

BOOK REVIEWS

GOVERNMENT AND COLLECTIVE BARGAINING. By Fred Witney, J. B. Lippincott Company, Chicago, Philadelphia, New York, 1951. Pp. vii, 741. \$7.50.

This is the second comprehensive treatise on labor relations law in the United States, devoting major attention to the Taft-Hartley Act, written by an economist for students of industrial relations. In 1950 appeared *From the Wagner Act to Taft-Hartley* by Harry A. Millis and Emily C. Brown, which was not quite finished at the time of the death of its senior author, the former chairman of the National Labor Relations Board and for many years the dean of all labor economists. Now *Government and Collective Bargaining* has made its appearance, written by a much younger economist, a professor at Indiana University.

This treatise covers a broader scope than its predecessor. It presents the story of the development of labor relations law in this country from the earliest days down to 1950. About a third of the book is devoted to the period before the Wagner Act, which is scarcely touched upon in *From the Wagner Act to Taft-Hartley*. It deals only briefly with the Wagner Act, its interpretation and operation, to which most of the earlier book is devoted. More than half of the entire treatise considers the several provisions of the Taft-Hartley Act and their interpretation. Throughout the author is concerned with the effects of statutes and court decisions upon unionism and collective bargaining, rather than with their logic or the legal reasoning behind them.

The author regards labor unions as an essential of a democratic way of life. "Collective bargaining offers the American worker the only effective means whereby he can realize social and industrial justice." He sees little need for government regulation of unions and collective bargaining, but deems it sound public policy that the government should protect and encourage collective bargaining. He concedes the necessity for more active government intervention in wartime and when strikes occur which produce national emergencies, but would have the government pursue a "hands off" policy in normal times, except to encourage the determination of conditions of employment through collective bargaining and to attempt to prevent and settle labor disputes through mediation.

Along with faith in unionism and collective bargaining, the author has a deep-seated distrust of anti-union employers and of government officials unsympathetic to labor. He finds that the courts, generally, have been unfriendly to labor, although in the nineteen-thirties they were respon-

sive to a more favorable public opinion. He ascribes the enactment of the Taft-Hartley Act and restrictive state legislation to anti-union sentiment among employers and to their propaganda campaigns.

While Professor Witney has not done much original research in this field, he has read widely on all aspects of labor relations law. He discusses statutes, court decisions, and legal theories competently, but contributes little toward a better understanding of what is generally discussed as the law of labor relations. It is with the law in action, rather than the law *per se* that this book is principally concerned. The main theme is the effect of the law of labor relations upon the development of unionism and collective bargaining in the United States. This is discussed chronologically with three major periods being sharply distinguished: the long period beginning with the conspiracy cases of the early nineteenth century and extending until the nineteen-thirties; the fifteen years from the enactment of the Norris-LaGuardia Act (followed soon by the Wagner Act) to the Taft-Hartley Act; and the most recent period. These periods the author entitles respectively: "Legal Suppression of Collective Bargaining," "Government Encouragement of Collective Bargaining," and "Restriction on Collective Bargaining."

Such an interpretation of the role the government has played in the development of collective bargaining in the United States is not original with the author. No one else, however, has so extensively presented the evidence justifying these characterizations. To the reviewer, they seem too broad to be completely accurate, but the evidence mustered by the author is most impressive.

Although in the period before the Wagner Act there were no statutes prohibiting unions or collective bargaining, and after the eighteen-thirties no decisions holding them to be illegal, the government was far from neutral in contests between employers and unions. Far from pursuing a policy of non-intervention, as is often claimed nowadays, the government intervened in many labor disputes on the side of the employers. This was done in court decisions and took the form of injunctions in labor disputes, enforcement of "yellow-dog contracts," and anti-trust law prosecutions of unions.

The complete reversal in the government's attitude in the nineteen-thirties is attributed to the Great Depression and the changes in public opinion it produced. Not only was labor accorded protection against acts of employers designed to keep out or undermine unions, but it was made a positive duty of employers to bargain collectively with unions representing a majority of their employees. Unions were not exempted from the anti-trust laws, but through Supreme Court decisions were, in effect, rendered immune from prosecutions unless they acted collusively with businessmen. And the Supreme Court broadly protected picketing as an exercise of the right of free speech.

In the most recent period which is still continuing, there has again occurred an almost complete reversal of government policy. The "yellow-dog contract" has not been revived; the basis for prosecuting unions under the anti-trust laws has not been broadened; and injunctions, while decidedly on the increase, still are not as great an obstacle to unions as they were in the nineteen-twenties. But Supreme Court decisions have greatly narrowed the right of picketing; many states have enacted laws severely restricting union activities; and, above all, the Taft-Hartley Act has replaced the Wagner Act.

There has never been brought together such an extensive detailed indictment of the Taft-Hartley Act, as is presented in this book. The author does not call the Act a "slave law" and recognizes that some legal restrictions upon unions may be appropriate. But he finds hardly anything in the Taft-Hartley Act which has worked out well. While passed as "an equalizing law," it actually "has changed the basic direction of national labor policy." "Its philosophy is basically anti-union." Its effect has been to restrict "vital union activities and processes" and to provide "employers with a variety of anti-union weapons." It has already halted union progress, despite the fact that employment conditions have been very favorable to union advances.

