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RECENT DEVELOPMENTS IN LABOR LAW: A SYMPOSIUM*

FOREWORD

*James R. Beaird***

This symposium issue brings together a collection of papers notable for diversity of subject matter as well as for point of view. Yet all relate to what is generally referred to as our National Labor Policy. A quick glance through this issue will remind the reader of the many faceted nature of this policy. A more careful study will make clear that its content, whether expressed by Congress, an administrator or an administrative board, is simply the balance that evolves from the continuing effort to blend national purpose with economic change.

In 1938, the Fair Labor Standards Act[1] became a part of this policy. Its objectives, as stated by Mr. Justice Burton, were:

> In this Act, the primary purpose of Congress was not to regulate interstate commerce as such. It was to eliminate, as rapidly as practicable, substandard labor conditions throughout the nation. It sought to raise living standards without substantially curtailing employment or earning power.[2]

Former Secretary of Labor Willard Wirtz has refered to this Act, which provides for the payment of a minimum wage with premium pay for overtime work, as a "forerunner of the war on poverty and equal employment opportunity."[3] Over the years the initial $.25 mini-

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1 Fair Labor Standards Act of 1938, §§ 2-19, ch. 676, 52 Stat. 1060-69 (1938), *as amended*, 29 U.S.C. §§ 201-19 (1964).

2 Powell v. United States Cartridge Co., 339 U.S. 497, 509-10 (1950).

3 U.S. DEPT. OF LABOR, THE FAIR LABOR STANDARDS ACT 1938-1968, at 13 (1968).

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mum wage has been increased to $1.60 per hour, and the Act's application, which was initially limited to individuals "engaged" in interstate commerce or in the "production of goods" for such commerce, has been expanded by a new concept of "enterprise" coverage. In 1963, the Act was expanded to proscribe wage discrimination on the basis of sex,[4] and in 1967 the enforcement machinery of the Act was employed to combat arbitrary age discrimination in employment.[5] The paper presented by Associate Solicitor of Labor Nystrom focuses on some of the current problems in this policy area.

In 1935, with the adoption of the Wagner Act,[6] the national policy of employee-employer relations changed from one in which the law played no role "save possibly to protect tangible property and preserve public order,"[7] to one in which the law guaranteed to employees certain rights[8] and protected the exercise of these rights against employer unfair labor practices.[9] This Act also requires an employer to bargain over certain subjects with the designated representative of a majority of his employees.[10] In 1947, the nation's labor policy underwent another substantial change. With the passage of the Taft-Hartley Act[11] certain union activities were labelled unfair labor practices,[12] and the courts were given a major role in the administration of collective bargaining agreements.[13]

The papers of Messrs. Browne, Sheinkman and Welles focus on the question—under what circumstances does the bargaining obligation of an employer arise. Their thoughtful consideration of this problem is particularly timely because the Supreme Court has recently agreed to review four decisions involving questions in this general area.[14] The

4 29 U.S.C. § 206(d) (1964), *amending* 29 U.S.C. § 206 (1964).

5 Age Discrimination in Employment Act § 7, 29 U.S.C. § 626 (Supp. III, 1968).

6 National Labor Relations Act §§ 1-16, ch. 372, 49 Stat. 449-57 (1935), *as amended*, 29 U.S.C. §§ 151-68 (1964) [hereinafter NLRA].

7 A. COX, LAW AND NATIONAL LABOR POLICY 5 (1960).

8 NLRA § 7, 29 U.S.C. § 157 (1964).

9 NLRA § 8(a), 29 U.S.C. § 158(a) (1964).

10 NLRA § 8(a)(5), 29 U.S.C. § 158(a)(5) (1964).

11 Labor-Management Relations Act §§ 1-503, ch. 120, 61 Stat. 136-62 (1947), *as amended*, 29 U.S.C. §§ 141-87 (1964) [hereinafter LMRA].

12 LMRA § 101, 29 U.S.C. § 158(b) (1964).

13 *See* LMRA § 301, 29 U.S.C. § 185 (1964).

14 NLRB v. Gissel Packing Co., 393 U.S. 997 (1968) (No. 573); Sinclair Co. v. NLRB, 393 U.S. 997 (1968) (No. 585). Three of the decisions are from the Fourth Circuit and were included in the *Gissel Packing* petition. General Steel Prods., Inc. v. NLRB, 398 F.2d 339 (4th Cir. 1968); NLRB v. Heck's Inc., 398 F.2d 337 (4th Cir. 1968); NLRB v. Gissel Packing Co., 398 F.2d 336 (4th Cir. 1968). One decision is from the First Circuit. NLRB v. Sinclair Co., 397 F.2d 157 (1st Cir. 1968).

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papers of National Labor Relations Board (NLRB) Member Fanning and NLRB Associate General Counsel Gordon also involve extremely significant issues. Mr. Fanning deals comprehensively with the scope of the NLRB's remedial powers,[15] and Mr. Gordon, in the incisive manner for which he is noted, deals with the problem—to what extent does a successor employer assume the labor relations obligations of his predecessor in sales and merger situations.

Ever since section 301 of Taft-Hartley[16] was given substantive content in *Textile Workers v. Lincoln Mills*[17] the federal common law of collective bargaining has taken on an ever increasing significance in the industrial life of our nation. The papers of Messrs. Platt and Levitt focus on current problems in this important area of labor policy.

Prior to 1959, internal union disputes were settled largely by state courts, generally in accordance with the laws applicable to voluntary unincorporated associations, such as churches and social clubs. With the passage of the Landrum-Griffin Act,[18] the federal government entered the field of regulating internal union affairs. The paper presented by Mr. Frank Kleiler is especially significant because it surveys the impact of this new facet of labor policy during its first nine years. Mr. Kleiler is uniquely qualified for this task since he has headed the federal bureau responsible for the administration of this Act during its formative years.

The papers published in this issue were initially presented at a labor institute jointly sponsored by the Atlanta Lawyers Foundation, the Federal Bar Association and the Georgia Institute for Continuing Legal Education. These organizations are to be congratulated for bringing this group of experts together and the Editorial Staff of the *Georgia Law Review* is to be commended for its work in making these materials available to its readers.

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15 29 U.S.C. § 160 (1964).

16 LMRA § 301, 29 U.S.C. § 185 (1964).

17 353 U.S. 448 (1957).

18 Landrum-Griffin Act §§ 1-707, Pub. L. No. 86-257, 73 Stat. 519-46 (1959), *as amended*, 29 U.S.C. §§ 153(b), (d), 158(b)(4), (b)(7), (e), (f), 159(c)(3), 160(*l*), (m), 164(c), 186, 187(a), 401-531 (1964).

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