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Cox and Bok: Cases and Materials on Labor Law

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The editing of the cases in Professor Corman's book is commendable in a number of respects. Professor Corman has a wide selection of cases including a number of excellent cases from the federal district and circuit courts.[6] A very desirable feature of the case editing is that the citations to individual state statutes have been keyed parenthentically to the Uniform Acts. This reviewer has many times wished that casebook editors would perform this small chore. The students, without some signal, just do not relate Maryland Code 1951, Art. 83, Sec. 43 to Uniform Sales Act, Sec. 25.[7]

Professor Corman includes a better than average index, a table of law review readings (Appendix A), and a desirable table indicating the pages at which various sections of the Uniform Acts are found or discussed in his casebook. The reader is warned that the latter table is not exhaustive of references to particular sections of the Uniform Acts. The editor has not enlightened us as to why section 19 of the U.C.S.A. is referred to in that index as appearing at seven separate places in the book while section 19(2) of the U.S.A. is referred to as appearing only once. The latter section is actually, of course, referred to and quoted in a number of his cases. An adequate collection of "Secured Financing Forms" is found at the end of the section on secured financing. It includes the basic forms for six types of chattel and accounts receivable financing. The order and straight bills of lading appear in the case material in Part I. Unfortunately, the editor has not chosen to reproduce the reverse sides of the Uniform Bills of Lading.

The necessary statutory material is included in a well-bound pocket supplement. Articles 2, 6 and 9 of the 1958 official text of the Uniform Commercial Code are included, without the official "Comments."

In brief, it might be said that Professor Corman has provided a casebook upon rather traditional lines with certain commendable features which have been indicated. Many instructors will find it adequate for their uses. However, other instructors, including myself, would probably prefer to use a casebook with more material for depth and problem assignments. The book is obviously carefully done, adequate and up-to-date.[8]

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Cases and Materials on Labor Law. By Archibald Cox and Derek Curtis Bok: The Foundation Press, Inc., Brooklyn, N.Y., 1962.

The main function of a good case book is to serve as a mirror of existing law, enabling those who use it to deduce the guiding principles in the area

[6] A preliminary count indicates that there are cases from 48 state courts in 36 states plus 22 federal courts. The Wisconsin Supreme Court is represented by fifteen cases, but four courts in New York are represented by a total of twenty-five cases. There are three English cases.

[7] See p. 303.

[8] A small number of unfortunate but understandable clerical or typographical errors do appear. See, for example, the omission appearing at p. 37 and the reference to the Supreme Judicial Court of Massachusetts as the "Supreme Court of Massachusetts," p. 98.

ventory financing (87 pages), and accounts receivable financing (30 pages) in that order. When the subject matter of secured financing is included in a three or four hour sales course, it is rather difficult to provide for an arrangement of the materials which will reflect an adequate treatment of the subject, but many law schools are faced with the problem of teaching sales and secured financing in a three or four hour package. Consequently, it may be inappropriate to criticize the sales versus sales financing coverage of a casebook designed for such a course. This reviewer feels, however, that it would have been advisable to include more materials on secured financing in this casebook. An instructor, if he so desires, can give more time to secured financing, even in a combination course. This can be accomplished, for example, by deleting materials on the Statute of Frauds and possibly bulk sales. Some of the traditional sales materials can be relegated to the freshmen courses in contract and personal property. My own experience has been that the problems of warranties and of the property concept (including therein materials on remedies) are the only ones that require a substantial portion of the class time in the pure sales course. And if a particular instructor wishes to minimize coverage of the property concept in a jurisdiction which has enacted the Uniform Commercial Code, then the demand on the instructor's time is even less with respect to coverage of the property concept. I, personally, would like to see a combination casebook with heavier emphasis on secured financing than on the law of sales.

The materials on inventory financing could certainly use much more introductory textual material. The cases themselves in this area of the law do not sufficiently indicate to the average law student the commercial demands for each type of financing and the reasons for the growth and development or selection of the various types of secured financing. Many students come to law school without a basic understanding of the many, sometimes complicated, commercial transactions. Also, they are not in the least aware of the role which the various alternatives play in terms of marketing and distributing goods. Commercial law is the one area of the law in which the student is able to see the law following societal—economic or otherwise—institutions. Problems and questions likewise could be designed to heighten the student's appreciation of the very intimate relationship between law and commerce. The chapter on accounts receivable financing occupies but a brief thirty pages in this casebook. Again, it appears that the student might be justified in reaching the conclusion that accounts receivable financing is seldom encountered.

