

# OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, FALL 2007

## Letter From The President

THE AFTERNOON OF AUGUST 15 and all day on August 16, the OHPELRA Board was "Sittin' on the Dock of the Bay" in Erie County, but we were not "wastin' time," as the song goes. (That tune brings back some wonderful memories!) In fact, we were making plans for the 24th Annual Training Conference (ATC), scheduled on February 3, 4, and 5, 2008.

The Board has developed a great process for formalizing a splendid program for the Annual Training Conference. And, the input and ideas that you provide us on the evaluation forms from each of our seminars really come in handy and are the core to our planning. We spend a tremendous amount of time reviewing your comments in order to improve the ATC and provide you with the training for which you ask.

The afternoon of August 15 saw us spending several hours going through all of your suggestions for topics and making an exhaustive list of items we want to cover at the ATC. Then, at the break of dawn on August 16, we reviewed the list, added in any other topics that we did not think of the day before, listed some speakers we may want to include in the program, and finalized the list. Then, each of us voted for our favorite topics on the list, making sure that some of our regular favorites like the *Legal Update* are automatically included. We then slotted the timeframes for each session and chose the speakers that we thought were best for the job.

Once the topics, timeslots, and speakers are chosen, each Board member is given specific assignments to carry out at the ATC so that the event runs smoothly. It's a lot of time, effort, and work, but we enjoy every minute of it, and it really re-energizes us and gets us excited for the ATC and our next event.

You might think that would be the end of the planning, but that doesn't conclude our duties as Board members in our preparation for the ATC. Once coming home to our "real jobs", we begin the process of lining up the speakers, moderators, and materials needed to make the ATC successful. Our outstanding Conference Coordinator, Brooke Carnevale, keeps us on task the rest of the year taking care of various jobs and "little things" that must be done before the ATC to make it that special event we all enjoy.

That planning session for the ATC really makes us look forward to seeing all of you at our November 1st fall seminar entitled *Living with the FMLA: New Realities and Strategies*. The program features Susan Love, an attorney from Wisconsin and

## Register Now For OHPELRA's Fall Seminar – *Living With The FMLA*



OHPELRA HAS ALWAYS TRIED TO HAVE A FALL SEMINAR relevant not only for the labor relations and human resources directors who make up most of our membership, but also department directors, managers, and supervisors who have to deal with a wide array of human resources issues in the workplace. Our topic for this fall's program, *Living with the FMLA: New Realities and Strategies*, is just that kind of subject. **This program will be offered in**

**Columbus on November 1**, and it is designed for anyone who faces the problem of controlling absenteeism in the face of the FMLA's restrictions – and that is everyone in management.

Our morning speaker, Wisconsin attorney **Susan Love**, will speak on **current issues and questions under the FMLA**, including court rulings and Department of Labor enforcement strategies. She will also discuss DOI's recent request for comments on the regulations, and whether that process seems to be bearing any fruit. Susan is one of the most popular speakers at the NPELRA Annual Conference, and she has spoken to OHPELRA audiences previously as well. She makes dry subjects interesting and even fun (the FMLA? Fun?) – you will enjoy her talk.

*Continues on page 2*



NPELRA member who speaks to rave reviews at many of the national conferences, and Ohio attorneys and OHPELRA members, Marc Fishel and Doug Duckett, as they share their real life experience in a recent federal court decision in Ohio that may change the way we handle FMLA entirely. You will not want to miss this one! Go on-line to register at [www.ohpelra.org](http://www.ohpelra.org)!

Yours truly,  
Marsha



“Living with FLMA” from page 1

**In the afternoon, we will take a look at a recent and groundbreaking federal court trial and jury verdict on an FMLA case.**

Most attorneys speaking at OHPELRA, NPELRA, and other management conferences have long advised us that employers could still enforce the rules for the use of paid sick leave in their collective bargaining agreements or civil service rules even if they went beyond what we can normally require for pure FMLA, unpaid leaves. Examples include a requirement that an employee with a high rate of absenteeism bring in a doctor's statement for each use of paid sick leave, or that an employee call in daily when using sick leave if he or she has not brought in a doctor's statement giving an expected, return-to-work date. While we could probably not require that for employees using their unpaid leave under the FMLA, when an employee is using paid sick leave, the employer can enforce its rules for the use of that paid leave, right?

You will see that the ruling of the U.S. District Court in this case calls that advice very much into question. This case offers a wealth of issues to consider: What went wrong here? What went right? What could the employer have done differently? What defenses can an employer offer to a claim of “interference” with FMLA rights? What if anything should we all consider doing differently now? And where is the case of *Martin Allen v. Butler County Commissioners* going, and what does it mean to public- and private-sector employers in Ohio and throughout the United States?

