

# The Labor Relations Advisor

A PUBLICATION OF F&amp;H SOLUTIONS GROUP

## DOL Revises Financial Disclosure Rules for Union Leaders

The Department of Labor (DOL) has issued revised rules that relax compliance and improve transparency of financial reports required by union leaders. The Labor Management Reporting and Disclosure Act requires union officials and non-clerical union employees to disclose certain financial information on LM-30 forms filed annually with the DOL. Union leaders must report payments or benefits from, or any other financial arrangements with certain businesses, including union-represented employers, companies employing persons whom the union is seeking actively to represent, or other groups that may present conflicts of interest. Similar financial payments received by spouses or minor children of the union official must also be disclosed. The revised rules will become effective on August 16th, and will apply prospectively. Major provisions are highlighted below:

- Payments of up to \$250 per year from one source are exempt from reporting, and single payments of up to \$20 are excluded from calculating the annual payments. Also excluded is a union leader's participation in a "widely attended gathering" which costs the business sponsor less than \$125 per attendee.
- Payments received as bona fide employees of the business are exempt. However, employees who spend part of their working time on union matters without loss of pay must report such pay in excess of 250 hours per year.
- Unions need not notify their officials of the obligation to file LM-30 forms.
- Officials must report fees and reimbursed expenses for officials who sit on an employer's board of directors, and gifts received from a business that competes with the union-represented employer.
- Officials of an international or national union must report financial arrangements with businesses connected to local unions as well companies involved with the national or international labor organization. Local officials are required to report only transactions with businesses at the local level. ■

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## *Labor Relations Advisor: Now Electronic*

Jerry Glass, President of F&H Solutions Group, published the first issue of the *Labor Relations Advisor* in September of 1989. Industry has seen many changes since that time and to keep you informed, we have compiled the important issues for you in this newsletter. To keep up with the times, F&H Solutions Group is updating the format of the *Labor Relations Advisor*. The newsletter will now be sent in an electronic format directly to your e-mail inbox. We will keep our commitment to providing timely and valuable information to our readers. We look forward to serving you for many years to come. To ensure that you continue to receive this useful and valuable newsletter, please send your e-mail address to [mcastelveter@fhsolutionsgroup.com](mailto:mcastelveter@fhsolutionsgroup.com). ■

## Federal Court Upholds SkyWest Pilots' Right to Organize

A United States federal court judge has partially denied a preliminary injunction against SkyWest Airlines, alleging employer interference with union organizing efforts. The federal district court has permitted SkyWest Airlines to continue funding the SkyWest Airlines Pilots Association (SAPA) (*SkyWest Pilots ALPA Organizing Committee, et.al., v. SkyWest Airlines, Inc.*, 3:07-cv-02688-CRB, Document 160 filed 6/27/07). The court also declined to block the airline from refusing to provide union organizers equal access to the same channels of communication that it grants to SAPA. Judge Charles R. Breyer did, however, grant part of the plaintiffs' motion. The ruling sustains the pilots' right to wear ALPA lanyards, to discuss ALPA and the organizing campaign off the job in non-work areas, and to distribute union literature on bulletin boards and in crew lounges.

Some SkyWest pilots have no official bargaining representative, but all crewmen at the airline are considered members of the SkyWest Airlines Pilots' Association (SAPA). Founded by SkyWest pilots in the 1990s, the organization is 100 percent funded by the company and has never been certified by the National Mediation Board as a bargaining representative. SAPA professes to negotiate with SkyWest over pilot pay and working conditions, and assists in developing the crew policy manual. The airline grants SAPA access to pilot mailboxes and to the company's email system, provides a dedicated bulletin board, and permits the organization to address all new-hire training sessions.

SkyWest pilots formed the SkyWest Airlines Organizing Committee to build support for ALPA representation. As part of its campaign, the Organizing Committee urged pilots to wear lanyards imprinted with the ALPA logo. Most pilots wear neckchains during working hours to hang ID cards around their necks. The company's uniform policy specifies that "logo neckchains are not acceptable unless they say SkyWest Airlines." Management threatened to discipline pilots who sported the ALPA neckwear. Court records show, however, that the company permitted pilots to wear non-standard neckchains that displayed insignia of sports teams, colleges, ski areas, and airplane manufacturers.

