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## ST. ANTOINE PRESENTS THOUGHT PROVOKING OPPORTUNITY FOR FELLOWS

The College marked the occasion of its Third Annual Lecture with a thought provoking speech presented by Fellow Emeritus Professor Theodore St. Antoine. The event, held May 2nd at the Willard Intercontinental Hotel in Washington, DC, was done in conjunction with a seminar hosted by the American Bar Association's Section of Labor and Employment and the University of Maryland's School of Public Affairs. The speech, titled "The Once and Future Labor Act: Myths and Realities" dealt with the early history of the NLRA where Professor St. Antoine offered insights and suggestions as to its future.



A unique and fascinating perspective was presented with respect to the past. Professor St. Antoine has had the good fortune of interviewing many of the persons who were "present at the creation" of the Act, enabling him to recount many of those conversations and providing an important prism through which to view all that developed later. According to him, the central themes of the NLRA were to guarantee workers "full freedom of association" and to "encourage the practice and procedure of collective bargaining." He offered that, in light of those aims, "something seems to have gone terribly wrong." In this regard, he reviewed the decline of the percentage of the US workplace that is organized, which he attributed, in part, to some employer hostility to unionization.

Professor St. Antoine then recommended ways "to revise or reinterpret the NLRA to better achieve its underlying purpose." Beginning with the duty to bargain, he criticized *Borg Warner* as a "straight jacket" which imposed a

"rigid and unrealistic dichotomy between mandatory and permissive subjects." He argued for a more expansive view of bargaining subjects.

Dealing with the core matters of union representation, Professor St. Antoine disagreed with proposals for card-check certification and compulsory arbitration of first contracts as a remedy for employer refusals to bargain and "instant elections." However, he favored monetary remedies for a refusal to bargain, specifically, a remedy that would consider the results that would have been achieved if there had been good-faith bargaining.

The remarks were concluded with a tribute to Monsignor George Higgins, the famous "labor priest." In that tradition, Professor St. Antoine offered his own vision of the future, saying:

"I cannot believe that a private-sector workforce that is only one-tenth organized is ultimately good for labor, for management, or for the whole of our society. And so I look for a day when the promise of the Wagner Act – that workers may freely organize and bargain collectively through representatives of their own choosing – is at long last fulfilled."

As a reflection of the Professor's provocative speech, there stemmed an interesting question and answer period. His answers were responsive, candid and thoughtful. Following the presentation, a reception was held where old friends and colleagues were able to visit with each other as well as the speaker himself. The College is deeply indebted to Professor St. Antoine for his presentation and for making this annual event a continued success.

*A complimentary copy the St. Antoine speech is included with this newsletter.*

## WEBSITE NEARS COMPLETIONS

**T**he construction of the College's official website is finally nearing completion. Release of the web address to various search engines is anticipated to coincide with the College's Annual Induction Dinner. The website will offer Fellows and interested parties alike an opportunity to obtain important information about the College and its various endeavors. Slated to be available are topics such as a brief history of the College including the Bylaws, information about the Board of Governors, description of standing committees, posting of the quarterly newsletter, a listing of the current membership roster as well as

a listing of the most recently elected Fellows, nominations forms, the credentials committee protocol, upcoming events, and links to other relevant websites.

As we continue to move into the digital age, the website will prove to be a perfect compliment of information and resource and will further distinguish the College as a pre-eminent professional association. Keep your eyes on the College's summer newsletter for an announcement of the website completion and its address.

## UPDATES FROM THE ABA SECTION OF LABOR AND EMPLOYMENT LAW

### *Section Annual Meeting, August 4 – 8, in Chicago*

**T**he Section will meet during the ABA's Annual Meeting this August in Chicago. The Section, headquartered at the Fairmont Hotel, plans an array of timely and interesting programs including the Monday morning plenary session during which counsel for Eastern Associated Coal Corporation and the United Mine Workers of America will outline the arguments they made in the employer's challenge of an arbitral opinion based upon public policy. In addition, scheduled programs include the latest developments in EEO, NLRB, ERISA and ADR, as well as programs on technology and international issues. Secretary of Labor Elaine L. Chao will speak at Tuesday's Annual Section Luncheon.

