THE ART OF COLLECTIVE BARGAINING, Second Edition, by John P. Sanderson, (Aurora, Ontario: Canada Law Book Inc., 1989) pp. xi + 197, ISBN 0-88804-069-5.

John Sanderson is an experienced labour relations lawyer who has acted primarily for management in Ontario. Despite his busy career, Sanderson has found time to write two editions of *Labour Arbitration and All That* (2nd edition, 1985) and *The Art of Collective Bargaining*, first published in 1979 and updated ten years later. He is very much part of the honourable tradition of Canadian labour relations practitioners and arbitrators who have offered their knowledge and wisdom to others by writing articles and books about their subject.

The Art of Collective Bargaining can be divided into two parts. The first deals with the process of collective bargaining, including chapters on preparation for negotiation, negotiating sessions, conciliation, mediation, and public sector collective bargaining. The second part of his book discusses typical contractual terms, giving examples and raising problems which often emerge in the drafting of specific clauses. In his conclusion, Sanderson makes some comments about the health of the collective bargaining process in Canada, and advances some recommendations.

The audience for *The Art of Collective Bargaining* would appear to be students of labour relations, and people starting to work in the field. The book is a straightforward, clear account of the process suitable for lawyers and non-lawyers. However, experienced negotiators and arbitrators will benefit from Sanderson's account of drafting and policy problems which can arise in the negotiation of typical provisions in a collective agreement.

Sanderson has a great deal of helpful advice to offer on the actual process of negotiation, the way in which parties should prepare and conduct the bargaining sessions, and the roles of conciliator and mediator. His comments are primarily directed to the employer's side of the table, but union representatives will find much to learn here. He is particularly candid and illuminating on negotiation and interest arbitration in the public sector.

Ironically, *The Art of Collective Bargaining* is less successful as a law book. The art of collective bargaining is not practised in a vacuum, but takes place in a legal environment. For Sanderson, that environment is Ontario, and he pays little or no attention to the different legal structures in other Canadian provinces. As a result, practitioners outside Ontario should not assume that the statements of law sprinkled through the book reflect the law of their jurisdictions. There are numerous legal opinions which are wrong or doubtful as statements of Alberta law. Despite the apparently universal character of Sanderson's account, it should be viewed as a statement of Ontario law and no more.

It is hard to know what to make of Sanderson's legal opinions because he does not include any footnotes, tables of cases and statutes, or any other reference to the rest of the world of labour relations law. From time to time, it appears that he is talking about specific Ontario statutes, but they are not cited. Apparently we are to take Sanderson's

word that the law is as he describes it. This is hardly satisfactory. There are now extensive textbooks on labour relations law and labour arbitration, not to speak of articles, reporting services and so on. Sanderson's book is frustrating because it gives the reader no chance to pursue his or her research further. This kind of magisterial indifference to documentation may have been acceptable when the first edition of *The Art of Collective Bargaining* was published, but legal and non-legal practitioners today want more for their money than a book of opinions (even good ones) unsupported by any authority or references.

The most interesting part of the book is the group of chapters in which Sanderson takes typical clauses found in collective agreements and discusses problems in their conception and drafting. These chapters contain specific provisions, set apart in bold type, and drawn from real collective agreements. They are not models to be followed. "To the contrary, in a number of cases the wording is clumsy and opaque" (p. 93). Their merit is that they have found their way into existing (presumably Ontario) agreements.

This strikes me as an odd course to follow. Why does Sanderson not try to draft model clauses, perhaps in alternative forms to show the diversity of solutions to a drafting problem? In his many years of negotiating and arbitrating, he has undoubtedly collected precedents which he likes. Why not share them? Sanderson tells us that the provisions he has reproduced are far from perfect. I want to know what is wrong with them. In many cases, it is not immediately obvious whether or not their wording is "clumsy and opaque". How could they be improved on? Sanderson does not say, and he should. What *is* apparent about several of Sanderson's clauses is their management slant. Union representatives reading the book should be on their guard.

Sanderson's grievance and arbitration clause at pp. 7-9 and 106-08 may serve as an example. It has a variety of problems, all of which can redound to the benefit of the employer.

(1) The time limits for taking steps in the process are far too short, and the clause allows for no waiver of them.

(2) If either party fails to advance the grievance from Step 3 to arbitration within the set time limit, it is deemed to be abandoned. Given that most grievances are filed by unions, this "remedy" impacts much more heavily on them. Some Alberta agreements provide that the effect of an employer missing a step, including the submission to arbitration, is that the grievance is automatically moved on to the next step in the process.

(3) At pp. 106 to 108, Sanderson returns to a discussion of the grievance clause and suggests additions. His examples would appear to create an artificial distinction between an individual and a union grievance which is bound to give rise to preliminary objections to jurisdiction. The clause is made more ambiguous by the absence of any reference to group grievances.

(4) The clauses contemplate a three-person board but not the cheaper and more speedy single arbitrator.

All of these problems lay the groundwork for preliminary objections to grievances filed and processed incorrectly under the clause. The effect is to make the grievance and

arbitration process more complex and expensive, and to jeopardize the chances of union or individual grievances getting to a hearing on the merits.

I do not want to overstate the management bias of the book. Many of the clauses seem fair to me, and the accompanying discussion raises legitimate and interesting problems which would have to be dealt with by any negotiator. As a labour nominee to many arbitration boards, I can only echo Sanderson's advice to negotiators (p. 101):

> In drafting language for a collective agreement, the greater the precision and clarity of the words by which the parties set out what they have agreed to, the easier it will be for the parties to the collective agreement and any persons that are affected by its operation to understand what the agreement says. If they understand, it is less likely they will be in dispute.

There are some common clauses (or variants of clauses) which Sanderson might have discussed. In his treatment of job descriptions (pp. 142-43) he should have raised the problem of the new job classification created unilaterally by the employer. The union may oppose its creation or, more commonly, may disagree with the pay rate attached to the new job. Some collective agreements in Alberta protect the employer's right to create a new job classification but empower the union to go to a mini-interest arbitration if it cannot reach an agreement with the employer about pay.

Sanderson discusses leaves of absence but leaves some obvious questions unexplored. Does the term "spouse" include common law spouses? If so, how is that term defined? Sanderson includes a jury duty provision, but says nothing about the employee called to be a witness in court or in an arbitration.

At various points in the book, Sanderson advances a few reform ideas. He advocates an automatic representation vote in certifications (p. 18), a compulsory strike vote (p. 180), the placing of the employer's final offer in front of the union membership before a strike (p. 180), and greater restrictions on the law of picketing (p. 180). What is striking is how many of these ideas have found their way into Alberta labour statutes, especially the Labour Relations Code. Whether or not they will work in a fair or equitable way as between labour and management remains to be seen.

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