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BOOKS REVIEWED

Procedures and Policies of the New York State Labor Relations Board.
By Kurt L. Hanslowe. Ithaca: Cornell University Press. 1964. Pp. viii, 216. \$4.00.

For too many people "labor relations" is a term whose connotations depend in large measure upon a journalist's sense of the newsworthy. There is, to be sure, something for the common reader in the periodic tests of strength between General Motors and the United Auto Workers; in the continuing *commedia dell'arte* involving the Department of Justice and Mr. Hoffa there unfolds, with neatly balancing touches of grotesquerie, a story line so complex and fascinating as wholly to obscure the identity of the underlying, and doubtless more important, problems. When big unions deal with big business or run afoul of big government everyone is presumably interested in learning every detail that can be uncovered or imagined by an enterprising newspaperman.

There is nothing for the front page, however, when "labor difficulties" occur in a small bake shop or a five-minute car laundry or a neighborhood delicatessen. No more than two or three employees may be involved; and even the existence of a picket line (unless one be a principal, a truckdriver, or a customer who is guided by pro-labor sentiments or political ambition) is a thing of small consequence. But if the standard of living of 300,000 General Motors' production employees may be reasonably thought to bear significantly upon the economy, may we not assume that the standard of living of 300,000 individuals who happen to work for delicatessens or service stations or other fairly piddling business enterprises has a like effect? Unfortunately, relatively little is known about the subject of labor relations in these small businesses. I do not know of any satisfying statistics¹ concerning the number of people employed by big as opposed to small business,² but suppose that a large

1. Citing the Statement by Jay Kramer, Chairman, Labor Relations Board, 1959-60, Report of the New York State Joint Legislative Committee on Industrial and Labor Conditions, in N.Y. Leg. Doc. No. 32, p. 117 (1960), Professor Hanslowe notes that the Chairman "has estimated that approximately 90 percent of the business establishments in New York State are subject to the jurisdiction of the State Board." Hanslowe, *Procedures and Policies of the New York State Labor Relations Board* 129 (1964). That is to say, that they either do not "affect commerce" or, if they do, that they do not fall within the range of businesses over which the National Board will exercise jurisdiction. (See note 2 *infra*.) This estimate does not tell us much about the number of employees, or the percentage of the total work force, involved. Nine hundred service stations, each of which employs one individual, have a total work force identical with that of ten relatively small factories, each of which employs ninety people.

2. For the sake of convenience, I employ the term "big business" simply to mean enterprises over whose labor relations problems the National Labor Relations Board will assert jurisdiction and the term "small business" to mean all other non-governmental enterprises (other than those subject to the provisions of the Railway Labor Act and employers whose labor relations are either governed by special legislation or immune from governmental regulation). Since the relative strength of union and employer will vary dramatically from place to place, from industry to industry, and from year to year, no intimation thereof is to be gleaned from "bigness" or "smallness" in the way I use these terms. Stated perhaps oversimplly, the NLRB will refuse to assert its jurisdictional power over "manufacturing" enterprises whose annual direct or indirect interstate inflow or outflow is less than \$50,000; over "retail" enterprises (including hotels, theaters, stores, and the

enough percentage of our work force is deployed in small business to make a study of its labor relations problems most welcome.

In any such study a crucial inquiry would be, of course, into the relationships among employers, employees, labor unions, and government. The New York State Labor Relations Board, one of the oldest and certainly the busiest such agency in the country, would seem an ideal focal point for this inquiry. Established under legislation³ that was clearly inspired by the substantive aim of the Wagner Act⁴ to redress certain proscribed forms of employer conduct and thereby promote the organization of employees for the purpose of collective bargaining, the Board has, over the years, struggled heroically with a statute that is a classic example of poor draftsmanship,⁵ that has never been meaningfully amended, and that has been at variance, for most of its life, with declared principles of federal law.⁶

In the past decade, as increasing attention has been focused on the problems of racket unionism, the SLRB has demonstrated great ingenuity in the development of substantive doctrine and procedural devices designed to inhibit the growth of "paper locals" and the proliferation of "sweetheart contracts."⁷ Since the State Labor Relations Act⁸ does not take cognizance of union unfair labor practices, the Board has been

like) whose annual sales fall short of \$500,000; and over fictively "local" enterprises, such as race tracks, hospitals, and private bus companies whose principal business is providing transportation to and from public schools.