So many of the specific provisions of the Taft-Hartley Act are claimed to have worked out in the above manner that only a few can be noted in this review. The law has not prevented the abuses which have developed under some closed shop contracts, but seriously restricts the freedom of employers and unions to agree upon the form of union security provisions which best suits their peculiar situation. The check-off provision, similarly, "circumscribes free collective bargaining without protecting the individual worker from excessive dues or initiation fees, unjustified fines, or indiscriminate special assessments." The Act impairs the grievance procedure as the method of enforcement of labor-management agreements by encouraging resort to the courts in cases of alleged contract violations. It outlaws all sympathetic action by unions (called "secondary boycotts" by supporters of the Act), producing a situation in which "the doctrine established by the Supreme Court in the labor union anti-trust cases is again the law." It also "endangers the success of economic strikes because it disfranchises displaced economic strikers." Its procedure for coping with strikes producing national emergencies has been a demonstrated failure. It has made it uncertain what unions may do by way of picketing and, through many provisions, makes organizational efforts of unions more difficult. It has tipped the scales decidedly on the side of the employers and has greatly increased the interference of government in labor-management relations. These and still many more indictments of the Taft-Hartley Act are documented in this book by "chapter and verse" citations from the law and the decisions rendered thereunder.

Although publicly on record in condemnation of the Taft-Hartley Act, even before its passage and many times since, the reviewer does not agree with all the views and conclusions presented in this book. It is not the final word on the operation of the Taft-Hartley Act. But it is a scholarly piece of work, by a qualified academic man who has no identification with organized labor and who, in this book, indicates a quite critical attitude toward many things that unions often do. It merits attention from all who want to know why organized labor continues to demand unconditional repeal of the Taft-Hartley Act and why Senator Taft, himself, proposed no less than twenty-eight far-reaching amendments in the bill which he persuaded the Senate to pass as a substitute for the Administration's repeal bill.

Edwin E. Witte †

LEGAL DRAFTING. By Robert N. Cook. The Foundation Press, Inc., Brooklyn, New York, 1951. Pp. 867. \$8.00.

Of course when one undertakes to review a textbook, one's first inquiry must be, just what is the purpose of the book. Fortunately, Professor Cook, the editor of *Legal Drafting*, tells us at the outset that his book is intended for use in law school courses on legal drafting and for reference use by practicing attorneys. Perhaps this dual purpose furnishes the basis for the most valid criticism of the work.

To the practicing attorney the cases reported in the volume are not of great value, and to the student the reference material is rather overwhelming. It may be added that the cases reported are very few, so that, as a *case* book, its great size seems beyond what is necessary. Much the greater number of its 860 pages is devoted to philosophical essays on the use of language, which are far over the head of the average student, and to forms and check lists which are much more useful to the practitioner than to the student. In other words, it seems to this reviewer that the material more usefully could be divided into two books, one pointed solely at the law student and the other at the practitioner. The material itself is excellent and the need for each of these two suggested books is great.

The average law graduate who is instructed to draw an agreement or will or other legal document, unless he has access to a form book, is as helpless as if he were asked to write a five act tragedy for the theatre. If he is fortunate he has had a tiny bit of experience in drafting a brief for a moot court argument—and that, by the way, opens a very important field not touched on in Professor Cook's book, namely, the drafting of briefs, which surely is a part of the subject of legal drafting.

Perhaps law schools in the past have considered that the drafting of agreements and wills is too practical an operation to meet the require-

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ments of scholastic dignity to which law schools aspire, or perhaps it was recognized that writing these papers really is post-graduate work requiring a full understanding of the law of contracts and decedents' estates, and therefore this work should follow the completion of those courses. In any event, it is a fine thing that a movement is on foot to give students practice in writing legal papers, and Professor Cook's book undoubtedly will stimulate that movement.

The formal aspects of legal drafting, as distinguished from the substantive legal problems presented, are well illustrated in Professor Cook's book. Perhaps there is more space given to discussing the preparation of statutes than will prove of value to students or young lawyers. In this regard, the general principles of definition of words employed, of the value or lack of value of preambles, of the dangers of punctuation, are set forth interestingly and instructively.

I hope that the teachers in this course will tell their students what probably does not belong in a textbook but what is perhaps more important than a great deal that is contained in a textbook—namely, that only a legal genius can hope to strike off a satisfactory paper at first dictation. A handwritten first draft—if handwriting still is extant—and a yellow paper second draft, are evidences not of lack of skill in drafting, but of an intelligent understanding of human limitations.

For the practitioner the forms are excellent, but I do get the feeling that if the word "thorough" is capable of comparatives, the forms used are almost too thorough. By the time the lawyer attempted to thrash out with the parties their view on all the items suggested, I fear that any meeting of the minds which they may have thought had occurred before they consulted the lawyer would be out of the window. However, as a check list, it is very good. The chapter on labor agreements is especially valuable to the lawyer who is not a specialist on labor law.

Of course, the great question is how far we should go in mechanizing drafting. Is there room for individuality of expression, or must we try to approximate the stereotyped form of a promissory note? Can an agreement be interesting as well as accurate? Is it permissible to regard a literary touch as not out of place? Is it necessary in drawing a will to insist that the testator refer to his wife as "my wife, Emily," and not as "my beloved wife, Emily," and by the omission of this sentimental word perhaps grievously wound a mourning widow? Certainly "Whereas" is not a valuable word in a contract, and one smiles as one reads the obsolete language of a deed, and one knows that a "will" is a "last will and testament," but these remnants of our glorious past are harmless, and should we strip ourselves of all of them just to show how efficient we are? In fact, the individuality of the lawyer cannot be eliminated from his authorship, and no rules can prevent the possibility that language which seems perfectly clear when written will become of doubtful meaning when unanticipated circumstances arise, and this despite the fact that since 1800

the number of words in the English language has risen from fewer than 100,000 to almost 500,000.

To sum up, Professor Cook's book is a fine work in a field much in need of such a book, and my only recommendation would be that it be split into two parts—one for students and one for lawyers.

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