NOTES

PRECEDENTS IN LABOR ARBITRATIONS: INTRODUCTION TO STUDENT NOTES

The student notes that follow are an attempt to assemble and collate the decisions of arbitrators in discipline and discharge cases. The project was inspired by the publication by Mr. Myron Gollub, an alumnus of the School of Law, of his "trail-breaking" monograph, *Discharge for Cause,*[1] a study of the decisions of arbitrators in cases arising under the New York State Mediation Board. It is thought that the publication of these student notes will appropriately complement the principal addresses, delivered at the Institute on Labor-Management Relations, May 20-21, which are also published in this issue of the Quarterly.

The notes are necessarily based on such of the opinions of arbitrators as have been selected for publication by the Bureau of National Affairs, in its *Labor Arbitration Reports,* and by Prentice-Hall, Inc., in its *American Labor Arbitration Awards.* The notes, therefore, do not take account of an untold number of unpublished arbitration opinions in this area of labor-management disputes.

In publishing this material, there is no suggestion that there is, or ought to be, any doctrine of *stare decisis* in the arbitration of labor disputes. There is indeed "In labor arbitration . . . no doctrine of *stare decisis,* . . . ."[2] Strictly speaking, that doctrine obtains only between the superior tribunal and the inferior tribunals in the same judicial hierarchy; and a hierarchy of tribunals is rare, if not wholly unknown, in labor arbitration. Typically, each labor arbitration tribunal is a "court co-ordinate in rank" with each other labor arbitration tribunal. In this situation, the decision of any arbitrator is merely persuasive, and not binding, on another arbitrator.

Moreover, there is at most only an emerging "jurisprudence" of labor relations. The arbitration of labor disputes is a relatively new phenomenon in American industrial life. It may be dated roughly from the adoption of the Wagner Act in 1935;

1. For a review of which, see *infra.*
2. Tilove, Robert, "Foreword" to Gollub's *Discharge for Cause.* See also 5 Labor Equipment ¶ 54,025 (Prentice-Hall).

it received its greatest impetus from the various efforts to minimize industrial strife and work stoppages during World War II. The just demands of Labor, and the interrelation of these to the proper position and powers of Management, are still in the process of exploration and development. There are more unanswered questions than answers. In this state of affairs, on many issues, the decisions of arbitrators may more often provide mere points of departure or land-marks than establish "doctrine."

Still, all this does not argue against the value of reading and comparing the decisions of numerous arbitrators in cases involving the same, or closely similar, issues. Such research of the arbitration cases is not at all unlike the greater part of the legal research presented in the ordinary law courts or used as the basis for business counsel and the value of such "comparative law" research is unquestioned. Neither does the fact that arbitration decisions need to be scrupulously distinguished, because they are novel or because they arise under different contracts, between different unions and different companies, in widely separated areas, and in highly divergent industries, argue against the value of their comparative study. In much the same way, and in varying degrees in various areas of the law, judicial decisions are weighed, compared, distinguished and only then cautiously applied to the very case at hand.

But the chief argument in favor of the comparative study of labor arbitration awards is the pragmatic one. The publication of selected arbitration awards is a going commercial concern, which of itself is a very strong indication that their worth is recognized in practice. Published opinions of arbitrators are more and more cited in support of one contention, or another, by both representatives of Labor and representatives of Management. Labor arbitrators resort increasingly for guidance to the published opinions of their brethren in distant parts. True, arbitrators do, and should, feel free to disregard the decisions of other arbitrators, or any reasoning in support of such decisions, which they cannot accept, just as judges frequently disregard court decisions from sister-states. But it will be a bold arbitrator who will assert that he can derive no assistance from a reading of the opinions of his fellows. In this connection, it may be noted that Professor Harry Shulman, one of the na-

tion's leading arbitrators, has just recently collaborated in the preparation of a case-book made up of selected arbitration awards.[3]

Still, the degree to which the decisions of other arbitrators "offer relevant experience"[4] to a pending labor problem varies widely with the phase of labor relations involved. The issues commonly present in discipline and discharge cases are more nearly comparable throughout industry; and in the resolution of these issues arbitrators employ concepts familiar to law students. Hence, this initial law journal venture in the annotation of labor arbitration awards has been confined to such cases.

It is hoped that, despite its inherent limitations, this experimental offering will profit those readers who participate, or have an interest, in labor relations.

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GENERAL CONSIDERATIONS

The power of employers to discharge, or otherwise discipline, their employees has been greatly curtailed in recent years. At common law, a contract of employment which stated no express term of employment was terminable at the will of either party.[1] Tenure of employment was thus largely at the sole discretion of the employer. The impact of trade unionism has wrought a tremendous change. Legislation has imposed some limitations. Thus, the discharge or discipline of employees because of their union activity has been prohibited by Congress[2] and by some state legislatures.[3] The collective bargaining agreement, now common in American industry, usually provides that discipline and discharge shall be imposed only for "cause" and that disputed cases shall be submitted to arbitration. It is these provisions that constitute the broader and more effective circum-

3. Shulman & Chamberlain, *Cases on Labor Relations* (1949). For a review of which, see *infra.*

4. Tilove, Robert, "Foreword" to Gollub's *Discharge for Cause.*

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1. 161 ALR 706; Note (1942) 42 Col. L. Rev. 107; (1927) 40 Harv. L. Rev. 646; (1923) 32 Yale L. J. 850; Restatement, *Agency* (1933) sec. 442.

2. National Labor Relations Act. (1935) 49 Stat. 449, c. 372, 29 U.S.C.A. secs. 151-158, 159-166; Labor Management Relations Act. (1947) 61 Stat. 136, c. 120, tit. I, sec. 101, 29 U.S.C.A. secs. 151-167.

3. See *e. g.,* The Wisconsin Employment Peace Act. WIS. STAT., c. 111, §§111.01-111.65 (1947).