

# BULLETIN

of the

*U.S. BRANCH*

*INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW*

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[U.S. Branch's web site: [law.unl.edu/islssl](http://law.unl.edu/islssl)]

## Notes from the Chair

### Steven Wilborn

One of the great values of our organization is the opportunity to attend the Congresses and meet colleagues from around the world. Our branch had a good group attending the recent World Congress in Sydney and, by all accounts, we all had enjoyable and productive experiences. **Gillian Lester** from Berkeley chaired one of the Roundtable discussions and **Katherine Stone** from UCLA presented an interesting paper. NLRB Board Chairman **Wilma Liebman** made the keynote address on the opening day of the conference. Many of the Congress' reports and presentations are on the web, so it's not too late to participate modestly in the Congress if you look at:

[www.labourlawssydney.com/ReportsandPapers.htm](http://www.labourlawssydney.com/ReportsandPapers.htm). But I must say, it was better to be there!

The International Society made some notable changes to its structure and organization at the Sydney conference. First, it made some changes to its bylaws. Two of the changes are worth noting. National affiliates of the organization must now have a minimum of fifteen members to vote and be recognized, absent special circumstances. Of course, we meet that standard easily, but some national affiliates of the organization have been very small enterprises and not really "national" in any realistic sense. This change deals with that issue. The bylaws were also changed to suspend the voting rights of national members that are not current in their dues payments. Again, we have always paid our dues on time, but that is not universally the case. This change will encourage more prompt payment of dues. (Our Secretary-Treasurer, **Alvin Goldman**, aided in drafting these changes, so congrats to him on the completion of this important task.)

Second, the International Society made a change in the regional distribution of Vice Presidents of the Society. Until Sydney, the North American Vice Presidency covered only four countries in the Society (Canada, the Dominican Republic, Mexico and the US), while the South American Vice Presidency represented 13 countries in South and Central America. At the Sydney Conference, four countries (Costa Rica, Guatemala, Panama, and Honduras) were shifted from the South American

Vice Presidency region to the North American region. So now the distribution is much more even with the North American region containing eight members and the South American region covering nine members. I suppose this diminishes our influence at the Vice President level, but nevertheless, we agreed to the change. It just seems fairer.

Finally, there was a discussion at the Sydney conference about the format of our Congresses. There seemed to be a fairly general consensus that it would be good for Congresses to offer more opportunities to present individual papers. We think this would be a good idea, too. It would offer more opportunities through our organization for you to make a presentation at an international conference and that, in turn, may make it easier to obtain funding to attend. This change will depend on the individual organizing committees of upcoming Congresses but, again, if it occurs, we think it would be a good development. Suggestions for other changes can be emailed to the Secretary General, **Arturo Bronstein** ([asbronstein@msn.com](mailto:asbronstein@msn.com)) for forwarding to the working group that will examine this topic.

I think we still have too few members for such a wonderful organization. Please help me in getting the word out. Please encourage your friends and colleagues to join.

## Apologies

The last Bulletin inadvertently left **Jay Youngdahl** off the list of new Executive Board members. Our apology to Jay.

As a result of failing to include suite numbers or a law firm's name on the address label, the June Bulletin was delayed in reaching several members, most particularly in the New York City area. Our apology for those delays.

## New International Society Officers

President: **Michal Sewerynski** (Poland)

Secretary General: **Arturo Bronstein** (Argentina)

Treasurer: **Corinne Vargha** (ILO Section)

Auditor: **Stein Evju** (Norway)

Vice-Presidents: **Takashi Araki** (Japan), **Gilles Trudeau** (Canada), **Rafael Pereira** (Chile), **Darcy du Toit** (South Africa), **Zelko Potocnjak** (Croatia), **Fernando Valdés Dal Re** (Spain).

## **New Edition of International Treatise**

Members **William Keller** and **Timothy Darby** are co-editors-in-chief of the 3<sup>rd</sup> edition of BNA's two volume INTERNATIONAL LABOR AND EMPLOYMENT LAWS, an ABA Labor and Employment Law Section project that provides summary descriptions of labor and employment law in 41 countries plus chapters devoted to specific topics of interest to those representing parties in global transactions and operations. Congratulations to them for completion of this substantial undertaking that enhances the research resources available to all of us in this field.

