

LABOR ARBITRATION/A DISSENTING VIEW. By Paul R. Hays. [New Haven: Yale University Press. 1966. vii + 125 pp. \$4.50].

Labor Arbitration/A Dissenting View is the latest contribution to the already extensive and extended controversy surrounding the relation of law to labor arbitration

in the United States.¹ It is the text of Judge Hays' Storrs Lecture at Yale University in 1964.

In essence Judge Hays, himself an experienced and distinguished labor arbitrator, criticizes the Supreme Court and its famous trilogy of cases² as seeing labor arbitration and labor arbitrators through rose colored glasses. In expressing the view that the Courts should show great restraint in upsetting arbitration decisions Judge Hays feels that the Supreme Court has caused the judiciary to abdicate their true responsibilities. He concludes:³

"I am deeply committed to the integrity of our court system and I do not believe judges should stand idly by and let that court system be used as the handmaiden for a system of private adjudication which has so many fatal shortcomings as has labor arbitration."

Judge Hays criticizes the Court for lauding the virtues of arbitration and for belittling the ability of judges to do as satisfactory a job. He argues that grievance arbitration is just another form of adjudication and that what the disputants want is a decision based on the collective agreement, not one where the arbitrator plays "philosopher king". He points out that the process is very much like court processes, that it can often cost as much and take as long. He scans the biographical notes of labor arbitrators in *Labor Arbitration* and points out that many arbitrators have no special qualifications or experience in labor relations. Finally, he sees the process as prone to abuses. He points out that where the arbitrator's future employment depends upon his acceptability to the parties that often injustices will develop such as "rigged" and "compromise" awards. His point is that the courts should not just provide a rubber stamp to decisions made by labor arbitrators; that they should either take an active part or leave them entirely to private enforcement. In the alternative, Judge Hays suggests a special judicial process that would be efficient, inexpensive and independent. He argues that such a procedure:⁴

"... has all the advantages of arbitration plus certain procedural advantages, like discovery, which are not available in arbitration. In addition it has the advantage of being presided over by a judge who is trained and skilled, who is a part of the judicial tradition, and who is protected by tenure. The judgments will be judgments in accordance with the law of collective bargaining agreements as that law is being fashioned by the courts. This law will be uniform throughout the nation, as Congress intended it to be uniform."

Undoubtedly, Judge Hays' views are a valuable contribution to the controversy of courts versus arbitrators in labor relations. He makes a strong argument for judges taking a closer look at arbitration awards before lending them their prestige and giving them the force of law. He has done much to shake loose some of the superficial and accepted platitudes about the superiority of labor arbitrators over judges in adjudicating contract violations. His thesis, however, is a technical one and does not have much relevance to industrial relations arbitration outside the United States.

D. J. M. BROWN.

1. E.g. Alexander, "Reflections on Decision Making", in *Collective Bargaining and the Arbitrator's Role*, (1962); Aaron, "Labour Arbitration and Its Critics", 10 *Lab. L.J.* 605 (1959); Aaron, "Arbitration in the Federal Courts: Aftermath of the Trilogy", 9 *U.C.L. A.L. Rev.* 360 (1962); Cox, "Reflections Upon Labor Arbitration", 72 *Harv. L. Rev.* 1482 (1959); Cox, "Current Problems in the Law of Grievance Arbitration", 30 *Rocky Mt. L. Rev.* 247 (1951-58); Davey, "The Supreme Court and Arbitration: The Musing of an Arbitrator", 36 *Notre Dame Law*, 138 (1916); Fleming, "Some Observations on Contract Grievances Before Courts and Arbitrators", 15 *Stan. L. Rev.* 595 (1963); Fleming, "Reflections on the Nature of Labor Arbitration", 61 *Mich. L. Rev.* 1245 (1963); Fuller, "Collective Bargaining and the Arbitrator", 1963 *Wins. L. Rev.* 3 (1963); Kagel, "Recent Supreme Court Decisions and the Arbitration Process" in *Arbitration and Public Policy* (1961); Meltzer, "The Supreme Court, Arbitrability and Collective Bargaining", 28 *U. Chi. L. Rev.* 464 (1961); Shulman, "Reason, Contract and Law in Labour Relations", 68 *Horn. L. Rev.* 999 (1955).
2. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrions & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.* 363 U.S. 593 (1960).

3. p. 118.

4. p. 118.