TEAMSTERS LOCAL UNION NO. 117
LEGAL DEPARTMENT

ACTIVITY REPORT
2011 – 2012

ABOUT YOUR LEGAL DEPARTMENT

Your Union's legal department has grown over the years, and is now comprised of four attorneys who bring legal expertise to your organization in different ways:

Secretary-Treasurer Tracey A. Thompson;
General Counsel Spencer Nathan Thal;
Senior Staff Attorney Daniel A. Swedlow; and
Legislative Affairs Attorney Teresita Torres

Your Secretary-Treasurer Tracey A. Thompson started with the Union as an attorney, and quickly established herself as an effective and aggressive advocate for workers, stringing together an unparalleled record of arbitration and litigation victories. Tracey's training and experience as an attorney serves her well as she leads your Union through the complicated and challenging issues that workers face today.

There is no other Teamsters Local that has four attorneys on staff, and very few that have in-house attorneys at all. By having employed attorneys on the payroll, your Union has immediate access to legal advice, strategy, and litigation capacity at a significantly lower cost. Moreover, because the cost of legal services is fixed, your Local Union is always prepared to take on any legal fight.

Your Union has developed a well-established reputation among employers for professional, effective, and undaunted representation. Employers know that we will not hesitate to take all legal action to support the interests of our members. This is primarily accomplished through the grievance and arbitration process, but there are some situations in which litigation is required. During the past few years your legal department has also become more involved in the contract negotiation process.

Senior Staff Attorney Daniel A. Swedlow has proven to be an excellent addition to your Union's legal team. During his first two years with the Union, he has demonstrated his ability to step in and handle a very heavy caseload across all aspects of traditional legal work: in organizing campaigns, unfair labor practice hearings, arbitrations, advice and litigation.

Your Union's legal department is now also engaged in legislative and political action. During this year, Teresita Torres quickly established herself as a force to be reckoned with in Olympia as she helped lead a bill through to full passage on its first presentation.

GRIEVANCE ARBITRATION

Your Union's legal department oversees the grievance and arbitration process, and handles all arbitrations. During calendar year 2011, the legal department oversaw the processing of 969 grievances. The legal department filed for arbitration in approximately 95 of those grievances. This is a 30% increase in grievances from only four years ago. The increase is due to the increasing efforts by employers to cut costs, discipline employees, and control working conditions. Many cases settle at some point prior to an arbitration decision. These are just a few examples of grievance arbitrations that occurred during the course of the past year.

1. Employee Reinstated With Full Back Pay Plus Interest.

Schnitzer Steel fired an employee who refused to come in for mandatory overtime on his scheduled day off after working 12 straight 12-hour days. The employer argued that the overtime work was mandatory, that the employee was clearly warned that he had to report to work and that the employee was told he could be fired if he refused to come in. To make matters worse, the employer argued that he not only refused to come in, but that he actually went around the yard trying to convince others not to come in. The employer terminated him for refusing to work mandatory overtime and for attempting to organize a wildcat strike in violation of the no-strike clause in the CBA.

The Union brought the case to arbitration and argued that the entire incident should be treated like a no-call no-show, because that is in fact what it was, and at most the employee should receive a verbal warning. The arbitrator agreed and ordered that the employee be reinstated with full back pay plus interest.

2. Pierce County Parks Department Ceases Use of Perma-Temps.

The Pierce County Parks Department has used seasonal extra help during the summer months for many years. At some point the County started using temporary workers to help with winter projects as well. Eventually the Parks Department was heavily staffed with so called "temporary workers" who seemed to stick around for up to 6 months, only to be laid off for a few weeks and hired again for the next "season."

The Union grieved this erosion of bargaining unit work and the blatant abuse of temporary help. During the course of the case the attorney for the County had to research the County's use of temporary workers and was astonished to discover how bad things had become. It seems even the County didn't know how many of its workers were classified as temporary help. The County agreed to stop the use of what the Union referred to as perma-temps and agreed to make such workers regular members of the union if they remained employed longer than the initial temporary assignment.

3. Bargaining Unit Work Preserved In Settlement Reached During Arbitration.

On the day of arbitration, after a long struggle with Hertz, the Union achieved a settlement that protects the core work of Hertz shuttlers through a negotiated settlement. The shuttlers at Hertz rental car move cars throughout the airport for another group of employees whose primary job is to clean and service the cars in between customers. This group, known as vehicle service attendants (VSAs), also shuttles cars alongside the shuttlers when things are really busy. Over the past several years, the employer began cutting the shuttlers' hours and allowing the VSAs to pick up the slack. The shuttlers saw their work literally being handed over to another bargaining unit while they were sent home early.

