Preface

Maurice F. Neufeld

The six short essays in this modest publication assess the impact upon industrial relations of the accelerating democratization of American life.

Milton R. Konvitz, who brings to his reflections a lifetime of renowned scholarship on civil liberties and civil rights, establishes the theme of the symposium in the opening address. He celebrates the right to human dignity and to legal and social equality now accorded by statutes and the courts to organized workers, women, aliens, bilingual Americans, the poor, students, illegitimate children, mental patients, and prisoners. He notes "that of the 140 other member states of the United Nations, not one can compare with the United States in the legal rights to equality enjoyed by our racial minorities, or the great progress that has been made toward political, social, and economic equality in the last several decades." Konvitz, at the end of his eloquent statement of faith, first invokes Emma Lazarus' famous poem on the base of the Statue of Liberty which calls upon the rejected peoples of the earth to seek freedom in America. He then rounds the argument: "Now we have begun to turn the Statue of Liberty around, so that its message is to be read as addressed to ourselves. For at long last we have begun to see that it is we how have huddled masses who yearn to be free and that it is our own teeming cities that have wretched refuse who wait for liberation."

Maurice F. Neufeld, in pursuing Konvitz's motif, maintains that no institution in the nation's history has struggled so long and so valiantly for the democratization of American life as the organized labor movement. Trade unionists had asserted from the 1830s onward

the right of the larger and larger number of Americans who labored in shop, mill, plant, factory, railroad district, and mine pit to redress wrongs suffered at their place of work. Union members therefore stood prepared before the turn of the nineteenth century to strive for the establishment of regular procedures for the settlement of grievances. Neufeld claims that the ordered but still varied and adaptive grievance procedures which they devised are unique in the world. These procedures, however, have never received the close attention which they should have commanded long ago because of their importance to the democratization of industry and their influence upon the character of work itself. He therefore examines the evolution of grievance procedures which trade unions and employers developed between 1880 and 1900 and finds that the principles and procedures which evolved at that time served as the principal bases for later developments. He states: "Indeed, labor and management employed them with such sensible flexibility that the arbitration of primary issues of interests, and not alone secondary issues of rights, found acceptance" during those early decades.

Jean T. McKelvey--skilled and enthusiastic teacher, voluntary and superb placement officer for students, champion literary agent for term papers, scholar of wit and foresight, and arbitrator of national fame--demonstrates that the concern for individual rights under Title VII of the Civil Rights Act of 1964 has circumscribed the large freedom of judgment formerly enjoyed by arbitrators in interpreting collective bargaining agreements. She points out that the concern of the courts for individual rights has activated a conflict between the law of the shop and the law of the land since the arbitrator is now "surrounded by constraints imposed by law, public policy, and affirmative action" and is therefore responsible "to a larger public, not a private, constituency." She concludes

her provocative essay by quoting from an article which she published in April 1971: "As more and more contract issues--once regarded purely as matters of consensual law--become subject to overriding public regulation and control, the once tight little ship of private adjudication is indeed becoming a leaky vessel." She went on to observe that many arbitrators "who are experts in the law of the shop shy away from the notion of learning more about the law of the land." In a spirit of jocular hope, McKelvey, who made it her business three decades ago to master the law of the land, suggested as early as 1971 that "arbitrators are in need of continuing education."

Alice H. Cook--keen student of the government of unions, indefatigable investigator of child-care facilities throughout the world, pioneer university ombudsman, long-time vindicator of women's rights, and now novitiate in arbitration--sketches a disturbing view of the present state of industrial relations in higher education. She sees "the waves blown up by Title IX of the Equal Employment Opportunity Act and its guidelines, the brewing storm of unionization, the rising consciousness of blacks and women who see the universities as one of the most resistant institutions to their acceptance" battering against the "frail procedures" which universities have devised to meet their labor relations needs. Central to this dilemma, she points out, is a distinctive aspect of college and university life: "its accepted system of peer governance within the faculty and between the faculty and administration." Special problems therefore "derive from the overlay of collective bargaining and the grievance procedure developed under it on these sophisticated patterns of governance and on the professional ethics long established as norms for faculty prerogatives and behavior." Of four types of employees within this fragile structure, she is particularly concerned about that group of professionals which is

almost invisible, many of whom are women with advanced degrees in their specialities: language instructors; editors and illustrators at the press; architects, designers, and engineers in buildings and grounds departments; librarians; museum curators and taxonomists; and extension associates. Cook's experience as an arbitrator of grievances at institutions of higher education leads her to the conclusion that under the pressure of a grievance system which ends in arbitration, "the university, like any other employer, falls back not upon the peer system which is its unique glory in a society which organizes itself in hierarchies where power flows from the top down, but upon management prerogatives, exactly like a manufacturer of automobiles."

Vernon H. Jensen bases his long-standing concern for the preservation of free collective bargaining upon detailed knowledge derived from meticulously researched and highly praised studies of labor relations in industries both here and abroad. He sees the American system of collective bargaining as part of the nation's quality of life associated with freedom. He is consequently troubled about the equivocal position of the collective bargaining agreement, created by consent between employers and unions, in a society where legislation and contract are that society's cornerstones. He asks: "But where does the collective bargaining agreement fit in?" Since it takes its character from both legislation and contract, but is different from each, Jensen maintains: "What is needed is a law of associations, recognition of the role of groups, or associations, in contrast to government and legislation and individuals and contract." Although Jensen maintains that the pluralism of our society has helped to accommodate the countervailing forces produced by it, he nevertheless insists that "the law is behind the times and a comprehensive body of law, recognizing associations for what they are, would be helpful. The collective agreement would then fit into it."

George W. Brooks--diligent public servant in pioneering agencies of the federal government, experienced and influential union aide, and eloquent, witty, learned, zealous, and beloved teacher--has long served as the conscience and sentinel inside and outside the School for democratic rights within the labor movement. He agrees with Jensen that "a belief in freedom is at the heart of our commitment to collective bargaining." He is therefore sensitive to "a growing disposition on the part of unions and collective bargaining institutions to withdraw from workers freedoms which were once considered essential to the effective operation of those institutions." Under the lively flow of democratization in American life, Brooks discerns an undercurrent, set in motion since the 1930s through public and private policy, which has "carried us to the point where employee freedom of choice has been seriously eroded by union and employer, by decision of the NLRB, and by decisions of the courts. The collective effect is awesome." He reminds us that 1984 is perhaps closer at hand than we think, that the shadows at the near horizon are Americans whose right to human dignity and to legal and social equality have been overcast.