

Long Island Chapter

Labor and Employment Relations Association

Newsletter

ADVANCING WORKPLACE RELATIONS



Spring 2015

Thomas B. Wassel, President
twassel@cullenanddykman.com

www.lilera.org

Dr. Gerald Grayson, Editor
jerryarb@verizon.net

PRESIDENT'S PERSPECTIVE:

Thomas B. Wassel, President

I am honored to be writing to you as the new President of the Long Island Chapter of LERA. I look forward to serving the needs of the members for the next two years. I am grateful to Immediate Past President Amanda Barker, and all those who served before her, for establishing and maintaining a vibrant and meaningful organization for labor relations professionals and students on Long Island.



The year 2015 is already shaping up as an eventful year for labor relations. It would be more accurate, perhaps, to note that the origins of current events began in late 2014. On December 12, 2014, the National Labor Relations Board issued its final rule regarding new procedures for representation elections. Proponents of the new rule characterize it as “modernizing” election procedures; opponents deride the rules as establishing “quickie” or “ambush” elections which tilt the playing field significantly in favor of unions and against management. (Full disclosure: I represent management.) Around the same time, the Board decided *Purple Communications*, which presumptively allows employees to use company e mail systems for Section 7-related communications (discussing their terms and conditions of employment and engaging in concerted activities).

Key Aspects of the New Election Rules

Certainly some modernization of the rules was in order. The existing rules did not, and could not, anticipate the changes in communication technology that have altered the world in the last two decades, let alone in the eight decades since the National Labor Relations Act became law. The new rules allow for electronic filing of petitions and other documents and use of electronic means for communication between the Board and the parties. The new rules also change what information the employer must provide to the petition-

Upcoming 2015 Chapter Meetings

Spring Conference
Friday, May 15,
Tam O' Shanter Club
Brookville, NY

Regular Meeting
Wednesday, June 10,
Davenport Press, Mineola

Regular Meeting
Thursday, September 17
Bonwit Inn, Commack

Regular Meeting
Wednesday, December 9,
Davenport Press, Mineola

ing union. For nearly 50 years employers have been required to supply to the union a list of the names and addresses of employees in the putative unit (the *Excelsior* list, which gets its name from the 1966 decision establishing the requirement) within seven days of the filing of the petition. The *Excelsior* list allowed the petitioning union to engage employees via mail or personal visits to their homes. The new rules require employers additionally to turn over the personal cell and home telephone numbers and personal email addresses (if available), work location, shift, and job classification. There is no “opt out” mechanism for employees to object to the sharing of this personal information, if they so desired.

Under the old rules, if the employer had objections to the scope or appropriateness of the petitioned-for unit, it could request a pre-election hearing, which would take place according to the practices of the various Regions. The new rule requires that such a hearing begin eight days after the filing of the petition. The employer is also required to identify the

continued on p. 2, col. 1

issues it wishes to raise in the hearing at least one day prior to the commencement of the hearing, and the union must respond no later than its Statement of Position at the beginning of the hearing.

Previously, once a Decision and Direction of Election (“DDE”) was issued, there was a 25 day waiting period before the election to allow parties to seek full Board review. That waiting period has been eliminated.

The result of the new rules is that elections can now take place as soon as 13 days after a petition is filed. A fuller description of the changes to the rule can be found at the NLRB’s web site at <http://www.nlr.gov/news-outreach/factsheets/nlr-representation-case-procedures-fact-sheet>.

Employers argue that these new rules hamstringing their ability to lawfully communicate with their employees about the pros and cons of unionization. Employers are statutorily permitted (with numerous restrictions) to communicate their arguments to employees pursuant to section 8(c) of the Act. However, as a practical matter, unionization efforts (whether internally or externally driven) may have been taking place over several weeks or months. The new rules give employers an extremely limited window of opportunity to persuade their employees.

The new rules took effect on April 14, 2015. However, on January 5, 2015, the U.S. Chamber of Commerce and other employer groups filed suit in the D.C. Circuit challenging the rule as violative of 8(c) of the Act, as well as violating the First Amendment rights of employers to communicate with their employees. Another suit was filed about a week later in the District Court for the Western District of Texas. Whether these suits are ultimately successful remains to be seen.