3. N.Y. Lab. Law §§ 700-17.

4. Act of July 5, 1935, ch. 372, 49 Stat. 449.

5. Compare Labor Management Relations Act § 8 (a), 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158 (1958), as amended, 29 U.S.C. § 158 (Supp. V, 1963), with New York State Labor Relations Act, N.Y. Lab. Law § 704. The draftsman of the latter seems to have been untroubled by—or perhaps innocent of—the maxim *inclusio unius est exclusio alterius*.

6. For ten years—from 1937 to 1947—only employer unfair practices could be redressed under both state and federal laws. The Labor Management Relations Act, 61 Stat. 136 (1947), as amended, 29 U.S.C. §§ 141-87 (1958), as amended, 29 U.S.C. §§ 153-87 (Supp. V, 1963), gave to the NLRB the power to remedy certain forms of proscribed union conduct, but no similar legislation was ever enacted in New York.

7. A "paper local" is a union whose existence is largely the fruit of a piece of writing—a self-conferred charter, a calling card, etc. In some instances paper locals actually bear charters from legitimate international unions. Amusingly, an ancient practice of the paper local has been, following success in an election conducted either by the NLRB or the SLRB, to advertise itself as having been "certified" by the agency, thus giving the impression that a tally of ballots constitutes a seal of approval.

A "sweetheart contract" is an ostensive collective bargaining agreement that is (1) the product of collusion between representatives of union and employer, and (2) confers upon covered employees benefits not substantially greater than those earned by unorganized workers, or materially lower than those enjoyed by organized workers in the same kind of industry and in the same geographical area. If an employer pays \$5000 to the business agent of a craft union to buy "labor peace" and then executes that union's form contract paying the same wage scale and providing the same benefits as are given under contracts involving no payoff, the employer may have been bilked and both he and the union official will have committed a crime—but no sweetheart contract has been executed. Similarly, if a fairly weak but honest union agrees to terms that some of its members may characterize as a "sellout" simply because it lacked the economic strength to obtain better conditions, that would not be a sweetheart contract.

8. N.Y. Lab. Law §§ 700-17.

somewhat hamstrung in this process. Upon the most ingenious statutory parsing it has fashioned two major contributions to the law of racket unionism: the discovery of its power to determine whether a party to a proceeding before it is really a "labor organization" within the meaning of the act; and its joinder, in appropriate situations, of representation proceedings with unfair labor practice cases. Thus the SLRB will dismiss an election petition upon a determination that the filing party, although nominally a labor union, is not really a "labor organization" devoted to the classic purpose of the improvement of its members' working conditions; and will allow a bona fide union the right to litigate the validity of a sweetheart contract interposed by an incumbent union as a bar to an election petition.

In dealing with racket unionism, the SLRB has shown a degree of courage and legal sophistication that makes the National Board seem almost maiden-auntish. Conversely, in handling classic employer unfair practices, the SLRB has contributed little of doctrinal significance and indeed would seem to have contented itself with a policy of me-tooism.⁹

I suppose that no two lawyers will ever agree fully as to where emphasis should be placed in dealing with the approaches to an essentially common factual pattern taken by different forums operating under different statutes. Yet I think most practicing labor lawyers would at least concur in the proposition that very different results frequently emanate from the National and the State Boards, and that the reason or reasons for this are worth study, not only as an academic pastime but also to shed light on the ways in which everyday, practical problems of labor relations differ when one deals—whether for an employer or a union client—with the SLRB or the NLRB.

That kind of study remains to be performed. Although, for example, brief mention is made by Professor Hanslowe of the SLRB's approach to the problem of racket unionism, the treatment is hardly more satisfying than a *Corpus Juris Secundum* footnote. The question of the regulation of union unfair labor practices is summarily disposed by the assertion that

even though the New York State Act contains no parallel to Section 8(b) of the National Act, many of the activities prohibited by Section 8(b) are controlled in New York State by the courts. For example, assuming state jurisdiction, strikes for unlawful objectives and secondary boycotts may be enjoined by the New York courts.¹⁰

The trouble with this blithe pronouncement is the very simple proposition that no congruence exists between the varied forms of union conduct proscribed by section 8(b) of the national act and the rather limited kinds of activity which courts in New York will deem subject to the injunctive power.

I do not mean to suggest that Professor Hanslowe could possibly have failed to realize the complexity of certain policy questions which in his book he treats in so cavalier a manner. A former associate general counsel of the United Auto Workers, as well as a prolific writer on labor law, he has played a significant role—both as advocate and as scholar—in the shaping of that protean body of doctrine which practitioners, generally with tongue in cheek, refer to as "The Law of Labor Relations."

