

A
BETTER

BARGAIN



**OVERHAULING
TEACHER
COLLECTIVE BARGAINING
FOR THE
21ST CENTURY**

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A Better Bargain: Overhauling Teacher Collective Bargaining for the 21st Century

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Executive Summary

At a time when disappointing student performance, stark achievement gaps, and an ever-“flattening” world call for retooling American schools for the 21st century, the most daunting impediments to doing so are the teacher collective bargaining agreements that regulate virtually all aspects of school district operations. These agreements are a critical part of the problem, and the solution, to the educational challenges we now face.

Today’s teacher collective bargaining agreements are vestiges of the industrial economic model that prevailed in the 1950s, when assembly-line workers and low-level managers were valued less for their knowledge or technical skills than for their longevity and willingness to serve loyally as a cog in a top-down enterprise. They are a harmful anachronism in today’s K–12 education system, where effective teachers are demanding to be treated as respected professionals and forward thinking leaders are working to transform schools into nimble organizations focused on student learning. Collective bargaining contracts are especially problematic on three fronts:

- They restrict efforts to use compensation as a tool to recruit, reward, and retain the most essential and effective teachers.
- They impede attempts to assign or remove teachers on the basis of fit or performance.
- They over-regulate school life with work rules that stifle creative problem solving without demonstrably improving teachers’ ability to serve students.

Union leaders typically greet this diagnosis with a reflexive refrain: “What is good for teachers is good for students.” While superficially appealing, that sentiment is simply untrue. In fact, the results of the collective bargaining process are too often incompatible with providing a high-quality education for all students. Growing public recognition of this reality has prompted some reformers and visionary union leaders to embrace the so-called “new unionism,” but unfortunately this high-minded approach has so far yielded more wishful thinking than tangible policy changes.

As equal parties to even the most cumbersome contracts, superintendents and school boards must share the blame for the status quo. They should chart a new course by working with union leaders to modify collective bargaining agreements on five key fronts:

- Teacher pay should reflect the scarcity and value of teachers’ skills, the difficulty of their assignments, the extent of their responsibilities, and the caliber of their work.
- Pension and health benefits should resemble those offered by other organizations competing for college-educated professionals, which will entail shifting from

industrial-era defined-benefit plans to defined-contribution plans better suited to the new economy and a professional workforce.

- While reasonable safeguards are essential, tenure should be eliminated from K–12 schooling or, at a minimum, contracts and state laws should be modified to enable management to more readily remove ineffective educators.
- Personnel should be assigned to schools on the basis of educational need rather than seniority.
- Work rules should be weeded out of contracts, and contracts should explicitly define managerial prerogatives.

These proposals are hardly new, but the urgency of their adoption is. The first order of business is to remake the environment in which collective bargaining is conducted and the manner in which the resulting contracts are implemented. This requires a commitment to strategies that will increase performance pressures in K–12 schooling:

- **Accountability:** More results-based accountability is needed throughout the system, from administrators to teachers. *One key step is the construction of reliable statewide databases that track individual students' academic progress over time so that teacher pay and professional development can be linked to classroom effectiveness.*
- **Choice and Competition:** Enhanced school choice and competition are essential to heighten incentives to improve student performance. *In particular, state officials should eliminate obstacles to the creation of charter schools that operate free from many statutory and contractual restrictions.*
- **Tough-Minded Governance:** District officials must shine light on inefficient contract provisions, push for fundamental changes in contract language, and fully exploit permissive or ambiguous language where it exists. *In addition, civic leaders and citizens must support management practices that may create, at least initially, disgruntled unions and increased labor unrest.*

A reform agenda based on these strategies can compel union leaders—however grudgingly—to recognize situations where the interests of their members are at odds with those of students, and to accept concessions that put the interests of students first. Such changes are essential to free our schools from their industrial era moorings and transform them into modern learning centers equipped to prepare citizens and workers for the Information Age that has already arrived.

Introduction

In the contentious world of school reform, the most daunting impediments to retooling our nation's schools to prepare *all* students for the rigors of 21st-century citizenship and employment are the collective bargaining agreements struck between teachers unions and school districts. Some four decades after the advent of collective bargaining in public education, these contracts now regulate virtually all aspects of school district operations, from how teachers are paid and assigned to schools, to the conditions under which they can be disciplined or fired, to the length of the school day and year. Designed for a bygone era, they forestall changes to educational practices and compensation systems that are essential to enhancing teaching and learning. While teachers unions have, at various times and in various locales, been partners in educational improvement, as well as convenient scapegoats for failed management, such considerations should not obscure this fundamental truth.¹

In the past five years, scholars and advocates from across the political spectrum have taken a fresh look at the role collective bargaining and teachers unions play in American education.² They have identified provisions in typical collective bargaining agreements that impede sensible management, especially in large urban districts and in these districts' most disadvantaged schools.³ Moreover, teacher collective bargaining agreements have become so comprehensive, that virtually any effort to alter the status quo in K–12 schooling will clash with them in some way. Given the need to improve our nation's schools—and the consistent failure of more resources alone to accomplish the task—it is only right that teacher collective bargaining has reached the top of the research agenda.⁴

The need for reform in public education has a special urgency in today's America, with nascent economic competitors abroad and continued low and unequal academic performance at home threatening the nation's economic vitality

1. Perhaps the most influential account of how teachers unions can contribute to education reform remains Charles Taylor Kerchner, Julia E. Koppich, and Joseph G. Weeres, *United Mind Workers: Unions and Teaching in the Knowledge Society* (San Francisco, CA: Josey-Bass, 1997). Recent union critiques include Peter Brimelow, *The Worm in the Apple: How Teacher Unions are Destroying American Education* (New York: Harper Collins, 2004) and Myron Lieberman, *The Teacher Unions: How the NEA and AFT Sabotage Reform and Hold Students, Parents, Teachers, and Taxpayers Hostage to Bureaucracy* (New York: The Free Press, 1997).

2. Jane Hannaway and Andrew Rotherham, ed., *Collective Bargaining in Education: Negotiating Change in Today's Schools* (Cambridge, MA: Harvard Education Press, 2006); Tom Loveless, ed., *Conflicting Missions: Teachers Unions and Educational Reform* (Washington, DC: Brookings Institution Press, 2000); Terry M. Moe, "Teachers Unions and Public Schools," in ed. Terry M. Moe, *A Primer on America's Schools* (Stanford, CA: Hoover Institution Press, 2001), 151–184; Terry M. Moe, "Political Control and the Power of the Agent," *Journal of Law, Economics, and Organization*, advance access published on 2 November 2005, DOI 10.1093/jleo/ewj011; David T. Conley, *Who Governs Our Schools? Changing Roles and Responsibilities* (New York: Teachers College Press, 2003); La Rae G. Munk, *Collective Bargaining: Bringing Education to the Table* (Midland, MI: Mackinac Center for Public Policy, August 1998); The Education Partnership, *Teacher Contracts: Restoring the Balance* (Providence, RI: The Education Partnership, March 2005); Dale Ballou, "The New York City Teachers' Union Contract: Shackling Principals' Leadership," *Civic Report 6* (New York: The Manhattan Institute, June 1999).

3. On the uneven distribution of the costs of collective bargaining, see Paul T. Hill, "The Costs of Collective Bargaining Agreements and Related District Policies," in Hannaway and Rotherham, *Collective Bargaining in Education*.

4. Eric A. Hanushek, "The Failure of Input-Based Schooling Policies," *The Economic Journal* 113 (February 2003): F64–F98.

and its commitment to the notion of equal opportunity. Reliable examinations of international student achievement routinely reveal that students in the United States lag far behind their peers abroad.⁵ Equally troubling, the National Assessment of Educational Progress reveals persistent gaps in achievement along the lines of class and ethnicity, with black 8th-graders reading and performing math at roughly the same level as white 4th-graders.⁶ The percentage of American students completing high school has actually fallen since 1970—a trend masked in official statistics by the growing number of students receiving alternative credentials such as the General Educational Development, or GED, certificate.⁷ Today, just 7 out of 10 students entering high school nationwide graduate four years later, and credible analyses estimate the graduation rate for black and Hispanic youth to be as low as 51 percent.⁸ In critical ways, our shared future hinges on the ability of our schools to answer these challenges. And collective bargaining agreements present formidable obstacles to that project.

