

## President's Message

BY EILEEN WIDDISON



*Eileen Widdison*

**G**reetings from beautiful southern Oregon. The fog is starting to lift down here and I can actually report that January circulation numbers are up.....by a whopping 47 subscribers!

A victory! I don't want to talk about the December numbers and I certainly don't want to talk about the shortened volume of pages and inserts. I'm sure that all of you have your own numbers to share.

Sometimes I am afraid that we're so busy looking at all that's gone wrong in the past that we can't see the opportunities that present themselves every day. As the "fearful leader" of the NICE group I've certainly heard more than my share of tales of woe from all sectors of the industry. **KNOCK**

**IT OFF.** It's creativity time. It's also time to share some good ideas with all of your fellow circulators. A new website devoted to uplifting the newspaper industry has been launched. I encourage all of you to check it out at [www.newspaperproject.org](http://www.newspaperproject.org). These folks have decided to fight back the tide of negativity and to grow and enhance the stature of the newspaper business. Give them a read and throw them some ideas while you are at it.

Good things always come from negative events and the newspaper drop in advertising has made our circulation numbers and the revenue especially important to our publishers. It's our time to shine. If you're not feeling especially "shiny" I invite you to steal some ideas from around the region. Interesting things are going on in Yakima and Ann Craven the Circulation Director up there has graciously agreed to take care of the judging for our annual conference.

Ah yes.....the annual conference. Lots of budgets have been slashed and I know that many of you may have difficulty getting to the conference this year. I would

encourage you to talk to your publisher's again. We are planning a shortened and cost effective conference. We will have one day of the full conference on Wednesday, May 20 and will offer a full day legal seminar on Thursday, May 21.

All of us should be alert and on guard due to recent developments in California. The recent settlement decision with contractors from the Orange County Register should be on everyone's radar. It will very likely have long lasting impact on the way we contract and do business. Many concerns have focused on the changes that the Obama administration may bring to bear via the Employee Free Choice Act and the Employee Misclassification Prevention Act. Look for more detailed information about this portion of the NICE program to come in a separate e-mail very soon. It is our hope that we will be able to bring our contracts and district manager training documents to the conference for review. We are also hoping to gain some insight about the prevention of union organizing in our mailrooms.

I promised you early on that I would always provide a takeaway idea. This one is really small.....it measures just 1 inch by 4 inches. There's a new regulation in Oregon that stipulates that all restaurants will either wrap or cover their silverware. We presold and designed our own silverware band that bears our logo and our website address. We started with 20,000 of them and are giving them to the restaurants at no charge. The restaurants are thrilled because they don't have to purchase them and we are getting some very valuable and inexpensive exposure. They were only \$100.00 for 20,000. We are hoping to drive some traffic to our website and create a valued business partnership at a very low cost.

I thank you in advance for your encouragement and the hard work that you do each and every day. I know that I'm a better leader because of the connections that I've found in the NICE organization. If you have been looking to get more involved in our group I would heartily encourage you to give me a call to talk about how you can help.

# Legally Speaking

L. Michael Zinser • NICE General Counsel



L. Michael Zinser

On December 10, 2008, by a vote of 37 to 5, operations employees of The Pantagraph (Bloomington, Illinois) rejected representation by St. Louis Newspaper Guild. The St.

Louis-based union had announced at the beginning of 2008 that its goal was to organize all Lee Enterprises-owned newspapers. This election was its first attempt to reach that goal.

In many respects this case is a preview of union organizing as it will occur under the Employee Free Choice Act, if passed. Card signing and organizing was stealthily conducted behind the scenes. Not all employees were contacted. Whoever the union had on the inside was strategically trying to keep the issue from those perceived as pro-company. In order to get some employees to sign a card, the union resorted to coercion and misrepresentation. A primary example is at least one employee was told that he must sign an authorization card or he would be unable to vote in the NLRB secret ballot election. Fearing he would lose his voice, the employee signed a card. He later shared that with management. The Pantagraph filed an unfair labor practice charge against the union for this tactic, claiming it amounts to a violation of the National Labor Relations Act. That charge is still pending.

