labor dispute that might lead to a strike, NLRB ruled June 30 (*Boghossian Raisin Packing Co.*, 342 N.L.R.B. No. 32, 6/30/04 [released 7/8/04]).

The parties' contract was extended while they negotiated for a new agreement, but after employees voted Sept. 22, 1999, to reject the company's "final offer," the union notified the company that it was terminating the extension contract as of Oct. 1. A union official indicated on a union form that he had complied with the National Labor Relations Act's requirement to notify both FMCS and the state agency of the dispute.

After employees walked out Oct. 1, the company notified the union that the strike was illegal because of failure to notify FMCS. The union discovered that the original FMCS notice letter was still in its files, and on Oct. 5, offered to return to work on the basis of the company's final contract offer. That same day, the company terminated 42 of the 45 strikers.

NLRA requires that before a union can strike it must notify "FMCS and any relevant state mediation agency of its intent to strike," the board said. "These provisions are mandatory and contain a severe penalty for failure to comply: employees who engage in a strike without the requisite notices being given forfeit their status as employees 'of the employer engaged in the particular labor dispute.'"

The NLRA provisions "are a clear expression of Congressional intent to minimize the interruption of commerce resulting from strikes and to further the use of mediation to assist parties in settling their labor disputes peaceably," and should be strictly enforced, the board said.

"Just as the employees may enjoy the benefits of competent union representation, so too the employees may suffer the consequences of negligent union representation," the board said.