St. John's Law Review

Volume 86
Number 2 *Volume 86, Spring-Summer 2012, Numbers 2-3*

Article 1

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WORLDS OF WORK SYMPOSIUM INTRODUCTION

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On July 20–22, 2011, the St. John's University School of Law's Center for Labor and Employment Law and The Hugh L. Carey Center for Dispute Resolution combined to sponsor and host *Worlds of Work: Employment Dispute Resolution Systems Across the Globe*, a landmark international conference held at Fitzwilliam College, University of Cambridge. Building on St. John's very successful 2006 conference *Transnational Perspectives on ADR*, held at the University of London's Queen Mary College,[1] this event brought together a world-class group of scholars and practitioners from the fields of labor law and ADR to exchange ideas on a range of topics, including differences among countries in the handling of workplace disputes, employment discrimination law in a transnational context, and the cultural, religious, and ethical dimensions of workplace conflict. In this special symposium issue, the *St. John's Law Review* proudly presents a representative selection of the outstanding scholarship on display at the conference.

Theodore J. St. Antoine, Dean Emeritus and James E. and Sarah A. Degan Professor Emeritus of Law at the University of Michigan Law School and Past President of the National Academy of Arbitrators, delivered the Conference keynote address. His Article *The Moral Dimension of Employment Dispute Resolution* sets out many of the themes that run through the conference scholarship. By elucidating concerns for the inherent dignity and worth of every human being in relation to employment, employment disputes, and labor law, the Article reminds us that legal regimes affecting work affect human beings

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[1] David L. Gregory and Francis A. Cavanagh, *Introduction to the Symposium Transatlantic Perspectives on ADR*, 81 ST. JOHN'S L. REV. 1 (2007).

at the most basic and important levels. Professor St. Antoine urges us to contemplate the moral foundation underlying employment dispute resolution as we contemplate, and work in and with, the structures in which employment disputes are resolved.

Next, Samuel Estreicher, the Dwight D. Opperman Professor of Law and the Director of the New York University School of Law Center for Labor and Employment Law, in *Strategy for Labor Revisited*, innovatively posits a Socratic dialogue among the president of a local labor union, a research director of a separate industrial union, and a highly-respected chief of staff for a national union representing government workers. This uniquely engaging piece explores the possibilities for what can or should be done about the decline of unions in private companies. Through the discussion, the participants pinpoint and evaluate the myriad problems facing the modern labor movement and pose various potential solutions while acknowledging the barrage of criticism that would likely ensue from publicizing any of the proposed ideas.

Recounting his experiences in Great Britain and his tenure as the Chairman of the NLRB, 1994-1998, William B. Gould IV, the Charles A. Beardsley Professor of Law Emeritus at Stanford Law School, offers *A Century and Half Century of Advance and Retreat: The Ebbs and Flows of Workplace Democracy*. In this Article, Professor Gould notes changing attitudes towards organized labor, reflected not only on the bargaining table, but also in politics and society. In his view, the current decline of organized labor negatively affects fundamental values in both the United States and Great Britain, spurring efforts to re-think the usual methods of resolving labor disputes. He highlights FirstGroup's private labor-dispute program as an example of how an employer's corporate social responsibility policy can be structured to improve employees' labor rights.

In *Winning the FLSA Battle: How Corporations Use Arbitration Clauses To Avoid Judges, Juries, Plaintiffs, and Laws*, Professor Julius Getman, the Earl E. Sheffield Regents Chair at the University of Texas School of Law, and Dan Getman anticipate the legal dispute that has emerged over class waivers as applied to the labor laws. They explore the degradation of workers rights and bargaining power in employment contracts and the use of the National Labor Relations Act and the Fair

Labor Standards Act to protect these rights. Observing that the protective policies of the National Labor Relations Act have been chipped away by increasingly powerful employers, Professor Getman and Mr. Getman analyze the increased use of the Fair Labor Standards Act in its place. The authors identify and examine the alarming trend of employment contracts with carefully crafted arbitration clauses. Their piece provides important context for the NLRB's recent decision in *D.A. Horton, Inc.* and *Michael Cuda* refusing to enforce class and collective actions waivers as applied to the Fair Labor Standards Act.

George Cohen, the Director of the United States Federal Mediation and Conciliation Service, addresses an issue critical to the welfare of the next generation of workers in his Article *Advancing Student Achievement in the United States Public Schools Through Labor-Management Collaboration: The FMCS's Evolving Role in Education Reform*. Critics have attacked the declining strength of our nation's public school systems, arguing that major reforms are necessary to ensure continued economic growth. To implement any changes, labor and management within the nation's many school districts will have to collaborate to reach an agreement going forward. This Article identifies these problems and potential obstacles along the way, assuring that the FMCS is ready and able to help once these negotiations become necessary. The Article was written in anticipation of a conference that was held on September 16, 2011.

In *A Comparative Assessment of Labor and Employment Dispute Resolution in the United States and United Kingdom from 2006 Through 2011*, Professor Dave Gregory and his research assistant Michael Harary '13 trace the evolving labor and employment dispute resolution dynamics in the United States and United Kingdom, focusing on the international economic crisis through the lens of economic statistics. In addition to examining several compelling current issues in the U.S., this piece discusses the legislative changes effected by the United Kingdom in the realm of ADR as related to labor disputes from July 2006 to the present July 2011. The authors consider a new resolution by the United Kingdom, the Dispute Resolution Commitment, showing a positive trend toward the formal adoption of ADR as a best practice for the United Kingdom government.

In his Article *The Importance of Legal Context and Other Considerations in Assessing the Suitability of Negotiation, Mediation, Arbitration and Litigation in Resolving Effectively Domestic and International Disputes (Employment Disputes and Beyond)*, Dr. Guido Carducci compares six different sets of considerations that should be taken into account when evaluating various dispute resolution mechanisms on the international stage. These considerations encompass the factors necessary for users to understand what dispute resolution mechanism fits best, or accommodates the most, the parties' expectations in any particular action. The Article then examines which of the various dispute resolution mechanisms best fit each set of circumstances.

Ronald C. Brown, Professor of Law at the University of Hawaii Law School, in *Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China, and the United States: Lessons from Asia?*, considers the commonalities and contrasts between new laws and mechanisms in East Asia for resolving individual labor rights disputes and labor-related arbitration and mediation in the United States. While mediation, arbitration, and litigation are used by all, they occur within different structures. Multinational companies generally do not use private internal grievance procedures, but their use of external dispute resolution processes suggests that this might change. Professor Brown's comparative study of other countries' processes suggests ways to re-consider the American system of individual dispute resolution.

Finally, Professor Elayne E. Greenberg, Director of The Hugh L. Carey Center for Dispute Resolution at St. John's University School of Law, in *Overcoming Our Global Disability in the Workforce: Mediating the Dream*, considers the impact of the United Nations Convention on the Rights of Persons with Disabilities (the CRPD). The CPRD was met with widespread approval, but the issue remains of how to successfully implement the CRPD in Supporting States. Professor Greenberg argues that part of the problem lies with attitudinal biases among employers in the private sector and addresses the challenges of creating mediation and conciliation programs that prevent these biases from affecting individuals with disabilities.