

BOOK REVIEWS

COLLECTIVE BARGAINING: NEGOTIATIONS AND AGREEMENTS. By Selwyn H. Torff. New York: McGraw-Hill, 1953. Pp. 323. \$5.50.

Labor-management relations in the United States have been, at least in the last quarter century, the most dramatic and dynamic of all forces which pulsate our society. The headline-catching phase of that relationship has been the organization of employees into unions. As in every other modern industrial society, the organization of workers into labor organizations has, in one way or another, riveted attention upon the industrial problems which have generated more passion, and rightly so, than any others that we have faced. The less dramatic, though infinitely more important, aspect of labor-management relations is the process of collective bargaining.

As that process exists in the United States today, it is a hallmark of our society as well as a key to our success in resolving those "class" conflicts which in other nations have been the root of modern totalitarianism. But the generalities of these macroscopic observations can have no important meaning to us unless the sometimes-prosaic process of collective bargaining is examined microscopically in each of its manifestations.

Collective bargaining has been analyzed by economists, political scientists, sociologists, psychologists, philosophers, legislators, and lawyers; each group has added its views to what is now literally an enormous body of literature on this complex subject. All agree, implicitly or explicitly, that collective bargaining is a process through which large aggregates of substantial economic, social, and political power, centered around the employment relationship, seek a contractual resolution of their conflicts. Since these conflicts and the resolution of them by collective bargaining agreement are writ large in their sharp impact upon the community and the nation itself, it is not unexpected that the writers on this subject often present their views with varying degrees of partisanship.

While it is true that the collective bargaining agreement is the most palpable symbol of the collective bargaining relationship, it is not all that that relationship implies. Collective bargaining, as we know it, is grounded on the existence of strong and free trade unions, which themselves are social institutions emerging out of a highly industrialized society. The trade unions seek to protect their members from the excrescences of industrialization by compelling industry to adopt practices which will preserve the integrity of the individual, and which will yield economic security and a fair share of the returns of the business enterprise.

The bone and sinew of collective bargaining agreements, the reality of form and substance, have so often been buried beneath the passionate polemics and the transcending philosophic discussions, that the students and practitioners have had to dig deep for the tools of the trade and the naked anatomy of the agreement. In the Torff book, however, we have a study of the tree apart from the woods. The author is neither pro- nor anti-tree or woods; he dispassionately describes the planting, care, and characteristics of the tree—root, trunk, branch, bark, leaf, and internal processes.

Of necessity, then, Torff views the process of collective bargaining from the point of view of the lawyer-negotiator. Stripping the issues, objectives and contentions on the bargaining table of their dramatic quality and political context, he illustrates the variety of means that the parties to collective bargaining agreements have evolved to deal with their routine or extraordinary problems as they work together in the mine, mill, or factory. To a large extent he has succeeded in retaining his objectivity, though it is soon apparent that Torff has sat on only one side of the bargaining table, and that he views the process of negotiation from the vantage point of the trader rather than that of the legislator. It is at this point that I would at least quibble with Torff's approach to the bargaining table, because I believe that collective bargaining is more analogous to the process of drafting and enacting legislation than it is to the higgling of the market place.

Torff briefly sketches the governmental framework, legislative, administrative and judicial, within which negotiations take place and to which the eventual bargain must conform. Summarized are the federal and state laws, and their administrative and judicial enforcement, with respect to union status, check-off, wages and hours, unemployment and sickness insurance, health and other welfare plans, protection for children and women, units of employees appropriate for collective bargaining, the scope of bargaining, liability for breach of contract, union and employer unfair labor practices, and other regulations of the labor-management relationship. The author indicates that the negotiators must, of course, have a firm grasp of this framework before they can begin to higggle and engage in semantic jousting over phraseology. Surprisingly, however, he does not view the negotiator as one equipped with a knowledge of the economics of the industry or the dynamics of the union, but rather as a bargainer in the literal sense who best serves his client when he knows the personalities and motives of the other side and has "the ability to gauge correctly the time for making proposals or abandoning or qualifying positions, the ability to assess the effect of proposals which may be adopted, the ability to know when to concede or hold firm or compromise, the ability to support one's own position with convincingness, the ability to distinguish between stubbornness and soundness in evaluating one's own contention, the ability to be self-controlled in the most heated of controversies. . . ." (p. 43).

Since it is not within the scope of this work, the author does not attempt to explain how this horse-trading sense may be developed.

Torff is at his best when he turns to the systematic exposition of the nature of the issues, the arguments pro and con and the various agreements which have been actually entered into in order to resolve the problems. The book explains why the collective bargaining agreement is so lengthy and complex. The negotiations between the parties are as unique as the agreement itself. The discussion of the negotiators ranges from details such as the use by the unions of bulletin boards and the contents of notices to be posted thereon, to consideration of proposals which may appear to be threats to the survival either of the business enterprise or of the union. The nature of the important issues reveals why the negotiations are at times as heated, acrimonious, and furious as a matrimonial quarrel. It is apposite here to note that the analogy to the matrimonial relationship is, indeed, a close one; it is a family quarrel almost always composed without divorce. To distill out of such an arena of conflict the separate and distinct issues and to present an objective analysis of the contentions of the parties was a task of no small proportion. Torff's book will be invaluable to negotiators and others who are confronted with the task of achieving a series of agreements on a wide variety of subjects and of reducing those agreements to writing in such form as to be clear, precise, and intelligible to rank and file workers, shop stewards, business agents, foremen, executives, lawyers, arbitrators and judges.