It may be that Professor Hanslowe is not wholly to blame for the modest confines

9. In violation of the basic rules of law journalism, I have deliberately refrained, in the last couple of paragraphs, from offering any documentation for the possibly outrageous positions there asserted. If autobiographical maundering be proper in a piece of this sort, let me state that those notions derive solely from my own experience as a practitioner before both agencies.

10. Hanslowe, *op. cit. supra* note 1, at 10.

of his study. *Procedures and Policies of the New York State Labor Relations Board* is a small volume of regional history published by a university press; it is typical of its genre. Although touted as a book for lawyers, it is one which may fit more properly on a library shelf adjacent to a history of the Geneva, N. Y. Agricultural Experiment Station than in a law library. Rather than telling us anything really interesting about the SLRB, the book is concerned with putting forth a kind of introduction to the very fact of the Board's existence, together with a description of its organization and a sketch of its procedures. Presumably for the purpose of acquainting the educated layman¹¹ with the mechanics of labor relations in New York State, Professor Hanslowe has devoted nearly half of his book to the reprinting of statutes, regulations, opinions, forms, charts and the like.¹²

All this reproduction of the prose of others seems to have reduced the space which Professor Hanslowe's publisher allows him for his own writing. For example, he notes in passing that, as a general rule, all three members of the Board rely for their understanding of the transcript of hearings in a given unfair labor practice case upon a summary made for them by one review attorney and presented at a meeting of the full Board.¹³ However, he does not mention that this practice is at marked variance with that of the NLRB, where one attorney from the staff of *each* Board member assigned to a particular case will make an independent study of the transcript for the benefit of his superior.¹⁴ Since the NLRB comes forth with a higher percentage of split decisions than emanates from the SLRB,¹⁵ it may be that this minor detail of procedure tells us something very significant about the decisional approach of the two boards. Possibly the SLRB's reviewing attorneys are more nearly infallible than those of the NLRB; possibly the members of the State Board share a perfect harmony of views unthinkable on the national level; and possibly too much reliance is placed, in the SLRB, on one man's view of a particular factual pattern developed at a hearing. Whatever the ultimate conclusion may be, it seems a pity that Professor Hanslowe was unable to give us his views on this question.

11. I have tried in vain to imagine Virginia Woolf's common reader interesting himself in a popular treatise on the SLRB.

12. Of its 216 pages, 92 are filler. In the body of the work, 7½ pages are devoted to reproduction of sections of the State Labor Relations Act and the Rules of the SLRB; 20½ to facsimile reproduction of Board forms; and 1 to a chart. In 55 pages of appendix the author gives us more charts, a letter from the Executive Secretary of the SLRB, verbatim texts of decisions already published in the SLRB reports, the full text of the State Labor Relations Act, and the full text of the Rules of the SLRB. Four pages each are consumed by a case table and an index. The chart which appears in the main body of the text informs us, among other things, that the SLRB has one telephone operator in its employ.

I hope that the agency will prosper and grow to the point where it is able to employ two full-time telephone operators. Alas, the book contains no envelope for pocket supplements, and the hiring of a second telephone operator will probably go unrecorded—as will amendments to the act and the rules.

13. Hanslowe, *op. cit.* supra note 1, at 57-60.

14. Statement of Ogden W. Fields, Executive Secretary of the NLRB Hearings Before the Subcommittee on the N.L.R.B. of the House Committee on Education and Labor, 48 L.R.R.M. 80, 86-88 (1962).

15. 25 S.L.R.B. 1-591 (1962) contains 131 decisions—all unanimous. In 135 N.L.R.B. 1-1420 (1962), covering the first two months of the year, 141 decisions are published. Dissenting opinions were filed in 16 cases, and in 5 others at least one Board member concurred in the result but differed with the majority's approach.

More disturbing is his reluctance to afford the reader any counsel on what he calls the "fundamental issue . . . whether or not a program of substantial amendment of the New York State Labor Relations Act, similar to the Taft-Hartley and Landrum-Griffin amendments of the National Labor Relations Act, should be undertaken."¹⁶ There is something reminiscent of *Clarissa Harlowe* in the refusal:

This issue is so supercharged with political volatility that the author is, frankly, reluctant to strike the spark that might set off the explosion! Indeed, the issue is so large as to appear beyond the competence of the isolated and somewhat insulated solitary academician. Timorousness, therefore, suggests the wiser course of outlining some considerations to be taken into account by those urging or opposing so fundamental a revision.¹⁷

These considerations boil down to a solemn admonition that the issue be studied "with imagination, with a willingness to consider novel approaches, leaving shibboleths and entrenched positions behind."¹⁸ I wonder, after reading a book like Professor Hanslowe's, why there is so much fuss about academic freedom.

