

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, SPRING-SUMMER, 2001

Letter From The President

Fellow Members:

OUR ANNUAL CONFERENCE, HELD FEBRUARY 4-6, 2001 at Cherry Valley Lodge in Newark, was again very well received by all in attendance. The Board will be studying the evaluations to determine what we can do to continue to make the conference even better in the future.

Congratulations to our new Secretary **Kathy Weisgarber**; and new Board members **Jennifer Lawson**, **Lisa deGuzman-Catlett**, and **Lynn Leslie** as they became part of the OHPELRA Board at the annual conference. A big thank you to **Sharon Gitman**, **Andy Votava**, and **Mark Wendling**, who served on the Board and made significant contributions in various capacities, including the office of Secretary, Vice President, and Conference Coordinator. Their contributions to this organization are very much appreciated, and we wish them well in their future endeavors.

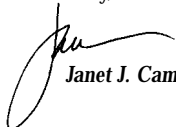
The Board is preparing the calendar of events for the upcoming year. We appreciate your continuous input and feedback regarding programming and services. Check out the start up of our web page, www.ohpelra.org. Following our planning retreat, we will be adding more information. We would also appreciate any feedback regarding the development of our website. Thanks to Board member **Steve Barker** for his efforts in getting the project up and running!

Doug Duckett represented OHPELRA before the joint House-Senate Civil Service Review Commission charged with evaluating civil service reform. Doug prepared and delivered testimony on behalf of Ohio's many public sector jurisdictions, and did so very well. Thank you, Doug! More on that can be found elsewhere in this newsletter.

We continue to request that you share with us any impasse decisions, good news, and bad news (we never get bad news, do we?) so that our experiences can be shared with one another. Our newsletter editor, **Judith Pepper**, would be happy to contribute to the writing and editing of such articles and publish them for the benefit of our membership.

The NPELRA conference was held in New Orleans, April 1-5, 2001. OHPELRA was well represented with 36 attendees. Please plan to attend next year's conference in Clearwater, Florida!

Sincerely,



Janet J. Campbell, President

Watch Those E-mails — They May Be A Public Record

by **Ronald G. Linville, Esq.**

Baker & Hostetler LLP

65 East State Street, Suite 2100

Columbus, Ohio 43214

WITH THE ALREADY ABUNDANT USE of electronic mail ("e-mail") expected only to expand, the question of whether these e-mail messages constitute a "record" or a "public record" under the Ohio Revised Code becomes an increasingly important question. The Supreme Court of Ohio has made it clear that in some instances, e-mail will be considered a "public record."

Ohio Revised Code ("ORC") Section 149.011(G) broadly defines "records" to include "any document, device, or item, created or received by or coming under the jurisdiction of any public office of the state of its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." See *State ex rel., Thomas v. Ohio State University*, 71 Ohio St. 3d 245 (1994).

Recently, the Ohio Supreme Court examined whether e-mail constitutes "records" for the purposes of ORC Section 149.011(G) and whether it is accessible as "public records" under ORC Section 149.43 in *State ex rel., Wilson-Simmons v. Lake County Sheriff's Dept.*, 82 Ohio St. 3d 37 (1998).

In *Wilson-Simmons*, the Court reiterated that ORC Section 149.43(A)(1) "does not define a 'public record' as any piece of paper on which a public officer writes something." The Court specifically rejected the broader assertion that no public office

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OHPELRA members in a New Orleans club after a day at the NPELRA Annual Conference

Where Were You On February 4, 2001? Conference Buzz

HAS IT REALLY BEEN THREE MONTHS SINCE CHERRY VALLEY? Yep...we spent three brisk, winter days in February enjoying our OHPELRA colleagues in spirited seminars, challenging plenary sessions, helpful networking, and just plain relaxing by the fireplace.