For a complete list of Section programming in Chicago, go to [www.abanet.org/labor/annualmeeting.pdf](http://www.abanet.org/labor/annualmeeting.pdf). Registration materials are available at [www.abanet.org/annual/2001](http://www.abanet.org/annual/2001).

### *Judicial Clerk Training Program Broadens*

In late 2000, the Section began a series of seminars designed to train federal law clerks on a wide-range of employment law related topics.

Sessions were held for clerks in the Southern and Eastern District of New York, Minneapolis, northern California, central Florida and the Northern District of Illinois. Earlier this year, the Section began working with the Division of Judicial Education at the Federal Judicial Center in Washington, D.C. to expand the project by developing a videotaped version of the training program that could be broadcast over the Federal Judicial Center's system, possibly to over 300 courthouses with downlink capabilities. It is expected that the 2-1/2 hour video will be taped this fall.

Once the video is complete, the Section plans to organize panels of Section members, representing the various sides of the employment relationship, to appear at the courthouse during the broadcasts to answer questions from the audience of clerks.

### *Section Creates Committee on Sports and Entertainment Law*

At its April meeting, the Section Council agreed to create a new standing committee to deal with sports and entertainment law issues as they relate to labor and employment issues.

*On November 9 and 10 the Section will sponsor a national program dealing with the important and emerging area of violence and mental health*

## CONTINUED

The committee will be comprised of attorneys who practice in one or both of the areas of sports and entertainment law in both the public and private sectors. The committee will focus on all labor and employment issues related to sports and entertainment law including such issues as employment contracts and their negotiations, discrimination law under both state and federal anti-discrimination law, including Title IX, collective bargaining for unionized employees, arbitration and mediation of individual and group disputes and television and broadcast rights, copyright and trademark questions, agency issues, league or association rules and regulations as they impact the employment in sports or entertainment such as professional football or baseball, and the NCAA rules. The Committee welcomes representatives from all sides of employment related issues including league counsel, university counsel, neutrals, union counsel, employer counsel and sports and entertainment agents. Any Section member may join the committee. Following selection of the initial leadership, the committee will hold an organizational meeting during the August Annual Meeting. All members with an interest in the area are encouraged to attend.

### ***Program To Deal with Violence and Mental Health Issues in the Workplace***

On November 9 and 10 the Section will sponsor a national program dealing with the important and emerging area of violence and mental health issues in the workplace. The program "Responding to Violence and

Mental Health Issues in the Workplace: Navigating the Rights and Responsibilities Created by the ADA, FMLA, Workers' Compensation Laws and Other Employment Statutes" will feature updates on the latest legal and administrative decisions and enforcement actions involving mental and emotional disabilities, as well as practical advice from mental health and rehabilitation experts.

Program sessions will present a balanced coverage of the issues given by the leading practitioners in the field. They will be held at the Wyndham Hotel in Atlanta beginning at 9 a.m. on Friday, November 9 and concluding at noon on Saturday, November 10. The ABA Tort and Insurance Practice Section will cosponsor the program.

### ***Section Hosts Law School Programs***

In March, the Section of Labor and Employment Law began a program that brings section members into ABA accredited law schools to discuss the career opportunities and special dimensions of this legal specialty. Through the program, panels of experienced practitioners representing a variety of perspectives on labor and employment law share real-life experiences and information during one-hour lunchtime programs.

The program provides law students a chance to meet with leading lawyers in the field of labor and employment law, and to learn about resources available to them if they are interested in pursuing careers in this specialty area.

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*Mark your calendars:*

*Sixth Annual  
Induction Dinner  
to be held  
Sunday, August 5  
in Chicago, Illinois*

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## NLRB REVERSES 50 YEARS OF ITS PRIOR PRECEDENT, MAKING IT MORE DIFFICULT FOR EMPLOYERS TO WITHDRAW RECOGNITION OF A UNION

By Edwin S. Hopson\*

**O**n March 29, 2001, the National Labor Relations Board in *Levitz Furniture Company*, 333 NLRB No. 105, issued an important decision reversing some fifty years of prior NLRB precedent on the question of under what circumstances an employer may withdraw recognition of a union unilaterally and still be in compliance with the National Labor Relations Act.