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The Law of Subdivisions. By E. C. Yokley. Charlottesville: The Mitchie Company. 1963. Pp. xvi, 492. \$20.00.

A lawyer friend, on being told that I was working on a book review, asked, "What book?" I replied, "The Law of Subdivisions." To which he queried, "Municipal Subdivisions?" All of which simply goes to show that lawyers have not yet reached the point where they automatically associate the word "subdivisions" with real estate subdividing. Perhaps this is so because the latter is more commonly thought of in terms of "platting." Be that as it may, this book is about real estate subdividing.

Certainly there is extensive statutory, judicial and administrative law relating to land subdividing. Typically, subdivision control has been a feature of local government law; the enabling legislation, of course, being at the state level.

It began in this country with rather elementary platting requirements dating as far back as 1821.¹ The original reason for requiring platting was probably to simplify boundary location, and this may be why the platting requirement has continued to be a characteristic of subdivision control.

While the individual land owner used to be the primary force in deciding how to utilize his particular tract of land, this function is now carried out in a great many localities by the community planner or planning board. Even in our great nation land is a limited resource, particularly in large metropolitan areas, and it has been fairly well accepted that in its use allocation the various and oftentimes seemingly competitive interests of the community as a whole—social, aesthetic, economic, and the like—must prevail over the freedom of the individual. To acquire any degree of satisfaction, this balancing of community needs can only be achieved by an individual or group of individuals, unburdened by other official duties. Whether the planner's decision ultimately

16. Hanslowe, *op. cit.* supra note 1, at 152-53.

17. *Id.* at 153.

18. *Ibid.*

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1. See History of Plat Legislation in Michigan, in *Mich. Stat. Ann.* at 151 (1953).

prevails will depend upon his powers of enforcement. Usually, at least two fairly effective powers are given: zoning and subdivision control. Unfortunately, many communities locate these powers elsewhere, rather than with the person who does the planning. If the planner can say, "The needs of the community require this area to be used for a park, and I will not approve your plat until you provide for one," his powers of enforcement are substantial. Of course, to what extent he should be allowed to do this is a fundamental question of law today, and it is by no means being answered uniformly. As more and more communities have taken on the task of community planning, and as planning has spread from the city or village to the county, on to the region, and even to the state level, with their variant jurisdictional problems, subdivision control has taken on increased importance and complexity. Thus, there is some justification for a handy reference volume dealing specifically with the problem.

But it could well be argued that because subdivision control is now so intimately connected with planning and used so frequently in conjunction with zoning, it ought to be discussed solely in relation to planning, each aspect of its makeup being analyzed in relation to how it aids or hinders the planner. In this one volume purporting to deal specifically with subdivision law, Yokley includes chapters on "Community Planning," "The Planning Commission" and "The Effect of Zoning on Subdivision Development," but the analysis of subdivision control in relation to planning is not pervasive. However, Yokley does not purport to do the ultimate. He points out that "magazine and law review articles, together with other writings limited to particular phases of the subject, have failed to meet the general need for a well-rounded and comprehensive discussion of this subject in all its ramifications,"² and that it is simply "the purpose of this work to attempt to, in some manner, close the gap that has existed down through the years in this sphere of law writing."³

The book can be considered in three basic parts.⁴ The first consists of a 178-page discussion of the general substantive and procedural law affecting subdivisions. Excluding the chapters referred to above, there are chapters on "The General Power to Control Subdivision Development"; "The Need for Open Space"; "Streets"; "Dedication"; "Maps and Plats"; "The Approval of Subdivision Plans"; "Subdividers and Lot Owners: Rights and Liabilities"; "Municipal Powers and Obligations in Specific Cases"; "Procedure; Appeals; Judicial Construction."

