

TMHRA HRFOCUS



PRESIDENT'S MESSAGE

Wow...it's been a hot summer! I hope you all have stayed cool and found some time to take a vacation, since it's now back-to-school time, and it seems the schedules get very hectic once again.

The Employment Law Seminar is scheduled for September 14-15 at South Shore Harbour in League City. If you haven't already signed up, please do so soon. We have some great topics and speakers lined up. You won't want to miss it!

The TMHRA Board will be traveling to Galveston the day before our seminar in League City to work out some preliminary plans for the TMHRA/IPMA-HR Southern Region Conference that will be held at the Moody Gardens Resort in May 2007. Check out the copy of the promotional information in this newsletter. The other Southern Region chapters are beginning to distribute this information to their members, so we are expecting a great turnout. It will be an awesome event!

As I mentioned in the last newsletter, TMHRA will not be hosting a formal session this year at the TML Annual Conference, but we will still be holding the business meeting. That is scheduled for Friday, October 27, at 9:00 a.m.

Thanks to Jim Parrish (Amarillo), TxPelra/Civil Service Committee Chair, for his work in coordinating and presenting agendas for presentation to the TML Municipal Legislative Policy Committee for the 2007 Texas legislative session on behalf of the Civil Service Coalition and Texas Public Employer Labor Relations Association. A copy is included in this newsletter for your information.

And, finally, I'd like to say that I am so thankful Lonne Parent-Smith survived her vacation. She and her husband must have had angels holding their car up after they slid off the side of a mountain in Colorado. It was truly a scary event that she lives to tell. You can check out her story at www.Ouraynews.com. Go into the archives, "Texas couple rescued after Jeep slides from 4x4 road." Lonne, I think God knew we can't survive without you! Glad you and Bo are safe!

I sincerely appreciate your continued support of TMHRA! Hope to see you at the Employment Law Seminar in September.

Melanie Helms Caballero, SPHR
Human Resources Director
City of Bryan

TMHRA
Newsletter
August 2006

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Texas Municipal
Human Resources
Association

IPMA-HR
INTERNATIONAL PUBLIC MANAGEMENT
ASSOCIATION for HUMAN RESOURCES

Your gateway to information about the Texas Municipal Human Resources professional activities throughout the State of Texas. This Newsletter is brought to you by TMHRA.

UPCOMING EVENTS

EMPLOYMENT LAW SEMINAR

Knowledge Is Your Edge

September 14-15, 2006

South Shore Harbour – League City

The primary focus of the seminar will be to discuss and review the current employment issues facing municipal governments, including hostile work environment harassment; FML, ADA, and how they intertwine with workers' compensation; and GASB 45.

The presenters include Elizabeth Provencio, Associate Attorney, Denton, Navarro, Rocha and Bernal, P.C., who will discuss hostile work environment harassment; George Hyde, Associate Attorney, Denton, Navarro, Rocha and Bernal, P.C., who will discuss conducting internal investigations; Bettye Lynn, Partner, Lynn Pham and Ross, LLP, who will provide an update on public sector legal issues; and Julie Ross, Partner, Lynn Pham and Ross, LLP, who will discuss how ADA, FML, and workers' compensation intertwine. William McKamie, Partner, William C. McKamie, P.C., will present an EEOC Update; and Bob Scott, Assistant City Manager and Chief Financial Officer for the City of Carrollton, will discuss pending rule changes in GASB 45.

This seminar is designed to provide human resource professionals, managers, and supervisors with the tools necessary to maintain workplaces that are in compliance. It will also heighten your awareness of legal issues surrounding the workplace and how you can avoid costly mistakes.

The value of attending this seminar is too great to fully explain — you simply must attend!

TML Annual Conference

October 25-27, 2006

**Austin Convention Center,
Austin**

The 2006 Texas Municipal League Annual Conference and Exhibition is fast approaching. Sessions scheduled this year provide meaningful perspectives on timely topics affecting Texas cities' leaders. With dozens of educational sessions, more than 300 exhibitors, and numerous networking opportunities,

this conference has all the ingredients to enhance your value to your city. General information can be found in the July edition of TML's magazine, *Texas Town & City*, and is available on the TML Web site at www.tml.org.