Since the Board's decision in *Celanese Corp.*, 95 NLRB 664 (1951), employers were permitted to unilaterally withdraw recognition of an incumbent union if it had a good-faith doubt as to the union's continued majority status among its employees in the bargaining unit, even if, in fact, the union continued to enjoy majority support. Employers with such good-faith doubt could file a petition with the NLRB seeking to decertify the union through a Board-supervised secret ballot election, conduct a poll of its employees, or could simply refuse to continue to recognize and bargain with the union, leaving the union with the options of itself seeking a Board representation election, filing an unfair labor practice to test the bona fides of the employer's claim, or voluntarily disclaiming interest in further representing the employees in question. See *Texas Petrochemicals Corp.*, 296 NLRB 1057 (1989), enforced as modified 923 F.2d 398 (5<sup>th</sup> Cir. 1991). Good-faith doubt was typically based on a petition signed by a majority of employees in the bargaining unit indicating they no longer wished to be represented by the union. However, if unfair labor practices had been committed by the employer that tended to undermine employee support for the incumbent union prior to receipt of the petition, then the above options were not open to that employer.

The U.S. Supreme Court in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998), criticized the Board's application of its good-faith doubt standard and held that it

must be interpreted to allow an employer to "act where it has a 'reasonable uncertainty' of the union's majority status, rejecting the Board's argument that the standard required a good-faith disbelief of the union's majority support." *Levitz*, at page 1. However, in *Levitz*, the Board "concluded that there are compelling legal and policy reasons why employers would not be allowed to withdraw recognition merely because they harbor uncertainty or even disbelief concerning unions' majority status." *Ibid*.

The NLRB, in *Levitz*, (with Chairman Truesdale, and Members Liebman and Walsh in the majority), held:

[T]hat an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees, and we overrule *Celanese* and its progeny insofar as they permit withdrawal on the basis of good-faith doubt. Under our new standard, an employer can defeat a post-withdrawal refusal to bargain allegation if it shows, as a defense, the union's actual loss of majority status.

*Levitz*, at page 1.

Additionally, the Board in *Levitz* allows employers to seek decertification elections supervised by the Board if it can demonstrate "good-faith reasonable *uncertainty* (rather than disbelief) as to the unions' continuing majority status." (Emphasis in the original). *Ibid*.

Leaving the standards under which an employer can conduct a poll for a later case, the Board has set two different standards to be applied for unilateral withdrawal of recognition and the filing of an employer decertification petition. Under the unilateral withdrawal ap-

*Good-faith doubt was typically based on a petition signed by a majority of employees in the bargaining unit indicating they no longer*

\*Mr. Hopson, a member of the law firm of Wyatt Tarrant & Combs in Louisville, Kentucky, has been a Fellow of the College since 1996.

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employer must now prove by a preponderance of the evidence that the union, in fact, no longer represents a majority of its employees in the bargaining unit. The Board majority, however, does not set out what types of proof will be required. Can the employer rely solely upon an employee petition signed by a majority of employees indicating they no longer wish to be represented by the union? Will it permit the employer to call employees at a hearing and question them concerning their union sentiment (which probably violates Section 8(a)(1)'s proscription against interrogation of employees regarding union support)? What sort of evidence can the General Counsel and the union present to rebut whatever evidence the employer presents? These are questions which must await future Board decisions.

The standard to be applied to employers who wish to test the union's continued majority status in a Board decertification election (an RM petition) was lessened in *Levitz*. An employer must only show that it has a reasonable uncertainty as to the union's continued majority status, rather than a disbelief. The reason for this difference is the Board's stated preference that questions regarding union representation be resolved in a Board-supervised secret ballot election. The evidence necessary to support an employer's filing an RM petition include the employee petition signed by a majority indicating they no longer wish to be represented, and/or statements by a number of employees to employer managers and supervisors indicating opposition to union representation, statements of employees regarding lack of union support amongst other unit employees, and employee statements of dissatisfaction with the performance of union representatives, all indicating a lack of majority support. However, the presence of a great many new employees shall not be considered as evidence supporting an employer's good-faith uncertainty of continued union majority status, since they are presumed to support the union just the same as longer service employees do. Moreover, the failure of the union to file grievances or appoint stewards will not be considered evidence to support the filing of an RM petition, unless it is the subject of statements of discontent amongst bargaining unit employees. Any

evidence found to support the filing of an RM petition must be objective and reliable. *Levitz*, at 11-12.

