The Editors' Page

This is the last issue that the University of Minnesota Law School faculty and students will edit. We have been privileged to be the *Journal*'s editorial home for the past nine years. Our law school's rich labor and employment curriculum enabled our students to contribute knowledge and precision to their *Journal* work. The *Journal*, in turn, provided unique educational opportunities as students wrote Notes on cutting-edge issues and learned about the law from the best lawyers in the field, our *Journal* authors. For us as professors, this opportunity to collaborate so closely with students in this endeavor has been immeasurably rewarding.

We have many to thank. First, we want to thank Professor Robert J. Rabin of Syracuse University College of Law, the *Journal*'s founding Editor, who helped us hit the ground running in 2009. We appreciate the considerable support we received from the ABA and the Section of Labor and Employment Law. Special thanks go to the Section members who served on our Editorial Board and to its Chairs W.V. Bernie Siebert, Robert M. Dohrmann, and Ellen C. Kearns. We also thank the more than 250 authors who generously shared their expertise with our readers. We are most grateful for the more than eighty students who have been *Journal* editors and staff members, and especially for the leadership and hard work of our nine student Editors-in-Chief.

The good news is that the *Journal* is moving to an excellent home at the Saint Louis University School of Law. SLU, as it is known colloquially, has an exceptionally strong labor and employment law curriculum, capped by the Wefel Center for Employment Law. Most significantly, the *Journal* will be edited by three Faculty Co-Editors who bring a rich diversity of skills and experience.

Matt Bodie joined the SLU faculty in 2007 after serving as an attorney at the National Labor Relations Board. He teaches Employment Law, Labor Law, and Employee Benefits, and is Director of the Human Resources Law Program. His principal scholarly focus is on the role of the worker within the firm, particularly on employee rights and corporate governance. He also studies employee privacy issues.

Marcia L. McCormick began teaching at SLU in 2009 after practicing international human rights law and handling civil appellate matters for the State of Illinois. She teaches Employment Discrimination, Labor Law, and International and Comparative Employment Law. Professor McCormick is also a busy administrator, serving as Associate Dean for Academic Affairs and Director of the Wefel Center. Her research primarily focuses on the law and social policy of the workplace and civil rights enforcement.

Miriam A. Cherry joined the SLU faculty in 2010 after practicing corporate law and litigation. She teaches Employment Law and seminars in Virtual Work and on Big Data and People Analytics. Her research interests include the intersection of employment law and new technologies, especially as viewed through a global lens. She is a recognized authority on legal issues of work in the gig economy.

We are saddened that our retirements from law teaching have made necessary the end of our partnership with the ABA Section of Labor and Employment Law. We are sincerely grateful for the many opportunities that partnership afforded. We know that the *Journal* will be in good hands going forward.

The articles in this issue, summarized below, reflect what has been our mission for the past nine years. We have wanted to present articles that identify critical current legal problems and offer practical guidance to labor and employment attorneys, as well as articles raising thoughtful questions about legal policy for practitioners to ponder.

Could lawyers and law firms broaden their client base by adopting a new practice strategy that would have the added social benefit of expanding access to justice for otherwise unrepresented employees and employers? That's the thesis of **Consent, Clarity, and Candor: The Ethics of Communication in Limited-Scope Representation** by Pamela Cardullo Ortiz, Director of the Maryland Courts' Access to Justice Department. Ortiz's article addresses the beneficial potential of limited-scope client representation, while identifying its ethical risks and articulating best practices for communicating with clients, unrepresented opposing parties, opposing attorneys, and courts when engaging in task-limited legal representation.

Creating workplace affinity groups seems like a great idea for employers to promote workplace diversity and inclusion, and enhance employee recruitment. What could possibly go wrong? Well plenty, as explained in **Legal Traps Associated with Affinity Groups** by Anne-Marie Vercruysse Welch and Emory D. Moore, Jr., both management attorneys, writing with two attorneys who represent employees, Jennifer Kroll and Heidi Sharp. The authors identify, and offer guidance for avoiding, the varied and sometimes surprising ways in which creation of affinity groups can give rise to employer liability under diverse legal regimes including anti-discrimination laws, the National Labor Relations Act (NLRA) (for private sector companies), and the U.S. Constitution (for public sector employers).

A company learns that an employee on a picket line used racist or other offensive language toward strike replacements who are members of a protected class under Title VII. If the company fires the worker, it might be violating the NLRA's protection for employees engaged in concerted activity for mutual aid and protection. On the other hand, if it doesn't discipline the employee, the company might be responsible for

creating a hostile work environment, violating Title VII. Two essays, one from the perspective of an attorney representing unions, and the other from management-side attorneys, identify the circumstances that raise conflicts between the NLRA and various state and federal laws. They note the limited administrative agency guidance to attorneys about how to handle such conflicts and offer practical ideas for navigating them in the face of uncertain law. Manuel Quinto-Pozos presents **The Tension Between the NLRA, the EEOC, and Other Federal and State Employment Laws: The Union Perspective**. Ryan H. Vann and Melissa A. Logan offer **The Tension Between the NLRA, the EEOC, and Other Federal and State Employment Laws: The Management Perspective**.

Annually, the ABA Section of Labor and Employment Law and The College of Labor and Employment Lawyers conduct the National Law Student Writing Competition. In 2017, the first-prize-winning essay, **Protecting the Loyal Hard Worker: The Need for a Fair Analysis of Venue Clauses in ERISA Plans**, was written by Michelle Streifthau-Livizos, a 2018 Drexel University law graduate. She describes Supreme Court precedent from other contexts that affords forum-selection clauses presumptive enforceability and argues why it should be inapplicable to venue clauses in ERISA plans in light of ERISA's statutory language and purpose, as well as the particular circumstances of lawsuits brought by retirement plan participants.

The National Labor Relations Board (NLRB) has long struggled for a consistent policy for determining when it should defer to an arbitration award when facts giving rise to an unfair labor practice charge were earlier the subject of arbitration. While much has been written about the NLRB's ever-changing approaches to arbitral deferral, little attention has been paid to the parallel issue of deferral under state collective bargaining laws that govern public sector employers and unions. In **Post-Arbitration Deferral of Unfair Labor Practices in the Public Sector: An Examination of State Approaches**, Lauren N. Zenk, a 2018 graduate of the University of Minnesota Law School, and a Managing Editor of the *ABA Journal of Labor & Employment Law*, systematically collects, classifies, and analyzes state public sector deferral decisions and calls for states to re-evaluate whether their deferral policies truly reflect their state interests.

Professor Stephen F. Befort
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