

**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](http://lawhelp.github.io/islssl/board.html)

Int'l Society web site: <http://islssl-us.org>]

**Note from the Chair**

**By Rick Bales**

I'll start my first Chair's Message by expressing my sincere thanks to **Steve Wilborn** and **Steve Befort** for their past leadership and their bending over backward to ensure a smooth transition. Many, many thanks also to **Jay Youngdahl** for stepping up actively into the role of Treasurer, and **Alvin Goldman** for his tireless work on this Bulletin.

Our top priority over the next year will be to do everything we can to support **Janice Bellace** in her new role as ISLSSL International President. Congratulations, Janice, and please let us know what we can do to support you!

Over the longer term, I have three goals for our Branch. The first is to expand membership, which we will do by reaching out to and partnering with like organizations. I would like us to have a presence at gatherings like LERA, LLRN, COSELL, and LCC. The second is to expand opportunities within our ranks for our members to contribute and lead. We build membership most effectively by ensuring everyone who wants to be actively involved has many such opportunities. Third, and related to the first two, I would like to see us actively participating in LEL-related conferences. Janice has wisely suggested that we do an add-on program at next year's annual LERA meeting in Cleveland. This seems like a fine place to start.

To pull off this ambitious agenda, we'll need your help – please let me know how you'd like to get involved!

**ISLSSL World Congress, Turin**  
**September 4-7, 2018**

**By Jim Brudney**

The most recent ISLSSL World Congress, held on the campus of the ILO's International Training Center on the outskirts of Turin, Italy, was devoted to the theme "Transformations of Work: Challenges for the National Systems of Labor Law and Social Security". More than 580 persons attended from 59 countries, including a substantial number

of young scholars. Participants contributed close to 200 papers (in English, Spanish, or French) compiled on the Congress website.

There were seven plenary sessions on study group themes. These included global reports on New Forms of Social Security; Informal Workers; Global Trade and Labor (prepared by **Janice Bellace**); Transnational Collective Agreements; Migrant Workers; The Role of the State in Industrial Relations; and Organization, Productivity, and Well-Being at Work. Afternoons were devoted mainly to parallel sessions (mostly in English, though many in Spanish and one in French) at which numerous speakers presented papers. Professors **Matt Finkin** (Illinois Law), **Ruben Garcia** (Nevada Las Vegas Law) and **Jim Brudney** (Fordham Law) were additional U.S. presenters.

Janice Bellace was officially installed as President of the ISLSSL for a three-year term. As was reported in November 2017, Janice is the third member of our branch to hold this office. She is Professor of Legal Studies and Business Ethics at the Wharton School of the University of Pennsylvania and is also the Director of the Tanoto ASEAN Initiative at Wharton.

It was announced that the upcoming regional conferences of ISLSSL will take place in Cordoba, Argentina (Sept. 4-6, 2019); Lisbon, Portugal (Sept. 2-4, 2020); and Zimbabwe (March 27-28, 2020) (theme-"Decent Work in Modern and Developing Countries: Contemporary Legal and Social Challenges"). The next Asian regional congress venue and dates are to be decided shortly and the next World Congress will be held in Lima, Peru, Sept. 7-10, 2021. In 2022 or 2023, the XIV European Regional Congress will be held in Ghent, Belgium.

Turin is a lovely city, and the meeting was a success in terms of papers presented, installation of a dynamic new president, and overall atmospherics.

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The papers presented at the Xth ISLSSL American Regional Congress are now pub-

lished in G. Casale, V. Torres De Leon (eds), *LABOUR LAW AND SOCIAL SECURITY IN THE AMERICAS*, Giappichelli, Torino, 2018.

### **Report on First CAFTA Arbitration**

In April, **Lance Compa**, together with Jeffrey Vogt of the AFL-CIO Solidarity Center and Eric Gottwald of International Labor Rights Forum, prepared a summary Report abridging and annotating a June 2017 arbitration decision in a dispute between the U.S. and Guatemala respecting alleged violations of the labor provisions of the Dominican Republic and Central American Free Trade Agreement (CAFTA) to which the US is a party.