Purple Communications

It has long been the rule that employers are not obligated to allow their property to be used by employees or unions for non-business-related purposes. In 2007, the Board decided *Register Guard*, which held that employers were free to prohibit uses of the company e-mail system for Section 7 related communications, as long as it did not treat those communications differently than other non-business-related communications. However, in a 3-2 vote along party lines (Democrats in favor, Republicans against), the Board, in *Purple Communications*, established a new rule that employees who had already been granted access to employer e-mail systems had a statutory right to communicate their Section 7 concerns via the employer’s email system as long as this was done on non-working time. The Board majority opined that e-mail systems had become the 21st Century equivalent of the “water cooler” at which employees might gather to discuss their working conditions, and that a blanket prohibition of the use of the employer’s email system unduly burdened employee rights unless the employer could meet its burden to justify such a prohibition on the grounds of production or discipline (a standard that very few employers would be able

to meet). However, the Board made clear (at least for now) that an employer is not required to give email access to employees who didn’t already have such access for business purposes, and that employers may lawfully monitor their email systems as long as they do not single out Section 7 related communications for special monitoring. *Purple Communications* is likely to be appealed to the courts, so we’ll have to see if it becomes settled law.

In closing, these changes in the law are the latest, but not the last, instances in which the Board has changed directions. It is incumbent on all labor practitioners, advisors, teachers, and students to keep current on their knowledge of changes in the law. I hope that Long Island LERA will assist all of its members in achieving this goal, and I encourage everyone’s active participation.

BOOK REVIEW

by Gerald H. Grayson

The Origins & Evolution of the Field of Industrial Relations in the United States

by Bruce E. Kaufman

Recently, national LERA presented an unusual gift to its members. It was a digital version of a book by Prof. Bruce E. Kaufman of Georgia State University entitled, *The Origins and Evolution of the Field of Industrial Relations* in the United States. Not being a fan of reading lengthy works on the computer screen, I purchased the book (I confess that I had not been aware of it before.)

As a student and teacher of industrial relations for more than 50 years, it was a wonderful journey to go back to the genesis of the field and read about those who had the vision to develop the discipline. The field of industrial relations was born in approximately 1920. The two events that marked its birth were the establishment, at the University of Wisconsin, of the first academic program in industrial relations in the economics major. The second was the first professional association dedicated to the study and practice of industrial relations, the Industrial Relations Association of America.

The establishment of the field was motivated by both science-building and problem solving considerations. For the first two decades of IR’s existence, the problem-solving far outweighed the science-building motive in drawing researchers to the field. The predominance of the problem-solving motive gave IR research a heavy emphasis on fact-gathering, the descriptive analysis of institutions and practices, a multidisciplinary approach to the study of labor problems, and a strong normative policy-oriented perspective.

From its earliest days, industrial relations was divided into two major schools of thought as to how to resolve labor-

continued on p. 4.

**LONG ISLAND CHAPTER
LABOR AND EMPLOYMENT RELATIONS ASSOCIATION
ANNUAL SPRING CONFERENCE**

**PLACE: TAM O'SHANTER COUNTRY CLUB
74 Fruitledge Road Brookville, NY
(516) 626-1980**

DATE: Friday, May 15, 2015

- 8:30 a.m. - 9:00 a.m. Registration and Breakfast
- 9:00 a.m. - 9:15 a.m. Welcoming Remarks
- 9:15 a.m. - 9:30 a.m. Presentation of LERA Scholarships
- 9:30 a.m. - 9:45 a.m. Presentation of MacGregor Award
- 9:45 a.m. - 11:00 a.m. First Panel Discussion

What the NLRB's new deferral policy under Babcock & Wilson means to arbitrators, unions and labor practitioners.

11:00 a.m. - 11:15 a.m. Break

11:15 a.m. - 12:30 p.m. Second Panel Discussion

Public Sector Developments 2015: "Mayor DiBlasio and the NYC PBA-Return of the Slow Down?"