While today's collective bargaining agreements hamstring reform efforts in significant ways, we do not believe that union leaders, in defending existing policies and prerogatives, desire to impede school management—or even that they are behaving irresponsibly in light of their obligations to the members who elect them. We have never met a teacher who would prefer to work in a dysfunctional school district or a school where children aren't learning. We therefore reject, categorically, *ad hominem* attacks on union leaders and their members.

The simple truth, however, is that union leaders are elected by current members to protect their interests.⁹ While unions claim to be—in the words of the National Education Association—advocates “for children and public education,” the truth is otherwise.¹⁰ As Robert Barkley, former executive director of the Ohio Education Association, has succinctly explained, “The fundamental and legitimate purposes of unions [are] to protect the employment interests of their members. It is the primary function of management to represent the basic interests of the enterprise: teaching and learning.”¹¹

Teachers unions favor existing arrangements that protect jobs, restrict the demands placed on members, limit accountability for student performance, and safeguard the privileges of senior teachers, not because they benefit students, but because they benefit existing members. Teachers who entered the profession under these rules and patiently served their time, waiting for the dollars and the perks of seniority, are understandably resistant to reforms that would upend pay scales, job protections, or work rules—whatever their implications for student achievement. In accepting this state of affairs as an inevitable starting point, we offer a reform agenda that departs from both the rosy optimism of “new

5. American 15-year-olds, for example, scored 24th out of the 29 OECD countries participating in the 2003 PISA assessment of mathematics literacy. Organization of Economic Co-Operation and Development, *Education at a Glance 2005* (Washington, DC: Organization of Economic Co-Operation and Development, September 2005).

6. National Center for Education Statistics, *The Nation's Report Card: Mathematics 2005* and *The Nation's Report Card: Reading 2005* (Washington, DC: United States Department of Education, October 2005).

7. Duncan Chaplin, “Tassels on the Cheap,” *Education Next* 5 (Summer 2005): 73–77.

8. Jay P. Greene and Greg Forster, “Public High School Graduation and College Readiness Rates in the United States,” *Manhattan Institute Education Working Paper* 3 (New York: The Manhattan Institute, September 2003).

9. Moe, “Teachers Unions and Public Schools,” 151–184.

10. National Education Association, *For Children and Public Education* (Washington, DC: National Education Association, 2000).

11. Robert Barkley, “Letter to the Editor: Teacher Contracts, Student Needs,” *Education Week*, 7 December 2005, p. 38.

SIDEBAR 1

Collaborative Union Leaders Get Lauded, and Unseated

Union leaders are rarely voted out, and when they are, the reasons aren't always clear. There is a lot of evidence, though, that union officials who seek to professionalize teaching, rethink the contract, or partner with districts in reform efforts are courting a challenge from hard-liners in the ranks.¹

For instance, in 2000, Cincinnati Federation of Teachers President Rick Beck agreed to a modest merit-pay pilot only to be ousted the following April by a challenger opposed to the plan. The new policy, which would have eventually based salaries in part on teacher evaluations, had won the support of even the most die-hard opponents of market-based reforms. *New York Times* columnist Richard Rothstein, wrote, "A radical experiment in teacher pay here could become a national model if successful," and concluded that, "Cincinnati's experiment is the one to watch." But in the next leadership election campaign, Susan Taylor accused Beck of failing to protect teachers and

argued that the experiment should be curtailed—a stance that won her 78 percent of the vote.

Similar circumstances led to the ouster of the union chief in Hartford, Connecticut. Since being taken over by the state in 1997, the Hartford Public Schools had won widespread acclaim as an example of management and labor working together effectively. The Hartford Federation of Teachers even served as host of a national 2001 AFT conference on collaborating with school management to improve failing schools. It turned out, though, that a lot of Hartford teachers weren't happy with their union playing the role of partner. As one teacher, Joe Troiano, asked in a *Hartford Courant* article, "Does it really cost almost \$700 a year [in dues] to say 'yes, yes' to administration?" In 2002, incumbent union president Edwin Vargas was defeated by challenger Tim Murphy. Murphy had previously served as HFT president from 1978 to 1986, a conflict-ridden period marked by

troubled school performance. Murphy reclaimed the presidency by promising to advocate more for the interests of teachers. "I will not allow what happened to Ed Vargas happen to me," Murphy told the *Hartford Courant*.

It was a palace coup that felled United Educators of San Francisco president Kent Mitchell and his cabinet in 2003, when the union's secretary, Dennis Kelly, and his colleagues took over the office, winning 60 percent of the vote. Union insiders said that Mitchell lost because he had become too close with district administrators. Mitchell admitted to the *San Francisco Chronicle*, "It would seem that the membership has decided that they would prefer a more confrontational approach."

Ironically, Mitchell had claimed the presidency as a challenger himself; in 1997, he had defeated President Joan Shelley, who had been president for more than a decade until—as a *San Francisco Chronicle* May 1997 article put it—she was thought to have "grown too cozy with the district's management."

1. Information for this sidebar provided by Mike Antonucci, director of the Education Intelligence Agency (EIA), email correspondence with author, 2 November 2005. All newspaper quotations included in this sidebar are drawn from weekly news summaries available on the EIA website. We are grateful to Mr. Antonucci for bring these incidents to our attention.

unionist" reformers and the stridency of more extreme union critics who seemingly hope to berate unions into changed conduct.

Proponents of the new unionism contend that a collaborative approach to collective bargaining focused on the needs of students will yield substantial benefits, even in the absence of more fundamental institutional changes. But the reality is that the interests of union members sometimes clash with those of students, parents, and taxpayers—especially when it comes to addressing anachronistic work rules, increasing accountability for students' academic progress, or reconfiguring compensation to reward excellence in the classroom. As even a champion of the new unionism acknowledges, "In exchange for the right to exclusively represent their members, unions are required to represent and advocate for *all* members, even the bad actors."¹² Common sense suggests—and experience confirms—that union leaders who fail to pay adequate attention to their members' interests can expect to be replaced by someone who will. [See Sidebar 1]

12. Linda Kaboolian, *Win-Win Labor-Management Collaboration in Education: Breakthrough Practices to Benefit Students, Teachers, and Administrators* (Bethesda, MD: Education Week Press, 2006).

The answer, then, is not fond hopes that union leaders will be sweet-talked or shamed into embracing change. With rare exceptions, the demands placed on leaders within the current policy environment make new unionist proposals unworkable. Moreover, reflexive efforts to modify contract provisions are unlikely to succeed unless the policy climate and political environment in which agreements are negotiated are recast. Nor is seeking to eliminate collective bargaining a useful goal. Not only is it politically hopeless, evidence from other industries suggests that unions can be partners in promoting quality, efficiency, and innovation under the proper conditions.¹³

The mission for school reformers, philanthropists, and public officials, then, is to foster those conditions by advancing measures that prompt unions to accept increased flexibility, accountability, and meritocracy for self-interested reasons. Only with such changes will schools be equipped to provide all children with the preparation they need to be good citizens, claim high-wage jobs, and perform effectively against international competitors in the 21st century.

13. Richard B. Freeman and James L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984).

Why Collective Bargaining Matters

Though they have attracted little media or, until recently, scholarly attention, teacher collective bargaining agreements shape nearly everything public schools do. These contracts are long, complicated, and barbed with detailed if at times ambiguous restrictions. The 199 teacher collective bargaining agreements on file at the Bureau of Labor Statistics in January 2005 spanned, on average, 105 pages.¹⁴ While it is a mistake to suggest that all contracts are similar, there are important regularities in how contracts are bargained, structured, and implemented.

