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Labor Relations and the Law. Robert E. Mathews, ed.

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LABOR RELATIONS AND THE LAW. Compiled by a group of teachers and practitioners of Labor Law; Robert E. Mathews, editor in charge. Boston: Little, Brown & Co. 1953. Pp. xlviii, 1100. \$8.50.

Books reviews for law reviews are normally written by persons expert in the subject matter covered by the book. In this way the reviewer brings to the readers of his review his own analysis of how the editors have failed to put out the book that he has always intended to write and never got around to doing.

The Buffalo Law Review, in requesting me to give their readers my impression of the above book, has broken with all tradition. They have turned to someone who does not profess to any expertness in the field of Labor Law, since my last real contact with the subject was in the B-T-H days of 1946 when I was exposed to the subject while a student at Wisconsin.

Therefore, as a preliminary warning to those who may not wish to read further, I wish to make a full and open disclosure. This reviewer has read *Labor Relations and the Law* solely from the point of view of its aid to me as an attorney; its use in the classroom to the professor; and in relation to my own feeling of how a law school course ought to be taught to our embryonic successors in the practice of law.

There is much in the book which is traditional and a necessary part of any such course in a law school. While this material has been handled well, because of space limitations I have decided to limit this review to those features of the book which I consider give it its right to be considered extraordinary.¹

The easiest place to start in reviewing any book is to read what is written on the outside cover. As has been previously mentioned, the title is *Labor Relations and the Law*. The title bespeaks the attitude of the editors. Law is, and must remain secondary to the real problem involved in this field, namely that of harmonious labor relations. In this field it seems that in the past there has been too great an emphasis on "law" from the contract point of view and little or none from the point of view of establishing harmonious relationships with the law merely acting as a skeletal framework from which the basic ground rules

1. It may well be a subjective prejudice which leads me to believe that two of the selections written by former colleagues help to make this book worth reviewing. But regardless of this, knowing that the Buffalo Law Review has a wide audience in Western New York, I feel that it should be of interest to its readers to know of the contributions which were made by members of the University of Buffalo Law faculty.

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can be drawn. The law can only stand to serve as a touchstone for the day to day operations in this field.² The editors, I feel, have fairly well recognized this to be true and have properly relegated "law" to its proper setting in the whole field.

From a technical point of view the editing of the case material is excellent. One of the features of the editing that might well be emulated by others is the editorial comment concerning those parts of the opinion which have been deleted. This should be helpful to the practitioner because it informs him of the other facets of the case dealt with by the court. I also feel that this may help the student. With the recent tendency found in many casebooks to edit the case down to the single problem to which the editor is interested in exposing the student, the law student is misled into the false notion that the nuggets of the law are easy to find, whereas in truth there is a lot of digging to be done in the average case to get down to its real significance. It might be said parenthetically that the severe editing to be found in some casebooks is making mental sluggards of the students and Law School professors may have been slightly myopic in their approach to this problem. While this reviewer recognizes that the great volume of materials which must be covered in law school makes a certain amount of this type of thing inevitable, the law school teachers need to keep in mind that they can not follow their students through life extracting cases for them. While law school professors have lectured long and loud, it may well be that the extracting of cases has helped to produce the head note hunters who roam in the legal fields.³

The editors have used a very interesting technique which I feel has considerable value. A fictional company known as the Enderby Company has been incorporated and its employees are represented by a union. With this setting the editors have interspersed the book with typical labor-management problems, leaving the student to solve these problems in relationship to the materials which follow the problem. This device strikes me as an excellent means for providing student stimulation, because it allows the student to analyze the cases in the light of real problems rather than dealing with them on a more sterile conceptual approach. In my judgment some of the problems are somewhat weak, and it is my guess that as this book goes through subsequent revisions the approach will be retained, but the problems will be re-formulated in the light of classroom experience.

2. In an unwritten manuscript of one of the country's leading law school professors the possible dichotomy in the role of a lawyer in this field has been aptly expressed as one either "in the dissecting room or on the football field."

