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Jill S. Schwartz, Winter Park
Cary R. Singletary, Tampa

PROGRAM ADMINISTRATOR

Angie Froelich
afroelich@flabar.org

January 23, 2014

Dear Executive Council Members and Committee Chairs,

The next Labor & Employment Law Section executive council meeting will take place on Thursday, January 30 at **5:00 p.m.** at the Rosen Shingle Creek Hotel, 9939 Universal Boulevard, Orlando, FL 32819, (888) 698-3142, www.rosenshinglecreek.com.

The agenda and supporting documents for this meeting are enclosed.

The conference call information is:

Toll-free number: 888-376-5050
Conference Code: 1563821345 and #
Customer Service: 866-640-5038

I look forward to seeing you in Orlando.

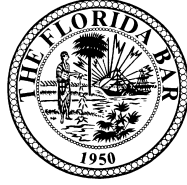
Angie



AGENDA

*Labor and Employment Law Section Executive Council Meeting
Rosen Shingle Creek, Orlando • Thursday, January 30, 2014 • 5:00 p.m. - 6:15 p.m. • St. Johns 23*

- I. Call To Order** – Robert S. Turk, Chair
- II. Secretary/Treasurer Report** – Frank E. Brown
 - a. Consideration of Minutes – October 24, 2013
 - b. Financial Statement – December 2013 (**Attachment A**)
- III. Committee and Subcommittee Reports (Attachment B)**
 - a. Outreach Committee –
ABA Liaison Subcommittee – Jennifer T. Williams
Law School Liaison Subcommittee – Jonathan Oliff / Debbie Brown
Judicial Outreach Subcommittee – Zascha Blanco Abbott / John D. Hoffman
Local/Voluntary Bar Association Liaison Subcommittee –
EEOC and FEPA Liaison Subcommittee – Marquis Heilig / Kristen Foslid
NLRB and PERC Liaison Subcommittee – Nick Karatinos / Stephen A. Meck (**attachment**)
Wage and Hour Administration Liaison Subcommittee – Joseph G. Santoro
Membership Outreach Subcommittee – Leslie Reicin Stein
Social Media / Advertising Subcommittee – Cathleen Scott / Brian L. Lerner (**attachment**)
 - b. Long Range Planning Committee – Robert L. Kilbride
 - c. Communications Committee – Cathleen Scott / Hon. Stephanie W. Ray
Publications Subcommittee – Jay Lechner / Zascha Blanco Abbott / Rob Eschenfelder (**attachment**)
Website Subcommittee – Hon. Stephanie W. Ray / Brian L. Lerner (**attachment**)
 - d. Special Projects Committee – Robert S. Turk
Certification Standards Review Subcommittee – Sherril Colombo
- IV. New Business**
 - a. 14th Labor and Employment Law Annual Update and Certification Review(1662R), January 30-31, 2014, Rosen Shingle Creek, Orlando – Leslie Langbein
 - b. ADR (1619R), March 13-14, 2014, Seminole Hard Rock Hotel & Casino, Hollywood – Leslie Langbein
 - c. Advanced Labor Topics 2014 (1693R), May, 2014, New Orleans, LA – Leslie Langbein
 - d. Audio Webcast Series
- V. Chair's Report**
- VI. Informational**
 - a. Reception • *St. Johns 25*
6:15 p.m. – 7:45 p.m.
- VII. Next Executive Council Meeting**
 - a. Thursday, March 13, 2014 • *Navigating the World of ADR (1619R), Seminole Hard Rock Hotel & Casino, Hollywood*
- VIII. Adjournment**



Labor & Employment Law Section

2013 – 2014

DECEMBER Section – Financial Statement

Beginning Fiscal Year Fund Balance	\$216,265
Total Revenue	\$ 70,254
Total Expenses	\$ 13,924
Ending Fiscal Year Fund Balance	\$272,595*

