proach, it is submitted that Professor Freund's failure to emphasize the presumption in favor of individual liberties accorded by the Bill of Rights is an unfortunate omission.[9] It is submitted that any judicial quest for a reconciliation of interests must take into account the Founding Fathers' propensity for unequivocal language in this area. This can be recognized without pushing the logic of absolute prohibition to absurdity.

All of this is not to deprecate Professor Freund's desire that the Court practice a Lincolnesque detachment and avoidance for immediate attachments. Nor is it meant to detract in any way from the proper concern of both Professor Freund and Justice Frankfurter that the Court remain intact as a symbol and teacher. But, as Justice Black has continually warned, the indulgence in a refusal to heed the Constitution and its sensitivity to the needs of people confronted with a potentially oppressive state can only take us down the road to the worst kind of judicial interference. I mean judge-made natural law. Mr. Justice Clark, concurring in the recent reapportionment case, correctly observed the Court's function as a protector of those who are not able to seek redress from the state when he wrote the following:

> It is well for this Court to practice self-restraint and discipline in constitutional adjudication, but never in its history have those principles received sanction where the national rights of so many have been so clearly infringed for so long a time. National respect for the courts is more enhanced through forthright enforcement of those rights rather than by rendering them nugatory through the interposition of subterfuges. In my view the ultimate decision today is in the greatest tradition of this Court.[10]

WILLIAM B. GOULD†

LABOR-MANAGEMENT CONTRACTS AT WORK. Morris Stone. New York: 1961. Pp. 307. $5.50.

To some, the title, *Labor-Management Contracts at Work,* may appear to be a misnomer. The book does not deal with the parties' day-by-day compliance with the terms of their agreement; nor does it concern itself with how to achieve such compliance without resort to litigation (arbitration). The books deals—as its subtitle reveals—with "an analysis of cases and awards" of arbitrators in labor-management disputes under such agreements; it is, therefore, a study of labor-management contracts *in litigation* in the *forum* which the

9. BLACK, THE PEOPLE AND THE COURT (1960).

10. Baker v. Carr (Decided March 28, 1962); *contra,* Bickel, *The Great Reapportionment Case,* The New Republic, April 9, 1962. Professor Freund might well have been in disagreement with the majority opinion. FREUND at 178.

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parties' agreements have designed especially for that purpose. After some twenty-odd years experience with labor-management disputes' arbitration in America, I find a study such as this a welcome addition to the growing quantity of literature in the labor-management relations field.

A somewhat similar, but much more limited, study was made in 1948 by Myron Gollub in a monograph entitled *Discipline and Discharge for Cause.*[1] The study analyzed the decisions in this particular area of labor-management disputes of arbitrators who had been selected by the parties *via* the New York State Mediation Board. Gollub's monograph inspired students at his *alma mater* to investigate the discipline and discharge arbitration decisions which had been published up to the spring of 1949, in one or the other of the "services"; and the fruits of their research appeared as a series of "student notes" in an issue of the *Washington University Law Quarterly.*[2]

However, analysis and synthesis in the discipline and discharge area of arbitration is an easier and simpler matter than analysis and synthesis of decisions in other areas of the collective bargaining agreement. In the discipline-discharge area, such agreements all but invariably confer upon the arbitrators a broad commission to determine whether or not the company-imposed discipline or discharge of an employee was for "just (or proper) cause." Such a broad scope of decision enables even a succession of *ad hoc* arbitrators for any one company-union "jurisdiction" to develop something resembling a "common law of the (particular) shop."[3] Because these "just cause" clauses are couched in substantially the same language in almost all labor-management agreements, something like *the* "common law" which is taught in American law schools may also *seem* to have developed and thus to invite comparison among industries, company-union "jurisdictions," and especially arbitrators.

But, in his book, Stone attempts—and succeeds in—a much bolder task. He examines arbitration decisions of a large number of arbitrators in nine "critical areas of union contract administration," in addition to the discipline-discharge area. These nine other areas are "Reduction of the Work Force," "Seniority and Ability," "Stewards and Union Officers," "Foremen and Supervisors," "Call-in Pay," "Paid Holidays," "Vacations and Vacation Pay," "Overtime" and "Nondisciplinary Terminations." In the nine areas, the "law" gov-

1. See Hilpert, Book Review, 1949 WASH. U.L.Q. 197.

2. 1949 WASH. U.L.Q. 71-188.

3. An edited version of Mr. Justice Douglas' highly controversial phrase in United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

erning decision most nearly resembles the "case law" of the ordinary courts which stems from the application, or interpretation and application, of statutes; for the basic "law of the parties" is their collective bargaining agreement. Arbitration decisions thereunder are, therefore, as variant as "case law" based on statutes, and as difficult to handle on any comparative basis.

The danger of egregious error confronting anyone who attempts to deal with arbitrators' decisions in these nine other areas of the collective bargaining agreement, is the error of over-generalization and over-simplification. By this error one may unwittingly contribute to the spreading of the erroneous notion that there is, indeed, "a 'common law' of labor relations."

This is an error which Stone successfully avoids. Throughout, he illustrates how arbitration results in the same general area vary with the language of the particular agreement that is involved. The real value of such a comparative analysis of the decisions lies in the guidance it provides for the draftsmen of collective bargaining agreements; for as Stone points out in a concluding chapter, the decisions of one arbitrator—especially in these areas of the collective bargaining agreement—are, for a variety of reasons, not "precedents" for another arbitrator who has before him a wholly different agreement, between other parties, containing variant provisions. Nevertheless, just as there is *a* pattern in the contract provisions in these areas, so is there—as Stone makes clear—also *a* pattern in the decisions thereunder.

It should come as a surprise to no one acquainted with the judicial process that Stone reveals that there are differences in points of view among persons who perform the arbitration process, which affect decision (just as there are variant philosophies of decision among those persons who serve as judges on our trial and appellate courts); and the fact that such differences exist among arbitrators should concern us no more than the fact that such differences exist among judges. Stone best exhibits these differences among arbitrators in his chapter dealing with the much-disputed role of "past practice" in decision—especially where a "past practice" is accepted or rejected, as a ground of decision, independently of its use in resolving an ambiguity in contract language. Yet, withal, Stone finds and documents an amazing coherence in the entire sweep of labor arbitration decisions.

Stone concludes, indeed, that although "there are many factors which combine to make every decision by an arbitrator unique,"[4] yet the decisions of even *ad hoc* arbitrators will fall in predictable areas; and he states, therefore, that it,

4. P. 290.

> detracts little from the value of reported awards that they do not lead to infallible prediction of the outcome of a pending grievance. What is important is that they point up problem areas in union contract negotiation and administration and show how future grievances may be avoided.[5]

Stone's materials consist of the output over a period of several years of only 150 arbitrators—all of whom, however, are among the "old pros." An analysis of such materials—in view of the nature of arbitrational decisional "law"—is quite an adequate basis for Stone's generalizations; it seems to the reviewer that there is no real need for encyclopedic treatment of all the published arbitration awards. If others see such a need, this reviewer nominates Stone for the job.

Stone writes in an easy-to-read style. His book contains a "Table of Arbitrators," keyed to the pages in the text where references are made to their decisions; a "Table of Cases"; and a "Subject Index." These excellent mechanical aids make any book far more usable.

Labor Management Contracts at Work should be in every reference library, and certainly in those located in urban-industrial centers. Its low price places it within easy reach of any practitioner in the field.

The reviewer is pleased to report that on a number of occasions he has seen the book brought into hearing rooms where he presided, by the representatives of managements or unions, for ready reference if necessary.

ELMER E. HILPERT†

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5. P. 291.

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