



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Illustrative Language

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Contract Settlements

Terms of settlements reported July 20-Aug. 2 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4101.

Southwest Flight Attendants Negotiate Pay Hikes of 31 Percent Over Six Years

About 7,400 flight attendants at Southwest Airlines will receive wage increases averaging 31 percent over the six-year term of an agreement ratified by Transport Workers Union members in balloting concluded July 30.

Flight attendants will reach the top pay rate in 14 years, rather than 17 years under the prior contract, and for the first time are covered under a stock option plan. The attendants are the last employee group at the Dallas-based carrier to get stock options, the union said.

"Part of Southwest's competitive advantage has always been high flight attendant morale and high quality service," TWU said. "In recent years, low wages coupled with more strenuous working conditions brought about by the airline's expanded schedule and new post-9/11 requirements threatened that winning formula."

"Southwest Airlines would never negotiate a contract it could not afford," the carrier said. "We know that we need to find ways to be more productive and efficient. But we are not going to maintain our low-cost structure by paying employees poorly. We're going to pay them competitive wages and provide them competitive benefits and find ways to maintain our low-cost structure through increased productivity and other efficiencies."

Under other provisions, Southwest agreed to make matching contributions to flight attendants' 401(k) plans retroactive to June 1, 2002, the early retirement age is reduced from 60 to 55, and accumulated sick leave can be traded for medical insurance in retirement.

Double-time pay is provided for work on Thanksgiving, Christmas, and New Year's Eve; the per diem increases \$2.15 per hour to match the rate for pilots; and flight attendants hired since June 1, 2002, will be paid \$1,000 for graduating from training.

CNA Contract With 11 Catholic Hospitals Provides Equity Increases, Pension Portability

Equity pay increases, pension portability, and restrictions on mandatory overtime highlight a new three-year master contract for about 4,000 registered nurses at 11 Catholic Healthcare West hospitals in Southern California that was ratified by members of the California Nurses Association, the union announced July 23.

Within three years, the 4,000 nurses covered by the contract will be combined with another 4,000 nurses covered by a master contract in Northern California (8 COBB 92, 8/7/03) to create a statewide master agreement covering 8,000 RNs in 21 facilities, CNA said.

The Southern California contract provides across-the-board pay increases ranging from 18 percent to 29 percent over term, plus additional equity increases. Wage increases vary from institution to institution because of a wide disparity among wages at the different hospitals, according to CNA. While there was "substantial" progress in reducing the disparity, it was not elimi-

nated, the union said, adding that when the two contracts become one in 2007, its aim is to negotiate “uniform pay” among all facilities.

Pension benefit improvements, which track those negotiated for nurses in Northern California, make the pension plan one of the most generous for registered nurses in the country, CNA said. Pensions now will be portable so any nurses at a CHW facility who transfer to another CNA-represented CHW hospital will be able to take their full pension credits that have been earned.

Mandatory overtime is prohibited except in cases of a publicly declared emergency, situations involving mass casualties, or hospital emergencies such as a fire or building collapse.

Another key provision of the contract is an agreement that, in the event a hospital must cancel shifts, it will cancel those of registry nurses or “travelers”—nurses who travel to various locations to work for a period of time—before canceling the shifts of regular nurses. As with other hospitals throughout the country, the CHW facilities increasingly are relying on registry RNs and travelers and are giving them preference in scheduling over regularly employed nurses, the union said; the new provision will end that practice.

Other provisions call for employer-paid retiree health benefits for nurses who retire at age 55 and resolution of safe staffing disputes by a neutral third-party arbitrator.

IBEW Ratifies Contract Covering 11,300 SBC Workers

About 11,300 workers at SBC Communications Inc. in Illinois and Northwest Indiana will receive across-the-board base wage increases

of at least 12 percent over five years under a contract ratified Aug. 3 by members of the International Brotherhood of Electrical Workers.

Terms of the new contract are similar to those recently reached by the Communications Workers of America (9 COBB 83, 7/8/04).

