



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Contract Settlements

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Preferential Hiring

Contract clauses covering preferential hiring are added at 140:3701.

USW Members Ratify Goodrich Contracts With No-Layoff Guarantees at Four Plants

United Steelworkers members at BF Goodrich Tire Manufacturing's four union-represented plants in North America have ratified contracts guaranteeing no layoffs, a first for the tire industry, the union said Aug. 27.

In exchange, various concessions will cut labor costs at the plants by about 20 percent, yielding annual savings of \$60 million, according to Goodrich, a subsidiary of Michelin Group of France.

The agreement covering about 3,400 workers at tire factories in Opelika, Ala., Tuscaloosa, Ala., and Fort Wayne, Ind., who had been working under a contract extension since April 2003, was ratified Aug. 26. The agreement covering 1,000 workers in Kitchener, Ontario, who had been on strike since June 1, a day after their last contract expired, was ratified Aug. 23.

Contract language guarantees that Goodrich will not lay off any employees, nor will there be any plant closures, for the life of the contracts. Also included is a "force level guarantee," whereby Goodrich will maintain minimum staffing equal to 90 percent of the full-time bargaining unit as of May 1, 2004.

Outsourcing protections will prevent Goodrich from using contractors for maintenance, installation, or mechanical work, and the union gains "long-denied access to and involvement in the contracting out process," USW said.

In order to enhance the factories' long-term viability, Goodrich promised to invest at least \$150 million to upgrade the plants, enabling them to boost their production of larger, higher-margin tires for passenger cars and light trucks.

As an offset to these guarantees, wage progression is lengthened from three years to five years, and greater use of contingent workers is permitted.

A cost-of-living provision is retained, but 66 cents generated from July 2003 to July 2004 and 50 cents generated from July 2004 forward will not be incorporated into rates, the company said. However, on April 23, 2006, the wage rate structure at each plant will incorporate 25 cents of past COLA payments.

Iron Ore Mines in Michigan, Minnesota Agree to Pre-Fund Health Care for Retirees

Pre-funding of retiree health insurance and pension benefits is called for in four-year contracts covering about 2,000 workers at Empire and Tilden Mines in Michigan's Upper Peninsula and Hibbing Taconite and United Taconite Mines in Minnesota that are operated and part-owned by Cleveland-Cliffs Inc. The agreements were ratified by members of the United Steelworkers, the company announced Aug. 20.

The contracts are "historic" because the companies will provide more than \$220 million to pre-fund retiree health insurance and pension benefits, the union said. The mines began a small amount of pre-funding years ago, and in negotiations agreed to pre-fund retiree benefits at a greater level.

Each company will make an initial lump-sum payment in addition to a cents-per-ton payment annually to retiree health insurance trusts, amounts that will total \$97.2 million by end of term, USW said.

A major union demand to accelerate funding of underfunded pension plans covering employees at the Empire and Tilden mines resulted in the employer agreeing to treat the pension plans as a single employer plan and contribute more than \$126 million during the life of the agreement, according to USW.

Current retirees and those who retired before Aug. 31 will continue coverage under a preferred provider organization that pays 100 percent for services provided in-network. However, in order to keep the status quo for current retirees and obtain the funding provisions for retiree health and pensions, the union agreed that effective Jan. 1, 2005, active employees and those who retire after Aug. 31 must pay 10 percent of costs incurred in-network under the PPO, with out-of-pocket costs capped at \$1,000 per year. In addition, future retirees will be required to pay 15 percent of the insurance premium.

Wages increase 3 percent Aug. 1, Sept. 30, 2005, and March 31, 2007. The companies agreed to roll into base wages money from an existing incentive program prior to the first increase. Average pay under prior contracts was about \$17.90 an hour, and when incentive pay is added, will be about \$21.40 an hour, the union said. With the first 3 percent increase, hourly pay will rise to \$22.04.

