

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
by Steve Befort

Last November, the U.S. Branch of ISLSSL sponsored a one-day conference at the Wharton School in Philadelphia on legal issues arising from “crowdsourcing.” Crowdsourcing refers to the practice of taking tasks that could be performed by a group of employees for an employer and distributing them to a crowd of ostensibly volunteer workers through an intermediary platform. Uber and Amazon Mechanical Turk are two examples of this growing phenomenon. At the conference, a talented group of experts from Europe and the United States debated the controversial issues of whether crowdworkers should have the status of “employees” or whether new forms of regulation should be devised to avoid a race to the bottom in labor standards. For someone like me with little background in the area, it was a fascinating and informative session. Papers from the conference will be published in the *Comparative Labor Law & Policy Journal*.

In January of this year, I forwarded to the President and Secretary-General of ISLSSL the names of three U.S. Branch members who will be participating in three of the seven groups newly formed following the Cape Town World Congress for the purpose of examining cutting-edge global issues. **Jim Atleson** will serve on the Global Trade and Labour working group, **Carmelo Mesa-Lugo** will serve on the New Forms of Social Security group, and **Jay Youngdahl** will serve on the group looking at Informal and Irregular Work. Stay tuned for what should be a series of very interesting reports.

The next opportunity to participate in an ISLSSL event will be provided by the upcoming Tenth American Regional Congress this September 26-30 in Panama. The themes of the conference are: Evolution and Transformation of the Sources Of Labor Law, Syndicalism in Face of the Transformation of Businesses and the Presence of New Social Actors, and Social Security: How to Make it to 2050 with a Healthy System. Additionally, there will be roundtables on The Formalization of Work-Place Infor-

mality, The Effectiveness of Labor Process Reform, and Individual Expressions of Citizenship and Their Impact in the Labor World. Also, there will be a special program on maritime labor law.

Please consider signing up once the call for volunteers goes out. Also, think about attending. I participated in the last American Congress in Ecuador in 2013, and it was a great experience. Panama is considerably closer and English is much more prevalent, so it should be better yet.

New Web Site Address

The U.S. Branch has a new web site address. It is now at: lawhelp.github.io/islssl/board.html

Member Activities

In the Fall 2015 semester, **J.H. (Rip) Verkerke** had an academic visit to China where he presented a talk entitled “Economic Analysis of Employment Law,” at the Grand Forums of the Most Honorable Jurists, Renmin University of China Law School, Beijing, as well as at the Nankai University Law School, Tianjin. Rip also participated at Renmin University in a two-day International Conference on Challenges and Responses in Labor Law under the New Normal Economy. Among other conference activities, he was on a panel on “Is the ADA Efficient?” Additionally, during the Fall 2015 semester he presented a paper at the ILO in Geneva.

Paul Secunda recently completed a six-month sabbatical as a Fulbright Senior Scholar at Melbourne Law School where his studies resulted in a paper comparing the Australian Superannuation Guarantee with American workplace retirement. His paper was recently published in the *Indiana Law Journal* under the title “The Behavioral Economic Case for Paternalistic Workplace Retirement.”

At this year’s May meeting of the ABA’s International Labor and Employment Law Committee in Hong Kong, **Stephen Moldof** will moderate a panel dealing with labor and employment issues in the airline and hospitality industries. The panel will include a member of the Hong Kong Legislative Council, la-

bor union officials from Hong Kong and the United Kingdom, a Vice President, for Intercontinental Hotels, and a management-side labor lawyer.

Last November Steve spoke on a panel on International Litigation at the ABA Labor & Employment Law's Annual Conference and in October he was on two panels at the International Bar Association's Annual Conference in Vienna and spoke on international law issues at the ALI-CLE Conference on Airline and Railroad Labor Law in Washington, D.C. Additionally, in September of last year he spoke at the London joint conference of the ABA/English Lawyers' Association on a panel on "The Rights of Unions and Other Representatives: One Size Does Not Fit All."

Last Spring **Martin H. Malin**, presented a paper at the second biennial meeting of the Labor Law Research Network at the University of Amsterdam, the Netherlands on the topic "An Empirical Comparison of the Handling of Human Rights Claims before Ontario Labour Arbitrators and the Human Rights Tribunal of Ontario." Marty also presented this study as the Scholar In Residence at the ABA Labor and Employment Law Section ADR Committee's mid-winter meeting and, this past September, at the Colloquium on Scholarship in Employment and Labor Law at Indiana University–Bloomington.

At the request of the Hugo Sinzheimer Institute in Germany, **Wilma Liebman**, together with a German and a Japanese academic, is engaged in a comparative study of the legal issues surrounding crowdwork. Wilma also recently participated in a meeting convened by the IGMetall on the "platform economy". (A business school term for generating revenue by using a company's data and customer network to offer, develop or coordinate development and distribution of new products and services.) In attendance were German platform officials, various union representatives, two ILO staff, and academics from Europe and the US.

