President’s Corner

Sue Byars

SPSE-UPTE holds elections for its officers annually, and with term limits imposed for our officers and executive board, we are assured of having different points of views each year. My term as President is over at the end of January, and Bruce Kelly becomes the SPSE-UPTE President after having served one year as President-Elect. Bruce has been an active member since 1974, and served as President twice before (1981 and 1995).

I want to thank the 2008 Officers and Executive Board for their dedication and hard work this past year. SPSE-UPTE has continued as the lone voice of employee advocacy at LLNL during some very tough times. The effort of the bargainers for the Skilled Trades unit has been outstanding and I wish them great success in finishing their contract!

The focus of this Sentinel is on bargaining. SPSE-UPTE is conducting its first ever bargaining for the Skilled Trades bargaining unit. The unit was recognized in February 2008 and we started negotiating with LLNS for our first contract. Since this has been our first negotiation one might expect the process to be longer than usual, but our bargainers have persevered and made great progress. SPSE-UPTE has written approximately forty articles for the contract.

In this issue of the Sentinel, one article tells of the bargaining process written by our chief negotiator. Three other articles tell of the delay tactics of LLNS and changes that have occurred while negotiations have proceeded. While negotiations are in progress there is supposed to be a status quo for both sides. This gives an incentive for each side to come to agreement. However, LLNS has selectively chosen to force acceptance of some changes but not others. We are also introducing our version of the “Golden Fleece” award.

2009 SPSE-UPTE Executive Board

Officers
President, Bruce Kelly
President-Elect, Jim Wolford
Treasurer, Margie Altenbach
Secretary, Joe Perea
UPTE Rep, Jeff Colvin

Board Members
Kevin Aguilar
Riki Gay
Alan Landrum
Rob Swanson
Darlene Yazzie
Bargaining for a Better Future
James Wolford, SPSE-UPTE Chief Negotiator

For the first time in its 35-year history, SPSE-UPTE is negotiating a contract on behalf of a group of employees it represents. Defined back in 1983, LLNL’s skilled trades bargaining unit was the sole group of employees to surpass the 50% mark in terms of signing petition cards for representation by SPSE-UPTE before the 2007 transition. They are the portion of 800-series employees who maintain and enhance the Lab’s infrastructure: its electricity, water, sewage, heating and air conditioning. They modify offices, build custom fixtures, change light bulbs, maintain high voltage, and replace worn-out machinery. They also respond in emergencies to keep programs from losing vital resources. After hard legal fights before both the California’s Public Employment Relations Board (PERB) and later the National Labor Relations Board (NLRB), the unit won recognition in February 2008, and immediately called for negotiations. Now they are making progress toward a first contract.

Enacted by Congress in 1935, the National Labor Relations Act made collective bargaining the law of the land, to avoid, in the words of the act “industrial strife and unrest.” However, its guidance is remarkably broad and guarantees nothing to unions beyond what they can manage to negotiate with employers. This is both freeing and challenging, since we are largely on our own and drawing on very little private-sector experience. In true union fashion, though, we are rising to the challenge and learning as we go. We have had a few successes so far, including persuading LLNS to pay a lump sum of money based on years of service to each of the flexible-term [employee] members of the bargaining unit who were laid off in January 2008.

SPSE-UPTE has commented at length, both before and after the transition, on the differences between public- and private-sector employment. We continue to take note of the ways in which private-sector law weakens the rights of employees and gives management broader prerogatives. Bargaining has shown us that even with their private-sector advantages, the employer still has an interest in treating employees fairly, and paying attention to their priorities. In a survey done before bargaining began, the skilled trades identified job security as their most important goal. They also expressed a strong desire to continue the practices and conditions that existed under UC’s management of the Lab. SPSE-UPTE has pressed these priorities in its bargaining positions and has reached tentative agreements with LLNS management to make permanent some important aspects of past practice.

