



# Collective Bargaining Bulletin

**A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION**

## Highlights

### Employment Cost Index

Compensation costs for private industry workers rose 4 percent over the year ended June, reflecting sluggish wage growth and sharply escalating benefit costs, the Bureau of Labor Statistics reports ..... **100**

### NLRB Members Talk to ABA

National Labor Relations Board members discussed factors causing delays in decisionmaking, member collegiality, adherence to precedent, board output, and representation issues at an American Bar Association conference..... **102**

## In the Manual

### July Economic Data

Consumer price index data for July and first-half 2004 are added at 18:7601, and July unemployment data are added at 18:8201. The government CPI report is available at <http://www.bls.gov/news.release/cpi.toc.htm> and the unemployment report is at <http://www.bls.gov/news.release/empstoc.toc.htm>.

### Contract Settlements

Terms of settlements reported Aug. 3-16 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4121.

## Continued Company-Paid Health Care, Expanded Job Security Bargained at BellSouth

**P**ay increases totaling 10.5 percent over five years, continued company-paid health care, and expanded job security are included in a tentative agreement for about 44,000 employees reached Aug. 7 by BellSouth Corp. and the Communications Workers of America.

Settlement terms would apply to six contracts for BellSouth workers in nine states if ratified in voting expected to be completed by late September.

Wages would increase 1 percent initially, 2 percent Aug. 7, 2005, and 2.5 percent in August 2006, 2007, and 2008. A lump-sum bonus equal to 4 percent of an employee's annualized basic rate on Aug. 8 would be paid upon ratification. Current average annual pay is \$46,000, according to CWA.

Employees also would be eligible for incentive awards of 2 percent per year for 2004, 2005, and 2006, and of 3 percent per year for 2007 and 2008. Incentive awards could be higher should productivity exceed the incentive goals.

Negotiators agreed to extend contract coverage to new technology services such as Voice-Over Internet Protocol, wireless networking, and video sales and support that BellSouth offers. The parties also agreed to discuss bringing into the bargaining unit telemarketing and other work now outsourced.

Under the tentative agreement, employees would have expanded transfer rights across all entities, and employees whose jobs have been designated as surplus would have priority consideration for vacancies.

Neither employees nor retirees would be required to pay health care premiums, except workers covered by the BellSouth Utility Operations contract who already pay a premium for coverage. However, employee deductibles would increase from \$200 to \$300 for individual coverage and from \$450 to \$600 for family coverage, and copayments for prescription drugs would rise.

A 12.5 percent increase in pension bands over term would be provided, and beginning in 2005, a pre-retirement survivor's benefit would be paid to a participant's estate if there is no eligible spouse.

## Tyson, UFCW Agree on Multilingual Training, First-Time Health Care Coverage for Retirees

**N**ew funding for multilingual training, first-time retiree health care coverage, and base wage increases totaling at least \$1.55 per hour are included in a new five-year contract covering about 3,000 employees at a Tyson Foods Inc. beef processing plant in Dakota City, Iowa, represented by the United Food and Commercial Workers.

The agreement, ratified Aug. 8, provides production and slaughter workers with hourly pay increases of 60 cents initially, 20 cents in 2005, and 25 cents in 2006, 2007, and 2008, boosting top pay to \$13.65 by 2009. For maintenance workers, the start rate will increase from \$10.20 to \$11.95 per hour over term, and the top rate will increase from \$14.20 to \$16.40 per hour.

Tyson agreed to add retiree health coverage and a supplemental Medicare plan, and to improve health benefits, including expanded vision and long-term

disability benefits, UFCW said. The company will match employees' 401(k) contributions dollar-for-dollar for the first 3 percent of pay, and 50-cents-per-dollar for the next 2 percent of pay.

The contract adds funding for multilingual training such as Spanish-language safety classes and English-as-a-second-language education, and provides four weeks of vacation, up from three weeks, to employees with 20 or more years of service.