As their length suggests, the topics covered in teacher bargaining agreements extend far beyond bread-and-butter questions of salary and benefits. In Eau Claire, Wisconsin, for example, the contract sets out a “standard day” for K–5 teachers in painstaking detail:

A standard day shall be defined as 435 minutes, excluding lunch but including a morning homeroom period of 7–15 minutes, e.g., where teachers will supervise students entering the building, take roll, take lunch count, make announcements, etc. The teaching day shall not exceed 349 minutes of classroom teaching, thirty (30) minutes for lunch and thirty (30) minutes of recess. Outside of the forty-five (45) minutes guaranteed prep time and a thirty (30) continuous minute block for lunch daily, up to eighteen (18) hours per year of the standard work day (an average of six (6) minutes each day — thirty (30) minutes per week) may be assigned each teacher for supervisory duties.¹⁵

Among other matters, contracts routinely spell out procedures for evaluating teachers, allowances for preparation time, regulations on the use of substitute teachers, stipends for overseeing extracurricular activities, protocol

14. Frederick M. Hess and Andrew P. Kelly, “Scapegoat, Albatross, or What? The Status Quo in Teacher Collective Bargaining,” in Hannaway and Rotherham, *Collective Bargaining in Education*.

15. *Eau Claire Association of Educators Contract 2003* (Wisconsin), article V, section A, part 11a.

for disciplining students, the extent and nature of professional development, and strictures on class size.

As the only accepted measure for making personnel decisions in workplaces where performance can be difficult to gauge, seniority has long enjoyed a privileged place in collective bargaining. The unions have aggressively imported it into K–12 schooling, where the centrality of seniority is illustrated by clauses like the one in Livonia, Michigan, that stipulates, “The seniority list shall be published by December 15 of each year, with notation of certifications then on file with the Board for each teacher. They will be posted in the area of each building reserved for teachers’ use. A copy of the posted seniority list and all subsequent updates shall be provided to the Association.”¹⁶

Contract provisions on key topics are often maddeningly complicated or even ambiguous. The Little Rock, Arkansas, contract stipulates, “An individual teacher’s lesson plan book shall be subject to the review of the principal at any time,” before clarifying that “teachers shall not be required to make their lesson plan books available on a scheduled basis.”¹⁷ Language regarding teacher transfers in the St. Louis, Missouri, contract reads in part, “System-wide seniority will be given due consideration in making transfers” and that if two employees are equally qualified, “transfers or promotion of the employee shall be made on the basis of system-wide seniority.” The same section, however, specifies that “any transfer may be denied for the good of the system.”¹⁸

Many contracts are also cluttered with more idiosyncratic provisions. In Bow, New Hampshire, for example, the contract specifies, “Teachers shall be permitted to wear the official NEA/NEA-NH membership pin.”¹⁹ The Wicomico County, Maryland, contract ensures, “The Board shall continue to pay the annual membership fee for all unit members who elect to join and maintain their eligibility in the Board’s group blood bank program.”²⁰ In Appleton, Wisconsin, the contract devotes a paragraph to the topic of “Physical Exam and X-Ray.” The clause requires, “Every professional educator new to the Appleton Area School District shall be given a physical examination and x-ray (or a TB skin test) as a condition of employment.” The Appleton contract also includes a three-paragraph section on “Hepatitis B Immunization” in which the district recommends immunization to teachers deemed at risk of hepatitis B but clarifies that it will not “require any professional educator to obtain Hepatitis B immunization.”²¹

The degree of the teacher contract’s influence on district operations has consistently surprised novice administrators with backgrounds in other industries. Howard Fuller, who served five years as superintendent of the Milwaukee Public Schools after stints as director of the Milwaukee County

16. *Professional Agreement Between the Livonia Public School District and the Livonia Education Association 1999–2003* (Michigan), article XXVI, section A and D.

17. *Professional Negotiations Agreement Between the Board of Directors of Little Rock School District and the Little Rock Classroom Teachers Association 2000–2003* (Arkansas), article 29, part M.

18. *St. Louis Board of Education Policy Statement* (Missouri), articles II–III.

19. *Master Agreement By and Between the Bow School Board and the Bow Education Association 2000–2003* (New Hampshire), article VII, section 1, “Teacher Rights.”

20. *Agreement Between the Wicomico County Board of Education and the Wicomico County Education Association 2003–2007* (Maryland), article XIV, section 9.

21. *The Agreement and the Memorandum of Understanding Between the Appleton Area School District and the Appleton Education Association 2001–2003* (Wisconsin), part III, section B and C.

Department of Health and Human Services and Secretary of the Wisconsin Department of Employee Relations, noted with frustration,

The [Milwaukee Public Schools] contract's size—which grew from 18 pages in 1964 to 174 pages in 1992–93—makes it a complex, sometimes impenetrable document. There also is a 'contract behind the contract.' It includes the 1,700 [memoranda of understanding], nearly 300 grievance-arbitration rulings, and various state declaratory rulings. Together, they comprise more than 2,000 documents. No more than a handful of largely anonymous management and union staff understand them.²²

For Joel Klein, who became chancellor of the New York City school system in 2002 after previously serving as the chairman and chief executive officer of Bertelsmann, Inc., and as assistant attorney general in charge of the U.S. Department of Justice's antitrust division, the move to education has been eye-opening. "Unions ... micro-regulate schools through a contract," he told an audience after his first year as chancellor. "When I ran a law firm, we didn't do business like that."²³

An Obstacle to Change

Collective bargaining both defines and preserves the status quo in schooling. Indeed, the sheer scope of teacher collective bargaining agreements ensures that they will collide with virtually any reform effort that sets out to change established practices in education. Most contracts, for instance, mandate a strict, "step-and-lane" salary schedule that is based almost entirely on years of experience and hours of graduate credits or graduate degrees. Proposals to deviate from this system—for instance, to incorporate merit pay for highly effective teachers or bonuses for teachers in low-performing schools—have consistently been resisted by union negotiators at the bargaining table, in local referenda, and in national policy discussions. Even the modest pay-for-performance system recently introduced in Denver, which rewards teachers for increasing student achievement and for meeting more subjective performance goals, was enacted only after years of struggle—despite the fact that the plan includes a sizable pay boost for participants, continues to provide premiums for traditional credentials, and is voluntary.²⁴

Collective bargaining agreements stifle proposed reforms on a variety of fronts. Curricular or organizational reforms, such as an extended school day

22. Howard L. Fuller, George A. Mitchell, and Michael E. Hartmann, "The Milwaukee Public Schools' Teacher Union Contract: Its History, Content, and Impact on Education," Report 97-1 (Milwaukee, WI: Institute for the Transformation of Learning, Marquette University, October 1997), 4.
23. Joel Klein, in a speech to the Citizens' Committee for Children, 16 October 2003, New York City.
24. Brad Jupp, "The Uniform Salary Schedule," *Education Next* 5 (Winter 2005): 10–12.

(a reform that has predictably boosted student achievement in some low-performing schools), can fall prey to the contract because they conflict with work rules.²⁵ By forcing districts to use only those intervention options that do not conflict with contractual provisions, local agreements may also undermine the ability of the No Child Left Behind Act to press districts to overhaul persistently low-performing schools. [See *Sidebar 2*]

Collective bargaining is also the source of teachers unions' political resources. Union dues, augmented by dollars deducted from the paychecks of nonmembers through laws allowing unions to collect funds from all teachers covered by the contract, are wielded to construct and maintain a policy framework hospitable to union interests. Many contracts even include provisions that provide release time for teachers to engage in political activities. The Indianapolis, Indiana, contract, for instance, provides, "Sixteen (16) days in each even-numbered year and twenty-four (24) days in each odd-numbered year shall be available for released time for teachers to work on legislative matters, including visits to the Indiana General Assembly and related activities which may include meetings with the IPS Legislative Liaison Office."²⁶

Today, teachers unions are among the most powerful interest groups in local, state, and national politics. The two largest national unions, the National Education Association (NEA) and the American Federation of Teachers (AFT), claim a combined membership of 4 million, and 73 percent of public-school teachers surveyed in a recent national poll reported that they belong to a union.²⁷ The unions are stronger than even these numbers would imply. As Dan Schnur, a Republican political strategist, has explained, "People like teachers, and voters listen to what they think teachers are telling them. Add that overall positive reputation to a huge pile of money, and you've got a pretty formidable political force."²⁸

The Other Side of the Table

Despite the conspiratorial tones in which critics sometimes discuss the NEA, the AFT, and collective bargaining, no agreement is unilaterally imposed. All agreements are bargained in good faith by two parties and signed by district officials. To the extent that provisions hinder effective management or thwart school improvement, both district management and the teachers union are responsible.