The Union grieved and brought the case to arbitration. To resolve the matter, the Union insisted that the Company cease the practice of giving shuttler work to VSAs while simultaneously cutting shuttler hours. After a full day of negotiating, the Union achieved exactly what it was seeking through arbitration and Hertz agreed to cease and desist the practice that was eroding shuttler work.

4. Teamsters At The City Of Woodinville Vindicated.

Virtually every winter in Woodinville the streets become clogged with snow and ice for several days. Teamsters work hard to clear the roads, often working round the clock for days on end. The City, in an effort to avoid paying overtime, began to send the road crew home early after only a few hours into the start of their shifts. The City told these workers to go home and rest (off the clock) and then come back in the evening to work late into the night plowing the roads. This practice forced the workers into longer days with less money and twice the commuting.

The Union filed several grievances covering separate storm events and consolidated the cases into one hearing. After two days of testimony, the arbitrator found in favor of the Union and ordered the City to cease and desist from the practice and pay the workers for all the time they should have been allowed to remain on the clock.

5. Arbitrator Reinstates Fired Worker With Long Clean Work Record.

At GP Gypsum, an employee of 25 years tested positive for cocaine. Although the CBA required termination, the Union argued that the principle of just cause required looking at the employee's whole record which was spotless for his entire 25 year history with the company. The arbitrator agreed that such an employee deserves a second chance regardless of what the drug policy demands and reinstated the employee.

Unfortunately, the Employer then challenged the arbitrator's decision in federal court arguing that he had overstepped his authority by ignoring the clear language of the drug policy which was contained in the collective bargaining agreement. The federal judge agreed and overturned the arbitrator's ruling. This case would almost certainly have come out differently if the language in the drug policy allowed for some wiggle room on discipline. Instead of using a phrase like: "positive results will result in discipline up to and including termination", the policy

instead left no choice and mandated termination for any positive drug test result. This is an important reminder to maintain some room for discretion and leniency in a collectively bargained drug policy.

6. Medical Marijuana Card Protects Employee From Discipline.

At Seafreeze Cold Storage, the Employer implemented a drug policy that included random testing. An employee tested positive for marijuana and grieved the discipline he received arguing that he had a card authorizing the use of medical marijuana. Between the time the Union filed the grievance and the time of the arbitration hearing, the Washington Supreme Court decided *Roe v. Teletech*. That case established the law that in Washington, a medical marijuana card is not a defense in the employment context. In other words, while the possession and use of authorized medical marijuana is not a crime, employers do not have to accommodate employees' onsite or offsite use. Prior to *Roe v. Teletech* it was unclear whether the medical marijuana statute had any bearing on employment matters. Teletech is a non-union employer.

The Union pressed forward and argued that *Roe v. Teletech* doesn't apply to union contracts that require discharges to be for just cause. The Union argued that an employee who legitimately suffers from a condition that is helped by the use of medical marijuana should be allowed to treat his condition so long as it has no impact on his work. The arbitrator agreed and overturned the discipline issued. This decision is a powerful reminder of the strength of the just cause protection.

7. The Union Continues the Fight With Hertz Over Prayer Breaks.

You may have seen press coverage of a battle the Union is fighting against Hertz rental car company this year over 25 shuttlers who were fired for taking their prayer breaks in accordance with a 15-year long past practice. That fight continues later this month with arbitration over the company's decision to require its employees to clock out for these intermittent breaks.

During the last round of bargaining the company and the Union agreed that employees should clock out for their normally scheduled 10 minute rest breaks. The parties also agreed that employees who take a series of mini breaks totaling 10 minutes or more, would be considered to have taken their 10 minute rest break. These mini breaks occur any time there is enough down time at work to rest for a few minutes without actually taking a full 10 minute break. Much of Hertz's shuttler workforce at the airport is comprised of Somali Muslims. As part of their religious tradition, these workers pray five times each day. During a normal 8-hour shift, a Muslim worker might need to take one or two prayer breaks as the rest of the prayer times come either before or after his or her shift. Prayer takes a total of 3-5 minutes. Accordingly, the workers typically did not clock out for prayer breaks and would simply take their 3-5 minute prayer break as part of the mini breaks agreed to in the CBA. This was in essence no different than employees who took a few smoke breaks throughout their shift rather than clocking out for a single 10-minute break.