Wages increase 2 percent effective June 27, 2004, 2.5 percent in June 2005 and June 2006, and 2.25 percent plus a cost-of-living adjustment in June 2007 and June 2008. The agreement also provides an immediate 1 percent lump-sum payment and payments of \$250 in July 2006 and \$375 in July 2007 and July 2008.

SBC workers will not have to contribute to their health care premiums, but co-payments for office visits and prescription drugs are increased.

Workers will be able to access jobs in SBC business areas affected by emerging technologies, including Fiber to the Premise, Voice over Internet Protocol, Wi-Fi and other wireless data technologies, and video and business data services.

The union said it quashed company proposals to outsource union duties, expand the probation period from six to 12 months, eliminate the meal allowance for overtime work, and require members to cross legal picket lines or face discipline.

SFW Follows Pattern, While Super Fresh Diverges

United Food and Commercial Workers members in Washington, D.C., and Baltimore, Md., last month approved four-year agreements with Shoppers Food Warehouse and Super Fresh. While the agreements largely track contracts reached in March for about 26,000 employees at Giant Food Inc. and

Safeway Inc. (9 COBB 37, 4/1/04), the Super Fresh accords include some differences in pay provisions.

Following the industry pattern, both the SFW and Super Fresh contracts call for continued employer-paid health care, although employee deductibles increase from \$100 to \$200, out-of-pocket maximums rise from \$2,500 to \$4,000, and prescription drug copayments rise.

In addition, new hires will be covered under a health care plan that does not provide dependent coverage for part-time employees and provides lesser benefits than current employees receive. However, new hires will be eligible to move to the same health care plan provided to current workers after six years of service.

Following the Giant and Safeway agreements, the SFW contract, covering about 6,000 workers and ratified July 6, provides over-term pay increases of \$1.25 per hour. Before the first increase of 30 cents per hour retroactive to July 4, starting pay rate was \$5.75 per hour and the top rate was \$13.40 per hour.

Under two Super Fresh agreements, covering 2,300 workers and ratified July 22, workers also receive pay hikes totaling \$1.25. Raises are backloaded, with no increase in the first year. Top-scale clerks hired after 1986 earn \$13.45 per hour, while top-scale meatcutters earn \$17.49 per hour. “The company came to us and said they needed some assistance and cooperation from the union” because it could not afford the exact industry package, UFCW said.

One other difference from the Giant, Safeway, and SFW agreements is that the wage progression at Super Fresh will continue to move workers along in six-month increments, while the other chains moved to a system based on hours worked.

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Facts & Figures

Wage Trend Indicator™

Low-Pressure System Persists in Compensation Forecast

The strengthening labor market this spring has yet to have any significant impact on workers' pay, and growth in wage increases will continue to be restrained, according to the latest Wage Trend Indicator report released July 15 by BNA.

The final reading of BNA's Wage Trend Indicator for the second quarter of 2004 is 98.28, down from the reading of 98.37 for the first quarter (second quarter 1976=100). The WTI has declined in four consecutive quarters and in all but three quarters since January 2001, when the economic expansion of the 1990s was winding down.

The latest WTI reading means wage increases likely will remain under 3 percent into early 2005, according to economist Joel Popkin, who developed the index for BNA along with economist Kathryn Kobe.

"The final number is clearly below the first quarter number," said Popkin. "It's continuing a trend which goes back to the onset of the recession in 2000-2001."

The WTI predicts turning points in private sector wage trends six to nine months before the trends are apparent in the employment cost index (ECI) compiled by the Bureau of Labor Statistics.

Four of the WTI's seven components made positive contributions to the WTI. Those four are: expected inflation from the Philadelphia Federal Reserve's survey of professional forecasters, average hourly earnings and job losers as a percentage of the labor force—both derived from BLS monthly employment surveys—and employers' hiring plans for production and service employees as identi-

fied in BNA's quarterly employment outlook survey.

Three components—the scarcity of professional and technical workers from BNA's quarterly survey, industrial production as calculated by the Federal Reserve, and the unemployment rate as calculated by BLS—made negative contributions to the WTI.

The June figure for scarcity of professional and technical employees indicated that a smaller percentage of employers in BNA's quarterly hiring survey found it difficult to fill professional and technical jobs compared with previous survey periods. A decline in that number tends to have a dampening effect on wages.