Gillian Lester is co-organizer of a Conference in June 2016 titled, "Philosophical Foundations of Labor Law." Panelists and discussants will be from all over the world. Papers from the conference will be assembled in a volume to be published by Oxford University Press. (See, below, more information about the conference.)

The Universität Eichstätt has named **Tom Kohler** the 2016 AUDI Gast-Professur. He will also be one of the keynote speakers at an international conference entitled, "Solidarity in Open Societies," to be

held in Munich in October as well as at a conference sponsored by the European Social Contracts Group to be held in September at the University of Luxembourg.

Last summer **Charlie Craver**, at the Lex Mundi program in Monterey, Cal., taught legal negotiation skills to a group of lawyers from around the world and will do the same this August.

This May, at the ABA's Midyear Meeting of the International Labor and Employment Law Committee in Hong Kong, **Rick Bales** is moderating a program titled "Laws on the Books v. Laws on the Ground: Minimum Employment Standards and Concerted Activity in China and the Region."

[Please let the editor know about **your** recent international or comparative labor law activities. Send an email to: goldmanalvin@me.com]

Upcoming ISLSSL Meetings

-June 19-25, 2016, **Venice, Italy**. The 3rd International Seminar on International and Comparative Labor Law will address the theme Sustainable Development, Global Trade and Social Rights. The program is hosted by the University Ca' Foscari. Program details are at: <http://islssl.org/wp-content/uploads/2016/03/ISLSSL-Venice-Seminar-2016.pdf> and registration information (closes May 31) is available at: <http://islssl.org/wp-content/uploads/2016/03/Call-EN-2016.pdf>

-September 26-30, 2016, **Panama City, Panama**. The 10th Labor and Social Security Law American Regional Congress will be held in Panama City in the RIU hotel. Registration is \$400, students \$150, companions \$150. The separate closing dinner charge is \$75.

For further details see Steve Befort's Note, above, and: <http://islssl.org/wp-content/uploads/2016/03/Call-X-CRAME-2016-EN.pdf>

Upcoming ILERA Meetings

-September 8-10, 2016, **Milan, Italy**, the 11th European Regional Congress of ILERA. The congress theme is The Future of Representation. Additionally, the ILERA Study Group on Public Policy and Industrial Relations will meet during the congress and there will be a workshop on the collective organization of waste pickers. The congress brochure is available at: www.ileraeurope2016.eu

-November 1-3, 2016, **Beijing, China**. The 9th Asian Regional Congress of ILERA will present the theme

“The Implications of Economic Transformation and Innovation on Labor and Employment Relations and the Responses”. The Congress is co-hosted by the China Association for Labor Studies and the Chinese Academy of Labor and Social Security. Registration before May 31, 2016: Delegates \$330; students, emeritus and retirees \$ 130. After May 31: Delegates \$380, students, emeritus and retirees \$180. The congress website is at: <http://www.ileraasian2016.cn>

-August 21-25, 2017, **Kinshasa, Democratic Republic of Congo**. 8th ILERA African Regional Congress. (No further details currently available.)

- July 23-27, 2018, **Seoul, Korea**. 18th ILERA World Congress. Web site: <http://www.ilo.org/public/english/iira/congresses/index.htm>

Other Upcoming Meetings

- May 31- June 2, 2016, **Saskatoon, Canada**. The Canadian Industrial Relations Association will conduct its Annual Conference. The theme this year is “Visions of Work: Examining the Workplace as a Multidisciplinary Meeting Place.” Further information is available at: <http://www.cira-acri.ca/2016-conference>

-June 13-14, 2016, **London, England**. ADAPT, the Auckland University of Technology (New Zealand) and Middlesex University Business School (United Kingdom) will host [the](#) Fifth International Conference on Precarious Work and Vulnerable Workers. For further information contact Prof. Malcolm Sargeant at: m.sargeant@mdx.ac.uk

-June 16-17, 2016. **Senate House, London, England**. Conference on the philosophical foundations of labor law. Designed to bring together leading labor law scholars from around the world. Focal questions include: What is the nature of freedom in the workplace? What is the role of the value of equality in conflicts between the employer and workers and among worker groups? What do we mean when we refer to the value of dignity at work? Can workers waive their human, social and economic rights through an employment contract? Conference fee £80, with dinner £120. For more details go to: laws.ucl.ac.uk/event/philosophical-foundations-of-labour-law/

- June 29-July 1, 2016, **Leeds, England**. The British Universities Industrial Relations Association (BUIRA) will conduct a conference on “Employment Relations Towards 2020 and Beyond: Reflection, Prospects and Opportunities” at The Carriageworks, Millennium Square, Leeds, England.