CAFTA Article 16.2.1(a) states: “A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties ....”

In 2008 the US Dept. of Labor received and investigated complaints of persistent violations of organizing and bargaining rights, anti-union violence and substandard working conditions in various Guatemalan factories and farms. In time, the Dept. of Labor, having failed to resolve the issues through a public report and extended discussions with the Guatemalan government, initiated the CAFTA arbitration process. Each side appointed an arbitrator and jointly appointed a third arbitrator as the chair. Only the chair, a Canadian professor of labor and employment law, had labor law expertise; the other two, a Mexican professor and a US practitioner, were experts in the area of international trade. Representation at the hearing was solely by government lawyers and according to the Compa *et al.* Report, the US Trade Representative “did not invite the complaining organizations to help them strategize and frame the case.” An initial draft was sent to the parties for comments prior to the Panel’s issuance of its final 299 page decision.

The US complained that Guatemala violated CAFTA by failing to: a) secure compliance with court orders requiring employers to reinstate and compensate workers wrongfully dismissed for union activities and pay a fine for their retaliatory action, b) properly conduct investigations under its Labor Code and impose the requisite penalties when inspectors identified employer violations, and c) timely register unions or institute conciliation processes as required by local law.

The decision dismissed the last assertion on the ground that it was not a detailed allegation of the submission to arbitration. The Compa *et al.* Report

contends that “the Panel could have ruled that in three years of consultations and successive enforcement plan extensions between the two countries, Guatemala had more than adequate notice and specificity on these claims”.

The evidence submitted by the US consisted largely of statements that had been redacted to protect the identity of the workers and union activists. Although it did not dismiss such documents out of hand, the Panel observed that they did not deserve the same weight as statements by identified individuals. The US also submitted official statistics of the Guatemalan Judiciary and intergovernmental agencies to show widespread failures by the Guatemalan inspectorate and judiciary but that evidence was dismissed as irrelevant “since that is not the claim advanced by the United States in its pleadings.”

The Panel ruled that the Agreement’s labor provisions are involved only if “failure to enforce labor laws is such as to confer a competitive advantage in trade between the parties to the Trade Agreement.” While the Panel found that Guatemala failed to effectively enforce labor laws within the meaning of Article 16.2.1(a) of the CAFTA with respect to 74 workers at 8 specified worksites, it concluded that this did not establish a CAFTA violation because there was no proof the backpay avoided by the specified companies conferred a competitive advantage in trade among the CAFTA nations.

Although the Panel acknowledged that retaliatory dismissals for union activity can ultimately lead to avoidance of collective bargaining and result in savings that provide a competitive advantage, it held it was not proven that in the instances at issue failures to enforce the laws affected the ability of the workers or the union to organize or incentivized other employers to violate the Labor Code nor that any violations affected CAFTA trade in a recurring or sustained manner.

As a means of strengthening trade agreements as a tool for leveling the competitive playing field by protecting worker and human rights, the Report’s authors propose eight changes for future or renegotiated labor provisions. Included is that proof of the competitive impact of persistent labor rights violations not be required; the agreement should make it clear that “the central goal of the labor chapter is to protect workers’ rights, not to grease the skids of trade”; full consideration should be given to reports and findings of international courts and bodies such as the UN and the ILO; the

available arbitrators for such disputes should “have expertise or experience in international law on human rights, labor rights and labor standards, and labor law and its enforcement under one or more national labor law systems”; and the persons and entities that initiated the complaint should have an opportunity to be heard.

