

## **SNYDER AND HOAG, LLC CLIENT NEWSLETTER**

**2011 – FIFTH EDITION**

**MERRY CHRISTMAS!**

**HAPPY 2012!!**

2011 was a challenging and exciting year both for our firm and for our clients. John Hoag retired from actively representing all but one of our law enforcement clients. Lane Toensmeier agreed to work part time for our firm on an "of counsel" basis. Kathy Pearson keeps churning out excellent wage and benefit surveys for bargaining and Sarah Snyder holds the fort in the Portland Office.

Despite his so-called "retirement" John will be available to consult with Lane and David between fishing trips and hunting adventures. He is working with the Petersburg Police Association in that Association's efforts to be recognized as the bargaining agent for Petersburg's police force. In addition, John continues to volunteer his time to a pro bono organization representing victims of domestic violence. Finally, in the small town that Petersburg is, John has been outed as a lawyer. He reports that new cases knock on his door fairly regularly.

Lane joined the firm earlier in 2011 and is already bargaining contracts for several clients. In addition he has worked closely with clients on both grievance and unfair labor practice disputes. He has more than 12 years' experience in labor relations. This experience is obvious in his ability to quickly and acutely analyze contract disputes. Our goal is to have Lane involved in all aspects of representing law enforcement labor unions by the end of 2012, from responding to officer involved shootings to arbitrating termination cases.

Given the state of the Oregon, national, and world economies, bargaining in 2011 was tough to say the least. Many client Associations were confronted with the choice between pushing for full cost of living and comparability based wage increases and layoffs. As interest arbitrators continued to issue conservative awards with limited wage increases whenever management raised even the slightest possibility of layoffs or service reductions, management became increasingly emboldened at the bargaining table. However, later in the year a few interest arbitration awards were issued in Washington State that suggest that arbitrators will not blindly accept a public employer's claims of inability to pay or financial distress.

Although the trend for many years has been to reduce differences in compensation between cities and counties of a similar size, bargaining in the Great Recession, with different outcomes depending on the employer's financial condition, will likely create new comparability gaps. These will undoubtedly be addressed in future years.

The current economic difficulties have brought out the worst political elements in a several states where elected officials have used the pressures of the bad economy as an excuse to target the collective bargaining rights of public employees. The good news is that voters in Ohio have repealed these attacks. Meanwhile, voters in Wisconsin may soon have an opportunity to hold their governor accountable for his attempts to blame the current economic difficulties on the state's public employees. Fortunately, no serious threats to collective bargaining rights have emerged in Oregon or Washington. Public employees in the Pacific Northwest should remain vigilant and ready to respond if a legislative initiative or ballot measure threatens collective bargaining rights. The ability to collectively bargain with an employer remains the most effective tool for addressing the needs of law enforcement personnel as well as public safety agencies.

Several of our clients lost respected friends and fellow officers in 2011. The end of the year is a good time to both reflect on those we have lost and to appreciate family, friends, and fellow officers still with us.

We wish all of our client labor organizations success in 2012. We wish all of our client's members a safe new year, good health, and much joy. Happy 2012!

David, John & Lane

## **OREGON**

### **CONTRACT SETTLEMENTS**

#### **MARION COUNTY LAW ENFORCEMENT ASSOCIATION CONTRACT SETTLEMENT**

The Marion County Law Enforcement Association has reached agreement on a new two-year contract.

In January 2012 employees will receive a wage increase of one – half percent (.5%). Effective July, 2012 employees will receive a 2% wage increase. In addition, in January 2012 the existing longevity premium was increased to 1.75% after 10 years, 3% after 15 years, and 5% after 20 years. The Association was able to preserve existing insurance benefits through 2012. In 2013, if premiums increase by more than 10%, either party may reopen the contract. If agreement isn't reached promptly, the parties' dispute will be submitted to one of four arbitrators specified in the contract. The parties also negotiated amendments to several of the contract's provisions

clarifying contract language. The Association's bargaining team was led by Association President Mike Beach.

### **PRINEVILLE POLICE OFFICERS ASSOCIATION CONTRACT SETTLEMENT**

The Prineville Police Officers Association settled a two year contract. Under the new contract all employees will receive a 2% wage increase in July 2011 and a 2% wage increase in July 2012. A new salary schedule will provide for uniform 2% salary steps. A one-half-day floating holiday was added. The Association was able to maintain existing insurance benefits and premium sharing.

The Association pushed hard to get the City to offer a larger wage increase, arguing that with the new Facebook facility in Prineville the City could afford a larger increase. The City responded that actual revenues from Facebook are uncertain. The Association's bargaining team was led by President James Peterson.

