

*ALAA Union Update*  
*February 12, 2002*

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*Note: This bulletin addresses a variety of issues that have arisen since the beginning of the year (90 Church Street has been addressed in separate reports). Individual questions answered here are identified by sender's name only where initially posted in a public e-mail.*

## Comp Day Grievance

The February 5 ALAA Executive Board meeting<sup>1</sup> unanimously adopted the recommendation of Union counsel to pursue the comp day grievance by making the following proposal to Management:

1. Clearly define the new policy.
2. Schedule expedited, "last-best-offer" arbitration to be held within a brief time-frame (e.g., 4-6 weeks) to resolve the limited issue of the new

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<sup>1</sup>Present at the February 5 EB meeting were: Michael Letwin (Pres.), George Albro (Sec'y-Treas.), Peter Blum (Alt. VP, CAB), Bob Zuss (VP, CDD-Bk), Debbie Wright (VP, CDD-Manhattan), Tim Mulligan (Alt. VP, CDD-Manhattan), Barbara Byrne (Alt. VP, CDD-Queens), Magda Rosa-Rios (Alt. VP, CLO/Volunteer), Clinton Hughes (Jr. Attys.) and Danny Engelstein (Counsel).

policy.

3. Pending arbitration, seek a negotiated resolution of the dispute.

4. Pending a negotiated or arbitrated resolution, suspend the new policy's implementation.

5. Incorporate the results of negotiation or arbitration into the contract effective October 1, 2002.

6. Condition final Union agreement to this procedure on ratification by the Delegate Council.

On Friday, February 8, the EB, accompanied by counsel, discussed this proposal with Theresa de León.<sup>2</sup>

•**Clarification of Policy.** In response to point one, above, de León explained the new policy as follows.

An attorney who uses up to 30 consecutive comp days would remain on payroll, with fringe benefits (pension, health, etc.) and anniversary credit. After that number, the attorney would be deemed on unpaid leave (without the above fringe and credit), and paid in a lump sum for any additional consecutive comp days used.

This policy would apply regardless of whether the comp days were used in conjunction with any other leave (e.g., vacation, parental, etc.).

De León then discussed how the above policy would apply to the hypothetical situations below.

•**Hypothetical #1 (Combined Leave):** An attorney takes 40 days of paid parental leave, immediately followed by 27 days of vacation and then by 97 comp days. This attorney would remain on payroll with full benefits for all of the parental leave and vacation, and for the first 30 of 97 comp days. The remaining 67 comp days would be deemed unpaid leave without paid benefits.

•**Hypothetical #2 (Comp Days Only).** An attorney takes 97 consecutive comp days. This attorney would remain on payroll with full benefits for the first 30 of 97 comp days. The remaining 67 comp days would be deemed unpaid leave without paid benefits.

•**Hypothetical #3 (Intermittent Use).** An attorney uses 30+ comp days intermittently over the course of

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<sup>2</sup>EB members present were: Letwin, Wright, Mulligan, Zuss, Blum and Rosa-Rios.

the year. This attorney remains on payroll with all benefits.

•**Points 2-6 (Above).** De León said that she would respond shortly to the EB's procedural proposal, which she generally characterized as reasonable.

In response to specific questions about ALAA's proposal to incorporate the results of negotiation or arbitration into the next contract, de León said that Management remains concerned about the extent of comp time accrual, and the issue would likely be a subject in negotiation of the next contract. Therefore, she did not see how an arbitrator's decision could be incorporated into that contract unless it addressed the comp issue as a whole.

De León has also said that she is preparing a detailed response to the Union's questions about savings related to the new policy, and to the cost of management health insurance.

The Executive Board and Delegate Council will next meet on this issue on Tuesday, February 19 and Thursday, February 21, respectively.

## Comp-Related Issues

•**Question (CDD-Manhattan):** "If a LAS employee exhausts 8 weeks paid parental leave and then wishes to take 4 additional unpaid weeks under the FMLA . . . is that individual entitled to health benefits paid by LAS?"

**Answer:** "[It] seems like the employee in your hypothetical would be entitled to paid health benefits. However, it's probably an unlikely scenario since most employees would rather have and are entitled to take simultaneous paid leave (vacation, 10 or 30 or whatever amount is permitted of comp. days), and, in any event, when you go off payroll, you get your health benefits paid thru the end of the calendar month anyway (which takes you thru the FMLA maximum period).

•**Question (Babe Howell, CDD-Manhattan):** "Is there any obligation for us to work nights, holidays and weekends? I don't see any in our contract. Please let us know if we can simply refuse to accept the shifts."