Union organizers also distributed ALPA-related literature in crew lounges, on lounge bulletin boards, and in pilot mailboxes. Although not prohibited by written company policy, management personnel suggested that this activity violated the airline's non-solicitation policy. One Chief Pilot refused permission to post ALPA fliers on crew lounge bulletin boards, and another manager admitted removing ALPA postings from those locations. Company representatives also stopped the distribution of ALPA leaflets to new hires outside of a training session on public property during non-work time.

The Organizing Committee filed suit, alleging that SkyWest had interfered with their union organizing. The plaintiffs sought temporary injunctions to block company interference with wearing ALPA lanyards, and with the distribution of union literature in non-work areas on non-work time. The plaintiffs also alleged that the company's full funding of SAPA violated the Railway Labor Act and claimed that the airline discriminated against ALPA by providing communication channels to SAPA that were not made available to the Organizing Committee.

The court refused injunctive relief on the SAPA issues. Judge Breyer noted that although the airline's full funding of SAPA may appear to violate the RLA, the balance of hardships rests in favor of denying a preliminary injunction on this issue. Evidence failed to show that the company's sponsoring of SAPA has deprived pilots of their freedom of choice. For over a decade SAPA has performed important administrative functions without legal challenge. The plaintiffs are unlikely to suffer irreparable harm without an injunction against the funding, the judge explained. The court also found no evidence that SAPA used its channels of communication in a discriminatory fashion. The court granted the preliminary injunction with respect to lanyards, and to the distribution of ALPA material in non-work areas and on bulletin boards, finding that the company had discriminated against the Organizing Committee on these issues. ■

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## Workers Approve Pact with Las Vegas Casinos

UNITE HERE has announced that workers at six major Las Vegas resorts have ratified the “largest wage plus benefit increase in the history of the union,” in a contract that the union hopes will set the pattern for upcoming negotiations with other city hotels and casinos. This is the first agreement reached in the current round of bargaining between the union and the Las Vegas hotels. Agreements covering approximately 50,000 Las Vegas resort workers expired at the end of May, although most contracts were extended as bargaining continued.

The 5-year pact with Harrah’s Entertainment covers 15,000 service workers at Caesars Palace, the Flamingo, Bally’s, Paris Hotel & Casino, the Rio Hotel & Casino, and Harrah’s Las Vegas. The contract boosts wages and benefits by \$3.47 per hour over the contract term, and retains fully-paid health insurance for employees and dependents. Two new Taft-Hartley trust funds were established: a legal defense fund to assist tipped employees who are audited by the IRS and a housing trust fund to assist workers who purchase homes in the area. These funds are contingent upon the participation of the other hotel/casino employers. The following are additional highlights of the agreement:

- Increased guaranteed gratuity to 18 percent from 17 percent for tipped waiters serving parties of 8 or more in full-service restaurants;
- Established severance pay and preferential hiring at other Harrah’s resorts for employees displaced due to a closure during the contract term;
- Instituted pay protection for employees called up for military service, with employer to pay the difference between workers’ military pay and civilian paycheck; and
- Extended employer neutrality and card-check recognition to new Harrah’s properties. ■

## Freight Railroads Reach Tentative Pacts

The National Carriers’ Conference Committee (NCCC) has reached tentative labor pacts with five unions representing railroad workers, bringing the current round of negotiations near conclusion. The NCCC bargains for more than 30 major freight railroads nationwide. The tentative accords cover 30,000 workers represented by the Transportation Communications Union, the Brotherhood of Railway Carmen-TCU, the International Association of Machinists, the International Brotherhood of Electrical Workers, and the Transport Workers Union. The unions expect to complete their ratification ballots by mid-September. Negotiations are continuing with the United Transportation Union, representing about 45,000 conductors and other trainmen.