With no prior warning, the Company suddenly began requiring all Muslim employees to clock out for prayer breaks. They did not require the same for smokers until it was brought to their attention that they were being blatantly discriminatory. The workers refused to bend to the company's disregard of their collectively bargained right to take prayer breaks without clocking out. Most were fired and remain unemployed. They recently won their unemployment hearing. They have since filed a discrimination lawsuit and the Union is heading to arbitration later this month over the company's breach of the break provision in the CBA.

LITIGATION

1. Union Continues To Press Litigation Against The Department Of Corrections Relating To The Unilaterally-Imposed Furloughs And Other Cuts That Jeopardize Safety.

In the summer of 2010, the State legislature passed a bill that imposed a ten-day furlough on State employees. Despite the fact that the bill expressly excluded employees in the Department of Corrections that are involved in the supervision and control of inmates, and despite the fact that the Union's collective bargaining agreement did not permit a reduction in hours, the State applied this furlough to approximately 800 employees that work in the prisons division under the Teamsters contract.

The Union responded aggressively, filing a grievance, an unfair labor practice charge and a lawsuit. The Union won the grievance, and the matter is now in the final stage with respect to remedy. A second arbitration involving furloughs on custody employees was heard last year, and a decision as to whether the first arbitration decision is binding on that case is imminent.

Meanwhile, the lawsuit remains pending in Thurston County Superior Court. The lawsuit charges the State with unfair labor practices for refusal to bargain regarding the additional furloughs.

2. Union Prepares Lawsuit To Force Vigor Shipyards To Arbitration.

The iconic Todd Shipyards situated on Seattle's industrial waterfront was recently purchased by a company called Vigor Marine. That company bought the entire Todd operation, including its collective bargaining agreements and union relationships. Rather than honor that pre-existing agreement, Vigor has carved up the shipyard into a series of smaller operations, each run by a different subsidiary under Vigor. The company is now claiming that those subsidiaries are actually separate companies with no obligation to bargain with the Union.

The company seems determined to cut the Teamsters Union out of the shipyard entirely and replace us with a much weaker union that does not have the collective bargaining power of the Teamsters. When Vigor started to hire traditionally Teamster positions and advertised them as non-Teamsters, the Union grieved, arguing that those positions are our work.

The company denied the grievance claiming that the position was advertised by a different company, one that does not have any collective bargaining agreement with the Union. The Union is preparing a federal lawsuit to force Vigor to arbitration over the matter. We are confident that the court will compel arbitration and that an arbitrator will see through the company's shell games and protect these Teamster jobs.

3. The Battle Over BFOQ Positions At WCCW And MCCCW Rages On.

The legal battle over DOC's attempt to make nearly 40% of the correctional staff positions at the Washington Corrections Center for Women (WCCW) and Mission Creek Corrections Center for Women (MCCCW) BFOQ female-only is far from over. This year your Union filed a lawsuit in federal court seeking a declaration that many of the Department's BFOQ designations constitute a violation of Title VII of the Civil Rights Act. If successful, this will effect the outcome of numerous pending grievances over seniority rights, bid rights, and overtime opportunities.

CONTRACT NEGOTIATIONS

During the past few years, your Union has increased the Legal Department's involvement in contract negotiations. This also allows your Union attorneys to gain a deeper understanding of the nature of the work, the working conditions, and to design and understand contract-specific language. This year, the Legal Department was closely involved in the strategy decisions relating to the master grocery negotiations, the labor dispute at Seattle Cold Storage and the showdown with Fred Meyer over health and welfare benefits. The Legal Department has had and/or will continue to have a role in the following contract negotiations, among many others:

Alamo Car Rental
Calbag Metals
Clear Channel Communications
Davis Wire Corporation
Fred Meyer
Golden State Foods
Grocery Negotiations (Safeway, Supervalu, Unified)
King County Legislative Analysts
King County Transit Managers
Quality Custom Distribution
Seattle Cold Storage

LEGISLATIVE UPDATE

The 60-day legislative session kicked off on January 9, 2012, and as you're reading this it is probably not yet over; in fact, given the impasse on budget negotiations, we could be rolling into a Special Session, but more on this later.