Now for the first time, representation by SPSE-UPTE is no longer an abstract idea. We hope that with a solid contract for the first bargaining unit we will be able to show other Lab employees the wisdom of organizing. Collective bargaining offers a way to regain some control of what we lost in the transition since the future of LLNL will offer few assurances. If you cannot imagine trusting SPSE-UPTE to advocate on your behalf, I would urge you to become active and see what is possible. As the skilled trades bargaining team will tell you, trusting a union to do right by you comes a lot easier if you get involved in the process of making decisions. ■

continued next column
What is Collective Bargaining?

Much more than the simple act of meeting with management, bargaining is a cyclic process that includes distinct phases, beginning with a survey and discussion to establish the priorities of bargaining unit members. At the conference, bargaining unit members elect a bargaining team from within their ranks, map out a schedule, and launch the contract planning process. The process of creating and negotiating a first contract can be time consuming. LLNL’s Skilled Trades bargaining team began negotiating its contract in early July 2008, and the process continues today. Once both sides agree to the contract, it is presented to the membership for a vote. If it passes, it remains in force for the time period agreed to in bargaining, and then the cycle repeats.

Along with the main goal of achieving a better work life, one positive side effect of the bargaining process is the face-to-face access bargaining team members get with their upper management. Team member and maintenance mechanic Kevin Aguilar remarks “the bargaining has been effective at getting management to listen to our concerns about health and safety on the job.” Pressure systems mechanic Tom Honour looks forward to a beneficial outcome from the bargaining: “the contract we proposed gives us a shot at holding onto rights and privileges we had under UC.” He adds “the face-to-face meetings make it clear when we’re getting through to management.” Fellow pressure systems mechanic and bargainer Rob Swanson notes the advantage of union representation, remarking “bargaining has given us a forum for voicing concerns over what is happening under the new Lab management.”
Bargaining In Good Faith: Why Can’t the Lab Just Do It?

Jeff Colvin

As you have learned in another article, the Skilled Trades employees at the Lab are organized into a certified SPSE-UPTE collective bargaining unit, and this unit is in the process of bargaining an employment contract with LLNS that specifies their wages, their hours, and their working conditions. The conduct of bargaining is governed by federal law, the National Labor Relations Act. This law is administered by the National Labor Relations Board (NLRB).

The law requires each side to “bargain in good faith.” This means, for the union, that the employees cannot go on strike while bargaining is going on. For the employer, it means that they must provide the union all the information on bargaining issues that the union requests (like salaries, work assignments, etc.); they must not make unilateral changes in working conditions outside of the bargaining process (status quo ante must be preserved); and they must refrain from taking any actions that harm the employees in the unit (like giving the work to subcontractors, or re-classifying employees out of the unit).

When either side violates the rules of “bargaining in good faith,” the other side can seek relief by filing an Unfair Labor Practice (ULP) charge with the NLRB.

In the course of the bargaining for the Skilled Trades unit, SPSE-UPTE has so far had to file three (3) ULP’s.

The first ULP was filed in response to the May layoffs of career employees. The law required LLNS to bargain the terms of the layoff, and to notify us in advance which specific employees in the unit were targeted for layoff. They failed to do this. In fact, they blatantly deceived us about their intentions on laying off several members of the unit. In a bargaining session just one week before “Black Thursday” (the May 22 lay-off day), they told us that the information we requested (again!) would be available at the beginning of the following week. Our Chief Negotiator went over to the Staff Relations Division first thing Monday morning to receive the information, and unbeknownst to him, while he was being handed the list of employees to be laid off, managers were walking the targeted employees out the gate! We filed a ULP on failure to bargain the layoffs, as required by law.

Soon after, we filed a second ULP for failure of LLNS to give us required documents relevant to negotiable issues that were requested in bargaining. A third ULP was filed when we learned that work that had been done by the laid-off employees was given to untrained employees outside the unit.

An NLRB agent was assigned. The agent consolidated all three (3) ULP’s into one, and after considering the evidence from both sides, decided that the union’s allegations were indeed supported by the evidence. The agent proposed a settlement that would have required LLNS to re-instate all the laid-off employees in the unit, give them back pay with interest, and post a notice of the settlement. LLNS refused to accept the settlement. The Regional Director of the NLRB in Oakland then issued a formal written complaint against the Lab, and set a November 4, 2008 hearing date for the Lab to respond to the complaint.

