

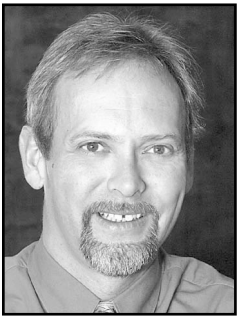
N.I.C.E. News

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April 2006

President's Message

By Dave Jacobsen –Interim -NICE President



Dave Jacobsen

In our profession, and life in general, one of the few things we know will happen is that situations are going to arise that are unlooked for and that the old, and much feared “Change,” is going to occur. Some of these little curves life throws us are positive, many are not. And, if we're lucky even those that appear to be negative at first, in the end prove to be clouds with silver linings.

Over the years, N.I.C.E. has been lucky to be served by a great many committed, highly professional individuals. Some are still active in the association, but many have moved on in their lives within the profession and outside of it. Their contributions to the continuing success of their colleagues through their involvement in our association speak volumes about the quality of the individuals within the newspaper industry, particularly those of us within the field of circulation.

This brings me to a point. The following is the content of an e-mail your Board of Directors received from N.I.C.E.'s President, Rick Sass in late February;

“In case you have not yet heard, last week USA TODAY went through a major circulation reorganization combining a handful of markets nationwide and eliminating positions. Unfortunately for me, mine was one of the positions eliminated in the change...

As a result, I am put into a position where I must resign my post as President of NICE immediately. I apologize for this unfortunate set of events. I have thoroughly enjoyed my time on the Board of NICE and have greatly appreciated being able to work with each of you for the good of the organization and its member newspapers.

Thanks for your friendship, support and professionalism. I look forward to maybe crossing paths in the future.

Best regards.
Rick Sass

I know that all of you join me in wishing Rick the best of luck, and hope that while this change in his life is certainly a challenge, a person of his distinct talents and character will turn this change into an opportunity, and in the end a silver lining will show itself.

As you know, earlier in the year Larry Karmil, formerly circulation director at the Wenatchee World, departed leaving a vacancy on the board, with remaining members advancing in chairs leaving the 2 Year Director position open. As the remaining board appeared to be in a strong and stable position, Rick had delayed filling the 2 year position. So, as an association, we've had one of those little curves thrown at us once again. While Rick's departure, particularly given the short period of time before the spring conference, is a blow, we're lucky at this time to have a group of board members whose dedication and talents promise a strong and stable future for N.I.C.E. Plans for the conference in Wenatchee are well under way, and we've addressed the board vacancies.

Effective immediately, we welcome Jim Crowl of The Daily News from Moscow, ID to the Board in the position of two Year Director. Jim has served the association in a variety of ways over the years, most recently in the role of auditing the association finances. Normally, the First Vice President performs the responsibilities of the President in the event of his or her absence. The interpretation of this section within the Bylaws by current and former board members is that this applies to circumstances in which the President is unable to attend a meeting or function due to a temporary situation.

The short period of time available prior to the conference, and the fact that the board members were already deeply involved in their conference related responsibilities, effectively prohibited moving existing board members up another chair. So, in the interest of providing for the future continuity and stability of the Board, and to allow for a normal progression through the various board positions of its members, as well as serving as Chairman of the Board for the balance of the Board's 2005-2006 term, through an action taken by the board I'll also be serving you in the capacity of Interim President.

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Legally Speaking

by **L. Michael Zinser**
NICE General Counsel

This month's column reports on The Tampa Tribune victory upholding a supervisor's discipline of a union steward who directed rude and disrespectful language toward that supervisor; we also report on two arbitration victories, upholding a productivity standard at Hawaii Tribune-Herald.

1. No union or protected activity at The Tampa Tribune

The NLRB concluded that employee Richard Banos was not engaged in union activity or protected concerted activity when he verbally berated his supervisor, and that the company was justified in issuing him a written warning.

Banos, a packaging department operator and union steward, attempted to repair a "bottom wrap" machine while the line was running. No backup line was running when he tried to perform the repair. His repair attempt was unsuccessful; the situation became worse. Banos' error in judgment caused the entire line to shut down. After a backup line began running, Banos' supervisor, Jennifer Amstutz, called Banos into her office to coach (counsel) him about when and how to perform repairs.

