ABA COMMITTEE ON DEVELOPMENT OF THE LAW
UNDER THE NATIONAL LABOR RELATIONS ACT
2020 MIDWINTER MEETING
SAN JUAN, PUERTO RICO
MARCH 1-4, 2020

Program Agenda:
Tides of Change

SUNDAY, MARCH 1

3:00 p.m. – 5:00 p.m. Registration

3:30 p.m. – 5:00 p.m. Civility in the Practice of Labor Law, Eh?
Lessons from our Friendly Canadian Neighbors
Panelists will address civility in the practice of labor law in the United States pursuant to Model Rules 1.4, 3.4 and 4.1. The speakers also will discuss civility rules governing some of Canada’s labor laws and explore whether ethical civility rules should be expanded in the United States. Attorneys attending the presentation will learn the current ethics requirements that address civility and how that applies to the contentious practice of labor law.

 Speakers: Clifford J. Hart, Borden Ladner Gervais, LLP, Toronto, ON
Lisa Pau, Laborers’ International Union of North America (LiUNA!), Washington, DC

6:00 p.m. – 6:30 p.m. First-time Attendee Reception

6:30 p.m. – 8:00 p.m. Welcome Reception at El San Juan Hotel

MONDAY, MARCH 2

7:00 a.m. – 8:00 a.m. Continental Breakfast

8:00 a.m. – 8:30 a.m. Welcome, Committee Announcements and Introductions

8:30 a.m. – 9:45 a.m. One Step Forward or Two Steps Back?
The NLRB’s Latest Rulemaking Related to its R Case Procedures
Over the past few years, the NLRB has proposed to change, and has changed, rules regarding representation case procedures, including changes to the 2014 R Case rules, blocking charge standards, and voluntary recognition. Attorneys attending the presentation will learn about what these significant changes to the R Case procedures are, as well as their anticipated affects while re presentsing unions and employers.

 Speakers: Allyson L. Belovin, Levy Ratner, P.C., New York, NY
W. Jonathan Martin II, Costangy Brooks Smith & Prophete LLP, Macon, GA

9:00 a.m. – 10:30 a.m. Spouse/Guest Breakfast

9:45 a.m. – 10:00 a.m. Break
10:00 a.m. – 11:15 a.m.  
*Having an Identity Crisis: A Discussion of the NLRB’s Misclassification and Independent Contractor Decisions in *Velox Express* and *SuperShuttle*

In 2019, the NLRB ruled that an employer’s misclassification of employees as independent contractors does not violate Section 8(a)(1) of the NLRA (*Velox*), and it overruled *FedEx Home Delivery* (2014) when it held in *SuperShuttle DFW, Inc.* that franchisees who operate ride-share vans for SuperShuttle are independent contractors. The speakers will address how these significant changes will affect the workplace and labor law.

**Speakers:**  
Kwan Park, *Morrison & Foerster LLP*, San Francisco, CA  
Mark Gaston Pearce, *Georgetown Workers’ Rights Institute*, Washington, DC

11:15 a.m. – 12:30 p.m.  
*Get Off My Lawn! The Changing Nature of Employer’s Property Rights Under Tobin Center, UPMC Presbyterian Shadyside and Kroger Limited Partnership*

From its decisions in *Kroger Limited Partnership* and *UPMC* regarding non-employee union organizers’ access to employer’s property, to its decision in *Tobin Center* regarding access by off-duty employees of an onsite contractor, the NLRB has overruled precedent and significantly altered the law regarding access to employer’s property. The speakers will address the impact of these changes on unions, employees and employers.

**Speakers:**  
Pamela Chandran, *United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME*, Los Angeles, CA  
Rebekah Ramirez, *Faegre Baker Daniels LLP*, Indianapolis, IN

6:00 p.m. – 7:00 p.m.  
Speakers and Editors Reception (*invitation only*)

7:00 p.m. – 11:30 p.m.  
Bio-Bay Kayaking at Las Cabezas de San Juan Nature Reserve (*optional ticketed event*)

**TUESDAY, MARCH 3**

7:00 a.m. – 8:00 a.m.  
Continental Breakfast

7:00 a.m. – 8:00 a.m.  
Women’s Breakfast

8:00 a.m. – 9:15 a.m.  
*Judging a Book by its Cover(age): Bargaining and Litigation Strategies after MV Transportation, Inc., Merck and Pittsburgh Post-Gazette*

The NLRB dramatically shifted its approaches to interpreting collective bargaining agreements in 2019, including as to unilateral employer changes under a management rights clause (*MV Transportation* and *Pittsburgh Post-Gazette*), and disparate treatment of represented and non-represented employees (*Merck*). The speakers will explore what this new line of precedent says about collective bargaining and NLRB litigation strategies in 2020 and beyond.

