

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, WINTER 2012



OHPELRA: Leading With Courage

Register Now For The 2012 Annual Training Conference!

February 5 - February 7, 2012

DON'T MISS our **28th Annual Training Conference**, OHPELRA: Leading with Courage! Taking place at the Cherry Valley Lodge and Conference Center, you will have 2 days of the best training for public sector managers that you can find. And the price is right. The member rate is only \$299.

For on-line registration and the program agenda, please visit the OHPELRA website at www.ohpelra.org.

Hotel reservations must be made directly with Cherry Valley Lodge. OHPELRA has secured a special room rate of \$70.00 per night. Please mention this conference to take advantage of our reserved block of rooms. Note that the room block guarantee is limited and expires several weeks before the Conference, so reserve your room early! Contact Cherry Valley Lodge for directions and information at (740) 788-1200 or see www.cherryvalleylodge.com.

We look forward to seeing all of you!

President's Letter

JANUARY 2012

HAPPY NEW YEAR!! I hope everyone had a chance to enjoy this Holiday season!! And hopefully, everyone had a chance to take a deep breath and is now ready to take on the challenges of 2012!! To prepare us for 2012, our Fall Seminar, **Finding Solid Ground in the New Ohio Public Sector Employment Environment**, was well attended by 114 participants on November 18, 2011. We appreciated the insight we received from all of our speakers. It was a great opportunity to not only reflect, but to look forward.

The OHPELRA Board has been working hard to finalize preparations for the 2012 OHPELRA Annual Training Conference, **OHPELRA: Leading with Courage**. On-line registration is our preference at www.ohpelra.org. We kick off the ATC with the Pre-Conference Workshop, "Performance Management: Leading Your Organization Over the Rainbow" and close the conference with featured speaker Julie Ispording, Olympic marathon runner and radio talk show host. She will speak on, "Courage to Fail, Courage to Try Again." The conference will also feature some of OHPELRA's favorite veteran speakers and introduce some new faces.



**Brooke Carnevale,
OHPELRA President**

In December, the OHPELRA Board met in Columbus, Ohio. If you do not already know, our minutes from our meetings are posted on our website at www.ohpelra.org. As you are well aware, service on the Board is voluntary and we have relied on many jurisdictions and their administrative support staff over the years. We are working through a number of transition issues including the move of many of our administrative support functions to the County Commissioners Association of Ohio (CCAO). We are also attempting to use technology to streamline the work of this association as best we can. That is why you will see our focus on on-line registrations. Please know that we do not want to lose a "personal touch" in these efforts. All of the Board's contact information can be found on the website. We are always a phone call or e-mail away.

In March, the Board will once again meet for our Spring Retreat. During this retreat, we set our agenda for the year including our plans for our Summer and Fall Programs. Additionally, we set our goals for the upcoming year. If you have ideas or if you believe there is a way that this association

Continues on next page.

OHPELRA Fall Program

Finding Solid Ground in the New Ohio Public Sector Employment Environment

NOVEMBER 2011

ONLY A COUPLE WEEKS after the repeal of Ohio's new collective bargaining reform law, OHPELRA members gathered at the Columbus Police Academy Training Facility to gain perspective for the new year. Dan Guttman, Partner at Baker Hostetler, opened the event by giving his thoughtful commentary on a "go-forward" strategy in the aftermath of the election results. Thomas Nowel, Arbitrator and Mediator, moderated a lively discussion on the state of the bargaining environment with long time OHPELRA contributors Donald Crain, Michael Esposito, and Ronald Linville.

After lunch, OPERS Chairman Ken Thomas, OPERS Executive Director Karen Carraher, and Ohio Police and Fire Executive Director William Estabrook briefed the membership on the future of public pension reform in Ohio. Doug Duckett wrapped up the day urging all of us to remember that the prize of labor relations is the relationship itself. Let's all remember to work on our relationships in the new year!

(Event photo highlights below.)



Pictured Above, from left to right, Ken Thomas, Chairman of the Ohio Public Employees Retirement System (OPERS), Karen Carraher, Executive Director of OPERS, and William Estabrook, Executive Director, Ohio Police and Fire Pension Fund.



Pictured Above, from left to right, Douglas E. Duckett, Esq., Duckett Consulting, Donald L. Crain, Esq., Partner, Frost Brown Todd, Thomas J. Nowel, Arbitrator and Mediator, Michael Esposito, Esq., Shareholder, Clemans Nelson & Associates, and Ronald G. Linville, Esq., Partner, Baker Hostetler.



