REVIEWS

COLLECTIVE BARGAINING IN THE RAILROAD INDUSTRY. By Jacob J. Kaufman. New York: King's Crown Press, Columbia University, 1954. Pp. 235. $3.75.

A REALISTIC study of collective bargaining must be concerned with the forces underlying bargaining power. Jacob J. Kaufman, of the Economics Department, University of Buffalo, is realistically oriented and endeavors to point the pathways toward freer collective bargaining in the railroad industry.

At the outset, the author brings into focus two significant facts of railroad life. He notes that a small handful of railroad terminals controls the flow of the bulk of the nation's freight and passenger traffic, and that "this means that the railroad labor organizations can easily disrupt the transportation system of the United States by striking certain railroads or terminals."[1] Secondly, he observes that "the financial position of the railroads and the procedures established by the Interstate Commerce Commission for the determination of rates are such that the railroads find themselves in a position whereby they are unable to agree across the table to demands for wage increases."[2] In this latter connection, the author offers figures showing that the actual rates of return on net investment for the years 1940-1952 averaged about four per cent, almost two per cent less than what the Interstate Commerce Commission regarded as the return which "the railroads should earn in a 'constructive normal year.' "[3]

Thus, it would appear that strategic economic power of the labor organizations is wedded to relative economic impotence on the part of the railroads, with resultant turbulence in collective bargaining relationships. The task of coping with this imbalance is, of course, complex. The simple solution of reducing the relative economic strength of the labor organizations is neither countenanced nor acceptable to the author.

Dr. Kaufman expresses the opinion that "we have had compulsory arbitration, *de facto*, but not *de jure*, in the railroad industry," and that "this condition developed as a result of Presidential intervention, government seizures, and the issuance of court injunctions."[4] The reality, if not legality, of limitations on the striking power of labor organizations is squarely presented. In the author's view, limitations on the strike are equivalent to limitations on free collective bargaining, and limitations on free collective bargaining are but shackled footsteps down the road to serfdom. "[L]aws do not prevent strikes, they simply

1. P. 179.
2. *Ibid.*
3. P. 7.
4. Pp. 181-82.

make them illegal. Therefore, the solution is not the banning of strikes, but the restoration of conditions under which genuine collective bargaining between the two parties can be carried on."[5] Dr. Kaufman thus rejects any weakening of the economic power of railroad labor organizations as a possible factor in "the restoration of conditions under which genuine collective bargaining between the two parties can be carried on."[6]

There exists in the railroad industry a custom of industry-wide collective bargaining over major economic demands. This is the "given" condition with which the author deals: the limitations on the striking power of the labor organizations arise almost entirely in industry-wide bargaining impasses. Conceivably, there would be little or no intervention by the federal government to limit the striking power of the labor organizations if bargaining were conducted on a regional or local basis. In the fiscal year 1953, according to the National Mediation Board, in not one of the seventeen local strikes in the railroad industry was an emergency board established.[7] The forces which have led the parties to negotiate on an industry-wide basis rather than on a local basis are not clear, although historically, to this reviewer's knowledge, on the Southeastern Railroads regional collective bargaining became the practice about 1910 when individual railroads there refused to be "guinea pigs" or leaders in raising their wage costs to their competitive disadvantage. Surely, it would seem that if there is insignificant impairment of the economic power of labor organizations in local bargaining as contrasted with industry-wide bargaining, the forces which maintain collective bargaining on an industry-wide basis should be more easily discernible. In this connection, it would have been useful if the author had brought within the scope of his study the nature and structure of decision-making power among and within the labor organizations and the railroads, individually and nationally.

State compulsion of the railroad worker is unequivocally opposed by the author. In the event of an emergency situation, however, he does recognize that "the President should take appropriate action, but the action should not be known prior to the breakdown of negotiations, nor should it be such as to hurt unduly one party as compared to the other party to the dispute."[8] This proposal would seem to carry much merit in conflict situations where the bargaining power of the parties is fairly equal. But it is of doubtful value where the existence of imbalance in bargaining power leaves the weaker party at the mercy of the stronger, for in such a situation the weaker does not have the range of alternative choices which underlies the doctrine of freedom of contract. Historically, the railroads have found themselves in the weaker position, and they have obtained some refuge in the powers of the federal government. It is more than understandable—indeed, it is to be expected—that the railroads have sought amendment of the Railway Labor Act to establish *de*

5. P. 183.
6. *Ibid.*
7. 19 NAT. MEDIATION BD. ANN. REP. 2-4 (1953).
8. P. 185.

jure compulsory arbitration[9] in lieu of the emergency board procedures of section 10 of the Railway Labor Act.[10] Likewise, it is not surprising that the labor organizations should oppose such amendment. As a practical matter, the author sees in the emergency board what is equivalent to a board of compulsory arbitration. It is therefore consistent with his overall argument that he should recommend: "The provision of the Railway Labor Act, as amended, with respect to the creation of emergency boards, should be eliminated."[11]