## Pattern Apparel Accords Cover 10,000 Employees

**N**ew three-year contracts negotiated in June by UNITE and employers in the women's apparel industry in the Northeast are setting the pattern for other agreements being negotiated this summer with U.S. apparel manufacturers, UNITE told BNA Aug. 13.

The new contracts cover approximately 10,000 workers, compared with 30,000 employees who were covered three years ago when the agreements were last negotiated. The number of workers has declined because so many of the companies in the New York City area have gone out of business, UNITE said.

During bargaining, the companies and union negotiators recognized they are "survivors" in a changing industry, according to UNITE, which characterized the negotiations as "an accepted challenge to create a business plan that would enable the companies and employees to survive and work in New York City."

The two similar but separate agreements between UNITE and associations of manufacturers/jobbers and associations of contractors provide wage increases of 3 percent each

year and raise minimum wage rates 1.5 percent annually. Shipping and warehouse workers receive flat rate increases of \$13 per week each year instead of a percentage increase.

Prior wage rates vary considerably, from a minimum of about \$7 per hour for contract employees to \$40 per hour for very skilled sample makers and cutters, UNITE said.

The manufacturers' contract maintains the current level of health care coverage, but workers' monthly premium contributions will increase Oct. 1 from \$23 to \$30 for individual coverage, from \$80 to \$105 for single coverage with one dependent, and from \$110 to \$145 for family coverage. Manufacturing employers will contribute an additional 1 percent of payroll each year to the health fund.

Contractor employees will continue to contribute \$23 per month for health care premiums over term, but negotiators agreed to switch from Blue Cross/Blue Shield to a less costly plan. Effective Sept. 1, contractor employers will contribute \$150 per employee per month to the health insurance, prescription drug, and vacation benefit plans for each employee who works at least 80 hours per month. The contribution will increase to \$180 per month July 1, 2005, and to \$210 per month July 1, 2006.

## PACE, Laclede Gas Limit Return From Management

**L**imits on return to the bargaining unit from management positions and first-time employee health care premium payments are called for in two new agreements between PACE and Laclede Gas Co. in St. Louis that were ratified Aug. 15.

The agreement covering approximately 1,050 construction and main-

tenance workers and meter readers provides annual wage increases of 2.5 percent. In addition, workers will receive a 0.5 percent lump-sum payment each year in the first paycheck after Aug. 1. Under the prior agreement, average hourly pay was \$22.85.

The contract covering about 260 clerical workers provides annual wage increases of 2 percent and annual lump-sum payments of 1 percent. Average pay before the first increase was \$20.40 per hour.

The contracts also require workers to pay a portion of their health care premiums for the first time, in amounts ranging from \$15 per month to \$147 per month, depending on which plan they select and the number of dependents covered. The amount by which a worker's share of premiums may increase each year is capped at \$10 per month.

New language limits the ability of employees recruited out of the bargaining unit into management positions to return to their positions. While previous contract language gave such management employees "a practically unlimited right" to return to their unit jobs, the new agreement gives them a window of nine months plus 30 days to return, PACE said.

The language became a matter of concern to the union only when the company began requiring management employees to pick up a large portion of their health care premiums, PACE said. That change gave workers an incentive to return to their unit positions, where under the prior contracts they were not required to pay premiums, and where under the new agreements their portion will remain smaller than that paid by management workers.

"We saw this as a job-protection issue," PACE said. "Although no workers lost their jobs when a few

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management workers came back recently, we weren't sure how it would look in the future, in this downsizing environment."

## Flexibility in Scheduling Bargained by UFCW, Macy's

**U**nited Food and Commercial Workers members Aug. 1 ratified a four-year contract with Macy's covering about 1,500 sales associates, stock clerks, greeters, and clerical staff at Macy's Union Square and Stonestown locations in San Francisco.

The agreement includes wage increases each year, additional flexibility for workers taking vacation time, and electronic scheduling for employees beginning in the spring of 2005.

