

**VOCAL 2910**  
***The Voice of the Library of Congress Professional Guild***  
AFSCME 2910

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www.guild2910.org

August 13, 2007

707-6493/1304

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*Employee confidentiality rights protected*

# **Guild prevails in landmark arbitration case**

By Saul Schniderman

On July 16, 2007 Arbitrator James Harkless ruled that Guild stewards and officers sufficiently documented the time they use for representational activities when they reported their time to management using categories listed in the Collective Bargaining Agreement, and that those categories complied with the Federal Service Labor Management Relations Statute.

Mr. Harkless' arbitration decision arose from a grievance filed against the Guild on October 16, 2006 by the Library's Director of Workforce Management. In that grievance, the Director demanded that Guild representatives provide greater specifics to him in reports describing our meetings with Library employees. He did not allege any abuse of representational time in his grievance but, instead, centered his allegations on the reporting methods. Any "insufficiently documented" time, he claimed, should be converted to annual leave or leave-without-pay.

For over 20 years Guild stewards have been reporting their representational activities to their supervisors - and to the former Labor Relations Office - in general categories, thus protecting the privacy and confidentiality of the employees who speak with a Guild representative. Rather than provide management with the details they desired, i.e. the name of the employee's division and a description of the concern being discussed, the Guild Executive Board voted to stand fast and uphold the principles upon which the Guild was founded.

Launching a "Campaign for Fairness," the Guild sent out a call to the library and the labor community asking for support. In a show of solidarity over 700 librarians and union members flooded Dr. Billington's office with letters and emails asking him to uphold the tenets of confidentiality, privacy and workplace democracy at the Library of Congress.

Ruling for the Guild, Mr. Harkless found that the Library's argument that "all Union representatives must describe their representational activities with sufficient

specificity to enable [the Agency] to determine the reasonableness of their use of official time” was without merit. In a related grievance Mr. Harkless

did not uphold the Guild’s claim that the Director of the Office of Workforce Management committed the Unfair Labor Practice of coercing the Guild’s chief steward and president with the threat of leave-without-pay.

The Guild was expertly represented in this case by Attorney Barbara Kraft of the firm Kraft Eisenmann & Alden. We received critical support from our parent organization - AFSCME Council 26 - as well as the Metropolitan Washington Council, AFL-CIO and the Department of Professional Employees, AFL-CIO. Peter Inman, a retired cataloger, former Guild officer and now Council 26 representative, stood by us throughout the crisis. Melinda Friend, former Guild Chief Steward (2003-2007) gave more than her share of blood, sweat and tears.

But as former Yankee catcher Yogi Berra once said “it ain’t over till its over.” The Guild now enters a new phase of effort and advocacy concerning this issue. Even though we prevailed in the grievance filed against us, Library management officially reopened our Collective Bargaining Agreement, specifically the provisions dealing with Guild representational rights.

On August 14 Lynn Sylvester of the Federal Mediation and Conciliation Service (FMCS) will come to the Library

to assist the parties in reaching a new agreement over how Guild stewards and officers will report their representational time. The Guild’s bargaining team will be headed by Kent Dunlap (Chief Negotiator) and will include Nan Ernst (Chief Steward) and myself.

Ms. Sylvester is a seasoned mediator so we are hopeful that agreement can be reached. We know that we will try our best.

The time has come to put this matter to rest so that both sides can reconstruct the labor-management relationship that has resulted in so many improvements in the work environment at the Library of Congress.

## Labor Relations Lingo

*arbitrator* - an impartial third party to whom the union and management refer their disputes to for resolution.

*mediator* - a neutral party who assists in negotiations and conflict resolution.

*collective bargaining* - the process whereby workers and employers reach agreement with respect to conditions of employment.

*grievance* - any complaint by an employee concerning any matter relating to a condition of employment.

*steward* - an employee who volunteers to

assist his/her coworkers by serving as a link between the union and the work area they represent.

*the Guild* - the Library of Congress Professional Guild, AFSCME Local 2910, going to bat for employees since 1976.

To join the Guild  
click on [www.guild2910.org](http://www.guild2910.org)

## Defending your Weingarten rights

By Kent Dunlap

The Guild, along with its three sister unions in the Library of Congress, filed an appeal with the General Counsel's Office of the Federal Labor Relations Authority (FLRA) over a dispute concerning the annual Weingarten notice.