Elimination of the emergency board provision would not alter the existing discrepancy in economic bargaining power of the parties. Nor would it leave a defense against the dangers to the health, welfare, and security of the nation in the crisis conditions of a national strike. Thus, unless the labor organizations willingly moderate their wage demands to the economic realities of the railroad's financial position, the probability of governmental intervention is high indeed. One of the chief functions of the emergency boards is to bring about a realistic appraisal by both parties of the kinds and quantities of economic concessions which are in the area of feasibility without recourse to conflict. Rather than eliminate the emergency board provision, it would appear to be desirable to improve the functioning of such boards as recommended by the Senate Committee on Labor and Public Welfare by providing a staff of experts in the field of wages and rules to assist the board in arriving at more correct determinations of technical questions, and by enlarging the emergency board to five members, three neutrals and two partisan representatives.[12] A board so composed would be better able to protect the public interest in the resolution of economic issues, and would be in position to communicate with both parties in testing proposed recommendations. Ultimately, perhaps, such a tripartite *de facto* board might develop into a continuing agency and serve as a form of transitional legislative body for the industry.

If a chief function of the emergency boards is to bring the parties to a more realistic appraisal of the feasible economic concessions, they must have a keen and sensitive appreciation of the values of the parties and of the total environmental forces which may lead the parties to accept peacefully the board's recommendations. Necessarily, this is a task of delicate balancing, and therefore it is to be expected, as Dr. Kaufman demonstrates, that there is considerable flexibility in formulating and applying wage criteria. He notes that five principal criteria are employed: (1) "changes in the cost of living"; (2) "changes in the productivity of labor"; (3) "wages paid in other industries"; (4) "maintenance of take-home pay in the face of reduction in hours"; and (5) "ability (or inability) of the employer to pay."[13] The author declares that there has been no attempt to develop absolute standards and that "this

9. *Hearings before the Senate Committee on Labor and Public Welfare on S. 3463*, 81st Cong., 2d Sess. (1950).

10. 44 STAT. 586 (1926), 45 U.S.C. § 160 (1952).

11. P. 185.

12. S. REP. No. 496, 82d Cong., 1st Sess. 17 (1951).

13. P. 97.

failure may well have played a part in the deterioration in the economic position of the railroad workers and the increasing dissatisfaction of the railroad workers with the wage recommendations of the emergency boards."[14] In this connection, he points out that from 1936 to 1952, the real wages of operating workers rose by about 18 per cent as compared with a real wage increase of 65 per cent for nonoperating workers and 61 per cent for workers in manufacturing industries.[15] Because this wage pattern is influenced by Government coercion Dr. Kaufman sees a great need to develop definite wage criteria. "For when wages are determined freely between labor and management, the criterion is quite simple: the economic cost to either side for failing to come to an agreement. But if the wages are determined as a result of governmental 'coercive intervention' objective criteria must be established. It would be desirable to have them worked out 'primarily by labor and management if the principles of collective bargaining are to be preserved.' "[16] To the extent that the parties, in arguing their positions before the emergency boards, actually employ such standards, it is likely that the author's recommendation may in time become established. Whether, however, such standards would yield to the railroad worker a wage as high relatively as wages in other industries remains dubious. It is not unlikely that were it not for the exceptionally strong bargaining power of railroad labor organizations, railroad wages would have deteriorated even more relative to nonrailroad wages.

Dr. Kaufman declares his unequivocal opinion that the grievance procedures for the operating crafts have broken down in the National Railroad Adjustment Board, First Division. "The large backlog of cases, the large number of cases brought before the Adjustment Board, and the increasing number of strikes and theatened strikes over grievances, involving primarily the operating workers, reflects a basic conflict between the labor organizations and the carriers: the former seek not only the maintenance of the working rules by preventing any interpretation that might be adverse to railroad labor but also their extension regardless of the specific wording of the contract between the parties. The carriers, however, seek the elimination, or at least the modification, of the working rules."[17] Looking to economic sources of the conflict over the working rules—technological changes pressuring the workers to hang on to the economic security of the established working rules, and competitive pressures forcing the carriers to seek relief from high cost, uneconomical operations under the old working rules—economist Kaufman concludes: "What must be achieved is the elimination or easing of many of the rules which, from a financial and economic point of view, are undesirable. This must be done, however, by agreement between the parties."[18] To assist in arriving at such accord, the author suggests that there be established a Commission "composed

14. P. 126.
15. P. 93.
16. P. 126.
17. Pp. 146-47.
18. P. 151.

of representatives of the railroad carriers, railroad labor organizations, and public members, to survey the entire working rules problem and come forth with recommendations for changes."[19] Surely, this is a constructive suggestion and one which might lead to substantial long run improvements in the quality and kinds of service which the railroads could provide in competition with other transportation agencies.

