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## The NLRB and National Labor Policy: An Introduction

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## SYMPOSIUM ON LABOR LAW

### **The NLRB and National Labor Policy: An Introduction**

*Edward B. Miller\**

Each of the five articles in this symposium deals with a recent development in American labor law. Professor Sanders addresses the interesting question whether strikes have a place in future labor dispute settlement. Mr. Nash discusses at length the important new policy of NLRB deferral to arbitration under *Collyer Insulated Wire*.<sup>1</sup> Mr. Kilberg then examines the recurring problem of discrimination in American labor organizations, and Mr. Bakaly reconsiders the important case of *Burns International Security Services, Inc. v. NLRB*<sup>2</sup> and gives us a critical evaluation of that decision. Finally, Professor Rabin presents a comprehensive synthesis of the law relating to the permissible scope of employer unilateral action.

My introductory comments are a brief attempt to lend to the symposium additional historical and legal perspective, thus emphasizing the current importance of the topics discussed. Furthermore, in the latter portion of the introduction I have tried to anticipate some of the major developments that may occur in the not-too-distant future—developments in which the issues and policies discussed in this symposium will undoubtedly have an important impact.

The National Labor Relations Act, allowing the regulation of employee concerted activity and its correlative relationships, provides the basic framework for the governance of industrial relations in the United States. Implementation of the Act has been entrusted to the National Labor Relations Board. Federal policy with respect

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\* Chairman, National Labor Relations Board; B.A. 1942, L.L.B. 1947, University of Wisconsin.

1. 192 N.L.R.B. 837 (1971).  
2. 406 U.S. 272 (1972).

to employer-employee relationships, however, has not been confined to the policy pronouncements in the NLRA as administered by the NLRB. There has been a significant expansion of federal policy in areas not governed by the NLRA, and a variety of private and governmental institutions has developed to implement those policies.

The following examples illustrate the extent to which institutions other than the NLRB now implement federal labor relations policy. The administration of collective agreements covering millions of employees rests primarily with voluntarily established arbitration tribunals, and federal labor policy clearly encourages their use. Discrimination in employment on account of race, color, creed, and sex is prohibited by various federal statutes and the implementation of those statutes is the responsibility primarily of the courts and of administrative agencies other than the NLRB. Federal policy has been fashioned to protect the safety and health of employees at their work place, and their administration has been vested in the Department of Labor and a special agency. Laws related to minimum wages and maximum hours of employment are administered by the Department of Labor and enforced primarily in the courts. Laws and executive orders relating to labor relations in the public sector at the nonfederal level are administered and enforced by state and local governments, and at the federal level by newly created administrative structures located primarily within the Department of Labor.

Thus the National Labor Relations Board is no longer the only, or even the primary, focus of public attention and comment on the employer-employee relations scene. The law administered by this Board has now been extensively fleshed out by over 200 volumes of Board decisions and a host of decisions by the Courts of Appeal and by the Supreme Court. Employers, unions, employees and the general public have accepted gradually, albeit sometimes reluctantly, the fact that the policies embodied in the National Labor Relations Act have become a permanent part of the fabric of federal law. All of these factors have tended to make this Board a somewhat less visible administrator of federal labor policy than it once was. Today we have, in the jargon of the times, a "low profile."

Yet we continue to bear substantial burdens and to perform essential functions. Indeed, the number of charges of violations of the National Labor Relations Act increases each year and has attained monumental proportions—some 26,000 charges per year are now being filed with us. The demand for our services conducting

representation elections grows and grows—we now conduct approximately 9000 elections each year. Low profile or not, the NLRB regularly and effectively continues to resolve a very substantial number of disputes growing out of matters relating to concerted activities by employees. We may no longer occupy center stage, but neither can it be said that we have been relegated to a bit part.

What can one predict about the decades lying ahead? It seems probable that some groups of employees, such as agricultural laborers and employees of non-profit hospitals, will within the relatively near future be brought under either our law or some parallel legislation. It also seems probable that the executive order dealing with labor relations in the federal portion of the public sector<sup>3</sup> will eventually be supplanted by permanent legislation. Labor relations in the public sector at the state and local levels likely will come increasingly under governmental regulation, and Congress, in the interests of uniformity, may well prescribe federal standards for such legislation.

I suspect that the principal problem demanding solution in the next decade or two will be the need to reconcile the various policies expressed in the proliferation of regulatory legislation governing employer-employee relationships. As Mr. Nash's article describes, our own Board has been seeking just such an accommodation between our processes and those of voluntary arbitration. We are also struggling to reconcile our principles and procedures with those, rapidly developing, that support constitutional and statutory prohibitions of racial and sexual discrimination of the nature described in Mr. Kilberg's article. Just emerging is the need for coordination with the new laws relating to employees' safety and health. And, surely, as the regulation of labor relations in the public sector matures and develops, accommodation will be required there as well.

It remains to be seen whether the institutions charged with the interpretation and enforcement of these sometimes overlapping areas of regulation will be capable of achieving workable and acceptable accommodations. There are today a great number of labor relations tribunals—administrative and judicial—that operate largely independently of each other. We are already facing a growing volume of complaints that this proliferation of laws and tribunals is generating confusion and that compliance with one set of employee-employer regulations increasingly may violate another set

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3. Exec. Order No. 11,491, 3 C.F.R. 191 (Supp. 1969).

of regulations. Procedurally, we are beginning to hear complaints that the same conduct is being prosecuted and defended in several tribunals, sometimes with inconsistent results.

The criticism and concern about these matters currently is barely audible, but I would not be surprised to hear it swell to a crescendo in the not too distant future. As usual, the problems will doubtless be easier to discern than to resolve. But it seems likely that there will be a real need both for a Congressional effort to eliminate substantive conflicts and also for a unified judicial or quasi-judicial forum in which conflicting federal policies can be reconciled and in which related issues growing out of the same or similar conduct can be litigated together. At this date, it is too early to predict the precise shape that these substantive and procedural accommodations will take.

Problems such as those raised by Mr. Bakaly and Professor Rabin in this symposium will continue to require answers. The beginnings of the synthesis between Board processes and arbitral processes described by Mr. Nash will require continued refinement. The policy and practical issues concerning strikes and dispute settlements raised by Professor Sanders await future resolution. The federal policies prohibiting discrimination, as indicated by Mr. Kilberg, will require further effective implementation. Thus future symposiums will doubtless consider again all of the subjects raised here. But I would also be bold enough to predict that the need for effective judicial and administrative coordination of federal policies in these and still other areas may also be a sort of inter-disciplinary theme that will increasingly be heard running through symposiums such as this in the years ahead.