The election petition was filed on July 2, 2008. Management then began the “perpetual campaign,” which lasted through December 10, 2008. Management developed a creative, high communication campaign, which included the following:  
A website called [www.theywantyourduesinstlouis.com](http://www.theywantyourduesinstlouis.com)  
Letters to the home educating employ-

ees on various aspects of union representation  
Creative posters, which changed weekly, addressing the issues  
Face-to-face meetings with the employees  
Regularly scheduled management team meetings

The union waged a behind the scenes, door-to-door campaign. Organizers would show up unannounced at employees’ homes in an attempt to sell the union position. Employees complained that they felt “stalked.” At times union organizers would somehow learn that an eligible voter was at a relative’s home and would show up at the relative’s home. The at-home contacts were constant. Employees were interrupted at their homes on weekends. In many respects this backfired on the union. Employees resented this intrusion into their privacy. Management lawfully and accurately informed employees that they had no obligation to allow a union organizer or any other stranger into their homes. One employee shared with management that if the organizers showed up again, he was “either coming to the door naked or with a gun!”

The union tried to create the impression that The Pantagraph had unlawfully discharged two former employees. It filed meritless unfair labor practice charges, which the union was forced to withdraw. The union never informed the employees of this fact and continued to represent that their unfair labor practice charges were still pending. The union’s credibility was attacked with a “Liar, Liar” poster reproducing the letters withdrawing the charges from the National Labor Relations Board.

As management’s campaign gained momentum and it appeared the union was going to face a possible loss, the union resorted to trying to suppress the vote. When the union learned that an employee was going to “vote no,” it asked the employee not to vote. Just

be “neutral.” With posters and letters management informed employees that not voting was not “neutral.” Rather, not voting was, in effect, a vote for the union. The employees were urged not to allow a minority to control the destiny of the whole. Upon learning that an individual intended to “vote no,” other voters were told, “You don’t need to vote. You’ve already voted by signing the authorization card.” That was also exposed as a blatant lie.

Management capitalized on the union dues issue. This union’s dues would be 1.6% of pay and an initiation fee equal to 1.6% of one month’s pay. In these recessionary times, that was a high price to pay for the unknown. Management also exposed a key bargaining goal of the union: a so-called union security clause that would force the Publisher to fire any employee who did not pay dues. The union never disavowed that goal.

In a press release dated December 11, 2008, Lee Enterprises said the following:

This overwhelming rejection of these outsiders, especially during challenging economic times, expresses a powerful vote of confidence in our family at The Pantagraph,” said Richard Johnston, Publisher. “With a substantially union-free environment, we will have the clear ability to safeguard the most vital elements of the Lee Enterprises culture – direct and open communication, a one-on-one working relationship between employees and supervisors, a climate of trust and teamwork, the ability for all of us to deal with each other honestly and fairly, and recognition of individual achievement.

Vytenis Kuraitis, Lee Vice President for Human Resources, said Lee employees have historically rejected unions. “Over the last several decades, as a result of good working environments, our employees eliminated all unions in 18

locations. The only unions that exist in Lee today were inherited in our more recent acquisitions. The reason is that, throughout Lee, we strive to provide consistently strong, fair leadership so our employees feel no need for union representation.”

On December 12, 2008, the union posted on its website a story about the election that included:

At the time of filing, an overwhelming majority of workers signed union cards so they could gain a voice on the job. Eventually Lee Enterprises could delay a vote no further, with the vicious anti-union campaign resulted in an atmosphere of fear and mistrust and ultimately a vote against collective action.

The situation at The Pantagraph is one of far too many examples of why we need to reform U.S. Labor Law. If the Employee Free Choice Act were a law, workers could have made a decision without the employer intimidation paid for by Lee Enterprises and would have an expectation of good faith bargaining and achieving lasting gains on the job.

Under current law, the First Amendment gives all employers the right to communicate the other side of the union representation issue. The bright light of the First Amendment is a powerful educational tool. What the union is really saying is they would like employees to be able to be hoodwinked, in ignorance of all the facts. The union would censor any communication from the other side. Nothing is more cher-

ished and traditional in American life than a democratic, secret ballot election after a vigorous debate on the issues. This union and others would eliminate that. The true message here is we must prevent passage of the Employee Free Choice Act.

Interestingly, the union story does not share the 37 to 5 tally of ballots. To demonstrate that the union’s story is propaganda, the union filed no post-election objections. The management victory was certified by the NLRB.

Editor’s note: The Pantagraph was represented by The Zinser Law Firm.