Lab management, however, did not wait for the formal hearing process. They subverted the process by bringing high-level pressure to bear in getting the Regional Director to change his mind and withdraw the complaint and cancel the hearing. The Lab’s argument is that SPSE-UPTE granted the Lab an “implied waiver” to bargaining the layoffs because we did not explicitly demand to bargain the layoffs in writing early enough in the bargaining process—an argument that is as laughable as it is preposterous. NLRB is now awaiting guidance from Washington on what to do next. For the laid-off employees it just means further delay in resolving their situation.

We reported in a previous edition of the Sentinel that LLNS behaved much the same way in the legal battle over certifying the Skilled Trades unit; i.e., they kept piling on legal challenges to the original pre-transition certification decision by the California Public Employment Relations Board (PERB). Even after the NLRB upheld the PERB certification, LLNS was prepared to continue the legal battle, until Congressional pressure finally got them to behave themselves and accept the NLRB certification decision. It remains a mystery to us as to why LLNS continues to behave outside established labor law, while maintaining that they respect and value their employees.

A final note: many of you may wonder what the battles of the Skilled Trades employees have to do with you, especially if you do a very different job. How it affects you is that the integrity of our work depends integrally on ALL employees being treated with dignity and respect. If Lab management does not value the work that “mere” plumbers do, while overlooking mediocrity in physicists because they are doing a job that is deemed important, we end up with neither pipes nor theories that hold water. Besides, the definition “of which jobs are valued and which are not” can keep shifting; today you may be in the “in” group, and tomorrow you could be out. The only thing that guarantees the integrity of our work is an environment in which ALL employees, regardless of the job they do, are valued and treated fairly. Indeed, the whole point of the law is to provide a legal “balance of power” between management and employees that prevents employers from abusing their power over employees—much the same philosophy of shared powers adopted in the U.S. Constitution that prevents government tyranny. Only when management respects labor law will all employees be treated fairly.
What if Today’s Rules to Get a Union Were Applied to Political Candidates?

There’s a big election coming in your hometown. The mayor, in office forever, is being challenged by someone with a lot of good ideas. Here’s how things would turn out if political elections had to follow the same rules as workplace elections:

1. The Police Chief – the Mayor’s campaign manager – knocks at your door and says he needs to talk to you NOW. He drives you to a meeting where you're forced to stay for several hours and listen to trash talk about the Mayor’s opposition.

2. You’re not wearing a button or sticker for either candidate, but you’re interested in what the challenger has to say. Maybe it’s just a coincidence that police cars keep driving by your house?

3. You get a letter from the Governor warning that when other towns in the state have elected challengers to their mayor, the number of state tax audits in those towns increased dramatically.

4. The city’s police officers are assigned to watch groups of citizens and try to identify who they are voting for in order to report to the Mayor. They may approach you on the street, at work, or in the grocery store to discuss your views on the election.

5. On Election Day, when you go to your local school to vote, the Mayor and his supporters are inside all day watching who comes to vote and what kind of button they’re wearing. They can stop and talk to you on your way in and out. The challenger and his supporters are only allowed to be 100 yards from the door at the entrance to the parking lot where people drive by at 30 mph.

Is this really so different from:

1. Your supervisor pulls you aside and says it’s best that you don’t support the union. You’re forced to attend company meetings that go on for hours, with managers and supervisors badmouthing the union. Of course no one from the union is allowed to attend.

2. You go to a union organizing committee meeting and discover that your supervisor is following you – after work hours.

3. The company threatens to shut down if you and your co-workers support the union. And worse, the company fires union supporters. Both are illegal, but happen all the time.

4. Supervisors are given the responsibility of tracking the views of every employee. They call them into one-on-one meetings and even ride along with them in their company vehicles, letting employees know they are closely scrutinized.

5. Voting is held on company property, and supervisors and managers are all over the place, trying to influence your vote.

Think about it. We need the Employee Free Choice Act.

Communications Workers of America, AFL-CIO
SPSE-UPTE Comment on Proposed Changes to LLNS Layoff Policy

We are responding to the proposed changes to the LLNS layoff policy (Section K of the LLNS Personnel Policies and Procedures Manual).