**Speakers:**  
Clement Tsao, *Branstetter, Stranch & Jennings, PLLC*, Cincinnati, OH
9:15 a.m. – 10:15 a.m.  **Enforcement Litigation Review**
Deputy Associate General Counsels will examine significant cases involving Board authority, appellate jurisdiction and judicial review of Board cases, employee status under the Act, representation proceedings and employer unfair labor practices.

**Speakers:**  Ruth Burdick, *National Labor Relations Board, Washington, DC*
Meredith Jason, *National Labor Relations Board, Washington, DC*

10:00 a.m. – 10:15 a.m.  **Break**

10:15 a.m. – 11:15 a.m.  **“C” Case Review**
The Associate General Counsel – Division of Advice will discuss significant ULP cases decided by the Board in 2019.

**Speaker:**  Richard A. Bock, *Associate General Counsel – Division of Advice, National Labor Relations Board, Washington, DC*

11:15 a.m. – 12:30 p.m.  **What Comes Next? The Duty to Bargain After Johnson Controls, Ridgewood Health and GVS Properties**
Once a union obtains the right to bargain on behalf employees, that right does not necessarily continue indefinitely and uninterrupted. Anticipatory withdrawal of union recognition when the agreement is due to expire (*Johnson Controls*) and the purchase of a unionized plant by a new employer (*Ridgewood Health, GVS Properties*) both provide opportunity for an employer to implement new terms and conditions of employment—under certain circumstances. The speakers will discuss those circumstances in detail, and the applicable standards for permissible unilateral changes, and whether the NLRB current positions on these matters is sound labor policy.

**Speakers:**  Lori Armstrong Halber, *Reed Smith LLP, Philadelphia, PA*
Adrian Healy, *International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (I.A.T.S.E.), New York, NY*

12:30 p.m. – 12:45 p.m.  **Committee and Section Business Meeting**

1:00 p.m. – 6:00 p.m.  **Golf Tournament**

**WEDNESDAY, MARCH 4**

7:00 a.m. – 8:00 a.m.  **Continental Breakfast**

7:00 a.m. – 8:00 a.m.  **Diversity and Inclusion Breakfast**

8:00 a.m. – 9:15 a.m.  **Is Emily Post Now Required Reading on the Shop Floor? Protected Concerted Activity After Alstate Maintenance, Greyhound Bus, Quicken and Electrolux**
In the past year, the NLRB has thoroughly examined and re-drawn the line separating personal complaint or “mere gripe,” from statements made on behalf of employees within a bargaining unit constituting protected activity
under the NLRA. The speakers will address these changes, and how both unions and employers should now judge employee action.

Antonia Domingo, United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW), Pittsburgh, PA

9:15 a.m. – 10:30 a.m. Update from the Office of the General Counsel: 2019 Enforcement Developments and 2020 Planned Initiatives
The General Counsel will provide a review of enforcement developments in the past year and an outlook on initiatives planned for 2020.

Speakers: Hon. Peter B. Robb, General Counsel, National Labor Relations Board, Washington, DC
Alice B. Stock, Deputy General Counsel, National Labor Relations Board, Washington, DC

10:30 a.m. – 10:45 a.m. Break

10:45 a.m. – 11:45 a.m. “R” Case Review: Discussion of Recent Issues Arising in Bargaining Unit Elections under Section 9 of the Act
Terence Schoone-Jongen will lead a discussion of recent issues arising in bargaining unit elections under Section 9 of the National Labor Relations Act.

Speaker: Terence Schoone-Jongen, National Labor Relations Board, Washington, DC

11:45 a.m. – 1:00 p.m. A Conversation with the National Labor Relations Board
The Board Chairman and Members will discuss significant NLRB decisions and initiatives from 2019.

Speakers: Hon. John F. Ring, Chairman
Hon. William J. Emanuel, Member
Hon. Marvin E. Kaplan, Member
National Labor Relations Board, Washington, DC

7:00 p.m. – 10:00 p.m. Reception and Dinner

The ABA will seek 14.5 hours of CLE credit in 60-minute states and 17.4 hours of CLE credit for this program in 50-minute states including 1.5 hours of ethics credit in 60-minute states and 1.8 hours of ethics CLE credit in 50-minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Visit www.americanbar.org/mcle for general information on CLE at the ABA.

Visit the Section of Labor & Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities.

For registration fees over $500, qualifying attorneys could receive at least a 50% reduction in the course fee. This does not include any reduction in meals, lodging or travel costs associated with the course. Send requests to laborempllaw@americanbar.org.