In June 2007, six other labor groups approved agreements covering approximately 66,000 workers, or about half of the NCCC’s unionized workforce. The unions that have ratified their agreements include the Brotherhood of Maintenance of Way Employees, the Brotherhood of Railroad Signalmen, the National Conference of Firemen & Oilers, and the Sheet Metal Workers International Association. Completing the list is the International Brotherhood of Boilermakers, Iron Ship Builders Blacksmiths, Forgers and Helpers. The American Train Dispatchers Association is now conducting a second ratification vote after discovering a mail problem with their first ballot count. The ratified contracts provide wage increases totaling over 18 percent compounded over the life of the agreement, as well as new cost-sharing formulas in the health care plans. The agreements will become amendable December 31, 2009. ■

## NEWS BRIEFS...

**AirTran** and the National Pilots' Association have headed back to the bargaining table, following the union's decision to postpone the ratification vote on the tentative agreement reached May 21, 2007. Union members had expressed dissatisfaction with the proposed settlement...Professional and technical employees of **Boeing Integrated Defense Systems** have voted to decertify their union, the Society of Engineering Employees in Aerospace (SPEEA) Local 2001. SPEEA leaders attributed the decertification drive to frustration in the bargaining unit over being barred from participation in Boeing's profit sharing plan. As non-represented employees, the group of 934 workers will gain access to participation in the company's profit sharing plan...Eleven **Comair** pilots have sued the airline and ALPA, claiming they failed to receive a portion of the unsecured claim of \$61 million distributed to pilots at the conclusion of the airline's bankruptcy proceedings. According to the suit, the plaintiffs did not receive a payment because

they were considered managers and not covered by the bargaining agreement...Teamster-represented **GoJet** pilots have ratified their first collective bargaining agreement by a vote of 81 to 12...After four years of bargaining, **Kalitta Air** crewmembers, represented by the Teamsters, have approved a new contract that improves the 401(k) plan and provides a 20 percent pay increase over the 4-year term...SEIU has launched **SEIU Healthcare**, a new "union within a union" with one million members. Led by Dennis Rivera, former president of 1199SEIU in New York City, the new organization plans to utilize 4,000 organizers and an annual budget of \$120 million to target 10 million unrepresented health care workers nationwide...The popular cost-control strategy of **shifting health care costs** to employees may be counterproductive, according to a recent report by the Integrated Benefits Institute (IBI). This practice actually may result in lost productivity through increased employee disability and absenteeism, according to IBI's research. ■

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## Southwest Offers Employee Buyout

Southwest Airlines has offered a voluntary buyout plan to highly-paid senior employees, the first of several steps designed to reduce costs and bolster profits. Project "Early Departure" is intended to pare the airline's unit labor costs, which now exceed those at competitors who had restructured in the wake of bankruptcies. Later this year the company will announce other plans aimed at realigning costs and enhancing revenue.

Eligible employees who participate in the buyout will receive a \$25,000 payout, as well as travel privileges and continued medical/dental benefits. The deadline for participation is August 10, 2007. The plan targets approximately 8,700 higher-paid staff including flight attendants, customer service agents, reservationists, ramp workers, and those who work in provisioning and freight handling. Mechanics and pilots are excluded from the plan.

The buyout is intended to lower the average cost of wages and benefits – not to reduce the headcount. CEO Gary Kelly expects that the company will decide not to fill the positions of approximately 1 percent of employees who participate in the plan. The airline currently employs 33,000 employees. ■

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## Raising the Bar: Ford & Harrison's 2007 Airline Labor and Employment Law Symposium

Ford & Harrison's 2007 Airline Labor and Employment Law Symposium will be held on Thursday, September 27 and Friday, September 28 at the Grand Hyatt Atlanta in Buckhead. Attendees will have the opportunity to choose from a variety of sessions addressing labor and employment law issues facing the airline industry today.

