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IWS briefing, Winter 2007 Volume 7 Issue 1

Abstract

[Excerpt] A newsletter on workplace issues and research from the School of Industrial and Labor Relations at Cornell University.

Keywords

ILR, Institute for Workplace Studies, IWS, labor, market, employee, managers, Bacharach, management, collective bargaining, Esta Bigler, Paul Salvatore, Lipsky, Scanza, ADR, alternative dispute resolution

Comments

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ILR Launches New Program for Lawyers

There's no lack of legal issues confronting today's workplace. Wage violations, discrimination, collective bargaining rights, employee litigation, government regulation, and labor and employment laws are a few that readily come to mind. Dealing with the applied and theoretical impact of these matters, however, requires serious deliberation. So ILR Extension's new Labor and Employment Law Program has a plan.

"We want to bring together researchers, lawyers, policymakers, legislators, employers, and labor leaders to debate and evaluate the critical legal issues facing the workplace," says Esta Bigler (ILR'70), the program director. Indeed, Ms. Bigler's long-term goal is the creation of a labor and employment law think tank at ILR. In the meantime, she and six ILR Extension colleagues are carefully building the foundation that will secure ILR's role as a leader in this field.

An evolving partnership between ILR and Cornell Law School is a critical first step. That collaboration has already spawned an agreement to jointly undertake research and educational activities related to conflict resolution (see "ADR Partnership," page 3). It has also resulted in an educational outreach effort aimed at labor and employment lawyers, which is named the Cornerstone Workshop Series for Lawyers. This fall marked the introduction of a four-course program that focuses on key areas of labor and employment law, including the National Labor Relations Act, em-

continued on page 2

Conflict and Collaboration Define Professor's Agenda

IF CONFLICT GETS YOU GOING in the morning, consider the life ILR Professor David Lipsky leads. As the Anne Evans Estabrook Professor of Dispute Resolution, director of the Institute on Conflict Resolution (ICR), an authority on negotiations and collective bargaining, an expert witness in labor arbitrations, a designer and evaluator of conflict resolution systems, an active researcher of conflict-related topics and a veteran teacher of same, Prof. Lipsky is enmeshed in some aspect of conflict throughout most of his working day.

But being the well-versed student of conflict that he is, Prof. Lipsky also knows a thing or two about preventing conflict. One technique that consistently produces results for this graduate of ILR (B.S.'61) and its former dean (1988-1997) requires working collaboratively with others toward a mutually desired or beneficial outcome. It is an approach that suits a variety of situations and venues, including the workplace. "People in an employment relationship often focus on their differences and may not realize they have common interests," Prof. Lipsky says. "In our programs we try to teach people how to identify their common goals and interests instead of focusing on their differences. It's easier to improve relationships if you stress the positives and downplay the negatives."

The ICR may be the prime institutional example of Prof. Lipsky's ability to blend his research interests with his practical inclinations. As his understanding of workplace conflict broadened and deepened during the mid-1990s, Prof. Lipsky was fortunate to obtain the generous support of veteran arbitrator Theodore Kheel in establishing the ICR. Today, the institute draws on the collective expertise of ILR faculty and students to offer training, education, research, consulting, and neutral/third party services that center on the management and resolution of conflict in the workplace. The ICR's expertise in workplace dispute resolution makes it unique among the 40 or so conflict resolution programs based at universities and law schools in the United States.

Prof. Lipsky has since pulled together numerous conflict-related research and programmatic partnerships. Associate Dean Ronald Seeber and Senior Extension Associate Rocco Scanza are frequent collaborators; graduate students and other faculty colleagues often round out the project teams. To cite two examples: Prof. Lipsky and Mr. Scanza,

continued on page 3

IN THIS ISSUE

- 1 Professor's Agenda
- 1 New Law Program
- 2 Studying Leadership
- 3 ADR Partnership
- 4 Colloquium Series

A newsletter on workplace issues and research from the School of Industrial and Labor Relations at Cornell University



Students Study Leadership with a Leader

LEADERSHIP COMES NATURALLY to some people. Take George Washington, for example. A surveyor, landowner, businessman, and farmer, this multi-talented individual was also a skillful military commander and an astute politician. He led the American forces during the Revolutionary War, was unanimously elected first president of the United States, established the operational foundations for our system of government, and graciously retired to Mount Vernon rather than seek re-election to a third term.

The characteristics that set him apart from his peers and assured him near mythological status in American history are no doubt the stuff of great leaders. But giving name to those qualities and distilling their essence can be a daunting task. Still, it is one that alumnus Paul Salvatore (ILR'81, Law'84) was willing to undertake in his role as guest lecturer for Prof. Samuel Bacharach's course on political leadership and managerial competence, a requirement for the 11 ILR students who held internships in New York City this past semester.