**Answer:** By law, employees directed to work a particular shift must generally "obey now, grieve later." Thus:

[a] general rule that arbitrators apply is that workers are expected to follow management's instructions and directives. If the worker believes the instruction to be unfair or a violation of the contract, he/she can file a grievance at a later time. Arbitrators have customarily held that failure to follow management directions can lead to the employee being disciplined for insubordination.

*AFSCME Steward Handbook: A Guide for Building A Strong Union*, (February/March 2001) <<http://www.afscme.org/about/stew05.htm>>.

As previously reported, the January 24 Delegate Council unanimously adopted a motion to "[a]ccompany ALAA grievance on CDD comp time by encouraging members to file individual grievances that detail personal impact, to file requests to use comp days, and to otherwise put pressure on Management (Letwin/Baker)."

Specifically, attorneys may grieve violation of the contract provisions that "[a]ccumulated [comp] days may be taken as vacation" in the year they were earned, Collective Bargaining Agreement, Article II, § 3(A)(2). To date, seven such individual grievances have been filed. Arraignment assignments may also be grieved where they generate unreasonable workload. CBA, Article IV, § 3.

## Computers at Livingston Street

On February 1, at the suggestion of ALAA HQ, the Union vice presidents at 111 Livingston Street, Brooklyn, filed a grievance concerning persistent computer and related resource issues.

On February 7, after discussion with boro management and MIS, Peter Blum, CAB Alt. VP, reported that improvements were expected.<sup>3</sup>

<sup>3</sup>Blum's report stated that:

"1. When the new server is installed in Long Island, it will alleviate our local computer problems. This is because when we log in, we will be logging in directly to Long Island. It will probably be 2 months before the new server is set up. The set up is planned to occur over a weekend and we should experience no interruption in service.

"2. Meanwhile, MIS says that everything possible is being done to diagnose why the system goes down in Brooklyn. One complication is that effective diagnosis can only occur

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when the system is malfunctioning. Another complication is that the problem could be in an almost infinite number of places, and it is therefore not easy to find. MIS says that they have tried various fixes and replaced various parts when the system has gone down, and will continue to try other things if the system goes down again. MIS is hopeful that the problem can be found and fixed through this diagnostic process.

“Some have inquired whether it might be possible to fix the problem more quickly by spending a large amount of money to do some sort of local upgrade in Brooklyn. LAS is taking the position that, with the move to Long island so close, it is not worth the large expenditure.

“3. The two computers in the library will be set up so that they can word process on C or A and print when everything is down. MIS is waiting for a part to set it up and expect it to be done this week or next.

“4. Some people currently have wordperfect installed on their PCs and can wordprocess on the C or A drive when everything is down (although those people still cannot print from their computer when everything is down). It is not clear to MIS how many of us have this capability. To find out whether you are one of the lucky ones, you can start your computer; hit cancel every time you are requested to log in until you arrive at your desktop screen; then try to start wordperfect and work on C or A. (I am able to work when everything is down, and I have therefore gotten into the habit of frequently saving my documents to C or A.)

“5. Denise Compono has some laptops that she can sign out to you in an emergency when everything is down. These emergency laptops are to be used here and not brought home.

“6. A shared services person will be assigned to Brooklyn to work for CAB. More details will hopefully be forthcoming soon.

“7. Leibman and Hertz has arrived and is on the shelves behind the librarian.

In a separate message of February 6, MIS head Ed Braunstein wrote that “we had people working over there this past weekend and had retained the services of a networking engineer in trying to find a solution for the ongoing problem - who worked with us Monday evening. We feel we have stabilized the situation - but we are also waiting for an upgrade to the data center router ios and additional memory so that it can accommodate the faster NIC card.”

## Contract Rewrite

ALAA HQ has redrafted the Collective Bargaining Agreement, and is awaiting Management's response.

## Federal Defender Salary Increase

The Federal Defender Division has informed ALAA that the Administration Office of the U.S. Courts has approved a new federal defender salary scale (see appendix).

## Foreign Language Reimbursement

The Society has agreed with ALAA's view that "foreign language course costs associated with (a) the study of sign language and (b) private foreign language study are eligible for reimbursement under the Staff Attorney Foreign Language Course Reimbursement program, provided other eligibility requirements are satisfied."

## JRD Workload Grievance

•*Question (JRD-Bk)*: "What happened to JRD's workload grievance?"