**see attached statement of operations*

Current Membership

Current Membership	2,048
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	December 2013 Actuals	YTD 13-14 Actuals	Budget	Percent Budget
Total Labor & Employment Law				
31431 Sect Dues	80	76,720	75,800	101.21
31432 Affil Dues	0	640	700	91.43
31433 Admin Fee to TFB	-35	-33,886	-33,703	100.54
Total Dues Income-Net	45	43,474	42,797	101.58
32191 CLE Courses	-1,448	11,815	15,000	78.77
32293 Sect Differential	120	1,480	7,200	20.56
35201 Sponsorships	0	0	3,500	0.00
37991 Advertising Revenue	0	0	3,000	0.00
38499 Investment Alloc	2,371	13,485	6,122	220.27
Other Income	1,043	26,780	34,822	76.91
Total Revenues	1,088	70,254	77,619	90.51
36998 Credit Card Fees	1	4	15	26.67
51101 Employee Travel	0	314	5,336	5.88
71001 Phone/Direct	65	336	1,000	33.60
71005 Internet Charges	0	0	500	0.00
84001 Postage	0	166	1,500	11.07
84002 Printing	0	16	1,200	1.33
84006 Newsletter	90	1,215	5,500	22.09
84007 Membership	0	0	500	0.00
84009 Supplies	34	109	250	43.60
84010 Photocopying	9	44	400	11.00
84051 Officers Travel Exp	0	0	500	0.00
84052 Mtg Travel Exp	826	2,380	22,500	10.58
84053 Out Of State Travel	0	0	1,000	0.00
84054 CLE Speaker Exp	0	0	10,000	0.00
84061 Reception	0	0	5,000	0.00
84069 Dinners	0	0	5,000	0.00
84101 Committee Exp	0	0	750	0.00
84103 Cert Committee Exp	0	860	2,000	43.00
84201 Board Or Council Mtg	0	1,245	5,500	22.64
84202 Annual Mtg	0	0	10,000	0.00
84205 Section Service Prog	0	4	4,000	0.10
84209 Retreat	0	0	11,000	0.00
84214 Long Range Planning	0	0	4,000	0.00
84301 Awards	0	0	7,000	0.00
84302 Scholarships	0	0	11,000	0.00
84422 Website	71	1,638	5,800	28.24
84535 Chairs Conv	0	0	400	0.00
84701 Council Of Sections	0	300	300	100.00
84998 Operating Reserve	0	0	12,681	0.00
84999 Miscellaneous	0	0	500	0.00
88252 Course Credit Fee	0	0	150	0.00

	December 2013 Actuals	YTD 13-14 Actuals	Budget	Percent Budget
Total Labor & Employment Law =====				
Total Operating Expenses	1,096	8,631	135,282	6.38
86431 Mtgs Admin	63	3,730	0	*
86543 Graphics & Art	516	1,563	4,209	37.13
Total TFB Support Services	579	5,293	4,209	125.75
Total Expenses	1,675	13,924	139,491	9.98
Net Operations	-587	56,330	-61,872	-91.04
21001 Fund Balance	0	216,265	204,073	105.97
Total Current Fund Balance	-587	272,595	142,201	191.70

* * * * * End of listing * * * * *

Written Report of Steve Meck for Executive Council meeting on January 30, 2014

This report will focus on the status of appellate cases concerning section 447.4095 F.S., Financial Urgency. The Public Employees Relation Commission (PERC) case numbers are provided so that you can access these decisions on the PERC website, <http://perc.myflorida.com>. I have also included recent case synopses from the upcoming PERC News.

Financial Urgency Cases

The first appellate decision was in Manatee Education Association, FEA, AFT (Local 3821), AFL-CIO v. School District of Manatee County, Florida, No. CA-2008-067. In this case, the First District Court of Appeals held: 1) The Commission correctly held that the School Board was not required to prove the existence of a financial urgency before invoking the statutory procedure; and 2) the majority of the commission erred in ruling that the School Board did not make an unlawful unilateral change, because Local 3821 refused to participate in the 14 days of negotiations required by the statute. The case was remanded to PERC to define what constitutes a “Financial Urgency.” The case is stayed upon the parties request pending the outcomes of subsequent appeals.

In Walter E. Headley, Jr., Miami Lodge # 20, FOP V. City of Miami, No. CA-2010-119 and Miami Association of Fire Fighters, Local 587, IAFF v. City of Miami, No. CA-2010-124, the Commission, pursuant to Manatee, defined “Financial Urgency” as “a dire financial condition requiring immediate attention and demanding prompt and decisive action, but necessarily a financial emergency or bankruptcy.” Headley was appealed to the First District, which adopted PERC’s definition and affirmed PERC’s holding that the Hearing Officer found that the record in that case demonstrated the City had proven that its economic condition clearly fulfilled this definition. Headley was appealed to the Florida Supreme Court. Miami Association of Fire Fighter was appealed to the Third District, and no decision has issued in that case.