Banos—whom the NLRB described as a "long time union adherent"—was offended by the coaching session, yelled at Amstutz, and said:

... that, if it had been her brother-in-law Jerry Eislie (another operator), she would not have said anything and that 'you love to kiss your brother-in-law's ass.' In response, Amstutz pointed to a sign in her office displaying the Respondent's 'Fairness, Dignity, and Respect' philosophy, and told Banos that he was not treating her with fairness, dignity, and respect. Amstutz told Banos that he could either go back to work or go home. Banos went back to work.

As a result of Banos' outburst, The Tampa Tribune gave Banos a written warning that future misconduct could lead to discharge.

The NLRB concluded that Banos was not engaged in union activity when he yelled at Amstutz; thus the Act did not protect his conduct. The Board explained:

Banos' actions do not automatically constitute 'union activity' simply because he also happens to be a union steward or official ... we find that Banos was present in Amstutz' office as an employee and not in his representative capacity as a union steward ... when Banos defended his decision to shut down the pressline, there is no evidence that he was asserting a position on behalf of the Union ... no one mentioned the union, and ...

Banos' charge that Amstutz showed favoritism to her brother-in-law was a matter of self-concern, that is, Banos was not protesting alleged generalized favoritism in the workplace. His protest referred only to his specific case.

Furthermore, Banos' conduct was not protected by the Act because:

Banos was speaking only for himself. There is no evidence that Banos was raising this issue on behalf of his coworkers, or that his coworkers even shared Banos' belief that Amstutz displayed such favoritism ... At no time during the coaching session—or the hearing—did Banos claim to be expressing a group concern.

The NLRB ruling was a 2 to 1 decision, with Member Liebman (Democrat) dissenting.

Editor's note: The Zinser Law Firm represented The Tampa Tribune.

2. Productivity policy in the newsroom prevails

Arbitrator Ken Perea, in 2 additional cases, found that Hawaii Tribune-Herald had just cause to discipline a reporter who repeatedly failed to meet the Company's legitimate productivity standard. The Company required each of its dayside reporters to submit an average of one byline story per day. The Company initially warned the employee verbally and later in writing that his productivity failed to meet the standard. When the employee (who was also a union official) continued to fail to meet the standard, the Company suspended the employee. The Arbitrator rejected the union's contention that the reporter's business and education beats were inherently more difficult to cover than the beats of other reporters. The Arbitrator deemed the Company's initial written warning to be "relatively mild" discipline. Furthermore, the Arbitrator concluded that a two-day suspension was the proper discipline for the employee's continued failure, after the written warning, to reach the required productivity level. This decision was a victory for management's inherent right to expect its employees to meet its stated and long-standing productivity standard.

In reaching his decision, the Arbitrator criticized the employee for repeatedly "crossing the line" into the bounds of unprotected activity. Arbitrator Perea noted Editor Bock's justified frustration over the employee's unprotected tactics:

Accordingly, in view of the regrettable history over the past several years between Unit Chair Bishop and Editor Bock wherein, in his performance of Guild activities, Unit Chair Bishop 'crossed the line' and thus exceeded the reasonable bounds of protected activity, the Arbitrator must conclude Editor Bock's evident frustration stems in overwhelming measure from unprotected activity.

Significantly, the Arbitrator ruled that the Company's discipline decisions were not motivated by discriminatory, anti-union intent.

Editor's note: The Zinser Law Firm represented Hawaii Tribune-Herald.

Speakers Set for Wenatchee

By Steve Devore

Our 2006 Annual Sales Conference is fast approaching. The conference will be in Wenatchee Washington at The Coast Wenatchee Center Hotel May 10 – 12, (also May 9 if you participate in the golf outing). This year, Our host newspaper, The Wenatchee World, is sponsoring a wine tasting event at their Pressroom Theater on Wednesday afternoon. This conference is a great opportunity to learn what is working for newspapers, as we examine industry trends. It's also an excellent opportunity for you to visit with circulators from our region as they share fresh ideas in our Workshop Sessions.

This year's theme is "Opportunities in Readership Growth". We'll talk about all components of circulation- home delivery, single copy, web editions and more.

Featured speakers include:

Mike Zinzer, NICE Legal Counsel, will update us on the latest legal battles and trends. NICE was pleased to be one of the sponsors of the Amicus Brief that Mike filed this year with the National Labor Relations Board in an effort to reverse the finding that the newspaper carriers at The Arizona Republic are employees.

