

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, SPRING-SUMMER, 2002

Letter From The President

Fellow Members:

IT IS A GREAT HONOR to have been elected as the President of OHPELRA at our Annual Conference at Cherry Valley Lodge in Newark. In the coming year, I look forward to working with you all to continue the quality of programming that has been the hallmark of my OHPELRA experience.

We broke the record of attendance yet again and had a simply TREMENDOUS program not to mention the FUN! On the heels of September 11, we invited Paul Hutchins from the New York Transit Authority to share his stories about the impact of the tragedy on one of our own. Paul's story was simply moving. On the other end of the conference, Sarah Weddington of Texas reminded us all to exhale and not take life too seriously.

Congratulations to our newest board members, Jim Sennish of Erie County and Marsha Jordan-Smart of Greene County. Jim and Marsha are no strangers to OHPELRA. Marsha is a charter member of OHPELRA having previously served as president. Jim has been an OHPELRA member and supporter for quite a number of years, attending many conferences and programs along the way. The Board would also like to thank our departing board members who made many significant contributions during their service: Judith Pepper recharged the OHPELRA newsletter and has been instrumental in coordinating the content; Felicia Bernardini was the immediate past president of OHPELRA from 1999-2001. Felicia provided structure and energy to OHPELRA and kicked off an aggressive membership drive that has positioned OHPELRA as the 2nd largest chapter behind California! Lastly, Rick Gatien who was a board member for a very brief period, but made quite a splash with his work with the sponsorship committee. Thanks to all for your contributions!

We were honored at the NPELRA conference in Clearwater Beach when three of our own received the *Award of Excellence* for their



New OHPELRA President Stephanie R. Echols shares her inaugural remarks at the OHPELRA Conference in February.

OHPELRA Welcomes New Board Members

Marsha Jordan-Smart, SPHR

IN A SENSE, WE CAN HARDLY CALL MARSHA JORDAN-SMART "NEW" TO OHPELRA, given that she served as our first woman president in 1990-1992. Marsha has over thirty years of experience in personnel and labor relations. She is currently the Human Resources Director for the Board of Greene County Commissioners, Xenia, Ohio. She has been employed by the Greene County Commissioners' since 1980. She has succeeded over the years in developing many county-wide projects and programs, such as the Affirmative Action Plan, a county-wide Classification Plan, Employee Handbook, and various policies and procedures. The Greene County Commissioners' Office of Personnel became a certified County Personnel Department under Ohio Revised Code 124.14(G) on July 1, 1999. She has been a member of OHPELRA and NPELRA since 1983, serving on the OHPELRA Board of Directors for nine years as Member, Vice-President, President and Conference Coordinator. She is also a member of the International Personnel Management Association and the County Commissioners Association of Ohio, serving in various official leadership roles. Previously, she worked in private sector personnel and labor relations for twelve years in the steel industry before entering public employment. She attended Sinclair Community College and Wright State University, receiving the Senior Professional in Human Resources certification from the Society of Human Resources Management, HR Certification Institute in 1992 and the National Public Employer Labor Relations Association's Labor Relations Academy certification in 2000, becoming the first Buckeye to be bestowed with this honor. Marsha Jordan-Smart was appointed by Governor Taft to the Ohio Civil Service Review Commission in December, 2000.

In 2001, she chaired one of the four sub-committees, Hiring & Promotions, of the Civil Service Review Commission, and devoted hundreds of hours to help the members of this Commission issue a final report and recommendation in December, 2001 to the Governor for major civil service reform in Ohio. Marsha was rec-



Marsha Jordan-Smart, SPHR

SERB Signals A Trump Card for Unions In Mid-Term Bargaining

By Donald L. Crain, Esq.
Frost Brown Todd LLC
Columbus, Middletown, Cincinnati

ON OCTOBER 1, 2001, SERB decided *In re Toledo City School District Board of Education*, (SERB 01-005), giving public-sector unions the right to block any unilateral employer action, absent exigent circumstances, after a mid-term bargaining impasse is reached by the parties. Significantly, this case applies to subjects covered by the parties' agreement as well as non-contract issues that are mandatory subjects of bargaining. Without the right for an employer to act unilaterally after ultimate impasse is reached, unions have no motive to even bargain, let alone bargain in good faith during the term of an agreement.

