LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

The industrial truce which prevailed between the termination of the coal strike in December, 1946, and the beginning of the telephone strike in April, 1947, did not obscure the fact that the settlement of labor disputes is this country's most critical postwar domestic problem. While there have been encouraging signs of the ability of labor and management to work out their own solutions through collective bargaining, this interlude must probably be characterized as a truce for the purpose of re-examining the legal devices for dealing with industrial disputes. There was watchful waiting while the judicial process brought forth its answer to the question whether the injunction was still a potent, if limited, strike-breaking weapon.* There was a shift of forensic energies from the bargaining table to the committee room as legislative bodies reappraised existing labor laws and talked of new ones. The ugly, black headlines of the days when there was no coal, no steel, no rail service were absent, but the basic public issues remained.

Fortunately, this opportunity to consider the issues calmly has been utilized. There has been a disposition to examine proposed remedies dispassionately, and to consider their long-range implications for basic individual liberties and for the free enterprise system. In the same spirit, LAW AND CONTEMPORARY PROBLEMS presents in this issue a significant cross-section of thought on these issues.

In the first article Mr. Paul H. Sanders, who planned this symposium, analyzes the types of labor disputes and the avenues of approach to their settlement. In the second, special applications on a local and unofficial basis of the techniques of mediation and conciliation are discussed by Mr. Arthur W. Hepner.

In the third article, Professor Benjamin M. Selekman and Mrs. Selekman direct attention to the psychological and sociological conditions of work in the modern factory as underlying causes of the frictions which lead to industrial disputes. This emphasis upon the psychological sources of conflict is continued in the next article, in which Mr. Isadore Katz makes a strong plea for broad and effective grievance procedures as "powerful purgatives of industrial unrest."

In the fifth article, Professor Alexander Hamilton Frey develops the thesis that collective bargaining in labor relations is vital to the preservation of the American

* United States v. United Mine Workers of America, 67 S. Ct. 677 (March 6, 1947).

system of free enterprise, and that arbitration is an essential element and an outgrowth of collective bargaining.

In the sixth article, Professor John T. Dunlop examines candidly the contribution which economic analysis can make to the settlement of specific wage disputes. If his conclusions seem pessimistic to any who cherish the illusory precision of certain formulas in current use, it must be remembered, as the author points out, that the identification of problems is the beginning of economic wisdom.

The next four articles deal with the distinctive and paramount problems of contract-negotiation disputes. Messrs. Fairweather and Shaw undertake to formulate principles for collective bargaining as a means of minimizing disputes in labor contract negotiation, and proceed to consider each of the problems typically arising in the course of negotiating a collective agreement. Mr. John S. Forsythe analyzes and compares the provisions of bills which have been introduced in the Eightieth Congress in so far as they bear upon the settlement of contract-negotiation disputes. Mr. Bernard H. Fitzpatrick, presenting a business viewpoint, maintains that a prerequisite to any policy for labor dispute settlement is the formulation of functional principles of union organization. Mr. Boris Shishkin, presenting a labor viewpoint, places his faith for the avoidance of work stoppages in direct collective bargaining, enlightened by full technical information and supplemented by conciliation, mediation, and arbitration.

Finally, Mr. Jesse Freidin, in a temperate and thoughtful article, finds that the public interest in the settlement of labor disputes will be best served by the encouragement of responsible and bona fide collective bargaining and by giving to the fruits of that process the widest recognition and protection.

The variety of the opinions expressed should make it clear that this symposium is not intended to give aid and comfort to the cause of either labor or management. It would be impossible to reconcile these views for the purpose of any partisan thesis. The most elementary obligations of editorship, however, require reference to the significant unanimity which pervades this diversity of opinion. The dominant and harmonious theme is faith in democratic institutions, in free enterprise, and in the ultimate effectiveness of free collective bargaining. Each contributor who has had occasion to refer to the subject, irrespective of his background or affiliation, has expressed opposition to compulsory arbitration and other forms of dictated settlement in disputes which arise from the failure of the parties to agree on terms and conditions of employment. Government has a role to play, but in the view of these contributors that role should be confined to formulating policies which fix the conditions of collective bargaining, to furnishing the complete technical information which can transform the bargaining process from an emotional altercation into a rational discussion of largely factual issues, and to assisting the bargaining process by making available conciliation, mediation, and arbitration facilities.

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