major problems. In a few instances however the author does not make clear what is intended by his references. In a note to *James v. Union National Bank*[3] (on page 469), for instance, which allows the payee of an unaccepted check to recover in conversion from the drawee-bank which had paid on an unauthorized indorsement, Professor Aigler raises the question among others whether the payee or drawer of a check has to bear the risk of the drawee-bank's becoming insolvent before the check has been presented. The authorities which he cites in this connection do not throw any light on the subject for in none of them was the drawee-bank insolvent; on the contrary in all these cases a forged check has been paid either to the forger or to a holder subsequent to the forger. Most of the cases discuss the problem whether the payee of a check may recover from the drawer either on the instrument or on the underlying indebtedness where the forger was an agent of the payee who had received the check within the scope of his authority but had no authority to cash checks. Professor Aigler's question is answered by section 186 of the Negotiable Instruments Law as he himself indicates. The creditor who receives the check in payment has to present it to the drawee-bank within a reasonable time. If he fails to do so and the drawee-bank becomes insolvent in the meantime, the drawer-bank is discharged on the instrument as well as on the underlying claim up to the amount of the loss which has been caused by the creditor's laches. In a footnote to the famous *Canal Bank* case[4] (on page 550), Professor Aigler discusses some of the problems presented by a guarantee of the genuineness of prior indorsements and in this connection he raises the question as to the consideration supporting such guarantee. There seems, however, to be ample consideration for the recipient's guarantee which may either be regarded as a unilateral promise supported by the drawee-bank's payment[5] or the binding effect of which may be explained by the theory that the drawee-bank when paying a forged check does more than is called for in its contract with the drawer, or, when paying, is acting in reliance on such promise.[6]

FRIEDERICH KESSLER*

How To Deal with Organized Labor. By Alexander Feller and Jacob E. Hurwitz. New York: Alexander Publishing Co., 1937. Pp. 678. $6.50.

The authors of this book have set out frankly to write a manual of labor relations for employers and their counsel. It is their claim that they have "carefully examined the creation, structure and operation of the labor Unions, diligently studied the powers of the labor Board under the law, impartially observed a large number of its decisions and respectfully listened to the pronouncements of the courts."[1] That would be a large order for anyone, and Messrs. Feller and Hurwitz have not filled it. Rather, they have hastily, and with the unmistakable air of the amateur, looked at a few union organizations; superficially rehearsed the provisions of the National Labor Relations

[3] 238 Ill. App. 359 (1925). The court said by way of dictum that the bank's payment "destroyed all right of action the plaintiff might have had against the maker in case of non-payment."

[4] Canal Bank v. Bank of Albany, 1 Hill (N.Y.) 28 (1841).

[5] Rest., Contracts § 75 (1932). [6] *Id.* at § 90.

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[1] Preface, p. vii–viii.

Act; gingerly questioned some of the decisions of the National Labor Relations Board; and listened raptly to the dissents of Mr. Justice McReynolds. These may be the constituents of a first-rate handbook of labor relations for the use of management. They do not yield a reliable or a lawyerlike study of the problems and the law in this field.

The National Labor Relations Act has been called everything from the Magna Carta of American workers to the knell of private property in this country. It is neither of these. (Those who do not read this book will miss a passage in which the writers soberly marshall evidence to sustain the conclusion that "the policy as expressed in the Act does affirm the underlying basis of the capitalistic system.")[2] The Act guarantees the rights to self-organization and the free choice of representatives for collective bargaining. In word, if not in deed, these elemental rights have for a long time been acknowledged everywhere—even in New Jersey. This statute breaks new ground by attacking the entrenched resistance to those rights at its heart—the influence, beneficent or malevolent, of employers upon employees exercising, or wishing to exercise, them. Paternalism, in an area carefully prescribed and commonly understood, has been outlawed.

As long ago as 1915 the need for this approach to the perennial problems of labor relations was wisely summarized by Mr. Justice Brandeis. Testifying before the Commission on Industrial Relations then investigating contemporary industrial strife, he said: "My observation leads me to believe that while there are many single things —single causes—contributing causes to industrial unrest, that there is one cause which is fundamental, and it is the necessary conflict between—the contrast between—our political liberty and the industrial absolutism . . . . unrest, in my mind, never can be removed, and fortunately never can be removed, by mere improvement of the physical and material condition of the workingman . . . . we must have, above all things, men; and it is the development of manhood to which an industrial and social system must be directed . . . . the end to which we must move is a recognition of industrial democracy."[3] That is precisely the end sought by the National Labor Relations Act, but the present authors have not yet made the discovery. From their lack of perception flow repeated failures to grasp the rationale both of the decisions and of the administrative policies of the N.L.R.B.

Thus Messrs. Feller and Hurwitz obviously, though not expressly, disapprove the Board's refusal to entertain, in actions under section 8, defenses founded upon the character of labor organizations, the conduct of union affairs or the deportment of workers. They cannot understand why a kindly and conscientious employer should not advise his employees even when they request it, when and how and why to join or not to join a union. They deplore the Board's apparent disregard of "labor racketeering." To them management is ever the father; when its guardianship is dissolved they demand intervention by the Board. The National Labor Relations Act was a belated acknowledgment of the coming of age of American workers. It freed them by restraining their masters. It made real for them words which hitherto had been but oratorical symbols. It did, and said, nothing else. Union management is the affair of unions. Unless and until a law is violated it is their affair alone. Labor unions, and members of unions, and sympathizers with unions, are subject to criminal and

[2] P. 202.