Notwithstanding the State budget crisis, Teamsters prevailed in both defending against disastrous cuts to the Department of Corrections and in passing legislation. Many of our labor allies did not fare so well in staving off attacks and moving forward their legislative agendas. What follows is an update on some of the legislation of particular significance to our Union.

1. Legislation That Exempts Correctional Officers From Having Their Uniforms Manufactured By Inmates.

HB 2346 removes the requirement that correctional officers purchase their uniforms from Correctional Industries. This bill embodies the very simple, sensible principle that inmates should not make the uniforms worn by the officers who oversee them, especially when Washington State Patrol, police officers and firefighters are exempt from having to do so, and when our officers have been attacked and killed in these very uniforms. Needless to say, the message is more than just about one of quality: it is about professionalism, authority and safety; it is about our officers having the same dignity and respect afforded them as other law enforcement personnel; and it is about the morale of our officers at a time when the Department of Corrections has been hit with hundreds of millions of dollars in budget cuts in the last three years.

Legislators heard our case. Dozens of members (as well as representatives from a private vendor) testified in support of the bill. Also in support were the Washington State Patrol Troopers Association, Washington Council of Police and Sheriffs, Washington Council of Firefighters, Washington State Labor Council, Washington Federation of State Employees and other labor allies. As many times as this bill almost died in committees, it was revived, and this was in large part due to the resounding support we had.

Despite strong opposition from the Department of Corrections and Correctional Industries, as well as the fiscal note attached to the bill, HB 2346 was passed out of the House with a vote of 92-3 and out of the Senate with a vote of 45-3. This past weekend, the House concurred with the Senate's amendments (a null-and-void clause requiring that it be fully funded, and an amendment narrowing the application of the bill to only officers of the Department of Corrections) and the bill was passed by the Legislature with a vote of 92-3.

As of this moment, HB 2346 is on its way to the Governor's desk for signature. We do not anticipate that the Governor will veto the bill given the overwhelming, bipartisan support for it. While funding for the bill currently appears only in the House budget, we are optimistic that funding for it will appear in the final, reconciled version of the budget. We are continuing to work the process to ensure that HB 2346 is signed into law.

2. Safety-Related Interest Arbitration For Correctional Workers.

EHB 2011 would have allowed a neutral arbitrator to address safety-related issues that were not resolved during collective bargaining. The original prime sponsors reintroduced the bill this Session, and EHB 2011 indeed retained its status in the House Rules Committee for some time. We worked tirelessly to get it out of Rules, arguing that interest arbitration as a course of action was vital for our members given the failure of SB 5907 to adequately address safety issues within the Department of Corrections following the murder of Jayme Biendl. We further argued that, like the county correctional employees, Washington State Patrol, local police officers, firefighters and other law enforcement and public safety professionals who have interest arbitration, our members deserved this same protection.

Despite our efforts, EHB 2011 was not pulled from Rules for a floor vote by the February 14 deadline. While a terrible disappointment, it is a call for us to do all we can in the interim to prepare to move this legislation forward again next Session. Education, a better economy and the election of strong labor supporters are all ingredients to getting interest arbitration passed in the future.

3. Defending Against The Cuts.

Special Session convened on November 28, 2011, and it was all about what to do with a $2 billion budget deficit for the remainder of the 2011-2013 biennium. Insofar as the Department of Corrections was concerned, the Governor proposed to release low and moderate risk offenders (as well as sex offenders) five months early, close minimum security units and repurpose the Washington State Reformatory from a medium to a minimum facility. Dozens of members and Union staff testified against these cuts and for the protection of jobs as well as staff and public safety. Legislators heard us loud-and-clear that not only was the Governor's proposal bad public policy, but it would place our communities at a level of risk never before conceived. As of this moment, this proposal is off-the-table.

4. Calling On Revenue. Calling On Jobs.

In an effort to address the fiscal crisis and maintain services in counties and cities across the region, Local 117 teamed up with a coalition of unions to fight the elimination of local revenue streams and support a revenue package that focuses on cutting corporate tax loopholes and forcing the wealthiest 1% to pay their fair share, and includes everything from sales tax to capital gains tax increases. Local 117 has also been supporting a comprehensive jobs package that would further stimulate economic growth and get us back on track. To date, an agreement on either package has yet to be reached.

