

BULLETIN
of the
U.S. BRANCH
INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW
ALVIN GOLDMAN, *editor*
May 2017

[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

I would like to use this column to describe two initiatives that have been approved by our Executive Board.

The first initiative is the nomination of **Janice Bellace** to serve as President of the International Society of Labor and Social Security Law. We have been told that it is North America's "turn" for the presidency. Janice is already on the leadership track currently serving as the Treasurer of ISLSSL, and she has agreed to accept our nomination. Here is some additional information about Janice that I included in my nomination letter:

Janice Bellace is the Samuel Blank Professor of Legal Studies and Management at The Wharton School of the University of Pennsylvania. She is a prolific scholar in the field of labor and employment law with an emphasis on comparative and international labor law. She has been an active participant in ISLSSL for over thirty years and has regularly attended world congresses since 1982. She currently serves as Treasurer of ISLSSL. She also is active in several professional organizations, including the International Labour and Employment Relations Association, for which she served as President from 2009 to 2012. She also served for many years on the ILO Committee of Experts on the Application of Conventions and Recommendations. She is the current President of the Labor and Employment Research Association. * * *

In sum, I believe that Janice Bellace has the skills and dedication to provide outstanding leadership to our organization.

Please urge support for Janice's candidacy if you have relationships with other North or Central American ISLSSL leaders.

The second initiative is U.S. Branch sponsorship of a luncheon program during the annual Colloquium on Scholarship in Employment and Labor Law (COSELL) which will be held this year at **Texas A & M on September 15-16**. COSELL primarily attracts younger scholars in the labor and employment law field, and our participation may entice some of these scholars to join our aging ranks. **Matt Finkin** has organized a distinguished panel of international scholars who will present during lunch on Saturday, September 16, on the topic of "Employer Access to and Use of the Contents of Employee Social Media: A Comparative Perspective." The panelists are David Mangan (City University of London), Mimi Zou (Chinese U. of Hong Kong), and Rudiger Krause (University of Gottingen). The panel will be chaired and moderated by Matt Finkin (U. of Illinois). Matt has summarized the objectives of this program as: broadening the perspective of U.S. employment law academics and introducing them to the value of comparative law and the U.S. Branch of ISLSSL. Please consider attending what should be an excellent two-for-one program.

Member Activities

-Steve Moldof was panel moderator and a speaker at the ABA's International Labor & Employment Committee meeting in Dublin, Ireland on May 10, 2017. The topic was "The Legal and Other Challenges to the 'Gig Economy' around the Globe: What's the Score?" Other panelists were from India, the UK, Canada and the U.S.

-Carol Rasnic, while a Visiting Professor at the University of Limerick School of Law, Ireland, co-chaired and participated in a labor law conference in October 2015. In the 2016 Spring semester she was a Fulbright Professor at the Department of Labor Law, Pázmány Pé-

ter Catholic University, Budapest, Hungary. In November, 2016, Prof. Rasnic organized and presented a panel for the Irish Association of Law Teachers in Waterford, Ireland, on the "Right to Strike Internationally" and presented a paper on "Effects, if any, of the 2013 and 2015 Same Sex Marriage Decisions of the US Supreme Court on Employment Law". Additionally, the 2016 *Comparative Law Yearbook for International Business* published her co-authored paper "Company Work Leave Laws: the U.S.A. and Hungary."

-The President has named our long time member **Philip A. Miscimarra** to be Chairman of the National Labor Relations Board.

-**Sandy Jacoby** is studying the regulatory framework for ride-sharing companies in Japan.

-**Rick Bales** spent most of January teaching labor students at Ton Duc Thang University in Saigon, Vietnam. His article *Transnational Employment Trends in Four Pacific Rim Countries*, co-authored with four others, will be published shortly at 34 UCLA Pacific Rim L.J. ____ (2017). Additionally, at the Asian Law Institute Conference in May, moderated a panel and spoke on the topic of *Labour Law in the Gig Economy: An International and Comparative Approach*. Also, Rick continues to edit the Newsletter for the ABA Section of International Labor Law, International LEL Committee, and in May attended the Committee's conference in Dublin. (Wow, is he racking up frequent flyer points!)