The Opening Reception was such fun, and it was here that "PapaHotze" (paparazzi member **Frank Hotze**, credit **Linda Chandler** with the clever name) made his first appearance. He was ever present with his camera chronicling Conference activity, and we reprint some of PapaHotze's work here. Frank is an old friend recently retired, and it was great to see him and Tom Payne, another recently retired OHPELRA friend. Both men are past presidents and great contributors to labor relations in Ohio.

OHPELRA stands proud among NPELRA chapters, according to National President Douglas Duckett in his remarks to the Conference. He cheered us when he stated how we have grown our membership to be the second largest PELRA in the nation. But the real inspiration came when he spoke about the leadership we have enjoyed: **Jonathan**

Downes, Tom Payne, Kevin Sellards, Marsha Jordan Smart, Frank Hotze, Rick Strader, Felicia Bernardini, Jan Campbell. His closing remark: "I treasure you. You taught me this work. Yours were the shoulders I stood on!" That captures the essence of OHPELRA, and it brought the house to its feet in a standing ovation.



One of the best things about Conference is getting caught up on news, and I learned that **Kathy Weisgarber** was promoted the Human Resources Director of the City of Miamisburg. **Jonathan Downes** and **Marsha Jordan Smart** were appointed to the Ohio Civil Service Review Commission. **Andy Votava**, after three years as Conference Coordinator and one as Vice President, has stepped down from OHPELRA office to assume the role of President of the Ohio County Administrators Association. **Sharon Gitman** left the OHPELRA Board after nearly a decade of service as Secretary. Sharon is now HR Manager for Miami Valley RTA, after 14 years of service to the Montgomery County Health

Department. **Mark Wendling**, who did such a great job as Conference Coordinator this year, has moved to Independence, Kentucky as Administrator.



"WATCH THOSE E-MAILS", CONTINUED

e-mail could ever be a public record under ORC Sections 149.011(G) and 149.43. Importantly, however, the Court made clear, "In other words, sometimes, public office e-mail *can* document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office," and will therefore be considered "public records" under ORC Sections 149.011(G) and 149.43. *Wilson-Simmons*, at fn. 1.

Acknowledging that e-mails will at times constitute public records, a host of questions regarding their scheduling and retention is raised. Therefore, since e-mail can constitute "public records," it may be prudent for public sector employers to reexamine storage and retention policies concerning electronic communications. Although Ohio law guarantees public access to public records, excessive or unnecessary record keeping is discouraged. As a result, public employers should only maintain e-mails or electronic communications that are necessary to adequately document its operations, and to protect the rights of persons directly affected by its activities. ORC Section 149.40. Therefore, it will be important for public employers to develop procedures for managing e-mail and balancing legal obligations with the desire and goal to not undertake excessive or unnecessary record keeping.

Baker & Hostetler and partner Ron Linville are Contributing Sponsors of OHPELRA.

OHPELRA Testifies On Ohio Civil Service Reform

LAST SESSION, THE OHIO GENERAL ASSEMBLY authorized the creation of a Civil Service Review Commission to examine Ohio's civil service laws, which regulate recruitment and selection of employees for the state, counties, large townships, and statutory cities. Particularly at the county level, these regulations govern a wide range of terms and conditions of employment throughout employment, particularly for non-bargaining-unit employees. Many public employers have found many of the state civil service regulations outmoded and inefficient, and OHPELRA seeks modernization and reform, while preserving the requirement of merit-based selection and promotion.

