

Book Review: Labour Relations Law: Cases, Materials and Commentary, compiled by Labour Relations Law Casebook Group

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BOOK REVIEWS

LABOUR RELATIONS LAW: CASES, MATERIALS AND COMMENTARY, COMPILED BY LABOUR RELATIONS LAW CASEBOOK GROUP
Kingston: Industrial Relations Centre, Queen's University. 1970. Pp. xxxi, 585 (Hardbound: \$15.00; Paperback: \$11.00)

In reviewing a text or novel the task normally centers on a relating of the thesis or theme of the work, an appraisal of the author's success in achieving his apparent objective from a substantive and stylistic point of view, and finally the importance of the book to society generally or to the specific field of inquiry. Unfortunately such a model of approach is quite inappropriate in reviewing the contemporary law text or casebook designed for class room pedagogy. Accepting that modern casebooks have progressed a great deal from the pure Langdellian preoccupation with appellate decisions; they still do not lend themselves to the classical review of thesis or style. The modern casebook while emphasizing appellate decisions, includes snippets from the social sciences, statutes, problems and many other types of materials and sources. The specific combination is a function of the editor's objective and approach to legal education generally and to the particular subject matter, specifically. However these underlying pedagogical and substantive notions are rarely presented explicitly to the reader and at times one wonders if the author even troubled to define those purposes for himself. In addition, these purposes may and generally do conflict, necessitating a compromise in the character and extent of materials included.

The pure case method introduced by Langdell was intended to develop in the student analytic skills of a deductive character: formulating general propositions, isolating relevant factual occurrence and culminating in a syllogistic exercise. In this it succeeded and yet the lawyer-student was in need of much more. As well as appellate decisions depicted the fineness of certain legal problems, they just as effectively ignored the contexts in which the legal system operates. To correct this hiatus economic, political, sociological and historical excerpts were inserted where relevant, offering a background and a perspective from which to view the judicial decisions.

As legal pedagogy became more sophisticated problems were inserted at strategic intervals, intending to encourage consolidation and reflection upon the materials presented to that juncture.

The *Labour Law Casebook Group*, comprising of five eminent law professors and assisted by a sixth, have produced an excellent casebook in the field, quite naturally, of labour relations, which utilizes all of these techniques. As with all casebooks, compromises had to be made in order that the materials be man-

ageable for the student as well as providing an effective teaching tool. In this case, the compromises must have been all the more difficult having regard to the fact that five men were involved in the organization of the materials. And it is to the credit of these individuals that the book does not reflect five different approaches all going in confusing and opposing directions. In fact it is of high and uniform quality and because of the Group's success at both the teaching and substantive levels, the book should be of value to students, practitioners and teachers alike.

The casebook represents the finalization of a temporary edition used on a trial basis in a number of Ontario law schools during the two preceding academic years. For those who are familiar with the temporary edition, it should be noted that the internal organization of some chapters has been altered along with the updating of materials where appropriate; yet in all other respects the text remains unchanged. The confusion generated in the temporary edition, because of the lack of variety in multilith print and the delicate nature of the physical structure of the temporary edition, have been eliminated by the hardbound edition.

The book consists of eleven chapters and generally follows a sequential pattern commencing with the organizational aspects of trade unionism, canvassing certification, collective bargaining and contract administration and culminating in the regulation of conflict that is a product of industrial interaction. Each chapter by way of excerpts from law review articles, relevant texts as well as by lucid notes prepared by the editors, provides a backdrop to the classic decisions selected to develop each particular topic. Problems are then posited to encourage the student to reflect upon and apply the particular materials before arriving to class. These problems can only stimulate and facilitate a more productive class dialectic. My only criticism with regard to the hypotheticals is that they consistently require the student to simulate the roles of the judge, the arbitrator or counsel who must relate the "legal" implications of a factual circumstance. The primary industrial participants are neglected and so are the industrial relations considerations that encourage unions or managements to forego the enforcement of a strict contractual or legal right in furtherance of industrial harmony. Legal considerations are only one element in the formulation of strategy. Every grievance, quite obviously, does not go to arbitration. In the organizational context most legal remedies are inadequate. In an effort to maintain or increase productivity management is well advised, in particular circumstances, to forego apparent contractual rights and deal rather on a behavioural level.

