

REVIEW

Labor Law: Cases, Materials and Problems (Second Edition). BERNARD D. MELTZER. Little, Brown & Co., Boston, 1977. Pp. xxiii, 1300. \$23.00.

Raymond Goetz†

No startling innovations. No radical changes in philosophy, coverage, or organization. Just thorough updating, judicious pruning, and scholarly refinement here and there. That fairly well sums up my appraisal of the second edition of Professor Meltzer's labor law casebook. It undoubtedly will continue to hold a prominent position among the established casebooks in the field¹—whose number just happens to match the number of major law text publishers.

When the first edition was published in 1970, it received extensive reviewer comparison with the other three leading casebooks then available.² Since most of the similarities and differences noted then are still present in the second edition, further detailed analysis along those lines would be supererogatory. It suffices to say that the primary distinguishing feature of Meltzer's book—in keeping with “the Chicago approach”—continues to be his effort to integrate the practical and policy problems of labor law with the social sciences, particularly economics and psychology.

This tone is set in the introductory chapters, which first review the historical and institutional framework of the labor movement and then describe the factual and economic contexts of contemporary regulation. Of necessity, the text and data on the factual background have been extensively revised to reflect recent trends in the composition of the labor force, unemployment, earnings, union membership, and work stoppages. The section on workers, unions, and the economy poses fundamental economic and social questions; it retains the classic but still controversial essay by Simons, “Some Reflections on Syndicalism,” paired with the more balanced view

† Professor of Law, University of Kansas.

¹ A. COX, D. BOK & R. GORMAN, *CASES ON LABOR LAW* (8th ed. 1977); W. OBERER & K. HANSLOWE, *CASES AND MATERIALS ON LABOR LAW: COLLECTIVE BARGAINING IN A FREE SOCIETY* (1972); R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, *LABOR RELATIONS LAW CASES AND MATERIALS* (5th ed. 1974); C. SUMMERS & H. WELLINGTON, *CASES AND MATERIALS ON LABOR LAW* (1968). Also available is a 10-volume set of teaching materials, *THE LABOR LAW GROUP, LABOR RELATIONS AND SOCIAL PROBLEMS* (1976), which departs from the traditional casebook format.

² Dunau, Book Review, 71 *COLUM. L. REV.* 513 (1971); Hillman, Book Review, 66 *NW. U.L. REV.* 146 (1971); Merrild, Book Review, 39 *GEO. WASH. L. REV.* 1254 (1971); Stewart, Book Review, 38 *U. CHI. L. REV.* 444 (1971).

of Lester in "Reflections on the 'Labor Monopoly' Issue." In providing valuable reference material for later chapters, especially the chapter on regulation of collective action by labor organizations, this section is particularly well suited to Meltzer's unifying theme. He carries it out with numerous thought-provoking questions on economic policy in the notes.

A formidable problem facing Meltzer in this edition was how to incorporate the outpouring of important new court decisions since 1970 without unduly lengthening the book. He has solved it remarkably well. The book is only a few pages longer, and the type is larger and much more readable. He has accomplished this feat by a number of well-chosen deletions. One that will not be missed is *NLRB v. Wyman-Gordon Co.*,³ which upheld the Board's requirement that an employer furnish a petitioning union with the names and addresses of its employees. The various plurality and dissenting opinions set forth a perplexing array of views on the Board's failure to exercise its rulemaking power—which drove many students to distraction. This case is best relegated to administrative law courses, where it is normally covered; the merits of the names and addresses requirement can better be considered by study of the Board decision in *Excelsior Underware, Inc.*,⁴ which Meltzer has substituted for *Wyman-Gordon*. Another welcome deletion is *NLRB v. Walton Manufacturing Co.*,⁵ which dealt with judicial review of Board findings on employer motive in discharge cases. The Supreme Court's opinion on that narrow point was frequently misread by students and overlapped editorial summary on judicial review in an earlier chapter. And while the history of J.P. Stevens & Co.'s guerrilla warfare with the Board illustrates remedial problems, the Fourth Circuit decision⁶ in the first edition did not stand for any general propositions of sufficient importance to merit the nine pages it filled up; Meltzer has appropriately reduced it to a note. Similar good judgment has been exercised in the deletion of *Bakery Sales Drivers Local 33 v. Wagshal*,⁷ *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*,⁸ and *Wood v. O'Grady*⁹ from the chapter on the regulation of collective action, and throughout the delicate cutting process.

