

Preface

Working is central to our lives. It is not just a method of occupying ourselves and earning a living, it is a source of our feeling of security and self-worth. In his book entitled *Working*,¹ Studs Terkel tells us that Sigmund Freud identified two moving impulses of man to be *lieben und arbeiten* (loving and working). Indeed, as we will see, under the Americans with Disabilities Act, working has been identified as a major life activity equivalent to seeing and breathing. Certainly, the denial or loss of a job can be an extremely traumatic event, undermining an individual's confidence and self-esteem, particularly if it is considered arbitrary or discriminatory.

The arrogant disdain of the English aristocracy for engaging in trade or work never infected the American colonies. In America the work ethic has always been extremely strong, possibly a byproduct of our Puritan heritage. That is perhaps one of the principal reasons the nation has achieved so much economic progress in its relatively short political history. Therefore, it is not surprising that laws regulating the employment relationship have developed in America. However, those laws were slow in coming, and the combative atmosphere within which they were born had a strong influence in molding their shape and substance.

Labor-management relations is a rich source for an interesting and satisfying legal career. For those who have the opportunity to represent management, there is the important goal to be achieved of stabilizing business to promote and enhance its efficiency and profitability; and for those who have the opportunity to represent labor, there is the important goal to be achieved of advancing and protecting employees' legitimate rights in the workplace. From either side, I can assure you from my 40+ years of experience in the field, there is never a dull moment: something is always popping up.

However, if you choose to pursue a career in labor-management relations, you will soon discover there are those few, on both sides, who promote more conflict than resolution. However, they are definitely in the minority, and they are generally

1. Studs Terkel, *Working* (Pantheon 1972)

not well respected or very successful. For the most part, the labor-management community has an atmosphere of collegiality that reflects the common interest in finding creative solutions to complex, troublesome, and potentially disruptive disputes. Indeed, the management representative who cannot, or will not, see the labor side of an issue, or the labor representative who cannot, or will not, see the management side of an issue, will not be highly successful in accomplishing either the client's short- or long-term goals.

What American labor and employment law has recognized and focused on from the outset is the intrinsic value of preserving stable, positive, and productive labor-management relationships. Methods of dealing with the familial squabbles, which inevitably arise and tumble within employment relationships, are provided only as secondary to the main objectives of the law. The law as it has developed in America is designed to promote industrial harmony and avoid industrial strife. The various aspects of labor and employment law should be studied and understood in that context. If there is a lesson to be learned from studying American labor and employment law it is that reasonable minds resolving disputes by mutual agreement is always preferable to conflict. Economic warfare is always possible, but virtually never desirable. The keystone for success is an attitude of cooperation and good faith. That is the fundamental principle upon which American labor and employment law is based.

This book is designed to be a textbook for a course in basic American labor and employment law for paralegal students. Its purpose is to provide a basis for an in-depth understanding of labor and employment law for those who choose to pursue a career in the labor-management field, or an opportunity for a good basic understanding of the subject for those who don't end up pursuing a career in that direction.

The book is divided into three broad sections. Part I deals with the history of the development of American labor and employment law, and the fundamental nature of the employment relationship. Part II deals primarily with the unionized setting, how it is created, and how it functions and is regulated by the law. Part III deals with the subject of unlawful employment discrimination.

Writing this book has been a labor of love at the end of a full and exciting career in the labor-management field. I hope it is useful in passing on to others some of my interest and enthusiasm about the subject.

One of life's little secrets is making sure that there is always something left to look forward to. I am now looking forward to teaching the course.

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