UWU Members at DTE Energy Gain 9.25 Percent Wage Hike

New contracts between DTE Energy Co. and the Utility Workers Union covering about 4,700 gas and electric workers will increase wages 9.25 percent over a three-year term.

The contract at DTE subsidiary Detroit Edison Co., which covers

about 3,700 employees, was ratified July 19, and the contract at subsidiary Michigan Consolidated Gas Co., which covers about 1,000 workers, was ratified Aug. 2.

Wages increase 3.5 percent retroactive to June 8, 0.25 percent Jan. 10, 2005, 2.5 percent June 6, 2005, and 3 percent June 5, 2006. Hourly pay under previous contracts ranged from \$10 for meter readers to \$32.91 for planner-development coordinators.

Health care was the major topic of discussion, according to the union. The parties prepared for negotiations by mobilizing in 2003 a union-management Health & Welfare Negotiations Subcommittee, which developed guiding principles for health care negotiations.

Following subcommittee recommendations, employee health care premium contributions are based on a percentage of pay, increased copayments are offset with a \$50 credit paid in cash or deposited in an employee's flexible spending account, and increased deductibles do not apply to preventive care benefits.

Although worker health care costs increase, dental, vision, hearing, and chiropractic benefits are improved. Financial incentives for participation in chronic disease management programs also are provided.

Employees now must work a minimum 15 years after age 40 to establish eligibility for post-employment health care, and those who retire after Aug. 2 must contribute \$25 per person per month, up to \$75, toward retiree health care costs. A one-time \$600 lump-sum payment will be made to those employees to help offset the contributions. Detroit Edison employees hired on or after June 7, 2007, will be required to contribute 50 percent of their health care plan's costs after they retire.

New Grocery Contracts Change Health Care Plans

Members of the United Food and Commercial Workers and the International Brotherhood of Teamsters Aug. 15 ratified three-year contracts covering approximately 11,000 grocery and meat department employees at chains in the Puget Sound area represented by Allied Employers Inc. Ten days later, UFCW members ratified identical contracts covering about 7,000 employees in Tacoma and west central Washington.

The agreements, which are retroactive to May 2, require employee health insurance premium-sharing for the first time and place new hires in a separate health insurance plan with less generous coverage than that offered to current employees. However, new hires will move into the same plan as current employees after 35 months of employment.

Employees pay \$3 per week for individual coverage and \$10 for family coverage through a health maintenance organization, and \$7 per week for individual coverage and \$18 for family coverage if they join a preferred provider organization. The plans pay 85 percent of in-network costs and 60 percent of out-of-network costs.

New hires are covered under an HMO that has higher copayments and pays only 80 percent of in-network costs.

Hourly pay increases 30 cents retroactive to May 2 and 30 cents May 7, 2006, raising top pay to \$17.45 per hour. In addition, top-scale workers will receive a lump sum on May 1, 2005, of 30 cents for each hour worked during the previous year. Employees will start at \$7.72 an hour, and progress to top rates over 7,800 hours, up from 3,812 hours.

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COLLECTIVE BARGAINING BULLETIN

Collective Bargaining Bulletin (ISSN 1522-8452) is published biweekly by The Bureau of National Affairs, Inc., 1231 25th St. N.W., Washington, D.C. 20037-1197. Periodical postage rates paid at Washington, D.C. POSTMASTER: Send address changes to: Collective Bargaining Bulletin, The Bureau of National Affairs, Inc., P.O. Box 40949, Washington, D.C. 20016-0949.

Full Service includes Collective Bargaining Negotiations and Contracts, and Collective Bargaining Bulletin.

Account-related questions should be directed to Customer Service, 800-372-1033. Comments about editorial content should be directed to the managing editor, (202) 452-4309.

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Facts & Figures

Employment

BLS Measures Families With Unemployed Member

The proportion of U.S. families with one member unemployed rose to 8.1 percent in 2003, the third consecutive year that figure has increased, the Bureau of Labor Statistics reported. The 2003 figure was 0.3 percentage point higher than in 2002.