Kurt Walu, of the Omaha World, is an expert in marketing. He worked for Philip Morris USA in retail marketing for 21 years before joining the Omaha World Herald in 1999. Kurt will speak to us on "The Power of Retail" and 3rd party sales.

Dr. Gene Sharratt of Washington State University, is a popular and entertaining speaker with a positive message. Gene's topic will be "We must adjust to changing times, but cling to unchanging principals."

Diane Rusnak and Chad Jaennette from ABC will give us all the latest in measuring circulation and readership.

Robert L. Rubrecht, Director of Circulation

Marketing for Newspaper Association of America will bring us up-to-date on NAA's latest research. Robert has held a variety of circulation positions with newspapers such as The Times (Trenton, NJ); The Herald & News (Passaic, NJ), The Bucks County Courier Times (PA), The Wall Street Journal, Dow Jones & Company and The Fayetteville Observer (Fayetteville, NC). In May 2004, Rob began working for NAA as Director, Circulation Marketing and has been involved with such single-copy publications as Merchandiser of the Year 2005 and 2006, the creation of the Subscriber Acquisition and Retention Web site and has a number of articles published in newspaper marketing.

Pam Coleman will speak to us on paid e-editions and on circulation marketing. Pam is the Circulation Marketing Manager for The Bulletin in Bend, Oregon. Prior to moving to Bend, she worked for Freedom Communications, most recently serving as Circulation Director for The News Herald in Panama City Florida.

Sandra Walker, historian for Seattle's Museum of History and Industry will give us a presentation during our lunch on Thursday. Sandra will share some of the rich history of Newspaper Carriers Across America, between 1920 and 1960.

After dinner Thursday, Teresa Kehrli of AAA Washington will brief us on the amenities of Holland America's ms Oostedam cruise ship that we will be sailing on for the 2007 NICE conference.

With our changing market, it becomes more important each year to attend conferences and stay current with the industry. Don't let this opportunity slip by to learn the latest in circulation management. Send in your registration today!

Steve DeVore is N.I.C.E. First Vice President and circulation director at the Observer in La Grande, Oregon

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Your N.I.C.E. Board of Directors as it stands at this time, is as follows:

Dave Jacobsen - Board Chairman and Interim President
Peninsula Daily News – Port Angeles, WA
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Steve Devore - First Vice President
The Observer – La Grande, OR
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Russ Davis - Second - Vice President
The Herald Journal – Logan, UT
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Eileen Widdison - Third Vice President
The Grants Pass Daily Courier – Grants Pass, OR
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Jodie Krueger - One Year Director
The Oregonian – Portland, OR
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Jim Crowl - Two Year Director
The Moscow-Pullman Daily News – Moscow, ID
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Dale Irvine - Secretary Treasurer
Honorary Life Member - La Conner, WA
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Naturally, at our upcoming conference, we'll be looking for individuals wishing to participate in the management of the association as we plan for, and move into the future. Should you be interested in working with us to insure that N.I.C.E. remains a vital and thriving force within the newspaper industry, e-mail myself, or any other board member listed on page 3.

I'm very much looking forward to seeing all of you at our conference in Wenatchee. The facility (view it at <http://www.wenatcheecenter.com/index.htm>) and the program promise to be superb. Or, link to it through our website www.nicex.org. Yes, that's correct. We have an active website from which you'll be able to download conference and membership information as well as registration forms and other documents. The site is up but we'd seriously appreciate your input as we want it to be a valuable resource for our members. Our sincere "Thanks" and appreciation go to the Pioneer group for their offer to host the site. Also, our appreciation to Vince Burrows, Director of Information Services at The Daily Chronicle in Bozeman for his assistance in getting it launched.

Something else that's new. For the first time, **promotion entries will be submitted electronically.**

To submit a pdf of your entry, simply click on the "Submit Promotion Entry" button on the Conference page of the site and attach your document to the e-mail.

The deadline for contest entries is April 21st, so don't delay!

Check out the website today at www.nicex.org and, again, let us know what you think. Also, if you haven't already renewed your membership, download a form from the "Membership" page and drop it in the mail with a check a.s.a.p. Great things are in the works and you don't want to miss out.

Dave Jacobsen
Peninsula Daily News

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