## **Publishing and Prize Opportunity**

The Korean Journal of Industrial Relations (KJIR), published twice a year by the Korean Industrial Relations Association, includes articles on all aspects of international and comparative industrial relations, both theoretical and empirical. Recent topics have dealt with industrial relations issues in the U.S., the U.K., Brazil, India, Japan, Africa, and China. Articles can be in English or Korean and each year the best article is awarded a prize of US \$5,000. (An American won one of these awards for 2007.) Format and other information for anyone interested in submitting a manuscript, is available from Dr. **Dong-One Kim**, Editor in Chief, at: dokim64@hotmail.com

## **UK Prohibition Against Unfair Dismissal Protects Worker's Right to Protest Possibly Unlawful Tasks**

In May, 2009, the United Kingdom Employment Appeal Tribunal, in *El-Megrisi v. Azad University*, UKEAT/0448/08(IR), a case with facts having a universal ring, held that management unlawfully dismissed an employee who senior staff regarded as uncooperative, obstructive and a trouble maker. The Tribunal found that the principal reason for the negative attitude toward the employee, an admissions officer, was because she persisted in raising concerns about the immigration status of some student applicants and about possible illegalities in applications for staff and student work permits or visas, as well as unwillingness to assist in obtaining entry documents to the UK for those she considered inappropriate applicants. The Tribunal concluded that because there was some foundation for the employee's protests, her actions were protected.

## **Future ISLSSL Conferences**

**-May 25-28, 2010, Cartagena de Indias, Colombia,** VIII<sup>th</sup> American Regional Congress, ISLSSL.

Keynote Speech: Strike in the Public Service. **Carlos Álvarez Pereira** (Colombia).

Theme 1: Public and private pension systems in the light of the global crisis. General Reporter: **Carmelo Mesa-**

**Lago** (United States). Theme 2: Public and private systems for settlement of individual and collective labor disputes. Co-reporters: **G. Valdés S.** (Colombia) and **Steven Willborn** (United States). Theme 3: Protection of privacy at the workplace. Co-reporters: **Cristina Mangarelli** (Uruguay) and **Gilles Trudeau** (Canada).

Round Table 1: "New forms of employment" and their impact on: a) individual employments relations; b) collective labor relations; and, c) the social protection of the workers concerned. Moderator to be announced.

Round Table 2: The use of international law by national courts in view of the adjudication of labor disputes. Moderator: **Xavier Beaudonnet** (ILO).

Registration prior to February 1, 2010, US\$220 (students \$160); thereafter US\$250 (students \$180). The registration website is at:

<http://www.colegio-abogados.org.co/> It moves slowly, and English is in the second half of the drop-down menu. An effort is being made to get this fixed and ascertain clearer information on registration procedures. An email will be sent to members when and if the organizers provide that information.

[Note: Cartagena de Indias is a coastal city of 900,000 on the Caribbean Sea that was founded in 1533. It became a colonial center in 1610 and was declared a World Heritage Site in 1984. Its walled old city retains numerous extravagant balconies and ornate doorways of former mansions that now house restaurants, guesthouses, gift shops and museums.]

**-Sep. 21-23, 2011, Seville, Spain,** X<sup>th</sup> European Regional Congress, ISLSSL.

Theme 1: Labor Law and Industrial Relations in the Light of the Economic and Social Changes. Theme 2: Collective Bargaining Rights in a Globalized Economy. Theme 3: Social Protection of the Unemployed.

Round Table 1: Public and private employment services as intermediaries in the hiring of workers.

Round Table 2: Groups of workers who risk exclusion or lack of protection under labor law.

Workshop 1: The role of the judiciary in the development of labor law.

Workshop 2: Interruptions and suspensions of the employment relationship.

