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Book Reviews

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TEACHER STRIKES AND THE COURTS. By David L. Colton and Edith E. Graber. Lexington, Mass.: D.C. Heath and Company, 1982. Pp. 132.

*Reviewed by Hugh D. Jascourt.**

If you want to know how school boards decide whether to go to court when teachers strike, what teacher unions do to defend themselves in court, and not only what the judges do but what they think, *Teacher Strikes and the Courts* is the book for you. The announced intent of the authors is "to remove mystery, to enlighten and to provide a basis for informed action." They succeed.

Their success is brought about by translating complex legal obligations and theories into simple terms everyone can understand. A little precision is lost but greater precision would require greater exposition, to the point where the general reader might lose the body of thought. Moreover, there are plentiful citations for further reading, but once more, exceptions and details are omitted that would detract from the central thought process.

Understanding is promoted by quotes from interviews of "key actors" and court proceedings from field studies of teachers strikes in California, Illinois, Louisiana, Michigan, Missouri, New York, Pennsylvania, Vermont, and Washington as well as a survey of all 158 school districts that experienced strikes in 1978-79. These quotes illustrate well the points being made rather than acting as filler or as obligatory citations of authority. Although the authors do not explain this sample of states, it is a good sample because it includes states that statutorily authorize collective bargaining and states that do not, plus it includes states that allow a limited right to strike, some that statutorily prohibit the strike, and others that do not directly prohibit the strike.

The book's success stems also from a useful organization in which each chapter clearly states what will follow and why. The introduction perceptively poses as a problem the fact that whereas a school board must phrase the issue in terms of illegality of a strike if it goes

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into court to enjoin the strike, the unions respond that the injunction does not address the labor relations problem and could only exacerbate it. Consequently, as the authors point out, the judge may respond to only one issue or the other or may intercede himself or herself. The authors go on to point out the difficulties that ensue from each of the responses.

By devoting separate chapters to "The Underlying Dispute," "The Legal Dispute," "The School Board as Petitioners," "Teachers as Respondents," and "Judges as Decision Makers," Colton and Graber avoid pitfalls common to many authors by understanding the strengths and weaknesses of the data on which they rely. For example, they recognize that Bureau of Labor Statistics school strike data are really in terms of immediate issues and not in terms of the real causes. For a short compact summary, the book relates well the myriad underlying issues, the buildup of pressures, and the growing perceptions and the emotions that affect responses. In short, it lays out the various strategies open to the parties and the judge and makes clear most of the options available—options or consequences far too frequently unrecognized by those caught in such situation(s) or recognized when it is too late.

In addition, there are some "facts" that may not be realized by seasoned practitioners or students of public-sector labor relations and that affect the choices available. Particularly pertinent is the statement that half of all injunctive proceedings produced judicial orders directing the parties to engage in additional negotiations. Of similar significance is the further finding that teachers complied with only one third of the orders mandating cessation of the strike or return to the classroom. The authors reconfirm a "fact" that experts should know but still too few accept as reality—perhaps because it departs from prior attitudes. They state that there is a trend away from major reliance on the injunction as a strike ending device and attribute this trend to a recognition by school boards that they can successfully "take" a strike and that if a strike occurs chaos will not reign.

The reader should be cautioned that this valuable work does not do several things, though the authors may be holding back in order to issue a sequel in the same manner of some recent films. For example, the authors are wonderfully descriptive. However, they are not analytical. They do not really compare states that prohibit the strike with states that permit strikes, states that mandate the injunction with states where the school board has the option, or the experience of states having skillful impasse bodies with that of states without

them. Consequently, there is no real discussion of the benefits or problems caused by judicial intervention, the interplay between the judge and impasse bodies, or the extent to which a judge who is unsuccessful in intervening acts uncharacteristically. This is not to say the authors should have addressed such aspects, but the reader should know what not to expect.