In an average week in 2003, 6.1 million families had at least one unemployed member, up from 5.8 million a year earlier.

The data are contained in BLS's annual report on the employment characteristics of families, which compiles information on employment, unemployment, and family relationships. Data are derived from the agency's monthly employment survey of 60,000 households, known as the current population survey.

The percentage of families with an unemployed member in 2003 was at its highest level since 1994, the year BLS began compiling annual averages on family employment. In 1994, the rate was 8.5 percent. The rate bottomed out in 2000, when it was 5.7 percent, and has risen every year since.

The agency's definition of families includes married-couple families, as

well as those maintained by a man or woman with no spouse present.

The proportion of families with an unemployed member was highest for blacks at 13.7 percent, followed by Hispanics (11.1 percent) and Asians (9.4 percent). White families had the lowest rate at 7.1 percent. The rate increased for all groups in 2003 except Hispanics, who saw the rate decline slightly from 11.2 percent in 2002.

The survey also showed that the employment situation for families worsened in 2003. Eight-two percent of families had at least one employed member, down from 82.4 percent the year before. That means 18 percent, or 13.5 million families, had no family member employed, up from a little more than 13 million in 2002.

Among families with children under the age of 18, 90.3 percent had at least one parent employed, down from 90.7 percent in 2002. All of the decline was among single-parent families, BLS said. The 9.7 percent of families with no working parent translates into 3.4 million families, up from 3.3 million in 2002.

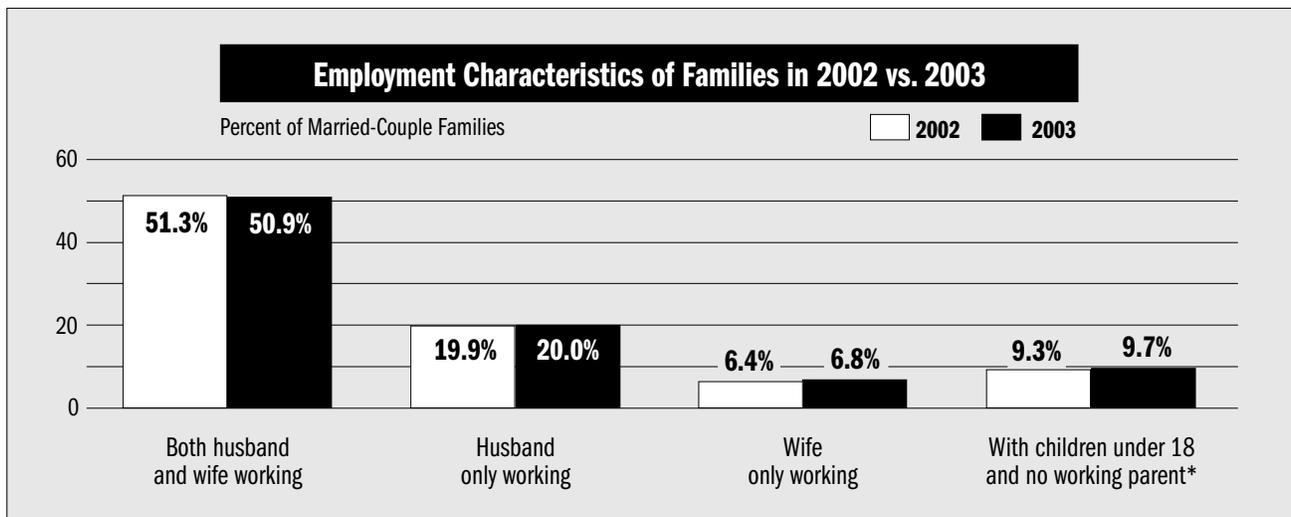
Slightly more than half (50.9 percent) of both husbands and wives in

married-couple families worked, the lowest total in the 10 years the annual averages have been compiled by BLS. The annual average peaked in 1997 at 53.4 percent and dropped slightly over the next three years before declining from 52.7 percent in 2001 to 51.3 percent in 2002.

