

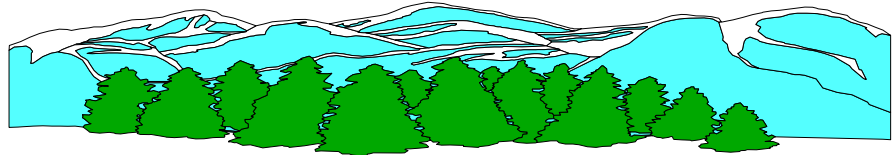
June 7, 2005

# NEW RIVER VALLEY SHRM CHAPTER

AFFILIATE OF



[www.nrvshrm.com](http://www.nrvshrm.com)



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## Greetings From The President

Attracting and retaining top talent is a challenge we each as Human Resources professionals face every day. On Thursday, May 19<sup>th</sup> our chapter heard from Jeanie Adkins with Mercer, she spoke on Total Rewards Systems. Good information was presented on how to reconcile current and future business needs with employee expectations. Amy Forsyth-Stephens also spoke briefly about available resources from the local Mental Health Association.

Steve Zimmerman, Principal with Challenger, Grey and Christmas and past-president of Virginia's State SHRM Council is back by popular demand to speak about Human Resources Career Paths, his presentations are always informative and entertaining. This meeting will be held at Stone's Cafeteria in Christiansburg from 11:30am to 1pm, I hope to see you all at our meeting.

Regards,

Jim Hungate, SPHR, CPC  
Chapter President

## Announcements

### nrvshrm.com JOB DATA BANK

The Chapter now has a new job posting area on the web site. Members may begin placing job postings immediately. The data bank can be found under the "Position Postings" link on the web site. Please use the following guidelines when submitting a posting:

#### **Guidelines to Post Vacancies**

1. All postings should be submitted by e-mail via the website to Kathy Janosko, Web Site Administrator (kathy@ali-inc.com)
2. There is a 30 day posting limit unless notified to remove sooner.
3. We accept HR related postings only.
4. NRV-SHRM is not responsible for editing the job posting. We reserve the right to determine appropriateness. NRV-SHRM does not endorse any advertiser/submission.

**There is no charge to members of NRV-SHRM.**

### ARTICLES FOR SHRM NEWSLETTER

Articles for each month's newsletter are due on the last Tuesday of the previous month. Articles for the July newsletter are due June 28th. They may be sent to the chapter's secretary, Teresa Harless, at [tharless@blacksburg.gov](mailto:tharless@blacksburg.gov). Teresa's telephone number is 540-558-0721.

### CHAPTER FINANCIAL REPORT

Beginning balance as of April 30, 2005	\$7,634.33
Ending balance as of April 30, 2005	\$9,309.29

Visit [nrvshrm.com](http://nrvshrm.com) for a detailed listing of transactions.

### NRV SHRM SALARY SURVEY

The 2005 NRV-SHRM Salary Survey were distributed to participants on April 29, 2005. Nineteen SHRM members participated in this year's survey. Copies of the results are available for \$75 to NRV-SHRM members who did not participate and \$125 for non-SHRM members. We will be conducting interviews and surveys this summer to get member feedback on how to increase participation, get surveys returned on time, and what new information should be added to future surveys. If you have any thoughts on the survey, feel free to pass them on to Mike Aamodt at [maamodt@radford.edu](mailto:maamodt@radford.edu)

## Meeting Notices

### CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on **Tuesday, June 14th** at IHOP in Christiansburg. IHOP is located between Ryan's and Red Lobster in Christiansburg. This meeting is held on the second Tuesday of every month and meets at 7:00 a.m. Contact Bruce Jennings at (540) 674-7461 or [bruce.Jennings@volvo.com](mailto:bruce.Jennings@volvo.com) for more information on the Industrial Meeting.

### BOARD OF DIRECTORS MEETING

The monthly Board meeting will be held on **Tuesday, June 7th** at 5:15 p.m. in the LeClair Ryan Flippin Densmore offices located at 2000 Kraft Drive Suite 1000. Any Board members that cannot attend should contact Teresa Harless at [tharless@blacksburg.gov](mailto:tharless@blacksburg.gov).

## Legislative Update

### Employee's Loud and Boisterous Criticism of Employer Protected Concerted Activity.

By: *Clinton S. Morse, Esq.*

*LeClair Ryan Flippin Densmore, Attorneys at Law*

One of the 10 most common mistakes that employers make is the failure to recognize that employee criticism directed at the employer is often protected concerted activity under the National Labor Relations Act. Section 7 of the Act gives nonsupervisory employees broad "free speech" rights to express their strong disapproval of the terms and conditions of their employment. Even a single employee, when speaking on behalf of co-workers, is protected. And although an employee can express himself so violently, offensively or profanely as to lose the protections of the Act, the exceptions are quite narrow as a recent case from the Fourth Circuit illustrates.