This reviewer would not minimize the importance of the economic issues underlying grievance disputes and the grievance procedure. Nevertheless, it must not be overlooked that the railroad industry is an authoritarian system. Semi-militaristic in its organization, it functions through a hierarchy of command with concentrated power in its general line officers. In railroading, numerous complex operations must be highly coordinated and reduced to the clock-like regularity of the time schedule. Flexibilities of policy are routinized through the daily drill of applying rules and regulations, in mechanical precedent fashion, so as to achieve what resembles automatic operation. The individual railroad worker, like the individual railroad bureaucrat, is, and feels himself to be, nothing more than a cog in the wheel of the transportation system. Within this authoritarian system human values may and often do shrivel and disappear. The working rules offer some relief to individual frustration and despair and some hope that arbitrary rewards and punishments will not be handed out. Seniority rules, for example, along with rules requiring fair procedures in disciplinary matters, serve to protect the otherwise helpless worker. Moreover, the grievance procedures allow for channeling explosive emotions arising from accumulated feelings of arbitrariness and injustice, and, in addition, such procedures offer some support to the individual against his own feelings of guilt, anxiety, fear, and helplessness in coping with superior authority. From this point of view, the grievance procedure, clogged with psychologically-based grievances, reflects the poor morale of the railroad worker. And in dealing with this problem of individual worker morale, the grievance procedures in the railroad industry may be deemed highly effective. Although the National Railroad Adjustment Board, First Division, was 4,717 cases behind in its work at the end of the fiscal year, 1952,[20] the backlog had been reduced to 2,798 cases at the end of the fiscal year, 1954, out of a total of 32,106 cases docketed since 1934.[21] Despite the prospects of long delay in the determination of an individual case, the certainty and simplicity of appeal to the Adjustment Board compels the parties to substitute reasonable and consistent standards of grievance determination for arbitrary action. Thus, to this reviewer's view, the rule of law replaces arbitrary power exercised in an authoritarian setting. Industrial jurisprudence, founded on principles of constitutional law and growing out of the common law heritage, emerges.[22] The principle of justice in human

19. P. 186.
20. P. 145.
21. 20 NAT. RR. ADJ. BD. 1ST DIV. ANN. REP. table 2 (1954).
22. See, in this connection, LAZAR, DUE PROCESS ON THE RAILROADS: DISCIPLINARY GRIEVANCE PROCEDURES BEFORE THE NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION (1953).

relations is encouraged to flow through the grievance procedures and transform the automaton-like railroad worker into a dignified human being with spirit and soul.

Dr. Kaufman seemingly equates free collective bargaining with the process of reaching agreement in direct and unhampered across-the-table bargaining between the parties. This view seems not to accord proper weight to the ultimate goals of collective bargaining—the enhancement of individual worth and self-determination within the framework of values embraced by a democratic society. Success or failure of collective bargaining in any industry must, then, be measured by the direction and degree to which such values are realized. The establishment of institutions of consent under the Railway Labor Act, safeguarded by constitutionally protected concepts of due process of law, reflects the genius of the democratic society and should offer Dr. Kaufman strong assurance that continued federal involvement in collective bargaining in the railroad industry is in the direction not of serfdom but of human freedom.

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CRIME AND THE SERVICES. By John Spencer. London: Routledge and Kegan Paul Ltd., 1954. Pp. xii, 306. 28s.

HERE is a book about the criminal behavior of British servicemen which may be read with profit by criminologists and staff officers in the military of any nation. Heretofore, the general area of war and crime has been studied by a number of European and American scholars such as Novicow,[1] Ferrero,[2] Steinmetz,[3] Constatin,[4] Le Bon,[5] and Sorokin,[6] but this book is one of the few to deal both with offenses within the armed forces and with deviant behavior of soldiers after demobilization. Stereotype thinking and folk judgments that "soldiering is brutal and licentious" die hard. But Mr. Spencer demonstrates that military service does not make criminals out of good men, although neither does it rehabilitate civil offenders or the seriously maladjusted. Many of the same factors which cause criminal behavior in civil life are operative in the army. The most that military duty does is to accentuate them. *Crime and the Services* leaves no cavil that military duty itself is not the primary cause for the high incidence of crime in the services or in the post-war years.

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1. NOVICOW, WAR AND ITS ALLEGED BENEFITS (1911).
2. FERRERO, EUROPE'S FATEFUL HOUR (1918).
3. STEINMETZ, ETHNOLOGISCHE STUDIEN ZUR ERSTEN ENTWICKLUNG DER STRAFE (1894).
4. Constantin, *Observations relatives à l'influence de la guerre sur la criminalité et la moralité,* 10 ANNALES DE MÉDICINE LEGALE 89-124 (Paris 1930).
5. LE BON, ENSEIGNMENTS PSYCHOLOGIQUES DE LA GUERRE EUROPÉENNE (Flammarion ed. 1916).
6. SOROKIN, MAN AND SOCIETY IN CALAMITY (1942).