Workers receive a \$250 signing bonus, and most employees receive base wage increases of between 3 percent and 4 percent each year. Instead of annual wage increases, employees who sell "big ticket" items will receive quarterly bonuses, the union said. In addition, employees will receive a 10-cent-per-hour increase in each of the final two years of the contract if sales levels at both stores exceed the previous year's sales by 5 percent and customer service scores reach a specified level.

Macy's agreed to make changes in the health plan if California voters approve a state ballot proposition in November that would limit employees' share of health insurance premiums to 20 percent if they work for large employers, the union said.

The contract also provides for the first time up to four paid days of leave per year to any employee who has accrued an equal amount of unused vacation leave. Employees can take the new leave in place of their vacation leave for any reason in half-day increments, and without being assessed disciplinary "attendance points." Attendance points are assessed for using regular vacation leave.

## UWU, Con Edison Negotiate 13.75 Percent Wage Increase

**M**embers of the Utility Workers of America ratified a four-year contract with Consolidated Edison Co. of New York, UWU announced Aug. 6. The agreement covers about 8,600 utility workers in New York City and suburban Westchester County.

The new contract calls for wage increases of 3 percent retroactive to

June 27, 0.5 percent Jan. 2, 2005, 3.5 percent June 26, 2005, and June 25, 2006, and 3.25 percent June 24, 2007. In addition, the pay progression table is shortened.

Beginning in January 2005, Con Edison workers' share of health care premiums will increase by less than \$5 per week on average over the life of the contract, the union said. Employees will be able to maintain their same primary health care providers, as UWU was able to rebuff company proposals to change to health maintenance organization providers and for higher worker premium contributions, according to the union.

Pensions will be based on the average of a worker's gross pay for the highest four years—down from five years—of the last 10 years worked.

## PACE Members Adopt Coordinated Bargaining Plan

**P**ACE members working in the paper products industry have approved a new national bargaining policy that sets goals for the union's upcoming contract negotiations, the union announced Aug. 5.

Major goals incorporated in the bargaining policy provide that: contract terms be no longer than four years; there be no future waiver of rights to negotiate over health care plans, sickness and accident benefits, life insurance, or pensions; and that no agreement include language that would allow an employer to unilaterally make changes to benefit plans during the term of a contract.

PACE's international president is authorized to determine if a proposed contract meets the minimum goals. If it does not, the president will not approve bringing the offer to a vote of the local union membership.

The policy "allows the union greater control of the tempo, tone, timing, and issues in negotiations," PACE said, adding that it believes having a national bargaining policy will support local unions against what it called "paper companies' divide-and-conquer tactics."

The bargaining program will apply to several hundred contracts expected to be negotiated in 2005 and 2006. PACE has 820 paper bargaining agreements, and on average, 140 to 150 contracts come up for renegotiation each year.

*Information about PACE's National Paper Bargaining Program is available at <http://www.pacenpb.org>.*

## News in Brief

### Boston Globe Contract Ratified

Members of the Boston Newspaper Guild Aug. 5 ratified a five-year contract with the *Boston Globe* that provides pay raises totaling 9.6 percent over term for about 1,150 reporters, photographers, and editorial and advertising employees. The agreement also includes a reduction in employee payments for health care in exchange for concessions on job security (9 COBB 85, 7/22/04).

### Western Wood Talks Wrapping Up

Unions representing about 19,100 Western woodworkers have reached contracts with almost all of the region's major wood products companies as of Aug. 4. Contracts negotiated by affiliates of the Carpenters and Joiners of America and the International Association of Machinists follow the pattern set by IAM and Weyerhaeuser in June that calls for a signing bonus, pay raises, and increased health care contributions (9 COBB 74, 6/24/04).

### NMB Proposes Arbitration Changes

The National Mediation Board in the Aug. 9 *Federal Register* (69 Fed. Reg. 48,177) published proposed changes in rules governing railroad industry arbitrations. Concerned with the length of time it takes to resolve grievances, NMB proposed changes requiring arbitrations be resolved within one year and denying payment to arbitrators who fail to meet the deadline. Comments should be submitted by Sept. 9 to: Director of Arbitration, NMB, 1301 K St. N.W., Suite 250-East, Washington, D.C. 20005. Attn: NMB Docket No. 2003-01N.