Information on BNA's Wage Trend Indicator is available at www.wage-trendindicator.com.

Wage Trend Indicator™ Components, Second-Quarter 2004

Component	Wage Impact	Description	Source
Final WTI		98.28, down from 98.37 in 1st quarter 2004. (2nd quarter 2003 = 98.73)	
Expected Inflation		One-year forecast of GDP chain-price index	Philadelphia Federal Reserve Bank
Average Earnings		Annual change in average hourly earnings of private industry production and nonsupervisory workers	Bureau of Labor Statistics
Worker Scarcity		Percentage of employers reporting difficult-to-fill professional or technical job vacancies	BNA's Employment Outlook Survey
Production/Service Expansion		Four-quarter average of percentage of employers projecting production/service job growth	BNA's Employment Outlook Survey
Job Losers		Percentage of the civilian labor force who have lost their jobs (Declining rate of job losers correlates to increasing wages)	Bureau of Labor Statistics
Unemployment Rate		Civilian unemployment rate four quarters ago (Declining rate correlates to increasing wages)	Bureau of Labor Statistics
Industrial Production		Annual percentage change in production index for manufacturing, mining and utility industries four quarters ago	Federal Reserve Board

Source: Wage Trend Indicator Database

A BNA Graphic/cbn416g1

Legal Developments

Firm Illegally Installed Cameras Without Bargaining, NLRB Decides

A company violated federal labor law by installing hidden surveillance cameras at a facility without bargaining with the union representing its workers, the National Labor Relations Board ruled July 22 (*Anheuser-Busch Inc.*, 342 N.L.R.B. No. 49, 7/22/04 [released 7/28/04]).

suspecting that employees might be using a rooftop room housing elevator motors for drug activity, the company installed hidden surveillance cameras in the room and surrounding areas. The company did not notify the union.

After recording the activities of 18 workers, the cameras were removed, and the company told the union about the surveillance operation. The company disciplined 16 of the workers for violating plant policies against being away from work areas for extended periods and against using drugs on the premises. Five workers were fired, four were suspended, and seven were given last-chance agreements along with suspensions.

The board found that the company's unilateral actions in installing and using the surveillance cameras in a designated break area were unfair labor practices in violation of the National Labor Relations Act.

"[T]he use of hidden surveillance cameras in the workplace is a mandatory subject of collective bargaining," the board said, adding that the U.S. Court of Appeals for the Seventh Circuit agreed with that view in *National Steel Corp. v. NLRB*, 324 F.3d 928, 172 LRRM 2154 (2003) (8 COBB 47, 4/17/03).

"While the area surveilled was not a part of the physical plant in which employees worked frequently, the record shows that employees did work there regularly" to perform elevator maintenance, and often took their breaks there without any prohibition from the company, the board said. It concluded that "the cameras were trained on a work and break area . . . and therefore the unilateral installation and use of cameras violated Section 8(a)(5) of the Act."

The discipline of the 16 employees was justified by the employees' violation of plant rules, the board found, rejecting "the argument that the discipline must be reversed because it is

essentially the fruit of unlawful surveillance, i.e., surveillance without opportunity to bargain." There is an insufficient nexus between the company's "unlawful installation and use of the cameras and the employees' misconduct to warrant a make-whole remedy," the board said.

NLRB's Findings Take Precedence In Jurisdiction Disputes, Court Says

A longstanding jurisdictional dispute between a contractor and union—which resulted in contradictory rulings by an arbitration panel, a federal court, and the National Labor Relations Board—was properly resolved in favor of NLRB because the agency's ruling took precedence, the U.S. Court of Appeals for the Seventh Circuit found July 22 (*Advance Cast Stone Co. v. Bridge, Structural and Reinforcing Iron Workers*, 7th Cir., No. 03-3090, 7/22/04).

The union filed a grievance with the joint arbitration board after the employer refused to employ union-represented workers on a project along with employees represented by another union. The contractor previously had used composite crews on other projects.