OHPELRA President **Jan Campbell** and Board Member **Douglas Duckett** appeared before the Civil Service Review Commission chaired by Rep. Stephen Buehrer and Sen. Lynn

Wachtmann and presented OHPELRA's concerns and recommendations. Three of the Commission's members are OHPELRA members: **Marsha Jordan-Smart** of Greene County and OHPELRA founder **Jonathan J. Downes** of the law firm Downes & Hurst, representing counties; and **Richard J. Gatien** of the City of Canton, representing cities. OHPELRA advocated: (1) preserving merit-based selection systems while giving greater flexibility to use a wider array of recruitment and selection tools; (2) moving the Ohio Department of Administrative Services from a regulatory model to more of a consultant role; and (3) ensuring that all civil-service regulations respect local needs and flexibility while ensuring local accountability. A coalition of public-employee unions also testified, arguing basically for the status quo, supported by union-appointed members of the Commission. In a moment of perhaps unintended irony, one union official argued against "legislative changes that would have an impact on benefits after



Our 18th Annual Conference will be at Cherry Valley again, February 3-5, 2001.

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OHPELRA's Arbitration Reports

WE ARE KICKING OFF A NEW FEATURE for the newsletter that will only work with your help. We would like to regularly provide summaries of interesting arbitration decisions, with your assessment of the award and the arbitrator's performance. Please be as objective as you can, and don't simply slam the arbitrator because you lost the case. As competitive as we all are, and as sure as we (usually) are of the justice of our cause, we all know that sometimes the employer does not deserve to win (or at least it can be a close call!).

We need your description to include:

- The name of the parties.
- The name of the arbitrator.
- A brief (sentence or two) description of the issue.
- The outcome of the case.
- Rating of the arbitrator on a scale of 1 to 5 (low to high) on: (a) the arbitrator's conduct of the hearing; (b) the arbitrator's grasp of issues; (c) the soundness of the overall decision; (d) the avoidance of apparent bias; (e) the arbitrator's willingness to decide case rather than split the decision; and (f) your overall willingness to use this arbitrator again. Please also list your name and telephone number and e-mail address for more information.

Here is the first arbitration summary:

Local 3062, AFSCME, Ohio Council 8 v. Butler County Department of Job and Family Services

Arbitrator: Louis M. Thomson, Esq.

Issue: Employee discharge for theft of co-worker's black sandals (ed. note: we deal with only the weightiest of moral issues

in labor relations...). Case was strong but circumstantial without eye-witnesses and no prior discipline, hinged on credibility, and was not at all a sure winner.

Outcome: Grievance denied; discharge upheld.

Rating of the Arbitrator (with 5 as highest):

- (a) **Conduct of hearing:** 4, informal but effective style, respectful of all sides.
- (b) **Grasp of issues:** 5, saw right through the grievant's sad, "I'm just a victim (who can't keep her story straight)" tale.
- (c) **Soundness of overall decision:** 4 very good outcome, but decision could have been more carefully written. Still, very good reasoning process, the arbitrator was adept at evaluating witness testimony, and he did not appear to impose a higher-than-preponderance burden, important since this was a theft offense.
- (d) **Avoidance of bias:** 5, flawlessly polite and respectful to both sides and all witnesses.
- (e) **Willingness to decide case and not split decision:** 5, total win for employer, with no bones tossed to the Union or grievant.
- (f) **Willingness to use arbitrator again:** 4.5—very pleased with decision, but would have preferred a more careful style of writing in the opinion. But this arbitrator had guts in a tough case and did not duck!

For more information, contact Doug Duckett at (513) 887-3257 or at duckettd@butlercountyohio.org. Have a case you want us to summarize? Send the information to Doug or Editor Judith Pepper at jpepper@mvrta.org.

"OHPELRA TESTIFIES", CONTINUED

a contract has already been negotiated." One wonders where he was when the Congress and state legislators adopted non-negotiated benefits enhancements such as the FMLA and the FLSA!

OHPELRA will continue to work together with groups representing counties, cities, and universities in the months ahead to ensure that the interests of effective public management are reflected in Ohio's civil service system. We will continue to keep you posted on this important commission's work.

OHPELRA Member Survey

The OHPELRA Board wants to ensure that you continue to receive the high quality services and programs that are the hallmark of our organization. The survey below is designed to get your input as we begin planning for the upcoming year.

