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Dean’s Column

BY GUEST AUTHOR PROF. RUBEN J. GARCIA

IS DEMOCRACY IN THE WORKPLACE NECESSARY OR PROPER?

Since its founding, the Boyd School of Law at UNLV has been a leader in the study of law in the workplace and, through its Saltman Center for Conflict Resolution, new models of dispute resolution. These two strengths came together recently when the law school hosted a symposium on February 23-25 on Democracy and the Workplace.

The symposium was organized by Saltman Center Director Jean Sternlight, Boyd Visiting Professor Lisa Blomgren Bingham (of the School of Public Affairs at Indiana University-Bloomington) and myself. I was very pleased to join the Boyd faculty this year after being the director of the Labor and Employment Law Concentration at California Western School of Law in San Diego.

One of the reasons that I joined the Boyd faculty is the commitment of the school to labor and employment law, as demonstrated by the school’s hosting of the Democracy and the Workplace symposium. The title of the symposium, however, might cause some to ask: Is there democracy in the workplace? Should there be? How could it be implemented? To address some of these questions, an explanation of the underpinnings for democracy in the workplace might be helpful.

Before 1935, democracy in the American workplace was indeed a contradiction in terms. The dominant legal framework in every state and the common law antecedents before 1935 was employment at will. As a default rule, employment at will is still in place in Nevada and 48 other states (besides Montana) – an employee can be fired for any reason or no reason, as long as the termination does not violate a constitution, statute or public policy. In 1935, however, Congress passed the National Labor Relations Act (NLRA), which, for the first time, made protection for union organizing and collective bargaining a matter of federal law. One of the major premises of the law was to institutionalize a system of employee voice that had previously not existed. As the system of collective bargaining matured, scholars and the courts began to see the NLRA as foundational to a system called “industrial democracy.”

More than 70 years after its passage, however, many commentators believe the NLRA has not lived up to its promise to bring workplace democracy to many private-sector employees, particularly with less than 7 percent of the private sector workforce currently represented by a union. Coexistent with the decline of collective bargaining, alternative dispute resolution systems have become more prevalent, perhaps providing some modicum of voice in nonunion workplaces.

For public employees, who are subject to different bargaining laws depending on the states in which they work, there has been a vigorous debate about the proper role and scope of collective bargaining and constitutional rights. At the same time, both employers and employees continue to participate in the broader system of democracy, though recent decisions of the United States Supreme Court may give employers a greater collective voice in the political system and the shaping of the workplace. These themes provided the impetus for the planning of the symposium.

The opening plenary set the tone for the conference with a focus on Nevada, in both the union and nonunion sectors. Panelists included: Jamie Naughton, the Speaker of the House of Zappos, Inc.; D. Taylor, the Secretary-Treasurer of the Culinary Workers Union Local 226; management lawyer Gregg Kamer of Kamer, Zucker and Abbott; and Pamela Egan, former chief operating officer of Nevada Partners and its sister organization, the Culinary Training Academy. All panelists agreed that there should be something like democracy in the workplace, though they differed about the exact definition of that term, and the reasons democracy in the private sector workplace might be desirable.

Other plenary speakers included Professor Joel Rogers of the University of Wisconsin Law School and Cynthia Estlund of New York University School of Law, who both put the themes of the conference into the context of larger social forces. These lecturers spoke in addition to the more than 40 panelists and commentators from all across the United States

and Canada who presented their remarks during the last weekend in February.

The conference also highlighted the strengths of the Boyd faculty in the roles of presenters, moderators and commentators, including those with workplace law interests, among them Professors Rob Correales, Ann McGinley and Elaine Shoben. Further, the symposium would not have been possible were it not for the support of Dean John V. White, himself a scholar of employment and civil rights law. The generous financial and inspirational contributions of Michael and Sonja Saltman continue to support the work of our Saltman Center for Conflict Resolution. Finally, the library and law school staff impressed all attendees with their hospitality and resourcefulness.

The conference closed with a discussion about how those assembled could continue and expand their work on the study of the workplace and also encourage democracy in the larger political system. The substantive contributions of many attendees will be memorialized in a future symposium of the Nevada Law Journal. The Wiener-Rogers library, on its Scholarly Commons website, will host a bibliography along with many of the recorded sessions and written materials that were presented. With this conference, and the many activities of its individual faculty members and centers, the Boyd School of Law and its Saltman Center for Conflict Resolution continue to be on the cutting edge of research and teaching on the law of the workplace and dispute resolution. ■

RUBEN J. GARCIA joined the faculty at the Boyd School of Law in 2011. Before coming to Nevada, he was a professor of law and the director of the Labor and Employment Law Program at California Western School of Law in San Diego, where he taught for eight years. Professor Garcia's research and teaching focus on the ways that race, gender, immigration and globalization impact the law of work. His book, *Marginal Workers: How Legal Fault Lines Divide Workers and Leave Them Without Protection*, was published earlier this year by New York University Press.