12:30 p.m. Lunch

12:45 p.m. Keynote Speaker: Maggie Gray - Adelphi University. Associate Professor and author of *Labor and the Locavore -The Making of a Comprehensive Food Ethic*

PLEASE CUT COUPON AND RETURN WITH YOUR PAYMENT
TO: Thomas B. Wassel, Membership Chair, LI LERA Cullen and Dykman, LLP
100 Quentin Roosevelt Boulevard , Garden City, NY 11530
e-mail: twassel@cullenanddykman.com

RESERVATION FORM

Please register the following person(s) for the May 15th Annual Spring Conference. I understand that the fee for the conference for members (including NYC LERA and NJ LERA members) is \$95.00 if prepaid, by April 30th, and \$105.00 after that date. For non-members the fee is \$105.00 paid by April 30th and \$115.00 after that date and for students the fee is \$25.00 by April 30th and \$35.00 after that date. Checks should be made payable to: L.I. L.E.R.A.

Name: _____ Organization: _____

(please write additional names on back)

Address: _____ E-Mail Address: _____

Telephone No. _____ Number of Persons: _____

Check No. _____ Amount of Check: _____

3.5 CLE Credits will be available for an additional \$125.00.

LI LERA.....

problems. The personnel management (PM) school maintained that labor problems were caused primarily by defective management in the form of poor business organization, workplace practices, leadership styles and communication.

The institutional labor economics (ILE) school maintained that labor problems were caused primarily by two factors: imperfections in the market system external to the business organization that tilted competition against employees and the autocratic nature of the master-servant relationship in which employees were denied democratic rights and the protection of due process. The solution of labor problems involved various institutional interventions, such as trade unions, protective labor legislation, social insurance programs and full employment monetary policies by the Federal Reserve Bank.

The PM school entered academe in the 1920s and 1930s through the efforts of Clarence Hicks and the research efforts spawned by the Hawthorne experiments at the Western Electric Company. These and other research efforts led to the emergence of the human relations movement which became the most important branch of the PM school in the 1940s and 1950s.

The founder of the ILE school and of industrial relations as a field of study in the U.S., was John R. Commons. In the 1940s and 1950s, labor economics gradually split into two branches, with one branch composed of ILE economists (John Dunlop, Clark Kerr, and Richard Lester) and the second branch composed of neo-classical oriented economists.

The golden age of industrial relations as a field of study was during the period following WW II. Numerous universities established free standing, multidisciplinary IR programs, and a new professional association, the Industrial Relations Research Association, and a new academic journal, the Industrial and Labor Relations Review, were

founded. Scholars from fields as diverse as anthropology, psychology, history, law, economics, and political science became active in industrial relations and contributed to a great outpouring of articles and books on the organization and practice of management, the structure and internal political process of unions and the process and outcomes of collective bargaining.* (To be continued.)

*This article was gleaned from Bruce Kaufman's book with his permission.

You can write. I can edit and publish. Let's get together. Have you had a case or incident in your practice that would provide insight to other practitioners? Have you read a book or article in a professional journal that you believe others might learn from and enjoy reading?

Let's get together. Send me your manuscript via email to: <jerryarb@verizon.net>.

ANNOUNCEMENTS, NOTICES

If you have an announcement or job posting that you would like to have published in our newsletter, send it for consideration to the editor at:

<jerryarb@verizon.net>.

The Long Island LERA Newsletter is a quarterly publication of the Long Island chapter of the Labor and Employment Relations Association.

President	Thomas B. Wassel
President Elect	Paula Clarity
Past President	Amanda Barker
1st Vice President	Jeffrey N. Naness
2nd Vice President	Jonathan D. Rubin
Secretary	James Conlon
Treasurer	Eugene S. Ginsberg
Newsletter Editor	Gerald H. Grayson

Notices of address change or new email address should be sent to Membership Chairman, **Thomas B. Wassel**, <twassel@cullenanddykman.com>. Inquiries about this publication, as well as submissions, etc., should be sent to Jerry Grayson at <jerryarb@verizon.net>.

LI LERA
43 Northcote Drive
Melville, NY 11747-3924