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Indiana Labor Relations Law, by Fred Witney

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BOOK REVIEWS

INDIANA LABOR RELATIONS LAW. By Fred Witney. Bloomington, Ind.: Indiana University School of Business, Bureau of Business Research. 1960. Pp. xii, 123. $3.95.

Professor Fred Witney here deals "with the development and current status of Indiana labor relations law." His fundamental purpose is "to shed light on this vital area of Hoosier society and to provide a better basis for the evaluation of the content and direction of the laws regulating and controlling union-management relations." (p. vii).

Dr. Witney's study is consistent with his stated purposes. First, in Chapter 1, he sketches the historical background on the "Regulation of Employer and Union Activities," emphasizing black-listing and union-discrimination statutes, protection of the right of workers to engage in strikes, state police in labor disputes, and the "no-man's land" of federal-state jurisdiction. Professor Witney observes that "what legal protection Hoosier employees received in their organizing efforts did not flow from the 1893 Indiana law, but from national labor legislation protecting the right of employees to self-organization and collective bargaining. Such protection is not available to Indiana employees who are not covered by the federal labor statute." (p. 9). He calls attention to the basic question whether Indiana should enact legislation to occupy the area abnegated by the NLRB, and he calls for the gathering of evidence, including the experience of other states with labor relations acts in force, to provide the basis for a rational decision. This reviewer will watch with interest for the gathering of evidence on this question.

Professor Witney, in his second chapter, relates the background and operation of Indiana's anti-injunction statute which is modeled after the Norris-LaGuardia Act. He reports that "injunctions may be issued when picketing is accompanied by violence or is carried out in a fraudulent manner" and that the injunction "does not apply to employer and employee controversies that do not constitute a labor dispute within the meaning of the statute." Such controversies, he states, which are subject to injunction, include organizational picketing. Dr. Witney concludes that "from all available evidence, it would appear that the state courts are honoring in good faith the legislative standards spelled out in the statute. There is no proof that injunctions have been issued under circumstances prohibited by law." (p. 37). It is not clear to this reviewer

whether the conclusion is warranted by the appraisal of factual data on the extent and application of the labor injunction in Indiana, which data are unfortunately absent from the study, or whether the conclusion is reached simply because there is a lack of evidence or proof altogether. When judges fashion labor policy on organizational picketing through the device of interpreting an anti-injunction statute, this reviewer would question the author's conclusions.

Professor Witney's third chapter is on mediation. The historical development of mediation in Indiana is illuminating and justifies the conclusion reached that "the prerequisite for a successful program is the maintenance of a permanent agency staffed by persons qualified by training and interest in the settlement of labor disputes through the mediation process." His suggestions for selection of mediators, salary improvements, training, etc., designed to make the mediation agency more effective are constructive indeed. One is given to wonder, in the absence of a factual report on the actual functioning of the agency, whether there may not be areas of difficulty in administration of the mediation function as a result of deficiencies in the law. Unfortunately, there is not more than a single paragraph describing the representation function as performed by the mediation service.

Chapter 4 of the study is on the "Public Utility Labor Disputes Act"; Chapter 5 discusses the check-off, right-to-work law, and supplemental unemployment compensation; and Chapter 6 sets forth some of Professor Witney's views on future labor-relations problems in Indiana.

On the whole, Professor Witney's methodology is historical, descriptive, and analytical. A quantitative, statistical approach is perhaps in the offing. He recognizes the need for evidence, for example, on the effect of the right-to-work law, stating the need for a study "to answer questions concerning: (1) the effect of the statute on union membership in the state; (2) the extent to which employees drop out of unions but remain in the bargaining unit; (3) the rate of growth of new unions;" etc. (p. 98). The common sense of the author might well be supplemented by the findings of empirical research.

Professor Witney concludes his study with a proposal that "the state appoint a permanent industrial relations commission composed of representatives of business, organized labor, and the public. This Commisson should have the task of studying the problems involving public policy in labor relations." (p. 119). Perhaps it is overly optimistic to anticipate that a tri-partite commission would be able to achieve a consensus on such problem as: whether the state of Indiana should enact a state labor relations act, protective or restrictive; whether a board or

the courts should administer any unfair labor practice provisions; whether the right-to-work law should continue and be loosely or strictly construed; whether criteria for determining the existence and definition of emergency disputes can be set forth along with adequate procedures for coping with such disputes; etc.

On the whole, this reviewer feels that Professor Witney's study contributes significantly towards the author's goal of presenting and evaluating the current status of Indiana labor relations law, with a view towards future progress.

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LEGAL REASONING: THE EVOLUTIONARY PROCESS OF LAW. By William Zelermyer. Englewood Cliffs, N. J.: Prentice-Hall. 1960. Pp. xv, 174. $4.35.

Modern law teaching is, at least in part, a method of teaching by example. In the usual law school course, the student is asked to derive that which is legally significant from law materials consisting primarily of compilations of appellate case opinions. The student's primary concern is to discover the substantive law of the legal field at hand.

The student is expected to learn how one discovers the legally significant by emulating the type of reasoning used by judges, lawyers, and especially law teachers. In the usual course, the teacher each day exhibits such reasoning to his students by talking in a lawyer-like way about the cases with which he is concerned. The law teacher often has not the time nor the inclination to sort out and explain the institutional processes which underlie his method of reasoning. Using the so-called Socratic method, he may try to stimulate the student into using the same mode of reasoning by asking him a series of questions which are intended to require the answerer to reason like a man of the law. Unfortunately, the skillful formulation of such questions is a difficult task to undertake during an extemporaneous classroom discussion. And even when well done, the student too often misses the point of the lesson.

Each case opinion with which a student comes in contact is, of course, a little specimen of legal reasoning. To supplement his teaching by example, the law teacher may also make occasional comments on the reasoning exhibited by case opinions. However, casebooks do not classify

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