*Answer (Carol Hochberg, VP, JRD)*: "It is still pending. We had a proposed settlement which was not formally adopted. . . . When we explored arbitration, counsel for the union advised us that as a practical matter, we needed to go into such proceedings with the relief we want ordered. . . . rather than expecting the arbitrator to fashion one. . . . Shall we have a delegates meeting?"

## JRD Firing Reversed

In response to ALAA's grievance, division management has withdrawn the firing of a JRD-Queens attorney.

## Opposite-Sex Health Coverage

In response to a request from Jim Rogers (CDD-Bx), ALAA has obtained an opinion letter from Union counsel stating that the Society's policy of providing health benefits to same-sex, but not opposite-sex, domestic partners does not appear to

violate ERISA or the Collective Bargaining Agreement.

## Pension Contribution

On February 1, Management informed the pension trustees that "the Society's contribution to the Staff Attorneys Pension Plan for the semi-annual period ending 6/30/2001 was sent to The Vanguard Group by overnight mail on January 31, 2002."

The timing of this contribution conforms to the new, accelerated timetable contained in the 2000-2002 Collective Bargaining Agreement.

## Pro Bono Defense of Detainees

●*Question (CDD-Bk)*: “[W]ould we have to take comp time here to make a Jersey court appearance” on behalf of an immigrant detained in the wake of September 11?

*Answer*: Yes. Article III, § 11 of the Collective Bargaining Agreement provides that: “Staff Attorneys wishing to engage in *pro bono* legal services on their free time will inform the division Attorney-in-Charge, who will approve activity that does not present a conflict of interest or otherwise make the attorney’s services unavailable to the Society and its clients.”

## Taxi Reimbursement

●*Question (CDD-Bk)*: Is there still a cap on taxi reimbursement?

*Answer*: The Collective Bargaining Agreement (2000-2002 MOA, para. 2.5) provides that “Staff Attorneys in all divisions leaving evening and/or night institutional assignments will be fully reimbursed for taxi fare within the five NYC boroughs. Managers will approve taxi fare beyond NYC limits on a case-by-case basis.”

## Telecommuting

In response to an attorney’s grievance, CAB division management has withdrawn a decision to end his right to telecommute.

## Transfer, Return From

●*Question (Civil Division)*: “Are there any provisions for a “right-to-return” in our contract that apply to situation when a staff attorney makes a lateral move to another unit? . . . If not, is there a custom and practice? Can it be dealt with under the general leave of absence policies, i.e. take a leave to accept a position in LAS w/a right to return w/in a year or so?”

*Answer*: There is “[n]o contract provision, and no right to return unless taken pursuant to an explicit guarantee e.g., when attorneys have voluntarily moved from one division to another to relieve CDD/CAB budget pressure.”

## Union Bylaw Revision

There will be an election at the February 21 Dele-

gate Council of one union member from each vice-presidential constituency (CAB, each CDD boro, Civil, JRD, Volunteer) to formulate proposals to the membership to bring ALAA bylaws into compliance with UAW rules (including potential change from current flat dues, to 1.15% progressive dues) and other bylaw issues to be determined.

**NOMINATIONS ARE NOW OPEN.**

## Union Elections in CAB

Elon Harpaz has been elected to the vacant position of ALAA vice president for CAB/Capital/Federal. Peter Blum remains alternate vice president.

## Union Reps, Right to

●*Peter Blum, CAB Alternate Vice President*: “Please remember that you have a right to a union representative if anything even hinting of discipline is discussed. You should particularly consider having a representative present if management proposes putting you on a schedule. If necessary, you can ask to stop the conversation and reschedule when a representative can be present.”

## For the Record: Correcting Mis/disinformation

●*Myth (CDD-Manhattan)*: “[P]lease explain the rumor [that the Union president’s] term . . . will be automatically extended by our relation with UAW.”

●*Fact*: “Under no condition can the officers term be ‘extended’—automatically or otherwise—except by the next membership election. Pursuant to Article 38, § 2 of the UAW Constitution, Article VIII, § 2 of the ALAA Bylaws (attached) specifically provides for officers to serve a three-year term. Thus, the next election will take place within 30 days of October 31, 2002, the third anniversary of ALAA’s last general election.”

**APPENDIX**  
**FEDERAL DEFENDER DIVISION**  
**Attorney Salary Scale for 2002**

<b>2002 Salary</b>	<b>Step</b>
1	45,055
2	54,389
3	61,936
4	70,060
5	76,282
6	82,505
7	85,501
8	89,130
9	92,299
10	95,699
11	99,213
12	102,382
13	105,781
14	108,950
15	112,522

16	115,864
MAX	118,284