Chapter one consists of a 'before' and 'after' unionism hypothetical. It highlights personal and sociological aspects of the industrial environment of a small town; yet as a student I did not find it helpful in any introductory sense and on reading it for a second time my opinion remains unchanged.¹

Chapter two develops the historical-legal background of collective bargaining with one section appropriately entitled, "Collective Bargaining: From Criminality to Respectability". There are some very informative notes throughout

¹However at page five a delightful union song is reproduced which might well be sung in class as an introduction to the spirit of the trade union movement that has survived judicial acrimony.

the book, and this chapter is no exception. One note, in particular, gives a neat and concise summary of the history of trade unionism in Canada. Unfortunately the editors were not inclined to give a short bibliography of relevant United States readings in this area. There exists an abundance of literature in that country on the history of trade unionism in contrast to the paucity of strictly Canadian readings.² Furthermore trade unionism in that country has had a dramatic impact on its Canadian counterpart. Similarly, it is unfortunate that no readings on Quebec trade unionism were suggested to the reader. However, this latter neglect is reflective of the book's general disregard of all provinces other than Ontario. For this reason it is recommended that a copy of *Labour Relations Legislation in Canada*,³ a handbook produced by the Canadian Department of Labour, be purchased on acquiring this casebook.

Chapter three, "Beyond Collective Bargaining" is rather a strange chapter and appears misplaced. It could well have been located after chapter nine enabling the incorporation of materials on creative collective bargaining reflected by coalition bargaining, automation and conversion plans, and continuous bargaining schemes. As it stands, the chapter emphasizes the essential, yet costly aspect of conflict within our industrial relations system and some comparative materials are presented. Unfortunately we do not see enough comparative excerpts or references in the casebook (excluding the United States); yet such materials can present with graphic effectiveness, the existing alternatives to our system. The Japanese and Soviet systems are *par excellence* in this regard.⁴

Chapters four to nine are highly substantive and with sufficient informative notes and law review excerpts to make the book valuable to the practitioner as well as the student. This value is accentuated by a very detailed and efficient subdivision of subject matter, and made accessible by a very refined table of contents and list of cases. The book would have profited from the inclusion of a page containing only the chapter headings, but the failure is not by any means fatal to the accessibility.

Chapter four entitled "Right to Join a Union" contains the regulatory framework for union-management interaction in the organizational context. Section six is a very important section on remedies and it is here that I would have fashioned a problem embracing the strategic considerations of the parties in light of certain remedial inadequacies.

²S. Alinsky, *John L. Lewis, An Unauthorized Bibliography* (New York: Putnam, 1949); W. Birdsall, *The Problem of Structure in the Knights of Labour July, 1953*, *Industrial and Labour Relations Review*, 532; J. Commons, *History of Labour in the United States* (New York: Kelley, 1966); W. Galenson, *The C.I.O. Challenge to the AFL; A History of the American Labour Movement, 1935-41* (Cambridge: Harvard University Press, 1960); P. Taft, *The A.F. of L. in the Time of Gompers* (New York: Harper, 1957); L. Ulman, *The Rise of the National Trade Union; The Development and Significance of Its Structure, Governing Institutions, and Economic Policies* (2nd ed. Cambridge: Harvard University Press, 1966).

³Legislation Branch of the Canadian Department of Labour, 1970.

⁴I. Ayusawa, *A History of Labour in Modern Japan* (Honolulu: East-West Center Press, 1966); M. Tsuda, *Japanese Wage Structure and Its Significance For International Comparisons 190-200*, T. Shirai, *The Changing Pattern of Collective Bargaining In Japan 201-209*, T. Minemura, *The Role of The Government In Industrial Relations: An Outline 219-224*, I. Nakayama, *The Modernization of Industrial Relations in Japan 225-236*, *British Journal of Industrial Relations* (July 1965); E. Brown, *Soviet Trade Unions and Labour Relations* (Cambridge: Harvard University Press, 1966).

Chapter five entitled "Status under Collective Bargaining Legislation" deals with the legislative categorization of industrial participants embraced by the framework.

Chapter six covers the selection of the collective bargaining representative and sets out clearly, the somewhat technical legal regime constituting the certification process.