Prior to the *Toledo* case, in *In re SERB v. Youngstown City School District Board of Education*, (SERB 95-010), SERB only required that the parties meet, confer in good faith, and reach ultimate impasse prior to permissible unilateral action by an employer for mandatory subjects not covered specifically by the parties' collective bargaining agreement.

Under the *Toledo* case SERB now permits only two exceptions for unilateral mid-term action — (1) where exigent circumstances exist (i.e., a bona fide emergency) that were unforeseen at the time of prior negotiations for the existing agreement, or (2) where change is necessary to conform to new statutory requirements passed by a higher legislative authority. Admittedly, these two standards will be difficult to meet.

SERB stated its intention to apply the ruling of *Toledo* to matters *not* covered by an existing contract. It has long been held in the public and private sectors generally that unilateral changes regarding mandatory subjects of bargaining to existing collective bargaining agreements were prohibited unless the provision was made unlawful by legislation or legal ruling. However, satisfaction of the meet and confer standard prior to unilateral action for non-contract, mandatory subjects has been an essential principle in balancing the need for unions to effectively represent employees and for employers to manage the workforce and the business of the public.

With *Toledo*, unions will either get exactly what they ask for or tell employers to wait until the contract expires, at which time the employer will have to "buy" or "horse trade" for the needed change. This shift in leverage by SERB is troubling making it much more difficult and expensive for public entities to manage the public's business.

The case is on appeal and until the matter is definitively determined, Ohio employers are encouraged to stay the course and challenge this decision.

*Frost Brown Todd LLP is a Contributing Sponsor of OHPELRA.
The opinions expressed in this article are those of the author and do not necessarily represent the views of OHPELRA or its Board of Directors.*

OHPELRA'S 18th Annual Conference Largest EVER!

By Judith Pepper

OHPELRA's 18th Annual Training Conference had a blockbuster opening on Sunday, February 3, with a great Super Bowl Party. It was difficult to determine what was the most popular venue, the TV room, the buffet table or the chat room. All were filled with the fellowship of old friends and new colleagues. We were proud to host National President Steven A Larson and show him some good ole Buckeye hospitality. Earlier that afternoon, we also honored Past President Felicia Bernardini with the Award of Excellence in Leadership for her many years of service as a board member and president. Felicia always kept us focused on service to members and developing our own potential as leaders, and we are better organization for her commitment to our profession.

The Conference theme, "Steady Leadership in Uncertain Times," was carried out over the next two days and was kicked off with a memorable keynote address, *The View from Ground Zero—The Labor Relations Aftermath in New York City*. Mr. Paul Marcus Hutchins, Senior Director of Labor Productivity, New York Transit Authority, gave us a first-hand view of leadership and heroism on September 11, 2001. He shared personal experiences from that day and presented a film that NY Transit made showing their employees involved in events of 9-11 and subsequent days. It depicted leadership, teamwork, courage and dedication to humanity. A most poignant segment of the film was of a subway train operator with a trainload of passengers caught underground at the time of the attacks on the building, and how using his instincts, he drove them to safety. One of those passengers called the Transit Authority a week or so later to praise her operator for providing up to the minute information to his passengers about happenings above ground and keeping everyone calm in the face of disaster. NY Transit arranged a meeting of the two, which was emotion packed and beautiful to witness.

There were many learning experiences to follow covering areas of smarter bargaining, pension reform laws, ethics in labor relations, investigating disciplinary issues, intergenerational issues in HR management, health care costs, and IBB. And who could forget the memorable performances of Rick Strader as hard-nosed supervisor and Brooke Camevale as employee under suspicion of drug use? No, this wasn't a reality TV show—it was our mock trial of a drug abuse case, led by attorneys Don Crain and Ron Linville, long-time OHPELRA sponsors.

The closing session put the exclamation point on the entire conference as Sarah Weddington addressed OHPELRA on "Rising to the Challenge of Leadership." Ms. Weddington argued the most significant constitutional case of the past thirty years before the United States Supreme Court at the age of 26. She was the first woman elected from Austin to the Texas House of



Paul Hutchins — Keynote Speaker on
Labor Relations Aftermath of 9-11

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Ohio Leaders And OHPELRA Members Win State And National Recognition For Excellence In Public Service

AT THE OHPELRA ANNUAL CONFERENCE in February, the organization recognized State Rep. **Stephen Buehrer** and three of our own members, **Jonathan J. Downes, Esq., Marsha Jordan-Smart, and Richard J. Gatien** with the OHPELRA Award of Excellence in Public Service for their leadership on the Ohio Civil Service Review Commission. Rep. Buehrer co-chaired the effort, and Jonathan, Marsha, and Richard chaired three of the four subcommittees that wrote the majority report, together with long-time ODAS official **Sharon Downes**. Their literally hundreds of hours of work created a blueprint to bring civil service law into the 21st Century, and we will need the strong support of OHPELRA's members in the months ahead so that those recommendations become reality and do not merely gather dust on a shelf. At that same conference, OHPELRA

honored Past President **Felicia Bernardini** with the Award of Excellence in Leadership for her many years of service to OHPELRA, including two years as President in 1998-2000.

