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Book Reviews

EMPLOYERS' ASSOCIATIONS AND COLLECTIVE BARGAINING IN NEW YORK CITY. By Jesse Thomas Carpenter. Ithaca, New York: Cornell University Press, 1950. Pp xviii, 419. \$4.50.

This book should be read, and read carefully, by any lawyer who wants to understand the realities of contemporary collective bargaining. The title of the book is unfortunate. Many people will not read the book simply because they will get the erroneous notion that it deals only with a practice which is characteristic of New York. The preciseness of the title, on the other hand, reflects the carefulness of analysis which Mr. Carpenter exercises throughout this study. While the book is based on a thorough study of association bargaining in New York, Mr. Carpenter's footnotes and many illustrative incidents in the text, are drawn from court and N.L.R.B. cases which demonstrate the nature of such bargaining as practiced throughout the country.

Association or multiple-employer bargaining is much more widely practiced than is ordinarily recognized. Yet, comparatively little has been known about the development, operation, effect and legal ramifications of association bargaining. In only a few instances, such as the San Francisco Employers Council, have the details been widely known. In literally thousands of situations, associations have come into being because of practical necessities; their growth has been so informal that even the parties involved had no clear concept of the ultimate end until they found that they were engaged in full-fledged association bargaining.

The practical necessities for multiple-employer bargaining arise in part from what the author very properly calls "The Myth of Single Shop Bargaining." Today, "union officials do not sit down at a conference table to work out the terms of a labor contract with each individual employer, any more than individual employers in nonunion shops *negotiate* in any real sense with every prospective worker who comes seeking an available job. In both cases, the 'bargaining table' is a myth."¹ In New York City, for instance, there were, in March of 1947, more than two hundred thousand business establishments, about 90 percent of which were owner-operated shops employing less than twenty workers. Only 2 per cent of the business establishments in the city employed as many as one hundred workers. On the other hand, some local unions in that city have attained large membership: Local 3 of International Brotherhood of Electrical Workers, A.F. of L. puts its membership at twenty-five thousand, and Local 32-B of the Building Service Employees, A.F. of L. boasts of having thirty-six thousand members. Obviously, there is no equality of bargaining power when such unions present their demands to an employer of ten employees in the form of a "standard contract." Essentially, multiple-employer bargaining has developed in an effort to achieve a better balance

or equality in collective bargaining. The stages by which employer group bargaining has generally developed are outlined by Mr. Carpenter as follows:²

- "(1) Each employer, as his contract expires, consults his fellow employers on the action to be taken toward the union's demands, but negotiates separately.
- "(2) Several employers bargain separately but use the same negotiating agent, who provides a common link between the employers for the formulation of common policies.
- "(3) Several employers negotiate separately but simultaneously, making possible behind-the-scenes conferences to decide upon a common course of action during negotiations.
- "(4) Several employers contribute members to a common negotiating committee that meets with the union at the conference table for joint negotiations.
- "(5) Several employers create an informal group or association from which representatives are chosen year after year to negotiate with the union on a multiple-employer basis.
- "(6) Several employers set up a formal organization, defining the powers and procedures of the group in the negotiation and administration of multiple-employer agreements."

Two chapters are devoted to a penetrating analysis of the patterns of bargaining, such analysis being well illustrated by specific bargaining instances and by a series of diagrams. Succeeding chapters are devoted to such questions as the organization, procedure and strategy of negotiating group contracts, the establishing of uniform work standards and the interpretation of contracts, the machinery and processes for settling disputes, and the problems and method of contract enforcement.

The materials upon which this study was based were not drawn solely from the reported cases. Instead, Mr. Carpenter had the cooperation of some 150 representatives of unions and employers' associations. Other basic research included a survey and an examination of numerous contracts, constitutions, etc. After a preliminary draft of the study was completed, it was submitted to those who had been interviewed for their comments and criticisms. The study was revised in light of these comments and criticisms. The thoroughness of the research and the carefulness in the selection and statement of illustrative instances produces a rewarding study.