The company contended that the arbitration board lacked jurisdiction because the company no longer had any agreement with the union.

A trial court enforced an arbitration ruling in favor of the union even though NLRB had ruled four days earlier in a Section 10(k) proceeding that the contractor was not required to recognize the composite crews. A year later, the trial court reversed itself and said that NLRB's decision overrode the arbitration ruling.

Agreeing with NLRB that the contractor was not required to use composite crews on the project, the Seventh Circuit reasserted that arbitration rulings should not be enforced when they conflict with NLRB jurisdictional dispute resolution proceedings under Section 10(k) of the National Labor Relations Act.

"When an arbitration award is in conflict with the decision of the NLRB in a § 10(k) proceeding, the NLRB decision takes precedence" the court said, quoting *Miron Construction Co. Inc. v. International Union of Operating Engineers, Local 139*, 44 F.3d 558, 564 (7th Cir. 1995).

News in Brief

Striker Replacement Data Sought

Unfair labor practice charges involving an employer's refusal to provide a union with information about striker replacements should be submitted to the National Labor Relations Board's Division of Advice, Associate General Counsel Richard A. Siegel said in a July 19 memorandum to regional office personnel. Certain federal appeals courts have rejected the board's standard for deciding whether the employer should provide the information, Siegel said. "Given this divergence between the Board's traditional standard and that applied by some courts, the General Counsel [Arthur F. Rosenfeld] wishes to formulate a comprehensive position on this important and recurring issue."

Health Costs Eclipse Pay Hikes

Although 2002-2003 school year average teacher salaries increased slightly over last year, those increases were undercut by a large increase in health care costs, according to the American Federation of Teachers salary survey, released July 15. Average teacher salaries for 2002-2003 were \$45,771, up 3.3 percent from the previous year, while the average beginning teacher salary was \$29,564, up 3.2 percent from the year before. However, health insurance costs rose an average of 13 percent from the 2001-2002 school year. The union's salary survey is available at www.aft.org.

NIOSH Released Violence DVD

The National Institute for Occupational Safety and Health has produced a training and educational DVD that provides recommendations and resources for preventing work-related homicides and assaults, NIOSH announced June 30. The DVD, *Violence on the Job*, includes a 21-minute education program, a bonus video on a New York State program that works to prevent violence in drug treatment facilities, the Occupational Safety and Health Administration's guidelines for preventing workplace violence, and access to additional materials and resources. The DVD (Publication No. 2004-100d) is available at <http://www.cdc.gov/niosh/docs/video/violence.html>, or copies can be ordered at no charge by calling 1-800-35-NIOSH.

Perspective

NLRB Case on Recognition Bar Attracts Many Amicus Briefs

In more than two dozen amicus briefs, business groups, individual companies, unions, employee rights groups, members of Congress, and professors expressed widely divergent views on whether the board should continue to bar decertification petitions for “a reasonable time” after an employer recognizes a union based on authorization cards signed by a majority of unit employees (*Dana Corp.*, N.L.R.B., No. 8-RD-1976, *briefs filed* 7/15/04).

The board invited interested parties to file amicus briefs by July 15 (9 COBB 75, 6/24/04) following its 3-2 decision June 7 to grant review in two consolidated cases involving regional directors’ dismissals of decertification petitions filed a few weeks after automotive suppliers Dana Corp. and Metaldyne Corp. recognized the United Auto Workers pursuant to a card-check procedure contained in neutrality agreements with the union (9 COBB 69, 6/10/04).

How the board rules in *Dana/Metaldyne* could have a major effect on organizing efforts by unions, which in the last decade have increasingly used card-check organizing drives, with or without a neutrality agreement, as a major part of their overall organizing strategies. Unions have expressed frustration with NLRB-conducted representation elections because of delays in holding elections and sometimes years-long delays in resolving board and court appeals about who won.

The arguments made by the amicus curiae roughly fall into four categories, with some urging the board to completely overturn the recognition bar, others asking the board to hold that the bar does not apply when recognition was preceded by a neutrality/card-check agreement between the union and the employer, others calling for a 30- or 45-day period following recognition in which decertification petitions may be filed, and others urging the board to maintain the voluntary recognition bar.