Moreover, in many communities, contracts may be less restrictive than superintendents or school board members claim. A close reading of contracts frequently reveals a degree of flexibility that administrators fail to exploit.²⁹ As one former school board member from a large urban district noted,

25. Sol Stern, "A Façade of Excellence," *Education Next* 3 (Summer 2003): 20–28; Joe Williams, *Cheating Our Kids: How Politics and Greed Ruin Education* (New York: Palgrave Macmillan, 2005), 39.
26. *Agreement Between the Board of School Commissioners of the City of Indianapolis and the Indianapolis Education Association 2003–2005* (Indiana), article XV, section 7.
27. Membership numbers according to the unions' websites. National Education Association, sec. "About NEA," <www.nea.org/aboutnea/index.htm> (18 January 2006); American Federation of Teachers, sec. "About AFT," <www.aft.org/about/index.htm> (18 January 2006). Percentage of teachers who are union members comes from a poll designed and commissioned by Terry M. Moe and carried out by Harris Interactive on a national sample of current public school teachers in 2003.
28. Jordan Rau, "Powerful Teachers Union Is in the Thick of Ballot Battles," *Los Angeles Times*, 28 September 2005, sec. A1.
29. Hess and Kelly, "Scapegoat, Albatross, or What?"; Ballou, "The New York City Teachers' Union Contract."

SIDEBAR 2

No Child Left Behind: A Missed Opportunity?

The legislative process leading up to the passage of No Child Left Behind (NCLB), the sweeping reauthorization of the Elementary and Secondary Education Act signed into law by President George W. Bush in January 2002, is widely believed to have been an unmitigated disaster for teachers unions. After all, the unions have long opposed strong accountability systems, and their criticism of NCLB since its passage has been intense. The National Education Association even filed a federal lawsuit charging that the law is an “unfunded mandate” and demanding immediate relief.

While the notion that NCLB was a major setback for the unions contains considerable truth, it nonetheless obscures key union victories in the law’s drafting and its subsequent implementation. The national unions’ singular priority in 2001 was ensuring that the reauthorized federal school law would not interfere with the collective bargaining process. And, although early drafts contained language intended to undercut collective bargaining rights, in the end NCLB became the first federal education law to recognize explicitly the role of collective bargaining in education governance. Section 1116d of the 669-page law guarantees, “Nothing in this section shall be construed to

alter ... the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.” As a consequence, although the law lists replacing most or all of a school’s staff and converting it into a charter school among the restructuring options for schools that fail to make “adequate yearly progress” for five consecutive years, states and districts cannot pursue those options if they conflict with existing collective bargaining agreements.

But did Congress intend for Section 1116d to apply also to newly adopted contracts? Sensing an opportunity to give district managers additional leverage in future contract negotiations, Secretary of Education Rod Paige, himself a former district superintendent, proposed regulations asserting that it did not: “When the collective bargaining agreements, memoranda of understanding, or other agreements ... are renegotiated, [the district] must ensure that those agreements do not prohibit actions that [the district] *may* be required to take with respect to school or school district employees.” (italics added) The implication, it seemed, was that collective bargaining agreements would have to allow local officials to select any

of the restructuring options specified in the law. The unions responded to the proposed regulations with a massive lobbying and letter-writing campaign that led Secretary Paige to back down.² Today, it is understood that districts must comply with NCLB requirements in a manner that accommodates the local collective bargaining agreement.

Officials in some districts have nonetheless exploited the leverage NCLB provides to win new concessions. In Philadelphia, where the public school system is in state receivership, the union agreed to give up some seniority hiring rights to allow the district more flexibility in assigning teachers to low-performing schools. Elsewhere, however, local unions are working to use this loophole to skirt the law’s intent. Teachers in the 4,200-student Oregon Trail District in Sandy, Oregon, for example, recently went on strike in search of assurance that faculty would not be replaced or transferred merely because their school was “in need of improvement.” Where such efforts are successful, the law’s mechanisms for transforming persistently failing schools may be rendered essentially inoperative.³

2. “Rights of School and School District Employees,” Federal Registry 67, 22 July 2002, sec. 200.54; see Secretary Rod Paige’s “Dear Colleague Letter,” 14 June 2002, accessed online at <www.ed.gov/policy/elsec/guid/secletter/020614.html> (18 January 2006).

3. Julia Silverman, “No Child Left Behind is becoming an issue in teacher contract talks around the country,” Associated Press, 9 November 2005, accessed online at <www.abcnews.com/US/wireStory?id=1296342&page=1> (18 January 2006).

Too often school boards and superintendents complain that they cannot do something because of the teachers union contract. Often what they were complaining was restricted wasn’t actually prohibited by the contract ... but might cause some political difficulties or raise some public issues.

She went on to blame the central administration’s resistance to accountability policies on the fact that “many of them had been teachers. They came from ... a

culture dismissive of personal accountability for performance. That was part of their culture as educators.”³⁰

Of course, it may be that unions accept ambiguity in key contract provisions because they are confident that they can control their implementation in other ways: by filing countless grievances, influencing school board elections, or establishing informal ties with the management team. Even so, it is undoubtedly the case that superintendents and school boards have sometimes found it convenient to use unions as a scapegoat so as to avoid political conflict or legal squabbles. A balanced assessment of collective bargaining therefore requires paying attention to union activity and formal contractual restrictions, but also to the behavior of superintendents, school boards, and principals.

30. A former school board member, telephone interview by author, 22 November 2005.

The Rise of Teacher Collective Bargaining

Until the 1960s, collective bargaining was largely foreign to K–12 schooling. School districts enjoyed a free hand in setting teacher compensation and work conditions, subject only to minimal state regulations. Wages were kept low, especially among the population of predominantly female elementary school teachers, and working conditions were often abysmal. Without the protections of legally enforceable contracts, teachers lacked protection against administrator favoritism and abuse.³¹ In that milieu, teacher collective bargaining represented a sensible and constructive development. The approaches and mindset of today’s union leaders reflect that early fight for fair and equitable treatment, which they continue to view in heroic terms. As two high-ranking union officials and a friendly professor put it in the opening lines of a recent book, “Few in the long-time teachers union ranks will forget the epic struggles to win contracts and establish bargaining rights.”³²

The pivotal moment in those struggles came in 1960, when, following a one-day walkout by the United Federation of Teachers (UFT), New York City Mayor Robert Wagner allowed teachers to vote whether to pursue formal collective bargaining. In June 1962, after another strike, the UFT negotiated a formal collective bargaining agreement—the nation’s first for teachers—offering an across-the-board pay increase of nearly \$1,000 and a duty-free lunch period.³³

The events in New York City, which were widely covered in the national media, sparked a rapid increase in union membership among teachers.³⁴ Membership in the American Federation of Teachers (AFT), the parent union of the UFT, increased from 60,000 at the time of the NYC walkout to 175,000 in 1968. The NEA—the AFT’s larger, more pedigreed competitor—responded by dropping its longstanding concerns that collective bargaining was unprofessional, embracing the right to strike, and ejecting supervisors and administrators from its ranks.³⁵

31. Richard D. Kahlenberg, “The History of Collective Bargaining Among Teachers,” in Hannaway and Rotherham, *Collective Bargaining in Education*; Marjorie Murphy, *Blackboard Unions: The AFT and the NEA, 1900–1980* (Ithaca, NY: Cornell University Press, 1990).

