BOOK REVIEWS

COLLECTIVE BARGAINING IN SWEDEN. By T. L. Johnston. Cambridge: Harvard University Press. 1962. Pp. 358. $7.50.

It is a pity that so many of the authors of the increasing number of works dealing with labor-management relations write so poorly and in such a prosaic fashion. The growing importance of this subject matter makes such practices especially regrettable. At the same time of course, one looks a gift horse in the mouth in asking for style in an area such as Swedish industrial relations—an area in which Americans have so little detailed information at this time. Perhaps it is too much for us to ask Professor Johnston to make his COLLECTIVE BARGAINING IN SWEDEN a readable book.[1]

One is immediately struck by the fact that the Swedish system is somewhat similar, in form, to the approach which America seems to be evolving. The conclusions drawn thus far, however, are quite contrary. In Sweden as in America, collective bargaining agreements are enforceable, but in a Labor Court.[2] Individual contracts, though recognized, are not enforceable.[3]

The idea of peaceful settlement under a formal contract as a substitute for industrial warfare holds true for both countries. The Labor Court's attitude in taking jurisdiction is quite similar to that manifested by the American Supreme Court in the Steelworkers trilogy[4] which held that all doubts about the arbitrability of a dispute would be resolved in favor of arbitrability under Section 301 of Taft-Hartley. Professor Johnston writes that "the principle endorsed by the Labor Court has been that it interprets the liberties of the parties with regard to unresolved disputes in a very *narrow* way. It has ruled that direct action may not be taken on an unresolved dispute by one party, if the other side asserts in good faith that the dispute relates to a matter regulated in the contract. . . ."[5] Here also, ambiguities have been drawn within the jurisdictional penumbra.

It is interesting to note that the Labor Court in Sweden is fashioning a body of labor law[6] as are the federal courts of the United States—pursuant

1. And of course Professor Johnston might well retort that as a lawyer, I am on exceedingly shaky ground.

2. The sanction can be damages, an injunction, or, unlike American practice, termination of the contract in case there is a fundamental breach.

3. P. 147.

4. United Steelworkers v. Warrior & Gulf Nav., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Enterprise & Wheel Corp., 363 U.S. 593 (1960).

5. P. 151.

6. P. 157. See also FOLKE SCHMIDT, THE LAW OF LABOR RELATION 44 (1962).

to Justice Douglas's clarion call for "judicial inventiveness" in Lincoln Mills.[7] But in Sweden private arbitration is often resorted to as a more preferred substitute. America's similar inclination is evidenced by the fact that ninety percent of our agreements contain arbitration clauses.

The Swedish Labor Court restricts the right of employer dismissal of workers—though both labor and management regard this as a fundamental management prerogative—through their protection of the "right of association." In general principle this would be equivalent to the protection afforded workers under Section 8(a)(3) of Taft-Hartley (although Professor Johnston is a little hazy on Swedish evidentiary problems in establishing a statutory violation[8]). But then the wrinkles begin to show up. If an employer dismisses a worker because his union is not the one that is a signatory to a closed shop, he violates the statute. (Incidentally, neither side of the bargaining table is particularly interested in union security matters.)

Furthermore, the Court awards "damages" rather than NLRB style "back pay." Damages can be claimed for personal suffering and encroachment on the injured party's interest in following his occupation without hindrance. Not long ago the Chairman of the NLRB called attention to employers—often in rural unorganized communities—who regarded back pay as a mere "penalty" fee for the obliteration of an organizational effort. Perhaps the Board would do well to ponder these Swedish sanctions.

The basic difference today between Sweden and America would appear to be one of self-help against increasing governmental intervention. In 1938 Swedish labor and management created their Basic Agreement to deal with some of the vast problems of technological change and labor mobility. This was done under strong threats by the government after much strife and lack of cooperation. And although the Swedes have an elaborate legal machinery Professor Johnston tells us that recourse to the courts for damage suits is a rarity.[9] It should be noted that historically their employers have been more fanatically anti-union than their counterparts in America.

The increasing difficulties that American labor and management have in reaching agreement in industries which affect the public interest may place our country at a Rubicon similar to Sweden in 1938. If the parties do not obtain intelligent self-made procedures to settle their problems, they may find that both the procedures and sometimes the substance of the agreement will be imposed upon them.

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7. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
8. P. 129.
9. P. 120.