-In February **Charlie Craver** presented a paper "Do Alternative Dispute Resolution Procedures Disadvantage Women and Minorities," at a symposium conducted by the SMU Law Review. His exploration will be of interest to scholars and practitioners in other countries as well as in the U.S.

-**Janice Bellace** is completing her year as president of the Labor and Employment Relations Association. She proudly reports that at the annual meeting in Anaheim (June 1-4), ten sessions are international and over 40 persons are

coming from outside the U.S.

In May, Janice was awarded an honorary doctorate in economics from Sydney University.

-Among his other recent publications, in July of 2015 **Ken Dau-Schmidt** prepared a paper for a conference on "Dalits and African Americans in the Twenty-First Century: Learning from Cross-Cultural Experiences". The conference was held at the National Law School of India, Bengaluru, India. Ken's paper is published as a book chapter titled "Oh Brother Where Art Thou?: The Struggles of African American Males in the Global Economy of the Information Age". It is available on line at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857475

Ken is scheduled to teach later this year at the Peking University's School of Transnational Law, in Shenzhen China.

Up-coming Conferences and Seminars

-**June 18-24, 2017, Venice, Italy.** The 4th Seminar on International and Comparative Labour Law will be organized around the theme "Global Trade and Labour Rights." Program and registration details can be found at: <http://islssl.org/4th-seminar-on-international-and-comparative-labour-law-final-program>.

The seminar is supported by the ISLSSL. Janice Bellace, who teaches in the seminar, reports that she has been very impressed by how much "the students know about EU law, international labor law, etc."

-**Sep. 20-22, 2017, Prague, Czech Republic.** XIIth European Regional Congress will address as its main theme "Current Challenges in Labor Law and Social Security Law". Program details are available at:

<http://www.ercprague2017.cz/en/program>.

Registration is available on-line at: <http://www.ercprague2017.cz/en/registration-fees> and the registration form on-line is available at:

<http://www.ercprague2017.cz/en/registration>.

English is one of the official languages of the congress and all plenary sessions will have simultaneous translation.

-August 21-25, 2017, Kinshasa, Democratic Republic of Congo. The 8th ILERA African Regional Congress. Details should soon be available at:

<http://www.ilo.org/public/english/iira/congresses/index.htm>

-July 23-27, 2018- Seoul, South Korea. World Congress of the International Labor and Employment Association. Details when available will be announced at:

<http://www.ilo.org/public/english/iira/congresses/index.htm>

Other ISLSSL Activities

In addition to the Venice seminar, noted above, ISLSSL supports several young scholar groups. Primarily these programs are in Spanish speaking areas (e.g., Spain and one that meets in South America). However, one is in Poland.

Sponsored Research Opportunity in Japan

The Japan Institute of Labour Policy and Training annually invites foreign researchers who are fluent in English to apply for travel and living expense support to engage in research and reporting on issues related to the Institute's projects. Further information about this program, including the application form, can be found at:

<http://www.jil.go.jp/english/invitation/index.html>

Comparing Occupational Safety and Health Laws

In 2014 the Bureau of Labor Statistics reported that a comparison of European Union and U.S. data from 2010 showed that while the overall job related death rate for the main industry branches in the EU was 2.8 fatalities per 100,000 employees, in the U.S. it was 3.1 fatalities per 100,000 employees for the same groups. However, a somewhat different picture emerged when the focus was on the distribution of all occupational fatalities among various industries. Thus, while the construction industry had 20.9 percent of all fatalities in the U.S., it

was 26.5 percent in the EU. In contrast, the fatality burden for manufacturing was higher in the EU than in the U.S. (19.3% EU, 14.9% U.S.). There are, of course, various possible explanations for the percentile differences including the overall profiles of the different economies and their dominant industries as well as cultural differences regarding such things as attitudes toward risk and rules. Among the possible explanations, too, are differences in the legal structures for establishing and enforcing OSH standards.

In the EU a series of 19 Directives establish a general framework for occupational safety and health laws with variations in the details being adopted by the member nations.