The term "Weingarten right" is derived from a famous Supreme Court case arising in the private sector involving the right to union representation during investigations which may result in disciplinary action. The facts of that case are illuminating:

In 1972, a lunch-counter sales clerk for the J. Weingarten Department Store was called into her store manager's office and interrogated by the manager and an undercover investigator employed by the store. She was charged with purchasing a box of chicken that sold for \$2.98, but placing only \$1.00 in the cash register. During the questioning, the sales clerk requested the presence of a shop steward. Her repeated requests for such assistance were denied. In response to questions about the allegedly purloined chicken, she explained that she had taken only a dollar's worth of food, but had used a larger box to place it in because the store had run out of smaller boxes. The investigator left the office and confirmed this fact with other store employees. He returned to the office and told her that "her story checked out," and that the matter was closed.

The sales clerk then broke into tears and said the only thing she had ever taken from the store was her "free lunch." The manager and the investigator responded by saying that free lunches were not provided at the store, and began another interrogation. The sales clerk again asked for the presence of a shop steward, and this request was again denied. She then asserted that all employees took free lunches, and she refused to sign a statement that she owed the store approximately

\$160 for lunches. Upon further investigation, it was discovered that employees, including managers, were taking free lunches. Moreover, headquarters confirmed that there was no company policy against free lunches. Dropping the demand that the sales clerk pay for the lunches, the manager asked the sales clerk to keep the matter to herself. Instead, she reported the details of the interview to her shop steward and other union representatives and an unfair labor practice charge was filed.

The Supreme Court ruled that the sales clerk had been a victim of an unfair labor practice. In reaching this decision, an important new right for workers was created: an employee may be represented by the union in an investigatory interview with his/her employer when the employee reasonably believes that the interview may lead to disciplinary action. In writing for the majority of the Court, Mr. Justice Brennan stated: "A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview."

In 1978, the Congress included the Weingarten right in the Federal Service Labor-Management Act. Since the right to union representation only applies if the employee specifically requests such representation, the law requires that federal agencies distribute a notification of this right, each year, to employees.

Until January of this year, the Library of Congress provided a straightforward statement on the right to union representation during investigations by issuing a Special Announcement to all bargaining unit employees. But in January 2007 it changed this practice. It issued the Weingarten notice in a lengthy announcement about standards of conduct of union officials. Recent regulations of the Department of Labor requires labor organizations - not employers - to furnish this information to its members. (The Guild distributes this information on its web site).

The Guild - along with our sister Library unions - believes that the January 2007 Special Announcement wrongly implies that the Weingarten right applies only to union members, and for this reason, the notice is defective. The right to union representation during an investigation likely to lead to disciplinary action is a right belonging to all employees, and we believe knowledge of this right is worth defending.

Logo

# A tale of two fires and one wayward grievance

By Nan Thompson Ernst

Twice in March 2007 the Madison Building was evacuated for fire emergencies in the elevator mechanical rooms. Fires in the Library of Congress? It's a frightening prospect best to face openly and with the intention to learn from mistakes and prevent disaster in the future. Here's what we have learned. Elevator mechanical rooms are located on the seventh floor "penthouse" of the building, an area operated by Architect of the Capitol (AOC) employees that houses the heating, ventilating, and air conditioning systems as well the elevator operating systems. The elevator mechanical rooms are enclosed areas of the 7th floor which contain the mechanisms, such as the

hoist machine, that move the cars up and down the elevator shafts, and all the electrical switches that allow us to automatically travel from one floor to another by simply pushing a button. The mechanical room also contains electrical generators which power the hoist machines.

When you get in the elevator, you probably push the button for the sixth floor and never think about how any of this works. Meanwhile, above you, in the mechanical room, electrical switches are powering up the hoists which moves the car through the shaft. Other electrical switches and sensors stop the car, level with the lobby floor, so you can step off safely and be on your way. If

you are rushing to get on an elevator when the doors are closing, an electrical sensor will cause the doors to spring back so you don't get caught and trapped by the door. In case of smoke or fire, detectors are programmed to send the elevator car to the exit floor and lock it out of service.

The Madison Building fires on March 1<sup>st</sup> and March 20<sup>th</sup> both occurred when motor windings in the electrical generators shorted out. Fortunately, the fires were caught early because smoke detectors activated the emergency response system. These fires demonstrate how vital smoke detection can be, and why OSHA has made smoke detectors a requirement. Moreover, these elevator mechanical rooms did not have working sprinklers.

