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Review of “Labor Law: Cases, Materials and Comments,” By Charles Gregory and Harold Katz

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fore, earnestly recommended to personnel directors, union representatives, lawyers engaged in labor relations—and, especially, to arbitrators of industrial labor disputes.

ELMER E. HILPERT†

LABOR LAW: CASES, MATERIALS AND COMMENTS. By Charles O. Gregory and Harold A. Katz. The Contemporary Case Book Series. Charlottesville: Michie Casebook Corporation. 1948. Pp. xxi, 1324. \$.....

CASES ON LABOR LAW. By Archibald Cox. University Case Book Series. Brooklyn: The Foundation Press, Inc. 1948. Pp. xxxv, 1432. \$8.50.

These volumes present a challenging divergence of ideas concerning the purpose and content of a course in Labor Law. Mr. Gregory's compilation is primarily concerned with the legal crises arising out of the "power conflict between economic groups." Accordingly, he builds his materials upon the assumption that the fundamental issue in the law of labor relations is the extent to which workers may unite and exert collective economic force against employers to secure by self-help those advantages which they believe unattainable by other means. Although Mr. Gregory realizes the need of devising methods of eliminating friction in industrial relations, he finds that a continued emphasis upon conflicts of power is rendered necessary at a time when the effect of the *Lewis* decision remains current and the Taft-Hartley Act is in its early career. So long as there still remain as dominant issues such questions as industry-wide bargaining, the allowable extent of picketing and the demarcation of management prerogative, the struggle for power should remain a focal point of legal study. Materials concerning collective bargaining have been included; but they have not been emphasized at the expense of the traditional chronological treatment of the orthodox legal sources. Mr. Gregory's materials are presented primarily to lawyers rather than to lay practitioners of the art of allaying industrial conflict.

Accordingly, the reader and student will find in Gregory's work a traditional and thorough assemblage of materials beginning with the *Philadelphia Cordwainers' Case* and extending to include such recent outgrowths of the Taft-Hartley Act as *Douds v. Metropolitan Federation of Architects*. The historical development of the injunction in the United States is traced from its first use in the *Federal Railway Receivership* cases. The *House of Lords Trilogy* and Holmes' famous dissent in *Vegeahn v. Gunter* give background for a study of theories underlying the legality of Union conduct. As readers of *Labor Unions and the Law* might anticipate, considerable space is given to picketing and the boycott and to the development of the anti-trust decisions. The work throughout is well, but not copiously, annotated. Missouri readers will be interested in the notes upon *Ex parte Hunn* and *Wolferman, Inc. v. Root*. The volume, of course, antedates the *Empire Storage* case. The *Lewis* case appears as the final item in the chapter upon "Interferences with Commerce—Action and Reaction"—a category which would appear to constitute, if anything, an understatement of the role of this decision.

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The Taft-Hartley Act is integrated into the sections concerning the National Labor Relations Act through a skillful use of excerpts from Congressional debates, Committee reports, recent law review articles and the author's own notes.

In sharp contrast is Mr. Cox's approach. Mr. Cox regards labor law as primarily concerned with the government of men working in industrial establishments. The rules which vitally affect workers in their daily lives are made in such establishments either by employers or through the institution known as collective bargaining. Such rules are in a sense voluntary; yet they act as the law of the plant. Such a concept, of course, would appear to define "Law" in a sociological sense. Collective bargaining is described as an "institution of industrial self-government." Its Constitution is found in the National Labor Relations Act and similar basic statutes and Court decisions; its statutory law in the collective agreement; its judicial tribunal in the arbitration panel.

After an excellent historical introduction dealing largely with the post Civil War and New Deal periods, Mr. Cox at once passes to collective bargaining. Detailed treatment is given to questions concerning wages and hours, seniority, management functions. Under wages and hours, Mr. Cox includes the *Belo* and other decisions under the Fair Labor Standards Act. Materials concerning such issues as seniority, management functions, shop discipline and grievance procedures are taken largely from arbitration reports. After these diurnal problems have been canvassed, attention is turned to the question of judicial enforcement of collective bargaining agreements. The National Labor Relations Act appears in detail and with its usual satellite decisions is supplemented by a brief treatment of the changes effected by the Taft-Hartley Act.