Pictured above, from left to right, Daniel J. Guttman, Esq., Partner, Baker Hostetler, and Andrew R. Votava, Esq., OHPELRA Board Member

can serve you better, I encourage you to contact me at bkcarnevale@columbus.gov or be sure to give us feedback on the evaluations at the ATC.

I would like to take this opportunity to congratulate Douglas Sarff who is the recipient of the NPELRA Foundation 2012 Russo Scholarship. Doug is a Human Resources Manager with the City of Columbus, Department of Public Utilities. I have had the privilege of working with Doug for many years at the City of Columbus and could not be happier to see him receive this scholarship. He is seeking a law degree from Capital University Law School. Congratulations Doug!! We hope everyone continues to give generously to the NPELRA Foundation (our 50/50 raffle) during our ATC.

It is with sadness that I announce that Jim Keating, Director of Human Resources for the Trumbull County Commissioners, has resigned from the OHPELRA Board for personal reasons. On behalf of OHPELRA, we would like to thank Jim for his service on the Board and for his dedication to this association for so many years. All of us wish you well!!

For those of you who make resolutions for the New Year, I wish you well. My resolution for the New Year is to maintain my perspective. A dear friend of mine says it makes him sad that people only seem to get perspective on what is important in life at funerals and during the holidays. Then, the perspective quickly goes away. I can reassure you that when I awake every day, I pray for perspective. I try very hard to keep focus on what is important.

Brooke K. Carnevale

OHPELRA President, bkcarnevale@columbus.gov

Rays Of Hope: Finding Balance Under The Current Law

by Donald L. Crain and Alexander L. Ewing,
Frost Brown Todd LLC

There is little doubt that Ohio public employers find that, for all its excitement, 2011 was somewhat disappointing. The year began with the excitement of Senate Bill 5, which promised to restore balance to public sector labor relations. Finally, after 27 years of a law that oftentimes left public employers with difficult choices, relief was on the horizon. But after a protracted and expensive campaign, Senate Bill 5 was defeated. To some, 2011 began with a bang, but ended with a whimper.

Many Ohio public employers faced the post-Senate Bill 5 world with much anxiety. This was the world that produced the now-infamous *Wayne County Sheriff* case, which found that an employer's ability to finance (i.e., acquire funds for) wage increases, rather than an employer's current ability to pay for wage increases, was the relevant inquiry under the statute. This result from well-respected and thoughtful arbitrators (who were guided by an excellent OPBA advocate) suggested that the current labor law needed drastic reform. If this result occurred in the depths of the "Great Recession," what chance do employers have before fact-finders and conciliators during the economic recovery? If employers are punished by arbitrators for good fiscal management, how can employers return to financial stability while remaining faithful stewards of taxpayers' dollars?

Fortunately, there are signs of hope for public employers. Our recent experience in the *Ohio Patrolmen's Benevolent Association v. City of Miamisburg* (2011-MED-04-0698) fact-finding and conciliation processes demonstrate that, when appropriately applied, employers can find balance under the current Ohio labor law.

The City of Miamisburg's experience over the past few years is likely similar to many other well-managed communities in

Ohio. During the economic crisis of 2008-2010, Miamisburg faced significant revenue losses. To reduce the impact of these shortfalls, Miamisburg relied heavily on its reserve funds. The City delayed capital improvements and froze hiring for several years. In addition, Miamisburg implemented city-wide wage freezes. Still facing drastic cuts, Miamisburg sought an income tax increase from its citizens.

These were hard decisions. But Miamisburg's strong leadership in these tough times paid off. In 2011, its revenues began to rebound. As a result, the City was slowly able to begin filling vacancies, investing in capital improvements, and replenishing its depleted reserve fund. These improvements, however, could not be mistaken for full recovery. Miamisburg's financial situation had only begun to improve. Although the City could technically afford base wage increases, these increases would not be fiscally prudent. Miamisburg understood the importance of delaying base wage increases to ensure the City was on firm financial ground before incurring additional costs.

Miamisburg began its reopener negotiations with the OPBA under these circumstances. In its negotiations the year before, the OPBA had agreed to receive lump sum of \$1,000 per member (not on the base wage) in the first year of the contract followed by a reopener. In the reopener negotiations, the City sought to maintain a wage freeze for the remaining two years of the contract. The OPBA wanted base wage increases in each of the remaining two years. The parties reached impasse and began the statutory dispute resolution process.

