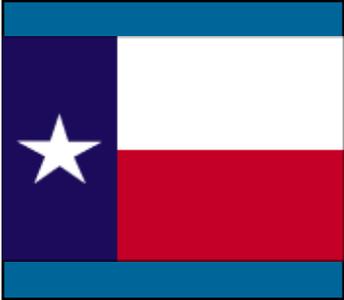


TCMA Lone Star Review



Board Briefs

The August 2009 publication of the TCMA *Lone Star Review* was a delayed in order to provide an update of the Association after the Board of Directors met in Austin, Texas, in early September.

During the first Board Meeting of the new year, President **Mike Arnold**, (*Corpus Christi-Caller Times*) welcomed the newest members who were elected during the March, 2009, conference in San Antonio.

Marti Christiansen, (*Austin American-Statesman*) will serve as the First Vice-President for the upcoming year. Joining her from the *Austin American-Statesman* is Second Vice-President, **Kelly Johnson**. Marti will head up the Carrier of the Year Competition. The Board discussed and approved changes in the competition this year. Kelly will assist Marti and other Board members as she observes how the Association functions.

Our newest Vendor Representative is **Nancy Bacher** (*NIE Solutions*). She will assist **Jeff Hechler** (*Schermerhorn Bros.*) as they plan for the Vendor participation at the annual conference.

The most exciting news is TCMA will hold its annual conference in Austin on April 8-9, 2010. The Board of Directors discussed going to a two-day format with the conference beginning on Thursday at 12:30 pm and concluding on Friday at 1:00 pm. We are working to create an affordable one price conference fee that will include your hotel room, meals, and conference costs. The Omni Southpark-Austin will be the site of the conference. The Omni has extended us the best hotel agreement in the history of TCMA. When you register for the conference, TCMA will reserve your room for you.

With these changes you could expect we had to trim some of the activities. No longer can TCMA depend on a host newspaper so we are "going it alone." Although the program has not been finalized, we expect to have an opening reception honoring the sitting President. The Carrier of the Year Banquet will be held on Thursday evening early enough to leave time for networking or socializing away from the hotel.

In addition, we have initially planned to have two ballrooms together in

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This month's column updates you on the Employee Free Choice Act, reports on a state law imposing card check and reports on an Illinois employee ruling in the unemployment context.

Employee Free Choice Act update

EFCA is still stalled in the United States Senate. The Democrats do not have the votes to cut off the Republican-led filibuster. The death of Senator Edward Kennedy further complicates that. Richard Trumka, considered the heir apparent to the top job at the AFL-CIO, recently cautioned his supporters that he didn't expect any further action on EFCA until "after healthcare." Recently addressing the Las Vegas Chamber of Commerce, Senate Majority Leader Harry Reid commented that he did not see any action on EFCA before the end of 2009. SEIU President Andy Stern says President Obama has promised to press the issue after the Healthcare bill issue is resolved. Organized labor has not given up. Stay tuned.

Hawaii card check at the state level

Overriding the veto of Hawaii Governor Linda Lingle (Republican), the heavily Democratic legislature passed a state law closely resembling the proposed federal law called the Employee Free Choice Act. However, employers who are in interstate commerce and are subject to the jurisdiction of the National Labor Relations Act are not affected.

The card check bill (HB 952) provides that:

SECTION 1. Chapter 377, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows: ..."

Chapter 377 covers employees in Hawaii but HRS Section 377-1(3) specifically excludes from its coverage: "Employee ... shall not include any individual subject to the jurisdiction of ... the National Labor Relations Act, as amended from time to time; provided that the term "employee" includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction.

Media companies are covered by the National Labor Relations Act since they are engaged in interstate commerce and meet the NLRB jurisdictional thresholds.

Further, even without this language, Hawaii's legislation would face a challenge under federal preemption if a union tried to organize a *media company* under the new card check provisions.

Illinois classifies couriers as employees under "business reality" test

In a case involving an assessment for lack of contributions to the Illinois unemployment trust fund, the Illinois Court of Appeals, First Division, held that couriers for a messenger service were

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employees rather than independent contractors for purposes of the Unemployment Insurance Act. Under the “business reality” test, the messenger service failed to demonstrate that its messengers were engaged in an independently established trade, occupation, profession or business.

Under Illinois law, an “independent business” is one where the worker’s business is capable of operation without hindrance from any other individual, and courts are to make a determination on this issue by looking at the “business reality or totality of circumstances.” Here, no evidence was presented that showed the couriers could operate their delivery services without the solicitation of customers by a delivery brokerage service company like the purported employer. The messenger company set delivery prices, made delivery assignments, billed customers, paid drivers, and reserved the right to terminate the relationship with the couriers. Couriers also did not solicit customers on their own. Nor did the couriers make their business available to the general public, maintain business listings in phone directories, report wages of workers they hired, or make payments for common carrier authority in their own name.

