

BULLETIN
of the
U.S. BRANCH
INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW
ALVIN GOLDMAN, *editor*

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[U.S. Branch web site: lawhelp.github.io/islssl/board.html--Int'l Society web site: <http://islssl.org/>]

Notes From the Chair

Steve Befort

In our last newsletter, I put out a call for volunteers to respond to questionnaires relating to the themes of the Tenth American Regional Congress held this past September in Panama. Special thanks to **Gilbert Cornfield** and **Jay Yougdahl** for stepping up to prepare questionnaire responses on behalf of the U.S. Branch. See Jay's report on the Panama conference elsewhere in this newsletter.

Planning is underway for a possible ISLSSL-sponsored educational event next September. The plan is to hold the event in conjunction with the Annual Conference on Scholarship on Employment and Labor Law (COSELL) at Texas A&M in Forth Worth on September 15-16, 2017. The planning group consists of **Matt Finkin**, **Janice Bellace**, **Steve Willborn**, **Alvin Goldman**, and myself. Please contact one of these members with any suggestions as to topics and speakers. Also, consider attending this two-for-one program.

In Memory



Roger Blanpain, a cherished friend of many of us, died on October 11, 2016. A past president of the International Society as well as of the International Labor and Employment Relations Association, he was Professor Emeritus of Labor Law at the Catholic University of Leuven, Belgium, where he also served multiple terms as the law school's dean and as an elected regent of the university's governing body.

Roger's U.S. connection dates back to the year he spent at Columbia University earning a master's degree in political science in the mid-1950s. At that time, as a young Belgian lawyer, he befriended some American labor lawyers and law teachers while in our country. On returning to Belgium he began a career in teaching and scholarship and established the Institute for Labor Law at his law school where often he graciously hosted such American friends as Clyde Summers, Benjamin Aaron, and William Murphy, who came to lecture and study.

Within a short time Prof. Blanpain became a leading authority not only on Belgian labor and employment law, but also a spark plug in the development of comparative labor law study. Roger's leadership of the Institute attracted prominent labor and employment law scholars from around the world. He encouraged his graduate students, which included many from other countries, to focus on studying comparative and international labor and employment law, and mentored a number of his former students and other young academics to become leading scholars in the field.

Roger continued to teach at several universities long after he was required to surrender his chair at age 65. (He was an active member of the Law Faculty of the University of Tilburg at the time of his death.) The *liber amicorum* issued in his honor when he retired contained 833 pages of scholarship prepared by 45 scholars from all over the world. In 1992 his nation inducted Prof. Blanpain into the Belgian Royal Academy of Sciences.

Prof. Blanpain was a very effective innovator and in the early 1970s he organized the *International Encyclopedia of Labour Law*, a core resource for those studying comparative and international labor and employment law. For the remainder of his long life he continued to edit not only this comprehensive work, but also the 11 editions of *Comparative Labour Law and Industrial Relations*, a compilation of comparative essays prepared by Prof. Blanpain and 30 other

authors. Roger's scholarly output in multiple languages (but primarily in English) prompted Roy Heenan, a leader of the Canadian labor law bar, to give him the title "the fastest pen in the West."

Not content with being an astute outside observer, Roger Blanpain additionally undertook a variety of efforts to better utilize labor and employment law to serve the needs of weaker parties. These ranged from aiding in the formation of the soccer players' union (for many years he was their honorary president), to obtaining significant severance benefits for workers whose factory had been closed, to raising funds to pay for young third world teachers to attend international conferences. The title of his published memoir, *What Can I do for You?* accurately reflected the theme of Roger Blanpain's life's work.

Further remembrances by Prof. Blanpain's former assistants, colleagues and friends, Profs. Frank Hendrickx and Michele Tiraboschi, can be found at adapt.it/englishbulletin/wp/in-memory-of-professor-roger-blanpain/ and at <http://us3.campaign-archive2.com/?u=477f592c29b5a739ce4cc8917&id=9be38851af&e=55289b44cd>

Recent Member Activities

Ron Brown continues to produce a long list of publications. Recent entries include: ASEAN: Harmonizing Labor Standards for Global Integration, 33 Pacific Basin L. J. 28 (2016); Chinese "Workers without Benefits," 15 Univ. Richmond J. Global Law & Business L. J. 1 (March 2016); FTAs in Asia-Pacific: 'Next Generation' of Social Dimension Provisions on Labor?, 26 Ind. Int'l & Comp. L. Rev. 69 (2016); Fostering Labor Rights in a Global Economy: The Efficacy of the Emergent US Model Trade and Investment Frameworks to Advance International Labor Standards in Bangladesh, 155 Int'l Labour Rev. (ILR) No. 3, 50 (2016). Also, China – U.S. Implementation of ILO Standards by BITs and Pieces (FTAs), ch.6, Fundamental Labour Rights in China - Legal Implementation and Cultural Logic, (eds. Liukkunen, Ulla, Chen, Yifeng (Eds.)) (Springer 2016); and Corporate Immunity in the Aiding and Abetting of Child Slavery, 1 ILaRC 101 (Hague 2015).

