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Labor

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which value reached is subject to doubt as to its binding effect on the Commissioner of Internal Revenue are appraisal and arbitration. Proper planning can achieve a figure conclusive for federal estate tax purposes. The more accurate the method used, that is, the closer it comes to reaching the true fair value, the more likely will be its acceptability to the Commissioner.

ROBERT A. ROMERO, JR.
Casenote Editor

INTERNATIONAL TRADE

A UNIFORM LAW FOR INTERNATIONAL SALES by John Honnold, 107 U. of Pa. L.R. 299 (January 1959)

During the last quarter century, a commission of European lawyers has been drafting a yet uncompleted uniform law to cover international sales. Despite the extent of the foreign trade of the United States and its importance in the maintenance of favorable international relations, this country has not participated in the work. Both the treaty-making powers and the power to regulate foreign commerce furnish the constitutional bases for the adoption of the proposed law, either as a treaty or legislation.

The draftsmen have sought to eliminate the peculiar technicalities engrafted in the sales law codifications of both common and civil law countries, one noteworthy instance being in the area of warranties. Risk of loss has been approached neither from the viewpoint of the property concept of the Uniform Sales Act, nor of the allocation of risk theory of the Uniform Commercial Code, but through a concept new to Anglo-American law embraced in the French term délivrance which deals with the handing over of goods conforming to the contract. The result of the use of this concept is a formulation more consistent with mercantile understanding in overseas trade than those found in our domestic sales laws. Salvage is treated so as to provide an even more efficient disposition of goods that have been rightly rejected, than under the Uniform Commercial Code.

The work of the draftsmen was progressed to the point where United Nations sponsorship appears desirable for completion and formulation. Professor Honnold concludes with an expression of hope for a greater national participation in cooperative endeavors to meet day-to-day needs of trade as a step in the development of an international legal order.

ROBERT DOIA

LABOR

REFLECTIONS UPON LABOR ARBITRATION by Archibald Cox, 72 Harv. L. Rev. 1482 (June 1959)

In this article Professor Cox concerns himself with the conflict between arbitral awards and judicial decisions, and seeks to find

in the nature and environment of collective-bargaining agreements a coherent rationalization of the process of interpretation and application which might guide both arbitrators and courts. A discussion is had of the limits of the judicial function in suits to compel specific performance of agreements to arbitrate grievances.

The article points out and clarifies the three fundamental rules established by the famous *Lincoln Mills* decision, observes the characteristics of a collective-bargaining agreement which might affect the terms in which it was written and, consequently, the process of interpretation; and draws the conclusion that such an agreement is not simply a document of limited, express restrictions on management and interpretation whose application is limited to documentary construction of language. In the concluding parts of the article it is stated that although the very nature of the collective agreement calls for arbitrators to create and apply an industrial jurisprudence unrestricted by the bare meaning of its words, there are limits to the arbitrator's function. Arbitrability is described as a slippery term having several concepts.

Professor Cox points out the need for judicial caution in too quickly concluding that a claim indisputably falls outside the scope of the contract. To require a union to go to trial is both wasteful and expensive to the employer, and the delay impairs the value of arbitration. These disadvantages far outweigh the cost to the employer of the arbitration proceeding.

IRWIN N. ALBERTS
Index Editor

THE NATIONAL LABOR RELATIONS ACT AND COLLECTIVE BARGAINING by Nathan P. Feinsinger, 57 Mich. Law Rev. 807 (April 1959)

Professor Feinsinger briefly traces collective bargaining from its inception to the present. The problems involved in determining good faith bargaining, as well as the conflicts existing in the interpretation of the National Labor Relations Act and its application to varying factual situations are thoughtfully considered.

The Wagner Act of 1935 adopted a policy of collective bargaining aimed at promoting industrial peace in areas even broader than the Act itself. NLRB decisions after 1935 developed the "good faith" bargaining test later adopted by Congress in the Taft-Hartley Act. When controversies regarding wages, hours, or conditions of employment are present, there exists a duty to approach the bargaining table with sincerity, counterproposals as opposed to concessions being obligatory.

Professor Feinsinger reviews and favors those court decisions holding that unilateral merit wage increases by an employer indicate lack of good faith bargaining once a union is certified to represent his employees, the effect being to undermine the union. Where an employer requests complete control of employment conditions, through a management prerogative

clause, such is indicative of a refusal to recognize a union's right to full and joint participation with management. The Supreme Court has imposed a duty upon employers in some instances to produce information regarding financial ability to grant an increase in wages, where the employer has raised the issue of inability to pay. It is suggested that a refusal to furnish the information should be considered in the light of all the surrounding circumstances to determine its relevancy and weight. Refusal to supply the information should not be treated as a per se refusal to bargain in good faith.

Consideration is had of the duty to bargain imposed upon unions in 1947, and the various tactics used by them to force agreements through harassment and economic pressure. Court decisions which continually frown upon Board reasoning that tends to impose fair dealing standards on unions are subject to criticism as illustrative of which is a court decision which justifies partial strikes solely on the ground that total strikes are not prohibited as a means of applying economic pressure.

A discussion is had of recent cases in which the Supreme Court found violations of the duty to bargain, an impasse having been reached on non-statutory matters, unrelated to wages, hours, or conditions of employment. Problems are suggested when non-statutory requests are pressed to an impasse, especially where subjective good faith is present and there appears to be reasonable justification for the demand.

Despite the multitudinous decisions of the boards and courts many conflicts remain unresolved and the area of collective bargaining continues to be fluid.

BRUCE N. SACHAR
Case Editor

SECURED FINANCING

REGULATION OF FINANCE CHARGES IN RETAIL INSTALMENT SALES, by William D. Warren, 68 Yale L.J. 839 (April 1959)

An examination is made of the subject of finance charge control as a method of protection of credit buyers, with particular reference to the effect of usury statutes on credit sales, and an evaluation had of new legislation regulating finance charges in the field of retail instalment selling.

Courts have generally used one of three methods in the application of usury statutes to otherwise exempt instalment sales transactions. First, usury has been found to exist (1) if the buyer and finance company agree prior to the sale that the company will finance the transaction by purchasing the buyer's contract from the seller or (2) if the relationship between the financer and the dealer is particularly close or (3) if the dealer negotiates with the buyer in terms of a time price arrived at by adding financing and other charges to a cash price. Each approach is unsatisfactory. The relationship between buyer and financer or between financer and dealer