On the other hand, the authors do say that their book will provide insight into the process of dispute resolution that exists outside the courts, but they do not do this. The authors repeatedly state that going to court puts the focus on only the legal status of the dispute, but they then describe how union advocates never lose sight of the underlying dispute as the primary target. If they were to put out a second edition—which this reviewer hopes the readership response will produce—the text should be modified to say what the authors really mean, namely that the press, and consequently the public, focus wrongly on the legal status and not the problem, with the corollary that a school board affected by the public and the media is likely to lose sight of the reality of the situation too. In the same way, the attorneys and the judges do not replace the leading actors when a dispute enters the realm of the court, but rather they are merely in the spotlight. In fact, some judges have been rather incensed when the parties have used the court as a basis for strategy or publicity instead of as a forum for a genuine dispute over the law. In fact, the authors provide such a good description of what does occur that *Teacher Strikes and the Courts* would be a good primer for a judge who is called upon to deal with a teacher strike.

In short, if the reader wants to understand the choices a school board must make when a teacher union strikes and to comprehend the subsequent actions by unions and judges, *Teacher Strikes and the Courts* is an excellent book to read and to retain for later reference. If the reader wants someone's opinion on what should occur and conclusions on whether there should be a different way of dealing with teacher strikes, this is not the book for you.

THE SCOPE OF FACULTY COLLECTIVE BARGAINING: AN ANALYSIS OF FACULTY UNION AGREEMENTS AT FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION. By Ronald L. Johnstone. Boston, Massachusetts: Allyn and Bacon, 1981. Pp. 196.

*Reviewed by Perry A. Zirkel**

In this book, Johnstone achieves his primary purpose—to summarize the scope of faculty bargaining at four-year colleges and universities—with brevity, readability, and practicality. The book provides a useful perspective and ample samples of provisions contained in collective bargaining agreements in force as of December 31, 1979. After a concise overview of the history and causes of faculty bargaining, the book presents in a generally clear and crisp narrative the incidences and some examples of contractual provisions relating to: (1) faculty rights, (2) employment decisions, (3) salary and fringe benefits, (4) working conditions, (5) faculty responsibilities, (6) academic governance, and (7) union security.

Without a great loss in brevity, readability, and practicality, the book could and should have provided more precise information with regard to the collection, analysis, and presentation of data. With respect to data collection, it is not clear upon what basis the author established "to the best of [his] knowledge" (p. xiii) that the universe of faculty collective bargaining contracts amounted to 94 at the end of 1979. Corresponding figures are attributed in a separate chapter (p. 4) to the National Center for the Study of Collective Bargaining in Higher Education, but as of one year later. References to contracts covering periods previous to the end of 1979 (e.g., Ashland College, 1972-73, p. 49) further obfuscate the scope and source of the author's data, leaving such matters to mere inference rather than to informed evaluation.

Similarly, the method of data analysis is stated cryptically and, thus, is subject to conjecture. The author describes his method as "content analysis" (p. xiii). In light of the simple frequencies and intuitive illustrations, it seems that the author was not using this term in its scholarly and systematic sense.[1] The data-presentation method could also usefully benefit from more sophistication. The results are not reported in terms of some recognizedly distinctive contextual

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[1] *E.g.*, R. Holsti, *Content Analysis*, in 2 HANDBOOK OF SOCIAL PSYCHOLOGY 596-692, (2d ed. Lindsey & Aronson eds. 1968).

variables (e.g., statutory scope of bargaining).[2] Other contextual categories (e.g., size, support, and prestige of the institution) are utilized in reporting the data but neither completely nor consistently. Most of the results are reported in either tabular or narrative form for the sample as a whole. Where analyses are reported in terms of institutional support alone (pp. 33, 34, 58, 80, 107) or both institutional support and prestige (pp. 24, 27, 37, 47), these categories are not explained with regard to their specific definition or selective application. Elsewhere the author cryptically creates a hybrid categorization. On page 55 he refers to "three categories of institution - more prestigious institutions, less prestigious public colleges and universities, and less prestigious private institutions," but then on page 60 he reports compensation data for "more prestigious state universities," "less prestigious state colleges and universities," and "private institutions." The latter triad seems to be the intended one, for it reappears in the presentation of other contractual data (pp. 66, 111, and 138). Although the author elsewhere (p. 58) cites Ladd & Lipset's work, he seems to have ignored their more systematic typology of institutions of higher education as well as their more sophisticated statistical treatment of data.[3]