**Marc Fishel**, a partner with Downes, Hurst & Fishel, tried the case for Butler County, and Butler County labor counsel **Douglas Duckett** will join him in discussing the case, its implications, and where we go from here. Both speakers are well known to OHPELRA audiences, and we hope to have an interesting and interactive discussion on how to minimize our risks of liability under the new and changing interpretations of the FMLA.

The 2007 Fall Seminar will be held at the Columbus Police Academy off of I-70 on Thursday, November 1 with registration starting at 8:00 a.m. and the program starting at 9:00 a.m. You should have received registration materials, and you can also register on-line at [www.ohpelra.org](http://www.ohpelra.org). Remember that our programs often fill up quickly, so be sure to register yourself and your managers and supervisors today!

## 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](http://www.ohpelra.org) and check your membership information. If your information is current – great!!! We can continue to provide you timely information. If your information is not up-to-date, please update it on-line at the website. **And, please, if your e-mail address is not included, please enter it in.** From time-to-time we provide time-sensitive information to our members using the Internet and we do not want to leave you out.



## The Winds of Change – Recent Reforms in Civil Service Law and Public Records

**June 20, 2007 Seminar**

OHPELRA, THE COUNTY COMMISSIONERS ASSOCIATION of Ohio (CCAO) and Downes, Hurst & Fishel co-sponsored our summer program at the City of Columbus Police Training Academy, a wonderful new state-of-the-art training facility where we had over 200 labor relations/human resources professionals and public officials in attendance.

The morning of the seminar, we heard about the recent changes in Ohio's public records laws from Jonathan Downes of Downes, Hurst & Fishel and Joshua Hahn of CCAO. We found that the changes in the law will not significantly change what defines a public record or the fact that we are required to make them available, but the law does significantly how we manage public records request, how we make the records available, and how we must process any denials of records requests. If you missed this session, you'll need to consult your attorney now or you most likely will later.

The remainder of the seminar was spent with Jonathan Downes and Marc Fishel of Downes, Hurst & Fishel, Cheryl Subler of CCAO, and Marsha Jordan-Smart, OHPELRA President and Greene County Human Resources Director reviewing the various civil service revisions that became effective July 1st for state agencies, counties, and many cities, townships, schools and other jurisdictions affected by state civil service laws. For many of our members, this session presented their first look at the new world of civil service. It's been a long time coming.

After lunch, Senator Steve Buehrer from Delta, Ohio, the activist behind H.B. 187, stopped by to address the audience and thank them for their efforts to further these civil service law changes. Senator Buehrer charged the group to continue efforts to press forward other changes that didn't make the first round.

In honor of his work efforts to bring H.B. 187 to reality, Marsha presented Senator Buehrer with a “Special Recognition Award” from OHPELRA for his hard work to obtain these positive changes in the law for us.

From the review of the program evaluations, the wealth of material that was provided to us was very positively received. Of special note, the City of Columbus Police Training Academy received extremely high remarks and you'll most likely see it as a regular venue for future OHPELRA events as long as it is available.

## Get Ready for Clearwater, Florida April 13 – 17, 2008

### OHPELRA's Jan Campbell Chairs the NPELRA 2008 ATC Planning Committee



MESSAGE TO ALL STATE PRESIDENTS:  
I have the honor of serving as chair of the NPELRA 2008 Annual Training Conference (ATC) committee. I have a great committee consisting of:

- **Robin Hall, Washington PELRA, Vice-Chair**
- **John Becker, Wisconsin PELRA**
- **Sheila Dugan, Nevada PELRA**
- **Joel Kuhl, Oregon PELRA**
- **Steve Loeffler, Ohio PELRA**
- **Walter Pellegrini, New York State PELRA**
- **Ken Phillips, California PELRA**

The committee receives much support from **Mike Kolb**, NPELRA Executive Director, and office staff, **Amy McBroom** and **Andrea Adler-Garcia**.

The committee met on Friday, June 1 to review evaluations and comments from the 2007 ATC and to incorporate that feedback as we frame the 2008 ATC schedule. The committee meets by conference call once each month and of course, shares information through email and phone calls on an on-going basis.

**Doug Duckett** from Ohio PELRA and **Mike Suppan** from Illinois PELRA will be coordinating the conference receptions which are typically sponsored by State PELRAs. We will be announcing these networking opportunities to the attendees as: *Receptions Sponsored by State PELRAs* so that everyone understands that they are invited to these receptions, and they are not exclusive to the State(s) that sponsor the reception.