The proportion of married couples in which only the wife worked rose for the third straight year. In 2003, the rate rose to 6.8 percent from 6.4 percent in 2002. The proportion in which only the husband worked was little changed at 20 percent. However, that figure has increased by 0.8 percentage point since 2000, according to BLS.

The labor force participation rate for mothers with children under 18 was 71.1 percent in 2003, down 0.7 percentage point from a year earlier. The participation rate for mothers with children under one year old fell by 2.4 percentage points to 53.7 percent in 2003.

The latest report on employment characteristics of families is available at <http://www.bls.gov/news.release/pdf/famee.pdf>.



Source: Bureau of Labor Statistics *Calculated from the total of families with children under 18.

A BNA Graphic/btm429g1

Facts & Figures

Employment

Job Levels Got End-of-Year Boost, BLS Reports

The private sector added 250,000 more jobs in the fourth quarter of 2003 than during the third quarter, while the number of job losses shrank by 22,000, according to data released Aug. 3 by the Bureau of Labor Statistics.

Job gains from business establishments that were opening or expanding totaled 7.6 million in the fourth quarter, while 7.3 million jobs were lost through businesses that were downsizing or closing, BLS said in its latest report on business employment dynamics (BED).

The net gain of 344,000 jobs in the fourth quarter was up from 72,000 in the third quarter, and continued a turnaround after a string of net job losses beginning with the recession in early 2001. Even following the end of the recession in November 2001, the economy continued to shed jobs until the second half of 2003, as quarterly private sector job creation re-

mained below pre-recession levels, according to BLS.

The BED data are derived from BLS's quarterly census of employment and wages, which encompasses information from state quarterly unemployment insurance records.

The latest data show that of the 7.6 million jobs gained in the fourth quarter of 2003, 6.1 million were created by expanding business establishments and 1.6 million were created by newly opening establishments. At the same time, downsizing business establishments accounted for 5.8 million of the 7.3 million jobs lost, and closing establishments accounted for 1.5 million.

Data for industry sectors, which BLS began publishing for the first time in the third-quarter BED report, showed that the services sector produced job gains of 5.98 million in the fourth quarter, up from 5.79 million in the third quarter. Service sector job losses, meanwhile, also increased

slightly to 5.61 million from 5.57 million, resulting in a net gain of 376,000 jobs, up from 222,000 in the third quarter.

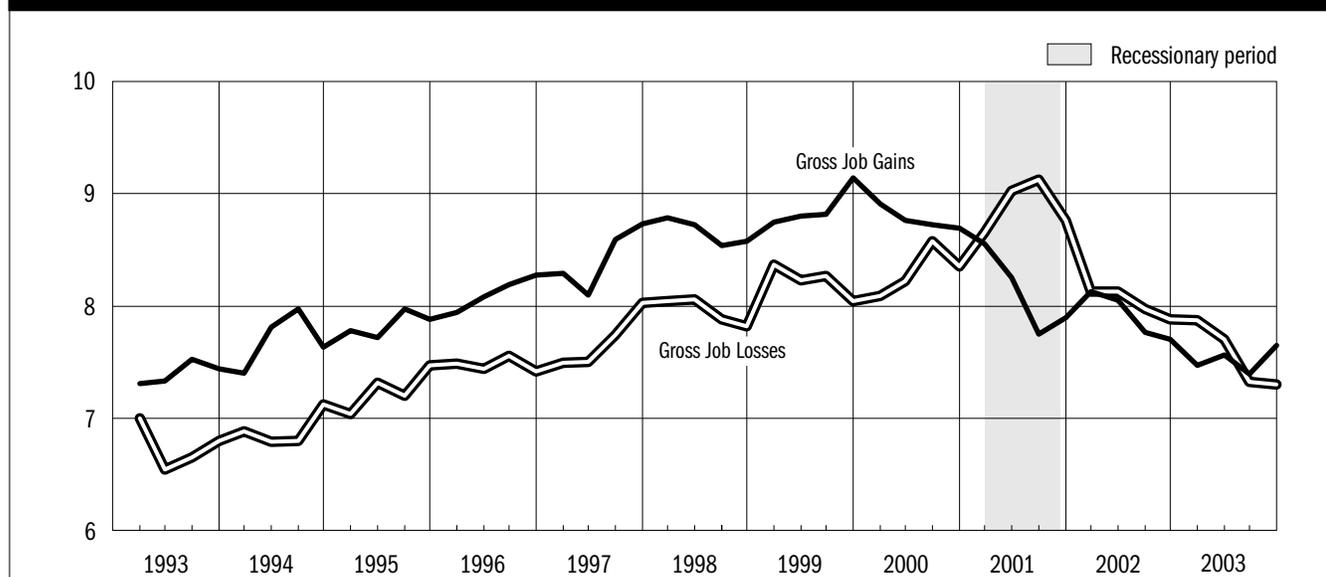
In the goods-producing sector, job gains increased to 1.67 million from 1.61 million in the third quarter, while job losses fell to 1.7 million from 1.76 million, resulting in a net loss of 32,000 jobs, down from 150,000 in the third quarter.