Further information is available at:

<http://www.buira.org/conference/2>

-November 11-12, 2016, **Bergamo, Italy**. A conference on The Sustainability of Work, sponsored by ADAPT and the University of Bergamo. The registration form is available at:

<http://adapt.it/englishbulletin/wp/form-futuro-del-lavoro-una-questione-di-sostenibilita-11-11-16/>

New Comparative Study

Those advising overseas clients, and those involved in shaping changes in US labor legislation, might want to consult the recent ADAPT Labour Studies Book publication WORK-LIFE BALANCE AND THE ECONOMIC CRISIS: SOME INSIGHTS FROM THE PERSPECTIVE OF COMPARATIVE LAW (L. Méndez & L. Serrani, Cambridge Scholars Publ.) The two-volume study explores legal regulations that attempt to balance various aspects of work-life and family-life in Spain, Argentina, Germany, the United Kingdom, Lithuania, Italy, and Belgium.

New Zealand Law Concerning On-Call Work

As we know from U.S. experience, on-call employment raises several issues including the employee’s right to compensation when required to be available. New Zealand recently passed a law providing greater certainty for employees who do not work set schedules. The new legislation requires employers to guarantee and pay for a stated minimum number of work hours each week. If employees are required to be available to work for more than the guaranteed hours, they must be paid reasonable compensation for the number of hours they must be available and cannot be penalized for refusing to work beyond the number of hours of agreed availability.

New Zealand’s new law does not attempt to prescribe the exact compensation for on-call time but offers guidelines for assessing what is reasonable. These include the number of hours the employee must be available during the week, the proportion of the availability to the number of guaranteed hours, and restrictions respecting the employee’s conduct (e.g., must not imbibe) while on call. Additionally, New Zealand law prohibits employers from putting unreasonable restrictions on secondary employment of employees.

Monitoring Internet Communications

Issues concerning employee privacy rights arise with some frequency in the EU. A recently decided

case involved a Mr. Bărbulescu who was employed in Rumania as a sales engineer. His employer had a rule stating: “It is strictly forbidden to disturb order and discipline within the company’s premises and especially ... to use computers, photocopiers, telephones, telex and fax machines for personal purposes.” As part of his job, Bărbulescu was required to open a Yahoo messenger account in his name for the purpose of responding to client inquiries.

Apparently unknown to him, his employer monitored the messenger account to ascertain whether it was being used for other than business purposes. The monitoring disclosed that some of his communications were purely personal exchanges with his fiancée and his brother, including subjects such as his health and sex life. He was dismissed from his job for violating the rule against personal use of computers. After losing in the Romanian courts, he appealed to the European Court of Human Rights on the ground that in denying him relief from the dismissal, the state courts had violated his privacy rights under the European Convention for the Protection of Human Rights and Fundamental Freedom. His appeal was rejected in *Bărbulescu v. Romania*, Jan. 12, 2016.

The Court held that the employer’s rule against personal use of its equipment removed any reasonable expectation of privacy, that it was not unreasonable for the employer to engage in monitoring to verify that employees are carrying out their professional tasks, and that the dismissal related to the personal use of the equipment and not to the private content of his personal communications. The Court also noted that Bărbulescu had not convincingly explained why he had used the Yahoo account for personal purposes.

One judge dissented on the ground that the employer had not explicitly warned employees that such communications were being monitored and that employees must be aware of the purposes, scope, technical means and time schedule of such monitoring. Otherwise, he warned, there is danger of *ad hoc* monitoring for opportunistic purposes of justifying otherwise improper dismissals and created a risk of monitoring being “abused by employers acting as a distrustful Big Brother lurking over the shoulders of their employees.”

The institutions of European labor-management relations have been under attack for some time by those who assert that they create inflexibility that damages economic growth and adjustment—a thesis that is familiar to Americans. These pressures have been accelerated by increased global competition and the world financial crisis of the last decade—a crisis that continues to have substantial impact on European economies.

These events and their social consequences prompted the European Foundation for the Improvement of Living and Working Conditions to conduct a comparative study aimed at identifying the changes taking place in collective bargaining structures and relations, and ascertaining what future changes can be expected.

The study found, among other things, that although the central and eastern countries in the EU had similar industrial relations structures when they were within the Soviet bloc, they now have “more differences than commonalities.” In contrast, the Centre-West group (Austria, Belgium, Germany, Luxembourg and the Netherlands) that were among the core of the original EU states, continue to have substantial similarities, though their differences have seen some increase.

In the past two decades, the percentage of employees who are union members has decline significantly in Eastern European countries but less dramatically in most of Western Europe. It has been observed that in several EU countries the density of union membership has experienced marked increases or decreases in line with changes in the role of unions as administrators of various social welfare funds and changes in the level of those fund benefits.

The study also observed that post WWII, in many European countries government participation has played a strong role in reaching national wage agreements or national industrial sector agreements, especially with respect to wages but also with respect to such matters as job training responsibilities. This has been particularly true in most of Western Europe. However, in the past couple of decades the government’s role has lessened either because of changes in national laws governing collective bargaining procedures or because of the parties’ willingness to allow for greater flexibility at the local level.

Eurofund Study of Collective Bargaining in Europe in the 21st Century