As one progresses through the book, one understands how the scope of collective bargaining has widened so as to require documents of tremendous length and precision in draftsmanship. At one time, the collective bargaining agreement was a document of no more than one or two pages containing a recitation, often ungrammatical, of a few general principles dealing with union security and check-off, wage increases, seniority, and strikes and lockouts. But as labor unions grew and insisted upon increasing the scope of bargaining, especially in the mass-production industries, and as more and more specialists clustered around the agreement, the collective bargaining agreement has grown in detail and in length. Some agreements, together with appendices, pension and insurance plans, interpretations, and explanatory illustrations, are documents of more than one hundred printed pages, to the despair, we may note, of the shop steward and the foreman. Such formidable documents not only defy the resourcefulness of the locker-room lawyers, but also the comprehension of the employees who are called upon to approve a collective bargaining agreement at a union ratification meeting. So long as collective bargaining retains its dynamism and expands its range, the agreement will continue to add rings of growth like the green bay tree.

Turmoil in labor relations and substantial financial losses or gains can result if the negotiators do not have a thorough understanding of the form and substance, of the careful drafting of agreements which deal with com-

plicated wage structures, seniority and recall, whether plant-wide, departmental, or by job classification, severance pay, whether for technological displacement or for other reasons, vacations, work loads and work assignments, etc. The author shows his deep understanding of these problems of form and substance and has been able to communicate that understanding with what I believe should be great profit to the reader. I was especially impressed with the searching discussion of wage structures and the refreshing and informative analysis of the relatively new subject of the guaranteed annual wage or annual employment.

I would demur somewhat to the author's approach to labor arbitration as a judicial process. It is rather, I think, administrative in nature, despite the fact that the arbitrator may have many of the indicia of a judge. I believe that the intramural resolution of disputes is more of an administrative than a judicial process.

The book is without a conclusion of any sort. I found this in keeping with its purpose as a short encyclopedia of collective bargaining, negotiations and agreements. It fulfills its purpose admirably.

Isadore Katz †

MORRIS ON TORTS. By Clarence Morris. New York: Foundation Press, 1953. Pp. 384. \$5.00.

To cast novitiates into the raging torrent to see whether they will sink or swim—that is a splendid sport. So tort law teachers must believe, for that is the way they spend their lives. Of course, there are others in the law school world who try to confuse and frustrate the beginning law student in their own special ways. These colleagues, worthy though they be, labor under an impossible handicap. They don't teach torts. It is in this field alone that the judicial process really triumphs over all, including, on occasion, the cause of justice itself. In what other field of the law can the courts take problems of relative simplicity and grind out solutions of incomprehensible complexity? *Causa causans*, proximate cause, nuisance per se, duty, *res ipsa loquitur*, negligence per se—these are beautiful words, perfectly formed, ready and waiting for every and all occasions. With an inexhaustible supply of such words fermenting between the covers of any thick torts casebook, the torts teacher is, or has been, equipped to offer his students a counsel of confusion beyond the reach of all his colleagues.

Small wonder then that the fraternity of teachers de son tort reacted with some misgivings to the news that Professor Clarence Morris (a Texas immigrant to Pennsylvania) was writing a student text on torts for use by first year law students. His reproachfully numerous and excellent

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articles in the field, together with a variety of other activities, have already stamped him as one of the leading torts scholars of our day. Reference should be made to his *Studies in the Law of Torts*, published in 1952. More significantly, he has been identified for some time as one especially prone to cut his way through the word forest of the conventional torts opinion to emerge with a sensible and understandable analysis of the problem. In short, Professor Morris is long on plain talk and common sense. The threat of a book of ten easy lessons on how to understand torts cases by such a writer was, therefore, real cause for alarm. From *I. de S.* to *Palsgraf*, we want our students to work for salvation the hard way, the confused way, laboriously surmounting road blocks of our own and the courts' construction.

Similar misgivings must have arisen thirteen years ago when another lucid torts scholar published his impressive *Prosser on Torts*. Of course, the sheer bulk of the volume with its 1127 pages offered a considerable reassurance that business could be conducted on essentially the same old basis. In the interim, we even developed an affection for this ever present source of outside reading.

Now, Professor Morris has published a very different kind of text, designed primarily for use by the first year law student. In a way, this book might appear to be more dangerous. The text is only 374 pages in length. The students can, and many will, read all of it. It is, as a matter of fact, a delightful book, easy to read and full of provocative ideas. A random example of the latter is Morris's observation that "[a] judgment for a seduced girl pays her cash for abandoning her virtue, and is not the best of examples for young girls with adventurous tendencies." (p. 32). I enjoyed his introduction to a discussion of that bane of the torts students' life "res ipsa loquitur:" "One pattern of proof of negligence has been singled out by courts for special emphasis and given a fancy name." (p. 129).

The provocative idea is perhaps the hallmark of this little book. Covering the principal topics normally embraced in the torts course, with some emphasis on procedural and evidential matters, the book offers the friendly, conversational, understandable and provocative Clarence Morris talking to first year torts students about torts problems, and what the courts do to, and with them. This is no effort to state the law of torts. It is rather an effort to assist students in understanding the nature of the operation of the judicial process in tort cases. Professor Morris is quick to acknowledge his debt to others whose writings on this subject have preceded him, but there is no questioning the individual flavor he imparts to modern thinking about torts problems. There is no doubt in my mind that torts students reading Morris will emerge from the forest of confusion into the land of some understanding with greater speed, still travelling, moreover, under their own power, and ready for intensive excursions into more difficult areas.

In a sense, some of the misgivings about the Morris book may prove to be well founded. The book may have a real impact on the teaching of the law school torts course. Undoubtedly students in discussion and at wits end will attribute to Morris, as they do to Prosser, singularly bizarre and incredible propositions. Beyond this, however, we may find that in a sense we are sharing our students with Professor Morris, for this book is a real teaching tool in the best sense. Such a book we greet not with alarm but with enthusiasm. It should win friends and influence people.

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