### **JUNCTION CITY POLICE ASSOCIATION SETTLES 4 YEAR CONTRACT**

The Junction City Police Association has agreed to a new contract for the years 2011--2015. This settlement provides for wage increases after the first two years, several improvements in incentives and premiums, and language improvements.

Under the terms of the new contract dispatchers will receive a new top step on July 1, 2011 and an additional top step on January 1, 2012. Each new step will be \$200 over the existing top step. In the second year dispatchers will have a wage freeze. In the third year they will receive a 3% wage increase. In the fourth year, dispatchers will receive a CPI based increase, minimum 2% and maximum 4%. Police officers will have a wage freeze for the first two years of the contract. In the second two years of the contract they will receive a cost-of-living adjustment: minimum 2%, maximum 4% provided that in those years if the CPI increases more than 5%, the Association may reopen the contract.

Several improvements in premiums were made. DPSST certification premiums were increased to 3% for intermediate and 6% for advanced. Additional incentives were added for FTO, Evidence/Property Custodian, Spanish or ASL. Officers with these skills may receive an additional premium of \$100 per month (maximum premiums per officer are \$150 per month). The longevity premium was improved by adding a 5% step at 15 years in addition to the existing 3% longevity pay at 10 years.

The Association was able to maintain excellent, fully paid, insurance benefits. The Association convinced the City to retain the current contract language regarding reopening of insurance only if premiums increase more than 15% in a year. Association President Cory Mertz led the Association's bargaining team in contract negotiations this year

## **EMPLOYMENT RELATIONS BOARD DECISIONS**

### **RELUCTANT RELATIONS BOARD RULES THAT A DISTRICT ATTORNEY'S STATEMENT TO BAR AN ASSOCIATION REPRESENTATIVE FROM EVER RETURNING TO HIS OFFICE AGAIN IF HE DIDN'T STOP "SMIRKING" CONSTITUTES AN UNFAIR LABOR PRACTICE**

This order came because the Court of Appeals reversed the Employment Relation's Board and using prior Employment Relation's Board cases concluded that the District Attorney committed an ULP when he got mad at an union representative and told the representative that if he didn't stop "smirking" during an employee hearing the DA would remove him from the office and never allow him to return.

The ERB initially ruled that the conduct did not constitute an ULP because it was an isolated incident spoken in anger and after the meeting the DA told other employees that the representative would not be barred from the District Attorney's office.

However, the Court of Appeals disagreed with the ERB, and citing previous ERB cases, found that the threat of being unwilling to work with labor representative has a chilling effect on protected activities.

Therefore, the ERB had to enforce the Court of Appeal's conclusion so it issued an "cease and desist" order which tells the District Attorney never to do it again, and did note that the association can now petition for representation costs.

### **ERB RULES THAT THE CITY OF PORTLAND COMMITTED AN UNFAIR LABOR PRACTICE BY NOT COMPLYING WITH AN ARBITRATOR'S AWARD**

In a complicated case of *Portland Firefighters Association v. City of Portland*, what was at issue was the *City's* attempt to run its own disability retirement program independent from its collective bargaining obligation. In this case, it decided that a firefighter should not have been on disability leave, tried to bring him back to work, and terminated him when he refused an order to return to work.

An arbitrator concluded that the *City* did not have the authority to do that because the firefighter was incapable of performing his work. The *City* argued that the arbitrator had no authority to order its retirement fund to return this firefighter to disability. Therefore, the arbitrator ordered the *City* to pay for firefighter's disability if it didn't want its fund to do so.

Citing its long standing deference to arbitration awards, the Employment Relation's Board upheld the arbitrator's decision and ordered the City to make the terminated firefighter whole.

## **ALASKA**

### **JOHN HOAG WINS LANDLORD TENANT CASE IN PETERSBURG**

Most of John's volunteer "work" is handling domestic violence cases. Recently he agreed to represent a tenant who was renting a 5<sup>th</sup> wheel in a trailer park. The tenant had gotten behind on her rent and the landlord filed an eviction notice against her and sued for over \$4,000.00 in back rent and damages to the 5<sup>th</sup> wheel.

Alaska's residential landlord tenant law requires landlords to rent properties in a habitable condition. A tenant may counterclaim in lawsuit for back rent due to defects in the rental unit. In this case John presented evidence that the 5<sup>th</sup> wheel was rented without hot water, a toilet that didn't flush and a roof that leaked. A City building official testified to chronic problems in the trailer park. After a half day trial, the Superior Court Judge ruled that the tenant was entitled to a \$400 judgment against the landlord and that John is entitled to attorney fees.

*Editorial comment: John says that one can't hunt and fish all of the time.*