

Missouri Law Review

Volume 13
Issue 2 April 1948

Article 9

1948

Book Reviews

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Recommended Citation

Book Reviews, 13 MO. L. REV. (1948)

Available at: <https://scholarship.law.missouri.edu/mlr/vol13/iss2/9>

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Book Reviews

ARBITRATION OF LABOR DISPUTES. By Clarence M. Updegraff and Whitley P. McCoy. Chicago: Commerce Clearing House, Inc., 1946. Pp. XI, 291.

The greatly increased public awareness of the existence of myriads of complex labor relations problems and the great impetus given in recent years, to some extent based on War Labor Board experience and growing out of the widespread union organization under the protection of the National Labor Relations Act, to the use of arbitration as a means of settling labor disputes makes this little book of timely interest and importance not only to the tripartite representatives of labor, industry and public so commonly called upon to participate in the settlement of labor controversies, but to the general lay reader as well. While the authors indicate some line of demarcation between what is set up for the lawyer and for the lay reader, or more particularly, the inexperienced lay arbitrator, there appears to be much of value for both groups throughout the volume. Of course, the citation of authorities, particularly in Chapters V and VII, is a feature invaluable to the lawyer. The material in the appendices, particularly A, B and C, presenting forms of arbitration clauses, submission agreements, and specimen arbitration decisions and awards, some the products of the authors' own experiences, should be valuable to both.

While there have always been differences of opinion as to the desirability of the labor arbitration process, and it has very recently been subjected to particular criticism as used in transit and other utility cases, it is clearly the most effective and most widely used technique which we now have for the settlement of labor disputes and the avoidance of the type of waste and loss arising from the old practice of trial by economic combat. There is much to be said, and legitimately so, against the use of arbitration as a substitute for negotiation in the fixing of the terms of a contract, such as wages, for example, though it is undoubtedly better than the breakdown in peaceful relations which it is calculated to prevent. Its most useful and legitimate function, of course, continues to be as the last step in the grievance procedure in the adjustment of controversies arising under a collective labor agreement, the terms of which have been fully arrived at by the process of collective bargaining.

The selection of an arbitrator, dealt with intelligently by the authors, is a matter of no small importance, and the chapter under that heading is no minor contribution, but when it is considered that the problem of finding wholly impartial arbitrators of competence is so difficult and the need for finding new sources of arbitrator material so pressing, the whole effort to provide something of a guide for the inexperienced arbitrator assumes a new importance. The new arbitrator is likely to find those materials dealing with the limitations upon the arbitrator's authority, the desirable arbitration procedure, and some insight into the responsibility which he must assume extremely helpful as he approaches his unfamiliar task.

The practice of providing in the labor agreement for the so-called permanent umpire, which is coming to be used rather widely, in place of the separately selected arbitrator or arbitration board for individual cases, has much to recommend it by way of providing a greater degree of continuity and furnishing greater possibility for the building up of something that may be called a developing common law of labor arbitration. On the other hand, there continue to be those partial to the individually selected type as providing fresher viewpoints and avoiding the "this one for the company, the next one for the union" technique sometimes charged, perhaps wholly unjustifiably so, against the permanent umpire. The reader may well wish for the opinion of the authors, out of the wealth of their personal experience, upon the relative merits of these and other arbitration setups, perhaps some indication of the type of situation in which the one or the other might be most desirable. So also might have been desirable a consideration of the coverage of arbitration agreements and the relative desirability of using the arbitration device at all in various types of controversies. Other shortcomings might be mentioned, the inclusion of which may well have extended the volume far beyond the purpose and limits set by the authors for themselves.

The coverage of this volume indicated by a mere reference to the section titles in the various chapters ranging from the historical background of the arbitration device through selection, qualification and jurisdiction of arbitrators, the agreement to arbitrate and the submission, and a rather comprehensive outline of procedure, to the enforcement of contracts to arbitrate and the making of awards and their enforcement, indicate the impossibility of giving exhaustive treatment to so many and diverse problems within the confines of so small a volume. This is not to deprecate the value of the authors' present contribution but to express the hope that they may find it possible to give us a more exhaustive work at a later time that may treat in detail numerous matters here dealt with but briefly or not at all.

On the whole, this little volume is a very worthy and useful contribution in a field where much work is sorely needed. By no means the least valuable part of the whole work is a most excellent topical index, so sadly lacking or wholly inadequate in much present day material, which adds greatly to its ready usefulness. The collection of citations to state arbitration statutes in Appendix D, in spite of the highly unsatisfactory state of the law on this matter, and the table of cases, in addition to the wealth of citations throughout, add greatly to the value of this work for the use of the lawyer. To the union representative and the company industrial relations director, especially if somewhat inexperienced, Appendices A and B containing specimen forms of contract clauses covering arbitration and specimen forms of submission agreements should be helpful. In like fashion the inexperienced arbitrator (perhaps those with experience also) should find the specimen arbitration decisions and awards contained in Appendix C a most welcome source of helpful suggestions.

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LABOR AND THE LAW. By Charles O. Gregory. New York: W. W. Norton & Company, Inc., 1946. Pp. 467.

For the reader who is seeking solutions to the many and pressing present day problems falling within the general compass of industrial relations, this book does not supply the answers, though it does contain a chapter under the title—"Where Do We Go From Here?"—which makes some thought provoking suggestions but does not attempt to chart a course for the future. Quite obviously, charting such a course for the future was not the main purpose of the author. His purpose, early indicated, was rather to give us a picture, simple enough, if possible, for the lay reader, of the place of organized labor in the fabric of our social, economic and political institutions, and its relation to the law, both past and present, and both statutory and common. Only by beginning with the early history of organized labor, both in England and in this country, inadequate though the discussion may be, can the reader, not otherwise informed, fully appreciate the later developments. To the extent to which the author succeeds in giving the reader this over-all picture, he provides the means by which a greater percentage of the public may be able to pass intelligent judgment upon our various attempts, state and federal, to deal legislatively with the problems of industrial relations, and perhaps make some contribution to the proper solution of those problems. To use but a single illustration, an understanding of the prevailing attitude toward the early attempts of laborers to improve their working conditions and raise wages, and a corresponding understanding of the methods of and reasons for the development of the criminal conspiracy doctrine in its application to labor, provides an important background for the broader understanding of later developments in this country.