5. Fighting Attacks On Our Pensions.

SB 6543 seeks to eliminate overtime for the purpose of pension calculation. We, along with our labor allies, have been strongly opposed to this bill. The bill was last heard in the Senate Ways and Means Committee on February 16, and we optimistic that it will not move any further.

OTHER LEGISLATION

Local 117 has been partnering with Joint Council 28 on its legislative priorities. Below is an update on other legislation that your Union is involved in.

1. Paid Sick Leave.

HB 2508/SB 6229 mirrors the legislation passed in Seattle recently whereby workers across the State would be afforded paid sick leave. Despite resounding support, both bills died in their respective committees.

2. Fish And Wildlife Officer Benefits.

SB 6134 allows quicker transfer of Department of Fish and Wildlife officers (LU 760 members) from PERS 2 and 3 to LEOFF. This bill passed unanimously in the House and Senate and is on its way to the Governor for signature.

3. Increasing Maximum Allowable Length Of Commercial Vehicles.

SB 6138 extends the length of all trucks from 40 to 46 feet on state roads. Work was done to amend the bill in the House, limiting it to auto-recycling carriers up to 42 feet. The bill was then unanimously passed by both the House and Senate.

4. Transit Board.

SHB 2553 clarifies the rights of non-voting labor representatives on transit boards and, despite a lack of public opposition, died in the Senate Transportation Committee. Joint Council 28 is currently working on an alternative strategy.

5. Drayage Driver Misclassification.

SHB 2395 designates port truck drivers as employees for purposes of workers' compensation, unemployment insurance and other state laws. Despite a strong showing by the drivers, this bill died in the Senate Rules Committee.

In a last minute push last week, over two dozen port truck drivers lobbied Senators. Although we did not have the votes to pull it out of the Senate Rules Committee, word is that Senate Labor Chair Kohl-Welles and House Labor Chair Sells want to convene a joint House & Senate work session in May.

6. Motion Picture Competitiveness.

SB 5539 reestablishes the B&O tax credit for the film industry in Washington. Joint Council 28 signed on to a coalition letter in support of this bill – Local 117 also signed in support – and it passed the Senate with a vote of 40-8. It is pending in the House Ways and Means Committee.

7. LEOFF.

The LEOFF issue is moving as legislators look for more savings in the budget. HB 2350 seeks to merge LEOFF 1 and LEOFF 2, which would yield a savings of approximately $74 million. This bill impacts almost 800 Teamster members enrolled in LEOFF, and after much investigation Joint Council 28 signed on in support of those proposing the merger, namely, Washington State Council of Firefighters and Washington Council of Police and Sheriffs. Vote counts of both the House and Senate are currently being conducted in an effort to ensure the savings will be booked in the final budget.

8. K-12 Health Care Benefits.

SB 6442 requires that all state school employees enroll in one health insurance system, removing the issue from the collective bargaining process and part-time employees from coverage. Senate Majority Leader Lisa Brown has added an amendment to the bill which would protect union bargaining, keeping the benefit negotiations at the local level as opposed to the state level where benefits would be worked out by a new board.

While this bill is expected to pass the Senate, we are working with House leadership on a defensive strategy to the underlying bill.

9. Transportation Revenue.

SB 6455 creates a revenue source for major transportation and transit programs by, in part, increasing the passenger vehicle weight fee by $15 and the license fee for large trucks by 15%. Joint Council 28 supports this package because of its benefits to roads, transit and major construction program. The Senate version passed 31-18, and the House version passed 55-41. Before final passage of the bill, the Senate needs to concur.

LATEST NEWS ON THE BUDGET

Last Friday night, Conservative Democrats Rodney Tom, Jim Kastama, and Tim Sheldon joined Republicans in calling for a 9th Order of Business in order to seize control of the Senate. This is something that has not happened in 25 years, and it certainly caught everyone off-guard, especially after what seemed like a genuine effort by legislators on both sides of the aisle to work together to arrive at solution to our State's budget crisis. The Senate then passed a devastating budget by a vote of 25-24 that would effectively cut school funding, family planning, higher education, financial aid, and so much more.

We are not sure what this will ultimately mean for the budget. The best case scenario is that one is indeed still passed that we could all live with; the worst case is that the Governor decides to not pass a supplemental budget at all, which means that she would likely cut across-the-board.

Word is that the House and Senate are in negotiations, but given that the last day of Session is supposed to be March 8 and that there is no resolution yet, we will likely be rolling into a Special Session.