

FROM THE PRESIDENT: Jim Purdon

The holidays are finally here and 2004 is right around the corner! This can be very rewarding time of year for those who are able to enjoy the company of family and friends. It is also a very busy time of year for circulation managers and carriers. For those newspapers struggling with declining numbers, don't forget about the third party programs....great for getting newspapers into the hands of potential subscribers. Also direct mail, sent to recently discontinued customers and non-subscribers can be a useful element in your overall marketing plan. These and other valuable topics are discussed in great detail at MACMA seminars and conferences. Don't forget to mark your calendar for May 2-4, to attend the next MACMA conference in Winston Salem at the Adam's Mark Hotel. Hope to see you there!

VENDORS: Remember that if you advertise in The Bulletin, your company is eligible for th spotlight in our "VENDOR PROFILE" feature. Please send your information to Leon Barrineau at any of his addresses listed on page 2. Profiles are published in order of receipt.

LEGALLY SPEAKING: Litigation News From Mike Zinser

Hilo, Hawaii employees get three-year pay freeze

On Oct. 1, 2003, *Hawaii Tribune-Herald* settled with all three of its unions in Hilo, Hawaii. The stated expiration date of the most recent contracts was March 1, 2002. The parties had been in negotiations since that time, over twenty months. The settlement reached (at the suggestion of a federal mediator) was that the old contracts would be extended through Dec. 31, 2004. There will be no changes in the contracts, including wage increases. This is the first time ever the unions failed to negotiate a raise.

The last pay raise received by these employees was a 1% raise on Jan. 1, 2002. There is no possibility of another pay raise until after the new expiration date of Dec. 31, 2004. The bottom line is, the unions have agreed to a three-year pay freeze for the employees.

Prior to the settlement, the parties were nearing impasse on key Employer provisions to delete union security and check-off, to add a substantive management rights clause, to add drug testing, and to expand the performance of unit work by supervisors. Hawaii Newspaper Guild made the most noise about the Employer proposals to delete union security and union dues check-off. The unions wanted no part of the Company's proposals to give employees the freedom to choose to pay or not to pay union dues and to stop payroll deduction of union dues. Rather than give the employees free choice, the union chose a three-year pay freeze. Union "institutional" issues won out over more money for the individual employee.

Editor's note: The Zinser Law Firm represented *Hawaii Tribune-Herald* in these negotiations.

Union-supporting employee lawfully terminated

Steven Lockyer worked for Wal-Mart. He stumbled upon the NLRB's website and determined that he wanted a union at work. He drafted fliers and posters, left the fliers out on break room tables, and posted the posters on bulletin boards. The fliers and posters encouraged fellow employees to create a union and informed employees that federal law prohibited Wal-Mart from punishing employees for creating a union. Wal-Mart removed the fliers and posters.

One day Lockyer left work for lunch without clocking out. He was absent for nearly two hours, as surveillance tapes later demonstrated. Lockyer was terminated for this violation of work rules. He then filed a complaint with the NLRB.

The NLRB dismissed Lockyer's complaint in its entirety. Notably, the NLRB credited the seven management witnesses' testimony over Lockyer's testimony. Wal-Mart's removal of pro-union fliers and posters was lawful because the bulletin boards Lockyer employed were only for work-related materials. At the hearing, Lockyer admitted to this. As for his termination, the NLRB determined that it would have occurred regardless of his union activities, thus his termination was not discriminatory. Wal-Mart had a legitimate, nondiscriminatory reason for his discharge.

"Three consecutive days" means 72 hours

The U. S. Court of Appeals for the 11th Circuit upheld a jury's ruling in favor of an employer that terminated an employee who had accumulated excessive absences after suffering a wrist injury. The employee claimed that the employer violated the Family Medical Leave Act ("FMLA") by terminating her because she had been absent for part of the day on more than three consecutive days due to her wrist injury. However, the trial court judge had instructed the jury that Department of Labor ("DOL") Regulations stated that in order to qualify as having a serious health condition, an individual must be incapacitated for "more than three consecutive calendar days."

In order to qualify for FMLA coverage, an individual must have a serious health condition. The FMLA defines "serious health condition" as, among other things, a condition that involves continuing medical treatment by a health care provider including a period of incapacity of more than three consecutive days. The court pointed out that no court had yet been asked to rule on the meaning of "calendar day." The court found that a calendar day refers to a whole day, not part of a day, reasoning that such a definition comports with the normal usage of the term and "adds certainty to the law by reading the regulation to set forth an objective, bright-line rule defining the period of incapacity necessary to invoke the protections of the FMLA."