**Patrick Glynn** from Wisconsin PELRA has accepted the responsibility of creating the resources CD again this year for distribution at the 2008 ATC. Please encourage your members to submit policies, documents, contracts, and/or manuals to Patrick at [glynn.patrick@co.calumet.wi.us](mailto:glynn.patrick@co.calumet.wi.us). The CD from the 2007 ATC was well received by our members, and we'd like to continue to expand the information provided to the attendees.

We will also be looking to each of the State PELRAs for session moderators from your state. Robin Hall from Washington PELRA is the point person on this project.

We have some preliminary ATC information on the [npelra.org](http://npelra.org) website which we encourage you to view, but most importantly we want to spread the word to **mark the 2008 calendar for the 2008 ATC on April 13-17, 2008 in Clearwater, Florida**. Please remember to include this event in your 2008 budget requests.

Thanks to all who contribute their time and efforts to make the NPELRA ATC an event that many look forward to!

If you have any questions or comments you would like shared with the committee, please contact me at [jjcampbell@columbus.gov](mailto:jjcampbell@columbus.gov) or any of the committee members.

Thank you!  
Jan Campbell

## Ohio AG's Opinion Advises Against Drug Testing of All Applicants

ON MAY 30, 2007, THE OHIO ATTORNEY GENERAL'S office released an informal opinion that can serve as a reminder to public employers of the federal and state Constitutional limits on employee drug testing. Interested in qualifying for lower Bureau of Workers' Compensation ("BWC") premiums, Wayne County sought advice regarding the county's ability to participate in the BWC's drug-free workplace discount program. The BWC's discount program required public employers to implement, at a minimum, two forms of drug testing. The critical issue was the program's requirement of 100% pre-employment or new hire drug testing. The AG's opinion advised that the county could not comply with this requirement. Citing Ohio and United States Supreme Court precedents, the opinion warned that implementation of testing of all applicants without any regard for "the position the individual was employed to fill . . . would appear to violate . . . both the United States and Ohio Constitutions."

Suspicionless drug testing such as this has been a controversial issue for both courts and public employers. It has long been held that drug testing by a public employer is a "search" under the Fourth Amendment. Ordinarily, for a search to be valid, it must be preceded by individualized suspicion of wrongdoing. The United States Supreme Court, however, has held that exceptions to this rule do exist. Specifically, in *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995), the Court held that "[a] search unsupported by probable cause can be constitutional . . . when special needs, beyond the normal need for law enforcement" make a suspicion-based requirement impractical. In scrutinizing special needs justifications for testing, courts must "undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties." *Knox County Educ. Ass'n v. Knox County Bd. of Educ.*, 158 F.3d 361, 373 (6th Cir. 1998). In effect, courts have permitted pre-employment testing of individuals when they hold or will hold safety sensitive positions.

This special needs inquiry is lacking in the BWC's discount program, which requires across-the-board testing of all applicants. The AG's opinion noted that this requirement did not "target a specific group of positions to be filled." In the absence of a special need, testing all county applicants could possibly violate the individuals' expectation of privacy.

In light of this opinion, public employers should continue to monitor how the BWC will respond. While the AG informal opinion is limited to this particular discount program's testing requirements and is only advisory, public employers should consult with their counsel to develop a short-term strategy to address their respective testing program. In this instance, the most persuasive guidance will probably be issued by the courts. Despite the fact that most courts tend to view pre-employment drug testing more permissibly than testing during employment, courts will certainly examine the balance between the BWC program, the public employer's interest in testing and the individual's privacy interest.

Article submitted by Ron Linville, Esq., of Baker & Hostetler LLP.

## Employee Free Choice Act (EFCA) Fails at Senate Level

Led by a group of Republicans, the vote on the Employee Free Choice Act (EFCA) was blocked in June before it could reach the Senate floor. The proposal had passed in the House of Representatives by vote of 241-185 just a few months earlier and was on a fast track to become law. Had the bill become law, it would have made it easier for organized labor to unionize private sector workers by avoiding secret ballot elections and being permitted to file a petition for recognition with the National Labor Relations Board (NLRB) by demonstrating majority support with signed interest cards by a majority of employees in the proposed bargaining unit. Republicans utilized the long-standing tradition of a democratic election to upend the measure and preserve the current secret ballot system.

With the defeat of the bill at the federal level, employers can look forward to a push by organized labor in the state legislatures to get card check elections in place. Although the EFCA concentrated directly on private sector employers, since the unions will most likely be lobbying state legislators on the issue, the probabilities are that they will also target the public sector. OHPELRA members should continue to monitor the issue and keep communication channels open with their legislators to oppose card check elections.

