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Labor Relations Law in the Public Sector

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RECENT BOOKS

Book Reviews

LABOR RELATIONS LAW IN THE PUBLIC SECTOR. By *Russell A. Smith, Harry T. Edwards,* and *R. Theodore Clark, Jr.* Indianapolis: Bobbs-Merrill. 1974. Pp. xxxvii, 1222. $18.50. STATUTORY APPENDIX. Pp. 155. $4.

In a pioneering venture, two professors and a practitioner have produced not only the first comprehensive public sector labor law textbook, but also a work that is original in style and useful to students, attorneys, and observers of public sector labor developments. The authors have combined the features of an outstanding reference text with the format of a conventional private sector labor law casebook.

The premise on which the volume is based, as set forth in the preface, is that public sector unionization and collective bargaining represent the most important developments in labor relations since the Wagner Act. As the authors stress, however, the movement did not emerge from a vacuum. The materials deal extensively with the application of private sector bargaining concepts to the public sector to resolve questions of representation, the scope of bargaining, and the settlement of impasses and strikes. The authors use statutes, executive orders, attorney general opinions, and labor board and appellate court decisions to highlight the dynamic growth of public sector labor relations during the past fifteen years. Mindful that public sector labor law is rapidly evolving, and that many jurisdictions lack clear statutory or judicial guidelines, the authors have also included commentaries by scholars and practitioners on relevant policy questions.

The book is organized into nine chapters, each with extensive bibliographies and notes. The opening chapter covers the origin of public employee unionization. A recent paper by Professor Charles Rehmus, delivered at the International Industrial Relations Association World Congress, charts the growth of federal, state, and local bargaining (pp. 5-9). An excellent exposition by Professor Kurt Hanslowe illustrates how legislation and court decisions have narrowed the sovereignty doctrine, which holds that unionization of civil servants impermissibly interferes with the public employer's conduct of public business (pp. 9-15). The authors note, also in chapter one, a well-known statement by the Committee on Labor Relations of Governmental Employees of the American Bar Association, Labor Law Section, to the effect that "[a] government which imposes upon other employers certain obligations in dealing with their employees

may not in good faith refuse to deal with its own public servants on a reasonably similar favorable basis, modified, of course, to meet the exigencies of the public service."[1]

The remainder of the volume illustrates how this principle is being recognized in many state and local jurisdictions. The materials trace the development of the constitutional and statutory rights of public employees to form and join unions (chapter two), and illuminate the structural problems of collective bargaining (chapters three and four). The legal problems relating to organizing and bargaining in the public sector resemble those in the private sector; but, as the cases and text illustrate, identifying the public employers and determining appropriate bargaining units for public employees present unique problems, especially with respect to professionals and supervisory employees.

The authors devote extensive consideration to the distinction between subjects appropriate for collective bargaining and those that involve managerial prerogatives and public policy questions. Cases and commentary illustrate the conflict between the merit principle and collective bargaining, and reveal how fiscal considerations, civil service laws, and local statutes may constrain the employer's authority to bargain.

In the landmark case of *Board of Education v. Associated Teachers of Huntington, Inc.*,[2] the New York Court of Appeals rejected the notion that absent an express statutory provision a public employer lacks authority to bargain collectively over conditions of employment. Instead, the court held that an employer must bargain on all terms and conditions of employment unless explicitly prohibited by statute from so doing.[3] The authors compare and contrast the *Huntington* decision, which is considerd supportive of an expansive scope of bargaining, with court decisions in other jurisdictions that have prescribed a relatively narrow scope of bargaining.[4]

Remaining chapters include debates among such authorities as Harry Wellington, Ralph Winter, Jr., John Burton, and Robert Howlett concerning the proper scope and activities of public sector unions. Among the topics treated are the validity of union security

1. ABA Section of Labor Relations Law, Report of the Committee on Labor Relations of Governmental Employees 89-90 (1955).

2. 30 N.Y.2d 122, 282 N.E.2d 109, 331 N.Y.S.2d 17 (1972).

3. The court held: "Under the Taylor [part of the New York Civil Service Law], the obligation to bargain as to all terms and conditions of employment is a broad and unqualified one, and there is no reason why the mandatory provision of that act should be limited, in any way, except in cases where some other applicable statutory provision explicitly and definitively prohibits the public employer from making an agreement as to a particular term or condition of employment." 30 N.Y.2d at 129, 282 N.E.2d at 113, 331 N.Y.S.2d at 23.

4. *E.g.*, Pennsylvania Labor Relations Bd. v. State College Area School Dist., 9 Pa. Common. 229, 306 A.2d 404 (1973).

agreements (chapter five); the right to strike (chapter six); and the role of arbitration, fact-finding, and mediation as means of dispute settlement (chapter seven). Chapter eight discusses the enforcement of public sector collective bargaining agreements through court action, grievance arbitration, and unfair labor practice procedures. The text concludes with a thorough investigation of the political and civil rights of public employees whose participation in partisan political activities is subject to state and federal regulation.

Some critics may believe that the current state of public sector labor relations is too undefined and fluid to warrant a definitive labor law text. Indeed, although the authors plan to update the volume with annual supplements, a total revision will be needed should a federal statute governing labor relations for public sector employees be enacted. Nevertheless, this text fills a great and present need for a teaching volume. The subject of public sector labor law is too complex to be considered merely as an adjunct to an already crowded private sector labor law curriculum. Recent changes in private sector protective labor laws, the Equal Opportunity Act,[5] the Occupational Safety and Health Act,[6] and the Pension Reform Act,[7] for example, already place a burden upon the comprehensive labor law course devoted primarily to the study of collective bargaining under the Labor Management Relations Act.[8] This volume may stimulate law schools to establish courses devoted exclusively to public sector labor law. Furthermore, labor relations agencies have been operating for several years in some jurisdictions—Michigan, New York, and Wisconsin, for example—and the practice of public sector bargaining is so extensive that the volume will prove useful to practitioners, administrators of labor relations statutes, and labor and management representatives.

The book appears at a time when many question the value of the case method as the sole pedagogical tool for law students. The case approach is especially inappropriate to the teaching of a currently evolving body of law. Particularly in jurisdictions without statutory authorization for public sector bargaining, economic and political forces, rather than judicial decisions, are the major forces shaping de facto bargaining law. Even where authorization for bargaining does exist, the actions of legislatures and the decisions of administrative agencies, arbitrators, and fact-finders contribute substantially to the development of public sector labor law. Were this text to ignore such factors, it would have provided less than the complete picture that law school courses are designed to deliver. The authors have

5. 42 U.S.C. § 2000e (Supp. 1972).

6. 29 U.S.C. §§ 651-78 (1970).

7. Pub. L. No. 93-406, 88 Stat. 829 (1974).

8. 29 U.S.C. §§ 141-68, 171-87 (1970).

admirably recognized the continuing relevance of nonjudicial writings. The materials thus raise significant policy questions in a manner not typical of traditional casebooks, the sources of which too often deal only with disputes that have been settled, and not with those that remain.

While book reviewers customarily criticize some aspects of a work, this reviewer is reluctant to do so, for truly no comparable work dealing with this subject exists. This volume is an outstanding contribution to the teaching of public sector labor law and an excellent example of how the case method can be improved by carefully selected materials from commentators, statutes, and labor board decisions.

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