FUTURE DATES:

TXPELRA/Civil Service

February 7-9, 2007 • El Tropicano - San Antonio

For a complete list of educational events, click on www.tml.org/ed_calendar.html.



TMHRA SPONSORS

TMHRA is grateful for the continued support of our sponsors. The sponsorships allow us to keep all events reasonably priced and affordable for all members. Thank you to the following sponsors for their support and contributions through the year:

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ARTICLES OF INTEREST



AKA NEWS YOU SHOULD USE

Official Ballots Mailed to TMHRA Active Voting Members

Ballots were mailed to active voting members at the end of July. Take the time to fill out the ballot and mail it in. One vote can make a difference--make your vote count!

Continuing Board Members

President: **George Mones**, SPHR, IPMA-CP, Mesquite
Vice President: **Laura Morrow**, SPHR, IPMA-CP, Allen
Trustee: **Bonita Hall**, Longview
Trustee: **Jane Mehrens**, Brenham
Trustee: **Ida Rivera**, Sweetwater
Immediate Past President: **Melanie Helms Caballero**, SPHR, Bryan

Running for TML Board Representative

Lauren Safranek, PHR, Frisco

Running for Secretary/Treasurer

Bonita Hall (Incumbent), Longview
LaShon Ross, Plano

Running for Trustee

William Bender, Friendswood
Donald Byrne, PHR, IPMA-CP(Incumbent), Odessa
Richard Hodapp, Fort Worth
Debbie Maynor, Killeen
Gayle A. Sims, Waxahachie
Rose Stewart, Texarkana

Congratulations!

Congratulations to Kathleen Buehner, Human Resources Director, City of Mansfield, for earning her IPMA-CP certification.

Mid-Year Foundation Report Rusos Bequeath Foundation \$5,000; Conference Fundraising Efforts Successful; Scholarship Round 8 Open

Conference Charter Member Anthony C. "Tony" Russo and his wife Marguerite included the NPERLA Foundation in their wills. Tony, who died late last year, and Marguerite, who passed away more recently, "were both very proud of the fact that the Foundation's scholarship program was named for Tony." The

bequest was for \$5,000. As the NPELRA Newsletter reported in January, Russo, a former Director of Labor Relations for New York City, "served as a board member and vice president of the Association during its formative years." "His charismatic style" at early NPELRA conferences "sent all who heard him home with a new resolve to work for balance at the bargaining table."

Conference Fundraising Efforts

Foundation President **Dema Harris** said recently, "We all should be very pleased with the Foundation fundraising efforts at the recent NPELRA Annual Training Conference." She continued saying, "Under the on-site leadership of **Madge Blakey** and **Steve Larson**, a total of \$7,583 was donated to support the Anthony C. Russo Scholarship Program."

State PELRAs (**California, Texas, Minnesota, Maryland, New York, and Ohio**) lead the way, with contributions totaling \$5,250. A raffle brought in \$1,258, and individual donations and pledges amounted to \$1,075.

Earlier in the year, before the conference, the Foundation received donations amounting to \$4,090, some of which was to support raffle items at the conference. State PELRAs making contributions included **Connecticut, Florida, Iowa, Minnesota, Ohio, Texas, and Washington**.


Further, following the conference, **Illinois PELRA** made a \$1,000 donation.

All told, total contributions and pledges at mid-year amounted to \$17,673. The Foundation Board extends a great big thanks to all who have supported and continue to support the program.

Scholarship Round 8 Open

Human resource, labor and industrial relations, public administration, or political science graduate students with an interest in labor and employee relations and the public sector are encouraged to apply for scholarships. Foundation President **Dema Harris** said, "This year we will be awarding scholarships in the amount of \$3,000." She added, "Since its inception in 1996, The NPELRA Foundation has awarded fifteen (15) \$2,000 and four (4) \$3,000 scholarships." NPELRA members seeking graduate degrees are eligible.