Neutrality/Card-Check Involved

The two consolidated cases the board agreed to review both involve

recognition pursuant to a neutrality/card-check agreement.

In both cases, NLRB regional directors dismissed decertification petitions based on the recognition bar doctrine, which prohibits such petitions for an undefined “reasonable period” following an employer’s voluntary recognition of a union based on a demonstration of majority support. The three employees who filed the petitions then asked the board to review the dismissals, arguing that NLRB should abolish the recognition bar or at least make an exception allowing decertification petitions to be filed within a short period after recognition.

The National Right to Work Legal Defense Foundation, which represents the employees who filed the decertification petitions, alleged in a brief to the board that Dana and Metaldyne conducted captive-audience meetings in which the companies praised the union as their “partner,” provided the union with the employees’ home addresses, gerrymandered the units “to weed out union opponents,” and allowed the union to harass and mislead employees into signing union authorization cards.

In granting review in the *Dana/Metaldyne* cases, the board acknowledged the recognition bar precedent but said it was not developed in cases such as these where the union and employer entered into an agreement before the union began asking workers to sign authorization cards.

Employer Views at Odds

A number of employer and industry associations—including the U.S. Chamber of Commerce, HR Policy Association, Associated Builders and Contractors, and National Association of Manufacturers—oppose the voluntary recognition bar, at least when recognition of the union follows a neutrality/card-check agreement. These employer groups in general argue that an NLRB-conducted secret-ballot election is the superior method for determining whether a majority of employees want union representation.

However, various individual companies expressed support for the voluntary recognition bar, while other firms opposed it. General Motors Corp., DaimlerChrysler Corp., Ford Motor Co., and Delphi Corp. joined together in filing an amicus brief stating that “the recognition bar doctrine . . . is essential for the maintenance of industrial peace and stability following voluntary recognition.”

In contrast, Allied Security and Wackenhut Corp. opposed the voluntary recognition bar as an interference with employee free choice about union representation.

Unions, Academics Back Bar

AFL-CIO joined the party brief filed by UAW, which argued that the voluntary recognition bar serves the National Labor Relations Act’s twin goals of guaranteeing both industrial peace and employee free choice. The United Transportation Union, American Rights at Work, and two labor studies professors from Rutgers University and Wheeling Jesuit University agreed with AFL-CIO and UAW.

The board has long recognized that “bargaining of the sort contemplated by the [NLRA] requires certainty as to the status of the employees’ representative,” UAW said in its brief. In addition, the board and the courts have recognized that employees may demonstrate majority support for a union by means other than an NLRB election.

There is “no logical or practical reason for treating voluntary recognition pursuant to a preexisting agreement specifying criteria for establishing majority support differently than voluntary recognition pursuant to an employer’s ad hoc and immediate acknowledgement of majority support,” UAW argued.

“Eliminating the [recognition] bar would adversely affect the bargaining behavior of both employers and unions contrary to the expressed desire of the majority of employees,” UAW said. The possibility of a decertification petition would lead some

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employers to delay the bargaining process and would lead some unions to either refuse to compromise or compromise too much to avoid disesteeming certain unit employees.

NLRB General Counsel Arthur F. Rosenfeld filed an amicus brief taking a middle-of-the-road position. He argued that “[t]he voluntary recognition bar, like the certification bar, effectuates the important policy of fostering collective bargaining through a representative chosen by a majority of employees, and it should be retained.” The certification bar prohibits the filing of decertification petitions for one year following NLRB certification of a union win in a representation election.

However, the general counsel urged the board to “create a limited exception to the voluntary recognition bar where a decertification petition is filed no later than 30 days after formal written notice to employees of the recognition.” The decertification petition must document opposition to representation by at least 50 percent of unit employees “no later than 21 days after formal written notice of the recognition.”

Hill Leaders Weigh In

The board’s request for amicus briefs was answered by both Democrats and Republicans on Capitol Hill.

