

Statewide Edition
May 20, 2005

MEMBER

The Business Council
of New York State, Inc.



6369 Collamer Drive, East Syracuse, NY 13057
empire@abcnys.org, www.abc.org/newyork
(315) 463-7539 (800) 477-7743
(315) 463-7621 (Fax)

ENY ABC John Nerney 518-449-1062/Fax 9084
WNYABC Scott Zylka 716-832-0777/Fax 0749
Metro/LI Ruth Mulford 631-738-2086/Fax 2083
CNY ABC James DeChene 315-463-7539/Fax 7621
ROCH ABC Andrea Harvey 585-266-3280/Fax 544-650

New York State Court of Appeals Unanimously Rules in Favor of NYSDOL on Annualization

The New York State Court of Appeals on May 3, 2005 issued a unanimous decision upholding the NYSDOL's annualization regulation, as it is applied to pension plan contributions. As you may recall, ABC member Chesterfield Associates, challenged the Department of Labor's annualization of Chesterfield's pension plan contributions on behalf of its employees. Chesterfield, through its counsel, ABC member Jackson Lewis, argued that annualization violates Labor Law §220 by penalizing contractors unless they provide for supplements at the prevailing rate on both public and private work, or alternatively, pay the supplements in cash. In its unanimous decision, the Court stated that "annualization is a methodology for valuing fringe benefits, which the Commissioner reasonably applied to compute the hourly cash equivalent of

Chesterfield's contributions to its profit sharing plan. Obviously, the judges do not fully understand the DOL's enforcement of annualization across the board. If they did, they could not have logically reached this conclusion.

If you'd like to read a copy of the decision in its entirety, you can find it at <http://www.courts.state.ny.us/ctapps/decisions/may05/64opn05.pdf>

Federal Court Ruling Strikes Down New York's Neutrality Law

U.S. District Court Judge Neal McCurn declared New York's recently enacted "labor neutrality" statute, which business organizations across the state referred to as New York's "employer gag" law. Back in 2002, Empire State ABC was one of many groups, including the Business Council of NYS and the Healthcare Association that fought passage of the law which prohibits the use of any public funds to encourage or discourage a vote

by employees on whether or not to join a union. In his ruling, Judge McCurn notes that the law "creates an unequal playing field by, in essence, allowing unions to actively participate in union organizing campaigns while at the same time significantly curtailing the ability of employers to voice their opposition to unions. His ruling states that the law is preempted by the National Labor Relations Act, which provides for a more balanced approach to union organizing. This was the very argument that ABC put forth in its opposition to this legislation, but to no avail. For once, though, the court agreed with us. This "gag law" was an unfair attempt to favor unions, and ABC is pleased that the court saw through the real intent of the legislation.

Empire State ABC Member E.W. Tompkins Co., Inc. Files Legal Challenge to Clifton Park/Halfmoon Library PLA

On May 11, 2005, attorney Joel Howard of ABC member firm Couch White, filed an order to show cause challenging the

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award of bids on a \$15,000,000 library building project under a project labor agreement. While Saratoga County Supreme Court Justice Frank Williams did not issue a temporary restraining order to delay the award of any contracts on the project, he did order the trustees of the Clifton Park – Halfmoon Library to appear before him on May 25 to answer to petitioner E.W. Tompkins & Co.'s challenge against the use of a project labor agreement. The challenge put forth by E.W. Tompkins argues that the PLA is unlawful and unenforceable, that it violates the NY State Constitution, the New York General Municipal Law, and New York State Labor Law. We will keep you updated on how this case is decided. For a complete copy of the petition and memorandum of law in this case, please contact the ABC office in East Syracuse.



National Legislative Conference Less Than Three Weeks Away – Are You Registered to Participate??

Time is running out to register for the upcoming National Legislative Conference taking place in Washington, DC on June 7-8, 2005.

Since we expect the House to overwhelmingly pass AHPs and they have already passed a permanent repeal of the Estate tax, the Senate will inevitably be the bottle neck for those vital bills. Thus, those will be our top priorities in the Senate. We are focusing on legislative initiatives that have a realistic chance of becoming law, while also focusing on core ABC legislation.

We expect our Senate priorities will be: 1) Association Health Plans (S. 406); 2) Permanent Repeal of the Death Tax (S. 420); 3) Salting Abuse/ Truth in Employment Act (S. 983); 4) NLRB Nominations (no legislation); and 5) Anti-Card Check/Protection of the Secret

Ballot Election (against S.842)

We expect our House priorities to be: 1) OSHA Reform Legislation (H.R. 739, 740, 741, 742); 2) Anti-PLA legislation (H.R. 1449, H.R. 1248); 3) Salting Abuse/ Truth in Employment Act (H.R. 1816); 4) Association Health Plans (H.R. 525); and 5) Anti-Card Check/Protection of the Secret Ballot Election (against H.R. 1696, support H.R. 874).

Empire State ABC has confirmed appointments with many of the members of our congressional delegation, and we need to have you, the constituents of these elected officials, the employers of many more constituents, to sit before these folks and discuss with them how these issues impact you, your employees, and your business. If you have not registered to attend and participate in this opportunity to voice your concerns, please visit the ABC National website at www.abc.org/legcon and register on-line today. We look forward to seeing you in our nation's Capitol!

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