

# Law tilts against unions, but labor can't give up fight

By **DON McINTOSH**  
Associate Editor

Over 230 people packed the International Brotherhood of Electrical Workers Local 48 hall Feb. 1 for the 11th Annual Oregon Labor Law Conference, and yet there was hardly a labor lawyer in the room. That's because the conference is about teaching labor law to folks in unions who need to know it — union reps and elected leaders whose job is to defend members.

In a day's worth of legal workshops, they learned that workers have muscular laws to defend them if they are cheated of breaks or overtime pay or discriminated against on the basis of race, gender, religion, disability. But if they get fired for trying to unionize their workplace ... good luck to them.

The conference is a labor of love for IBEW Local 48's staff attorney, Norm Malbin, who sees it as a way to empower the wider labor movement with legal knowledge. No speakers are paid, and yet it draws prominent trainers. Highlights included a vision of how different things could be if states could pass stronger labor relations laws; a candid update from the National Labor Relations Board's top regional official; a walk through recent court rulings from an attorney who's normally a union adversary; and a catalogue of the last year's legislative achievements from the Oregon Senate Majority Leader.

"The National Labor Relations Act, that great bell of freedom for my father's generation, has failed," declared Henry Drummonds, professor of law at Lewis & Clark Law School. "It doesn't protect the worker's right to concerted action. It boxes the worker in. It confines the union. And it unlevels the playing field."

The NLRA is supposed to protect workers' rights to organize and bargain collectively. But unlike most other landmark federal laws, the NLRA "pre-empts" state legislatures from going any farther. Instead of setting a federal "floor" like the laws that created

the minimum wage, overtime, or occupational safety protections, the NLRA sets a federal ceiling that states can't exceed, and that so-called "right to work" states can lower.

So it's no accident, Drummonds argued, that state and local public sector unions are flourishing — the NLRA doesn't apply to public workers, so states have been free to pass laws that make it easier for public sector workers to unionize. Imagine, Drummonds said, if states could pass laws more favorable to private-sector unions — banning so-called "permanent replacement" of strikers, forbidding employers from holding mandatory-attendance anti-union meetings, giving union organizers equal access to workers at the workplace, or providing real penalties for employers who fire workers for supporting a union.

Richard Ahearn, Seattle regional director of National Labor Relations Board, didn't take issue with the description of recent NLRB legal decisions in the packet that introduced him: that they've been diminishing "already pathetic remedies" for workers' rights violations, and that they are known for "astonishing delays," like the workers who were awarded backpay last year because they were illegally denied reinstatement — in 1990! Instead, Ahearn took participants through the practicalities of decisions that make it harder for employers to voluntarily recognize unions, easier for employers to refuse to hire pro-union workers sent in by the union, and denying union rights to workers who supervise others even partially.

For the third year in a row, Malbin was able to get management-side attorney Rick Liebman to speak. Liebman, a partner in the Barran Liebman law firm, is the only management attorney to have spoken, though, as he pointed out, sometimes he works for unions too, because unions are themselves employers. Liebman delivered an update on recent employment law court decisions.

At least things are getting better in state law, said Oregon Sen-

ate Majority Leader Kate Brown (D-Portland), a former family law attorney and a classmate of Malbin's in law school. It was the first time Brown accepted the invitation to speak at the conference, and she had a lot to report.

Last year, for the first time in over a decade, Democrats controlled the Oregon House, Senate, and governor's office. Brown's list of the pro-worker laws passed last year left her almost out of breath: a ban on employment discrimination on the basis of sexual orientation; the right of nursing mothers to unpaid breaks for expressing milk; time off work for crime victims to get restraining orders; a ban on golden parachutes for top school officials; making safety a mandatory subject of bargaining for firefighters; prohibiting "non-compete" contracts for low-level employees; extending unemployment benefits to all workers locked out in labor disputes; and more. It was a very successful legislative session for labor, Brown said, and even more progress is likely in 2009.

## *Labor Bowl for MDA April 27*

The 19th annual Labor Bowl Challenge to benefit the Muscular Dystrophy Association (MDA) will be held Sunday, April 27, from 1 to 4 p.m. at Cascade Lanes, 2700 NE 82nd Ave., Portland. Registration starts at noon.

Portland area labor unions have collected \$276,041 for the charity since its inception. Money raised from pledges and a silent auction helps provide wheelchairs and braces for youngsters, medical care, research and summer camps.

Pledge packets are available at the Northwest Oregon Labor Council or by calling Tor at MDA at 503-223-3177.

For more information, call Kelly Pendell, a member of Letter Carriers Branch 82 and coordinator of the event, at 503-493-5903.

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