A group of Democrats submitted a brief calling on the board to stay the course and not overrule its precedent on voluntary recognition. Citing NLRA’s legislative history, they asserted that Congress intended to encourage voluntary recognition upon a showing of majority support and intended that “a bargaining relationship established pursuant to voluntary recognition be afforded the same degree of stability as a relationship established pursuant to Board involvement.” The board “may not usurp Congress’ exclusive authority to amend the NLRA,” the brief said.

“Because an employer may voluntarily recognize a union, it follows that an employer may agree to the terms upon which a voluntary recognition will occur,” the Democrats said. They argued that card-check agreements “facilitate the voluntary recognition process by ensuring that the union has, in fact, obtained majority support” and “avoid the contentious, divisive, and delay-ridden” election process.

Three former board members who are now management attorneys—

John N. Raudabaugh (R), J. Robert Brame (R), and Dennis M. Devaney (D)—prepared an amicus brief signed by 21 Republican representatives. They urged the board to hold that there should be no recognition bar when an employer recognizes a union pursuant to a card-check recognition agreement that was reached before the union started soliciting signatures on recognition cards.

“[A]lthough voluntary recognition may, in recent history, have become more prevalent, the secret ballot election conducted by the NLRB continues to be the ‘gold standard’ ” and “card checks are less reliable indicators of employee desires,” the Republican members said. They warned of the possibility of “collusion between the employer and a hand-selected union,” misrepresentations in soliciting the signing of cards, group pressure from other employees, and a lack of competition in providing information to employees.

In its brief on behalf of the Dana and Metaldyne employees who filed decertification petitions, NRTW argued that the actual representational preferences of the employees will not be known without an NLRB-supervised, secret-ballot election.

Calling for strict scrutiny of neutrality/card-check agreements, NRTW said they threaten free choice because conduct that would be considered objectionable and coercive in an election campaign is “inherent” in a card-check campaign.

Abolition of the recognition bar is needed to re-establish the board’s proper role in the representation process and to protect employee free choice, NRTW said. Alternatively, it asked the board to create a 45-day window period following recognition in which employees can file decertification petitions.

Metaldyne: Bar Facilitates Choice

Metaldyne said in its brief to the board that its goal has always been that employees “be allowed to exercise their Section 7 rights and decide in a free and untrammelled manner whether they wish to be represented by a labor organization.”

Urging the board to continue to apply a voluntary recognition bar for a reasonable period following recognition, Metaldyne pointed out that “on the day that the neutral fact finder examined the cards, a majority of the employees desired representation by the UAW.” The company questioned why employees should

get “a second bite at the apple,” which they are not entitled to following certification of election results.

Allowing workers to challenge certification “without first providing reasonable time for the negotiation of a collective bargaining agreement does not support the interests of labor peace,” Metaldyne said. “At worst, abolition of the bar encourages employers to manipulate the bargaining process with the intent of undermining the union. At best, such pressure encourages union leaders to make fast compromises in exchange for instant results not necessarily in workers’ long-term interests.”

Metaldyne also opposes NRTW’s alternative proposal for a 45-day window period, saying “such a window would likely create an atmosphere of confusion and mistrust between employer, employees and the union where none of the parties is sure of the outcome until this unstable window period is closed.”

Dana: Bar Protects Bargaining

Dana argued in its brief to the board that voluntary recognition through card check and the recognition bar “are important doctrines which protect both the collective bargaining process and employee representation rights.” Noting that no employees filed any unfair labor practice charges regarding any aspect of the card-gathering and card-check process, Dana said the concerns raised by one of its employees through NRTW “are nothing more than a mischievous attempt to undermine the collective bargaining process.”

Either NRTW alternative “not only interferes with collective bargaining, but [also] the representation rights of the majority of employees who have asked a union . . . to represent them and negotiate on their behalf,” Dana said. “If, under current board law, the employees determine that union representation has been a failure after a reasonable period to bargain, then they have the right to have a decertification petition processed.”

As in a board election, “after a card check there is always likely to be a minority, and sometimes even a substantial minority, opposed to recognition,” Dana said. “To allow that disaffected minority to disrupt collective bargaining by filing a decertification petition is to foster an unstable environment that would make any rational employer reluctant to agree to a card check recognition process.”