When smoke alarms activated an alert, AOC employees responded. On March 20<sup>th</sup>, in the worst of the two fires, the motor controller was in flames when the fire was discovered by the AOC. These dedicated employees fought the fire with hand-held extinguishers until the DC Fire Department arrived on the scene. It took more than an hour to clear heavy smoke so that staff and visitors could safely reoccupy the building. Steps are now being taken to improve the safety of all these systems in the elevator mechanical rooms.

The Guild was relieved to know that smoke detectors were operating on

March 1 and March 20 because we had been uncertain. That very question was the subject of a grievance which ended in arbitration. We had only learned through testimony presented during the arbitration hearing in December 2006 that smoke detectors were present. When we received the arbitrator's decision about the smoke detector grievance on March 22, we felt vindicated, especially after the news of these fires in the Madison Building elevator mechanical rooms.

Guild representatives are not mechanical engineers; most of us are librarians. But we have learned a lot about elevator safety by following up on employee concerns, beginning five years ago when we were all wondering if elevators could be safely used to evacuate disabled staff and visitors from the Library during emergencies, including fires. Throughout the last five years, we had countless meetings and discussions with management officials and safety professionals on the topic of elevator safety in general and elevator evacuations in particular. We filed grievances and requested inspections by the Office of Compliance (OOC), to address deficiencies. We advocated for improvements in planning and programs for emergency preparedness. And the Library has met and even exceeded our expectations by developing an emergency preparedness program that, while still a work in progress, is the most comprehensive on Capitol

Hill. We are so proud of the Library for this accomplishment, and we are also proud of our advocacy role. Scarce Guild resources have been devoted to this issue, and a lot of hard work.

Yet, with life safety, you can never say that the job is done. For this reason, there are periodic inspections, reviews, and updates. Sometimes we determine that the best course of action is a grievance, especially in questions of life and death. During the OOC biennial inspection in 2006, the Guild learned that smoke detectors were missing from some Madison Building elevator mechanical rooms. We filed a grievance to identify, report, and remedy this hazard. Surprisingly, the Library denied our grievance by asserting that the Guild was trying to usurp the role of the OOC by attempting to enforce OSHA requirements. We disagreed. Our grievance was an attempt to enforce our Collective Bargaining Agreement in the provision of Article 33 (Working Conditions) which states, "The Library shall take whatever actions are necessary, including requests to the Architect of the Capitol (AOC) and Congress, to remedy any serious unsafe or unhealthful condition."

Management's legal position seemed to strip the Guild of its right to file

health and safety grievances, so in addition to remaining uncertain as to whether or not the smoke detectors had been installed, now we were grappling with a new problem. Could we continue our robust advocacy for safe working conditions if this legal position was to stand? We determined to litigate this case, shocked

that a health and safety matter had been pushed into arbitration and that our union dues money would have to be spent in the process. Likewise for our taxpayer dollars to pay for management's litigation costs.

The case was heard by Arbitrator Barbara Franklin on December 11, 2006, and her decision was issued March 22, 2007, sustaining the Guild grievance. In her decision, Arbitrator Franklin wrote, "the Library's position raised questions of whether the [Guild] and the employees it represents could continue to have confidence that, after a bargaining relationship of almost 30 years, they could rely on the negotiated agreement to protect their workplace safety. Because of the centrality of the grievance procedure to collective bargaining, the employees have a right to know that their confidence can be restored." As remedy, Franklin ordered the Library to post a notice to assure employees of their rights under the collective bargaining agreement to address workplace safety violations through the grievance process.

But the story does not end here. Management challenged Franklin's decision and more litigation followed. The case is currently under review by the FLRA. In the best of times, all resources of union and management would go toward fixing hazards. This is not the best of times, so meanwhile, the Guild will fight, if necessary, for workplace safety.

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**A message from 3 union presidents to Library employees**

**To:** Bargaining unit employees working in the Madison Building

**From:** Saundra Smith, President, AFSCME Local 2477  
Saul Schniderman, President, AFSCME Local 2910  
Dennis Roth, President, IFPTE Local 75

**Subject:** Staff lounges in the Madison Building

The Library's unions have been officially notified that the Library plans to use some staff lounges in the Madison Building for other purposes. In order to facilitate our discussion with management concerning this matter and to better represent you, we have prepared the attached survey.

Please take some time to fill out this survey. Your input will assist us in determining which lounges will remain open.

We need to ensure that Library management proceeds in a manner that is fair and equitable to all staff working in the Madison Building. Please return the attached survey by August 24, 2007. Thank you. [Note: survey form not available electronically.]