Certainly, all these topics are relevant. In developing them, Yokley seems to have cited most of the cases that have specifically dealt with questions of subdivision law and many cases from peripheral areas. But, although the book is comprehensive in the sense that it refers to these many cases and pulls together in one volume the many specific areas that make up the body of subdivision control law, it does not analyze in complete detail any particular topic within the general scheme. It is disappointing, therefore, after the author's acknowledgment of the existence of magazine and law review articles dealing with particular phases of this subject, that he cites only one *Virginia Municipal Review* article,⁵ one *Wisconsin Law Review* article,⁶ and one *American Society of Planning Officials Newsletter* editorial.⁷ Certainly, one of the services that a general text could perform is to point out

2. Yokley, *The Law of Subdivision* vii (1963).

3. *Ibid.*

4. Also, the book has 90 pages devoted to a table of cases and an index.

5. Yokley, *op. cit.* supra note 2, at 2, 3, 4, 101.

6. *Id.* at 2.

7. *Id.* at 28, 29.

where a more penetrating discussion of a particular point can be found. For example, the discussion of the distinction between "master plan" and "comprehensive plan"⁸ could profitably refer to the fine student note in the *Syracuse Law Review*⁹ and Professor Haar's excellent article in the *Harvard Law Review*.¹⁰

Similarly, there is a lack of reference to the texts that treat subdivision control. The only text cited directly by the author is Yokley on *Municipal Corporations*, although others have at least sections on subdivision control. Completely ignored are the pioneering books in this field.¹¹ It is true that they are slanted more toward a "business approach" rather than a "legal approach" to the question of land subdivision, but this would seem to be all the more reason for reference to them as a complement. Further, Yokley's book is not written just for the lawyer.

The major difficulty with this first part of the book is what I would call its fragmentation. To begin with, although there are comments in the book such as "in this section will be included brief mention of *some* decisions dealing with this subject,"¹² for the most part Yokley does not make it clear whether or not he purports to discuss all of the cases from all of the jurisdictions affecting a particular topic. The cases used are frequently presented as "it has been said" or "it has been held" without any attempt at analysis in terms of a general principle. At other times the holding of a case will be presented in a flat statement appearing to be a general principle, even though it may not have been considered in any other jurisdiction. A part of the difficulty, admittedly, is that there are not many cases on some of these points, but then this should be made clear. It does not help matters when the citations to the cases are sometimes given in the text and sometimes in the footnotes.¹³

The second part of the book consists of a summary of the enabling legislation of 49 states (Delaware has none), presented in 95 pages and without reference to the cases. Some statutes are presented in a general summary, while others are presented in a chronological summary by section number. None of the summaries are schematic (*i.e.*, divided into various topics) or comparative, nor do they summarize all the relevant provisions in each state. They do, however, provide a handy reference for citations to help the reader find the laws of a particular state.

The third section, 128 pages long, is entitled "Forms," but this may be somewhat misleading. Although it does contain forms such as "printed form for use in applying for subdivision approval,"¹⁴ the bulk of it (106 pages) consists of "forms" for, or examples of, state enabling legislation, municipal ordinances and planning commission regulations. Even the 22 pages of other forms are not for the practitioner, since most, if not all, municipalities have prescribed their own forms to be used in proceeding for subdivision approval. All these forms are to be used, I gather, to try to get new laws, ordinances and practices enacted, or old ones changed. However, Yokley does not represent these to be the desirable forms based on his studied efforts

8. *Id.* at 22-23, 81-83.

9. Note, Comprehensive Plan Requirement in Zoning, 12 *Syracuse L. Rev.* 342 (1961).

10. Haar, In Accordance With a Comprehensive Plan, 63 *Harv. L. Rev.* 1154 (1955).

11. Lautner, *Subdivision Regulations* (1941); McMichael, *Real Estate Subdivisions* (1949); Monchow, *Seventy Years of Real Estate Subdividing in the Region of Chicago* (1939). To these might be added Bassett, Williams, Bettman & Whitten, *Model Laws for Planning Cities, Counties, and States* (1935).

12. Yokley, *op. cit. supra* note 2, at 125. (Emphasis added.)

13. A further aggravation is that in all case citations the dates are omitted.

14. Yokley, *op. cit. supra* note 2, at 382.

or experience. Rather he says simply that they are "representative"¹⁵ of what exists.

In conclusion, suffice it to say that the book is more than a digest, but it does not reach the standards of a horn-book. *Quaere*: how much should one be influenced by Yokley's comment, "If perfection were ever an art, surely it is a lost art. For our errors of omission and commission, therefore, we seek the forgiveness of the reader"?¹⁶

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15. *Id.* at 275.

16. *Id.* at viii.

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