

# BULLETIN

## *INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW—U.S. BRANCH*

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

### **Notes from the Chair**

**Steven L. Willborn**

The primary value of our Society is the opportunity to talk about vital topics in labor and employment law with interesting people from around the world. Next year, we're going to have two wonderful opportunities to do just that.

On May 20, 2009, the United States Branch will be the primary sponsor of a one-day conference at Northwestern University Law School in Chicago. This will be an all-day conference and it will be very reasonably priced, probably \$60 for members (like you) and \$100 for non-members. Program details and presenters are outlined in another part of this Bulletin. We'll have more information about this in due time, but please consider attending.

Our conference will be co-sponsored by the Canadian Branch of the ISLSSL, the National Academy of Arbitrators (which will have its conference the following three days in Chicago), and probably by a few others.

On September 1-4, 2009, the Australian Branch of the International Society will host the nineteenth World Congress. Ron McCallum, Professor and former Dean at the University of Sydney, is the President of the Australian Branch and the main organizer of the Congress. He has promised both an invigorating program and a hearty Australian welcome and for the conference social program. I have great confidence he'll deliver on both promises. Program details and presenters are outlined in another part of this Bulletin.

I know many of you have been loyal members of our Society for years, but have never attended one of our conferences. I would urge you to give it a try. This fall, I attended the ninth European Congress of the ISLSSL in Freiburg, Germany. Freiburg turned out to be a wonderful college

town, the University was beautiful and impressive, the discussions were lively and invigorating, and the beer was pretty darn impressive (and I'm from Wisconsin, so I know my beer). Again, these are wonderful events. I know you would enjoy them if it's possible for you to carve out the time to attend.

### **Chicago Conference of U.S. Branch**

**May 20, 2009**

As the saying goes, **back by popular demand**, the U.S. Branch will conduct a one-day comparative labor and employment law conference in Chicago, IL, on Wednesday, May 20, 2009, at the Northwestern University School of Law. May 20<sup>th</sup> is the day immediately preceding the start of the annual meeting of the National Academy of Arbitrators and was selected to facilitate attending both meetings (and, for those attending the Academy meeting, take advantage of its discounted hotel rates at the Fairmont which is about eleven blocks from the Northwestern U. law building.)

**Theodore St. Antoine**, Prof, Emeritus, U. Michigan will preside over the first half of the program which will include presentations by **Ronald C. Brown**, Prof. of Law, U-Hawaii (Overview—China's New Legal Environment Affecting ADR); **Hilary K. Josephs**, Professor of Law, Syracuse U. (China's New Employment Contract Law); **Arnold Zack**, Arbitrator, NAA, & Lecturer, Harvard U. (Mediation and Arbitration in China—Law and Practice); and **Earl Brown**, Solidarity Center, AFL-CIO (China's Labor Landscape—The Union Role).

The second half of the program, "Industrial Action in Confederal Systems", will look at judicial responses to union efforts to curb outsourcing in cross border transactions. Prof. **Frank Hendrickx** (Catholic University, Leuven, Belgium)

will explain discussed European developments respecting this issue (*Viking* and *Laval* cases) and Profs. **Bernard Adell** (Queens U., Kingston, Ont.) and **Steven Willborn** (Nebraska) will respectively offer Canadian and U.S. perspectives.

The third session features **Ana Gomes** (Prof. of Intl. Labor Law at Catholic University, Santos, Brazil and Mackenzie University, São Paulo, Brazil), **Benjamin Davis** (Director, AFL-CIO Solidarity office, Mexico City) and **Thomas Wilson** (Vinson & Elkins law firm). Prof. Gomes and Mr. Davis will explain and assess the labor and employment dispute resolution systems respectively in Brazil and Mexico, and Mr. Wilson will offer a U.S. practitioner's perspective on the topic.

### **Sewerynski New President-Elect of International Society**

At the recent ISLSSL congress in Freiberg, Professor **Michal Sewerynski** of the University of Lodz was elected President-elect of the International Society for Labor and Social Security Law. He will take office, succeeding Professor **Kazuo Sugeno**, at the conclusion of the Society's World Congress in Sydney in early September of 2009.

Professor Sewerynski, President of the Society's Polish Branch, who has contributed articles to our Branch's *Comparative Labor Law and Policy Journal*, is author, co-author or editor of 15 books and some 140 articles published in Polish and other languages. He was President of his university from 1990-1996 and is a former President of the Polish Conference of University Presidents. Apart from his academic posts, he served as Poland's Minister of Science and Higher Education from 2005-2007.

### **In Memoriam- Leroy Merrifield**

On Sept. 19, 2008, **Leroy S. Merrifield**, who was chair of the U.S. Branch of the ISLSSL from 1982 to 1988, died at his Alexandria, VA, home at age 90. Roy, a World War II veteran who had law degrees from Minnesota and Harvard, was a federal government lawyer before joining the George Washington University faculty in 1947. He was Lobingier Professor of Jurisprudence and Comparative Law at the time of his retirement from teaching in 1988.