Within goods-producing industries, manufacturing job losses exceeded job gains during the fourth quarter, leaving a net loss of 65,000 jobs, down from 152,000 in the third quarter. However, manufacturing losses shrank to 651,000 jobs from 701,000 in the third quarter, while job gains increased to 586,000 from 549,000.

The business employment dynamics report is available at <http://www.bls.gov/news.release/pdf/cewbd.pdf>.

Gross Job Gains and Gross Job Losses: First Quarter 1993 – Fourth Quarter 2003

Millions of Private Sector jobs, Seasonally Adjusted



Source: Bureau of Labor Statistics

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In the Courts

Union Cannot Compel Wage Hike Based on Oral Promise, Court Says

A union cannot compel a company to follow through on an alleged oral agreement to raise wages, the U.S. Court of Appeals for the Fifth Circuit held Aug. 6 (*Office & Professional Employees Int'l Union Local 107 v. Offshore Logistics Inc.*, 175 LRRM 2452, 5th Cir., No. 03-30688, 8/6/04).

The company, an air carrier regulated by the Railway Labor Act, proposed modifications to the parties' contract, including two wage increases. The union rejected the offer, but the company notified the union of its intent to implement the increases.

In response, the union said it would not challenge the company's action in court if management prepared a letter of agreement amending the bargaining contract to reflect the new pay schedules. The company agreed, but the letter included only the first pay increase.

The appeals court dismissed the union's argument that promissory estoppel should prevent the company from renegeing on its promise. The union said it gave up its right to sue under RLA to enjoin the company's unilateral actions after relying on the company's promises.

To establish an enforceable contract based on promissory estoppel, the appeals court said, a plaintiff must show that: the defendant made a promise, the defendant should reasonably have expected that it would induce the promisee's reliance, the promise induced such reliance, the reliance was reasonable, and the "injustice" can only be avoided by enforcement of the promise. In this case, the union did not show why its reliance was reasonable or why injustice only can be avoided by enforcement of the promise, the court said.

The union was not harmed by the firm's failure to grant the second pay hike, the court said. "Although the Union contends that it 'gave up' the right to bring suit under the RLA to enjoin the pay increases, it could have asserted its rights under the RLA and filed suit as soon as [the firm] refused to include the 2002 pay increases in the letter of agreement."

The appeals court also rejected the union's argument that the alleged agreement should be enforced even though it was not written because

Section 2 of RLA requires parties to make reasonable efforts to make and maintain agreements concerned with wages. The Fifth Circuit concluded that language referring to "maintaining" agreements compels it to honor only signed agreements.