32. Ronald D. Henderson, Wayne J. Urban, and Paul Wolman, introduction to ed. Ronald Henderson, Wayne Urban, and Paul Wolman, *Teacher Unions and Education Policy: Retrenchment or Reform?* (New York: Elsevier, 2004), xii.

33. Kahlenberg, “History of Collective Bargaining.”

34. David L. Angus and Jeffrey Mirel, *Professionalism and the Public Good: A Brief History of Teacher Certification* (Washington, DC: The Thomas B. Fordham Foundation, 2001), 32.

35. Kahlenberg, “History of Collective Bargaining.”

Pressured by the NEA and AFT, states began adopting laws sanctioning collective bargaining for teachers. According to NEA researchers, 34 states and the District of Columbia currently have laws obligating districts to engage in collective bargaining with organized teachers. Eleven more states have laws providing for “permissive collective bargaining rights at the discretion of the employer,” while Georgia and South Carolina have no specific laws protecting or denying collective bargaining for teachers.³⁶ In three states—North Carolina, Texas, and Virginia—state law explicitly stipulates that districts may not collectively bargain. Even in Texas, however, teachers frequently organize, select representatives, and find districts willing to negotiate through a process called “meet and confer.” [See *Sidebar 3*] And because courts have consistently ruled that state efforts to prevent public employees from joining unions are a violation of the First Amendment right to free association, all 50 states have affiliates of one of the two major national teachers unions.³⁷

In sum, teacher collective bargaining, while a relatively recent phenomenon, has rapidly ascended to a prominent place in public education. Unfortunately, because this development preceded the collection of reliable national data on academic outcomes, observers looking for empirical explanations of how it affected student performance will remain disappointed by research findings.³⁸ Yet the pressing question today is whether elements of collective bargaining, as currently practiced, hinder future improvement. If so, what might be done to improve the situation? To answer this question, we examine the world of collective bargaining in more depth.

36. The eleven states with permissive legislation are Alabama, Arizona, Arkansas, Colorado, Kentucky, Louisiana, Mississippi, Missouri, Utah, West Virginia, and Wyoming. National Educators Association, *Collective Bargaining Rights for Education Employees in the United States* (November 2003). Information on Georgia and South Carolina from a National Education Association representative, email correspondence with author, 19 December 2005.

37. While the First Amendment explicitly constrains only the U.S. Congress, the Supreme Court has applied the protections pertaining to freedom of association to the states through the 14th Amendment’s “due process” clause. A 1968 appeals court decision codified this right for teachers, noting, “Teachers have the right of free association, and unjustified interference with teachers associational freedom violates the due process clause of the 14th amendment.” *McLaughlin v. Tilendis* (1968), 398 F.2d 287, as quoted in Louis Fischer, 2nd ed., *Teachers and the Law* (New York: Addison Wesley Longman, Inc., 1999), 60.

38. Simple comparisons of the quality and productivity of education in unionized and non-unionized districts and states fail to account for unobserved characteristics of school systems that make teachers more likely to unionize. The most convincing attempt to address this problem indicates that teacher collective bargaining increases school spending by 12 percent but leads to a 2.3 percent increase in dropout rates, suggesting that unionization reduces productivity. Caroline Minter Hoxby, “How Teachers’ Unions Affect Education Production,” *The Quarterly Journal of Economics* 111 (August 1996): 671–718. For a recent review of the literature on the impact of teachers unions on student outcomes, see Dan Goldhaber, “Are Teachers’ Unions Good For Students?” in Hannaway and Rotherham, *Collective Bargaining in Education*.

SIDEBAR 3

Labor Relations in Non-Bargaining States

In more than a dozen states, districts are not legally obligated to engage in exclusive collective bargaining with organized teachers. Even in those states that specifically prohibit bargaining, however, there is little evidence that districts have sought to design compensation schemes, working conditions, or terms of service in significantly different ways.⁴

In states that do not specifically permit collective bargaining, many districts—especially the larger ones—elect to engage in some form of formal discussions or negotiations with their teachers. This has many of the same practical effects as formal collective bargaining. In Wyoming, for example, the majority of districts choose to engage in discussions or negotiations that address many of the same issues as traditional bargaining agreements. Every single Wyoming district uses a salary schedule, and 35 of the 48 districts employ some form of collective negotiations process (with 17 of those districts employing a “meet and confer” arrangement and 13 an

“interest-based” negotiation process). The 13 districts that use interest-based negotiations enroll more than half of the state’s K-12 students.⁵

Other states without bargaining protections have enshrined in state law, often at the behest of the teachers associations, many of the same protections and regulations a bargaining agreement would typically provide. In Georgia, for instance, the education code addresses many of the same issues as typical collective bargaining agreements, including teacher rights, salaries, work days, retirement plans, class size, and tenure policies. State law also spells out the “grounds for termination or suspension” and procedures on professional development, requiring that school budgets include “an amount of funds for the purpose of providing staff and professional development to certificated and classified personnel and local school board members which shall be at least equivalent to 1.5 percent of salaries of all certificated professional personnel used in the development of each

respective program weight.”⁶

Even in Texas, where collective bargaining is prohibited, many districts engage in “meet and confer,” a process that the Association of Texas Professional Educators describes as “different than collective bargaining and therefore legal because employees’ input is considered advisory; there is no binding legal contract and the school boards make any final decisions.”⁷ In practice, according to a national NEA official, “the policies that result from ‘meet and confer’ or ‘exclusive consultation’—even though they’re not legally binding—are treated by district officials as if they were legally binding.”⁸ Moreover, as in Georgia, the Texas Education Code contains detailed provisions governing teachers’ hours, contract terms, termination procedures, and even class size. As former Houston schools superintendent and U.S. Secretary of Education Rod Paige explains, “In Texas, where we don’t have collective bargaining, the union has just gotten the legislature to write measures into state law.”⁹

4. Hess and Kelly, “Scapegoat, Albatross, or What?”

5. A Wyoming Education Association representative, telephone interview and email correspondence with author, 12 October 2005.

6. The Georgia Education Rules are available online at <http://public.doe.k12.ga.us/pea_board.aspx?PageReq=PEABoardRules> (18 January 2006).

7. Association of Texas Professional Educators, “Collective Bargaining/Exclusive Consultation,” 15 June 2004, available online at <www.atpe.org/EduIss/ColBarExcCon.htm> (18 January 2006).

8. A National Education Association national official, conversation with author, 16 December 2005.

9. Rod Paige, conversation with author, 6 October 2005.

The Real World of Collective Bargaining

The negotiation and implementation of teacher collective bargaining agreements does not occur in a vacuum. Several contextual factors play a key role in shaping the bargaining process and help determine how contracts impact school districts. Four of the most significant considerations are 1) provisions in state law regulating the “scope” of bargaining; 2) the threat of teacher strikes; 3) the procedures followed when the union files a grievance; and 4) the extent of media coverage of the bargaining process.

Scope Provisions

“Scope” refers to whether bargaining on certain issues—like questions of class size and length of the school day—is required, permitted, or impermissible. Early collective bargaining laws often limited negotiations to issues of pay and working conditions in an attempt to preserve management discretion over policy matters. It soon became apparent, however, that this distinction was difficult to maintain. A comment made by a teacher in an early study of collective bargaining for public employees illustrates the problem: “Below 30, class size is a matter of policy; above 38, it becomes a working condition.”³⁹ Definitions aside, the extent to which scope provisions are enforceable is debatable. As one experienced negotiator of teacher contracts explains, “Whether or not a particular demand represents a mandatory or non-mandatory subject may be irrelevant if either side cares deeply enough about it.”⁴⁰ Ultimately, the tendency for collective bargaining to spill into managerial prerogatives poses real problems for school reform. How effectively scope provisions can combat that tendency, however, remains an open question.