The role of lawyers in the formation of associations, in the negotiating of contracts and in the settlement of disputes is considered in various parts of the book. The following quotation might be of some interest to lawyers:

"Sometimes the man behind the movement is an aspiring but not-too-successful lawyer with his eye on a new source of income. He plies the streets of Flatbush or the Bronx convincing the operators of hole-in-the-wall shops of the need for an association to bargain with the union. Perhaps he sponsors 'The "X" Avenue Association of Delicatessens' or 'The Meat Dealers' Association of "Y" Street.' Forthwith, the members of these groups name him as their executive director or legal counsel or both. He may also become their bargaining agent and their sole representative in

problems of contract enforcement. Over the last fifteen years hundreds of such associations have sprung up for every type of industry, trade, or business, from the manufacture of ash cans to the printing of sample cards. They cover the span of human existence from diapers for babies to caskets for the dead. The enterprising lawyer who gathers a few of these groups under his care will not want for bread; nor will he lack excitement, if he is willing to take his funds where he finds them.

"The top-notch lawyers, some of whom may already represent a number of firms in their individual relations with the union, find that an employers' association minimizes headaches without reducing pay. Many a jittery employer greets every union leader entering his office with a common theme song: 'I've gotta see my lawyer.' If the employer has a good lawyer—and the best labor lawyers are likely to be expensive—then the counsel, for sheer lack of physical capacity to meet the demands on his time, may neglect his client. If the client transfers momentarily to another lawyer, his confusions may be the worse confounded. For not every good lawyer is qualified to handle problems in the negotiation, interpretation, or administration of labor contracts, or to cope with the complexities of labor statutes, administrative rulings, and court decisions.

"Under these circumstances, an association of employers is a happy solution for all concerned. The per capita cost of legal advice on labor matters goes down—and that pleases the employer. More time is available for precedent-setting cases—and that pleases the lawyer. A principle once established is applicable to all members of the group—and that pleases the union. In short, a lawyer who takes the initiative in forming an association of employers for the purpose of making business for himself may, if he is honest and competent, be rendering a distinct service to his clients and to the union as well."³

With respect both to negotiating conferences and arbitration hearings ". . . lawyers are charged with playing up technicalities while disregarding the human factors in labor dispute. They cannot see the woods for the trees. Certainly, the legal experts with their 'motions,' 'objections,' and 'exceptions' may impress their clients, but they tend only to confuse the issues. Some unions refuse to use them; many executive directors admit they are a liability, some arbitrators do not want them and occasionally exclude them from the hearings."⁴ A footnote to this quotation states, however, that the parties are to blame for the kind of lawyers that they employ, and it is pointed out that "Everyone is agreed that some of the most successful representatives of employers' associations and of labor unions in New York City are lawyers."

The fact is that the area of labor-management relations involves a great deal more than the law, and effective lawyers in that field will recognize the complex nature of their work. Such factors as productivity, morale, efficiency and human relations must be given primary consideration. Lawyers who are prone to rush into an industrial relations situation with a litigious frame of mind and without adequate knowledge of other determinative factors frequently jeopardize their clients' fundamental interests. In addition, such conduct is often harmful to the legal profession because it does supply a foundation for the criticism that when

3. Pp. 59-61.

4. P. 330.

some lawyers enter the labor-management field they create more difficulties than they help solve. The law does not operate in a vacuum. Lawyers who undertake to represent either management or labor have an obligation to make every effort to understand the proper relationship of the law to the various other factors which lead to sound industrial relations and to a productive economy. Mr. Carpenter's study will be useful to any lawyer who takes this obligation seriously. In addition, the study contains the basic substantive law relating to association bargaining.

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CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE. By Robert Wyness Millar. New York: The Law Center of New York University, 1952. Pp. 534. \$7.50.

As always, it is a pleasure to read a book by Robert Wyness Millar, for one is sure that it will be on a subject of interest and value and that it will be carefully and logically written. *Civil Procedure of the Trial Court in Historical Perspective*, which is one of the books in the *Judicial Administration Series*, is no exception to this rule.

The book is written in two parts. The first part considers the general aspects of procedure and deals with procedural evolution and with the Anglo-American system and then with the antecedents of that system. It next considers the English and American procedure in the early eighteenth century and finally deals with procedural reform in England and in the United States. The second part of this book takes up the specific phases of procedure. First considering the unification of the administration of law and equity, it then proceeds to deal with the history of the procedure in a case from the commencement of a suit through execution.

Under each of these topics the author goes into historical detail. It would be of little value for me to detail this history, for only by reading the book can one appreciate how valuable a history of procedure has been written by this outstanding scholar in that field. The writer wishes to congratulate Dr. Millar on the excellence of this book and on the service which he has rendered through it, both to the lawyers of the United States and to the historians who are interested in legal procedure.

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