Tom Kohler delivered the keynote address "Rec-

oncilable Ambiguities: Solidarity from an American Perspective" at an international conference titled Solidarity in Open Societies, held in Munich in October. In November, he will present a keynote address in the Final Conference of the "Restatement of Labour Law in Europe," which will take place in Brussels. This decade long project is funded by the European Union and conducted by the European Labour Law Network, a group leading labor law scholars across the E.U.

Additionally, as the 2016 AUDI Gastprofessur at the Univ. of Eichstätt, in December Tom will give a talk, in German, to the AUDI Board of Directors and top company management entitled, *Labor Law in Comparative Perspective: American and German Law in the Context of the Automobile Industry* and will offer a block seminar in American Employment Law for the graduate students of the University's Ingolstadt School of Management.

His paper "Der Wagner Act," will appear in *Arbeit und Recht*—a series of articles commissioned by the Initiative: History of Labour Law that is jointly sponsored by the Hugo-Sinzheimer Institute and the Max-Planck Institute for European Legal History.

Barbara J. Fick edited a new collection titled INTERNATIONAL LABOUR LAW, published by Edw. Elgar (2016). It provides a selection of seminal articles on current key topics in the field of international labor law.

Sanford Jacoby is engaged in a comparative study of Uber versus taxis in Los Angeles and Tokyo.

Martin Malin is delivering a paper at a symposium in memory of the late Prof. Michael Zimmer at Seton Hall University Law School on the comparative role of property rights under U.S. and Canadian labor law. Along with the other papers from the symposium, it will be published in *Employee Rights & Employment Policy Journal*.

In early November 4, Marty is presenting a paper, "14 Penn Plaza v. Pyette, Opportunity or Oppression for U.S. Workers -- Lessons from Canada" at a conference at the University of Chicago Law School "Oppression for U.S.

Workers: Lessons from Canada". The paper will be published in the University of Chicago Legal Forum.

It is also noteworthy that on November 11, at its annual meeting, the ABA Section on Labor and Employment Law is presenting Marty with the Arvid Anderson Award for lifetime contributions to public sector labor law.

Rick Bales's article (co-authored with 5 Southeast Asian labor lawyers) "Transnational Employment Trends in Four Pacific Rim Countries" has been accepted for publication in the UCLA Pacific Rim Law Journal. The article grew out of a panel presentation at last year's LawAsia Employment Conference.

Currently, Rick is the editor for the ABA Committee on International LEL, and will spend part of spring 2017 teaching labor advocacy at the Labor College of Ton Duc Thang University in HCMC (Saigon), Vietnam.

For six months in the second half of 2015, **Paul Secunda** held a Senior Fulbright Scholar Award to study comparative workplace retirement law at Melbourne Law School in Australia. While there he taught two Master Law classes - Comparative Superannuation (Pension) Law and International Employment Law (with Sean Cooney) at Melbourne Law School.

In June, **Gillian Lester**, jointly with Hugh Collins (Oxford) and Virginia Mantouvalou (University College London), co-hosted a conference at Kings College London, on the subject of Philosophical Foundations of Labour Law. In attendance were scholars from Europe and North America. A book with the conference papers will be published next year by Oxford University Press.

Jay Youngdahl has a debate with representatives of the National Domestic Workers Association in the latest issue of the *New Labor Forum*. The topic is their "Good Work Code." It can be found at:

<http://newlaborforum.cuny.edu/2016/08/16/on-the-contrary-fall-2016/>

Report on the Xth Americas Regional Congress of the ISLSSL Jay Youngdahl

The conference took place in Panama City, Panama, September 27-29, 2016, and featured panelists from a majority of countries in the Americas. Interestingly, many Panamanian lawyers attended making it a large meeting. As is normal for these regional meetings, simultaneous English-Spanish translation was provided.

Our U.S. branch was well represented as Professor **James Brudney** of Fordham led the first full day of proceedings, speaking on "Evolution and Transformation of the Sources of Labor Law." The concept of the "transformation" of labor law became a recurrent theme of the conference.

In addition, Professor **Janice Bellace** of the University of Pennsylvania spoke on a panel discussing "Individual Expressions of Citizenship and their Impact in the Labor World."

Sergio Delgado, formerly of the FMCS, presented

a workshop on "Labor Dispute Resolution in the United States," and I joined several Panamanian speakers on a panel examining the "Special Maritime Labor Convention, 2006."

I find that these conferences of our Americas Section provide important and interesting views into the state of our field. As a personal reflection, our Latin American colleagues are certainly as advanced as those in our country in considering the problems of "informal work" as well as in considering how law can be useful in mitigating the severe pressures facing workers and the middle class in our globalized world. The problems faced by unions, the relationship of public and private employment, issues of soft law as well as international law in relation to national law, and concerns over technology and the workplace are being considered by our colleagues in Central and South America in a manner at least as rich as is being done in the US.