The Board made its *Levitz* decision prospective rather than retroactive. Thus, the result in *Levitz* was that, under the old standard, the employer was justified in unilaterally withdrawing recognition and the Board dismissed the union's complaint against the employer.

The lone dissenter in *Levitz*, Member Hurtgen, while concurring in the result, argued against overruling *Celanese* and changing fifty years of Board law. Based on the doctrine of stare decisis, Hurtgen contended that there was no evidence that the old rule was not working or had created instability in labor-management relations and, therefore, no change should be made. He also asserted that the new standards may place some employers on the horns of a dilemma. Thus, when faced with evidence creating a good faith doubt as to the union's continued majority status, i.e., an employee petition signed by a majority stating they no longer wish to be represented by the union, the employer by unilaterally withdrawing recognition may violate Section 8(a)(5) of the Act. While the better course now may be to continue recognition and file an RM petition, this requires continued recognition in the meantime. If, in these circumstances, the union, in fact, did not represent a majority, then the employer may be violating Section 8(a)(2) of the Act which prohibits employer support or domination of a labor organization. See *S.M.S. Automotive Products*, 282 NLRB 36 (1986). Member Hurtgen further argues that RM petitions are a long and potentially time-consuming process due to the ability of the union to file unfair labor practice charges which would block and delay an election and file post-election objections further delaying final resolution of the question concerning representation. He suggests that the union should file its own petition for an election (an RC petition) in the face of an employer's unilateral withdrawal, since it is more unlikely that the union would attempt to draw out the process by filing blocking charges. *Levitz*, at 14-15.

In the next several months, President Bush will be nominating three new Members to the five person NLRB, along with a new General Counsel. What impact that may have on this new decision remains to be seen. In the meantime, employer unilateral withdrawal of recogni-

*The standard to be applied to employers who wish to test the union's continued majority status in a Board decertification*

# WHAT EVERY EMPLOYMENT LAWYER SHOULD KNOW ABOUT LABOR LAW

by Thomas H. Barnard\*

When I was in law school, the only course available relating to employment was traditional labor law. In fact, other than the National Labor Relations Act (NLRA) and the Fair Labor Standards Act, there wasn't much else. Today, many management lawyers only practice employment law and have virtually no knowledge of the NLRA. They have few or no dealings with unions and believe that a knowledge of the NLRA isn't necessary. Not so, hence this primer.

Beginning with the basics, Section 7 of the NLRA sets forth in pertinent part that:

[e]mployee[s] shall have the *right to self-organization*, to form, join, or assist *labor organizations*, to *bargain collectively* through representatives of their own choosing, and to engage in other *concerted activities* for the purpose of collective bargaining or other *mutual aid or protection*.

Under Section 8(a)(1), it is an unfair labor practice for an employer, among other things, to "*interfere with, restrain, or coerce*" employees in the exercise of any guaranteed by Section 7. This section usually forms the basis for these claims in the non-union context.

## **Rights Of Non-Union Employees**

### A. The Right to Representation in an Investigatory Interview.

Union employees have long enjoyed the right to have a union representative present during an investigatory interview conducted by management. This right was first described by the U.S. Supreme Court in *N.L.R.B. v. J. Weingarten, Inc.* (U.S. 1975).

Last year, in *Epilepsy Foundation of Northeast Ohio*, the N.L.R.B. held that *Weingarten* rights apply to *non-union employees*, as well as to

union employees. The Board concluded that the employer's refusal to permit the worker to bring his co-worker to the interview was an interference with the worker's Section 7 rights.

### B. The Right to Discuss, Amongst Themselves, Terms and Conditions of Employment.

Wages and Benefits. Some employers do not like their employees *discussing their wages* amongst themselves and impose rules prohibiting such discussions. Last year, in *N.L.R.B. v. Main Street Terrace Care Center*, (6<sup>th</sup> Cir. 2000), the Sixth Circuit held that a non-union employer *cannot* prohibit employees from *discussing their wages* amongst themselves.