Among the differences in the U.S. and EU approaches is that EU countries often impose government penalties on employees who violate their safety and health duties. Also, whereas U.S. law mandates employee input into workplace safety and health practices only if undertaken in a collective agreement and, to a limited degree when an OSHA inspection takes place, EU laws promote a greater employee consultative role in the initiation, design and implementation of workplace safety and health practices.

For example, in a number of European states employee health and safety representatives are elected or are chosen in some other way such as by union appointment. These representatives have an independent role in finding and calling attention to problems and participate on a joint health and safety committee together with employer representatives including the employer's health and safety professionals. In some countries, such as Ireland, the employees must request such a joint committee; in Poland only a union can call for the committee; in Portugal the joint safety and health committee must be established by a collective agreement. In other countries, such as Belgium and Denmark, a joint safety and health committee is established but no one is designated as an individual OSH representative. In contrast, in a few countries, including Italy and the Czech Republic, there is an independent employee OSH representative but no joint committee and, finally, in Germany and four other countries employee consultation on occupational safety and health issues is a works council function.

Smaller work places often are exempt from the representation requirement or have a separate mandated method for input by an employee spokesperson.

In a few EU countries, including Denmark and Spain, the employee representative or representatives or OSH committee, have the authority to suspend work in the face of serious, imminent danger.

Comparative Study of the Difference in Collective Bargaining Structures

Recently reported in the *ADAPT International Bulletin* is a comparative study being undertaken by Anthony Forsyth and Paolo Tomassetti of Australian and Italian collective bargaining law. The on-line report contains the authors' initial comparison of the key features of the respective collective bargaining structures and explains that a key focus of their study will be on the impact on productivity when a collective bargaining system shifts from collective bargaining that is industry-wide to a bargaining structure that is enterprise-wide.

Both in Australia and Italy, industry-wide bargaining and enterprise bargaining are available. In Australia industry-wide bargaining was the norm until the early 1990s when the law changed to encourage enterprise bargaining and bargaining within smaller units of an enterprise. The possibility of shifting from industry to enterprise bargaining is more recent in Italy and is being encouraged.

The authors note that the shift to enterprise bargaining has been based on the contention that it increases flexibility and thereby improves productivity. They point out that such gains in Australia in the early 1990s have not been sustained. Thus, the findings of their study are expected to provide important guidance for policy makers in both countries and beyond.

European Court of Justice--Head Scarves

The Court of Justice of the European Union recently ruled on the question of whether an employer can dismiss an employee who wears a headscarf for religious reasons.

In one case, the works council had a rule prohibiting "wearing any visible signs of ...

political, philosophical or religious beliefs or from engaging in any observance of such beliefs." A woman assigned to customers as a receptionist was told she could not wear an Islamic headscarf because it violated the rule against wearing political, philosophical or religious signs. She was dismissed when she later insisted on wearing an Islamic headscarf, sued, and the Belgian court referred the underlying question of religious protection to the EU Court of Justice.

The Court ruled that "an employer's desire to project an image of neutrality towards ... customers is legitimate... where the only workers involved are those who come into contact with customers." It additionally indicated that the employer has a duty to accommodate the employee if it would have been possible, without a burden on the employer, to offer the worker a post not involving visual contact with customers.

In a companion case, a woman employed as a design engineer, was dismissed for wearing an Islamic headscarf contrary to the wishes of a customer to whom she had been assigned. She challenged her dismissal in a French court which referred the underlying legal question to the EU Court of Justice.

In the French case the Court drew a distinction between enforcement of a neutral rule applied to all employees and mere accommodation of a customer's objection to a headscarf. It ruled that religious practices can be restricted based on objective requirements dictated by the nature of job activities or the context in which they are carried out. However, the occupational requirements defense does not allow for subjective considerations such as the employer's desire to placate a particular customer's wishes.

If You Haven't Already Done So,
Please Send Your Annual Dues to:

Prof. STEVEN WILLBORN
U.S. Branch ISLSSL Treasurer
College of Law, Univ. of Nebraska
P.O. Box 830902
Lincoln, NE 68583-0902