³ 394 U.S. 759 (1969).

⁴ 156 N.L.R.B. 1236 (1966).

⁵ 369 U.S. 404 (1962).

⁶ *J.P. Stevens & Co. v. NLRB*, 406 F.2d 1017 (4th Cir. 1968).

⁷ 333 U.S. 437 (1948).

⁸ 312 U.S. 287 (1941).

⁹ 307 N.Y. 532, 122 N.E.2d 386 (1954).

Essential space-saving has been coupled with improved clarity and balance in the section on NLRB elections. In the first edition, Meltzer used brief editorial comment to cover technicalities of the contract bar rule. He has now extended this technique to the problems of schism within the union (a rarity these days), union defunctness, and the effect of changing operations. These details probably represent the least interesting part of the labor law course. Trying to master them by reading Board decisions, students tend to lose sight of the forest for the trees.

As one might expect, all of the significant new cases have been added, including such recent landmarks as *Hudgens v. NLRB*¹⁰ (on shopping center picketing as protected free speech), *Connell Construction Co. v. Plumbers Local 100*¹¹ (on the scope of labor's anti-trust exemption), *Lodge 76, International Association of Machinists & Aerospace Workers v. Wisconsin Employment Relations Commission*¹² and *Farmer v. United Brotherhood of Carpenters Local 25*¹³ (both on preemption), *Buffalo Forge Co. v. United Steelworkers*¹⁴ (on the enjoynability of sympathy strikes pending arbitration), and *Hines v. Anchor Motor Freight, Inc.*¹⁵ (on the duty of fair representation). Thus, Meltzer's book enjoys the advantage of being the most current.

The most extensive revision seems to have been in the section on regulation of organizational campaign techniques. *NLRB v. Gissel Packing Co.*,¹⁶ which laid down the Supreme Court test for determining the legality of employer predictions as to possible consequences of organization, has been elevated from a note to a well-edited featured opinion. *Plochman & Harrison—Cherry Lane Foods, Inc.*,¹⁷ *Dal-Tex Optical Co.*,¹⁸ *Hollywood Ceramics Co.*,¹⁹ and *Sewell Manufacturing Co.*,²⁰ have been replaced by *Oxford Pickles v. NLRB*,²¹ *Luxuray of New York v. NLRB*,²² *Modine Manufacturing Co.*,²³ and *Bancroft Manufacturing Co.*,²⁴ which provide more

¹⁰ 424 U.S. 507 (1976).

¹¹ 421 U.S. 616 (1975).

¹² 427 U.S. 132 (1976).

¹³ 430 U.S. 290 (1977).

¹⁴ 428 U.S. 397 (1976).

¹⁵ 424 U.S. 554 (1976).

¹⁶ 395 U.S. 575 (1969).

¹⁷ 140 N.L.R.B. 130 (1962).

¹⁸ 137 N.L.R.B. 1782 (1962).

¹⁹ 140 N.L.R.B. 221 (1962).

²⁰ 138 N.L.R.B. 66 (1962).

²¹ 190 N.L.R.B. 109 (1971).

²² 447 F.2d 112 (2d Cir. 1971).

²³ 203 N.L.R.B. 527 (1973), enforced 500 F.2d 914 (8th Cir. 1974).

²⁴ 210 N.L.R.B. 1007 (1974).

current treatment of essentially the same material. In addition, Meltzer has interwoven provocative references to the groundbreaking empirical study by Getman, Goldberg, and Herman on the psychological effects of representation campaign tactics on employees,²⁵ thereby furthering his objective of integrating labor law with the social sciences.