Mitchell B. Goldberg served as fact-finder. Mr. Goldberg was presented with a close case. On the one hand, the City's financial recovery was only beginning, and it needed to be cautious in incurring additional expenses. On the other hand, the OPBA made a forceful and articulate argument that it was undisputed that the City could afford wage increases and that wage increases were supported by external comparables.

Mr. Goldberg issued a well-reasoned and fair report and recommendation. He recommended a wage freeze during the second year of the contract, followed by a \$1,000 lump sum in the third year of the contract, along with a "me too" provision. In addition to its fairness, Mr. Goldberg's recommendation was notable in its clear analysis and application of the statutory factors. He carefully considered internal and external comparables

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“Rays of Hope” from page 3

and the City's ability to pay. Ultimately, Mr. Goldberg recognized that the City's finances had only started on the path to recovery, and therefore Miamisburg was not in the position to incur compounding additional costs. Although he acknowledged that some additional pay (in the form of a lump sum) was justified, he did not award a base wage increase in view of Miamisburg's nascent recovery. While neither party received exactly what they requested, Mr. Goldberg issued a recommendation that was supported by the facts and the statutory factors.

The City accepted Mr. Goldberg's proposal, but the OPBA, intent on winning a base wage increase, rejected Mr. Goldberg's recommendation. Margaret N. Johnson was appointed as the conciliator. After hearing the parties' arguments, Ms. Johnson issued a thoughtful analysis and decision. She identified all the statutory criteria, summarized each party's position in significant detail, and examined the relevant factors at issue.

Ms. Johnson's overall application of the statutory factors was excellent. But with regard to ability to pay, Ms. Johnson's analysis was simply outstanding. Her report specifically underscored the importance of a public employer's need to maintain sufficient reserve funds. Ms. Johnson rejected the notion that an employer must necessarily use reserves to pay for wage increases, noting:

“In the past, public employers and neutrals in impasse proceedings were willing to use general fund reserves to pay for wage increases. Events of the past several years have demonstrated the need to revise such tendencies, and, instead, to bring expenditures into line with revenues.”

She found that even when an employer's financial situation is not dire, a conservative approach is necessary when recovery is fragile.

Ms. Johnson's opinion recognized that the City is a well-managed organization and its sound management should not serve as an excuse to award the OPBA's requested wage increases. At the conclusion of her analysis, she awarded the City's position.

Public employers should take comfort in the Miamisburg fact-finding and conciliation opinions. It is encouraging to know that SERB's pool of talent includes excellent arbitrators like Ms. Johnson and Mr. Goldberg. But perhaps more importantly, these decisions demonstrate that public employers can obtain the results they need under the current labor law. Public employers need not fear that their organizations will be punished for good fiscal management. In addition, public employers who are beginning to emerge from the economic crisis will not necessarily see their prospects for recovery dashed by irresponsible fact-finding recommendations and conciliation awards. When properly applied by astute arbitrators, the current public sector labor law can work for employers and taxpayers.

*Please mark your calendars for the
National Annual Training Conference
on April 15 – 19, 2012.*

You won't want to miss, “NPELRA Presents
the Wonderful World of Labor Relations.”

Located at Disney World in Orlando
Florida. You can register at www.npelra.org.

Congratulations to Douglas Sarff, Winner of a 2011 NPELRA Russo Scholarship!



OHPELRA's own Doug Sarff, Human Resource Manager, City of Columbus, Public Utilities, was awarded one of the prestigious Russo Scholarships from the NPELRA Foundation. Congratulations, Doug! Doug is seeking his law degree from the Capital University School of Law.

Applications are now being accepted for 2012 NPELRA Foundation Scholarships. The DEADLINE is Wednesday February 29, 2012. The application can be found at www.npelra.org.



Improving the Employee Evaluation Process

by Nancy M. Barnes, Esq., Thompson Hine LLP

ALTHOUGH SENATE BILL 5 was soundly defeated by a public referendum during the November election, it is safe to say that vestiges of its provisions will likely reappear in future legislation. Specifically, a performance-based compensation system may come into effect at some point in the future. Even if not required to do so by law, public employers will be well-served to review their evaluation processes to ensure that their most highly valued employees are being given the feedback and positive reinforcement that will help to retain them. On the flip side, employees with poor performance issues or areas of development should be receiving that message through an effective performance management process. How can employers improve this process to make it more efficient and effective?

Communicate Goals and Duties Clearly

It seems very simple and straightforward, but many employers and supervisors fail to articulate to employees what their job duties are and how to perform them. Frequently, employees are doing work that is well outside their stated job description. (This problem can raise issues about misclassification of exempt and non-exempt employees as well.) Annual evaluations contain vague and abstract statements about broad, generalized goals rather than specific targets or metrics that can be measured. Personal meetings are a critical component of developing an annual plan for each employee and understanding each employee's function within the organization.