### Doctors Covered Under Labor Law

Attending physicians at a Cook County, Ill., hospital are not supervisors exempt from coverage under the Illinois Public Labor Relations Act, a state appellate court ruled July 28 (*Cook County v. Illinois Labor Relations Bd.*, Ill. App. Ct., No. 1-03-1622, 7/28/04). The county opposed a union representation petition, saying the physicians were ineligible to participate in collective bargaining because they were managerial employees. The court said that even though the physicians' "activities include issuing orders . . . they do not constitute executive or management functions."

# Facts & Figures

## Employment Cost Index

### Benefit Costs Soar as Wage Growth Sputters, BLS Says

The cost of compensating private industry workers rose at a steady 4 percent over the year ended June, but this measured pace belies more dramatic forces that appear to be pulling employer costs in opposite directions. Wage growth has never been more sluggish than it is now, while growth in benefit costs has not been this robust in 20 years, according to data released July 29 by the Bureau of Labor Statistics.

The increase in total compensation paid by employers of private industry workers was on par with the average annual gain posted over the past five years, but keeping overall compensation costs steady as benefit costs have surged over the past two years has come at the expense of wage growth.

Benefit costs for workers in the 12 months ended June were up 7.3 per-

cent, the largest year-over-year gain since 1984, according to BLS's employment cost index. Over the same period, wages and salaries rose just 2.6 percent—tying the 12-month gain posted in first-quarter 2004, second-quarter 2003, and fourth-quarter 1992 for the smallest annual gain ever recorded.

For the second quarter alone, private industry wages rose 0.6 percent, unchanged from the gain posted in the first quarter. But benefit costs retreated from an earlier cost spike, rising 1.7 percent versus the first quarter's 2.6 percent gain.

Ken Matheny, an economist at Macroeconomic Advisers in St. Louis, said some of the deceleration in second-quarter benefit costs can be attributed to a slight slowdown in increases for health care costs. "Health

care costs are still rising at a fast pace, but the gains are starting to slow," he said. "We are starting to see some reasons to be hopeful that overall benefits costs will slow too."

For all civilian employees—private industry plus government workers—total compensation costs rose 3.9 percent over the year ended in the second quarter. Benefit costs rose 7.2 percent, the highest gain since 1990, while wages and salaries climbed 2.5 percent, matching its all-time low.

Compensation costs for union workers rose 6 percent over the year ended June, compared with 3.5 percent for nonunion workers.

The employment cost index report is available at [www.bls.gov/news.release/pdf/eci.pdf](http://www.bls.gov/news.release/pdf/eci.pdf).

### Employment Cost Index, Second-Quarter 2004

Changes in wages and salaries and benefit costs, private industry, 1984-2004



Source: Bureau of Labor Statistics

A BNA Graphic/cbn417g1

## Legal Developments

### Claims on Effects Bargaining, Protest T-Shirt Dismissed by NLRB

A Japanese-owned manufacturing firm fulfilled its duty to bargain over the effects of moving some production to Japan and legally prohibited workers from wearing a union T-shirt that referred to the attack on Pearl Harbor, the National Labor Relations Board ruled July 30 (*Komatsu Am. Corp.*, 175 LRRM 1209, 342 N.L.R.B. No. 62, 7/30/04 [released 8/4/04]).

After announcing in January that it planned to transfer some work to its facilities in Japan, the company, at the union's request, began bargaining over the effects of the outsourcing. The company transferred work by the end of June and implemented a reduction in force on July 1. The parties continued with effects bargaining after the RIF.

In September, some workers began wearing union T-shirts that said "December 7, 1941" on the front and "History Repeats," then "Negotiate Not Intimidate," on the back. Employees stopped wearing the T-shirt after the company threatened to discipline any worker who continued to display the message.