Hollywood Fire Fighters, Local 1375, IAFF v. City of Hollywood was appealed to the Fourth District. The Commission definition of “Financial Urgency” was also adopted by that Court. However, the Court found that Section 447.4095, F.S. is unconstitutional as applied reasoning that PERC should have adopted the Supreme Court’s definition set forth in Chiles v. United Faculty of Florida, 615 So. 2d 671 (Fla. 1993). This case held that when a contract is fully funded, it becomes an enforceable contract, that may only be altered when a compelling state interest and a demonstration is made that “no other reasonable alternative means of preserving its contract with public workers, in whole or in part.” Id. Chiles also stated that the Legislature must demonstrate that the funds are available from no other means. Id. As in Chile, the Third District held that the City of Hollywood had failed to meet this test. The Court recognized conflict with the First District decision in Miami.

Recent PERC Decisions

Orange County Classroom Teachers Association, Inc. v. School District of Orange County, 40 FPER ¶ 151 (2013), Case No. CA-2013-030.

The parties' collective bargaining agreement provided that the union had permission to use the school district's email to communicate with employees but could not use the email system to advocate legislative positions, unless mutually agreed upon, or to send campaign literature. The Commission found that the school district committed an unfair labor practice when its agent repudiated the agreement by adopting a policy that limited the union's use of the email system to union members, excluding non-union members who are also in the bargaining unit. Attorney's fees were awarded to the union. This case has been appealed to the Fifth District Court of Appeal, Case No. 5D13-3507.

Orange County Classroom Teachers Association v. School District of Orange County, 40 FPER ¶ 157 (2013), Case No. CA-2013-029.

The union's registration expired, and after granting several extensions of time to renew its registration, the Commission issued a final order denying the union's application for registration because the submitted renewal forms were deficient. When the school district learned of the Commission's final order, it denied the union's request to use its email system until the union was reinstated as the registered bargaining agent. In addition, when a reporter from the local newspaper called the school district to ask about the consequences of the lapsed registration, the reporter was told that until the union was registered it could not serve as the certified bargaining agent and that the school district was under no obligation to continue negotiations. The school district also sent a letter to the union warning that it would cancel meetings, cancel dues deductions, deny the use of bulletin boards and email, and force the union president to return to the classroom or resign from her teaching position.

The Commission found that the school district should have been aware of the Commission's interpretation of Section 447.305, Florida Statutes, that a lapse in registration does not amount to a revocation of a bargaining agent's certification. The Commission concluded that the school district committed an unfair labor practice because its conduct amounted to the disenfranchisement of twelve thousand public employees based upon a self-serving interpretation of a statutory provision taken out of context and the school district held hostage the employees' constitutional right to engage in collective bargaining until the union met its demand to register. Attorney's fees were awarded to the union. This case has been appealed to the Fifth District Court of Appeal, Case No. 5D13-3609.

Teamsters, Chauffeurs and Helpers, Local Union No. 79 v. Hillsborough Area Regional Transit Authority, 40 FPER ¶ 163 (2013), Case No. CA-2013-015.

Two bargaining unit members ran red lights while on duty that were captured by red-light cameras. The authority imposed discipline for reckless driving. The hearing officer found that the charge should be dismissed as untimely because it was filed more than six months after the first employee was disciplined for reckless driving based on a red-light camera violation notwithstanding the fact that the employer subsequently downgraded that employee's violation to a lesser infraction, where the union was on notice that the employer was treating the downgrade as a clerical error and intended to discipline red-light violators at the higher level. Thus, the authority's "reclassification" of the disciplinary offense of

the second employee did not establish a new or continuing unfair labor practice. Even if the charge had been timely, the hearing officer determined that the union should have known of the authority's past practice of disciplining employees for reckless driving for running red lights. Further, the hearing officer concluded that the union waived its right to bargain this issue through inaction. Attorney's fees were awarded to the authority because the charge was frivolous, unreasonable, or groundless when it was filed. Neither party excepted to the hearing officer's recommended order or filed a transcript of the hearing. The Commission adopted the recommended order.