The Uniform Commercial Code is treated with all due respect for its present significance to sales law. While the casebook is obviously designed to teach the law of the Uniform Sales Act, Professor Corman has carefully annotated the cases to relevant sections of the Uniform Commercial Code. Some annotations indicate where the Code has made a specific change and other annotations are undoubtedly for the purpose of highlighting further discussion of questions raised under the Uniform Sales Act. Even assuming that a jurisdiction has not nor is about to enact the Code, it is nonetheless valuable for its courts to be aware of how the framers of the Code have approached problems which might be unsettled under the Uniform Sales Act.

from their own observations of what is reflected there. Unfortunately in the field of industrial relations law, the revolt against established doctrine has become so widespread that any publication less ephemeral than a ticker tape can scarcely serve this purpose today.

This element of rapid change has been due only in part to Congressional action. Since the passage of the Wagner Act in 1935, the only major changes in this statute have occurred in successive twelve year intervals, the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959. But as a result of a series of inconsistent administrative and judicial constructions, the practical application of many of the basic provisions of these enactments has undergone change. As virtually no business enterprise can operate today without taking labor problems into account, the practitioner who is called upon to advise management in such day-to-day matters as subcontracting, grievance handling, organizational drives, and union negotiations is frequently unable to protect his clients from the hazards of uncertainty.

A recent contributing factor to the instability of this branch of the law has been the startling disregard for precedent exhibited by the new majority of the National Labor Relations Board. Almost immediately after the composition of this tribunal had been altered by two appointments of President Kennedy, the Board in entertaining union motions for reconsideration in several important decisions, overruled their predecessors. In one case, the Board held an employer under duty to bargain for an agency shop, even though the only exception embodied in section 8(a)(3) of the act to the general rule against discouraging or encouraging unionism is confined to membership contracts.[1] And in another, immunity was conferred upon unions who picket premises where another union has been certified as the bargaining representative of the employees provided the signs merely protest "substandard" conditions. According to the new Board, such picketing is not an effort to force an employer to bargain or recognize such union—conduct forbidden by section 8(b)(4)(C) of the act—although it is difficult to understand how any company could induce the pickets to go away without some kind of bargaining.

Another "reconsidered" rule was the well settled principle that the statutory obligation to bargain was limited to the subject matter of wages and working conditions of the jobs in the bargaining unit, not the discontinuance of such jobs. In *Town & Country Mfg. Co.*,[2] a contrary pronouncement was made. This meant not only the overruling of *Fibreboard Paper Prods.*,[3] and earlier decisions, but in the identic *Fibreboard* case, a revocation of its dismissal, and an order requiring reinstatement of all employees displaced by the subcontracting of certain maintenance work.[4]

Whatever may be said of the merits of these decisions—and it may be noted that one has already been reversed by the Court of Appeals for the Sixth Circuit[5]—they are illustrative of a trend undermining many familiar

1 General Motors Corp., 133 N.L.R.B. 451, 48 L.R.R.M. 1659 (1961).
2 136 N.L.R.B. No. 111, 49 L.R.R.M. 1918 (1962).
3 130 N.L.R.B. 1558, 47 L.R.R.M. 1547 (1961).
4 138 N.L.R.B. No. 67, 51 L.R.R.M. 1101 (1962).
5 General Motors Corp. v. NLRB, 303 F.2d 428 (6th Cir. 1962).

landmarks.[6] Some recent decisions in such controversial areas as the minimum size of appropriate bargaining units, free speech, and the computation of back pay, reject rules of decision going back to the pre-Taft-Hartley era.

Nor has uncertainty in the labor law field been discouraged in any significant degree by the present Supreme Court of the United States. In this current term, the Court in *Smith v. Evening News*,[7] expressly overruled a leading case less than eight years old,[8] holding that a union had no cause of action under Section 301 of the Taft-Hartley Act for individual wage claims arising under a collective agreement. In *NLRB v. Radio & Television Eng'rs*,[9] where the Board had held that Section 8(b)(4)(D) of the Labor Relations Act defining as an unfair labor practice a strike by an uncertified union to force an employer to assign particular work meant precisely what it says, the Court reversed the Board on the theory that it should first have arbitrated a "jurisdictional" dispute, despite its own decision to the contrary respecting the application of identic language in Section 303 of the Taft-Hartley Act, *International Longshoremen v. Juneau Spruce*.[10] And last year in *Sinclair Ref. Co. v. Atkinson*,[11] the Norris-La Guardia Act was held to bar federal district courts from enjoining a strike under a contract containing no-strike and grievance arbitration clauses under Section 301 of the Taft-Hartley Act, although the Court had previously found no such jurisdictional limitation upon similar injunctive relief for carriers subject to the Railway Labor Act.[12]

Apparently, so far as federal labor legislation is concerned, the Court has relegated to limbo the ancient canon that judicial interpretation of any statute by a court of last resort is *stare decisis*, unless and until such holding is repudiated by subsequent legislative action.