In April, the national organization jointly awarded Jonathan, Marsha, and Rick the **NPELRA Pacesetter Award**, one of the organization's highest honors recognizing leadership and innovation in public service. They were the first Ohioans so honored at the national level since **Tom Payne** received the NPELRA Award of Excellence in 1992. Rick Gatien, who was unable to attend the entire conference, flew to Clearwater for the day to accept the award on behalf of his three colleagues.

We are very proud of Jonathan, Marsha, and Rick — they represent the very best of OHPELRA.



From left to right, Rick Gatien, Rep. Stephen Buehrer, Jonathan Downes, and Marsha Jordan-Smart, recipients of OHPELRA's 2002 Award of Excellence in Public Service.

OHPELRA'S Website— A Resource To Use

By **Steven D. Barker**,
Board Member

Just a reminder to all that there is great professional support and information to be found at our website, OHPELRA.org. Our Discussion Board allows friends and colleagues from all over the State to offer advice, direction and information on every issue you may encounter. A vast pool of experienced and battle-tested public-sector employees willing to share their experience with you is there to be tapped. Or perhaps your expertise in a particular area could be of help to others looking for answers and solutions. Your input would be greatly appreciated. OHPELRA.org exists for you, the public sector professional. We hope you find our site helpful and informative. **Please check us out; you'll be glad you did.**



Remember that the user ID for the Members Only section is "ohio" and the password is "buckeye."

"NEW BOARD MEMBERS", CONTINUED

ognized nationally for this work, winning the NPELRA Pacesetter Award in April 2002, together with Jonathan Downes and Rick Gatien.

James A. Sennish

Jim Sennish is currently the Erie County Director of Human Resources and has been a member of OHPELRA for over ten years. Erie County has over 730 full-time employees with nine labor unions, along with a self-funded health insurance plan administered by Human Resources. Jim is a graduate of Bowling Green State University with a Masters degree in American government and public administration. On the labor relations front he has been active with the current civil service review/reform efforts and has been negotiation team leader for several labor agreements successfully utilizing Interest Based Bargaining (IBB) techniques. Jim's previous employment was as the director of human resources for the City of Sandusky where he led an IBB effort that resulted in a SERB Resolution recognizing Sandusky as the first city in Ohio to negotiate all labor agreements using SERB facilitated IBB negotiations. Jim has recruited several northern Ohioans to OHPELRA and looks forward to working with a great team to make this organization even better. He is the past president of the Erie County Human Resources Association and The Kiwanis Club of Sandusky. Jim and his wife Jody and their three children (Ben 17, Lauren 14 and Patrick 9) live in Sandusky.



Jan Campbell Elected To NPELRA Board Of Directors; Continues Ohio's Tradition Of National Leadership

NPELRA RECENTLY CONCLUDED ITS 32ND ANNUAL TRAINING CONFERENCE in Clearwater Beach, Florida, and the program was very successful, with four days of excellent training. Overall numbers were down because many jurisdictions have restricted out-of-state travel in light of the economic slump, but Ohio still sent 28 members to the NPELRA Conference, tying us with Illinois as the largest state delegation of any affiliate chapter! As usual, the Wednesday night joint Ohio-Iowa reception, this time joined by Missouri and Oklahoma as well, was a huge success, and everyone had a great time.

The highlight of the Conference for Ohioans was the election of **Janet J. Campbell** of the City of Columbus to a three-year term on the NPELRA Board of Directors. Jan is only the second Ohioan elected to the national leadership, moving to the national board just two months after completing two years as OHPELRA President. Jan has served on NPELRA committees for several years and has spoken at a number of national conferences. We look forward to her continued leadership on both the state and national levels.

