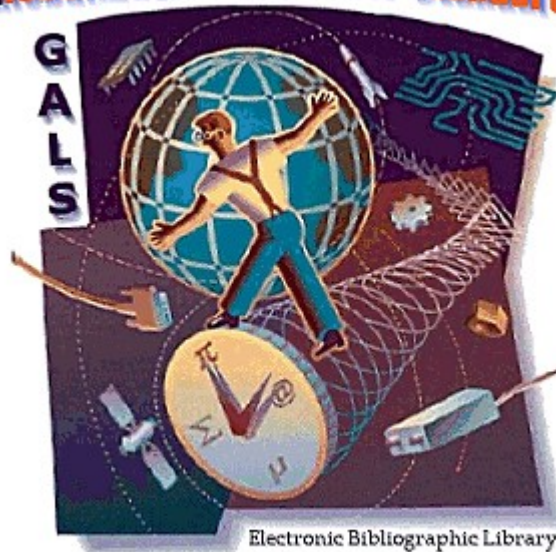


Globalization and Labor Standards



GALS Newsletter

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Note: a New GALS feature !!!

Short Takes

**Brief updates on labor law developments
In different parts of the world**

U.S. Supreme Court Hears Arguments on the Validity of a 2 Member Labor Board

On March 23, 2010, the U.S. Supreme Court heard oral arguments in *New Process Steel v. NLRB*, regarding the legality of the National Labor Relations Board (“NLRB” or “the Board”) decisions where only two of the five seats on the NLRB are currently filled. For the past two years, the Board has had only 2 members because Congress failed to approve the President's appointments to fill the vacancies.

The Board was created by the National Labor Relations Act (“NLRA”) to adjudicate labor issues involving employees who are either covered by union contracts or engaged in collective activity. The statute provides, in Section 3(b), that:

“The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. [...] A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof.”

In 2007, when the Board was down to 3 members, it delegated its authority to a three-member panel of the Board, which then became a two-member panel after the term of one of the members expired. The Courts of Appeals are split on whether a two-member panel can issue decisions on behalf of the Board.

The Seventh Circuit ruled in *New Process Steel v. NLRB* that the plain language of the statute authorizes a two-member board as a quorum of the three-member board. The D.C. Circuit ruled in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB* that the two-member quorum lost its authority once the three-member Board that designated it ceased to exist. The First, Second and Fourth Circuit have joined the Seventh Circuit in recognizing the authority of the current two-member panel of the Board.

The Supreme Court granted certiorari in *New Process Steel* in November, 2009. The appellant-company has argued that the two member panel’s authority expired when the three member panel that appointed it dissolved. The company emphasized the “at all times” clause of NLRA Section 3(b), to suggest that the three member panel must remain in existence for its two member designee to have authority. The company argued that Congress’ general intent was to create a five member Board with a three member quorum, and that Congress has a preference for odd-numbered panels.

The NLRB has argued that the plain language of NLRA Section 3(b) allows two member panels to constitute a quorum, because the word “except” creates an exception that overrides the need for a three member panel. The Board further argued that the legislative history of the NLRA supports its reading, since the Board routinely made decisions in two member panels prior to the Board’s expansion from three to five members in 1947. The Board contended that the 1947 expansion was intended to increase efficiency, not to obviate the possibility of two member quorums. The Board also argued that its interpretation of the statute should also receive judicial deference.

If the Court reverses the Seventh Circuit and rules in favor of the company, over 500 NLRB decisions issued since 2007 will be vacated.

Country-Specific Case Studies

Sur, Melda, "The Fundamentals and Limits of Managerial Prerogative in Turkish Labor Law", *Comparative Labor Law & Policy Journal* v. 30 no2 (Winter 2009) p. 313-333

Abstract:

This article describes recent changes in managerial prerogatives under Turkish labor law. In 2003, Turkey enacted a Labour Code that increased protections for workers in certain precarious employment arrangements, improved workplace health and safety standards, and required notification of union representatives before collective dismissals can take place. The 2003 Code also required employers to obtain consent of employees for substantial modifications of working conditions, and strengthened the protection of employees during the transfer of an enterprise. Despite increasing worker protections, however, the 2003 Labour Code also increased managerial prerogative in the area of working hours. Previously, the law required that working hours be distributed equally throughout the day and week, and that overtime be paid for work in excess of the daily maximum. After 2003, employers can now, with the consent of their employees, vary the daily hours. Further, overtime pay will only be awarded for hours in excess of a 45 hour week averaged over 2 months. In recent years, the decreasing density of unions has also strengthened managerial prerogative.

Subjects: [Contingent Work](#), [Country-Specific Case Studies](#), [Health and Safety](#), [Overtime Rules](#)

Full-text links: || [WESTLAW](#) || [LEXIS-NEXIS](#) || [WWW](#) ||

Zhao, Yun, "China's New Labor Dispute Resolution Law: A Catalyst for the Establishment of Harmonious Labor Relationship?", *Comparative Labor Law & Policy Journal* v. 30 no2 (Winter 2009) p. 409-430

Abstract:

It wasn't until 1994 that China effectively adopted a labor code. In 2007, China added a series of laws aimed at improving and increasing the protection of workers' rights. The new labor laws address problems that emerged from the 1994 laws. Whereas parties to a labor dispute were previously required to go through arbitration before reaching litigation, the parties can now choose to go straight to litigation. The laws also attempt to remedy the fact that the worker is the weaker party in most disputes. For example, in certain types of disputes, only the employee has the right to appeal an arbitration award. Also, labor arbitration is provided free of charge. Arbitration tribunals may shift the burden of proof from the worker to the employer in certain situations. Also, they have the option of awarding a worker an interim award before the final award is rendered. The limitation period for making an arbitration request is increased dramatically. The new laws also attempt to make the dispute resolution system more efficient by shortening the time by which the tribunal must render an award. The laws also provide for an increase in the number of mediation commissions. The author suggests that certain steps need to be taken in order to allow the new laws to be effectively used. Detailed procedural rules for labor arbitration should be created. Also, the quality and number of arbitrators should be increased. Finally, the legislature should modify existing law to provide that courts shall only review the procedural aspects of arbitration decisions, and not the substantive aspects as well.

Subjects: [Arbitration](#), [Country-Specific Case Studies](#)

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Links to Related Projects

The International Labour Organization's (ILO) Informal Economy Resource Database:

<http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

International Labour Organization's (ILO) Conditions of Work and Employment Laws

<http://www.ilo.org/travdatabase>

The Program maintains a Database of Conditions of Work and Employment Laws, which provides information on laws from around the world. The database covers measures on minimum wages, working hours and holidays, and maternity protection and provides information on around 130 countries from all regions.

Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

ETUI Labourline: <http://www.labourline.org/Etui>

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at dbensman@smlr.rutgers.edu.

International Social Security and Workers Compensation Journal:

<http://www.business.curtin.edu.au/business/research/journals/international-journal-of-social-security-and-workers-compensation>

The International Social Security and Workers Compensation Journal is an on-line journal that focuses on international scholarship in the areas of social security, workers compensation, and occupational health, and disability support. It is published by the School of Business Law, Curtin Institute of Technology in Perth Australia. The IJSSWC contains inter-disciplinary articles in fields such as law, occupational medicine, health economics, and disability studies.

Labor and Global Change Database: <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

LabourWeb: <http://www.lex.unict.it/eurolabor/en/>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

The Marco Biagi Centre for International and Comparative Studies:

<http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's

website will soon offer an English version.

Trade Unions and Labor Relations Database: <http://www.polwiss.fu-berlin.de/tu/english/>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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