In lieu of, rather than in addition to, these somewhat scholarly desiderata, the author reflects an eminently practical orientation. Based on his early experience as the president of a local faculty association and later the associate dean of arts and sciences at Central Michigan University, which was one of the first institutions to enter into a collective bargaining agreement, he provides useful insights into the content and context of the contractual provisions. For example, he appropriately points out that contractualization does not necessarily mean significant faculty participation, yet it provides a base for the grievance process. Similarly, he observes that the contract does not tell the whole story. Other institutional documents (*e.g.*, faculty handbooks or trustees' policies) also provide guidance, and other proposals were undoubtedly modified or eliminated in the collective bargaining process.

The author's view is generally balanced, though at times showing traces of his faculty association activities. He acknowledges that the research was partially supported by the NEA and its state and local affiliates and that it started as a project for faculty collective bargain-

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[2] *Cf.* Zirkel, *An Analysis of Selected Aspects of Teacher-Board Negotiation Statutes*, 6 NOLPE SCHOOL LAW JOURNAL, 9-22 (1976).

[3] E. Ladd & S. Lipset, *Professors, Unions and American Higher Education* (Washington, D.C.: Carnegie Commission on Higher Education, 1973).

ing agents. In general, he is admirably honest and objective in terms of faculty and administrative perspectives, with his bias being by implication in favor of collective bargaining rather than in favor of either side. Remaining an academician at heart, however, he seems to reach for a new model of collective bargaining in higher education, with elements of dual-track compartmentalization and integrative-bargaining mutuality. Without such elements, he sees collective bargaining in higher education threatening to become a "diversionary sideshow of posturing pretenders"; while with them it can be a "complement to the educational process and a contributor to institutional well-being" (p. 178).

His familiarity with the relevant literature and litigation is pleasantly obvious, though better integration of this knowledge in the interpretation of his research results would have been helpful. For example, the results of other contract analysis studies[4] are not compared or meshed with the results of his study. Similarly, his discussion of the agency-shop results does not take into consideration the Supreme Court's decision in *Abood v. Detroit Board of Education.*[5] His summary and assessment section is much more summary than assessment, generally sidestepping evaluative issues.

All in all, despite its deficiencies, Johnstone's book is a handy reference for participants and observers. At a time when collective bargaining in higher education has reached a consolidating plateau,[6] he contributes a short and simple account of "what has been bargained, how often, with what variety, and where" (p. 165).

SCHOOL LAW: CASES AND CONCEPTS. By Michael W. LaMorte. Englewood Cliffs, New Jersey: Prentice Hall, 1982. Pp. 425

*Reviewed by Paul Thurston**

New and revised school law books are being published at a rate

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[4] *E.g.*, Mortimer & Lozier, *Faculty Workload and Collective Bargaining*, in ASSESSING FACULTY EFFORT, 49-64 (J. Doi ed. 1974); N.P. Humphrey, An Analysis of Collectively Bargained Contracts in Senior Colleges and Universities in 1973 (1974) (Ed.D. diss., Brigham Young University) (3501 *Dissertation Abstracts*, 129A); Hooper, Faculty Union Contracts and Higher Education Administration (1977) (Ed.D. diss., West Virginia University) (3808 *Dissertation Abstracts* 4481-A).

[5] 431 U.S. 209 (1977).

[6] Edward B. Fiske, "*Hard Times for Faculty Unions*," N. Y. Times, May 18, 1982, at C1 & C6.

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only slightly below that with which the Supreme Court issues opinions at the end of the term. For this reason I was somewhat skeptical about the contribution Michael W. LaMorte's new book, *School Law: Cases and Concepts,* could make in this crowded field.