Chapter seven, "The Collective Bargaining Relationship" canvasses the duty to bargain, conciliation, a union's exclusive bargaining status as well as the issue of surviving bargaining rights. The first page of this chapter reflects the editors' awareness of the behavioural and strategic elements involved in the negotiation process. Unfortunately, this was not supplemented with many references to the theoretics of the negotiation and conciliation process.⁵ This chapter also illustrates the general difficulty encountered in developing a casebook, in recognizing that psychological, sociological, political and economic considerations, are of great importance; yet being unable to do more than note their presence without running the risk of superficiality.

The editors state in their preface:

Labour relations law is unintelligible except when it is seen as part of the entire industrial relations system, its political, social, economic, psychological and cultural environment: is it possible to produce a casebook of manageable proportions which adequately conveys the essence of both law and life?

The theoretics of bargaining has been examined in detail in the fields of game theory and economics⁶ as well as the contribution of psychology to coalition theory. The economics of collective bargaining has been analyzed in relation to the existence of wage contours and inflationary tendencies.⁷ Much literature exists on the investment in human capital highlighting seniority systems and benefit plans.⁸ Sociology has contributed to an understanding of human interaction and alienation within an industrial environment. Any casebook that tries to advert to these contributions without some detailed presentation is going to appear superficial. Yet, what law professor is capable of undertaking so grandiose a plan? Better still, what would a casebook look like or more importantly, what would it weigh, if such a task were undertaken? So to say this casebook is superficial in this regard is only to admit to human limitations. The advent of inter-disciplinary legal education allowing for substantial cross registration opportunities is the solution to this dilemma; not a comprehensive casebook.

⁵C. Stevens, *Strategy and Collective Bargaining Negotiations* (New York: McGraw-Hill, 1963) was cited; but see also R. Walton and R. McKersie, *A Behavioural Theory of Labour Negotiations* (New York: McGraw-Hill, 1965); T. Schelling, *The Strategy of Conflict* (Cambridge: Harvard University Press, 1960). Much of the relevant literature exists in the fields of economics and decision-making.

⁶See generally, Schelling, *supra* note 5; see also M. Olson Jr., *The Logic of Collective Action; Public Goods and the Theory of Groups* (Cambridge, Mass.: Harvard University Press, 1965).

⁷J. Dunlop, *Wage Determination Under Trade Unions* (New York: Kelley, 1966); H. Levinson, *Determining Forces on Collective Wage Bargaining* (New York: Wiley, 1966); A. Ross, *Trade Union Wage Policy* (Berkeley: University of California Press, 1948); S. Slichter, *Do The Wage-Fixing Arrangements in the American Labor Market Have an Inflationary Bias?* (1954), 44 *American Economic Review*, 322.

⁸G. Becker, *Human Capital, A Theoretical and Empirical Analysis, with Special Reference to Education* (New York: National Bureau of Economic Research, 1964).

Chapter eight is a detailed and highly informative chapter entitled "The Collective Agreement and its Administration". Issues of seniority, management's rights and discharge are discussed in relation to the nature of the collective agreement and the role of the arbitrator.

American materials are used to good advantage throughout the casebook and the section on judicial review of arbitration awards in this chapter is a paradigm of the general effectiveness achieved. The editors inform the reader on numerous occasions that the Canadian legislative framework was modeled on that of the United States. Yet in this section the Canadian cases make no reference to the United States approach, juxtaposed so nicely by the editors, and instead apply archaic and inappropriate English common law doctrines that evolved in an altogether different context.

This chapter teems with small hypotheticals and instructive notes, again reflecting the book's general value to student, teacher and practitioner alike. The chapter concludes on a presentation of the multiple enforcement possibilities surrounding the collective agreement.

Chapter nine is a very complete analysis of strikes, picketing, boycotts and lockouts. The introductory text to this chapter presents an enlightened framework from which to view the cases selected for discussion.

Chapters ten and eleven deal with inter-union rivalry and intra-union conflict, respectively. It is unfortunate that these chapters are victims of a general neglect by law teachers. Both chapters are well organized and broadly present the interesting and important recent developments in these areas.

In summary, a quick glance at the names of the group of editors suggests that their casebook must indeed be a significant contribution to Canadian labour relations. In my opinion, a careful reading of the book only confirms this assumption. This first edition of *Labour Relations Law* is a casebook of extreme high and uniform quality. Its arrival should be heralded as a great step forward in the teaching of labour relations in Canadian law schools.

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