

MVP: Morgan Lewis' Philip A. Miscimarra

By Irene Spezzamonte

Law360 (October 13, 2023, 1:08 PM EDT) -- Philip A. Miscimarra, a partner at Morgan Lewis & Bockius LLP, played a key role in helping the United States Football League negotiate its first collective bargaining agreement covering about 350 professional athletes, earning him a spot among Law360's 2023 Employment MVPs.

His biggest accomplishment this year:

Miscimarra, who leads Morgan Lewis' National Labor Relations Board special appeals practice and co-leads Morgan Lewis Workforce Change, guided the USFL's negotiation efforts with the United Steelworkers by serving as the league's chief spokesman.

"The resulting contract was praised by people on both sides as providing significant benefits for the players and also being very helpful for the league, and it was a good example that negotiations result in outcomes that are positive and favorable for both sides," Miscimarra said in a recent interview with Law360.

The contract came after players voted 69-32 in favor of unionizing during a June 2022 election. They chose to be represented by the United Football Players Association, a USW affiliate.

The parties reached a tentative agreement in December 2022, and in January, they ratified the historic contract providing, among other things, pay security and a five-week injured reserve.

Miscimarra said that what was particularly challenging about striking the deal was that it was the first union contract in the league, and, therefore, there was "no template to work from in terms of what will be the scope of matters that are discussed and how those issues may be resolved."

There were several variables that the parties needed to tackle before coming to an agreement, including how practices would be conducted and how to deal with injuries, which required particular attention, he said.

"In the context of a new bargaining relationship and an initial contract and a new league, it was



important to try to work through those issues, to be a good listener and also to try to have a focus that would be helpful not only to my client, which was the league, but also to try to come up with solutions that would be instructive for both sides," Miscimarra said.

His biggest challenge this year:

But Miscimarra said the past year also included some challenges, especially as he helps his clients navigate what they can discuss with employees in the workplace.

In one of those instances, Miscimarra is representing the U.S. Chamber of Commerce and several associations, including the Associated Builders and Contractors and the National Federation of Independent Business, in their suit in Connecticut federal court challenging a state law allowing workers to leave anti-union meetings without facing reprisal.

Connecticut Gov. Ned Lamont signed Senate Bill No. 163, now known as Public Act No. 22-24, into law in May 2022. It gives workers the right to leave or altogether skip meetings in which their employers share their positions about religious, political and labor organizing matters.

The pending lawsuit, which landed in federal court last November, claims that the state law is preempted by the National Labor Relations Act, which "has protected the right of employers and other parties to express their views on unionization to their employees."

Miscimarra said that tackling free speech restriction cases is challenging because cases like the one in Connecticut involve constitutional rights and tackle exchanges that happen between employers and employees on a regular basis.

Those conversations involve a variety of topics from paid time off to workers' breaks and can occur in both writing and during oral conversations, making "the application of strict standards regarding what can be discussed or can't be discussed in the workplace ... very difficult for employers to administer," Miscimarra said.

Having "a sudden demarcation of certain topics" employers and employees can discuss "ends up presenting particular difficulties with the practical way that workplaces function," especially in remote and hybrid workplaces, Miscimarra said.

"And it's especially challenging because, at least in my view, the law under the National Labor Relations Act, which the NLRB enforces, also happens to be very clear that all kinds of speech between employers and employees are actually affirmatively protected," Miscimarra said. "But the NLRB and now several states are adopting restrictions on different types of employer speech."

Miscimarra knows first-hand the ins and outs of the NLRB's functions: He first served as a board member after former President Barack Obama appointed him in 2013, and former President Donald Trump appointed him chair of the NLRB in 2017.

When he testified before the House Education Committee's Subcommittee on Health, Employment, Labor and Pensions in May, Miscimarra wrote in his prepared remarks that "the NLRB cannot do whatever it wants when resolving the competing interests of employees, unions, employers, and the public."

Why he is an employment attorney:

Miscimarra said he first started getting interested in labor issues while growing up in Pittsburgh — a city

with a long-running labor history.

While in college, Miscimarra said, he was a member of Local 6471 of the American Federation of Musicians since he was a musical director, an arranger, a vocal coach and a pianist.

Miscimarra, who still plays the piano, said that after his undergraduate career at Duquesne University in Pittsburgh, he went to business school at The Wharton School of the University of Pennsylvania pursuing his MBA in Labor and Employment Relations.

While at Wharton, Miscimarra said, he mostly did employment-related research with the Industrial Research Unit, which is now known as the Wharton Center for Human Resources and was "the first research center ever established at a business school" and focuses on "the economic and social problems of business," according to the center's website.

Miscimarra said that the employment-related work he has been doing throughout his career has been "gratifying."

"Employment law involves an enormous variety of interesting issues. Those issues are extremely important for companies and employees alike," he said. "Every company can only accomplish its objectives through the people they employ, and just about every person depends on their jobs, to have security for themselves and their families."

His advice for junior attorneys:

Miscimarra said there are two things that those who wish to undertake the labor law road should keep in mind: Don't take shortcuts, and be team players.

When looking at a specific issue, "do the work that's necessary ... and don't settle for the first answer in the mind or the first solution that seems to be right," Miscimarra said.

Being prepared to work in a team and not worry about credit is also fundamental because "everyone benefits when you find yourself in a position to collaborate with other talented colleagues, which includes learning from them."

"What I have seen in my own practice and my own firm is that it's extremely gratifying to create a whole that exceeds the sum of the parts, and I think that would be an important thing for any young attorney to learn early in their practice," Miscimarra said.

--As told to Irene Spezzamonte

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.