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BOOK REVIEW

CASES AND MATERIALS ON GOVERNMENT REGULATION OF WAGES

By ERNEST N. VOTAW

In a review of Archibald Cox's first edition of *Cases on Labor Law* (1948),¹ Judge Warren Madden observed that "most labor law case books contain no material at all on this important Act [Fair Labor Standards Act]." Except for Professor Votaw's compilation, this still seems to be the situation today, almost twenty years later.² The first edition of Professor Cox's casebook did include a few FLSA decisions on one "knotty" problem (relating to determination of the "regular rate" which is the basis for computing overtime compensation), which Judge Madden criticized as a rather "illogical . . . singling out of one puzzling problem on the FLSA." In his latter editions, Professor Cox omitted even this material on the FLSA.

Professor Votaw's "Cases and Materials," therefore, fills a large and important gap. The paucity of casebook material for law students on the FLSA seems at least partially due to the very real difficulty of selecting, out of the vast number of judicial decisions and administrative regulations and interpretations, the materials best suited to teaching purposes. Although Professor Votaw has devoted all but 38 of his 476 pages to the FLSA, his selection also reflects how "knotty" the problem of choice is. Like the legal materials on federal tax laws, a selection with the emphasis and symmetry suitable for students poses a most difficult but challenging problem. The task of selecting and organizing cases and materials on the FLSA is particularly aggravated by the fact that the subject has not, as yet, been recognized as worthy of inclusion in the curriculum of most law schools. The task is further complicated by the technical nature of so many of the questions presented by the FLSA due largely to the complex exemptions and the frequent circuitous wording of the definitions (e.g., notably the definitions of "enterprise," "retail establishments," "agriculture" and "regular rate"). There is danger that the decisions or excerpts chosen might tend to confuse rather than illumine the mind of the newcomer to this field. There is the additional danger with a subject so susceptible to statutory change as the FLSA that too much attention

1. 58 YALE LAW JOURNAL 660 (1949).

2. The 1962 supplement to the *Employment Relation and the Law*, Labor Law Group, B. Aaron, Editor (Little, Brown & Co.) does contain a section and cases on FLSA.

may be focused on temporary aspects which Congress will soon make obsolete.

Professor Votaw has made a commendable effort to meet these problems. In view of his long practical experience, as Regional Attorney for the Department of Labor almost since the date of the enactment of the Fair Labor Standards Act of 1938, he is unusually well-equipped for the task. He is also one of the very few professors who has taught a course devoted almost exclusively to the FLSA. His experience in teaching the course undoubtedly entitles his judgment on the selection and organization of the materials to great deference. But, undoubtedly, too, more experience with teaching the subject is needed.

Professor Votaw's "Cases and Materials" furnish a useful panorama of the number, variety and complexity of legal problems involved in the enforcement of the Act, and his selection of cases is well-designed to reveal how these problems are related to and overlap the subject matter of more traditional courses in the law school curriculum. The extent of the overlapping unavoidably raises the question of the advisability of a separate course devoted exclusively to the FLSA and related wage and hour legislation. This question has, of course, been faced in connection with other relatively recent courses such as Federal Taxation and Labor Relations. Both of the latter subjects are now generally recognized as important subjects in the law school curriculums. Their attainment to this status can probably be attributed as much to the fact that specialization in either of these two fields has become a highly lucrative practice for many lawyers, as to the increasing importance of these subjects to such a large proportion of the citizenry. Specialization in the FLSA and related legislation on wages and hours has not, thus far, achieved any comparable "bread and butter" interest, and perhaps may never do so, but the wide-spread and important impact of the FLSA upon employees and businesses would appear to be at least equal to that of Federal Taxation and Labor Relations Law.

Certainly no lawyer purporting to be a specialist in Labor Relations can afford to be ignorant of the Fair Labor Standards Act and the Walsh-Healey-Public Contracts Act. While the federal labor relations legislation affects all unionized workers and businesses (and those susceptible to unionization), unionization in this country has been relatively limited and has not evidenced any appreciable disposition to increase. Thus a liberal estimate of the number of unionized workers is only about 16,000,000 out of a total labor force of over 75,000,000. The FLSA, of course, applies to unorganized as well as organized workers, and even with its numerous exemptions, directly affects many more employees than does the National Labor Relations Act. With the coverage added by the 1966 amendments, it is estimated that the FLSA now applies to over 41,000,000 employees, and close to 2,000,000 business es-

tablishments.

That the FLSA is the source of voluminous legal practice is evident from the vast amount of litigation and the huge body of judicial decisions emanating from this law. However, apparently private practice in this field has not yet become sufficiently attractive to encourage anything like the specialization that has developed in the field of Taxation or Labor Relations. Perhaps this may change with the present emphasis on the Anti-Poverty program and the need for furnishing legal services to low-income citizens. Certainly the FLSA can no longer be dismissed as mere "peripheral legislation" (as Professor Cox characterized it in the first edition of his *Cases on Labor Law*). Professor Votaw's casebook makes an effective and timely contribution to realization of the ever-increasing importance of this legislation.

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