Firm Owes Pension Contributions For Daily Hours Worked Over Eight

A company owes delinquent contributions to a multiemployer pension fund for hours its union-represented employees worked in excess of an eight-hour workday, the U.S. Court of Appeals for the Second Circuit ruled Aug. 30 (*New York State Teamsters Conference Pension & Retirement Fund v. United Parcel Serv. Inc.*, 2d Cir., No. 03-7349, 8/30/04).

As a party to a series of contracts with the union running from 1979 through 2002, the company was required to make contributions to the pension fund on behalf of about 5,000 employees. While the 1979-1982 contract placed an eight-hour day cap on fund contributions, two successive contracts did not. In 1989, the parties executed a settlement amendment to the 1987-1990 contract restoring the cap, but none of the contracts reached after 1990 included the cap.

From 1995 to 1997, the fund conducted an audit of company records and determined it owed the fund nearly \$2.9 million in delinquent contributions for overtime, unused sick leave, and disability pay.

The appeals court said it would not enforce the eight-hour day cap that was omitted from the contracts after 1990. The court dismissed the company's assertion that the 1989 settlement agreement implicitly carried the eight-hour day cap over into all subsequent versions of the contracts.

"Multiemployer plans should be able to ascertain the controlling provisions of a [collective bargaining agreement] by reading it, without interviewing the negotiators or tracing provisions back to [collective bargaining agreements] that have expired," the court said.

In addition, the court concluded that "otherwise valid collection regulations promulgated by a multiemployer plan to effectuate contributions cannot be defeated by implied or unwritten agreements between employers and unions."

News in Brief

NLRB Approves Withdrawal of ULPs

The National Labor Relations Board Aug. 19 announced the resolution of unfair labor practice litigation in a six-year dispute between Rocky Mountain Steel Mills of Pueblo, Colo., and the United Steelworkers (*New CF&I Inc.*, N.L.R.B. 27CA-15562, 15750, 16054, 16164, JD (SF-25-00) 8/11/04). Withdrawal of the ULP complaints filed by the company is conditional upon both sides fulfilling their obligations under a settlement agreement ratified by union members in March, which included a five-year contract covering three bargaining units (9 COBB 33, 3/18/04).

Cost Shift to Workers Planned

Employers are taking steps to cut health benefits and keep their average health care cost increase to just under 10 percent for 2005, according to a Mercer Human Resource Consulting survey issued Aug. 26. Survey results suggest there will be more cost-shifting to employees in the next year, especially among small employers, such as boosting use of in-network deductibles and increasing office visit copayments, Mercer said.

Income Was Flat in 2003

Real median household income remained flat in 2003, according to figures released by the Census Bureau Aug. 26. Median household income adjusted for inflation was \$43,318, a drop of \$63, or 0.1 percent, from 2002, which Census officials said was statistically insignificant. The unchanged figure in 2003 followed two straight years of declines in real household income. The report, *Income, Poverty, and Health Insurance Coverage in the United States: 2003*, is available at <http://www.census.gov/prod/2004pubs/p60-226.pdf>.

NMB Extends Comment Period

The National Mediation Board Aug. 27 announced it is extending the comment period through Sept. 20 for a proposed rule governing grievance arbitration in the railroad industry. The rule changes would require that arbitrations be resolved within a one-year period from the date notices are filed (9 COBB 99, 8/19/04). Submit comments to Director of Arbitration, NMB, 1301 K St. N.W., Suite 250-East, Washington, D.C. 20005.

Conference Report

Contract Interpretation, Neutrality Discussed at ABA Meeting

The “plain meaning” rule of contract interpretation no longer is sufficient, and parties need to use extrinsic evidence to establish what a collective bargaining contract provision means, Alan Miles Ruben, an arbitrator and professor, said at an American Bar Association conference held in Atlanta Aug. 5-10.

Extrinsic evidence sometimes is needed because the “English language is not precise” and “words have shades of meaning,” Ruben told a meeting of the Alternative Dispute Resolution in Labor and Employment Law Committee. Ruben edited the Sixth Edition of *“Elkouri and Elkouri: How Arbitration Works,”* a BNA Books publication.