International Union of Police Associations, AFL-CIO v. Sheriff of Lee County, 40 FPER ¶ 172 (2013), Case No. CA-2013-023.

The sheriff's sergeants and deputies elected the union as their bargaining representative in separate bargaining units in January and August 2011, respectively. Other sheriff's employees remained unrepresented. In April 2012, a decertification petition was filed for the sergeants' bargaining unit. Two days after the election notice issued, the sheriff sent an email to employees, excluding sergeants and deputies, stating that they would receive a one-time bonus check. The union lost the decertification election. The union filed an unfair labor practice charge alleging that the sheriff discriminated against bargaining unit employees by offering bonuses to the unrepresented employees and denying bonuses to the represented employees.

The Commission agreed with the hearing officer that the sheriff discriminated against unit employees. The Commission concluded that the sheriff's anti-union statements lost any potential statutory protection from Section 447.501(3), Florida Statutes, when he combined those statements with discriminatory actions and the intent to discourage union membership. Having concluded that the sheriff committed an unfair labor practice, the Commission ordered the sheriff to treat all employees equally in the payment of bonuses. The sheriff was directed to require unrepresented employees to return the bonuses they received or pay the sergeants and deputies the same one-time bonus that was paid to the unrepresented employees. Attorney's fees were awarded to the union.

The union also alleged that the sheriff unilaterally changed a past practice by denying bonuses to unit employees when such payments had been made in the past. The Commission agreed with the hearing officer. Neither party was awarded attorney's fees for this allegation.

Collier Professional Firefighters and Paramedics, International Association of Firefighters, Local 2396, AFL-CIO v. East Naples Fire Control & Rescue District, 40 FPER ¶ 176 (2013), Case No. CA-2012-024.

This case is another in a series of recent cases involving alleged financial urgencies in the public sector due to the ongoing economic situation. The Commission adopted the hearing officer's conclusion that the fire district did not commit an unfair labor practice by declaring financial urgency. The Commission reiterated that the standard for determining whether an employer declares financial urgency in good faith is set forth in *Walter E. Headley, Jr., Miami Lodge #20, FOP v. City of Miami*, 38 FPER ¶ 330 (2012), *aff'd*, 118 So. 3d 885 (Fla. 1st DCA 2013), appeal filed, Case No. SC13-1882 (Fla. Sept. 20, 2013). The Commission also stated that the legislature does not require that an employer follow the impasse procedure set forth in Section 447.403, Florida Statutes, as a condition precedent to availing itself of the

ability to address a current financial urgency pursuant to Section 447.4095, Florida Statutes. Rather, these are two mutually exclusive procedures which allow an employer to modify a collective bargaining agreement. However, the Commission also adopted the hearing officer's conclusion that the fire district committed an unfair labor practice by unilaterally changing articles in the expired collective bargaining agreement that did not impact the financial urgency. The Commission ordered the fire district to cease and desist from unilaterally changing terms in the expired bargaining agreement that do not impact the financial urgency. The Commission agreed with the hearing officer that attorney's fees should not be awarded to the union even though it prevailed on the part of the charge alleging unilateral change in terms of the expired agreement that did not impact the financial urgency. The hearing officer reasoned that the union's charge concerned an emerging area of the law and was one of first impression. This case has been appealed to the Second District Court of Appeal, Case No. 2D13-5551.

Marion Education Association v. School District of Marion County, 40 FPER ¶ 177 (2013), Case No. CA-2013-014.

The central question in this case was whether the school district committed an unfair labor practice when it hired personnel in the classifications entitled "substitute teacher," "continuous substitute teacher," and "certified substitute teacher" during the 2012-2013 school year to fill nineteen vacant teaching positions and to fill in for forty-three teachers on various leaves of absences. The substitutes were hired to perform work previously performed by bargaining unit members. The school district did not recognize the substitute teachers as being covered by the parties' collective bargaining agreement. It paid them half of what an entry level teacher is paid and did not provide them with any of the benefits afforded to teachers under the contract.

The Commission found that the charge was timely filed despite being filed more than six months after advertisements of the substitute positions were posted because postings were taken down after the union objected and the union did not have notice that the school district still intended to go through with the hirings until the school year began. Further, the Commission determined that the use of substitutes in prior years did not make the charge concerning the school district's latest hirings untimely.