Provide Ongoing Feedback

Providing ongoing feedback is perhaps the most difficult, yet most valuable, tool to implement in a workplace that provides effective performance management. Monitoring employee performance and the progress toward achieving goals on a regular basis will help employees to meet expectations, avoid surprises, and nip problem behaviors in the bud before they become entrenched. Significant, long-term goals require continual monitoring if you expect success.

Document Poor Performance in Writing

Documenting poor performance is absolutely necessary for at least three reasons. First, the primary goal should be to improve performance. The best way to improve performance is to clearly articulate the deficiencies and to provide concrete examples of shortcomings and constructive suggestions for improving performance. Second, written documentation indicates to the employee the serious nature of the deficit and will hopefully encourage improvements. Third, in the event of formal discipline, termination or any other adverse employment decision, the written documentation is a record of communications and missed opportunities that



the employee had to correct his or her behavior. There is nothing better than contemporaneous documentation.

Train Managers on the Appraisal Process

Training supervisors and managers on how to do effective evaluations and manage performance is a key component of the success of any appraisal system. Higher level management should review appraisals of lower level employees and provide feedback on the appraisals themselves. Managers should be counseled on how to communicate with their subordinates, how to recognize high and low achievers, how to criticize constructively, and how to treat all employees fairly and objectively in the appraisal process.

Be Honest!

The importance of honest evaluations cannot be overstated. If an employee does not know where his performance falls short, he is not truly being given an opportunity to improve and meet expectations. It is important for managers to convey their desire to work with employees in a joint effort to achieve improvement. Moreover, when it comes to high performing employees, they want to know that they are meeting or exceeding the employer's expectations. They want to know that the employer recognizes that they are superior performers. If every employee is told they are "meeting expectations," it is the worst of both worlds.

FOLLOWING THESE TIPS will allow you to deal with the "problem" situations that arise in nearly every workplace. For example, when an employee lodges a complaint or engages in some kind of protected activity, a regular and honest history of performance evaluations will assist you if the employee suddenly claims retaliation. Similarly, well-defined job descriptions and performance expectations allow you to address issues related to reasonable accommodations and leave requests without having to create after-the-fact documentation to support your position. Finally, if you do have to take an adverse action against an employee – such as termination – the decision hopefully will not come as a surprise to the employee. While this does not guarantee that the employee will not file a charge or a grievance, the employee is certainly less likely to do so when the termination decision is consistent with the feedback that has been given for some period of time.

At the end of the day, the result of a successful performance review process is an employee who is motivated to improve and is excited about his or her job. When employees receive honest and fair assessments of their job performance, they feel acknowledged and appreciated and believe that they are a valuable asset to the organization. By implementing or refining your performance management process, you can improve productivity, morale and employee retention. That's a great goal for 2012!

What Can Management do to Protect the Organization from Inappropriate Use of Social Media?

By: Dan Guttman, Esq., Baker Hostetler, Columbus Ohio

ALTHOUGH "SOCIAL MEDIA" IS A RELATIVELY NEW CONCEPT, its impact on American culture and the American workplace has been profound in scope. In late July, 2011 Facebook, a leading social networking website, was expected to have hit the 500 million users mark. As of August 4, 2011, LinkedIn, the world's largest professional network online, reported over 120 million users.

These two massive social media outlets are sure to provide employers with new and growing opportunities for recruiting and hiring new talent, reaching out to constituents, and communicating beneficial information. However, the use of social media by organizations and their employees also presents numerous challenges and risks, both in terms of efficiency and legal liability. Before embarking on either encouraging or limiting the use of social media in the workplace, follow the old adage: proceed with caution.

As a first step, a social media policy can help organizations identify and mitigate their potential sources of legal liability without unnecessarily hampering the otherwise beneficial use of social media by employees, human resource managers, and other personnel.

Employers' social media policies should (1) be narrowly tailored to protect legitimate business interests, (2) describe what social media is covered, and (3) specifically outline which activities are subject to the policy. For instance, if possible, the policy should reference other relevant policies, including the employer's anti-discrimination/harassment, computer use and confidentiality policies.