Round eight applications must be postmarked no later than September 29, 2006. The application can be obtained from the NPELRA Web site. Questions should be addressed to roger@npelra.org.



Civil Service Coalition/Texas Employee Labor Relations Association Presented August 2006

The Civil Service Coalition requested the support/endorsement of the Texas Municipal League on bills in the 2007 Texas Legislative Session as follows:

Civil Service Coalition Summary of TML Support/Endorsement Issues For 2007 Legislative Session

- Support bills providing flexibility in hiring entry-level fire fighters and police officers.
- Support bills allowing a fire or police chief to increase the number of appointments immediately below the department head level. Chapter 143.014
- Endorse bills reducing appeals to third party hearing examiners of suspensions of less than three days by fire or police officers. Chapter 143.053 and 143.057
- Endorse bills providing reasonable time limits for fire or police officers to return to work after temporary disabilities or disability retirements. Chapter 143.073 & 143.074
- Endorse bills allowing negotiated retirements arising out of or related to resolution of a lawsuit against a firefighter or police officer. Chapter 143.088
- Endorse a bill defining eight hours as a day in the statute referring to sick leave and vacation leave. Chapter 143.045 and 143.046
- Endorse bills providing six additional months of probation for participants attending an academy, whether they are certified or not. Chapter 143.027
- Endorse bills allowing another ranking officer other than the department head to deliver a letter of suspension. Chapter 143.052(c)
- Endorse bills that reduce the administrative burden of Chapter 143.

Civil Service Coalition and the Texas Public Employees Labor Relations Association for 2007 Legislative Session Presented August 2006

The Civil Service Coalition and the Texas Public Employees Labor Relations Association requests priority status from the Texas Municipal League against bills in the 2007 Texas Legislative Session that:

- Propose collective bargaining
- Expand Meet and Confer
- Seek to limit management rights
- Limit a city's ability to appeal the decision of a third party hearing examiner
- Mandate or enhance health care and prescription drug coverage
- Are presumptive disease bills
- Enhance employment mandated benefits
- Make detrimental changes to workers' compensation.

Anyone interested in joining the Civil Service Coalition should contact Jim Parrish via e-mail at Jim.Parrish@ci.amarillo.tx.us.

NPELRA Labor Relations Academy

The Texas Public Employees Labor Relations Association (TxPELRA), in conjunction with the Texas Municipal Human Resources Association (TMHRA), presents the opportunity to learn labor relations from the pros. The NPELRA Labor Relations Academy is an innovative program leading to a certification program to become a Certified Labor Relations Professional (CLRP).

Who Should Attend?

This program is designed for both experienced human resources/labor relations professionals and persons newer to the field. The program is designed for anyone who wants to include this impressive certification on a resumé; for anyone who wants to understand the basics of labor/management relations; for anyone who wants to be prepared to negotiate a comprehensive labor agreement; for anyone who wants to understand the arbitration process; and for anyone who wants a broader knowledge of labor relations.

ARTICLES OF INTEREST, AKA NEWS YOU SHOULD USE

The Program:

The Academy is presented in three segments lasting 7-12 hours each, including interactive exercises, demonstrations, valuable tips and checklists, guidelines, and insights.

Academy I – The Foundation of Labor Relations

The Duty to Bargain – Good Faith Defined – The Scope of Bargaining – Special Clauses – Tools of the Trade – Preparing and Organizing for Bargaining – Contract Enforcement and Administration – Overview of Comparative Negotiating Processes