## Lilly Ledbetter Act passes the House; Awaits Senate Review

The Supreme Court issued a decision in May of this year dealing specifically with Title VII of the Civil Rights Act of 1964, which contains a six-month statute of limitations for workplace discrimination claims. In accordance with Title VII, the Supreme Court ruled that a former employee of Goodyear Tire could not bring suit for discriminatory acts committed against her years ago.

Feeling that the Supreme Court's decision provides no relief for fair pay discrimination victims who discovered that discrimination outside of the six-month period in which the discriminatory decision was made, Democrats in the House of Representatives sponsored H.R. 2831 or the Lilly Ledbetter Fair Pay Act. In July, mainly following party lines, the House passed the Lilly Ledbetter Fair Pay Act (225-199) and it now sits in the Senate for review.

Each side of this act cites solid reasons behind their agendas. Proponents for the bill state that the Court's decision effectively eliminates a discriminated employee from receiving compensation for damages when they discover that discrimination occurred if that discovery is outside of 180 days of the discriminatory decision. They also argue that previous Court decisions started the 180-day clock when the employee received his/her last discriminatory paycheck.

Opponents of the bill argue that the bill goes further than the issues created by the *Ledbetter* decision and virtually eliminates any time limitations for claims of employment discrimination. In doing so, the legislation invites stale claims and frivolous litigation when unwarranted litigation is already an issue under current discrimi-

## A Special Welcome to All Our New 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!

**Pam Fisher,**  
LABOR RELATIONS OFFICER,  
OHIO DEPARTMENT OF JOB  
AND FAMILY SERVICES

**Tina Nilo,**  
LABOR RELATIONS OFFICER,  
OHIO DEPARTMENT OF JOB  
AND FAMILY SERVICES

**Teresa Toronto,**  
LABOR RELATIONS OFFICER,  
OHIO DEPARTMENT OF JOB  
AND FAMILY SERVICES

**Deborah Connolly,**  
LABOR RELATIONS OFFICER,  
OHIO DEPARTMENT OF JOB  
AND FAMILY SERVICES

**Rebecca Castorano,**  
MANAGEMENT ANALYST  
SUPERVISOR, OHIO  
DEPARTMENT OF JOB AND  
FAMILY SERVICES

**Lisa Iannotta,**  
DIRECTOR OF  
ADMINISTRATIVE SERVICES,  
DELAWARE COUNTY

**Scott Dressler,**  
DIRECTOR OF  
ADMINISTRATION, SUMMIT  
COUNTY ENGINEER

**Jennifer Jackson,**  
ASSISTANT LAW DIRECTOR,  
CITY OF EUCLID

**Brenda Meyer,**  
ASSISTANT PROSECUTING  
ATTORNEY, LUCAS COUNTY

**Robert Matyjasik,**  
EMPLOYEE RELATIONS  
SPECIALIST, CUYAHOGA  
COUNTY BOARD OF  
COMMISSIONERS

**Jennifer Lewis,**  
CIVIL SERVICE  
ADMINISTRATION, CITY OF  
YOUNGSTOWN

**Steven Bates,**  
HUMAN RESOURCES  
MANAGER, OHIO DEPT OF  
NATURAL RESOURCES

**Megan Hupp,**  
DIVISION DIRECTOR  
HUMAN RESOURCES, LUCAS  
COUNTY DEPARTMENT OF  
JOBS AND FAMILY SERVICES

**Steve Toth,**  
CHIEF OF HUMAN  
RESOURCES, OHIO  
DEPARTMENT OF NATIONAL  
RESOURCES

**Catherine Shearer,**  
INTERIM HUMAN  
RESOURCES DIRECTOR,  
MONTGOMERY COUNTY  
CHILDREN SERVICES BOARD

**David McDonald,**  
DIRECTOR OF FIELD  
OPERATIONS, SOUTHEAST  
EMS DISTRICT

**Elaine Barton,**  
HUMAN RESOURCES  
DIRECTOR, CITY OF PIQUA

**Tye Smith,**  
HUMAN RESOURCES  
DIRECTOR, FOREST PARK  
CITY

**Angela Phelps,**  
ASSISTANT DIRECTOR  
FOR HUMAN RESOURCES,  
FRANKLIN COUNTY  
ENGINEER

**Joan Kasotis,**  
MARION COUNTY AUDITOR,  
MARION COUNTY

**Thomas Lynn,**  
CHIEF DEPUTY AUDITOR,  
MARION COUNTY AUDITOR

**Sharon Gitman,**  
DIRECTOR OF HUMAN  
RESOURCES, GREATER  
DAYTON REGIONAL TRANSIT  
AUTHORITY

**Deborah Heater,**  
CHIEF OFFICER,  
CINCINNATI PUBLIC  
SCHOOLS

**Josie Smith,**  
EMPLOYEE RELATIONS  
SPECIALIST, LUCAS COUNTY  
COMMISSIONERS



nation laws. They cite that the Equal Employment Opportunity Commission reported that it found reasonable cause in only 5.3% of the over 75,000 charges of discrimination that it received in FY2006 and found *absolutely no cause* for discrimination in over 60% of the charges (amounting to 45,500 "no cause" charges). A study of previous years' statistics yields similar results.