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## A SEA OF CHANGE

*Retiring Circulation Director Jim Crowl recalls 47 years in the circulation industry, and talks about what he sees ahead for newspapers.*

Last January I announced to my publisher that this would be my last year in the circulation industry. It all started when I turned 10 and the District Manager came over to apologize to my mom for the horrible service. I remember his exact words, “How old is he? Does he want a paper route?” When I said yes I never knew that I would end up as a CSR at 15, DM in college and Circulation Manager upon graduation. Newspapers at the time used hot lead, linotype machines, honor racks, and were delivered by youth carriers totting collecting books. Things were less formal. If a carrier got behind on payment, you might see him washing the circulation vans to make it up. With gas at 24.9 cents per gallon our motor route carriers were willing to deliver as far as people had interest in our publication. PM papers far outnumbered the AM, and many markets had direct competition. It was not uncommon for newspapers to own a local commercial printing operation.

Newspapers did not change overnight. Getting together at N.I.C.E and the other sectionals we found better ways of doing things. When I was a district

manager we drove around with several thousand dollars in our cars, picking up carrier bills. That always concerned me, so as a circulation manager I arranged a carrier bank deposit system where carriers could take their collections to any bank. Carrier collect went to office pay, and options such as credit cards and EZ-Pay were eventually added by newspapers. As an industry, I have always felt we sometimes lagged behind other industries in implementation. When I first suggested we accept Visa on subscriptions I got the strangest look from our accounting manager. It was not widely being done by newspapers at the time, despite acceptance elsewhere. Technology has always fascinated me, so I was in the first 1% of the public to buy a cb radio, personal computer, own a VCR, or surf the net. The early internet was mostly text, so when US News & World report first made the cover of their magazine available to download; I was excited, picturing newspapers someday creating online editions. About that time our publisher’s wife mentioned that there was a lot of talk at the latest publisher meeting about computers, and asked me “could you think of any reason in

the world why we would want one of those computers at the newspaper” I thought of plenty. And had visions of scrapping the addressograph, graphotype, and PIA ledger cards for a computer database. It was not till years later that the newspaper bought a system, and even longer till circulation was a part of it. As a matter of fact the first computer I used in circulation duties was actually at a 12-year old carrier’s house. We had a sub not show up to do a route, and I swung by the regular carrier’s house in hopes that he had left a spare copy of the route list out before leaving for camp. His grandmother said that he actually kept it on a computer, and I was welcome to run a copy if I could figure out how to use it. I did, but left wondering when we would catch up in technology. Many of our papers again played catch-up when it came to the internet. What if newspapers had been the original internet access providers!

2008 has been a challenging year for the industry. We have had to become more aggressive than ever in order to achieve fairly flat circulation growth. We are examining staffing and ex-

penses that we have taken for granted for years. At our company we have just completed combining the circulation departments for our two daily publications into one. I believe we are seeing two separate things affect our industry. One is a change in lifestyle, with readership habit moving away from print, and people feeling less of a connection to their local town. The second is the national economy. The economy will recover and newspapers will survive.

People will continue to read print newspapers as well as online editions. Despite circulation losses in larger markets, we are still the best vehicle to deliver mass readership. Radio and TV audiences are split between many choices. With internet radio and TV becoming more popular that audience will continue to fragment itself. The internet does not provide the mass media that advertiser's desire. If you poll your neighbors, one person may be on a golf site, someone else on a custom car site etc....very fragmented. Newspapers are also a necessary part of gathering the news. Yes the local internet sites may have reader bogs, and even have an AP feed, but someone has to gather the news to begin with and be trusted to separate fact from fiction.

Will newspapers change? Of course, the evolution will continue. That's not all bad. One example is the stock market page. For years many of us provided a page that simply listed stocks, closing prices etc. I enjoy looking at my stocks

each day to see how much I've lost, but like most investors do so on the internet. The stock page has always been passed over by readers with no interest in the stock market. We've scrapped our stock market page in favor of a page of financial charts, and articles. It's written to be of interest to the investor as well as having things that the person who does not own stocks might find of interest. We still have a lot of older readers who depend on our TV magazine. However with online and on-screen listings readily available, some day that will be a thing of the past. With the overwhelming amount of information available, newspapers will provide even more of a sorting role in locating news of interest to their readers. "News you can use" will join local as must read content in a community. The dry, formal style of many newspapers will become more readable. We will see more interactive content- web content going to print as vice versa to support each other. Most, but not all publications will survive. Joint printing and distribution efforts between competing publications will increase, and become more commonplace. Some editions will be cut, and we will see less effort to cover an entire region or state. A newspaper may distribute by print in their primary market area, but online/weekend only in the more distant areas.