Academy II – The Arbitration Process

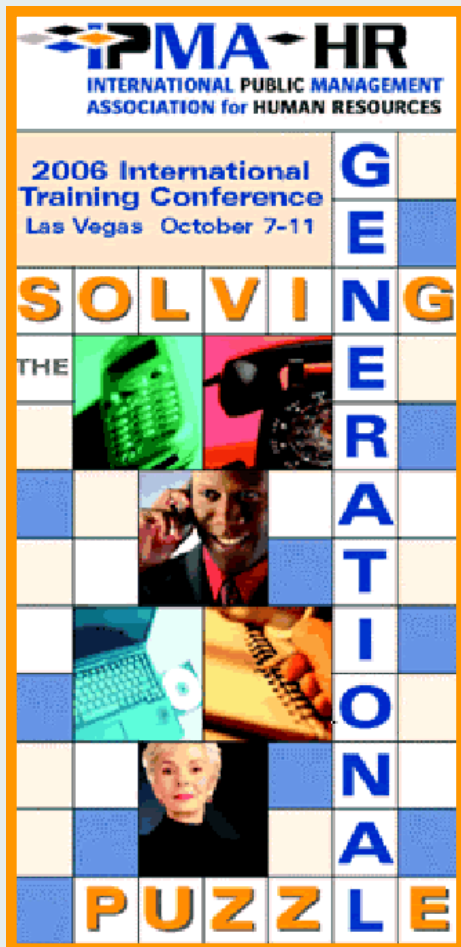
Grievance Processing – Investigation – Case Preparation – Evidentiary Standards and Objections – Advocacy Techniques – The Arbitrator's Perspective – Standards of Just Cause – Introduction to Interest Arbitration

Academy III – The Negotiation Process

Negotiation Simulation: an interactive team exercise using materials and resources provided in advance – Profile of a Successful Negotiator – The Wisdom of Experience – Scenarios and Most Common Mistakes – Union and Management Perspectives – Impasse Strategies

From NPELRA Website: <http://npelra.org>

Full International Training Conference Brochure Now Available Online



Make plans now to join your public sector human resource colleagues from across the country and around the world for the IPMA-HR 2006 International Training Conference in Las Vegas, Nevada, at the Flamingo Hotel, October 7-11, 2006.

This year's conference features hands-on pre-conference workshops and three full days of sessions that offer real world insights, techniques, and methodologies pivotal to the increasing demands on the HR professional. Choose from more than 35 sessions covering various topics in the areas of improving tactical HR skills and strategic HR and leadership development.

The IPMA-HR Annual Conference also offers plenty of opportunities for networking and peer discussions. Attendees can meet IPMA-HR members and other participants during the Products and Services Expo, evening events, and a number of informal social gatherings hosted by IPMA-HR and the local chapter. Check it out at ipma-hr.org.



IPMA-HR Members – Online Membership Directory Available

If you are a paid, active member of IPMA-HR, you can access IPMA-HR's new online membership directory. Find the names, addresses, and phone numbers of active members of IPMA-HR through our E-directory by logging onto resources.ipma-hr.org.

For your convenience, the E-directory is constantly updated to give you the most accurate contact information available for active members of IPMA-HR. For more information about this new product, which is available only to active members of IPMA-HR, please contact IPMA-HR at (703) 549-7100.

Here's the latest legal update from Audrey E. Mross:

1. Border Blues – The U.S. Senate has passed a comprehensive immigration reform bill (62-36), but House reps are saying they won't accept anything that amounts to amnesty for illegal workers who are in the country now. A key part of the Senate bill is a proposed electronic verification system that would replace the I-9 process. Employers would contact the Department of Home Security (DHS) within three days of hiring, to confirm a worker's eligibility to work, and DHS would respond within ten days. If DHS can't verify the worker, it would provide the worker a chance to provide additional proof. Stay tuned!

2. Living It Up – An employer will pay \$1.43 million—to cover \$805K in unpaid wages and vacations for 219 workers, plus civil penalties and 10% prejudgment interest—for violation of a living wage ordinance. *Amaral v. Cintas Corp.* (Cal. Super. Ct. 5-11-06). Even though the facility providing services was outside of the city limits of Hayward, California, the "living wage" ordinance applied because the company was doing business with the city. The ordinance was enacted in 1999 and set a minimum wage of \$8/hour with health benefits, or \$9.25 without (the wage is now \$10.86 without benefits). Other living wage ordinances are applied to a geographic area and are not dependent upon being a city contractor. A good Web site to research these local minimum wage laws is www.livingwagecampaign.org.