Obviously, the same purpose is intended to be served by the second chapter dealing with the *Mogul*, *Allen* and *Leathem* cases in England and concluding that "we cannot safely leave these delicate issues of policy to our courts alone when they are so prone to develop one law for industry, and another law for labor." These cases find something of a parallel in the conflicting developments in this country represented by the conservative approach of the Massachusetts court and the more liberal approach employed by the New York court, as sketched in Chapter III. The author concludes that while the law lords in England were ever prepared to fall back on the doctrine of civil conspiracy, whereas the Massachusetts court made use of its so-called illegal purpose doctrine as a final means of determining legality or illegality, both "failed to state any articulate standards of lawful conduct or legal objectives against which to judge the activities and motives of organized labor," with the result that both achieved the result of "a government of men and not of law."

In the decisions of the New York court the author finds definite parallel to the more liberal House of Lords decision in *Allen v. Flood*, and characterizes their foundation as the *civil rights* doctrine as contrasted with the *illegal purpose* doctrine embraced by the Massachusetts court. Upon these concepts as developed by the English and early American cases rests the foundation for the development of the modern law of labor relations in this country.

Following this general broad introduction to his study, the author takes up in three short chapters the labor injunction and its abuses, strikes, boycotts and picketing, and the functioning of the courts, on a common law or non-statutory basis, in relation thereto. By illustrating the economic factors by way of justification, or lack of it, for labor union conduct brought before the courts on charges of illegality, a basis for a broader understanding of both common law adjudication and legislation in the field is helpfully provided. In the process of this analysis a foundation is thought to be laid for later questioning the soundness of the doctrine that peaceful picketing falls within the scope of free speech protected by the Constitution.

The first six chapters of this book are built upon developments at common law, with numerous suggestions as to the proper line of demarcation between judicial control on the common law level and control by affirmative legislative action. The next five chapters seek to round out the general picture of labor's relation to the law under such legislation as the Sherman Act, the anti-injunction statutes, and the National Labor Relations Act, as interpreted and applied by the courts. The more general concepts of free speech in relation to picketing and the place and importance of the collective labor agreement and arbitration are left for separate treatment in individual chapters, as are also some more specific suggestions for the future.

As the materials in the early chapters serve to give the reader a practical and understandable picture of the position of labor on the common law level, the materials in Chapter VII dealing with the Clayton Act, the "Yellow Dog Contract," and the Norris-La Guardia Act provide a basis for understanding these aspects of our labor picture in a way not easily gained by the ordinary reader or student through a study of the cases alone. The author's handling of the later Sherman Act decisions, influenced as they were by the change in philosophy made apparent between the time of the *Bedford Cut Stone* case in 1927 and the *Apex Hosiery* case in 1940, such philosophy being largely influenced by the Norris-La Guardia Act and the National Labor Relations Act and developments under each, as well as by broader social, economic and political developments of the time, supplies a basis for understanding not likely to be gained without some such help, or prolonged and exhaustive study hardly to be expected from any general reader or the average student. The author's comparison of the *Apex Hosiery* case with the *Second Coronado Coal* case, and his criticism of Mr. Justice Stone's analysis of the latter and the *Duplex, Bedford* and *Danbury Hatters'* cases, deploring as he does the failure to overrule these earlier cases, constitute a valuable contribution toward a better understanding of the later developments under the Sherman Act—developments that are at best difficult fully to understand.

The chapter on "The NLRB Before the Courts" comes very much more nearly accomplishing the author's apparent purpose of making a difficult and technical subject understandable to the general reader than is true with respect to the remainder of the book. It is also well calculated to be useful to the student in synthesizing the over-all picture produced by a study of the case material.

The author's analysis of the free speech cases in Chapter XII criticising what he considers too broad an assumption of power by the Supreme Court provides

a challenging basis for a detailed study of the cases in this confused field of the law by persons already familiar with the cases, though it certainly cannot produce any very intelligent understanding on the part of the general reader. His call for a more careful consideration of what authority should shape our labor policies is likewise one not properly to be ignored. Little, if any, less intriguing is the proposal for congressional establishment, in the exercise of the commerce power and patterned somewhat after the National Labor Relations Act, of a restricted system of compulsory arbitration of labor disputes, building upon certain aspects of our experience with the functioning of the War Labor Board.

In the final chapter of this little book, under the unrevealing title of "Where Do We Go From Here?", the author gives us, not a blue print for the future or a worked out legislative proposal to remedy the many evils he discerns in our present set-up, but a host of thought provoking suggestions ranging from that of codes of fair employment reminiscent of the NRA, including price fixing and standardization of employment conditions, to a control of our industrial machinery in which organized labor would directly share, and numerous less all-inclusive possibilities of dealing legislatively on a national scale with individual if not isolated problems. Through it all he keeps the reader cognizant of the complexities of any possible legislative program which he conceives to arise in some degree from the present doctrines of the Supreme Court under the First and Fourteenth Amendments.

All in all, this is a valuable contribution to the study of industrial relations and the law and should be found both useful and provocative to the law student and to many practicing lawyers, but for the general lay reader, whom the author appears to think he is writing for, many of the chapters can produce little but confusion and bewilderment.

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