Having read Joseph Ellis's 2004 biography of Washington (*His Excellency: George Washington*, published by Alfred A. Knopf), Mr. Salvatore was struck by the leadership skills Washington displayed throughout his military career. "First, he was able to take a little (in terms of resources) and make a lot out of it," Mr. Salvatore explains. "Second, he knew when to retreat." Washington was a master at cajoling and begging both government and private citizens to obtain what was needed to wage a credible fight against the British, who boasted the strongest army in the world. Although Washington lost more battles than he won, Mr. Salvatore continues, he held the American "team" together until forming a "joint venture" with the French that eventually enabled him to rout the British at Yorktown and secure the colonies' independence.

The Ellis book was required reading for the students. Through written assign-

ments and class discussions with Mr. Salvatore, a labor and employment law partner at Proskauer Rose LLP, they derived a list of attributes that described Washington's leadership style and personality traits. Highlights from that inventory range from his ability to find and shape undiscovered raw talent to his awesome physical presence. "What struck me," Mr. Salvatore notes, "is that Washington was someone who was able to instill in people around him an amount of loyalty and trust — and at some levels, reverence — that we rarely see in leaders today. Contemporary accounts are just remarkable; he had certain characteristics that led individuals to want to follow him."

Just how these insights can be applied to the modern workplace is a topic the students also grappled with. "In the past we've studied Lincoln, Roosevelt, Truman, and Johnson," Prof. Bacharach says. "With the students out in the field as interns, this is a great opportunity to get involved with the practice of leadership in different work settings." The students also benefited from the experience of one other guest lecturer — Ed Watt, secretary-treasurer of Transport Workers Union Local 100 in New York City — who talked about leadership under strike conditions during the union's walkout in late 2005.

The students might even have taken some leadership cues from Mr. Salvatore, himself. An unstinting supporter and friend of ILR, he was president of the alumni association for four years in the 1990s and most recently chaired the school's advisory council. He has also taught labor and employment law topics as an adjunct lecturer in ILR Extension programs in New York City. "Cornell ILR has produced many great leaders and George Washington promoted the idea of creating institutions to train leaders," Mr. Salvatore says. "I think he'd like ILR, on several different levels." ■

New Program

continued from page 1

ployment discrimination, wage and hour law, and arbitration advocacy. Additional workshop series will be added shortly, including one on discrimination law. Ms. Bigler says the classes are intensive and interactive, appropriate for new and experienced lawyers, and provide skills training alongside discussions of the ethical, historical, and economic contexts surrounding the law and its enforcement. Each course offers continuing legal education (CLE) credits; stand-alone CLE workshops are also scheduled.

Policy forums, seminars, and conferences are another component of the Labor and Employment Law Program's emerging structure. A recent session in New York City dealing with the health care cost quagmire attracted legislators, health care advocates, union leaders, and foundation representatives. Policy experts from Maryland first presented an overview of legislation that would have required large employers to shoulder a greater share of employees' health care costs. They then explained a recent district court decision, now on appeal, that ruled the Maryland statute was preempted by the federal Employee Retirement Income and Security Act (ERISA). Ms. Bigler notes that lawmakers in Albany have also been grappling with legislative proposals that would shift more health care costs onto employers who provide minimal or no medical insurance to employees. The legislators' intent is to create some equity in a system that generates its share of unintended consequences by penalizing employers who do the right thing (a decent health insurance package is costly to businesses) and by burdening taxpayers who wind up subsidizing the medical bills of the uninsured.

The concerted focus on labor and employment law and policy is a natural fit for ILR Extension. With Extension's long-standing practical expertise in this field and its connections to workplace practitioners, including hundreds of ILR alumni who have become labor and employment lawyers, this new unit is perfectly positioned to achieve its strategic goals.

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Professor's Agenda

continued from page 1

who directs **ILR** Extension's conflict resolution program, have helped the U. S. Nuclear Regulatory Commission design, administer, and evaluate a dispute resolution system involving whistle-blowers in the industry. Additionally, Prof. Lipsky, Mr. Scanza, and Ph.D. candidate Ariel Avgar recently completed an evaluation of the internal dispute resolution program for employees at the U.S. Equal Employment Opportunity Commission.

Two related assumptions inform Prof. Lipsky's theoretical and applied work.

First, conflict is a commonplace reality within organizations, one that erupts between

conflict is commonplace within organizations

individuals or groups and can sabotage organizational and individual goals. Second, conflict can be managed through processes that advance the constructive resolution of the underlying problem. The processes themselves vary in the details but can be collectively described as forms of alternative dispute resolution (ADR). ADR is nonjudicial and undertaken by private parties in a private setting. The most common forms of ADR include negotiation, where the parties engage in give-and-take until reaching agreement; arbitration, where a neutral third party decides the outcome; mediation, where the parties jointly determine the outcome with a third party helping to move the discussion along; and facilitation, where a neutral actively guides the parties toward an outcome. And then there is straightforward collaboration, which entails working jointly with others — not truly an ADR process, but rather a mode of interacting that enables two or more people to get the job done without disruptive conflict.