In NLRB v. Air Contact Transport, 2005 U.S. App. LEXIS 5887 (4<sup>th</sup> Cir. April 11, 2005), the Fourth Circuit upheld an NLRB decision finding that in criticizing his employer, the employee was engaged in protected concerted activity under Section 7 of the Act and had not expressed himself so offensively or profanely so as to lose the protections of the Act. In the Air Contact Transport case, the employer sponsored a going-away party for an employee and, at the conclusion of the party, the general manager asked whether any employees had questions on work-related matters. An employee raised his hand and asked a number of questions pertaining to pay and benefits "on behalf [of himself] and other co-workers." The employee began to talk in a "loud" and "boisterous" voice in the course of the ensuing discussion and after the general manager responded to one of his questions, the employee muttered "baloney" to a fellow employee.

The general manager subsequently sent a "counseling" letter to the employee addressing the disrespectful tone of the employee's voice and stating that the employee was "very public in [his] loud voicing of [his] discontent" and that the "challenging, loud, animated and insubordinate tone [was] embarrassing [to the general manager]." The general manager also instructed the employee's immediate supervisor to insure that the employee signed the letter as an acknowledgement of his receipt of the letter and understanding of it.

The employee refused, stating that he did not agree with the general manager's assertion that he had been insubordinate at the party. The president of the company subsequently called the employee at home to discuss why the employee had not signed the letter. The employee continued to argue that he did not agree with the assertions in the letter. The president then informed the employee that if he did not sign the letter, Air Contact would be "cutting ties with him." Whereupon the employee hung up the phone on the president, and the company discharged the employee.

The Fourth Circuit Court of Appeals upheld the NLRB's decision that the employee was engaged in protected activity under the NLRA and therefore could not be disciplined for his comments and actions. The court agreed that the counseling letter reasonably tended to coerce and intimidate employees in the exercise of their Section 7 rights. The employee's conduct was not "unlawful, violent" or "so egregious as to take it outside the protection of the Act or of such a character as to render the employee unfit for further service." "Although the discussion became loud, this alone was not enough to constitute insubordination."

The court also affirmed the Board's determination that the employer could not discharge the employee in this case for refusing to sign the company's illegal counseling letter. "An employer cannot provoke an employee to the point where [he] commits... an indiscretion...and then rely on this [indiscretion] to terminate [his] employment."

The practice point to remember is that the individual griping, complaining or insubordinate conduct of a single employee is not protected conduct. However, whenever an employee purports to be speaking for co-workers or expresses himself in a group setting, companies must be mindful not to discipline such employee for the content of the speech even if expressed in a seemingly disrespectful manner.

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This article and others written by attorneys in the firm appeared in the *Virginia Employment Law Letter*. For more information, go to [www.hrhero.com](http://www.hrhero.com)

Clinton Morse can be reached via email at [clinton.morse@leclairryan.com](mailto:clinton.morse@leclairryan.com) or via phone at 540-510-3023

### 2005 Calendar of Events & Annual Meeting Schedule

DATE	SPEAKER	TOPIC
January 20, 2005	Dr. Richard Wilson—Ability Physical Medicine & Rehabilitation	Preventing Workplace Injuries
February 17, 2005	Legislative Update—DOL Regulations on Employment Based Permanent Resident Applications	Jeff VanDoren of LeClair, Ryan, Flippin & Densmore
March 17, 2005	Darrin Wagon with Cailion Behavioral Health	EAP/Mental Health—The Battle Between HIPPA and ER Liability
April 21, 2005	Bobbie Raynes, MS—Director of Training Development for Personnel Research Associates	Conflict Resolution—Preventing Workplace Conflict Before It Gets to Mediation
May 19, 2005	Mercer HR Consulting	Total Reward Systems
June 16, 2005*	Steve Zimmerman	HR Career Paths
July 21, 2005	Marsh USA	Employee Wellness vs. Disease Management—The Bigger Bang
August 18, 2005	Social Security Administration	Social Security—Then & Now
September 15, 2005	Paula Wilder	Executive Coaching & Counseling
October 20, 2005	TBD	Diversity & Inclusion
November 17, 2005	Jack Smalley	Effective Recruiting & Retention Practices—Love Tehm or Lose Them
December 2005	Holiday Social	

\*The June 16th meeting will be held at Stone’s Cafeteria in Christiansburg at  
11:30 a.m. until 1:00 p.m.

All NRV-SHRM Breakfast Meetings will be held at the Hampton Inn, Christiansburg at 7:30 a.m. unless otherwise noted

PLEASE BE SURE TO REPLY TO THIS E-MAIL FROM TERESA HARLESS ([tharless@blacksburg.gov](mailto:tharless@blacksburg.gov)) BY TUESDAY, June 14<sup>TH</sup> IF YOU ARE PLANNING TO ATTEND THE MAY MEETING. PLEASE INDICATE IF YOU WILL BE BRINGING ANY GUESTS. IT IS IMPORTANT THAT WE GET AN ACCURATE COUNT OF PEOPLE SO THAT FOOD AND HANDOUTS CAN BE PREPARED ACCORDINGLY. THANK YOU