

Cornell Roundtable Joins Labor with Management

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Discussion Focuses on Law's Effects on Union Organizing

The prospects for labor and management to establish a rational approach to union organizing drew representatives of both groups to the seventh annual Labor and Employment Law Roundtable, held in May 2008 at the Cornell University School of Hotel Administration. This is the first year that the roundtable has included participants with ties to organized labor. In addition to the session on labor organizing, the roundtable examined how employers can work with the Equal Employment Opportunity Commission (EEOC) and the pitfalls inherent in wage-hour laws.

The roundtable session on union organizing examined the newly minted "Ethical Code of Conduct in Union Organizing for Management and Labor." Joining this roundtable session were Rick Hurd, a professor at the Cornell ILR School, and Richard Bensinger, the former organizing director of the AFL-CIO and the founder of the Organizing Institute. Developed by union and management representatives to remedy what both sides see as potential flaws in current practice, this code calls for a campaign by both labor and management, followed by an election in which employees decide whether to organize. Among its provisions, the code establishes new rules that require, among other things, access for union, no promises by the union, and honesty from both sides. (For a full description of the code see: www.employeechoice.org.)

This discussion, which also featured Dean Stewart Schwab (Cornell Law School) and Dean Harry Katz (Cornell's ILR School), broke new ground as union and management representatives combined with leading academics to debate a "fair" way to deal with union organizing. The management lawyers were intrigued by the idea, but still saw potential pitfalls. Joe Baumgarten of Proskauer Rose, for instance, stated that he was leery of a system that did not include a dispute resolution mechanism.

Working with EEOC: Pain and Pleasure

In the second session, Gregg Gilman, of Davis and Gilbert, and David Sherwyn, professor at Cornell, presented their research on management's responses to discrimination claims from the EEOC. They suggested a 'bi-modal' distribution of reactions. When they are presented with a discrimination charge, corporate counsel will take the charge seriously if they believe the EEOC might initiate litigation on the claim. However, if management and counsel determine that EEOC is not inclined to litigate, the company often sends a perfunctory response to the claim, and then waits to see whether the EEOC would resolve the charge through mediation or whether the claimant retained a lawyer. In any case, participants expressed a common concern that EEOC litigation is on the rise in some areas.

Running Afoul of Wage-Hour Laws

Carolyn Richmond, of Fox Rothschild, and Paul Wagner, of Shea Stokes Roberts & Wagner, led a discussion in which employers reported the horrors of compliance with wage-hour laws and how unintended violations of unclear technical points could turn into lawsuits that threatened a company's viability. As explained by Martha Lomanno, a 2008 graduate of the School of Hotel Administration, her preliminary state-by-state analysis of wage and hour laws demonstrates the complexities facing employers. The roundtable closed with a discussion of the vicissitudes of immigration law, led by Stephen Yale-Loehr of Miller Mayer, LLP. A chief problem identified by participants is the difficulty of getting visas for lawful workers and ensuring that all members of their work force are legally in this country.

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