Regarding the merits of the charge, the Commission determined that the parties agreed in their contract to a sub-classification of instructional employees who would be hired to fill vacant teaching positions and to fill-in for teachers on leaves of absences and those temporary and replacement employees would be treated as employees under the contract. The parties also agreed in their contract to the use of "substitute teachers" who would be available if possible to fill in for absent teachers and who would not be treated as employees under the contract. These contractual provisions created the status quo. The Commission concluded that the school district committed an unfair labor practice when it hired substitutes for the 2012-2013 school year instead of adhering to the contract and hiring replacement or temporary employees covered by the contract. The substitutes were in all ways indistinguishable from regular bargaining unit teachers, with the exception of low wages and lack of benefits. The Commission stated that the abolition of bargaining unit positions and transfer of that work to positions outside of the bargaining unit based on a mere retitling of those positions is not a management right. Attorney's fees were awarded to the union.

Eguino, Spira, and Chang-Muy v. City of Miami, 40 FPER ¶ 185 (2013), Case Nos. CA-2013-037, CA-2013-038, and CA-2013-039.

The Commission concluded that the city committed an independent violation of Section 447.501(1)(a), Florida Statutes (2013), by failing to arbitrate the charging parties' grievances concerning computation of retirement payments. The Commission did not adopt the hearing officer's analysis that a charge alleging that an employer failed to advance an employee's grievance to arbitration requires a finding of sufficiency under Section 447.501(1)(f), Florida Statutes (2013), or a combination of Section 447.501(1)(a) and (f), Florida Statutes, to proceed. Instead, the Commission adopted the hearing officer's alternative analysis concluding that there was enough ambiguity in the language of the collective bargaining agreement's grievance procedure that it could not be said with positive assurance that the grievances in this case were not arguably grievable. The procedural questions which led the city to refuse to participate in the arbitration process should have been sent to arbitration. All of the city's defenses related to whether the charging parties complied with the contract's procedural requirements in the grievance process. Attorney's fees were awarded to the charging parties. This case has been appealed to the Third District Court of Appeal, Case No. 3D13-3067.

Orange County Classroom Teachers Association, Inc. v. School District of Orange County, 40 FPER ¶ 187 (2013), Case No. CA-2013-029.

The Commission denied the school district's motion to stay the final order issued in Case No. CA-2013-029, pending the resolution of the appeal of that order to the Fifth District Court of Appeal. The Commission concluded that the school district did not show that it would suffer irreparable harm if it was required to take to the affirmative actions directed in the final order. In addition, collateral proceedings regarding the determination of attorney's fees had already been stayed pending the outcome of the appeal. Subsequently, the court granted the school district's motion to stay the final order pending the outcome of the appeal.

Dade County Police Benevolent Association, Inc. v. Miami-Dade County Board of County Commissioners, 40 FPER ¶ 198 (2013), Case No. CA-2012-021.

The Commission affirmed the hearing officer's recommended order concluding that the county bargained in bad faith by issuing layoff notices to bargaining unit employees after promising not to do so. The union and the county negotiated a tentative agreement, and the union agreed to concessions to avoid layoffs. The parties agreed to submit the issue of whether employees would be required to contribute to the county's cost for health care insurance to impasse, but to waive the special magistrate proceeding to expedite resolution of the issue. The county and the union ratified the agreement. The county resolved the impasse issue at a public hearing by imposing no health care contribution. Subsequently, the mayor, who serves as the chief executive officer of the county, vetoed the resolution imposing no contribution and issued layoff notices to police officers. Thereafter, the county reconsidered its impasse resolution and imposed a 4% health care contribution upon employees. The Commission concluded that the statements made by county personnel stating that no layoffs would occur were not protected under Section 447.501(3), Florida Statutes, because the statements did not

convey an opinion regarding ratification or the likely result of ratification votes. A majority of the Commission concluded that the board of county commissioners was an independent body from the mayor and complied with a strict duty of fairness despite the mayor's veto of the county's resolution concerning employee health care contributions. One commissioner dissented on this issue arguing that the mayor's veto of the county's resolution of the impasse issue constituted an unfair labor practice in violation of Section 447.501(1) (a) and (c), Florida Statutes. The Commission awarded partial attorney's fees to the union. This case has been appealed and cross-appealed to the First District Court of Appeal, Case No. 1D13-6108.