Although the school law area is inundated with potential textbooks, there are a number of critical variables that confront the authors of such books, and the way the authors respond to these serve as a way of categorizing the books. For example, with the steady expansion of case law dealing with schools there is an initial decision facing the author on how to best maintain currency. Authors vary widely in their intent to provide the most exhaustive review of the cases in a particular area and report the current law in this area. Some texts emphasize the case approach while others emphasize the commentary that synthesizes the cases to articulate the current state of the law. A second factor that can be used to distinguish between school law books is the primary audience to which the books speak. Usually this means choosing between students and practitioners (possibly teachers or board members but most likely educational administrators) who face school problems that have legal overtones. The student market needs to be subdivided further into the law school and educational administration markets. Books aspiring lawyers use will more likely be the traditional case book with detailed notes and comments, whereas aspiring educational administrators are more likely to use books that summarize the law in certain areas. Some books attempt, therefore, to appeal to both the educational administration student as well as the practitioner by providing a few highlight cases and filling in around these cases with considerable commentary. *The Law of Public Education* by Reutter and Hamilton and *Education and the Law* by Hazard are two successful examples of this middle ground.

Because the area of school law is so large, some authors attempt to limit the scope of their book in some way. For example, Morris' book, *The Constitution in American Education,* limits its focus to the U. S. Constitution, while the recent McCarthy and Cambron book *Public School Law: Teachers' and Students' Rights* limits its focus to teachers and students. Because of the national market all school law books aspire to, it should not be surprising that no book exists which adequately explores the differences between state jurisdictions on various matters. Matters of common agreement of national law tend to be emphasized. This is something that instructors will want to be sensitive about in supplementing the text with appropriate state constitutional and statutory decisions.

The subtitle of the LaMorte book, "Cases and Concepts", is instructive for better understanding its categorization. The book organizes carefully edited cases around several central themes. No attempt is made to provide commentary or exhaustive case citations to provide the last word in a particular area of the law. Rather, the book seems to be organized for purposes of teaching concepts of legal analysis and of understanding, more than for providing the most accurate statement of substantive law. The book is organized around several central topics such as "Schools and the State" (chapter 1), "Students and the Law" (chapter 3), "Teachers and the Law" (chapter 4), "School Desegregation" (chapter 5), "Equality of Educational Opportunity" (chapter 6), and "School District Liability" (chapter 7). These topics are then subdivided around central issues on which brief introductory remarks are made and edited cases presented to provide a leading example of judicial handling of this matter. "Notes and questions" sections follow the cases to identify important relevant decisions and raise critical questions about the key case.

One may quibble about LaMorte's selection of cases in certain areas. For example, he limits the concept of educational opportunity to finance decisions. There are also examples where a particular professor would substitute another case for the case that is used. He also, I believe, does not emphasize the distinction between statutory and constitutional sources of law to the extent it deserves. An adequate distinction is made in the introductory materials in chapter 1, but because of the subject matter orientation of the book the constitutional and statutory sources are lumped together around the organizational scheme of students, teachers, etc. Still these are relatively minor matters of personal preference that could be remedied when the book is used.

The most significant contribution the book makes is in introducing students to the "concepts" of legal analysis. In addition to an introductory chapter which describes the legal relationship between the federal, state, and local levels in our federal system and the structure of the state and federal court systems, there are several appendices that assist the student in dealing with unfamiliar material—cases, statutes, and regulations—which is central to understanding the relationship of the legal system and the public school system. The appendices provide guidance on analyzing a court decision and doing research in school law. There are also edited versions of the U. S. Constitution and key federal statutes and regulations such as Title IX and P.L. 94-142.

My experience in teaching school law is that educational adminis-

tration students have as much trouble managing legal analysis, reading cases, and putting cases together to arrive at standards to be applied to particular fact situations, as they do understanding the substantive content of the cases. Consequently, *School Law: Cases and Concepts* provides a useful balance between the substance of law and the conceptual aspects of how the legal system operates. The textbook can stand on its own in the teaching of school law to a non-legal audience. Beyond this it would be ideal as a central text which a professor could supplement with state and recent federal court decisions. Despite my earlier misgivings, I am, therefore, persuaded that this book will find a niche in the school law market place.