Teacher Strikes

Casual observers often imagine that it is the threat of teacher strikes that is responsible for the restrictiveness of contract language and the inability of school boards to win meaningful concessions. In the 1960s and 1970s, the number of

39. Sterling D. Spero and John M. Capozzola, *The Urban Community and its Unionized Bureaucrats* (New York: Dunellen Publishing Company, Inc., 1973), 189.

40. Melvin H. Osterman Jr., “Public Education,” in ed. John L. Bonner, *Labor-Management Relations in the Public Sector: Redefining Collective Bargaining* (Horsham, PA: LRP Publications, 1999).

teacher strikes exploded—from three in 1960–61 to 241 in 1975.⁴¹ As explained above, the gains teachers made during this era of militancy undoubtedly played a key role in the success of the AFT and NEA in winning new members.

Since 1975, however, the incidence of teacher strikes has declined dramatically, falling to 99 nationwide in 1991 and 15 in 2004.⁴² Experts typically attribute this decline to increased bargaining experience on both sides, state laws requiring arbitration or prohibiting strikes, and the rise of collaborative bargaining approaches.⁴³ Said one union official, “Over time, you come to know what to expect. In the 1970s and even into the 1980s, many districts and locals were still feeling their way.”⁴⁴

The reality is that teacher strikes are now regarded with distaste by union leaders and trepidation by school board members. As one national AFT official put it, “Simply put: strikes don’t work very well.”⁴⁵ The present era of labor peace reflects both parties’ willingness to accept the status quo in collective bargaining agreements, with unions foregoing militant tactics and district management avoiding any provocation.

Grievance Procedures

Once collective bargaining agreements are put in place, there is always the possibility that management and the union will disagree about how the contract applies in a given case. When the union believes that management actions may violate the contract, it follows procedures spelled out in the contract to file an appeal or a grievance. This routinely occurs, for instance, when management seeks to terminate or discipline an employee.

Critics of teachers unions assert that unions’ institutional resources and specialized expertise give them a clear advantage in the ensuing proceedings. Ron Wilson, executive director of the North American Association of Education Negotiators, says, “There is a definite difference in expertise [between unions and school districts] ... Districts often utilize labor relations consultants to close the gap, but small districts have to rely on associations to provide them the resources they need.”⁴⁶ The most striking example of union coordination may be the NEA’s UniServ system, a nationwide network of 1,650 full-time and 200 part-time employees who provide local affiliates guidance on matters including negotiations and grievance resolution. The NEA touts the UniServ program as “a vast cadre of human resources,” on which it spent approximately \$50 million in 2001 (the most recent year, to our knowledge, for which expenditure data are publicly available).⁴⁷

NEA leaders, however, downplay the significance of UniServ, noting that its employees have multiple responsibilities, work with several districts, and offer

41. Lorraine McDonnell and Anthony Pascal, *Organized Teachers in America’s Schools* (Santa Monica, CA: RAND Corporation, February 1979), 26. For an extensive look at teacher strikes in the 1960s and 1970s, see Bruce S. Cooper, *Collective Bargaining, Strikes, and Financial Costs in Public Education: A Comparative Review* (Eugene, OR: ERIC Clearinghouse on Educational Management, 1982).

42. Ann Boyko, “School Employee Strikes Fell in 2003–2004 School Year,” *The School Leader News* (Cumberland, PA: Pennsylvania School Boards Association, 23 July 2004).

43. Bess Keller, “Few Teachers’ Strikes Mark U.S. Landscape,” *Education Week*, 6 October 2004, p. 3.

44. A National Education Association official, telephone conversation with author, 12 April 2005.

45. American Federation of Teachers official, conversation with author, 15 June 2005.

46. Ron Wilson, telephone conversation with author, 9 February 2005.

47. National Education Association, “A Vast Cadre of Human Resources,” *NEA Today* (Washington, DC: National Education Association, 2001).

expertise that pales beside the staff districts can readily hire. Moreover, union officials point out that school districts command far greater legal and budgetary resources.⁴⁸

In practice, the restrictiveness of contracts turns heavily on the outcomes of appeal and grievance procedures. In a telling example of their import, the Los Angeles Board of Education faced enormous challenges in 2002 when it sought to remove about 400 of the 35,000 teachers in the chronically low-achieving district. The board found its effort stymied both by arduous grievance procedures and by contractual protections for teachers. In the end, the board was able to remove only *three*, and arbitrators overturned two of those on appeal.⁴⁹

Media Coverage

The failure of the public and more than a few policymakers to understand the contours of the negotiation process and resulting agreements reflects, in part, the scant attention the media devotes to these dealings. For instance, the only systematic study of media coverage revealed that in 12 out of 20 relatively large districts, the local daily newspaper ran no more than one article covering the contract negotiations, and most of these appeared after the contract was settled. In just four districts, each of which was engaged in unusually contentious or nationally significant negotiations, were more than three articles written about the negotiations or the contract.⁵⁰

Addressing the limited coverage of collective bargaining, a national union official explained, “Bargaining is conducted behind closed doors. Neither side ‘goes public,’ even to its own members, until the entire contract is done. This is necessary because there is so much ‘horse trading’ that nothing is final until the entire contract is done.”⁵¹ On the other hand, one former school board member from a large urban school district (who did not want to be identified for fear of retribution) said, “My experience is that confidentiality is *always* breeched, with the union ‘leaking’ inaccurate information to the press and their members during the negotiations. This makes good faith negotiations difficult.”⁵²

Richard Colvin, a veteran education reporter and director of Columbia University’s Hechinger Institute on Education and the Media, appropriately rejects all excuses for journalistic inattention:

The fact that parties to one of the most important negotiations in any community choose to keep them private doesn’t absolve

48. A national American Federation of Teachers official, email correspondence with author, 1 June 2005.

49. Frederick M. Hess, *Common Sense School Reform* (New York: Palgrave MacMillan, 2004), 124.

50. Hess and Kelly, “Scapegoat, Albatross, or What?”

51. A national union official, email correspondence with author, May 2005.

52. A former school board member, email correspondence with author, 24 January 2006.

reporters of the responsibility to dig and find out what both sides are proposing and whether it would contribute to or serve to undermine student achievement. It also doesn't absolve reporters of the responsibility, once negotiations are completed, to go beyond the press release and ferret out the details of the contract and to ask what that means for the community's children.⁵³

While productive negotiations require the ability to float ideas without fear that they will appear in tomorrow's headlines, greater transparency would force both the union and management to justify their demands in the face of public scrutiny. Today, the dearth of media coverage means there are few public consequences for unions that make extravagant demands or for district leaders who resist such demands. This gives superintendents and school boards little incentive to engage in hard-nosed negotiating.

53. Richard Colvin, telephone conversation with author, 16 June 2005.

Collective Bargaining and District Management

Today's contractual arrangements for teachers reflect the industrial model that prevailed in the mid-20th-century American economy, when assembly line workers were valued less for their knowledge or technical skills than for their longevity and willingness to serve as a loyal cog in a top-down enterprise. These contracts are thus ill-suited to recruit, retain, or sensibly deploy a highly educated, professional teacher workforce or promote a relentless focus on student learning and achievement. There are three areas where an especially convincing case can be made that contracts hinder effective management and reduce the quality of education for at least some students: compensation, transfer and dismissal policies, and work rules. In each case, a close look reveals that current practices make schools more attractive to staff members—especially the most experienced—but less conducive to high-quality teaching and learning.

The Structure of Teacher Compensation

It goes without saying that having a highly talented teacher is the most important determinant of a student's academic progress.⁵⁴ Assuming that better pay and benefits attract better candidates, it would therefore seem that compensation is an area where teacher unionization has clearly benefited students. After all, unions have been quite effective in convincing local officials and the American public that the typical teacher is woefully underpaid. [See *Sidebar 4*] The unionization of teachers in specific cities was typically associated with a jump in salaries and benefit packages, and teachers covered by collective bargaining agreements are better compensated than those who are not.⁵⁵ A closer look at the structure of teacher salaries and benefits imposed by collective bargaining agreements, however, reveals a different picture.