Similarly, employers may not impose a rule prohibiting employees from *discussing employer-provided benefits* amongst themselves. In *Cypress Semiconductor (Minnesota), Inc.*, NLRB (1996), the employer maintained a stock option incentive program. The supervisors conducting these performance reviews told each employee that they were "prohibited from telling other employees the number of shares" they had received. The Board concluded that the employer had committed an unfair labor practice by forbidding its employees from discussing the stock option program, including the number of shares each had received.

Workplace Complaints and Grievances. Employers may not impose a rule requiring employees to *bring their complaints directly to management* and forbidding employees from *discussing these complaints amongst themselves*. In *Aroostook County Regional Ophthalmology Center v. N.L.R.B.*, (D.C. 1996), the Court held that it *was* an unfair labor practice to require employees to bring all of their complaints to their supervisor, and to forbid them from discussing these complaints amongst themselves outside of patients' hearing.

*The Board concluded that the employer had committed an unfair labor practice by forbidding its employees from discussing the stock option*

\*Mr. Barnard is a member of the law firm of Ulmer & Berne LLP in Cleveland, Ohio. He was inducted as a Fellow of the College in 1998.

*The Fourth Circuit held that the company's "blanket prohibition" on discussing the circumstances of the lowered qualification "affected protected rights*

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*Performance Evaluations*. Employers may not prohibit their employees from discussing *the results of performance evaluations* amongst themselves. In *Medeco Security Locks, Inc. v. N.L.R.B.*, (4th Cir. 1998), an employee received a low score on an employer-required test and was required to re-take the test. The employer required the employee to sign a "confidentiality statement," in which he agreed not to disclose the reasons for his lowered qualification or his test scores to anyone. The Fourth Circuit held that the company's "blanket prohibition" on discussing the circumstances of the lowered qualification "affected protected rights because it covered communications that would be protected by the Act."

*Results of Drug Tests*. Employers may not prohibit employees from discussing *the results of their own drug tests*. Also, in *Medeco Security Locks, Inc. v. N.L.R.B.*, another employee had been required to take a drug test. After the test came back negative, the company forbade the employee from disclosing the results of this test. The Fourth Circuit held that this prohibition violated the NLRA. "[T]he company cannot legitimately prevent him from attempting to air the facts in a manner that he believes will restore his good name."

### C. The Right to Collectively Bring Complaints to the Attention of Management.

Employers may not discourage employees from *making complaints about workplace issues*, or take adverse action against employees for collectively complaining about working conditions. In *Skyline Lodge, Inc. v. N.L.R.B.*, (6th Cir. 1992), numerous employees of a restaurant had brought complaints to the attention of upper management regarding workplace favoritism, unfair work assignments, and improper allocation of tips. One waitress persisted in complaining when conditions did not improve. The Sixth Circuit affirmed the Board's conclusion that the employer had committed an unfair labor practice by terminating the complaining waitress.

### D. The Right to Complain *En Masse* to Regulatory Agencies About Workplace Matters.

Employers may not prohibit employees from collectively *approaching regulatory agencies about workplace matters*, and may not take adverse action against such employees for doing so, or *even for contemplating doing so*. In *Systems With Reliability, Inc.*, NLRB (1996), three welders regularly worked with a solvent that was hazardous and gave off a noxious odor. These welders talked amongst themselves about the possibility of going directly to the Occupational Safety and Health Administration ("OSHA"). They never contacted OSHA, but instead discussed these issues with their management. After a series of encounters with management, one of the welders was fired. The ALJ held that the welder's statement that he might complain to OSHA was protected activity under Section 7.

### E. The Right to Walk off the Job *En Masse*.

In *Bethany Medical Center*, NLRB (1999), the non-union employees in a medical facility engaged in a walkout to protest certain terms and conditions of their employment. They walked off for two hours and only gave fifteen minutes notice prior to the start of the work day. Section 8(g) of the NLRA requires that a "labor organization," prior to striking, must give ten days advance written notice to the employer and to the Federal Mediation and Conciliation Service. However, in *Bethany*, the NLRB held that since *there was no labor organization involved* in this walkout, *the ten-day notice provision of Section 8(g) did not apply*.

Instead, the NLRB held that Section 7 protects the right of non-union employees to engage in concerted activities, including walkouts, *without giving prior notice*. The practical effect of this rule is that, with respect to walkouts, *non-unionized employees actually have greater rights than represented employees*.