The U.S. Supreme Court has ruled that the National Labor Relations Act requires an employer to bargain at a meaningful time and in a meaningful manner over the effects of a decision to close a facility, NLRB said. In this case, the firm announced the outsourcing plan well in advance and engaged in effects bargaining at the union's request.

In addition, NLRB said the general counsel failed to show that by imposing a RIF in the midst of effects bargaining, the company presented the union with a fait accompli that prevented meaningful bargaining. The RIF "was caused by a general downturn in business," the board said, finding no causal nexus between the outsourcing initiative and the RIF.

Turning to the T-shirt issue, the board said employees in general "have a protected right under Section 7 of the Act to make known their concerns and grievances pertaining to the employment relationship, which includes wearing union insignia while at work." However, Section 7 rights "may give way when 'special circumstances' override the employees' Section 7 interests and legitimize

the regulation of such apparel." In light here of the union's "clear appeal to ethnic prejudices, we find that the T-shirt was sufficiently offensive and provocative to justify its regulation by [the company]."

### Union Not Entitled to Data For Third-Party Investigation

An employer was not obligated to provide a union with certain requested information because the union made the request pursuant to a complaint it filed with a state agency, and not for the purpose of collective bargaining, the National Labor Relations Board ruled July 29 (*Southern Calif. Gas Co.*, 342 N.L.R.B. No. 56, 7/29/04 [released 8/3/04]).

The union sought information from the company after making a complaint to the state public utilities commission regarding alleged safety problems. The employer declined to provide the requested information because it did not relate to a grievance or negotiations between the parties. The union filed an unfair labor practice charge.

An employer has a duty to furnish to a union requested information that is relevant and reasonably necessary to the union's performance of its responsibilities, the board said. Such information is presumptively relevant if it concerns the terms and conditions of employment for bargaining unit workers. When information is not presumptively relevant, the burden rests on the union to show that the peculiar circumstances of the situation make the information relevant. In this case, the union failed to meet that burden, the board said.

"If safety information is sought for a grievance or for bargaining or for contract administration, it may well be presumptively relevant," the board said. "However, the information sought here was for a matter before a state agency." Even assuming that the union appeared before the agency in its representational capacity, the union's request never made a connection between that role and the information sought, it added.

"The mere mention of the word 'safety' is not sufficient to warrant a conclusion that the requested information is presumptively relevant for the purposes of collective bargaining," according to NLRB.

## Conferences

**Federal Sector Labor Relations & Labor Law Program**, Sept. 23, Chicago, Ill.; price: \$190. Presented by Chicago-Kent College of Law, Illinois Institute of Technology, (312) 906-5090.

**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.

**Investigation Tools and Techniques: Developing Facts and Evidence**, Oct. 1, New York, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

**Preparation for Collective Bargaining**, Oct. 4-5, New York, N.Y.; price: \$1,195. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

**Mastering the Collective Bargaining Process**, Oct. 4-6, Milwaukee, Wis.; price: \$1,165, group discount available. Presented by University of Wisconsin-Milwaukee, (414) 227-3200.

**Effective Collective Bargaining Skills and Strategies**, Oct. 6-7, New York, N.Y.; price: \$1,295. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

**The Dynamics of Labor Negotiations**, Oct. 8, New York, N.Y.; price: \$595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

# Conference Report

## NLRB Members Discuss Collegiality, Factors Causing Delays

The biggest factor causing delays in decisionmaking by the National Labor Relations Board is the preparation of separate dissenting or concurring opinions, NLRB Member Dennis Walsh told attorneys attending an Aug. 8 American Bar Association session sponsored by the Section of Labor and Employment Law.

He urged his colleagues to write separate opinions only on "major issues" and to make more effort to reduce their differences and issue a decision all three panel members can join. Sometimes that can be accomplished by deciding a case on one ground and not reaching other, more contentious grounds, Walsh said. He also warned against the dissenter on a three-member panel threatening to take the case to the full board, saying members need to respect the panel system as a way to expedite cases.