54. Steven G. Rivkin, Eric A. Hanushek, and John F. Kain, "Teachers, Schools, and Academic Achievement," *Econometrica* 73 (March 2005): 417–458; Jonah E. Rockoff, "The Impact of Individual Teachers on Student Achievement: Evidence from Panel Data," *American Economic Review* 94, no. 2 (2004): 247–252.

55. Harris L. Zwerling and Terry Thomason, "Collective Bargaining and the Determinants of Teachers' Salaries," *Journal of Labor Research* 16 (fall 1995): 467–484.

SIDEBAR 4

Are Teachers Underpaid?

Almost everyone “knows,” in the words of *Washington Post* national columnist Richard Cohen, “Teachers make lousy money.”¹⁰ In fact, the claim that teachers are underpaid is debatable. The average teacher salary in 2004 was \$46,600, compared to the average full-time worker salary of \$43,690.¹¹ While a starting salary for a teacher with a B.A. in 2005 of \$42,000 in Los Angeles¹² or \$44,500 in Newark, New Jersey,¹³ may seem shockingly low to the typical *New York Times* reader, it’s actually higher than what many Ivy League graduates earn when starting in the policy world, advertising, or similar non-technical jobs. For instance, those 2004 graduates of journalism and mass-communication programs who landed jobs earned a median salary of \$27,800 if they had a B.A. and \$33,000 if they had an M.A.¹⁴

While pay comparisons are inevitably

subject to wrangling among economists, one recent analysis of the Bureau of Labor Statistics’ National Compensation Survey found that teachers earn “more per hour than architects, civil engineers, mechanical engineers, statisticians, biological and life scientists, atmospheric and space scientists, registered nurses, physical therapists, university-level foreign-language teachers, [and] librarians.”¹⁵ In fact, the Bureau of Labor Statistics reported that in 2004, the average pay per hour for all full-time workers in the “professional specialty and technical” category was \$29.77, while public secondary school teachers earned \$32.52 and elementary teachers \$32.53—or about 10 percent more than the typical professional.¹⁶

While, on the whole, teachers may not be underpaid, those who excel, those working in tough circumstances,

and those with critical skills are clearly shortchanged. The flip side is that mediocre teachers are overpaid, sometimes substantially. The real problem is not the total amount paid to teachers but the fact that basing teacher pay on experience and credentials rather than performance means that pay isn’t going to those teachers who deserve it. Highly paid teachers receive their salaries not because they are exceptional teachers or have tackled tough assignments but because they have accrued seniority. Providing raises in such a system is enormously expensive because so much of the spending is soaked up by the undeserving. The answer is not to pay all teachers more—but to pay good teachers more through sensible collective bargaining agreements that allow districts to spend wisely.

10. Richard Cohen, “Houston’s Disappearing Dropouts,” *Washington Post*, 4 September 2003, sec. A21.

11. Ed Muir, F. Howard Nelson, and Aaron Baldaro, *Survey & Analysis of Teacher Salary Trends 2004* (Washington, DC: American Federation of Teachers, 2005), table I-2.

12. See Los Angeles Unified School District’s salary chart entitled “2005-2006 Salaries for Teachers with Regular Credentials,” available online at <www.teachinla.com/Research/documents/TAnnual2005-06.pdf> (18 January 2006).

13. See New Jersey Education Association’s chart entitled “Districts With \$40K Starting Salaries,” available online at <www.njea.org/pdfs/40Kminimum.pdf> (18 January 2006).

14. Lee B. Becker, Tudor Vlad, and Amy Jo Coffey, *2004 Annual Survey of Journalism & Mass Communication Graduates* (Athens, GA: Grady College of Journalism & Mass Communication, August 2005), 1, 8.

15. Richard Vedder, “Comparable Worth,” *Education Next* 3 (Summer 2003): 16.

16. U.S. Bureau of Labor Statistics, *National Compensation Survey: Occupational Wages in the United States, July 2004* (Washington, DC: U.S. Department of Labor, August 2005), table 2-1.

Salaries While unions have fought to increase salaries, they have staunchly resisted efforts to ensure that this spending will recruit, reward, and retain the most essential and hardest-working teachers. Consequently, there is good reason to believe that collective bargaining has actually contributed to an overall decline in the aptitude of individuals entering the teaching profession and to persistent shortages of qualified applicants in high-need subject areas.

Reflecting the fact that unions tend to pursue wage agreements that increase member solidarity and organizational unity, while limiting managerial discretion, unionization in any industry is typically associated with a narrowing of pay differentials between employees.⁵⁶ The result is more standardization of pay on the basis of job description and less room to reward excellence or special contributions. It is therefore no surprise that virtually all teacher collective bargaining agreements

56. Freeman and Medoff, *What Do Unions Do?* 78–93.

establish salary schedules based strictly on years of experience and accumulated graduate credits or degrees—the famed “step-and-lane” model.

The step-and-lane salary schedule is an anachronism that is increasingly out of step with practices in today’s private sector economy. It makes it virtually impossible to reward teachers for improving student achievement, possessing high-demand skills, or taking on more challenging school or classroom assignments. Rewards for performance are rarely included in contracts, with just 5.5 percent of traditional public school districts reporting that any kind of incentives (such as cash bonuses, salary increases, or additional salary steps) are used to reward excellent teaching.⁵⁷

New research confirms that, prior to the spread of collective bargaining, pay was more closely linked to teacher ability. For instance, while new female teachers from highly selective colleges now earn no more than graduates from bottom-tier institutions, graduates from elite colleges 50 years ago out-earned teachers from less prestigious institutions by a wide margin. The evidence further suggests that this compression of pay with respect to ability is primarily responsible for the decline in the aptitude of women entering the profession.⁵⁸

Teachers now tend to have lower standardized test scores and lower undergraduate GPAs and hold degrees from less selective undergraduate institutions than college graduates entering other professions.⁵⁹ In subjects like math, science, computer science, and special education, there are often too few qualified applicants to fill existing teaching slots, especially in urban schools with heavily minority, low-income student populations.⁶⁰ School administrators have reported that it is “very difficult” to fill math or physical science positions more than 30 percent of the time, but that it is similarly difficult to fill elementary teaching positions just 6 percent of the time.⁶¹ Yet collectively bargained salary schedules leave administrators unable to take these imbalances in supply and demand into account when making salary offers.

Indeed, union voices have made it clear that they see efforts to link pay to performance as an assault on educators. An editorial in the NEA’s house organ, *NEA Today*, proclaimed, “Basing teacher pay on student performance is no answer—it’s a thinly disguised assault on us. Every day, we educators do the best we can, often under horrific conditions, with the best of intentions. No single determining factor—least of all student achievement—should dictate who among us will be paid more than others.”⁶² Jim Dougherty, the president of the Illinois Federation of Teachers, recently ridiculed the notion that revamped compensation could help attract or retain good teachers: “Does a scientist seeking the Nobel Prize do it for the prize money? People who work in matters of the mind don’t improve their performance by dangling a bag of coins in front of their face.”⁶³

57. Michael Podgursky, “Personnel Policy in Traditional Public, Charter, and Private Schools,” *NCSC Review* 1, no. 1 (2003): 10–13.

58. Caroline M. Hoxby and Andrew Leigh, “Pulled Away or Pushed Out? Explaining the Decline of Teacher Aptitude in the United States,” *The American Economic Review* 94 (May 2004): 236–240.

59. Eric A. Hanushek and Richard R. Pace, “Who Chooses to Teach (and Why)?” *Economics of Education Review* 14, no. 2 (1995): 101–117.

60. Cassandra Guarino, Lucretia Santibanez, Glenn A. Daley, and Dominic J. Brewer, *A Review of the Research Literature on Teacher Recruitment and Retention* (Santa Monica, CA: RAND Corporation, 2004); Richard W. Ingersoll, “Is There a Shortage Among Mathematics and Science Teachers?” *Science Educator* 12 (spring 2003): 1–9.