During his career, Prof. Merrifield was a Fulbright fellow in Australia and a Ford Foundation fellow in Europe. He served as a member of the Civil Rights Reviewing Authority for what is now the U.S. Department of Health and Human Ser-

vices and as an adviser to the U.S. Civil Service Commission, the Commission on Government Security, and the Administrative Conference of the United States. He also was an arbitrator in the railroad and other industries, and a member of the Foreign Service Grievance Board.

Prof. Merrifield was, perhaps, most widely known as a co-author of highly regarded and widely used casebooks in the labor field.

Roy's wife, **Marian Hansen Merrifield**, who many members no doubt remember, preceded him in death in 2002.

Some Society members were Roy's admiring colleagues in other endeavors. Those who traveled with him and Marian to ISLSSL congresses were graced by their kind, generous, thoughtful natures.

### **In Memoriam- Américo Pla Rodríguez**

Prof. **Américo Pla Rodríguez**, a past President of the ISLSSL, who died on July 22<sup>nd</sup> in his home in Montevideo, Uruguay at age 89, was one of Latin America's most respected labor law scholars. A man of quiet dignity and dedication, he continued to conduct classes in his law office after being removed from his academic post by the dictatorship that took power in 1973. Prof. Pla's courageous defense of the rule of law and the principles of decency inspired a generation of Uruguayan and Latin American scholars.

### **Mandatory Retirement Dispute in Britain**

A few years ago, in *Palacios de la Villa v Cortefiel Servicios SA* (Case C-411/05), the European Court of Justice (ECJ) held that the European Directive against age discrimination is not violated by a Spanish law that allows collective agreements to provide for termination of employees who reach normal retirement age if they have accrued minimum pension entitlements. Earlier this year a British organization representing older workers and retirees challenged as discriminatory a British law adopted in 2006 that allows employers to retire workers who have reached retirement age. The organization argued that, unlike the Spanish situation, compulsory retirement under British law was not justified by a national policy imposed during high unemployment to promote better access to employment opportunities for workers who have no alternative income source. In response to the suit, the Advocate General of the ECJ recommended to the Court that it not strike down the British law on its face but rather should permit enforcement if the United King-

dom's government provides acceptable justifications for allowing mandatory retirement. The EJC normally follows, but need not follow, the Advocate General's recommendations. The Court's decision is expected in December.

### **Other Up-Coming Conferences**

#### **World Congress of ISLSSL**

The next world congress of the International Society will be held in **Sydney, Australia**, from **September 2-4, 2009** at the Sofitel Wentworth.

The conference will have three themes:

Theme 1: Regulatory frameworks and law enforcement in new forms of employment.

Theme 2: Workers' representation and social dialogue at the workplace level. General

Theme 3: Emerging patterns of social protection in light of structural changes (aging population, changing family structures, immigration, budgetary constraints, political and ideological realignments).

The general reporters for these sessions respectively are Professors Rosemary Owens, University of Adelaide; Antoine Jeammaud, Université de Lumière Lyon; and Carlos Hernandez, Catholic University Madre & Maestra School of Law, Dominican Republic.

In addition, **Prof. Gillian Lester**, University of California-Berkeley, will chair a round table on "Work and family Life."

Other speakers at the congress will include:

Prof. Gordon Anderson, Victoria University of Wellington; Dr Guy Davidov, The Hebrew University of Jerusalem; Attorney Jonathan Sale University of the Philippines School of Labour and Industrial Relations; Dr Kamala Sankaran, University of Delhi; Prof. Silvana Sciarra, Università di Firenze; Prof. Paul Benjamin, University of Cape Town, South Africa; Prof. Takashi Araki, University of Tokyo; Professor Paul Davies, London School of Economics and Political Science; Prof. Keith Ewing, Kings College London; Prof. Judy Fudge, University of Victoria; Prof. Mark Freedland, Oxford University; Prof. Adrian Goldin, San Andres University; Prof. Alain Supiot, Université de Nantes; Prof. Sharifah Suhanah Syed Ahmad, University of Malaya; Dr Vanitha Karean, Monash University.

The early-bird registration rate, available before June 1, 2009, is AU\$795 (as of late October '08 = c. US\$494). Reduced rates are available for students and accompanying persons. The congress web site is: <http://www.labourlawsydney.com/>

Immediately prior to the Society's world congress, the International Industrial Relations Association will hold its world congress—also in Sydney. (See below.)

- At the Society's recent European Congress in Freiberg, the following future congresses of the Society were announced. The VIII<sup>th</sup> Western Hemisphere Congress will take place in Cartagena de Indias, Colombia, in 2010; the X<sup>th</sup> European Congress will be held in Seville, Spain, in 2011; and Santiago de Chile will host the XX<sup>th</sup> World Congress in 2012.

### **Conferences of Other Organizations**

- Aug. 24-28, 2009, Sydney Convention and Exhibition Center, Sydney, Australia. World Congress of the International Industrial Relations Association.