Levy County Education Association v. School District of Levy County, 40 FPER ¶ 218 (2013), Case No. CA-2013-042.

The Commission agreed with the hearing officer that the school district committed an unfair labor practice by refusing the union's request to resume bargaining after an improper ratification vote was conducted by the union and by implementing a collective bargaining agreement which had not been properly ratified by the bargaining unit members. The Commission determined that the proper remedy was to rescind the school district's unlawful action. The Commission denied the union's request for prevailing party attorney's fees.

**Labor and Employment Law Section
Social Media/Advertising Subcommittee Report
January 22, 2014
Submitted by Co-Chairs: Cathleen Scott and Brian Lerner**

Outstanding Issues/Projects:

- Facebook Page
 - 42 likes (added 8 since last meeting on 10/24/13)
 - Page continues to be updated with CLEs, meetings, and other news and notes (10 items added since last meeting on 10/24/13)
- LinkedIn Page
 - 391 members (added 46 members since last meeting on 10/24/13)
 - Page continues to be updated with CLEs, meetings, and other news and notes (9 items added since last meeting on 10/24/13)

Reminder to Executive Council: [Join the Facebook and Linked In Pages](#)

Be sure to join and let others know about liking the Facebook page and joining the Linked In page.

**Labor and Employment Law Section
Website Subcommittee Report
January 22, 2014
Submitted by Co-Chairs: Brian Lerner and Judge Stephanie Ray**

New Developments on Website:

- New page developed and added to website to highlight Practice Toolkits:
<http://www.laboremploymentlaw.org/practice-toolkits.php>
- E-Updates going out regularly
- Case Law Development being posted
- E-Blasts being issued
- Section News Blog being updated
- Upcoming Events and Publications pages updated based on information received to date
- Website Data (since the last L&E Section meeting on 10/24/13):
 - 1,069 people visited, number increases to 1,477 when you add in people who visit the site more than once.
 - Most popular age range: 25-34 (over 33.5%); 18-24 (27.5%); 35-44 (15%).
 - Males visit more than females (over 54%).
 - The average person views the site for 1 minutes, 39 seconds (down from 2 minutes and four seconds from last report)
 - The most popular pages viewed are CLE, publications (December Checkoff), publications (E-Updates).

*Events/CLE page and Publications page are most visited pages on website

Outstanding Issues/Projects:

- Electronic RSVP page under development for Section meetings, receptions and dinners.

Reminder to Executive Council: [Personalize Your Profile in Online Membership Directory](#)

As a benefit to Section members, the website features a searchable member directory which allows users to search for members by name, county, area of practice, law school or board certification. Members are encouraged to update and personalize their member page by adding a photo, practice area, law school, board certification, and links to publications. To log in for the first time to update your profile, click Member Login at the top right corner of the home page. Click the link that reads “Forgot your password? First time logging in? Click this link.” That link will provide instructions on how to obtain your password so that you can log in to the website and update your profile.

THE FLORIDA BAR JOURNAL COMMITTEE REPORT

- * The final published article count for 2013 was 4, appearing in the February, July/August, September/October and December issues of the Journal.
- * The Section has submitted and the Journal has accepted for publication a two-part article on arbitration clauses by author Donald Spero. The articles will appear in the February and March issues of the Journal.
- * I am currently working with author Jennifer Fowler-Hermes who is developing an article on Religious Accommodations. I anticipate receipt of Mrs. Fowler-Hermes' draft article by end of February with expected publication in April or May.
- * As always, I am happy to receive references for authors to work on articles for the summer and fall.

This concludes my report to you and the Executive Committee. Please let me know if you have any questions prior to the meeting.

Respectfully submitted,
Robert Eschenfelder
Section Journal Articles EditorChairman Turk,

In advance of the upcoming Executive Council meeting, please accept this as my committee report for the Bar Journal:

- * The final published article count for 2013 was 4, appearing in the February, July/August, September/October and December issues of the Journal.
- * The Section has submitted and the Journal has accepted for publication a two-part article on arbitration clauses by author Donald Spero. The articles will appear in the February and March issues of the Journal.
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- * As always, I am happy to receive references for authors to work on articles for the summer and fall.

Robert Eschenfelder
Section Journal Articles Editor