

Labor Law—Cases, Materials, and Problems. BERNARD D. MELTZER.
Little, Brown and Company, Boston and Toronto, 1970. Pp. xlv,
1221, Appendix. \$16.50.

Frank H. Stewart†

I have a selfish interest in any labor law textbook. I need it in two ways. The labor law course at the University of Cincinnati could not be taught without it. And I have a great fondness for any book which helps me practice what I teach. To my great satisfaction, Professor Meltzer's new textbook fills both needs admirably.

The scope of the book is enormous. It ranges the full length of the National Labor Relations Act, from representation, through preemption, to complicated, secondary problems. These areas are covered in most standard textbooks, but Professor Meltzer's book goes much further. It projects itself into areas of growing and novel concern: collective bargaining in the public sector, trusteeships, and the rights of individual employees within their union. It is, for the instructor, a rich selection of cases and text, arranged in precise outline.

The selection is balanced. It includes suggestions that union restraints of trade are not economic and perhaps not in the public interest.¹ This thought is hardly novel, but it does not appear in every labor textbook on the market. The advent of the Taft-Hartley Act is discussed as a resolution by Congress of conflicting views—not an overheated response to exaggerated abuses.² Mr. Justice Douglas' effusions about the divinity of labor arbitration are balanced by references to Judge Hays' observations that some labor arbitrators are biased, some are venal and some are just plain stupid.³ The balance does not appear in many texts.⁴

The case selection is beautifully edited. No casebook approaches the precision with which Professor Meltzer follows principal cases with illuminating notes. He does what I have always thought a casebook should. The principal case sets the stage; the notes stimulate research, discussion, and, one hopes, the mind.

† Member of the Ohio Bar; Lecturer, University of Cincinnati College of Law.

¹ Pp. 48-74.

² See A. COX & D.C. BOE, *CASES ON LABOR LAW* 105-07 (7th ed. 1969).

³ P. 814.

⁴ See *LABOR RELATIONS AND THE LAW* 872-73 (3d ed. J.S. Williams 1965).

Most notes in other casebooks are really useless. They sweep law review titles into an imposing pile and imply it is research, or they simply follow the main case with quotations from subsequent cases. Professor Meltzer has taken a harder route, for his notes show that subsequent material has been thoughtfully analyzed. An example is Note No. 1 after *United States Gypsum Co.*⁵ The principal case announces, grandly, the proposition that an employer's election petition must satisfy the Regional Director that objectively the employer doubts the union's majority. Note No. 1 shows deftly that the Board's rhetoric is based on minority Senate reports and on rejected Senate amendments. Succeeding notes develop proof of majority with questions of increasing difficulty, all variations of the problems raised by *United States Gypsum*.

For an instructor, the notes ask fine questions. They seem to be planned in a spectrum: the first geared closely to the principal case, the later questions spreading out gradually to the speculative and the unanswerable.⁶ Needless to say, they are a fertile source for exam questions.

For the practitioner, the notes are a gold mine. Since they are selective, and not merely a collection of titles or quotes, they are an excellent source of further authority and thought. Most specialists are conversant with the principal cases (or talk as if they are). But these notes examine those cases from practically every vantage point. It will be folly to cite one of them in briefs without examining the notes.

The notes are not only well thought out, they are marvelously digested. It is hard to believe that the 1967 Detroit newspaper strike can be summarized in one paragraph, but summarized it is, and in perfect fashion.⁷

I have one quarrel with the organization of the material. I believe the National Labor Relations Act instruction should begin with the unit for bargaining. Under the present organization of the textbook, students deal at once with regulation of campaign techniques,⁸ proceed to 8(a)(1) and (3) cases⁹ then go to the unit.¹⁰

The unit is basic to a union's rights under the statute. Without a proper unit there is no election, no duty to bargain, no protection under the whipsaw and lock-out doctrines. The unit is too important to be postponed. Moreover, though basic, the unit is not a difficult con-

⁵ P. 282.

⁶ See, e.g., Notes, pp. 235-36, 471-72.

⁷ P. 256.

⁸ P. 90.

⁹ Pp. 124-261, 90.

¹⁰ P. 289.

cept. Of course, it is not constant—it varies with political power in Washington. But the political nature of unit issues makes them easier for today's politically keen student to assimilate.

As a practitioner, I would not send a management trainee to the illustrative collective bargaining agreement Professor Meltzer includes in the Appendix¹¹ without a few asides. That agreement does not reflect certain trends in collective bargaining and is certainly not what the aspiring management negotiator attempts to secure. The management clause¹² is a standard one. Management representatives in greater numbers now attempt to exclude certain critical management functions from the grievance and arbitration procedure as a direct result of the arbitration trilogy. Sometimes the management clause is divided into arbitrable and non-arbitrable decisions; sometimes, as in the GE-IUE national agreement, the union is given the right to strike over non-arbitrable management rights. Perhaps these refinements are for the seminar, but it seems to me some exposure to bargaining trends is in order.

The introduction to the grievance procedure excludes from its operation the no-strike clause (Article VI), apparently to avoid the holding of *Drake Bakeries v. Local 50, ABC Union*.¹³ I should have thought it far simpler to avoid that problem by drafting the grievance procedure to run exclusively to employee or union complaints against the company's interpretation of the agreement.

In the selection of arbitrators the illustrative agreement requires the parties to go through the outdated practice of securing a list of five names, from which each party strikes two. I have never understood why sophisticated men willingly play roulette in selecting a man whose decision is final, binding and sometimes wrong. Yet, time after time I find that parties have agreed to just this method without considering the consequences. I suppose this method has, after all, an apparent fairness. Each side may strike the most offensive names; the least objectionable wins. (Although the distinction of least obnoxious is the damnation of faint praise, arbitrators seem to relish it nonetheless.)

But the apparent fairness is just on the surface. Are the men on the list established in their field, or is the Service trying to launch new careers? Are they all chosen from one geographic area? Some employers, like television stations that broadcast editorials, will not agree to local arbitrators. There are indeed so many reasons why four out of five names would be offensive to any one party that I am amazed at the number of intelligent negotiators who accept striking as a desirable

¹¹ Appendix, pp. 129-41.

¹² Appendix, p. 130, art. II.

¹³ 370 U.S. 254 (1962).

means for selecting arbitrators. It is far more sensible to pick the arbitrator from a list *or lists* to be supplied by the appointing Service. The subtlety is one the student will not learn from the Appendix and may learn in practice only after sour experience.

But this is neither here nor there. No reviewer feels complete until he has carped a little. Having taken Professor Meltzer to task on trivia, I must return to the overwhelming excellence of his book. It is complete; its texts are extraordinary; and, as one who has used three textbooks in the last four years, I have no hesitation in calling it the definitive labor law case book. It probably will be for many years to come.