Consistent with federal and state law, employers should consider:

- Informing employees that by using the employer's equipment, they are consenting to have such use monitored by authorized organization personnel at its discretion. A screen that the employee must respond "yes" to when logging on the computer system can be used to secure this consent in a tangible way.
- Reminding employees when posting on social media to always use common sense and common courtesy; when you post content to social media, it is likely public and permanent. Anyone may be able to access it indefinitely.
- Requiring employees not to disparage or demean the employer, co-workers or other employees, business practices, strategies, or its leadership; to the extent an employee expresses an opinion, they must clearly state that it is theirs as an individual and not the employer's opinion or position.
- Refraining from disciplining employees whose electronic communications, including social media postings, may be viewed as "concerted" or group activity involving terms or conditions of employment.
- Informing employees that they are prohibited from making discriminatory, defamatory and/or sexually explicit comments when discussing the employer or the employee's supervisors, co-workers, and/or customers.
- Reminding employees that the employer reserves the right to routinely monitor its employees' social media activity to detect violations of company policies and applicable laws.
- Warning employees that the company reserves the right to take disciplinary action against any employee if his or her social media activity violates any of the company's policies.
- Requiring any staff reviewing social media postings for job applicants to: (1) document their searches; (2) if going to search social media, to consistently perform searches for all applicants; and (3) remove all information that might directly or indirectly reveal any protected classification applicable to the applicant.

The preceding list is not comprehensive. Employers are strongly encouraged to consult legal counsel to formulate a custom tailored social media policy to address their unique needs and their unique legal environment. This area of the law is destined to become increasingly complex and difficult for employers to balance management rights and interests with those of their employees.

OHPELRA President's List

Roy Bechtel	1984
Thomas Payne	1985
Jonathan Downes	1986
Kevin Sellards	1987
Bob Burnett	1988
William Logie	1988-1989
Marsha Jordan-Smart	1990-1991
Douglas E. Duckett	1992-1993
Richard Strader	1994-1995
Frank Hotze	1996-1997
Felicia Bernardini	1998-1999
Janet J. Campbell Lanza	2000-2001
Stephanie Echols	2002-2003
L. Joy Campbell	2004-2005
James Sennish	2006
Marsha Jordan-Smart	2006-2008
Kevin Williams	2009-2010
Brooke Carnevale	2011

Please Welcome All New OHPELRA Members

SINCE THE LAST ISSUE OF *OHPELRA UPDATE*, the following new members have joined OHPELRA and NPELRA. Welcome to our organization, and we hope to see you at our next event!

Mandy Bonifield, Clerk, Administration
Dept., City of New Albany

Jeff Ginsburg, Attorney/Personnel Director,
Holmes County DJFS

Mollie de Rojas, Labor Relations Liaison,
Ohio Dept. of Job & Family Services

Douglas Dye, Director of Fiscal Operations,
Buckeye Hills-Hocking Valley RDD

Barbara McCormick, Personnel Director, City
of Englewood

Jesse Moore, Assistant Chief, Delhi Township
Fire Department

Marcy Porter, Personnel, City of Gallion

Mike Printy, Township Trustee, Perkins
Township

Lindsay Smith, Assistant Director Human
Resources, Franklin County Sheriff's Office

Ellie Topham, Division Manager, City of
Cincinnati - Police



OHPELRA Board of Directors, February 2011

Brooke K. Carnevale – President

Human Resources Officer,
Dept. of Public Safety, City
of Columbus

Maurice J. Evans – Vice President

Secretary and Chief
Examiner, City of Dayton

Laura Joy Campbell – Treasurer and NPELRA Board Member

Assistant Director of Human
Resources, Butler County

Todd Hunter - Secretary

Human Resources Manager,
Dept. of Public Safety, The
Ohio State University

Kevin G. Williams - Immediate Past President

Human Resources Officer,
City of Columbus Public
Health Department

Janet J. Campbell Lanza – NPELRA Immediate Past President

Labor Relations Manager,
City of Columbus

Kristen M. Treadway – Conference Coordinator

Vice President of Human
Resources, Central Ohio
Transit Authority

Tomeka M. Hopson – Board Member

Human Resources
Manager, City of Columbus
Department of Building and
Zoning Services

Dawn Huston – Board Member

Director of Administrative
Services, Delaware County
Board of Commissioners

Andrew R. Votava – Board Member

Former Director of
Organizational Development,
Fulton County Board of
Commissioners

Help Us Serve You – Update Your Information Today

OHPELRA AND NPELRA ARE COMMITTED TO PROVIDING YOU the most up-to-date training and information as possible. In order to continue to provide these services, we ask that you visit the OHPELRA website at www.ohpelra.org and check your membership information. If your information is current –thank you. If your information is not up-to-date, please update it on the website, **particularly your email address.**



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