**-September, 24-30, 2012, Santiago de Chile,** XX World Congress, ISLSSL (exact days to be determined).

Proposed agenda items:

- a) The role of the Labor Inspection and of the workers' representatives in the enforcement of the Labor Law.
- b) The right to strike as a fundamental right and its possibility of conflicting with the fundamental rights of the people in the case of strike in essential services.
- c) Social protection of non-wage earners.
- d) Structure and effects of collective bargaining and the right to free competition.
- e) The use of international law by national courts.
- f) The future of private pension systems in the light of economic

turmoil. g) Labor Law and small and medium-sized enterprises. h) Individual and collective labor relations in the public administration. i) Harassment at the workplace.

### **Other Conferences**

**-May 9-13, 2010, Istanbul, Turkey.** Mid-year meeting of ABA International & Employment Law Committee. Details will be available soon at:

<http://www.abanet.org/dch/committee.cfm?com=LL108000>.

**-June 28-July 1, 2010, Copenhagen, Denmark.** 9th European congress of the International Industrial Relations Association (IIRA). For details, see:

<http://www.iiraeurope2010.com>

**-September 20-23, 2010, Bali, Indonesia.** 7th Asian Congress of the International Industrial Relations Association (IIRA). For details, check:

<http://iiraasian2010.wordpress.com>

### **Societas Europaea**

**Stuart Basefsky**, Director of the News Bureau of the Institute for Workplace Studies of the Cornell School of Industrial & Labor, issues email alerts respecting new sources for learning about global labor and employment law developments. A recent alert called attention to a report by **Michael Whittall** of the Technical University in Munich discussing the status of the Societas Europaea. These are business enterprises chartered by the European Union that have the advantage of being subject to a single set of EU regulations that pre-empt national regulations.

The legislation authorizing chartering this new species of enterprise became effective in October 2004 and the report estimates that there now are around 350 such entities. EU requires that they communicate to employees various categories of business information that affects the workforce as well as provide employee consultation and participation in work force related management decisions.

Although national legislation throughout the EU requires information sharing and employee consultation, there are considerable variations in the mechanisms for accomplishing these goals. Thus, doing business as a Societas Europaea is a potential means of avoiding the more rigorous co-determination requirements established by some national laws such as those of Germany where for companies with 2,000 or more employees, half of the governing board is elected by the workers.

An example of what can transpire is provided by Whittall's report which reviews an arrangement recently negotiated for an enterprise primarily based in Germany but with employees as well in Austria, France and Spain. Under the agreed arrangement with the German Metalworkers' Union, a company-wide employee elected works council will have consultation rights on behalf of all of the enterprise's European workforce and the work-

ers will elect a third of the governing board. Because close to 2,000 of the company's almost 2,600 employees are employed in Germany, with just a little growth in their numbers, the German workers may soon have fewer governing board representatives (one third) than they would under German law (one half). Nevertheless, the union expressed satisfaction with this arrangement. Perhaps this because under the German co-determination system the board chair is designated by shareholder-elected representatives and has a tie-breaking vote. Thus, despite the even number of representatives, in a deadlocked vote employees are junior partners in the co-determination process.

### **European Collective Bargaining Developments**

The Amsterdam Institute for Advanced Labour Studies publishes an update on collective bargaining activities throughout Europe. To subscribe, contact: [tmacdonald@etui.org](mailto:tmacdonald@etui.org)

### **Member Activities**

Prof. **Ronald Brown's** new book, UNDERSTANDING CHINA'S LABOR AND EMPLOYMENT LAWS, was published by Cambridge University Press. Prof. Brown also recently delivered a Distinguished Alumni Lecture on China's Legal Growth and Labor Law Developments at the University of Toledo Law School. As if that was not enough, he published an article in Chinese "A Comparative Study of Labor Dispute Mediation and Arbitration Systems in China and the U.S." in 8 Labor Relations Journal 47 (People's University Law School, Beijing) and is scheduled to present a paper in Rome at the Lionello R. Levi Sandri Permanent Seminar entitled "Employee By Any Other Name?" which explores the use of contingent employees and independent contractors to lower labor costs, rights and benefits. Additionally, under a grant from the U.S-China Legal Cooperation Fund Prof. Brown, working with government officials and Peking University, will conduct a series of Workshops in China leading to development of an Implementing Platform for China's New Draft Social Security Law.