### **Benefits Distinctions in Japan Between Regular and Non-regular Workers**

In Japan, workers hired as permanent or “regular” employees are distinguished from those on a fixed term contract. Many in the latter category are retirees who continue to work for the employer to supplement their retirement benefits. Others are hired to fill needs during periods of uncertain work force expansion. According to Mr. Ryo Hosokawa, Vice Senior Researcher, at The Japan Institute for Labour Policy and Training, starting in the late 1990s the number of such non-regular employees was increasing and that increase “became more acute in the economic crisis of 2008.” [R. Hosokawa, “The Illegality of Differences in Labor Conditions between Regular Workers and Non-regular (Fixed-term Contract) Workers”, Japan Labor Issues, vol.2, no.7, p. 20 (June-July 2018).] Growing attention to the situation of non-regular (fixed-term) workers gave rise to the adoption, in 2012, of Japan’s Article 20 of its Labour Contracts Act, prohibiting unreasonable differences in labor conditions between those with fixed-term contracts and regular employees. However, Article 20 does not expressly adopt the principle of “equal pay for equal work.”

Pension benefits begin at age 62. (The starting age is gradually increasing until for men it reaches 65 in 2025). Nevertheless, regular employees can be required to retire at an earlier age. To ease the resulting financial burden, the Act on Stabilization of Employment of Elderly Persons, employees who wish to keep working must be retained until age 65 but retention can be as a non-regular worker in a lower paid job.

On June 1, 2018, it was reported in *The Mainichi* that the Japanese Supreme Court, ruled that three employees at the Nagasawa-Unyu transport company, who remained after reaching the retirement age of 60, were entitled to receive perfect attendance allowances of 5,000 yen monthly because depriving them of this benefit was unreasonable under Article 20. The Court also required recalculation of their overtime pay to reflect the higher pay rate due to the perfect attendance al-

lowance. However, the Court rejected the plaintiffs' claim that the differences in the base pay and other allowances were unreasonable, noting that the retirees would soon begin to receive pension benefits and therefore justified the difference in treatment.

### **Up-coming Events**

[See, also, the conferences listed above in Jim Brudney’s report.]

The Ca’ Foscari will organize the 6th International Seminar on International and Comparative Labour Law in May 2019. Up-to-date information can be found at the ISLSSL website.

The Japan Institute for Labour Policy and Training will conduct the 3<sup>rd</sup> Comparative Labour Policy Seminar in March 2019.

### **Member Activities**

**Jay Youngdahl** is a Visiting Scholar at the newly renamed School of Labor and Urban Studies at CUNY.

Prof. **Charles Craver** gave presentations on “Effective Negotiating” to two international groups in Monterey, Calif.

Prof. **Rick Bales** moderated a presentation on “Artificial Intelligence in the Workplace” at the midyear meeting of the ABA’s International Labor and Employment Law Committee held in Milan, May 2018. He attended the ILERA International Conference in Seoul, South Korea in July 2018 and began a series of labor arbitration trainings in Myanmar in October. In the last year he has published “Legal Responses to the Rise of the On-Demand Economy in Georgia and the United States”, 1 *[Republic of] Georgia L.J.* \_\_\_\_ (forthcoming fall 2018) (co-authored with Ana Mikhailidze), and On the Precipice: Prospects for Free Labor Unions in Vietnam, 19 *San Diego Int’l L.J.* 71 (2017) (co-authored with Trần Thị Kiều Trang).

**Lance Compa** assisted the United Food & Commercial Workers and the UNI Global Union in drafting a complaint against IKEA under the OECD Guidelines for Multinational Enterprises for violating workers' rights in the United States, Portugal and Ireland. A news item about the complaint can be found at:

<https://www.nytimes.com/reuters/2018/09/27/business/2/reuters-ikea-unions.html>

The latest scholarly contributions of Prof. **Ronald Brown** include “Due Diligence – MNCs and Human Labor Chains - Remedies: Soft Law and Hard Law”, in 22.2 *UCLA J. Int’l L & Foreign*