The registration fee is \$145 for clients and \$195 for non-clients. The fee covers attendance at the symposium, all symposium materials, Ford & Harrison's 2007 SourceBook, lunch, a cocktail reception and dinner on September 27, and breakfast and lunch on September 28. For more information, please contact Amy Garrison at 404-888-3989 or visit our web site at <http://www.fordharrison.com>. ■

## ADA Class Action Certified Against UPS

A United States federal judge has certified a class action suit under the Americans with Disabilities Act (ADA) against United Parcel Service (UPS) (*Hohider v. United Parcel Serv. Inc.*, W.D. Pa., No. 04-363, 7/16/07). Judge Joy Flowers Conti ruled that the plaintiffs may bring claims that UPS discriminates by refusing to accommodate disabled employees who wish to return to work, by applying its ADA compliance policy to delay and avoid providing requested job accommodations, and by using job descriptions that omit the central functions of jobs.

The class is comprised of current and former UPS employees who missed work for medical reasons and who were then prevented from returning to work due to UPS policies. The plaintiffs allege that an unwritten company rule required sick workers to stay home until they were “100 percent healed” with no medical restrictions. Although three plaintiffs brought the suit, the class could include more than 36,000 persons in the U.S. who were employed by UPS at any time since May 10, 2000. The group includes employees on workers’ compensation, those on disability leave, or workers on sick leave who did not return to work because of the company’s alleged 100 percent healed policy, discrimination under the written ADA compliance policy, or discriminatory use of job descriptions.

Judge Conti held hearings on the certification motion in January 2006. Court records show that during the 4½ - year period beginning in May 2000, UPS opened files on 481 employee requests for accommodation. Of those, 233 requests were withdrawn. The company offered accommodation in 47 cases. UPS managers and employees affirmed the existence of an unwritten policy that required full recovery – without medical restrictions – before returning to work. Some managers were unaware of the formal accommodation procedures; others observed that those procedures were intended to discourage workers from requesting job modification. Evidence was provided that the Equal Employment Opportunity Commission (EEOC) had found probable cause that UPS had violated the ADA in several individual cases.

The court determined that the plaintiffs may use the “pattern-or-practice” framework of proof. Judge Conti explained that under this scheme, the plaintiffs at the liability stage need not prove that each person seeking relief was a victim of the alleged discrimination, but only “must prove that a discriminatory UPS policy existed.” The burden of proof would then shift to the company to refute the existence of a discriminatory policy. UPS plans to appeal the certification ruling. ■

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## Congress Ponders Family Leave Improvements

Three separate bills recently introduced in Congress would provide or enhance family leave for several disparate employee groups. Highlights follow:

- The Military Family Support Act (S. 1649) would permit family members of deployed military personnel or reservists serving in combat zones to take leave from their jobs to care for dependents of the service member. The bill proposes to create separate programs for federal workers and for private sector employees. The Office of Personnel Management would administer the program for federal employees who are designated caregivers. Sick banks, vacation, or other approved leave could be used. The Labor Department would encourage private sector employers to voluntarily design programs similar to the federal model. Sens. Russ Feingold (D-Wis.) and Robert Casey (D-Pa.) introduced the legislation.
- The Family Leave Insurance Act of 2007 (S. 1681), introduced by Sens. Christopher Dodd (D-Conn.) and Ted Stevens (R-Alaska), would establish a federal fund to provide eight weeks of paid leave for employees who take time off under the Family and Medical Leave Act (FMLA). Employers and employees would share the cost of financing the benefits. For companies with 50 or more workers, employees would contribute 0.2 percent of annual earnings; employers would pay matching amounts. For smaller companies, participation would be voluntary and premiums would be reduced. Companies could opt out of the program if they already provide an equivalent leave plan.
- H.R. 2744, The Airline Flight Crew Technical Corrections Act, would amend the FMLA to provide coverage to pilots and flight attendants provided they have “been paid for or [have] worked 60 percent of the employer’s monthly hour or trip guarantee, or the equivalent annualized over the preceding 12-month period” (*Labor Relations Advisor*; June 2007). The bill, introduced by Rep. Timothy Bishop (D-NY), would eliminate the current requirement that employees work 1,250 hours per year to qualify for FMLA coverage. ■

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