3. In this comment, of course, I imply no criticism of those legal opinions where the court actually writes the head notes and they are considered by the court and the jurisdictions as actually embodying the principle of law enunciated.

The editors have also seen fit to develop the historical background of labor relations and have included a large amount of fairly well-chosen economic material. It is my feeling that the editors have done as conscientious a job as it is possible to do in order to present to the students both sides of this very complex question, leaving for the student the responsibility of making his own value judgments.

One of the unusual features of this casebook is the foreign materials which have been integrated throughout so that the student has the opportunity to see how the various problems which are confronting labor, management and government have been dealt with in the foreign countries. The recent tendencies in the law schools to include comparative law materials as a part of their curricula is an encouraging sign. It is an indication of a breakdown of provincialism and an attempt to utilize the knowledge and thinking of our legal counterparts in other countries. The editors of this casebook have been very fortunate in having Dr. Lenhoff to handle the comparative law material. Dr. Lenhoff's vast knowledge has been gained from experience in the field of labor law both in Europe and in the United States. An extremely minor criticism of this material might be that the approach is a little too legalistic,⁴ but this is so minor that it does not detract from the great value of having collected the foreign approaches to the problems and compared them to the American approach. If this material is skipped over by practitioners in the field, it will be their loss. All who are looking and studying for the ideal answer to the problems of labor relations could well benefit by including this part as a required reading lesson.

The final section of the book is devoted to the relation of the union and its members. While Professor Summers has been the leader in the writing in this area for many years, the use of the materials in a casebook as developed by him serves a very useful function. With the law schools having the obligation to train the lawyers who will be sitting on all three sides of this tri-cornered bargaining table, it is extremely valuable that the law student be trained so that he is prepared to sit on any of the three sides.

One criticism of the book and all books in this area is that with the development of the law being so rapid, by the time the book has come off the press, it is already dated. It would seem that it should be possible to devise a usable looseleaf binder so that the editors could constantly be revising the book, thus pro-

4. In all fairness it should be pointed out that Professor O. Kahn Freund, who has had a greater opportunity to explore the field, does not agree with this position. See, 2 AM. J. COMP. LAW, 99, 101 (1953).

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viding a more helpful tool to the law student, the law professor and the practitioner.

Finally, in conclusion, there is one area which the book does not cover, nor do any of the typical law school courses. The late Professor William Herbert Page of the University of Wisconsin Law School used to tell his students that they would encounter three types of clients in their careers. The first is the client who comes to them after he is in trouble—this client causes no problems; the second is the client who consults them beforehand and then fails to follow their advice—this client also causes no problems; the third is the client who consults them beforehand and then follows their advice—*this* client is dangerous. One of the few areas in which the law schools are not completely fulfilling their functions is in the training of the law student to predict trends in the law prior to the time they become written decisions. It would seem that in a course like labor law it could well be a requirement that the students be forced to read current periodicals, speeches of members of the NLRB, etc., and from these speeches analyze present law and attempt to predict its future development from the utterances of those called upon to administer the law and direct its future growth.⁵ Of course, the reviewer realizes that this is impossible in the typical law school. Until such a time as school administrators recognize that clinical training via seminars is a necessary part of legal education, and further recognize that it is as important to society to turn out well trained lawyers as it is to turn out well trained doctors, advance in legal education is limited. Critics of the legal educational process have not addressed themselves to this basic problem. Many law schools have the type of personnel capable of performing an excellent job of educating, but they are being strangled by financial limitations. In this regard, consideration should be given to the monumental work of J. Willard Hurst, "The History of American Law—the Lawmakers". It provides an excellent start for anyone interested in this problem in helping him to realize how important current events are in properly advising a client, whether that client be management, union, or the government.

I highly recommend this book for adoption and think it is the type of book that could well be on the shelf of every practicing lawyer who either practices labor law or desires to be informed about a very important area of our American economy.

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5. It is my understanding that at least one person, Professor Louis L. Jaffe of Harvard Law School, is following this approach in his seminar in Administrative Law.