*Affairs* \_\_ (2018); “New Leader in Asia: New Rules; No Labor Protections in its Free Trade Agreements”, 35 *UCLA Pac. Basin L. J.* 1 (2018). He also presented papers at: a) a conference in June 2018, in Foshan China (the robot capitol of China), entitled “Chinese Labour Law and the Digital Workplace”; b) “EU-China BIT and FTA: Building a Bridge on the Silk Road Not Detoured by Labor Standard Provisions”, at a conference September 12-15, 2018, in Turin Italy, sponsored by Turin University Law School and the European Union-China Law Society; and c) “Measuring Worker Performance Within the Limits of Employment Law in the Changing Workplace Environment of Industry 4.0”, Modena, Italy, at the Marco Biagi Conference on March 20, 2018.

Dean **Gillian Lester** reports that she co-edited *PHILOSOPHICAL FOUNDATIONS OF LABOUR LAW*, (Oxford U. Press, Dec. 2018) authored by legal academics and philosophers spanning the U.S., Canada, and Europe (mainly UK).

**Wilma Liebman** will be a presenter at a training program in mid-October in Sitges, Spain. It is conducted by the Brussels European Employee Relations Group (BEERG), a forum for European employee relations specialists. She will talk about "unions and the politics of today," including new forms of worker organizing and unions' global strategies in comparison with the European employee involvement framework. In June Wilma discussed complex labor relations in our country with HR officials from French multinationals that have signed the Global Deal and do business in the US. And, together with **Tom Kochan**, she organized and participated in a one-day program at MIT on "industry 4.0 and co-determination." The program included leading German Works Council and HR representatives as well as US academics with expertise in the German political economy.

### **International Lawyers Assisting Workers (ILAW) Network**

Former AFL-CIO General Counsel, **Jon Hiatt**, informs us that a new global network of international union and worker rights lawyers, the International Lawyers Assisting Workers (ILAW). It is being developed with a core mission of bringing together legal practitioners and scholars in an exchange of ideas and information in order to best represent the rights and interests of workers and their organizations. The Network will offer opportunities to learn from each other's experiences and to collaborate and strategize in matters pertaining

to the protection and expansion of worker rights, including those that cross national borders.

An Advisory Board of 20 lawyers from 20 countries will focus initially on: global supply chain accountability; the fissured employment relationship; migrant worker rights; the informal economy; employment discrimination in all its forms; bargaining with multinational employers; and trade union rights.

The Network's online platform will be the main point of interaction supplemented by occasional global and regional conferences. The key components of the ILAW website, which will be presented in English, Spanish, and French (and hopefully other languages over time) will include:

- An online library for the sharing of relevant materials accessible by subject matter as well as geography;
- A global directory of members' contact information and areas of expertise;
- A network of chatrooms or listserves to facilitate direct communication among members with similar interests or concerns;
- A news feed site to provide updates on worker rights developments and to announce upcoming events of potential interest;
- A link to an ILAW Network twitter feed, a forum for webinars and other educational opportunities

Membership dues will be necessary to sustain the organization, but will be set at modest levels, and tied to ability to pay.

Further information is available from Jeff Vogt ([jvogt@solidaritycenter.org](mailto:jvogt@solidaritycenter.org)), Legal Director of Solidarity Center, a non-profit NGO affiliated with the US labor movement or from Jon Hiatt ([jonhiatt17@gmail.com](mailto:jonhiatt17@gmail.com)).

Also, see, [www.ilawnetwork.com](http://www.ilawnetwork.com) (which is coming soon.)

### **Help Our Membership Grow**

We regret to report that our membership growth has not reflected the growth in globalization of employment relations. We need your help in publicizing the activities of the US Branch of the ISLSSL. Please help us by urging your friends and colleagues to join. Prospective members should contact our treasurer, Jay Youngdahl, at:

**[jyoungdahl@youngdahl.com](mailto:jyoungdahl@youngdahl.com)**