

BOOK REVIEWS

DISCHARGE FOR CAUSE. By Myron Gollub. New York: New York Department of Labor, Division of Research and Statistics, Special Bulletin No. 221, 1948. Pp. 88.

This monograph is the result of Mr. Gollub's study of the arbitration awards in cases arising under the New York State Board of Mediation between 1937 and 1946. The monograph assumes "a modest purpose. It is not intended to emphasize precedent but rather to offer relevant experience." As far as is known, it is a "pioneer" work; and Mr. Gollub deserves much credit for having undertaken it.

Gollub first delineates employee tenure at "common law," under modern legislation, and under collective bargaining agreements. He follows this with sections on the "burden of proof," a definition of "discharge," and other procedural and preliminary matters. The remainder of the monograph is devoted to a detailed consideration of cases involving the discharge of industrial employees for Dishonesty, Incompetence, Insubordination, Violation of Rules, Union Activities, and miscellaneous causes.

Despite an expectable variation, and even diversity, in results, this study of the New York cases reveals that arbitrators tend to differentiate the several grounds for discharge as to their gravity; that they tend to find "degrees" of "dishonesty," "insubordination," and other industrial offenses; and that they consider, in determining whether discharge or some lesser penalty shall be imposed, various extenuating and mitigating factors, such as, prior laxity in plant discipline, failure to warn employees, prior employment record, etc. The student notes in this issue of the Quarterly indicate that the generalizations that derive from this study of the New York cases may be derived as well from the decisions of arbitrators generally. From all this one concludes that the ancient maxim, *ex facto ius oritur*, applies with especial force in this area of adjudication.

Because many of the New York awards were handed down without opinions, and most of the accompanying opinions "were sketchy in nature [having been] written, not for publication, but for the benefit of the parties," Gollub's task was the more difficult; and the easy flow of the text is a tribute to the author's skill in analysis and synthesis. The text is occasionally unduly generalized but never dogmatic; and it is thoroughly documented to the New York cases, with occasional reference to less local materials.

Gollub's monograph will have a special significance in New York, because it is based on cases arising in that state. However, since the issues presented in discipline and discharge cases follow much the same general pattern throughout the country, his study of the New York cases will be of real benefit to those engaged in labor relations everywhere. Mr. Gollub has made a brilliant contribution to the literature of labor relations. A reading of his monograph will lead to a much better appreciation of the actual working of the arbitration process in discharge cases. It is, there-

fore, earnestly recommended to personnel directors, union representatives, lawyers engaged in labor relations—and, especially, to arbitrators of industrial labor disputes.

ELMER E. HILPERT†

LABOR LAW: CASES, MATERIALS AND COMMENTS. By Charles O. Gregory and Harold A. Katz. The Contemporary Case Book Series. Charlottesville: Michie Casebook Corporation. 1948. Pp. xxi, 1324. \$.....

CASES ON LABOR LAW. By Archibald Cox. University Case Book Series. Brooklyn: The Foundation Press, Inc. 1948. Pp. xxxv, 1432. \$8.50.

These volumes present a challenging divergence of ideas concerning the purpose and content of a course in Labor Law. Mr. Gregory's compilation is primarily concerned with the legal crises arising out of the "power conflict between economic groups." Accordingly, he builds his materials upon the assumption that the fundamental issue in the law of labor relations is the extent to which workers may unite and exert collective economic force against employers to secure by self-help those advantages which they believe unattainable by other means. Although Mr. Gregory realizes the need of devising methods of eliminating friction in industrial relations, he finds that a continued emphasis upon conflicts of power is rendered necessary at a time when the effect of the *Lewis* decision remains current and the Taft-Hartley Act is in its early career. So long as there still remain as dominant issues such questions as industry-wide bargaining, the allowable extent of picketing and the demarcation of management prerogative, the struggle for power should remain a focal point of legal study. Materials concerning collective bargaining have been included; but they have not been emphasized at the expense of the traditional chronological treatment of the orthodox legal sources. Mr. Gregory's materials are presented primarily to lawyers rather than to lay practitioners of the art of allaying industrial conflict.

Accordingly, the reader and student will find in Gregory's work a traditional and thorough assemblage of materials beginning with the *Philadelphia Cordwainers'* Case and extending to include such recent outgrowths of the Taft-Hartley Act as *Douds v. Metropolitan Federation of Architects*. The historical development of the injunction in the United States is traced from its first use in the *Federal Railway Receivership* cases. The *House of Lords Trilogy* and Holmes' famous dissent in *Vegeahn v. Gunter* give background for a study of theories underlying the legality of Union conduct. As readers of *Labor Unions and the Law* might anticipate, considerable space is given to picketing and the boycott and to the development of the anti-trust decisions. The work throughout is well, but not copiously, annotated. Missouri readers will be interested in the notes upon *Ex parte Hunn* and *Wolferman, Inc. v. Root*. The volume, of course, antedates the *Empire Storage* case. The *Lewis* case appears as the final item in the chapter upon "Interferences with Commerce—Action and Reaction"—a category which would appear to constitute, if anything, an understatement of the role of this decision.

† Professor of Law, Washington University.