Boston College Law Review

Volume 2 | Issue 2 Article 39

4-1-1961

Labor Law

Brian E. Concannon

corporation and not to the shareholder with whom he is dealing. However, this section is limited in scope in that it is aimed at the short-swing speculation of insiders owning ten percent of the firms stock, provided such stock appears on a national exchange. The rigid objective standards of this statute may enable insiders to make gifts of inside information to outsiders and under the statute not become liable to the corporation for the profit made by the donees of the information. Judicial interpretation of SEC Rule X-10B-5 seems to impose a fiduciary obligation on the insider to disclose all material facts, and the courts consistently imply a civil remedy although such is not provided for by the express language of the statute.

Mr. Conant concludes that both federal and state courts have established a trend toward extending the fiduciary duty of disclosure, but that the reasons given for such extensions are not valid when based on traditional trust concepts. Due to the fact that an exceptional opportunity for security manipulation exists in these transactions, they should be controlled by state and federal statutes aimed at the specific problem, rather than relying on present remedies.

LAWRENCE A. KLINGER

LABOR LAW

INVESTIGATIONS UNDER LANDRUM-GRIFFIN, by Stanley M. Rosenblum and Merle L. Silverstein, 49 Geo. L.J. 257 (Winter 1960).

Two Missouri lawyers in reiterating the substance of a paper presented before the National Conference of Teamster Lawyers examine the untested investigatory provisions contained in the Labor-Management Reporting and Disclosure Act of 1959. Deeming Landrum-Griffin a statute wanting in clarity, the authors assay the rights given to those subject to investigation under it.

Grasping the gauntlet of those who would cede to the Secretary of Labor independent investigatory powers under Section 206, the writers argue that the ability of the Secretary to investigate under Landrum-Griffin derives from Section 601. Proof of this, they say, lies in the legislative history of Section 206, the treatment of its prototype in the Fair Labor Standards Act, and in its plain wording.

They contend that the legislative history makes it clear that Section 601 confers upon the Secretary the same powers given him in the Fair Labor Standards Act. Arguing analogically from the judicial treatment of the latter statute, the writers foreclose any exercise of the Secretary's investigatory powers under 601(a) without the use of subpoena. And while 601(a) would seem to grant a right of access to documents without subpoena, the right granted is so limited as to affect only those employers who are being investigated under Landrum-Griffin. Labor, therefore, needn't be too concerned about this provision.

Since 601(a) provides for an investigation when the Secretary "believes it necessary," simple curiosity can launch one. This intentional omission of a "probable cause" requirement allows an inquisitorial power analagous to that of the grand jury. In the case of an objection on the grounds of irrelevancy, the evidence sought will be admitted unless the irrelevancy is plain and obvious and the documents sought could not possibly disclose anything material. Objections to the unreasonableness of a subpoena are governed by the rules applicable to grand jury investigations.

The new law applies to the Secretary those provisions which Sections 9 and 10 of the Federal Trade Commission Act apply to the Federal Trade Commission. Evaluating the decisions under the latter Act, the writers conclude that the basic concepts to bear in mind respecting documentary production and immunity are: (1) The procedural requirements of a subpoena, production before the Secretary, and possibly the oath are all applicable in determining immunity. (2) Records of the union are nonprivileged. (3) Personal records, required to be maintained by law, are probably nonprivileged. (4) Immunity for the production of non-privileged records will probably not be conferred. (5) Oral testimony concerning non-privileged records will create immunity for the witness.

Raising objections to investigative subpoenas results in certain procedural problems which the authors summarize as follows: First, a refusal to comply may cause either a noncriminal action under Section 9 or a prosecution under Section 10. Secondly, the Secretary of Labor apparently has discretion to make this choice. Moreover, federal district courts have no jurisdiction to enjoin the Secretary's proceedings. Also, the criminal provisions of Section 10 may not stand attack constitutionally. Finally, the mere challenging of a subpoena or investigative procedure runs the risk of criminal prosecution.

This article should be helpful to those who first test the investigatory provisions of this statute.

BRIAN E. CONCANNON

TAXATION

THE NEW TAX POLICY ON DEFERRED COMPENSATION, by Ralph S. Rice, 59 Mich. L. Rev. 381 (January 1961).

In this article Professor Rice analyzes the effect of the Commissioner's 1960 ruling, 60-31, as to past and present informal deferred compensation arrangements. After examining the ruling the author establishes its practical effect and its place in current legislative and administrative structures for the taxation of income.

Due to the progressive rates of the federal income tax, devices have been established through which employees may defer income from periods of great productivity to subsequent periods when their income will not be so large. The simplest method of achieving this result is where the em-