The conference was not without its light moments even for English speakers, as a Colombian speaker showed a rap video centered on the struggles of precarious work in Colombia, as well as ending the conference with a poem describing the conference itself.

As in the past, the hosts were extremely accommodating to all who attended.

Upcoming Conferences

-Sept 20–23, 2017, Prague, Czech Republic. The 12th European Regional Congress of the ISLSSL. Registration begins March 17, 2017. Details are available and will be updated at: www.ercprague2017.cz

-Feb. 8-10, 2017, Canberra, Australia. Annual conference of the Association of Industrial Relations of Australia and New Zealand. Program and registration details can be found at: <http://www.airanz2017.org.au>

-Sep. 4-7, 2018, Turin, Italy, XXII World Congress of ISLSSL. Details forthcoming.

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← **-Aug. 21-25, 2017, Kinshasa, Democratic Republic of the Congo,** 8th ILERA African Regional Congress. Details forthcoming.

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← **-Jul. 23-27, 2018, Seoul, South Korea,** 18th ILERA World Congress. Details forthcoming.

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The Baker McKenzie law firm has released online its EMPLOYEE CREATIONS HANDBOOK which is designed to help users to find and compare key labor and employment law policies, practices and regulations across more than 30 jurisdictions. Their announcement states that the “handbook is primarily available online via the Global IP Suite” and requires those seeking access to fill out basic user information. Further information is available at:

GlobalIPKnow-How@bakermckenzie.com.

Work Time Flexibility

Most, perhaps all, members of the US Branch of ISLSSL have work time flexibility. For those who missed it, a recent study by Heejung Chung, a British academic, respecting the impact of work time flexibility, is of professional interest and also for many of us carries a personal message as well. She concludes: “Greater flexibility and autonomy over work sound great – and could well herald a new era of better work-life balance. But so far much of the evidence points to the opposite and we need to better understand exactly what’s going on to tackle some of these negative consequences. Existing labour laws protect workers from being

exploited by employers. Perhaps what we need now are laws that can help protect workers from exploiting themselves such as France’s proposed ‘right to disconnect’ to regulate out-of-hours emailing. Freedom doesn’t have to be slavery – we just need to make sure we know how to handle it.”

See the full article at:

<https://theconversation.com/flexible-working-is-making-us-work-longer-64045>

Employee Rights in Takeovers under EC Law

When a business entity or its control is sold or changed in the U.S., the resulting workers’ rights, if any, are governed by a patchwork of judicial and statutory rules. The manner in which the change of ownership or control is made, and the jurisdictional location of the assets or business headquarters, can affect the rights of the enterprise’s workforce and its representatives.

Takeover situations are examined in a recent study of business takeovers in Europe, TAKEOVERS WITH OR WITHOUT WORKER VOICE: WORKERS’ RIGHTS UNDER THE EU TAKEOVER BIDS DIRECTIVE (Jan Cremers & Sigurt Vitols Eds. 2016). It defines a takeover as “an attempt by an external party to acquire or extend a controlling interest in a company whose voting shares are listed on a public exchange” and seeks to guide worker representatives in how to better protect worker interests through the EU’s requirements of worker participation.

The study explains that in theory the 2004 European Directive on Takeover Bids coordinates the safeguards that member states require of listed companies traded on their markets and, primarily, also protects the interests of shareholders. Nevertheless, the impact of the Directive provides some enhancement of employee rights as well.

Generally, employee interests in business decisions are protected more comprehensively under EU law than under U.S. law. The protections often go no further than requiring the sharing of information and providing a consultation opportunity for input of arguments and further information. Although information and consultation sharing can be mere cosmetics to placate interested parties, it also can create worker bargaining power if time is of the essence to those

controlling a takeover and can enhance the prospect that the ultimate decision will better accommodate mutual and non-competing party interests as well as social interests.

For example, among other things, the Directive on Takeovers requires the acquiring party to provide specified categories of information to an offeree's shareholders including describing repercussions for and safeguarding of jobs and any material change in employment conditions and change of production locations. Additionally, it requires that if a takeover proposal involves a publicly traded company, the boards of the offeree and the offeror must also inform their workforces of the proposal. Once that occurs, the consultation rights of employee representatives, including works councils, provide an opportunity for bargaining leverage as well as an added voice to reshape the proposal to better satisfy mutual, compatible, and social interests.

Moreover, both national and EU rules regarding the rights of works councils call for management to inform and consult in a timely manner regarding issues of major concern to the workforce. Therefore, in many instances the takeover proposal will have to be revealed to employee representatives prior to being made public. (The laws extending these duties also have confidentiality safeguards.)

The study's editors note that the EU Directive on Takeovers does not apply where it involves only the purchase of shares. They argue, however, that member states adopting appropriate rules should apply similar standards in order to ensure consistency in the impact of a takeover on employees.

In addition to its overview and essays providing critical commentary, the study contains a series of summaries of how pertinent legislation in individual EU countries will affect or be affected by the new Directive.