The themes are:

Track 1: Management, Work and Organization

Track 2: Voice and Representation

Track 3: Work, Family and Community

Track 4: Institutions, Processes and Outcomes

Track 5: New Forms of Work

A super early bird registration fee of \$880 is available for those members who register before Jan. 9, 2009). (Presumably this is Australian dollars.) The next lowest early bird registration fee of \$990 is available for those registering before Feb. 27, 2009. Additional information is available at: <http://www.iceaustralia.com/IIRA2009/>

-**Apr. 23-24, 2009, Berlin, Germany.** International Bar Association conference on Key Employment, Labor, and HR Challenges for Today's Multinational Employers. Details available at: <http://www.ibanet.org/conferences/conf252/>.

-**May 10-14, 2009, Hotel Ritz-Madrid, Spain.** Meeting and program of the International Labor Law Committee of the ABA Labor and Employment Law Section. Details to be announced.

### **Publishing and Other Member Activities**

**Jay Youngdahl's** article "Mapping the Future: Cross-Border Unionizing Strategies" was published recently in 17 *New Labor Forum* 71 (2008). In it he examines various strategies unions are exploring to regain influence in shaping employment policies across national boundaries.

Several members recently co-authored *CASES AND MATERIALS ON INTERNATIONAL LABOR LAW: CASES AND MATERIALS ON WORKERS RIGHTS IN THE GLOBAL ECONOMY* published by West-American.

Professors Calvin Sharpe, James Atleson, Lance Compa, Kerry Rittich and Marley Weiss joined in this collaborative effort which examines labor rights and standards in multilateral and regional institutions like the WTO, ILO, OECD and the European Union. Also regional and bilateral trade agreements like NAFTA and trade agreements with developing countries, as well as private initiatives like anti-sweatshop campaigns and corporate codes of conduct. Other chapters deal with labor rights lawsuits in U.S. courts, cross-border labor organizing and bargaining, migrant workers, women workers in the global economy, and child labor.

Prof. Sharpe and attorney Dan Kovalik are preparing an article based on Prof Sharpe's paper "The Alien Torts Claims Act as a Tool for Attacking Violations of International Labor Standards" that was presented last February at a conference in San Diego.

Arnold Zack has been designated an Honorary Advisor of the Hong Kong Law School's Masters in ADR Program and an Honorary Fellow of the US-Asian Law Institute at NYU Law School.

In early April, at a conference on the Status and Function of Executive Staff in the Law of Different Countries, Thomas Kohler presented a paper "A Study in Ideal Anti-Types: Executive Status and Labor Market Regulation in Comparative Perspective." The program was sponsored by the Law Faculty, University of Frankfurt, and the Business Faculty, Univ. of Reutlingen. In September Prof. Kohler addressed the 67th Deutscher Juristentag in September in Erfurt, Germany. This paper was titled "Alter und Arbeitsrecht aus amerikanischer Sicht."

Steve Befort has co-authored a new book to be issued in June 2009 by Stanford U. Press titled "Invisible Hands, Invisible Objects: Bringing Workplace Policy Into Focus." In it Professors Befort and Budd assess the labor and employment law regulatory patch-work from the perspective of social as well as market values.

### Other News

The ABA's Labor and Employment Law Section has annual meeting papers available on-line in pdf format covering the following topics: "Using the Alien Tort Claims Act to Hold Multinationals Accountable for Human Rights Violations in U.S. Federal Courts". "Extraterritorial Applica-

tion of U. S. Laws", and "Mediating Disputes Over International Labor Standards."

### Bordeaux Summer Program

In recent years, during the early summer, the Centre for Comparative Labour Law and Social Security has conducted a seminar at the Université Montesquieu Bordeaux IV for doctoral and post doctoral level students, teachers, researchers and officials. The goal is to promote the exchange of ideas and discussion of labor and social security law. An announcement for a 2009 program has not yet been posted. Nevertheless, anyone interested in learning more about this seminar can contact the program secretary Anne-Laure Gautier, COMPTRASEC, Avenue Léon Duguit - 33608 PESSAC CEDEX FRANCE  
anne-laure.gautier@u-bordeaux4.fr  
<http://comptrasec.u-bordeaux4.fr>

### Korean Industrial Relations Journal Prize

Seoul National University of Technology each year awards a \$5,000 prize for the best article among those published in the *Korean Journal of Industrial Relations*. The 2007 prize was won by Prof. Cynthia Gramm of the University of Alabama on the topic "The Relationship Between Competitive Strategy and a Firm's Reliance on Long-Term Employment Contracts." Manuscripts can be submitted by email to Prof. Dong-One Kim, Editor in Chief at: dokim64@hotmail.com

### Financial Crisis Related News

As if there isn't enough bad news, Juan Somavia, the Director-General of the International Labour Office (ILO), in a statement to the International Monetary Fund and the World Bank in early October, predicted that global financial crisis could increase unemployment by an estimated 20 million women and men.

In late October the European Parliament and Council issued DIRECTIVE 2008/94/EC, a new codification of the requirement that members states establish an insurance system to ensure payment of employee earnings for at least three months in the event of their employer's insolvency.

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Board elections for the U.S. Branch will be conducted in early 2009. Please look in your mail for the nominating notice.