### **Latest Issue of Comp. Lab. Law and Pol. Journal**

Issue 4 of volume 30 of the CLLPJ was recently published. The lead article, titled "The Impact of Dismissal Protection on Employers' Cost of Terminating Employment Relations in Germany: An Overview of Empirical Research and Its White Spots", by Dorothea Alewell, Eileen Schott, and Franziska Wiegand, analyzes efforts to assess the effects of the current legislation on employers' costs and HR decisions.

Luis Beccaria, in "Notes on the Evolution of Wage Distribution in Argentina", examines the evolution of his nation's current labor market and the economy, and examines different theories respecting factors that influence

wage distribution.

The self-explanatory title of Prof. Brian Etherington's paper is "The B.C. *Health Services and Support* Decision—The Constitutionalization of a Right to Bargain Collectively in Canada: Where Did It Come From and Where Will It Lead?".

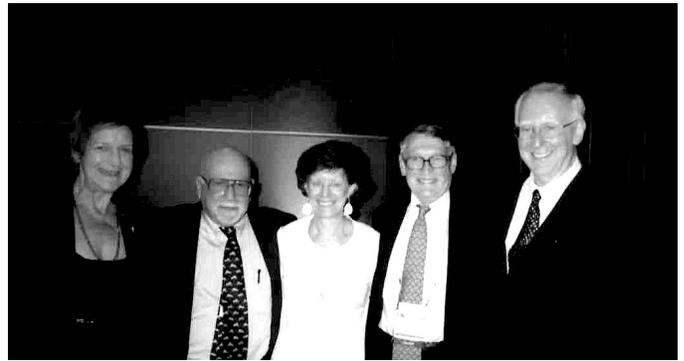
Yuval Feldman of Bar-Ilan University, Israel, explores the array of possible remedies to combat avoidance of employer responsibilities toward those who perform outsourced work in "Ex-Ante vs. Ex-Post: Optimizing State Intervention in Exploitive Triangular Employment Relationships".

Additional contributions to this journal issue are: Nikita Lyutov and Daiva Petrylaite, "Trade Unions' Law Evolution in Post-Soviet Countries: The Experiences of Lithuania and Russia"; Faina Milman-Sivan, "The Virtuous Cycle: A New Paradigm for Democratizing Global Governance Through Deliberation"; Luca Ratti, "Agency Work and the Idea of Dual Employership: A Comparative Perspective"; Sebastian Krebber, "Status and Potential of the Regulation of Labor and Employment Law at the European Level"; and book reviews of *REDESIGNING THE WELFARE STATE: GERMANY'S CURRENT AGENDA FOR AN ACTIVATING SOCIAL ASSISTANCE* (edited by Hans-Werner Sinn *et al.*) and *Greg J. Bamber, Jody Hoffer Gittell, Thomas A. Kochan, and Andrew von Nordenflycht, UP IN THE AIR: HOW AIRLINES CAN IMPROVE PERFORMANCE BY ENGAGING THEIR EMPLOYEES*.

### A Few Photos from 2009 ISLLS World Congress in Sydney



ISLSSL President Kazuo Sugeno and his wife, Michiko



Geraldin Freedland, Matt Finkin, NLRB Chairman Wilma Liebman, Ted St. Antoine and Mark Freedland (University Professor of Employment Law, Oxford)



Dennis and Fran Nolan, Lloyd St. Antoine

### Resource for Comparative Labor Law Research

Alan Gladstone, an American who is former Director of the ILO's Industrial Relations and Labour Administration Department, edits *INTERNATIONAL LABOUR LAW REPORTS*, an annual compilation, in English, of important high court decisions (with commentaries) from about a dozen countries. Published by Martinus Nijhoff, the volumes have a subject matter index that facilitates accessing both important and unique case law developments.

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