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### F. The Right to Use Company E-Mail

An employee's use of company e-mail servers has been held to constitute protected concerted activity. If an employer makes e-mail services *routinely available to employees*, a blanket ban on non-business use of e-mail is *presumptively unlawful*. In *Pratt & Whitney*, (1998), the NLRB's Division of Advice advised that blanket bans of "non-business" use of e-mail are unfair labor practices.

However, in February 2000, the Division of Advice also opined that if employees *do not regularly use e-mail as a part of their work*, an outright ban on employee use of e-mail is *not unlawful*.

### **Special Issues For Non-Union Employers**

A. Employee Handbooks. Several employee handbook provisions have been found to constitute unfair labor practices.

Blanket no-solicitation rule. In *Flamingo Hilton-Laughlin*, NLRB (1999), the Board held that the broad no-solicitation policy in the employee handbook violated Section 8(a)(1), because it was broad enough to bar off-duty employees from soliciting other off-duty employees in public areas of the employer's facility.

Blanket rule prohibiting off-duty visits to workplace. Also, in *Flamingo Hilton-Laughlin*, the Board held that a rule in the same handbook prohibiting employees from visiting the employer's property during the eight hours immediately prior to a scheduled shift was unlawful because it could have the effect of prohibiting off-duty employees from engaging in protected solicitation or distribution in the public areas of the facility.

Rules requiring employees to report union organizing activity. Handbook provisions requiring employees to report union organizing activity to management are presumptively unlawful under Section 8(a)(1). *West Michigan Plumbing and Heating Inc.*, NLRB (2001).

Handbook provisions declaring that the employer's facility is to be a "non-union" facility. Such a provision will violate Section 8(a)(1) if employees are forced to *sign a written acknowledgment* stating that they have received the handbook and will abide by the non-union philosophy, *E.A. Maas Co., Inc.* NLRB (1994).

B. Use of Employee "Teams". The use of employee "teams" to involve employees in management decisions may be an unfair labor practice. In *Electromation, Inc. v. N.L.R.B.*, (7th Cir. 1994), the Seventh Circuit held that the employer violated Section 8(a)(2) of the NLRA, which prohibits employers from dominating or interfering with "the formation or administration of any labor organization," by using "action committees" to involve its non-union employees in decision-making.

Obviously, as can be seen from these cases, employment lawyers and their clients who don't have a basic understanding of the NLRA can easily run into trouble even with no union in sight.

*If an employer makes e-mail services routinely available to employees, a blanket ban on non-business use of e-mail is presumptively*



## SPOTLIGHT ON FELLOWS

### FELLOW FINISHES TOUR AS AMBASSADOR, RETURNS TO PRIVATE PRACTICE

Edward E. Shumaker, III, a Fellow inducted in the first class in 1996, recently stepped down after service over three years as United States Ambassador to the Republic of Trinidad and Tobago, an economically vibrant and culturally rich Caribbean country of 1.5 million people located seven miles from South America. Shumaker is returning to private practice in Concord, New Hampshire with Gallagher, Callahan & Gartrell, one of the state's largest firms, which he first joined in 1976 and headed as firm president for four years in the early 1990's.



Before his appointment as Ambassador, Shumaker practiced in all areas of labor and employment law representing major national and New England businesses, utilities, newspapers, health care facilities, banks, colleges and universities (including Dartmouth and the University of New Hampshire). He negotiated many union contracts and tried well

over a hundred cases in court, at the NLRB and before labor arbitrators as well as arguing employment cases at two state supreme courts and before three different federal circuit courts of appeal. On his return to the private sector, he intends to resume this practice as well as being available as an international commercial arbitrator and mediator.

As Ambassador, in addition to managing an embassy with seven different federal agencies and a staff of over 120, he served as Honorary Chairman of the American Chamber of Commerce and advocated frequently on behalf of the over seventy major American companies operating there. Ambassador Shumaker started eighteen new Fulbright Scholarships for Trinidadians to earn degrees in the United States raising over \$1 million from private sector companies to fund them. During his tenure, he hosted former Attorney General Janet Reno, former Secretary of Labor Alexis Herman, Senator Joseph Biden and former Secretary of State Madeleine Albright during official visits to Trinidad. Shumaker noted that there are a lot of legal matters ranging from treaties and international agreements to extradition cases and government regulations involved in heading an embassy and that the experience was both fascinating and

### BOARD OF GOVERNORS' MEMBER JOHN HIGGINS NAMED ACTING GENERAL COUNSEL OF NLRB

President Bush recently named John E. Higgins, Jr. Acting General Counsel of the National Labor Relations Board. Mr. Higgins has served as a Member of the NLRB on two occasions and in other senior positions at the federal agency. A Fellow of the College since 1996, Mr. Higgins currently serves as a member of the Board of Governors.

