INTRODUCTION

SCOPE OF THE COURSE

Among the more intricate and vital relationships in our society—along with the relationship of individual to family and of citizen to state—is that of a worker to his or her job. Employment is more than a source of income. One's sense of worth and of accomplishment is shaped largely by one's workplace responsibilities, performance, and rewards. It is therefore natural for workers to wish to participate in the shaping of the rules that govern the workplace, or at least to be treated "fairly" under those rules. Historically, many workers seeking to achieve these objectives have turned to unionization and collective bargaining, and as an incident on occasion to work stoppages, picketing and boycotts. It is the reaction of lawmaking institutions to these activities that is the basic stuff of the traditional Labor Law course.

One ought not get the impression that the rules that govern the workplace are set exclusively through "private" dealings between labor and management. Indeed, modern labor laws regulate a host of substantive aspects of the work relationship, quite literally from the cradle (medical leaves and insurance coverage for working mothers, and child labor laws) to the grave (retirement and pension plans, and disability and life insurance). State and federal laws regulate minimum wages, working hours, health and safety, pension funding and benefits, discrimination on the basis of race, sex and age, treatment of the disabled and those injured in industrial accidents, benefits for the unemployed and disabled, employment rights of returning members of the armed forces. The United States Department of Labor, alone, is charged with administering some 180 federal statutes governing the employment relationship. State labor laws are also of great importance; among the most striking common law developments in any field of human activity in recent years in the United States has been the emergence of a right to be protected against "unjust dismissal" in an increasing number of circumstances in many jurisdictions.

This network of comprehensive and interlacing federal and state laws regulating the workplace makes very pointed the question, why is the conventional law school course in Labor Law confined to questions centering about union organization and collective bargaining. Perhaps the answer lies principally in history and in habit. But there are sound reasons which justify focusing our attention upon this subject matter even as an original question.

In the first place, collective bargaining has great significance in the governance of workers in American industry—and that is true even though the proportion of workers who are union members or who work

for unionized enterprises has been dwindling in the past four decades. Despite all of the detailed regulations mentioned above, the rules which most vitally affect workers in their daily lives are made in each industrial establishment either by the employer unilaterally or by the negotiation and administration of collective agreements. Although legislation may place "floors" under wages and "ceilings" over hours, and otherwise establish minimum guarantees regarding such matters as workplace discrimination or safety, all of the rules that would give employees benefits and rights beyond those statutory minima are determined by private adjustment. That adjustment has historically been effected through collective bargaining in the most significant components of American industry, and that remains true in large degree today. Collective bargaining agreements also routinely afford workers protections that are altogether outside the range of those provided by legislation. The use of seniority as a principal criterion for promotions and for layoffs and recalls, the grant of holiday and vacation pay and other forms of paid leaves of absence, and the provision for bilateral grievance procedures commonly culminating in impartial arbitration, are all examples. Even in the non-union sector of our economy, it is undeniable that wage rates and other workplace benefits and practices have been patterned after those that have been developed in the unionized sector. In short, collective bargaining is an important element—historically and currently—in achieving improved working conditions and worker participation, superimposed though it is upon a framework of significant substantive legal protections.

A second reason for concentrating on issues relating to unionization and collective bargaining is that those issues raise fundamental questions regarding the proper role of government in regulating economic conflict and private economic power. In regulating the relationship between workers and their employers, what aspects should be determined by governmental pronouncement and what should be left to private adjustment? On those matters left to private adjustment, to what extent should government regulate the kinds of peaceful economic pressures that either party may bring to bear upon the other? On those matters meant for governmental regulation, how much should be addressed by detailed legislation—and how much should be left to the administrative agency acting through elucidating regulations and decisions? What role should the courts play? What is the proper sphere of operation of state law in this field, in which there is comprehensive federal legislation and administration?

A third and related reason for the traditional contours of the Labor Law course is that the course, somewhat distinctively, focuses on the rights of groups rather than of individuals. That is obviously so when attention is given to such group devices as strikes, picketing and boycotts in aid of organizing or bargaining. In collective bargaining too, there is the important question of the extent to which the union as the collective

representative is properly empowered to exclude access to the employer by individual workers, and is properly empowered to trade off individual benefits for the good of the group. In most associational settings—the church, a political party, a professional organization or social club—the individual can withdraw from the group if he or she would wish to chart a separate, self-interested course. To what extent is that true in the context of bargaining and the related resort to work stoppages and the like, when there is a union which acts as collective representative?

Fourth, the study of unionization and collective bargaining provides an opportunity to consider the procedures, and the strengths and weaknesses, of different kinds of dispute-resolution mechanisms. The normal law school course focuses upon the public judicial system as the preeminent mechanism for resolving conflicts between private parties. Against that context, it may be somewhat strange to deal with a body of law which had its source in a distrust of the judiciary, judges being perceived as both biased against the working class and institutionally incapable of managing disputes between labor and management. In the Labor Law course, one can study the National Labor Relations Board, can compare the Board's functions with those of a judge and jury, and can assess the two different modes of operation which can be utilized by an administrative agency—adjudication and rulemaking. One can also study the contractual grievance procedure—culminating in grievance arbitration—as an alternative, privately created mechanism for resolving labor-management disputes; and one can then appraise the relationship between the arbitration process and the judicial process, and between the arbitrator and the NLRB.

Fifth, although it may be that the traditional Labor Law course cannot lay exclusive claim to this virtue, it does provide a most fertile opportunity to examine issues relating to the responsible practice of the law. It provides any number of opportunities to consider matters of drafting (of statutes and of contracts) and to explore strategic issues surrounding the bargaining process. It also, in a field that is often emotionally charged, invites the consideration of the attorney's ethical responsibilities to the client and to the public interest.

Needless to say, it is difficult to keep these larger themes of Labor Law constantly before the class; the specific substantive problems are much too fascinating. But the possibility is always present, and the thoughtful teacher and student will surely be moved to explore these themes as the course progresses.