It is the position of SPSE-UPTE that some of the proposed changes violate federal law, specifically Sections 3161 and 3163 of the National Defense Authorization Act of 1993 (Public Law 102-484).

In particular, in Section 3161, Paragraph C it says that “Employees shall receive preference in hiring” (emphasis added). The law also mandates that the Department of Energy (DOE) labs provide for retraining, relocation assistance to other DOE facilities, and local impact assistance to communities affected by a layoff. It seems clear from the wording in the law that these provisions are not optional.

Thus, it seems clear that the new LLNS layoff policy, which completely eliminates all the sections of the policy on preferential rehire, retraining, etc., is a violation of Sec. 3161. We would like to see all of these deleted sections restored.

Furthermore, in Sec. 3163 the law says that “The term ‘Department of Energy employee’ means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such facility.” In other words, the law governing layoffs at the labs does not distinguish between career and flexible term employees. We believe that LLNS treating flexible terms differently vis-à-vis the layoff policy is also a direct violation of the law, especially since most flexible terms are now hired into what are really career indefinite jobs, in contradiction to policy.

We also note that a phrase has been added to the basic policy statement in Section K.III.1.1 that seems to allow layoffs whenever a lack of work or lack of funds results from reorganizations. Reorganizations can, and often are, driven by many factors that have little or nothing to do with lack of funds. The addition of this wording, we believe, unnecessarily loosens the necessary conditions that can trigger a layoff, and is sure to be abused by management. We propose that the added phrase be removed or reworded.

Finally, we would like to point out what is missing from the new policy. One of the main things that went wrong with the recent layoff was the conflation of “layoff units,” which the Director decides as per policy, with “business units,” which directorates and divisions decided, and the secrecy surrounding how employees were selected to be in which “business units.” We propose that the new policy be clear about how employees are picked for layoff, guided by the following general principles:

1) The Director picks the layoff units, that is, those job titles that are subject to layoff. The policy specifies this now, but it is not specific enough so as to prevent lower levels of management from slicing and dicing the general layoff units into smaller “business units.”

2) People in the same three digit job code are ordered by inverse seniority within the layoff unit.

3) Each directorate can skip people in the seniority list to retain needed skills, knowledge and abilities, but this skipping should be limited to no more than 10% of eligible employees.
If you are a member of the Skilled Trades unit the answer should be nothing? However, LLNS continues to violate labor law and make changes to conditions of employment they should not be doing. One of these changes is the layoff policy that has been covered in an article in this issue.

Another change that is happening just this month is the modification in the health care benefits. This is a traumatic year for our health care options, which have been reduced forcing some employees to change health care providers. LLNS has also decided to remove the multiple tiers for the cost of health benefits. What this means is that everyone will be paying the higher tier price for their care. This started by eliminating the tier that no one was in, but in the coming year many people will see an increase in their cost due just to the elimination of the tiers. If you are planning on retiring and are coordinated with Medicare, plan on losing your group policy. Benefits will be the focus of the next Sentinel. Again many of these changes should not be changed while negotiations for the collective bargaining unit are proceeding. I can think of only one of the changes that have not been illegally forced on the Skilled Trades. That is their raises. Nice of LLNS not to force that one on them!

A change we anticipate is the resumption of contributions to the Total Compensation Package 1 (TCP1) plan. University of California (UC) has announced its plan to start employee contributions to the retirement system in July 2009. The announcement stated a total contribution of 18% to 20% over time will be needed. How much is paid by the employee and how much by UC is undetermined, but UC stated its share would be more than the employees. It is also expected that they will start this process by using the 2% going into the Defined Contribution Plan and retarget it to University of California Retirement Plan (UCRP). This affects people in the TCP1 retirement plan because Contract 44 calls for LLNS to consider what UC is doing and following their lead if appropriate. This is probably not news to most people, but again, the amount the employee pays must be negotiated for represented employees before contributions can start and set by LLNS for all others. The union position has been that this increase in cost to employees cannot cause a reduction in pay. Thus, any increase in payments to the retirement plan must be matched by a salary increase, and that increase is separate from the normal raise package.