The General Counsel has independent authority under the National Labor Relations Act to investigate charges and issue complaints alleging the commission of unfair labor practices by employers and unions. The General Counsel also is responsible for conducting elections to determine union repre-

A career NLRB attorney since 1964, when he joined the agency at its Memphis, Tennessee Regional Office, Mr. Higgins has served in a variety of high-level positions, including Board Member (twice by recess appointment, from 1988-1989 and 1996-1997), Deputy General Counsel (1976-1988), Inspector General (1994-1996), and Solicitor (1989-1994 and November 1997 until this presidential appointment). He succeeds Leonard R. Page, who resigned in April this year. Raised in Melrose, Massachusetts, Mr. Higgins received an A.B. degree from Boston College, a J.D. from Boston University, and an M.S. from Cornell University.

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Mr. Higgins is a member of the Council of the Labor Employment Law Section of the American Bar Association; an adjunct professor at the Catholic University of America Law School; and served last year as president of the Association of Labor Relations Agencies (ALRA).

Mr. Higgins is married to the former Frances Litton of Memphis, Tennessee and resides in Chevy Chase, Maryland. They have three grown children - David, Beth and Jack, and five grandchildren.

*The Newsletter Committee continues to strongly encourage all Fellows to submit for publication any honors, accomplishments or other notable relative information.*

### PASSING OF JOHN O'HARA

The College mourns the passing of John O'Hara, long recognized for his distinguished career as a labor lawyer. Mr. O'Hara, who was inducted as a Fellow Emeritus in 1998, passed away this past February. He began his long and illustrious career as a labor lawyer representing management in Los Angeles in 1947. His career as a labor lawyer began during the same period that the Taft Hartley Act amendments to the National Labor Relations Act became effective. For many years, he was on the cutting edge of the practice of labor law in the Southern California area, where his practice grew and flourished. He was the Chairman of the Labor Department at Parker, Milliken, Clark, O'Hara & Samuelian for many years until he became the firm's managing partner. However, labor and employment law remained his primary practice area.

Up until his retirement from the firm in 1996, Mr. O'Hara was an active member of the Labor and Employment Law Section of the American Bar Association. In 1973, he was asked to be the first Chair of the Labor Law Committee of the Los Angeles County Bar Association and was instrumental in building that committee into what it is now, the Labor Law Section of the Los Angeles County Bar Association. During the administration of George Deukmejian, former Governor of California, Mr. O'Hara served as the Governor's personal liaison to the various factions involved in the proposed reform of the Workers' Compensation laws with the state,

including the Workers' Compensation attorneys' bar, employers, insurers and labor unions.

Mr. O'Hara was a frequent guest lecturer at the UCLA Institute of Industrial Relations and actively participated in programs at that institution designed to train labor arbitrators and advocates alike. He spoke frequently at labor-related organizations such as the National Academy of Arbitrators and various chapters of the Industrial Relations Research Association, an organization he was a long-time member of.

Survived by his wife, Elaine, of fifty-nine years, Mr. O'Hara was the father of three sons, two daughters and six grandchildren. In lieu of flowers, donations may be made to any of the following organizations: Santa Clara University, Santa Clara, California 95053; Little Company of Mary Hospital, Torrance, California 90503 or STAR, Inc. (Society to Aid the Retarded), PO Box 1075, Torrance, California 90503.

## FELLOWS ENJOY RECEPTION FOLLOWING COLLEGE'S 3RD ANNUAL LECTURE



**From left to right –  
Fellows Max Zimny, Laurence Cohen, Theodore St. Antoine and Don MacDonald**



**From left to right -  
Fellows Carter Younger, Tom Coleman and John Higgins**



**From left to right -  
Fellows Joel Glanstein, Theodore St. Antoine and Elliot Bredhoff**

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