The court rejected the employee's argument that the DOL regulations impermissibly creates a test for incapacity not provided for in the FMLA,

reasoning that the DOL regulation reasonably interprets the FMLA in this regard. The court refused to rule on the employee's argument that her injury constituted a chronic injury that falls outside the scope of the three calendar day requirement, because the employee did not make that argument at trial.

HOW YOU CAN BENEFIT FROM YOUR MACMA MEMBERSHIP: PART 4

(This is final installment of a four part feature describing the values of MACMA membership. Part one was a brief history of the organization published in the March/April issue. Part two covered details of our annual conference and was in the Conference Review Edition. Part three, in the September/October issue explained the value of our MACMA training sessions. This final installment deals with The Bulletin.)

You now hold in your hand one of the best tools you can use to praise your shining star employees, educate your staff, brag about your department's accomplishments, or warn your MACMA friends about the pitfalls you've found lurking in major projects that you've undertaken.

All of MACMA's seminars, conferences, and meetings are announced and reviewed in The Bulletin. By keeping your eye on these announcements, you will be able to schedule your staff for the various training sessions provided by your organization for a very modest charge.

Each issue of The Bulletin also contains a "MACMA Transitions and Member News" column that you can use to announce newcomers, job promotions, retirements, and other special events to recognize the accomplishments and milestones of your staff.

The editors of The Bulletin will welcome your articles about your department's accomplishments through sales promotion, special projects, and major announcements. It's a great opportunity to let your MACMA friends know what's going on in your area of our three-state organization.

Sometimes our projects don't go as smoothly as planned. We run into pitfalls and roadblocks that try to derail our progress and we think to ourselves "why didn't somebody warn me about that!" The Bulletin provides you the opportunity to "warn" your MACMA friends and give them tips on how to overcome difficulties inherent in major projects.

Each issue also contains a complete listing of the officers, directors, and committee chairs. If you have a questions about MACMA, you can get an answer from one of the folks listed in The Bulletin. If you're about to undertake a major project and you'd like a little advice from a paper that's already done it, the managers listed in The Bulletin can probably tell you who to call.

Didn't make it to the annual conference? While you missed out on a lot of information and friendship, you can make up for it by grabbing a copy of The Bulletin's Annual Conference Review Edition. It's a complete review of the each conference sessions along with information on how to contact the person who presented the program.

Got a question about legal issues? Mike Zinser's column appears regularly in The Bulletin. Mike is MACMA's legal counsel and his column explains recent court rulings – usually those that apply to newspapers.

Also in each issue is a message from MACMA's president. The president uses The Bulletin to let the membership know about issues the organization is currently facing.

As we enter a new year it would be good for the organization if all of us could make a vow to participate in the MACMA Bulletin. Send in your news, your employee recognitions, and your suggestions. Make The Bulletin your tool to use for MACMA information.

SINGLE COPY SEMINAR SET FOR MARCH

The Single Copy seminar originally scheduled for January has been rescheduled for Friday, March 5, 2004, in Winston-Salem.

Frank Mastromarino will be arranging the details and will most assuredly put together another outstanding session.

Complete details and registration information will be sent in a few weeks. For more information contact Frank at The Fayetteville Observer, 910-486-3541, or email at mastro@fayettevillenc.com.

HIGH POINT ENTERPRISE MANAGER RICHARD TEAGUE DIES

Long time Enterprise circulation manager and MACMA member Richard Teague died at his home on Monday, December 1, 2003. He was 72.

Richard was the City/Total Market Coverage Manager and he had worked at The Enterprise for 56 years holding many circulation positions.

In a tribute article published in The High Point Enterprise, Richard was described by his coworkers as "loyal, dependable, honest, fair, golf-loving and always willing to work out a problem."

Circulation Director Don Wilson was quoted as saying "Richard had a work ethic you just don't see any more. He loved it. I think it was the comradery of newspaper employees, and the satisfaction of seeing a product delivered every day."

The tribute article mentioned many instances of Richard's generosity, which Don summed up by saying, "A lot of people didn't know how kind he was. He would give you the shirt off his back, but he just wouldn't want you to know he was doing it."

Richard leaves his wife, two daughters, and two grandchildren.