"Cornell ADR" is another example of an ICR-affiliated venture that was forged through collaboration. A series of discussions among **ILR** faculty — Prof. Lipsky, Mr. Scanza, Prof. James Gross, and deans Seeber, Harry Katz,

and Susanne Bruyère — resulted in a decision to move ICR directly into the labor arbitration business. The institute has long maintained a roster of neutral third parties available for mediations and arbitrations; with Cornell ADR, the institute is now a full-service provider offering upstate employers and unions engaged in contract disputes a vetted list of arbitrators, a set of rules, access to hearing rooms, and administrative support. Prof. Lipsky expects the case load will grow slowly, largely because Cornell ADR must first be written into existing collective bargaining agreements as the accepted arbitration service. Still, he is confident Cornell ADR will fill the void left by the closing of the

American Arbitration Association's Syracuse office in 2005.

Prof. Lipsky's activist bent is matched by similarly collaborative conflict-focused scholarly pursuits. Over the years he has written or co-authored numerous papers and books on conflict management systems, workplace dispute resolution, and the arbitration profession. Just now he is beginning a project, with Associate Dean Seeber, Mr. Scanza, and Mr. Avgar as partners, on the politics of the ADR evaluation process. Extensive experience with organizations that have instituted dispute resolution systems has suggested to Prof. Lipsky and his colleagues that managers often say they want unbiased and data-driven assess-

ments of the programs but balk when the conclusions don't meet their expectations. "There's a lot of literature on evaluating social and educational programs," Prof. Lipsky says, "but no one is really thinking about how to evaluate dispute resolution programs in an honest, balanced way."

A trove of data on employment arbitration cases arising under the National Association of Securities Dealers (NASD), the private-sector provider of financial regulatory services, also awaits analysis. But not for long. Prof. Lipsky, Associate Dean Seeber, and **ILR** statistics professor Martin Wells recently obtained information on the 3,000 employment arbitration cases heard since 1993, when the NASD adapted the arbitration process used for broker-client disputes to handle employee complaints about workplace issues. The researchers are interested in the classic questions about bias and effectiveness in arbitration: Does arbitration provide a level playing field for the disputants? Do litigation and arbitration result in different outcomes? What determines the outcome? Does arbitration offer the same quality of justice as litigation?

Other research and program initiatives are in the formative stages. Prof. Lipsky has no shortage of ideas, and his network of professional contacts ranges far and wide. He is certainly proving that conflict and collaboration can be a winning combination. ■

ILR and Law School Form ADR Partnership

DISPUTE RESOLUTION LIES AT THE CORE of a new partnership between the **ILR** School and the Cornell Law School. Following discussions among the two schools' deans, Harry Katz and Stewart Schwab, and key faculty, an agreement was reached in early 2006 that has already produced a joint research, education, and training initiative centered on ADR. **ILR** brings its expertise on workplace matters to the new arrangement while the Law School contributes its knowledge of all forms of legal conflict. Students and faculty from both colleges will benefit through greater access to projects and courses. The two schools also expect that collaborative programming will attract lawyers who want to hone their ADR skills and deepen their understanding of dispute resolution. A certificate program in workplace ADR is now being offered; next fall will mark the introduction of a certificate program in commercial and international ADR. ■

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Alumni Speak at Workplace Colloquium Series

THE INSTITUTE FOR WORKPLACE STUDIES (IWS) takes its outreach mission seriously. From its base in New York City, the institute serves as a link between the academy and the community. A prime example of its ability to bring together academics, labor and management representatives, and policymakers is the annual **IWS** Workplace Colloquium Series.

This year the **IWS** is sponsoring three colloquia, each showcasing ILR alumni. The first, scheduled for February 15, features Douglas Braunstein (ILR'83), head of Americas Investment Banking at JPMorganChase, who will talk about the employment impact of mergers and acquisitions. On March 22, Joseph Rich (ILR'86), president of Pearl Meyer and Partners, will address the issue of executive and management compensation. And finally,

a panel comprised of three alumni, one of whom is an **ILR** faculty member, will speak on May 31 about alternative dispute resolution in the workplace. The panelists will be Jay Waks (ILR'68, Law'71), a litigation partner and chair of the employment and labor law practice at Kaye Scholer LLP; Martin Scheinman (B.S.ILR'75, M.S.ILR'76), an arbitrator and mediator of workplace disputes; and David Lipsky (B.S.ILR'61), the Anne E. Estabrook Professor of Dispute Resolution and director of the Institute on Conflict Resolution (see story about Prof. Lipsky on page 1).

Each session is held in the evening and includes dinner and roundtable discussion. For more information or to make a reservation, contact Katie Briggs at kb41@cornell.edu or (212)340-7931. ■

GOTO

www.ilr.cornell.edu/iws for updates about Institute for Workplace Studies events.