CRITIQUE ON "THE LEGAL ASPECTS OF PERSONNEL AND PRODUCTION ADMINISTRATION"

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One of the purposes of our discussion today is to examine the issues which pertain to the question whether phases of the personnel management area can properly be incorporated for presentation in a business law course. Inasmuch as the basic theme is concerned with "Law as a Bridge Builder in the Business Administration Curriculum," the personnel management phase is only one of a number of business school course areas involved. Furthermore, limitation of time necessarily restricts this presentation to a review of the highlights.

Previous discussants have asserted "that law and property rights were born together and they will die together." It appears to me that this statement synthesizes the conflict posed in the original question. Are there any preliminary impediments which the lawyer trained in property rights needs to overcome before he can successfully approach the field of personnel management and its related area of industrial relations? The answer generally would be in the affirmative.

The field of personnel management presents a challenge to a law instructor due to the difficulty of placing in proper perspective centuries-old principles of law involving property rights versus the modern view of individual rights. I submit to you that in the management field there exists a marriage of convenience—a shotgun marriage—consummated without benefit of law or clergy; a marriage where the parties are required to live together—after the dispute has been resolved. Lawyers are accustomed to grappling with the technical problems of their clients, and after the final judgment of the court is delivered, they are then in a position to advise their respective adversaries that they are free to wend their separate ways. The parties, as a general rule, need never again enter into contractual relations, thus obviating the possibility of another dispute.

In the field of personnel management, a relationship of employer-employee is destined to continue, once a collective bargaining agreement has been executed, and the employee has completed his probationary status. Such an employee begins accumulating seniority rights, which can be severed only under certain pre-determined conditions. These rights frequently have been compared to property rights insofar as privileges and responsibilities affecting the work place are concerned. Employees who have spent years accumulating seniority, either as a result of a collective bargaining agreement or past practice, or both, will strenuously resist

any attempt to deprive them of these rights. This in itself creates an anomaly for the lawyer trained in the sanctity of property rights.

We can better understand the total problem if we investigate the objectives of the personnel manager. Basically, he seeks to recruit, select, and train individuals who have the capacity, ability, and aptitude to accomplish the company's objectives. Regardless of what viewpoint we adopt, a private corporation or a partnership firm is organized for profit-making purposes. Thus, a company's primary objective is to maximize production, or increase its profits, and is not too concerned with individual rights.

Though the field of personnel management is of relatively recent origin, its historical development as an offshoot from the field of labor relations can be traced back at least as far as the Bubonic Plague, when in 1351 the English Parliament passed the Statute of Labourers in order to control the wages of employees. In this country, the doctrine of criminal conspiracy was finally laid to rest (insofar as labor unions were concerned) in 1842, through the decision of Chief Justice Shaw in *Commonwealth v. Hunt.* In its stead arose the doctrine of illegal purpose and illegal means. The labor injunction of the 1880's is still a part of our heritage, although strongly modified by the provisions of the Norris-La Guardia Act (1932). However, since the Taft-Hartley Act of 1947, and the Landrum-Griffin Act of 1959, some aspects of the injunction have been restored.

Needless to say, various state laws, such as the Fair Employment Practices Acts, Unemployment Compensation Acts, and Workmen's Compensation Acts, have increased the burden upon those engaged in personnel work. In interstate commerce, the Fair Labor Standards Act of 1938, as amended, covering minimum wages, portal-to-portal pay, hours of overtime, child labor, and exempting groups of professional, administrative, and executive personnel, as well as the Walsh-Healey and Davis-Bacon Acts, have vitally illuminated the need to develop and train personnel managers who have a grasp of the workings of the laws. This is probably the basis for examining the question as posed at the outset.

Most schools of business today offer courses in personnel management and industrial relations. In addition, a course in labor legislation is frequently included in this area, and all too often presented by an instructor who is not legally trained. It seems to me that such a course should be taught by the business law instructor, and preferably one who is legally trained. However, in order to properly present such a course, a prerequisite would include a background of labor-management relations, union and management organization, as well as a familiarity with union and management philosophy. Only then would he be prepared to instruct in such a contentious field, one which has been so beset by acrimonious diatribe and partisanship as to border on the verge of a national scandal.

In the few moments remaining, I should further like to call your attenion to a quasi-judicial procedure which has been developing very rapidly in this field. The late Professor Sumner Slichter of Harvard referred to it as the Law of Industrial Jurisprudence. The development of the collective bargaining agreement has been described as a living document standardizing wages, hours, and working conditions. Nevertheless, the contents of such a contract frequently are implemented through the day-to-day relationship of the parties, and usually includes a step-by-step grievance system, as well as an arbitration procedure. Today, such a provision

is incorporated in approximately 95 per cent of all collective bargaining contracts, and has been sanctioned by the United States Supreme Court in *Textile Workers versus Lincoln Mills,* 353 *U.S.* 448. Both union and management personnel, depending upon the size of the respective organizations, generally act as their own counsel in presenting these disputes to the arbiter, despite their lack of adequate training. Such training could also be provided by the business law instructor in the business law course, so that the student could more adequately be prepared to cope with the requirements of his job upon graduation.

Reverting back to my opening remarks, a lawyer trained in property rights finds it difficult to accept the principle that a document, within the context of its four walls, can be implemented during its tenure so as to permit new life to be injected. Generally, a contract represents an unyielding, fixed, and permanent fixture. It is therefore difficult for such a practitioner to grasp the philosophy that one of the union's most important functions is to police a collective bargaining agreement. By the same token, his concern with regard to the principle of management prerogatives, which is akin to property rights, prevents him from viewing these rights in their totality, in order to accommodate group rights. He is reluctant to concede that the company's right to direct the human work force can only be obtained in a democratic society by its ability to offer higher wages, shorter hours, and better working conditions. In a free enterprise system, these are the factors which operate as the *quid pro quo* for the right to direct and manage human beings.

It is thus in the area of social policy that business law instructors are required to enlarge their scope. The business school curriculum contains an interdependent and interrelated group of courses which depend upon a welding of the old and the new. Property rights and individual rights can be developed to a degree that will permit the shaping of a firm's progress in the future, within a well-planned set of principles. The promulgation of these principles has too long been neglected by those who are most keenly interested in preserving our economic system—the business law faculty. Here is the challenge for the next decade!