"LABOR AND THE LEGAL PROCESS"

By Harry H. Wellington; (Yale University Press: New Haven) 1968; 409 pp.

In this book, Professor Wellington examines the roles of the judiciary, and government, in the collective bargaining process within the United States. Underlying the entire work is the belief that collective bargaining remains the best method of ordering industrial relations and that generally, labor and management should be allowed maximum freedom in negotiating contracts and settling industrial disputes. Yet the very process which has best served the industrial system has also created problems, the solutions to which necessitate judicial and more particularly government, intervention. Included in these problem areas are such matters as the protection of the individual within his union; and public interest in regard to major work stoppages and contract settlements. The problem, therefore becomes one of striking an equitable balance between freedom of the collective bargaining process, on the one hand, and individual rights and the public interest, on the other.

The initial part of the book is an historical survey of labor unions in the United States. As in Anglo-Canadian jurisprudence, the courts of the United States viewed employee organizations with mixed feelings of fear and hostility, seeing unions as conspiracies which if allowed to function, would destroy the natural workings of the economic market. In short, trade unions were regarded largely as a threat to the existing order — an order based on vested property rights and the economic superiority of the employer vis-a-vis the employee. It was the federal government — through such statutes as the Norris-La Guardia Act of 1932, the Wagner Act of 1935 and the Taft-Hartley and Landrum Griffin amendments of 1947 and 1959 respectively — which corrected the impediment placed on the trade union movement by the courts. Perhaps most important, legislation served as the great equalizer, placing labor and management on relatively equal power levels, and thereby rectifying the imbalance of power once held by management.

Professor Wellington then proceeds to discuss some of the problems created by the existing situation of industrial relations. What, for instance, should be the role of the courts in the area of industrial jurisprudence? He points out that, "Because of experience and training, because of time and attitude, a good arbitrator is probably better able to cope wisely with this sort of an [collective] agreement than is a good judge."[1] In this regard, the American courts have been basically reluctant to alter the awards of arbitrators, feeling that these persons were better qualified than

1. p. 105.

judges to adjudicate on matters peculiar to an industrial context. As those familiar with the Canadian labor scene are aware, this philosophy stands in sharp contrast to that recently announced by our own Supreme Court.[2]

While modern labor relations legislation has augmented union strength in relation to management, the freedom of the individual worker has, in the process, been sacrificed in favor of the union. In Chapters 4 and 5, Professor Wellington deals with the question within the labor organization, proceeding on the assumption that while some individual rights must, of necessity give way within the collective bargaining system, maximum protection of existing rights must be ensured. Thus, while individual employment contracts must stand aside in favor of the collective agreement, other rights, such as freedom from discrimination and protection from negligent or corrupt union leaders must be maintained. The author concludes that the government has an obligation to preserve these individual rights.[3]

Of major interest to the Canadian reader will be Chapters 8 and 9, dealing with the effects of present-day labor practices on the general public and the economy. In Chapter 8, entitled, "Major Work Stoppage", Professor Wellington discusses the question of the major strike (for example, the 1966 airline strike) and its effect on the nation. The author acknowledges that political, economic and national security effects of major labor disputes makes government intervention inevitable. Yet, as he subsequently points out: "The goal of industrial peace must be purchased at as small a cost to private ordering — free collective bargaining — as possible, because the existence of private ordering is both a major promise and principal condition of political democracy."[4] The author deems the existing supply of methods available for government intervention, unsatisfactory and proceeds to discuss and evaluate a number of existing and proposed techniques. These include (a) mediation, (b) fact finding (boards of inquiry or fact-finding boards), (c) injunction (legal freeze period provided by statute), (d) seizure (government takeover of industry), (e) compulsory arbitration, (f) the nonstoppage strike (an interesting but somewhat complex procedure whereby production does not cease, but each side has the power to impose penalties on the other while production continues) and (g) choice of procedures (enabling the President to choose from amongst a variety of alternatives, to settle a major labor dispute).

In the concluding chapter, Professor Wellington turns to an examination of the effect of contract settlements on the national economy. No longer can such settlements be regarded as affecting only labor and

2. *Port Arthur Shipbuilding Co.* v. *Arthurs, et al* (1968) 70 D.L.R. (2d) 693.
3. For example, the *Labour-Management Reporting and Disclosure Act* (1959) dealing primarily with financial malpractice in unions and problems of union democracy.
4. p. 283.

management. Because contract settlements can have adverse effects on the national economy, the public, out of necessity, becomes a third party in the negotiating process. The question thus becomes: Is the final settlement in the public interest? The author makes references to the Report of the Council of Economic Advisers, noting that if contract settlements are not made within the framework of the Council guides; and should such settlements prove to have a harmful effect on the economy (including an increase in inflation), then the government might be compelled to resort to such measures as price and wage controls, or compulsory arbitration of wages and conditions of employment, out of duty to the general public.

Although much of the detail relating to the United States case law and legislation relates solely to the American labor scene, the book contains sufficient material common to both the United States and Canada. As such, it will be of both interest and value to the Canadian reader. Thus Chapter 6, Unions and Political Power, is written in the American context, where trade unions do not support a political party. The situation in Canada, with official labor support of the New Democratic Party, naturally differs appreciably. However, other areas of the book, such as the rights of the employee within his union; national effects of major strikes; and the economic effects of collective bargaining agreements are all subjects directly touching Canadian labor relations. In particular the discussion of increased government intervention into an essentially two-party forum (labor and management) is of particular import, given the present inflationary spiral and increased public hostility toward national work stoppages (as for example, the 1968 postal strike).

In conclusion, I would recommend this book not only for its presentation of many current United States labor questions, but also because it serves to mirror both the advantages, and inadequacies of our own labor laws and practices.

KEN ALYLUIA*

WHITE COLLAR BARGAINING UNITS UNDER THE ONTARIO LABOUR RELATIONS ACT

By G. W. Reed, Q.C.; (Industrial Relations Centre: Queen's University, Kingston), 1969; IX, 56 (including appendix) pp.

The character of the Canadian labour force has altered greatly since World War II. As noted in the foreword of Mr. Reed's work, ". . . .

* Faculty of Law, University of Manitoba.