According to Wikipedia, the Golden Fleece Award was started by former US Senator William Proxmire in 1975. The award was given to public officials who wasted public funds. SPSE-UPTE would like to start its own version of the award. We hope this will be the one and only award given. Unfortunately, the editors believe this will be a regular column in the Sentinel.

Without further ado and appropriate fanfare may we have the drum roll please!

The first winner of our version of the Golden Fleece Award goes to the entire LLNS Management Team for provoking the largest wrongful termination lawsuit in the history of the United States of America Department of Energy or its predecessors!

Congratulations! Not only did LLNS violate federal and state discrimination law, but could not manage to follow their own policy made up just for this situation. In the process they have damaged nearly 2000 American families in the process.
JOIN SPSE-UPTE

Membership is open to all Lawrence Livermore National Laboratory employees that are not represented by another union.

To join SPSE-UPTE, complete and return this form. The form below authorizes payment of $25.00 per month dues to be paid by payroll deduction to SPSE. Be sure to sign on *6. If you do not wish to have automatic deduction do not fill out the * items and you will be billed quarterly.

Name (please print) ___________________________ Employee Number ___________________________

Job code ___________ L-Code ___________ Extension ___________ E-mail __________________________

Home Address ___________________________ City ___________________________ Zip Code __________________________

Signature ___________________________ Date ___________________________ Home Telephone __________________________

EMPLOYEE ORGANIZATION MEMBERSHIP
PAYROLL DEDUCTION AUTHORIZATION
UPAY 068 (1080)

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ACTION ON THIS FORM TO BECOME EFFECTIVE ON THE PAY PERIOD BEGINNING: DATE ASAP

MONTHLY DEDUCTION

| REGULAR DUES RATE: $25.00 | X |
| MAXIMUM DUES: $25.00 per month | X |

TOTAL

I authorize Lawrence Livermore National Laboratory (LLNL) to withhold monthly or cease withholding from my earnings as an employee, membership dues, initiation fees and general assessments as indicated above.

I understand and agree to the arrangement whereby one total monthly deduction will be made by LLNL based upon the current rate of dues, initiation fees, and general assessments. I ALSO UNDERSTAND THAT CHANGES IN THE RATE OF DUES, INITIATION FEES AND GENERAL ASSESSMENTS MAY BE MADE AFTER NOTICE TO THAT EFFECT IS GIVEN TO LLNL BY THE ORGANIZATION TO WHICH SUCH AUTHORIZED DEDUCTIONS ARE ASSIGNED AND I HEREBY EXPRESSLY AGREE THAT PURSUANT TO SUCH NOTICE LLNL MAY WITHHOLD FROM MY EARNINGS AMOUNTS EITHER GREATER THAN OR LESS THAN THOSE SHOWN ABOVE WITHOUT OBLIGATION TO INFORM ME BEFORE DOING SO OR TO SEEK ADDITIONAL AUTHORIZATION FROM ME FOR SUCH WITHHOLDINGS.

LLNL will remit the amount deducted to the official designated by the organization.

This authorization shall remain in effect until revoked by me - allowing up to 30 days time to change the payroll records in order to make effective this assignment or revocation thereof - or until another employee organization becomes my exclusive representative.

It is understood that this authorization shall become void in the event the employee organization’s eligibility for payroll deduction terminates for any reason. Upon termination of my employment with LLNL, this authorization will no longer be in effect.

This authorization does not include dues, initiation fees and general assessments to cover any time prior to the payroll period in which the initial deduction is made.

Payroll deductions, including those legally required and those authorized by an employee are assigned priorities. In the event there are insufficient earnings to cover all required and authorized deductions it is understood that deductions will be taken in the order assigned by LLNL and no adjustment will be made in a subsequent pay period for membership dues, initiation fees and general assessments.

Employee Signature ___________________________ Date ___________________________

FOR LLNL USE ONLY

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RETENTION: 1 YEAR AFTER INACTIVE - ACCOUNTING OFFICE

Return signed and completed form to:
Margie Altenbach, L-189
SPSE-UPTE
4047 First Street, Suite 200, or P.O. Box 1066
Livermore, CA 94551-1066