It is important to note that the Company tried to argue that its due process rights were violated by the Department of Employment Security when the Department failed to interview a single Company representative during its audit. The court failed to consider this argument because the Company failed to raise this objection in a timely manner. The Company had an obligation to raise specific, detailed objections, and their written objection made no reference to a due process issue. As a result, that omission constituted a forfeiture of the issue for review before the Court of Appeals.

L Michael Zinser is a guest columnist for the *Lone Star Review*.

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order to provide space around the sides for our vendors while having the conference meeting in the middle of the room.

The Board decided it was time to change things up and have everyone in the same room. Our breaks will be around the vendor area as to give our supporting vendors an opportunity to see the attendees without having to go to another meeting room.

We are making a change in the Carrier of the Competition. Many newspapers may not have the funds to create a professional video and therefore would not participate. This year if your submission makes into the finalist category, the Board will accept other forms of media to assist the Board in selecting the winners. Your newspaper may submit a “home made” video, a PowerPoint presentation or digital photos with captions that help explain why your carrier should be selected. There are too many carriers going unrecognized in Texas. With these changes every newspaper in Texas should submit several nominations.

The Board of Directors has not selected change for the sake of change. With the many changes in the newspaper industry in the past several years, the Board of Directors determined it was time to make these program changes in order to keep the Association vibrant.

Our Association will be 100 years old in 2013. We are the oldest Circulation Sectional in the United States. During the last ninety-six years, TCMA has stayed on the cutting edge to keep the Association relevant to the current times. Today, is not any different. TCMA will continue to serve our members, support our vendors and work to be to disseminate the most effective methods to market the daily newspaper.

Pay in 2009

As you plan your budgets for 2010, be sure to include your travel expense for the TCMA Conference in April, 2010.

If you have some remaining travel money or registration fees in your budget this year, use the money to pay for your Conference expenses in 2010.

TCMA will provide you with an invoice for the expected costs of the conference in Austin. If the amount you pay is more than the actual fee in 2010, your newspaper will get a refund. If the actual fee is more than you pay, then you win! You will not pay any more than what you paid in 2009.

Now that's a deal you just can't pass up! If you are interested, contact our Secretary/Treasurer at tcma@texascma.org.

Membership

TCMA By-Laws require the Secretary to mail membership renewal notices each November for the following year.

Be sure to watch for your membership renewal notice in the November 2009, *Lone Star Review*.

Your membership fee enables the Association to provide you a quarterly newsletter as well as supporting the Carrier of the Year Competition.

A special offer will be made to our Vendor members this year to cover membership, a newsletter ad and buyer's guide ad for a one time payment. No more individual invoices for each service—unless you want it that way.

Don't forget! You can renew online and use your credit card to pay for your membership.



Buyers Guide Update

TCMA values the support of our Associate Members (Vendors). Each year we publish a buyer's guide in conjunction with the annual conference.

In 2010, TCMA is proposing an all-digital Buyer's Guide complete with links to your company's web page.

If you have viewed the *Lone Star Review* on the web site, **Blue Toad**, this is how your ad will appear digitally. There is a link on the newsletter web page that will take you directly to the Blue Toad site. Once at this site, the Buyer's Guide will appear in a book format allowing the user to turn the page, print the ad, email the ad, and link to your company's web site. The guide will be available online for three years on the Blue Toad site.

TCMA can reduce the price of a full color print ad from \$525 a page to \$150 a page. Current advertisers who have purchased a black and white ad will now be able to have a full color ad for the same price.

Soon after the conference is over each year, the Buyer's Guide is brought back to the office and gets buried. Monthly email reminders with links to the Buyer's Guide can serve as a reminder to the members to take a look at the online Buyer's Guide. There are many more opportunities to get your company recognized with an online Buyer's Guide.

The Board will consider publishing a limited number of paper copies to be distributed at the Conference but the main guide will be online.

We would like to hear from our Vendors with your comments and questions before we launch this effort with a special pricing promotion in November, 2009. Send your comments to:

buyersguide@texascma.org

Carrier of the Year Competition



COTY Competition Begins Soon!

The 2010 Carrier of the Year applications and instructions will be arriving in your mailbox in a few days. There is also a link on the Carrier of the Year (COTY) page on the TCMA web site.

Included with the applications will be the deadlines for the upcoming competition.

Does your newspaper have an on-going carrier recognition program? The TCMA COTY award program recognizes the best of the best. Each year you have the opportunity to nominate your carriers and/or your district managers/distributors. They are on the front lines every day, in all kinds of weather, delivering newspapers to our subscribers. In some cities carriers are even delivering multiple products. *(See Board Briefs on page one for COTY Competition changes this year.)*

Online Applications

The 2010 Applications are online now. It takes less and a few minutes to complete the application. Just a click sends your application to TCMA! Go to www.texascma.org and then to the Carrier of the Year page.

Check out the videos from 2007, 2008 and 2009 on the web site to view previous winners.

Every newspaper has some deserving carriers needing to be recognized. It is easier than ever to nominate your deserving carriers. Do it today. They will thank you for taking the time to honor them!