NPELRA has joined with several other prominent national associations in opposition of the passing this legislation. Stay tuned, as once again our job security may be enhanced once again.

## OHPELRA Website Changes

KEEP AN EYE ON THE OHPELRA WEBSITE at [www.ohpelra.org](http://www.ohpelra.org). In the near future we will be redesigning it to meet your needs. We are looking at making the OHPELRA website Homepage the resource place for public sector employers. Some changes we are looking into are:

A One-Stop location for links to our favorite employment law sites:

- Ohio Revised Code and Ohio Administrative Code online,
- FLSA regulations,
- FMLA regulations,
- Ohio Ethics Commission Advisory Opinions,
- Ohio Attorney General Opinions, and
- many others.

A One-Stop location for links to our favorite organizations:

- DOL,
- SERB,
- NPELRA (of course),
- SHRM,
- CCAO, and
- many others

The Homepage will also feature:

- The most recent question on the Discussion Board on the front page,
- A link to a new member welcome page,
- Event updates, and
- much, much more

Stay tuned and keep watching. Once completed, you may decide to make it your automatic Homepage on the Internet. It will be your access to all your favorite sites.

**If you are a member and forgotten the user name and password for the member-only portions of the website, please e-mail Maurice Evans at [maurice.evans@cityofdayton.org](mailto:maurice.evans@cityofdayton.org)**

## Another 21st Century Project



THE OHPELRA BOARD IS REVIEWING its options to take the *OHPELRA Update* electronic and begin sending it to our membership electronically by e-mail. To do so, we need every member to update his or her e-mail address with us. You can easily do that by visiting our website at [www.ohpelra.org](http://www.ohpelra.org). Keep your eyes open for more information on OHPELRA "going electronic."



**OHPELRA board members select topics for 2008 OHPELRA Annual Training Conference (February 3 - 5, 2008), while at the board retreat in Erie County in August.**

## Hey You!!! Yes, YOU!!!! We Need Those Nominations!!!

OHPELRA brought back the Pacesetter Award from the NPELRA Annual Training Conference for the OHPELRA/ CCAO/OSU Extension joint venture County Salary Survey. **LET'S DO IT AGAIN!** Do you know someone within the OHPELRA organization who should be recognized for his or her outstanding contributions to our profession in public sector human resources and/or labor relations?

If so, please remember to make a nomination for the:

### **Award of Excellence, and/or Pacesetter Award**

An OHPELRA member will be honored for each award at the Annual Training Conference in February 2008. The OHPELRA award recipients will also be nominated for awards at the national level at the NPELRA Conference in Clearwater, Florida in April 2008. We did it before. We can do it again. Nominate someone.

Award applications are available on the NPELRA homepage at [www.npelra.org](http://www.npelra.org). Please forward your nominations to Kathy Weisgarber, City of Miamisburg, 10 N. First St., Miamisburg, Ohio 45342 or e-mail them to [kathy.weisgarber@cityofmiamisburg.org](mailto:kathy.weisgarber@cityofmiamisburg.org). Send us an application **TODAY!!!!**

## **OHPELRA Thanks Its 2007 Contributing Sponsors**

See the links on our web site at OHPELRA.org for more information on these sponsors. Please continue to consider our sponsors when seeking professional services, and remember to thank them for supporting OHPELRA!

### **Advanced Benefits Planning**

Dayton

### **Baker and Hostetler, LLP**

Columbus, Cincinnati, and  
Cleveland

### **Bernardini Consulting Services**

Columbus

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Dublin

### **Clemans, Nelson & Associates**

Dublin

### **CompManagement Health Systems, Inc.**

Cincinnati

### **Downes, Hurst & Fishel**

Columbus

### **Frost Brown Todd, LLC**

Cincinnati, Middletown, and  
Columbus

### **Little Mendelson, P.C.**

Columbus and Cleveland

### **Pepple & Waggoner, Ltd.**

Cleveland

### **The Segal Company**

Cleveland



## **OHPELRA Update**

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