Please complete the survey and return it to:

Ms. Janet J. Campbell
Labor Relations Manager
City of Columbus
90 West Broad Street
Columbus, Ohio 43215-9046

Note: If you completed this survey at the OHPELRA Annual Conference in February 2001, please do not complete it again.

I would like to have programming in locations throughout the state. Yes No

Preferred location _____

I would like to have more seminars and workshops during the year. Yes No

I am satisfied with the number of programs provided by OHPELRA. Yes No

I am interested in the following program topics:
1. _____
2. _____
3. _____

I am interested in being more involved in OHPELRA. Yes No

Describe area of interest _____

I am interested in presenting at an OHPELRA conference. Yes No

Additional comments:

Member Information:

Name: _____

Title: _____

Organization: _____

Type of Organization:

- City County State Township Education
- Other (Please describe _____)

Thank you for your input.

We Welcome 26 New Members To OHPELRA

The following new members have joined OHPELRA and NPELRA since the last newsletter. Welcome to our organization!

William Margalis

*Assistant Administrator/
Human Resources Manager*
Lake County

Ronaye Hubbard

Labor Relations Officer
City of Cleveland

Nichole Leatherbury

Human Resources Manager
City of Columbus,
Division of Police and Public
Safety

Judy McDonald

Human Resources Manager
City of Tallmadge

Myra Williamson

Personnel Coordinator
Delaware County

Karon Murphy

Office Manager
City of Columbus, Division of
Public Safety-Communications

Donna Roland

Human Resources Director
Licking County Government

Cheryl Subler

Senior Policy Analyst
County Commissioners
Association of Ohio

Rachel Stull

Recruiter
Delaware County

Tad Ellsworth

Budget/Labor Relations Analyst
City of Canton

Ron Connally

Human Resource Officer
Greene County Public Library

Michael Cornell

Assistant City Manager
City of Fairborn

Judith Carter

Assistant Township Administrator
West Chester Township

Kathy Cooper

Director of Labor Relations
The Ohio State University

Todd Hunter

Human Resources Consultant
The Ohio State University

Shawn Douglas

Human Resources Administrator
Lake County Department of Job
and Family Services

Deborah Chaconas

Human Resources Coordinator
Licking County Government

Al Allender

Human Resources Director
Allen County Board of Mental
Retardation and Developmental
Disabilities

Kimberly Serra

Human Resources Officer
Hamilton County

Linda Harris

Human Resources Manager
Five Rivers Metro Parks,
Montgomery County

Harold Reeder, Esq.

Attorney for Cuyahoga County
Treasurer

Leslie Ghiz

*Supervising Analyst of Labor
Relations*
City of Cincinnati

Keith Grace

Senior Human Resources Analyst
City of Cincinnati

Robin Lehman

Court Operations Director
Montgomery County Domestic
Relations Court

Margie Laut

Human Resources Director
Butler County Department of
Job and Family Services

Robert Thornton

Chief Negotiator
City of Columbus

Largest Ever Ohio Delegation At NPELRA Conference In New Orleans

NPELRA'S 30TH ANNUAL TRAINING CONFERENCE was a huge success, with the largest number of attendees in many years. Ohio's delegation was the largest ever as well, with 36 in attendance, including several "first-timers." NPELRA always offers a great mix of outstanding training with the chance to experience great locations, and this year's conference lived up to that billing.

The New Orleans Conference marked the end of **Doug Duckett's** term as NPELRA President, and he was succeeded by **Steve Larson** of the City of Garden Grove, California. In his opening remarks, Doug shared his year of travels around the country, using photographs and stories of members he met along the way, and he again thanked OHPELRA for its constant support and encouragement during his term as the first national president from Ohio. OHPELRA President **Jan Campbell** served on the NPELRA Conference Program Committee this year, another step in her continued leadership on the national level. **Jan Campbell** presented a workshop at the NPELRA Conference on "Table Manners: Practical Protocol at the Bargaining Table," and **Jim Davis** of the Butler County Department of Environmental Services joined with **Doug Duckett** to lead a workshop called "What Went Wrong—When Pay for Performance Plans Don't Work." OHPELRA Vice President **Stephanie Echols** also served as moderator of the second plenary session, featuring past OHPELRA speaker **Bill Patterson** on dealing effectively with the media.