At the end of that same conference, **Douglas E. Duckett** of Butler County left the NPELRA Board after eight years of service, including election as the first National President from Ohio. Thanks to Jan's election, Ohio will continue to have a voice in the national leadership. Congratulations, Jan, and our thanks to Doug for his eight years of service in NPELRA's leadership.

Hold Those Dates!

OHPELRA plans two events in the coming months. On **Thursday, July 18, 2002**, we will offer our Summer Workshop on the recent Trumbull County CSEA strike and lessons we can learn from that painful experience. That program will include brunch and will be at **no charge** to members, \$50.00 for non-members, and will be held at the Grand Host East in Reynoldsburg, just east of Columbus. On **October 29, 2002**, we will offer our Fall Seminar, a full-day program on **Conducting Internal Investigations and Disciplinary Proceedings**, featuring attorneys Marc Fishel and Lori Torriero of the Columbus firm of Downes, Hurst & Fishel. This program will be held at the Fawcett Center on the campus of The Ohio State University in Columbus, and will cost \$125.00 for members, \$150.00 for non-members. The Fall Seminar is designed not only for labor relations and human resources professionals but for supervisors and managers at all levels who confront disciplinary issues.

Please keep your eyes peeled for registration materials, but for now, keep those dates open!

What Are You Doing To Build Membership?

By **Lisa R. deGuzman-Catlett**
Board Member and Membership Chair

IF YOU ATTENDED THE ANNUAL OHPELRA CONFERENCE, or made time for even one of the fall 2001 seminars, you realize the value of your state PELRA chapter. As mentioned earlier in this newsletter, you were represented on the national level by three members who won the national Pacesetter Award: Jonathon Downes of Downes, Hurst & Fishel, Marsha Jordan-Smart of Greene County, and Richard Gatien of the City of Canton. Your OHPELRA organization is one of the leading PELRA organizations among the state affiliations and we want to keep this going strong with your continued support.

Where else can you find knowledge, professionalism, affiliation, and fun for such a reasonable investment? Kari Geiser, Human Resources Director for the City of Mason, a new member, says "I take advantage of the wealth of information I now have access to and truly appreciate the ability to talk with anyone, even those I don't know well." In addition, Kari, along with many others, had the opportunity to hear inspiring words from leader Sarah Weddington, who argued the precedent setting *Roe v. Wade* case and gave an inspiring message on what it means to lead, personally and professionally.

You believe in OHPELRA, you would like to see your state organization continue to operate at the "edge" of its involvement on both the state and national levels. What commitment have you made personally to increase membership and involvement and to ensure its continued existence? Take this brief quiz to determine what you can do to foster increased membership of your non-profit organization.

1. I invite prospective members to become involved at every opportunity that presents itself.
2. I offer newsletters or publication subscriptions to prospective members.
3. When I attend functions, I seek out new members and make sure they feel welcome.
4. I bring prospective members to meetings and social gatherings.
5. I keep membership materials convenient and distribute them whenever the opportunity arises.
6. I educate prospective members about OHPELRA benefits and services and explain how to obtain them.
7. I offer ideas and advice on recruitment and retention to the membership committee.
8. I maintain contact with new members and make sure their OHPELRA experiences are positive ones. When I find a member who has leadership potential, I act as his or her mentor.
9. I ask the advice of new and prospective members on OHPELRA related issues.
10. I keep my ears open for successful membership development activities of other organizations.

If you put just six of these activities into practice on a regular basis, you are doing a tremendous service to your OHPELRA group.

If you practice these activities only rarely, pick a half dozen that you can make part of your everyday routine, and you will enlist the involvement and enthusiasm of your peers.

Thank you for supporting your OHPELRA organization. You are valued!

We Welcome New Members To OHPELRA!

OHPELRA is proud to welcome 17 new members to our organization. The following people have joined since the last edition of OHPELRA Update:

Louise Brock, Esq.
Dinsmore & Shohl
(New Sponsor)

Tondra Brokaw
Labor Relations Officer
Ohio Department of MR/DD

Carolyn Carlisle
Human Resources Manager
City of Lebanon

Chuck Demidovich
Administrator
Butler County Care Facility

Jeffrey Forbes, Esq.
Wood & Lamping, LLP

Joyce Hanauer
Director of Human Resources
Montgomery County Clerk of
Courts

Evan Harper
Human Resources Manager
City of Columbus

Steve Kayatin
Engineer
Allen County

Joy Kouns
*Director, Human Resources and
Administrative Services*
Mid-Ohio Regional Planning
Commission