Overall, instructors who have used the earlier edition will still feel at home with this one. The section on secondary pressures, for example, is virtually unchanged. Relatively minor changes in structure and content have been made in the chapter on the duty to bargain. The coverage remains comprehensive. Everything the fledgling labor lawyer needs to know is there. The book could even be used as a handy reference for practitioners with limited access to loose-leaf services, although we now have labor law texts better-suited to that purpose.²⁶

If the book has a flaw, it might be that it attempts too much. Clearly it offers far more than can possibly be covered in a basic labor law course of sixty or so class hours. As any casebook must, it fully delineates all aspects of the Labor Management Relations Act. Moreover, like most competing casebooks, it covers the enforcement of collective bargaining agreements—both through the grievance-arbitration machinery and the courts—the union's duty of fair representation, and union government and administration. Wisely, Meltzer makes only passing reference to the Employee Retirement Income Security Act (ERISA) and includes only one case on section 302 of the Labor Management Relations Act (LMRA). Still, one might question the need for his section on fair employment regulation (increased from sixteen to eighty pages) and his short section on collective action in the public sector. A book of this scope is presumably intended for advanced as well as basic courses. The trouble is that employment discrimination has become a course in itself. It is difficult to see any advantage in trying to introduce students to this rapidly-developing area—governed by a separate statute and a separate administrative agency—along with the mass of regulatory detail more directly related to the LMRA. Although work in this area currently occupies much of the time of labor lawyers, the same could be said for ERISA and the wage and hour laws. It seems doubtful that many labor law teachers attempt to cover

²⁵ J. GETMAN, S. GOLDBERG & J. HERMAN, *UNION REPRESENTATION ELECTIONS: LAW AND REALITY* (1976).

²⁶ R. GORMAN, *BASIC TEXT ON LABOR LAW* (1976); ABA SECTION OF LABOR LAW, *THE DEVELOPING LABOR LAW* (C. Morris ed. 1971).

any of these areas, even in advanced courses. On the other hand, public sector bargaining is probably covered in one way or another in most advanced courses. Yet, the twenty-three pages Meltzer devotes to this subject are so skimpy that many teachers will find them inadequate for advanced study. Of course it is always possible to omit excess material in the basic course and use supplementary texts for the advanced course, but students may feel cheated by a basic course that covers only one-half to two-thirds of the text and may rebel at an advanced course that requires two or three expensive books. My own preference would be for a slenderized basic casebook and an advanced text covering bargaining, arbitration, internal union affairs, and public sector bargaining.

Most experienced labor law teachers have developed their own preferences as to course organization, which to a considerable degree influence their casebook selection. Although the content of all the leading casebooks is sufficiently similar so that any of them could be adapted to almost any course organization, students become restive, if not disoriented, by excessive skipping around in a text. Aside from omissions dictated by time constraints, I find little necessity to deviate from Meltzer's structure. After the two introductory chapters referred to earlier, he has a short chapter outlining NLRB procedures and judicial review, before turning to chapters on protection of the organizing process against interference and discrimination. To my mind, these subjects—which usually involve activities that precede in time the formality of selecting a bargaining agent—logically precede the problems of determining representative status, which Meltzer has placed in the next chapter. The chapter on the regulation of collective action could stand more or less on its own, but certainly fits well after the selection of the bargaining agent and before the chapters on collective bargaining and enforcement of collective agreements. Some may prefer to treat the chapter on federal preemption after collective bargaining, rather than before as Meltzer has done, but this is easily accomplished. The final three chapters cover individual and collective action, community and collective action, and union government and administration, an organization that works out well for those who have to omit this from the basic course.

In short, Meltzer has provided us with another fine instructional tool. I have used the first edition since it was first published and have just finished covering the first seven hundred pages of the new edition. The students—most of them in their third year with a low threshold of boredom—have been reasonably well satisfied, even though only a handful are likely to become directly involved in labor law practice. In my judgment, no labor law teacher could go wrong adopting this book.

