

BASIC TEXT
ON
LABOR LAW
UNIONIZATION AND
COLLECTIVE BARGAINING

Robert A. Gorman



BASIC TEXT
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AND
COLLECTIVE BARGAINING

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To My Parents

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PREFACE

The objective of this book is to explain in a straightforward manner the principles of what has come to be known as Labor Law. These are the principles that have been developed by the National Labor Relations Board and the courts under a fairly elaborate piece of federal legislation enacted in three major stages: the Wagner Act or National Labor Relations Act of 1935, the Taft-Hartley Act or Labor-Management Relations Act of 1947, and the Landrum-Griffin Act or Labor-Management Reporting and Disclosure Act of 1959. For convenience, this legislation will usually be referred to herein as the Labor Act; its text, and that of other pertinent federal legislation, is set forth in an Appendix to this book. The subjects covered relate to the formation of labor unions, the use of economic weapons such as strikes, picketing, boycotts and lockouts, the establishment of collective bargaining and the enforcement of the collective bargaining agreement. Obviously, the title Labor Law is rather overbroad, for neither this book nor the conventional law course so titled deals with other legal rules which govern the employment relationship, such as wage and hour laws, laws barring discrimination in employment on the basis of race or sex, health and safety laws, laws governing compensation for industrial accidents, pension laws, unemployment compensation and social security. These omitted subjects are regulated by legislation, judicial decisions and administrative rulings, at both the federal and state levels, in increasing volume and importance.

The title of this book has therefore been "colon-ized" to denote its scope with greater accuracy: Unionization and Collective Bargaining. This narrower aspect of the employment relationship merits discrete examination. The Labor Act constitutes a single coherent (some would question the adjective) body of legislation. It has created an administrative agency responsible for shaping and applying most of its directives; that agency, its decisions, and its relationship to the judiciary justify special attention for lawyers and for students of governmental regulation. Unlike laws which regulate working conditions directly, the Labor Act—by fostering employee freedom in the choice of collective bargaining representatives and good faith bargaining if a representative is selected—attempts merely to regulate the process by which the parties themselves shape their substantive working conditions. The study of Labor Law is the study of group action, of the relationship between organized capital and organized labor, of the relationship between the individual and the

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labor organization. These common threads justify an attempt to order the pertinent legal principles and to understand their evolution and their foundation in policy.

The intended audience for this book is principally the law student and the practicing lawyer. For the law student, the book will hopefully provide an orientation, will answer many questions and will raise others. I have purposely refrained from venturing a great number of personal appraisals of the soundness of Board and court rules and decisions. Although, in order clearly to communicate principles—the objective of this book—the author must inevitably show his predilections merely by organizing and analyzing materials, I have assumed that the reader would prefer, in a work necessarily limited by economies of time and print, that the author's personalized appraisals be kept to a minimum. While that might for some be a shortcoming, I have tried instead to give to the reader enough information and perspective to reach his or her own conclusions about the soundness of the legal doctrines developed in the cases. The student should treat this not as a terminal point for thinking about Labor Law but rather as a starting point. Hopefully, the book can serve this purpose not only for the student in law schools but also for the student in divisions of arts and sciences or business who are studying such subjects as labor history, labor economics or industrial relations.

The book should also be of use to the practicing lawyer. The general practitioner who occasionally confronts a problem in labor-management relations should find orientation and direction in these pages. The more sophisticated specialist in Labor Law will already have that orientation, and will be more adept at handling the arcane reference tools in the field; but this book can serve many as a "refresher" and others as a source of new insights or of new legal references.

These objectives help to explain the somewhat unusual format of this book. Since it is not designed to compile references, it has no "string citations" of cases from many circuits on each principle. While this book can facilitate legal research, the only way to do thorough and up-to-the-minute research is through the usual library methods, particularly in the reference services. No book between two covers can adequately deal with the great volume of cases on the great number of issues in Labor Law or can catch the decision handed down just yesterday. Rather than attempt to substitute for what can only be found in a research library, this book is designed principally to be read in one's own study or office. Therefore, only a single case is generally cited in support of an announced principle. That case has been chosen because it either first announced the principle in question, or has otherwise "given its name" to that principle, or (whenever possible) has the most thorough and illuminating analy-

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sis of that principle, or has a useful catalogue of the pertinent cases. In short, the cited case is one which I regard as particularly helpful to the reader who might be moved to go beyond what is in these printed pages. (No attempt has been made to incorporate cases reported after January 1, 1976, the approximate date on which the manuscript of this book was delivered to the publisher.)

The somewhat implausible omission of footnotes is explainable for additional reasons. The constant—for many of us, seemingly instinctive—flitting of the eye from text to page-bottom is rather a nuisance; it consumes time and destroys continuity. Moreover, Labor Law is a field in which it is often quite important to know such information as when a case was decided or principle announced; whether it was announced by the NLRB or by a court of appeals or by the Supreme Court; if by a court of appeals, which circuit; if by the Board, whether its decision was reviewed and whether it was denied enforcement; in which industry and with which union did this case arise. Case citations, ordinarily rather dull and annoying, can be most illuminating on matters of import in the field of Labor Law, and they have been accordingly elevated (quite literally) to a location in text where they can be quickly seen by those interested in doing so and quickly leaped over by those not. (The frequent use of post-citation synopses of holdings and reasoning, placed within parentheses, is another reason for locating them in text.)

In order to limit the citations-in-text to this substantive role, the citations have been stripped of their volume and page numbers and of such non-substantive history as the denial of certiorari; these matters can be ascertained simply by reference to the alphabetical table of cases at the back of this volume. The citations-in-text convey only the name of the case, the year of decision, and the decisionmaker; the identity of the court is shown by customary designations before the date, while decisions of the Board will show the date only (and will obviously be Board decisions because bearing the name of only a single party, the respondent, without the usual adversary caption). As is customary, the year date of two decisions in the same proceeding within the same calendar year will be reflected only once in the citation.

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There are a number of persons who, wittingly or not, have contributed substantially to the preparation of this book. My colleagues at the University of Pennsylvania Law School, Howard Lesnick and Clyde W. Summers, have for many years—both through their writings and in personal discourse—demonstrated for me an incomparable acuity concerning matters of law and labor relations. A number of able and good friends have looked at portions of the manuscript and