Steven Little
Employee Relations Bureau Chief
Ohio Department
of Youth Services

Ron Lucki
Director of Customer Service
Comp Management, Inc.
(New Sponsor)

Laura Mann
Human Resources Generalist
University of Cincinnati

Douglas Miller, Esq.
Horan & Associates
(New Sponsor)

Linda Patterson
Personnel Services Manager
City of Canton

Robin Ramey
Project Manager
Ohio University

Ruth Rehak
Labor Relations Officer
Ohio Department of MR/DD

Douglas Sarff
Human Resources Manager
City of Columbus


**Please help us welcome these
new members at our next
OHPELRA function!**

“LETTER FROM PRESIDENT”, CONTINUED

work on the Civil Service Review Commission. A special honor to Marsha Jordan-Smart, Jonathan Downes and Rick Gatien. It was a well-deserved achievement. Our own immediate past-president, Jan Cambell, was elected to the NPELRA board at the April Conference. Congratulations Jan!

The OHPELRA Board is excited about the upcoming year. We invite you to be a part of your organization by sharing experiences, contributing to the newsletter, attending the conferences and letting us know what you need. Be sure to check out the website! Some new things are coming!

The Board is looking forward to buying you brunch on July 18!



Stephanie R. Echols, President

OHPELRA'S Arbitration Reports



We continue our series of reports and summaries on arbitration decisions submitted by members. The views expressed herein are those of the member and do not necessarily represent any evaluation or opinion of OHPELRA or its Board of Directors.

Fraternal Order of Police, Ohio Labor Council, Inc. v. Scioto County Sheriff

Arbitrator: Jeffrey Michael Sherman

Issue: Whether or not a probationary extension signed by the Sheriff and the FOP was valid. The Sheriff terminated an employee as a probationary employee, and the FOP claimed that the extension agreement was signed after the completion of the probationary period. The Sheriff raised an arbitrability issue since probationary removals are not grievable.

Outcome of the Case: The contract expressly provided that probationary removals are not grievable. The arbitrator reluctantly recognized the parties' agreed extension of the probationary period, but held that the extension did not carry with it the bar on grievability. The arbitrator then interpreted the parties' actions to indicate that they saw the issue as grievable, because the Sheriff had heard the grievance through all the steps and agreed to request lists of arbitrators from the FMCS. Based on that, the arbitrator found that he had jurisdiction.

It is not clear from the submission whether or not the Sheriff raised the lack of jurisdiction in the grievance process below, but such an outcome puts the employer in a very difficult position. Must an employer who disputes jurisdiction simply refuse to process the grievance or cooperate with the arbitration process in any way in order to preserve its claims?

Rating of the Arbitrator (with 5 as the highest):

- (a) Conduct of the Hearing: 2.
- (b) Grasp of the Issues: 1
- (c) Soundness of the Overall Decision: 1
- (d) Avoidance of Bias: 3
- (e) Willingness to decide case rather than split decision: 1
- (f) Willingness to use this arbitrator again: 1

For more information, please contact **Robert W. Cross** of Cross Consulting Services, Inc. at (740) 351-0097. Have a case you want us to summarize? Please send the information in this format to Jim Sennish at JSennish@erie-county-ohio.net or to Doug Duckett at duckett@butlercountyohio.org.

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OHPELRA Update

c/o Butler County Department of Personnel
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Hamilton, OH 45011-6016

“OHPELRA’S 18TH ANNUAL CONFERENCE”, CONTINUED

Representatives and went on to serve as an Assistant to President Jimmy Carter. Her theme, that leaders need oxygen for themselves before they can offer oxygen to others, captured what the OHPELRA conference is for so many of us — oxygen that gives us both skills and energy to do our work well.

Judith Pepper, Director of Administrative Services for the Miami Valley Regional Transit Authority, served on OHPELRA’s Board of Directors for three years, and has also served as the Editor of OHPELRA Update. Because of the pressing demands of her work at the MVRTA, Judith has left the board, but does so with our gratitude for her outstanding contributions to this organization, particularly this newsletter. Thanks, Judith!

The Board Will Be Calling



Over the next few months, you should expect a call from a member of the OHPELRA Board of Directors. We will be asking each member a few questions about OHPELRA and its services—what we’re doing well, and where we need to improve. The whole conversation should only take about five minutes or so, so please give your board members a little time and feedback on how we can better serve you.