Newspapers will be a part, but not the whole of our business. A smart newspaper will be able to build a complete marketing package for their clients

consisting of graphics support, direct mail, newspapers, and special publications. Niche publications will not only continue but choices will expand. Some will be print, some online, and some a combination. We currently have five phone directories distributed in our area. This will consolidate, and such directories will more than likely move online. Newspapers should be positioning themselves as THE online directory for their area before others do. Who else is in a position to not only have all the business information, but know about the changes during the year to keep it current? Although there are some successful long time internet pros, many business people are just starting to get involved in the internet, and would benefit if newspapers offered "how to" seminars, and website links to integrate businesses, the directory, and the newspaper online product.

It's an exciting time in the industry. I've met a lot of talented circulation people at N.I.C.E. conferences, and am confident that by working together our industry will continue to evolve in a positive manner and be as valuable in the future as we are today.

*Jim Crowl was former circulation director for the Moscow-Pullman Daily News and has recently retired and is traveling the United States in his RV.*

*The next page describes a legal seminar in the Los Angeles area, hosted by Cal West. For more information contact Charlie McManus at 951-492-9330.*

#### **HOW TO REACH US**

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# Legal Seminar XXIX



CWCMA will hold its 29<sup>th</sup> annual Legal Seminar in Glendale, California on February 19, 2009. The Hilton Hotel in Glendale is the site of this year's meeting. Utilizing real case studies, participation, and feedback — this seminar is “fun!” L. Michael Zinser, CWCMA General Counsel, will lead the Legal Seminar for the 29<sup>th</sup> consecutive year. With over 33 years of experience representing newspapers on circulation issues, Mike is particularly qualified to conduct this meeting. Currently representing many CWCMA newspapers, he is acutely aware of legal issues of concern to Cal-Western newspaper executives.

The seminar topics will include:

- ★ **Independent Contractor Developments** — We will explore all current contractor developments. The assault on independent contractor status continues! Specifically, we will address:
  - (1) The essential ingredients of a defensible independent contractor agreement;
  - (2) Employment Development Department (EDD) activity against California newspapers and Distributors; strategies to deal with EDD.
  - (3) Abusive practices of the State Compensation Insurance Fund (SCIF) and private workers' comp insurance companies; strategies to deal with this abuse;
  - (4) Newspaper carrier accident insurance:
    - Accident insurance for independent contractors;
    - The critical interface of carrier accident insurance and workers' compensation;
    - Selling the advantages of carrier accident insurance;
  - (5) The District Manager — frontline offense in the independent contractor wars:
    - District Manager training - too little too late?
    - Integration of independent contractor-friendly terminology and practices into training;
    - Negotiations with newspaper carriers.
  - (6) Creating an Independent Contractor state of mind.
  
- ★ **National Labor Relations Act Developments** — We will discuss current legal developments of the NLRB as it impacts independent contractor status and employee relations.
  
- ★ **Federal Legislative Proposals** — We will discuss and review the following bills pending in Congress:
  - Employee Free Choice Act
  - Employee Misclassification Prevention Act
  - RESPECT Act

This trio of bills has the potential to dramatically impact independent contractor status and make it easier for unions to organize.
  
- ★ **Orange County Register Class Action** — The case settled. What does this mean for California newspapers? What should you be doing to “shore up” your defenses against this sort of attack? San Diego based attorney Patrick Sullivan, Of Counsel to The Zinser Law Firm, will present class action basics under California state law. Mr. Sullivan has successfully defended class action cases before the California Supreme Court.

 Mark your calendar now! For 29 consecutive years CWCMA has presented this seminar for its members. CWCMA is the only newspaper trade association that has such a rich tradition of educating its members on key legal issues. This seminar alone is uniquely tailored to address the concerns of CWCMA members. The cost of the seminar is only \$75.00 this year, in recognition of the current economic climate in the newspaper industry. For further information, call Charlie McManis at 951.492.9330 or send an email to: [director@cwcm.com](mailto:director@cwcm.com).