The authors of this most recent addition of cases and materials on labor law to the University Casebook Series are keenly aware of the probable impermanence of their scholarly contribution. Most of their work was done in 1961—a year described as one in which the law "seemed in a state of unusual flux and uncertainty." The authors explain that no serious attempt was made to include cases decided subsequent to January 1, 1962, but nevertheless "a few later decisions so clearly qualified portions of the manuscript that they were inserted in galley."

Despite these difficulties, Mr. Cox and his successor at Harvard Law School, Mr. Bok, seem to have collected almost all the decisions which raise important issues in the field of union-management relations. Also included is a section on litigation between individual employees and unions, revised extensively in this edition to focus attention on the new provisions of the Labor-Management Reporting and Disclosure Act. There are also new sections devoted to the Norris-La Guardia Act, the Railway Labor Act, and recent arbitration awards. Partly because of space limitations no attempt was made

[6] For an extensive discussion of this trend, see Comment, 3 B.C. Ind. & Com. L. Rev. 487 (1962).

[7] 371 U.S. 195 (1962).

[8] Salaried Employees v. Westinghouse, 348 U.S. 437 (1955).

[9] 364 U.S. 573 (1961).

[10] 342 U.S. 237 (1952).

[11] 370 U.S. 195 (1962).

[12] Trainmen v. Chicago River & Indiana R.R., 353 U.S. 30 (1957).

to cover litigation arising under the Fair Labor Standards, Walsh-Healey or Davis-Bacon Acts, although acquaintance with the wage-hour standards and procedures embodied in these statutes is an essential part of the equipment of private practitioners in the labor law field.

Unlike the classic case books of a generation ago, the authors have added to the decisional texts, not only material from the reports of legislative committees, but brief summaries of their own on the histories of particular acts or long standing controversies which have been reflected in legislation. Before becoming Solicitor General of the United States, Mr. Cox, because of his numerous and lucid articles, was one of the best known labor law professors in the country. He had also served in such "neutral" roles as arbitrator, secretary of the labor relations section of the American Bar Association, chairman of the post-war wage stabilization board, Associate Solicitor of the Department of Labor, and draftsman for the Senate labor subcommittee in 1958 and 1959 for the Kennedy bills, a major part of which were incorporated in the reform law of 1959, now popularly known as the Landrum-Griffin Act.

Some of the editorial material in the book reflects the personal point of view of Mr. Cox, which is inclined to disparage some of the Taft-Hartley amendments to the Wagner Act intended to protect the rights of employers and non-union men as well as the rights of union employees. Generally speaking, however, there is nothing partisan about the book for the authors have been at pains to include majority as well as minority opinions in the court and National Labor Relations Board decisions which have drawn fire from the bar and, in some instances, from Congress. Moreover, in the anthology of arbitration cases, some of the more notorious examples of the tendency of many arbitrators to deviate from the precise language of collective bargaining agreements in order to redress real or imagined union grievances have been included, *e.g., Coca-Cola Bottling Co. of Boston,*[13] as well as decisions in which arbitrators have demonstrated that the parties to such proceedings will be governed by well settled judicial principles of contract law, *e.g., Borg-Warner Corp.*[14] It is well to acquaint students with the spotty character of the arbitration process, as few things have had a more demoralizing effect on sound relations between management and unions than the exaltation in certain teaching circles of arbitration as a solution to all problems.

One of the virtues of the new edition is the inclusion of a bibliography, which although highly selective, enumerates with brief editorial comment, the most interesting and perhaps influential of the treatises and text books in the last thirty years. In referring to the very readable *Industrial Peace and the Wagner Act,* Iserman (1947), Mr. Cox speaks of the author as a "lawyer who advises many large corporations," and refers to his book "as the work of a special pleader and sometimes this quality had led to what I think may fairly be called inaccuracies." He then adds ". . . contrariwise, may it not be the difference in our own points of view and my own bias that leads me to use this term." Such disarming candor makes it difficult for a reviewer to be

[13] Arb. Award (1949) [p. 530].

[14] NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342 (1958) [p. 523].

over-critical of any seeming lapses by the senior editor from the ideal of objectivity.

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