

THE EMPLOYMENT RELATION AND THE LAW. By The Group of Teachers and Practitioners of Labor Law. Boston: Little, Brown and Co., 1957. Pp. 827. \$10.00.

THE prima donna of labor law is undoubtedly federal labor-management legislation. Today, "Taft-Hartley" blazons from the marquee, held over, even if not by popular demand. She is the star, and all labor specialists pay her court as a younger generation of swains pursued the favors and intimacy of the Wagner Act.

The students of labor drama—epic and prosaic—remember divas of yet an earlier age. They know the show never would go on without the bloomer girls of factory inspection acts, the Schumann-Heink of workmen's compensation. Patiently working as grips, the stars of yesterday—railroad retirement and unemployment compensation acts—are behind the scenes doing their necessary, even if less spectacular, tasks. Supporting roles are ably filled by the more modest and solid social security and child labor laws.

The Employment Relation and the Law is a compilation of descriptive analysis, statutory excerpts, opinions and case summaries, and a rich variety of commentary which tell the legal stories of the sturdy perennials who never were or are no longer the featured performers of labor drama. All but the dilettante must know something about them. All who would specialize in any of the constituent crafts must learn their major exploits, their character and their many possible relations with others of the historic company, for there has been much inbreeding in this troupe.

The book is a product of the Labor Law Trust, a group of vast talent and experience. Its members have served various apprenticeships and become craftsmen in universities, "old-line" federal departments and the many specialized agencies, commissions and boards which deal with the problems and programs affecting working men and women. A few non-Trust specialists have supplemented their efforts in assembling materials which have been on the boards in lecture room and seminar for more seasons than *My Fair Lady*. This vast and intricate script has been tried out on the road, rewritten and rehearsed many times before being put into "final" form.

This volume and two companion books¹ were produced by the Trust as an outgrowth of a round table on labor law courses at a meeting of the Association of American Law Schools in 1946. A published version of the discussion by W. Willard Wirtz² decried the tendency in teaching labor law to stress cases involving situations in which any reasonable labor-management relation had disappeared, if it ever existed; this "practice" of presenting labor law as the case rules of industrial warfare was condemned as "negative" and "sterile."³ A plea was made for less emphasis upon "pathol-

1. LABOR RELATIONS AND THE LAW (1953); READINGS ON LABOR LAW (1955).

2. Wirtz, *On Teaching Labor Law*, 42 ILL. L. REV. 1 (1947).

3. Footnotes observed that more imaginative and affirmative approaches already were

ogy" and more upon preventive and constructive measures, specifically instruction in the methods, skills and substance of good-faith bargaining. The first two volumes of the Trust were designed for this major and proper purpose.

In his article, Wirtz also asked whether the labor course should "be devoted solely to the problems of unions and companies, or should the study include a development of the statutes applying to employees as individuals?"⁴ The Trust decided that materials for the latter course should be available. Such a conclusion seems eminently correct for two major reasons: these "employee" problems involve millions of people and are the most numerous in the field; and they often are intimately connected with bargaining, grievances and strikes.

As a practitioner, bureaucrat and legislative aide in the labor field, this writer can testify to the need for a comprehensive volume on the many non-labor-management aspects of labor law. For one thing, most lawyers representing employers and employees are more likely to come into contact with the intricacies of workmen's compensation and wage-hour regulations, which have broad everyday application, than with the bewitching prima donna. The counselor in labor-management relations, moreover, will be ill-equipped if he is not knowledgeable in social security, so intimately related to any negotiated pension plan; temporary disability laws, which must be dovetailed in the states where they exist with health plan provisions; and unemployment compensation with the recent supplementary benefits, now a principal element of guaranteed annual wage plans.

Tested as it has been by the expert scholars and teachers who put it together, the utility of *The Employment Relation and the Law* for instructional purposes can hardly be questioned. However, it would be a hardy professor and class who would attempt to master all its contents in one semester. What excess there may be is useful as reference material, or as points of departure for more detailed research. Topics such as "Public Assistance" do not, as the authors point out, belong to the general subject of the volume; they are only generally related. Others, such as "The Railroad Retirement System"⁵ are little more than mentioned.

Wirtz also scouted the "historical" case approach. He argued that the "history" contained in such cases was often bogus, and that judicial rules they expressed were not the real reasons for the early decisions. The whole wearisome exercise, he concluded, was a drain on time that could "be better spent."⁶

For the most part, *The Employment Relation and the Law* eschews historical material, omitting not only old cases but the economic and social set-

being employed by Frey, Handler and Hayes. See *id.* at 2 n.2, 4 n.8, 9 n.13, 15 n.19, 16 n.23, 17 n.27, 26 n.39.

4. *Id.* at 25.

5. Pp. 688-91.

6. Wirtz, *supra* note 2, at 6-8.

tings which gave rise to the legislation as well.⁷ Since the book is some 800 pages, such an omission may appear justifiable. However, something of importance is missing. Child labor laws, for example, are today accepted as necessary, although their extension to new areas, such as agriculture, is resisted strenuously. Compared with the frightful conditions of only three and four decades ago when youngsters of ten were working in mines and sweatshops, child labor exploitation problems are now a polite thing. The 1930 census reported 667,118 children between ten and fifteen years old as engaged in "gainful occupations," and this was a great improvement over 1900. Yet the story of this change is barely hinted at, let alone told. The years of the "complacent fifties" have been plagued by insensitivity to many of the real problems of our time. Observers on all sides report that present-day students are not interested in "problems" of today and the recent past.⁸ Students in the law schools must be given the opportunity to understand not only the "problems" but the human suffering and deprivation which gave anguished birth to reforms such as child labor laws. These laws are something a great deal more than the rules and conventions of tennis or scrabble. They do not live fully when deprived of their human and emotional content.

Having said this, one may observe that the lack may be remedied easily enough by some supplementary readings. Better yet, a later edition of the book might provide citations to such materials. For without them, the case excerpts, articles, statistics, reports and analyses, excellent as they are, do not provide rounded education.

No reviewer can let a perfectly good book go by without proffering criticisms, "kindly meant," which the authors probably considered and rejected quite early in their labors. The minor reservations here expressed probably can be traced to differences with the editors on the kind of background and degree of familiarity students can be expected to bring to a labor course.

For the book is an excellent, rounded and balanced volume ranging over the legal aspects of the employment relation. It is the result of cherished work by learned men. Those who use it can surely partake of their learning; they may even obtain some of the love, and with it the understanding which only love can call forth, of a vital field of law in our constantly more complex industrial society.

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7. Some may wonder how this book compares with RIESENFELD & MAXWELL, *MODERN SOCIAL LEGISLATION* (1950). Both cover many of the same subjects. The earlier work concentrates upon social security, workmen's compensation, disability, medical and unemployment insurance, Fair Labor Standards Act, and public assistance, plus housing. Riesenfeld and Maxwell emphasized social policy, and its evolution, and raised questions of what it should be. In the main, *The Employment Relation* is concerned with more subjects and considers the present state of the law less exhaustively.

8. See Ferrer, *Our Egocentric College Youth*, *Saturday Review*, Sept. 14, 1957, p. 18.

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