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Commentary (Bargaining and Discussion-Is It a Happy Marriage?)

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Commentary

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Ms. Doering has concluded that it is hard to assess the advantages or disadvantages of the discussion process because it has not been tried.¹ The conclusion that discussions have not been tried apparently has been reached because of a failure to file unfair practices against the employer charging a refusal to discuss as required by Public Law 217.²

Employees are refusing to file unfair practices for two reasons. One, there were approximately 30 unfair practices filed during the first season of bargaining, with the IEERB taking an average of seven months to render a decision on a complaint. Under this timeline, any unfair practice filed in October charging a refusal to discuss would not reach a conclusion until May, which is well into the next bargaining season. At that time, employees expect to be bargaining items which are classified as discussible (permissively bargainable).³ Second, the individuals used as hearing officers for the unfair practices are the same individuals the IEERB uses as fact-finders.⁴ Ms. Doering points out the discrepancies among fact-finders' reports in various school corporations. In addition to the discrepancies mentioned within the article, one IEERB fact-finder, in the *Prairie Heights* case,⁵ ordered binding arbitration in the grievance procedure stating, "A grievance procedure terminating under the control of one of the contract's signatories is clearly no grievance procedure at all."⁶ A second IEERB fact-finder, in the *South Dearborn* case,⁷ found for a grievance procedure terminating with the employer making the final decision stating, "[This] is better than no grievance procedure at all."⁸ Since the employee has no

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¹ Doering, *Bargaining and Discussion—Is It a Happy Marriage?*, 50 IND. L.J. 284, 309-10 (1975), *supra*.

² Indiana Education Employment Relations Act, IND. CODE §§ 20-7.5-1-1 to -14 (1973), IND. ANN. STAT. §§ 28-4551 to -4564 (Supp. 1974).

³ All items which *must* be discussed, IND. CODE § 20-7.5-1-5 (1973), IND. ANN. STAT. § 28-4555 (Supp. 1974), likewise *may* be bargained. *Id.*

⁴ See Doering, *supra* note 1, at 298-99 n.69.

⁵ *Prairie Heights Community School Corp. & Prairie Heights Educ. Ass'n, [Impasse Fact-Finding]* Case No. F-74-57-4515 (IEERB, Aug. 28, 1974).

⁶ *Id.* at 4.

⁷ *South Dearborn Community School Corp. & South Dearborn Educ. Ass'n, [Impasse Fact-Finding]* Case No. F-74-58-1560 (IEERB, Sept. 17, 1974).

⁸ *Id.* at 2.

control over the selection of the hearing officer for an unfair practice, it is felt that the chances of gaining a valid interpretation of the law are minimal.

The exclusive representative organizations around the state have made a concerted attempt to gain meaningful changes in policies affecting working conditions through the discussion process since the 1974-75 school year began. In numerous school corporations there have been regular weekly or biweekly meetings. The remaining employee-employer groups are meeting on a less regular basis. Less than 5 percent of the exclusive representative organizations report any success toward meaningful input and ensuing improvements in working conditions through discussions.

To the employee organization, the "Discussible Section" of P.L. 217⁹ is not working. Sixty percent of the employers have refused to bargain permissive bargainable items such as teacher evaluation, due process, transfers, class size, etc., on the grounds that the law did not require bargaining of these items. However, these same employers are now refusing to enter into meaningful discussion of these working conditions, even though required to do so by law. Apparently, the employers' real position is to maintain the status quo which the employer originally established.

It is not surprising to the employee organization to find school boards refusing to bargain or discuss. The June 10, 1974, issue of *Negotiation Notes*, which is a "house organ" of the Indiana School Boards Association, espoused its typical antiooperative attitude by stating that "local boards should bargain only those items which they have to, or those which they feel (whatever the reasons are) they want to do. The ISBA position, as stated many times, is that of limited scope as P.L. 217 provides."

Public Law 217 only provides a "limited scope" to the narrow-minded individuals bent on continuing the practice of unilateral and arbitrary decisionmaking. In reality, P.L. 217 mandates that some items must be bargained and clearly opens a broad scope of other items that may legally be bargained under the law. It is unfortunate to find that ISBA is telling school boards to do only what they have to do. Fortunately, our educational system as a whole continues to provide an exceptional education because employees far exceed doing just what they have to do.

At the same time, it is discouraging to the employees to see school

⁹ IND. CODE § 20-7.5-1-5 (1973), IND. ANN. STAT. § 28-4555 (Supp. 1974).

board members in Indiana using taxpayers' money to pay membership dues to their state organization and hire staff to run around the state extolling the position of doing nothing unless you have to. The May 6, 1974, issue of *Negotiation Notes* states, "Remember, no one—including the union—can force you to say 'yes'." This comes at a time when most of our society has long recognized that collective bargaining is a desirable process through which employee-employer relationships are enhanced.

The state organization of school boards seems to be holding to the 18th century philosophy that "the King can do no wrong." That organization has apparently been able to grab control of local school boards and generally prevent them from broadening the scope in bargaining even when it is beneficial to the educational programs. It appears that the state school boards organization has successfully convinced a majority of local boards that to broaden the scope in local bargaining would be synonymous with selling out the boards' autocratic rights.

The discussion process will not work so long as local school boards fail to recognize that the employees provide a public service rather than being a school board servant.

Ms. Doering suggests that the discussion process may fill the role of a grievance procedure on "nonbargainable" working conditions.¹⁰ There are no "nonbargainable" working conditions; however, there are permissively bargainable working conditions. Problems arising out of permissively bargainable areas, which have already been taken to the bargaining table and resisted by the employer, will not be resolved through a procedure of meeting and discussing so long as the employer has the authority to make the final decision. A refusal to bargain must be considered as a refusal to resolve differences through instituting change with a written guarantee to honor the new policy. Discussion will not elicit any further guaranteed solution to problems.

Ms. Doering raises a side issue on the question of the bargainability of a grievance procedure under Public Law 217.¹¹ She fails to note that section 3 of the law states that "school employers and school employees shall have the obligation and the right to bargain collectively the items set forth in Section 4"¹² Section 4 states that "[a] contract may also contain a grievance procedure culminating in final and binding arbitration."¹³ The law clearly mandates the bargaining of a

¹⁰ Doering, *supra* note 1, at 307 & n.107.

¹¹ *Id.* at 292 n.43.

¹² IND. CODE § 20-7.5-1-3 (1973), IND. ANN. STAT. § 28-4553 (Supp. 1974).

¹³ IND. CODE § 20-7.5-1-4 (1973), IND. ANN. STAT. § 28-4554 (Supp. 1974).

grievance procedure. However, as Ms. Doering points out, the law is permissive on the matter of arbitration as the final step of the procedure.

To an employee group, the Public Law 217 marriage of bargaining and discussion is incompatible and should be annulled. Discussion has not worked, and will not work, until the employer is required to change policies. When changes are made in policies or when current policies which are mutually acceptable are a part of one's employment, then a contract is necessary to guarantee against unilateral arbitrary changes in employment during any teaching year. This year it has been proven that discussions can last hours, days, and even months without results. Only bargaining will provide a contractual guarantee of stable and acceptable working conditions.