Chairman Robert J. Battista acknowledged that dissent preparation can slow down casehandling but said members who "disagree strongly" on an issue should speak their mind. He recommended the writing of "short, sweet, quick dissents."

Member Peter C. Schaumber agreed with Walsh that the members should try harder to reach a consensus, but said the back-and-forth process of developing majority and dissenting opinions can result in better analysis.

Battista and Members Ronald Meisburg, Schaumber, and Walsh spoke at the session; Member Wilma B. Liebman did not attend the ABA conference held in Atlanta Aug. 5-10.

### Individual Priorities Cause Delay

Another major factor causing delays in deciding cases is the different priorities of the individual board members, Walsh said. Every type of case cannot be put "at the top of the pile." He asserted that the board should prioritize jurisdictional disputes between unions arising under Section 10(k) of the National Labor Relations Act, Section 10(j) injunction cases, cases on remand from a federal appeals court, cases in which an administrative law judge has rec-

ommended a *Gissel* bargaining order, and all representation cases.

### Battista Sees Strong Collegiality

Despite issuing many decisions with dissenting opinions, all five members of the board share a strong sense of collegiality and a commitment to "disagree without being disagreeable," Battista said.

The field of labor law is very contentious, with strong views held by parties and advocates on both sides, Battista said, adding that disagreements among the board members are to be expected.

Discussing the role of "stare decisis," or adherence to precedent, Battista said board members must use their experience and expertise to decide when a particular precedent is wrong, unfair, or destructive and therefore needs to be overturned. He said he does not "lightly vote to change precedent."

While stare decisis plays an important role in assuring stability and predictability, Congress envisioned that different boards could reach different results that fit within the parameters of the act, Battista said. Employers and unions become uncertain how to conduct themselves when the board keeps changing its view of what is legal and illegal, so NLRB needs to balance change and stability.

Addressing the issue of NLRB output, Battista said the board is doing "fairly well" in trying to meet its numerical goals for issuing decisions. In March through July 2004, the board issued an average of 50 decisions per month, which is lower than its goal of 60 a month but higher than the fiscal year 2003 average of 47 a month, the chairman said. He predicted that the board will be more productive in FY 2004, which ends Sept. 30, than during the previous fiscal year.

The board has managed to resolve a number of older, difficult cases and is aiming to issue decisions in several "very significant" cases by October, Battista said.

Board-member turnover hurts productivity because new members need time to get up to speed, but turnover

is a predictable, regular event, Battista said.

The board is likely to go down to just three members by the end of the year. In addition to the expiration of Meisburg's recess appointment that ends when Congress adjourns its 2004 session, Walsh's term expires Dec. 16.

Suggesting a possible solution to the turnover and vacancy problem, Schaumber said Congress could pass an amendment allowing members to stay on after their term expires until the Senate confirms a replacement.

### Representation Processes Debated

In a discussion of representation issues before the board, Walsh said he believes NLRB is "somewhat at a crisis point" and is "in danger of losing our credibility" regarding representation processes because of delays. The board too often is granting review of regional directors' decisions on election issues, including which employees are supervisors, and creating uncertainty for the parties as to whether the employees have union representation or not, he said. The delays caused by unnecessarily granting review can "slow down and kill" an organization campaign.

Battista replied that "our representation procedures are in good shape," with most parties entering into stipulated election agreements that resolve pre-election issues and the regional offices promptly conducting elections and post-election hearings. He agreed with Walsh that review of regional director decisions should be "granted sparingly." However, Battista said the supervisory issue is "very important" because the U.S. Supreme Court has rejected the last two standards developed by the board, which must develop a new standard and issue a new decision in *NLRB v. Kentucky River Cmty. Care Inc.*, 532 U.S. 706, 167 LRRM 2164 (2001) (6 COBB 63, 05/31/01). Approximately 56 supervisory cases in which review was granted will be decided quickly once the board develops a new standard for determining supervisory status, he said.