On the social side, Doug's suite was packed on Wednesday night for the joint Ohio-Iowa-Missouri reception. Many attendees described the conference as one of the friendliest ever, and people from different states mingled and networked very

well. And yes, much food—too much—was consumed.

NPELRA'S 31st Annual Training Conference will be in Clearwater Beach, Florida on April 14-18, 2002. Start planning to include that cost in your budget for 2002, and join us in Clearwater Beach for another week of outstanding training and networking.



Congratulations, Raquel!

OHPELRA congratulates member Raquel Dowdy-Cornute of the Public Utilities Commission of Ohio on her election as Vice President-Secretary of the newly chartered Central Ohio Chapter of the International Personnel Management Association (IPMA).

An Interview With OHPELRA's President

Ms. Janet J. Campbell is Labor Relations Manager for the City of Columbus, and recently completed her first year as OHPELRA President. We have recently learned that she will soon be awarded the NPELRA Certificate as a Labor Relations Academy Master. You will want to review her paper, "The Rules of the Game," on the NPELRA website, www.npelra.org. OHPELRA is proud of President Jan!

Jan, you are one of OHPELRA's stars, coming up through the ranks to the presidency and on to National (NPELRA) committees. When you joined OHPELRA, did you think it would become such an important aspect of your professional life?

Thank you. I knew when I joined OHPELRA that it was an organization of labor relations/human resources professionals, and that I would probably get out of the organization what I put in it. What I didn't know was how much I would learn from my peers throughout Ohio and the United States and what wonderful friendships I would make. A former department director told me that one can't just belong to a professional organization, but one had to get involved to reap the real rewards. I have been fortunate to have been invited to participate in many activities at the NPELRA level and have thoroughly enjoyed the benefits of the association with the many members and speakers throughout the country. I've truly enjoyed serving as OHPELRA's president and appreciate the opportunity to do so. But in a nutshell, no, Judith, I had no clue!

Jan, each president has a special agenda or goals for her/his term of office. Could you share your vision for OHPELRA?

My personal goal is to enhance membership services. With the help

of the Board, our vision has focused on communication, information sharing, and programming. OHPELRA continues to increase its membership and that's a great accomplishment. We now rank second in the country in membership. But our focus must, more importantly, be on serving our current members. We all have to work to make that vision a reality.

Well, I think we measure up pretty well against those goals. How do you view the state of the organization after your first year?

For the first time in our history, OHPELRA was able to provide a benefit to the members in the way of providing the cost-free luncheon program with the State Employment Relations Board last July. Through persistent planning, OHPELRA's financial status is the best ever.

Our website at www.ohpelra.org is now operational, and the development of the site will continue. This effort will enable us to communicate with our members on a more frequent basis, and in the future, our members will be able to communicate with us regularly. The format of the newsletter has been improved; and the newsletter is provided on a schedule that affords us the opportunity to stay in front of our members.

Our programming continues to be some of the best in the country—we're told that constantly by other chapters. We held a profitable and well attended fall conference on "Dealing with Difficult Employees". And, of course, the annual conference held in February was outstanding—not just from our perspective, but from the attendees' as well.

You have focused a lot of energy on providing service to members. What can we expect in the coming year?

The Board will begin its planning

at a two-day retreat to be held in May. I fully expect that we will continue to pursue different program forums with member services in mind.

You have just returned from the National (NPELRA) Conference in New Orleans. What was the Conference highlight for you?

OHPELRA was represented by 36 attendees at the NPELRA annual conference—that was a record, and we claimed it enthusiastically! The networking and comradery continue to be the highlights of every conference I've attended, but I certainly don't want to downplay the programming which, of course, was high quality.