Arbitrators must determine the meaning of a contract provision not just by considering the words of the contract, but also by examining usage by the parties and how they should have understood the language to mean under the circumstances, Ruben said.

Kevin McCarthy, a practitioner in Portage, Mich., who is the management co-chair of the committee, said he could not recall the last time he went to an arbitration and just presented the language of the contract.

Seattle attorney Jon Rosen, the committee’s union co-chair, said that his concern about the loss of the plain meaning rule is that the arbitrator will allow the subjective intent of a party to be weighed. Arbitrators should not go so far as to consider evidence of “gee, we meant to say this, but we never did,” he said. Evidence to be considered must be other written evidence besides the contract or oral exchange.

Ruben agreed with Rosen, stating that “uncommunicated subjective intent is no evidence at all.”

After-Acquired Evidence Use Up

Raising the issue of after-acquired evidence, Ruben said arbitrators increasingly are holding that evidence an employer acquired after the discharge of an employee may not go to that discharge but may be used in de-

termining what, if any, remedy will be awarded.

The increased use of after-acquired evidence runs counter to the purpose of progressive discipline to rehabilitate the employee, Rosen said. He added that he is finding that after discharging people, employers call in “IT Nazis”—information technology experts who find all kinds of objectionable information in the employees’ computers.

Turning to the subject of the award of interest and attorneys’ fees, Ruben said that in some cases, interest on back pay is being awarded. Interest usually is awarded in cases of bad faith or when much time has passed since the employment action.

McCarthy said that the first time an arbitrator in one of his cases awards interest where interest is not provided for in the contract will be the last time he uses that arbitrator. The word “egregious” shows up a lot in cases in which interest is awarded, and it is a “disguised form of punitive damages,” which parties usually do not call for in contracts, he said.

Interest awards in general are punitive, Rosen agreed. But he suggested that employees should be entitled to interest because of the hardship they suffer for being out of work.

For example, employees off work for a year due to unjust discharge may have to live off unemployment insurance or loans from friends and relatives, and often survive by using credit cards with a high rate of interest, Rosen said. They suffer “a real loss,” for which back pay is not going to compensate them. But, he said, he has been uniformly unsuccessful in getting interest awarded unless the employer’s conduct is “egregious,” even though courts routinely grant interest.

Neutrality Report Upcoming

At another conference session, National Labor Relations Board General Counsel Arthur Rosenfeld said the board is preparing to issue a report on recent cases involving neutrality/card-check agreements handled by the Division of Advice.

The advice division also soon will hand down decisions on whether to issue unfair labor practice complaints in several cases involving neutrality/card-check agreements, the general counsel said. He noted that legal challenges to such agreements, which are a popular union organizing tool, are increasing.

Labor Law Principles to Be Upheld

Many observers think board-conducted elections are “the gold standard” and view card-check agreements as vulnerable to manipulation and coercion, Rosenfeld said. Neutrality/card-check agreements create a tension between two important principles of federal labor law—the freedom of employers and unions to make contracts and employee free choice about whether to have union representation. He vowed to protect both principles unless a particular neutrality/card-check agreement is really intended to inhibit freedom of choice.

So far, no case has challenged the right of an employer and a union to sign a neutrality/card-check agreement, Rosenfeld said. However, cases have addressed how the agreements are carried out.

The board currently is considering a case involving neutrality/card-check agreements between the United Auto Workers and automotive parts suppliers Dana Corp. and Metaldyne Corp. The board is considering whether the voluntary recognition bar, which blocks decertification petitions for a “reasonable period of time” following an employer’s recognition of a union based on proof of majority support, should be applied in connection with card-check procedures (9 COBB 95, 8/5/04).

Other unresolved issues regarding neutrality/card-check agreements include whether recognition should bar representation petitions filed by another union, whether such agreements are a mandatory or merely permissive subject of bargaining, and whether specific provisions amount to unfair labor practices, according to Rosenfeld.