3. Overtime Ouch – A brokerage unit has agreed to pay \$98 million to settle the overtime pay claims of thousands of former and current brokers. *Bahramipour v. Citigroup Global Markets Inc. fka Salomon Smith Barney* (N.D. Cal. 5-24-06). Plaintiffs allege that they were mistakenly classified as exempt (using the administrative exemption), did not receive earned overtime, and were not reimbursed for registration fees, costs of support staff, and costs of trading errors.

4. A Bigger Stick – The State of Illinois is on the verge of amending its minimum wage statute, allowing punitive damages to be awarded against employers who underpay their workers (in addition to back pay, costs, and attorney's fees). The bill, S.B. 2339, would entitle workers to an additional 2% of the back pay award as punitive damages, and would be available in civil actions filed individually or by a group of workers.

5. Visa? Priceless – US CIS announced that as of May 12, 2006, 34,808 cases have been counted against the FY2007 H-1B visa cap. There are only 58,200 H-1Bs available (after the set aside of 6,800 visas under trade agreements with Chile and Singapore), so it's expected that the 65,000 cap will be hit very soon . . . if you want one, shake a leg! Thanks to Cindy Kang of Haynes and Boone, LLP, for providing this helpful reminder.

6. ICE, ICE Baby – In yet another raid on an employer, the Immigration and Customs Enforcement (ICE) division of the Department of Homeland Security arrested four supervisors for a home building company, three subcontractors (who hired, housed, and provided the workers), and 76 suspected illegal workers. *United States v. Witt* (E.D. Ky. 5-8-06). In the charges, ICE alleges that the company knew the contractors' "business structure" and that this "layer" between the undocumented workers and the company does not relieve the company of the responsibility to ensure that their contractors employ a legal workforce. Each of the company supervisors, if convicted, faces up to ten years in prison and a \$250K fine.

7. Busted! – An employee who faked knee injuries two summers in a row, in order to get time off to take vacations with his fiancée, has no claim for failure to reinstate under FMLA. He tried to argue that the company should've required a second medical opinion before firing him, but the Court agreed that the employer had an "honest belief" that disability leave had been fraudulently obtained, which violated the prohibition against falsification of company documents. And it didn't hurt that they had hired a P.I. who videotaped the employee doing yard work while supposedly on the mend from his injury. *Crouch v. Whirlpool Corp.* (7th Cir. 4-20-06).

8. Chicken Nuggets – Now that the U.S. Supreme Court has unanimously vindicated the DOL's long-held position that workers' time spent donning and doffing protective gear, plus the walk to/from the changing area and the production line, are all compensable, the settlements are pouring in. Next up? A \$1.2 million settlement involving 5,482 workers in a Missouri poultry processing plant. Several folks have requested copies of an article I wrote for *Texas Lawyer* on the "continuous workday" decision by the U.S. Supreme Court in *IBP, Inc. v. Alvarez*. You will find a copy posted on our firm's Web site at www.munckbutrus.com (click on E-Newsletter) along with previous editions of Legal Briefs for HR.

9. Drive Time – County construction inspectors must be paid from the time they pick up a county vehicle at a remote parking lot until they return the car to the lot at the end of the day. Obtaining the vehicles was described as an "integral and indispensable" part of the employees' workday and was, therefore, compensable under the FLSA. The county argued that the employees benefited, by saving wear and tear on their personal cars, but the Court found that parking the idle cars on the lot was primarily for the county's benefit and was an "inconvenient detour at the end of the workday." *Burton v. Hillsborough County* (11th Cir. 5-18-06).

10. Free Employment Law Guide – The DOL has posted a revised edition of its *Employment Law Guide*, in English and Spanish, on their Web site at www.dol.gov/compliance/guide/index.htm.

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HR Legal Update is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel.

NEWSLETTER INPUT NEEDED

This is YOUR newsletter, and we want to ensure it provides you with a valuable source of information from TMHRA. If you have any ideas, articles, or information you would like to see included in future newsletters, please submit them to the Newsletter Committee.

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