Mr. Cox throws into relief an interesting phase of the *Lewis* case. From the United Mine Workers' brief are cited the arguments that the restraint against giving publicity to the "no contract" notice constituted a violation of the First Amendment, and that the restraining order also violated the Thirteenth Amendment. Excerpts from the brief of the United States also appear; followed by the succinct paragraph in the opinion in which these contentions were found to be "without merit."

Both volumes include materials dealing with the increasingly important problem of the individual *vis-a-vis* his union. Both include the usual statutory appendices. Mr. Cox's volume, however, does not contain many citations of law review articles; it is somewhat in the earlier tradition in which a case book was regarded as a compilation for student purposes, rather than as a comprehensive source book of the law; its compensating bulk, however, renders it valuable as a point of departure into its field.

Much of the material dealing with the National Labor Relations Act and with the problems presented by strikes, picketing, and boycotts will be found in both books. Nevertheless it is a cogent testimonial to the complexity and mass of the subject that each such gargantuan volume should contain so many features not duplicated in the other. In a sense these volumes are complementary. In another sense they represent two basically opposed pedagogical approaches to the teaching of Labor Law. The student desirous of absorbing the general legal background of Labor

Law may find Mr. Gregory's book more exciting and more comprehensive. The practitioner engaged in the day-to-day corporate and labor practice will find much of value in Mr. Cox's materials. Both volumes might well find their place on the practicing lawyer's library shelves.

CHRISTIAN B. PEPE†

CASES ON LABOR RELATIONS. By Harry Shulman and Neil W. Chamberlain. The Foundation Press, Inc. Brooklyn. 1949. Pp. ix, 1266. Price, \$8.00.

The appearance of this book is a pleasant surprise! It is not just another casebook on "labor law." As its title states, it is a casebook on "labor relations,"—which is quite another, and a much more significant, matter. Its title, however, does not sufficiently apprise one of the book's unique character—it is a collection of the opinions of arbitrators in labor-management disputes.

Those who actively engage in labor relations as company personnel directors, union representatives, or arbitrators will recognize at once the timely need for this casebook. To law students and to most lawyers, certainly, and, very probably, even to some lawyers who advise clients on labor relations, this book will present an area of labor "law" in which they have hitherto been quite unversed. Whether or not one belongs to the school of thought that reacts violently to any suggestion of *stare decisis* in labor arbitrations, this book will provide an opportunity "to learn," as the editors put it, "by vicarious experience." A study of materials such as are here collected will add very considerably to one's knowledge and understanding of the problems of draftsmanship and of administration that arise under "collective bargaining" agreements; it will help prepare those who hope to participate, and will assist those who already participate, in labor relations; it will invite comparison; and it is bound to exert an influence much the same as is exerted by the "comparative" study of law in our law schools.

The editors of this casebook came to their task singularly well-equipped. Mr. Shulman, Sterling Professor of Law at Yale University School of Law, and a skilled casebook editor in more traditional law school subjects, has also practiced law and been in government service. He is a widely experienced and highly successful labor arbitrator. In this field, Mr. Shulman is perhaps best known as the permanent Umpire for the Ford Motor Company and the United Automobile, Etc., Workers of America, C. I. O. Mr. Chamberlain is an economist on the faculty of Yale University; and he is the Director of Research of that university's Labor Management Center. Among others, he has published a brilliant article entitled "Collective Bargaining and the Concept of Contract."¹ Thus, not only does each of the editors have some of the training and experience, and possess some of the skills, needful to an appreciation of the problems of labor

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1. Chamberlain, *Collective Bargaining and the Concept of Contract* (1949) 49 Col. L. Rev. 829.