[3] Quoted in Senate Report No. 46, Part 3, 75th Cong., 2d Sess., p. 6: Report of the Committee on Education and Labor Pursuant to S. Res. 266 (La Follette Committee).

civil penalties for misconduct. The burden of the Act is to protect the independence of employees from interference by employers. Congress has left no room for doubt that it is not for the Board to substitute a new paternalism.

The errors of fact and of law in this book, the innuendos with a blurred ring, are beyond number. Even the citation of the N.L.R.A. is inaccurate.[4] It is impossible here even to catalogue, much less to correct them. A few, reiterated and embroidered, must be mentioned. In numerous chapters there occur frequent forebodings as to the limitless scope of the Act, predictions of its probable extension over all business which is at any time contiguous to interstate commerce. Yet the majority opinion in the *Jones and Laughlin* case, in language quoted by the authors themselves, explicitly rules out any such possibility. It denies that the preamble (sec. 1), upon which the writers rely, gives any authority for this view. Said the Chief Justice: "But we are not at liberty to deny effect to specific provisions which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. . . . . We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. . . . ."[5] It is by such a construction that the Board is bound and must be limited. It is under this very interpretation that the judgment of the Board has been upheld in each of the 162 cases decided by it which has reached the Circuit Courts of Appeals.[6] Messrs. Feller and Hurwitz should know this.

Subsection 5 of section 8, which prohibits employers from refusing to bargain collectively with the representatives freely chosen by a majority of the employees in an appropriate bargaining unit, is another bugbear to these authors. They find no affirmative guides to proper employer conduct in the decisions of the Board under this section; the cases, inevitably, debate only what constitutes a failure to bargain in good faith. Consequently Feller and Hurwitz would like us to think that employers are at the mercy of unions in this respect, that they must in some degree yield to whatever requests are made of them. The writers are shocked to find the Board of the mind that the duty to bargain continues during, or if it has previously ceased, may be revived by a strike. Their view bespeaks incomprehension of the place, in legislation designed to "diminish the causes of labor disputes" and to "mitigate and eliminate these obstructions when they have occurred," of the collective bargaining device. As the Board put it in the *Consumers' Research* case, "To interpret the Act to mean that upon appearance of industrial strife in a particular case the duty to bargain collectively is extinguished would be to nullify the clear intent of Congress and to disregard the very purpose of the law; to say that in the event of violence the duty to bargain is extinguished, is to interpret the Act to mean that, as and when industrial warfare appears it shall be permitted to run its course, burdening or threatening to burden commerce, with no obligation whatever imposed by the Act to attempt to remove the burden, or threatened burden, by collective negotiations. The Act will not bear such an interpretation."[7] It is not, of course, the employer's duty to grant

[4] Appendix, p. 625.

[5] 301 U.S. 1, 30 (1937).

[6] Statement of J. Warren Madden, Chairman, N.L.R.B., to the Committee on the Judiciary of the Senate, on S. Res. 207, February 3, 1938; NLRB Release No. R-571, p. 4.

[7] In the Matter of Consumers' Research, Inc. and J. Robert Rogers, Representative for Technical, Editorial and Office Assistants Union, Local N. 20055. 2 NLRB 57, 73 (1936–1937).

any particular demands of his employees. He is no more at their mercy than is any offeree at the hands of one who makes a proposal. His obligation is simply to receive the representatives of the majority, to discuss with them the matters to which they invite his attention and to negotiate with them in good faith in a genuine effort to achieve mutual understanding and satisfaction. No business man in his daily dealings would expect less.

Throughout the book there are analyses, conclusions and prognostications to which one must take exception were space available. At the same time the most controversial and important problems which the Board is now facing are ignored. There is no reference to the difficult question under section 9(a) of small but strong craft unions in the midst of large bodies of production workers organized on an industrial basis.[8] No mention is made of the matter of according to voters opportunity to express through the ballot indifference to all the bargaining agencies competing in an election.[9] None of the recent decisions of the Board is included. The harassing issues growing out of the schism in labor are thus but lightly touched.

In those parts of the book which pose generally the strategy to be adopted by employers who may be subject to the Act there is some plain speaking. Management would do well to listen to the sound advice of these authors relating to bullish strike tactics and the necessity for objective standards of hire and discharge. The primitive state of mind which has produced the kind of opposition encountered by the N.L.R.B. and the La Follette Committee is evidenced equally by the chaotic practices prevailing in personnel administration. These healthy reminders, however, suffer like the rest of the book from the incompetence of the writing. Grammatical and typographical carelessness infects the entire volume. This reviewer does not recall an inferior performance in book production. Employers who are seeking a trustworthy guide in their labor relations will save themselves the price of this work by referring their attorneys to the published decisions and the annual reports of the National Labor Relations Board.

JOHN W. PORTER*

[8] In the Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248; Case No. R-215, 4 NLRB No. 24, decided Nov. 20, 1937.

In the Matter of Schick Dry Shaver Company and Lodge No. 1557, International Association of Machinists; In the Matter of Schick Dry Shaver Company and Schick Local of the United Electrical and Radio Workers of America; Cases Nos. R-263, R-264, 4 NLRB No. 35, decided Nov. 29, 1937.

In the Matter of American Hardware Corporation and United Electrical and Radio Workers of America; Case No. R-271, 4 NLRB No. 58, Dec. 4, 1937.

In the Matter of Worthington Pump & Machinery Corporation and Pattern Makers Association of New York and Vicinity, Pattern Makers League; Case No. R-303, 4 NLRB No. 61, Dec. 7, 1937.

[9] In the Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1657; Case No. R-316, 4 NLRB No. 9; Supp. Dec., 4 NLRB No. 9d, decided Dec. 28, 1937.

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