Any new ideas you picked up that you want to try back home?

Too many to cover in this short space. But I encourage those who regularly attend the conference to continue to budget for the trip, and to those who have never gone, please make an effort—the experience is well worth it!

And no discussion about an event in New Orleans is complete without comment about the food, the bayous...the music. Did you bring back some crayfish etoufee for the rest of us to sample?

No, sorry, but I sure had my share. Every place we ate declared that their gumbo was the best—that they had their own special recipe. So, we had to try every type of gumbo which resulted in us eating gumbo every day (we almost went through a whole bottle of Tums, too). I did pick up a couple of special spices and cookbooks which I'd be happy to share.

The music was wonderful. Everywhere you went someone was playing something. It was amazing to see and hear such talent. I bought some CD's, one from Rooster and the Chickenhawks—I'll remember that experience for a long time!

I must bring us back from that wonderful NPELRA experience in

that fascinating city, back to the reality of labor relations in the public sector. What do you see as the biggest challenge before us here in Ohio?

I think the biggest challenge we all face is developing and maintaining good relationships with our bargaining unit representatives. As players change for each party in the public sector, we must put forth a continuing effort to work diligently towards mutual respect and understanding.

What can we do, singly or collectively, to prepare for that? (or to meet that challenge?)

The first is recognition that development and maintenance of relationships with our bargaining unit representatives is important. Secondly, it is imperative that we educate others of that importance. There are many things that cannot and will not be accomplished for either party without mutual respect. Our members can help each other by sharing their experiences dealing with this issue, through the NPELRA website, and in the future, OHPELRA's website, through contributing articles to the newsletter, and by volunteering to speak at one of our annual conferences.

And, Jan, I can't resist taking advantage of your long and impressive experience to ask for more advice on how to guide my new labor relations officer. She has been on the job for a few months and is doing well. But the union has filed a record number of grievances, and she is taking it personally. What steps can I take to help her regain her perspective?

I'm not sure what the relationship is with the union filing the grievances, and I'm not sure what your contract provides with respect to the grievance procedures, but I've always found that meeting the issue head on is the best practice. First, I would share your insight with her regarding the personalities and history between the parties in an effort to put her at ease regarding the number of grievances filed (I'm assuming she

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OHPELRA Thanks Its 2001 Contributing Sponsors

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McGohan Brabender, Inc., Dayton

Please remember our sponsors' strong commitment to OHPELRA.

Hold These Dates!

August 29 in Columbus

The Prospects for Civil Service
Reform in Ohio
OHPELRA Luncheon Program
with Members of the Civil
Service Review Commission

October 23 in Columbus

OHPELRA Fall Seminar:
Conquering Absenteeism —
A Ray of Hope
Details and Registration
Information to Follow!

“AN INTERVIEW”, CONTINUED

was not the subject of the grievances). Then, I would facilitate a meeting(s), separate from the grievance procedure, to establish rapport with the union representatives, and begin the establishment of a relationship. While I don't know that there is a prescription to remedy this type of situation, honesty, respect, and time will eventually cure the ill.

Thanks, Jan, I'll give it a try. And to all of you members out there...do you have a question for our President or other members of the OHPELRA Board? Please send them to me at jpepper@mvrta.org, and I will explore the answers in future interviews in this column.

OHPELRA ON THE WEB!



Check out OHPELRA's new web site at www.ohpelra.org! We're just getting started and hope to add more features, so we welcome your ideas and suggestions. Also, please use the message board to ask for information and exchange ideas. And check it frequently to see if you can help out your colleagues. Direct any comments to our web overseer, **Steve Barker**, at barkes@odhs.state.oh.us.

OHPELRA Update

c/o Butler County Department of Personnel
315 High Street, 6th Floor
Hamilton, OH 45011-6016