61. Michael Podgursky, *The Single Salary Schedule for Teachers in K–12 Public Schools* (Houston, TX: Center for Reform of School Systems, 2002).

62. Lynette Tanaka, “Editorial,” *NEA Today*, May 1996, p. 31.

63. Scott Reeder, “‘Diplomacy’ Undermines Teacher Evaluations,” *Small Newspaper Group* (Springfield Bureau), accessed online at <<http://thehiddencostsofentire.com/stories/?prcss=display&id=266561>> (18 January 2006).

The irony is that teachers themselves believe it possible to identify those who deserve to be rewarded. A 2003 Public Agenda survey found that 78 percent of teachers believe “in [my] building, it is easy to spot who the truly great teachers are,” and 72 percent say that “most teachers in [my] building could pretty much agree on who the truly great teachers are.” Even more surprising is that the same poll found that 70 percent of teachers support giving extra pay to teachers in “tough neighborhoods with low performing schools,” 67 percent support it for those “who consistently work harder . . . than other teachers,” and 62 percent support it for those “who consistently receive outstanding evaluations from their principals.”⁶⁴

Benefits Evaluated solely in financial terms, the benefits teachers receive are modestly more generous than those received by comparable private sector workers. A 2004 Bureau of Labor Statistics survey indicates that the fringe benefits cost per teacher amounts to 20.2 percent of total salary, as opposed to 17.0 percent in the private sector.⁶⁵ The average elementary school district in California spent more than \$13,000 on statutory, health, and welfare benefits per teacher in 2002–03. When added to an average salary of slightly more than \$55,500, these benefits brought the state’s total cost per elementary teacher to more than \$68,000.⁶⁶ More important than the average dollar amounts, however, is the way that these benefits are structured. They reward longevity alone, thereby crippling a district’s ability to compete for highly qualified new or mid-career candidates in an increasingly national labor market.

Nearly all public school systems still rely on “defined benefit” retirement plans that provide a formula-driven pension and disproportionately reward educators who stay in one place for 15 or 20 years at the expense of those who depart sooner.⁶⁷ For instance, in 2000–01, 15 of the 16 states that constituted the Southern Regional Education Board required newly hired teachers to teach at least five years before vesting in the retirement system, and five states required a period of at least ten years.⁶⁸ Matthew Lathrop, of the American Legislative Exchange Council, has noted, “The guaranteed benefit is only good for those who spend a substantial part of their career with one employer. That’s an enormous drawback in today’s economy, when even public employees are less likely to stick with a single employer.”⁶⁹ This model made a certain kind of sense in the mid-20th century, when the teaching profession was composed mainly of married women who lacked other career choices, but it is poorly designed for today’s world—and a real handicap in the effort to attract and retain excellent teachers.

64. Public Agenda, *Stand by Me: What Teachers Really Think about Unions, Merit Pay and Other Professional Matters* (New York: Public Agenda, 2003), 24–25.

65. Districts’ large contributions to health care and retirement plans are partially offset by the fact that public school teachers are not included in the federal Social Security system. Michael Podgursky, “The Adequacy of Teacher Pay,” presented at a conference entitled *The Adequacy Lawsuit: Its Origins and Impact on American Education* (Cambridge, MA: Harvard University, 13–14 October 2005).

66. School Services of California, Inc., (Sacramento, CA), “Average Scheduled Salary & Benefit Amounts for 2002–2003,” available online at <www.sscal.com/links.htm> (18 January 2006).

67. Sandra Ruppert, *Improving Pension Portability for K–12 Teachers* (Denver, CO: State Higher Education Executive Officers, 2001).

68. Gale F. Gaines, *Beyond Salaries: Employee Benefits for Teachers in the SREB States* (Atlanta, GA: Southern Regional Education Board, March 2001), 5.

69. Julie Blair, “New Pension Plans Provide Educators with Options, Risks,” *Education Week*, 3 April 2002, p. 1.

There is also mounting evidence to suggest that teacher benefit packages are poorly equipped to deal with the rising costs of health care. The Rhode Island Education Partnership published a 2005 study that compared benefits for public school teachers to those of employees in the state's private sector. It found that in all of the private sector firms, managers had the discretion to select a health carrier and the design of the health-care plan, while none of the school districts in the study had that capability. More than 85 percent of private sector contracts required employees to pick up more than 15 percent of their health-care costs, compared with none of the teacher contracts. Seventy-three percent of school districts provided health benefits to retirees at no cost, while none of the private firms did so.⁷⁰ In short, it appears that—much like troubled industrial-era firms such as General Motors, the failed steel giants, and major airlines—school districts are sinking enormous sums into gold-plated benefits plans for workers and retirees that may prove unsustainable.

The response to efforts to rein in such packages often reveals a sense of entitlement among both union leaders and members that will make change difficult. For instance, teachers in the 2,300-student Colchester, Vermont, school district went on strike for eight days in October of 2005 after district officials failed to renegotiate their contract to boost health benefits and salaries. As one local small business owner explained, residents sympathized with the teachers but found themselves cutting corners on insurance while the teachers “are getting a benefits package we can only dream of.” Colchester teacher Andy Simmons provided an exceptionally honest take on the dispute, explaining, “We’re passionate about the students. But when push comes to shove, I have my own family to think about.”⁷¹

Transfer and Dismissal Policies

When it becomes necessary to fill a classroom vacancy or remove an ineffective teacher, managers find themselves hobbled by existing contract language. Frequently, it is not that the contract flatly prohibits managers from making sensible decisions, but that complex provisions, the time required to comply with procedures, a desire to avoid grievances, and administrative timidity add up to management by paralysis.

Contracts routinely call for senior teachers to get preferred assignments while daintily implying that this process will not affect district performance, as in this provision from a Colorado district:

If the transfer is required because of enrollment decline or program change, a volunteer(s) will be solicited by the principal.

70. The Education Partnership, *Comparative Benefit Survey* (Providence, RI: The Education Partnership, 2005).

71. Matt Sutkoski, “Strike Looms as Colchester Teachers Consider Pay, Health Benefits,” *Burlington (Vermont) Free Press*, 4 October 2005, accessed online at <www.burlingtonfreepress.com/apps/pbcs.dll/article?AID=/20051004/LIVING/51024024&theme=>> (18 January 2006).

If no volunteer is secured, the least senior teacher will be involuntarily transferred unless by transferring the teacher with the least length of service in the District, the building is unable to meet the identified instructional and program needs within the grade level, department or team.⁷²

In practice, there is an overwhelming tendency to give senior teachers the plum assignments, with little regard for their skills, the needs of their students, or the implications for recruiting and retaining new teachers. As a growing number of researchers have documented, these practices have led to situations in many cities where the most senior teachers are concentrated in the most desirable teaching environments, while schools with more disadvantaged student populations suffer with less experienced teachers.⁷³

Apart from their implications for within-district equity, seniority transfer privileges also hinder principals' ability to forge a cohesive school staff. A 2005 study by The New Teacher Project examined contracts in New York City, San Diego, and three anonymous urban districts and found that, due to seniority-based transfer requirements and protections for tenured teachers, "Urban schools are forced to hire large numbers of teachers they do not want and who may not be a good fit for the job and their school."⁷⁴ As the report goes on to note, "Novice teachers are, by default, the first to be excessed and, in many districts, can be 'bumped' from their positions if a more senior teacher needs or just wants their job." This is true, "regardless of their contribution to their school."⁷⁵ [See *Sidebar 5*]

Contract language is even more restrictive in matters related to termination. While procedures exist for removing teachers for "just cause," most teachers have tenure as a matter of state law, and the available procedures are rarely employed. [See *Sidebar 6*] As one study of Michigan contracts concluded, "The 'just cause' standard has sometimes been stretched to include situations that make a travesty of procedural protections intended to guard good teachers from arbitrary and capricious decisions."⁷⁶ In one eye-opening example, the report concluded, "One employee discharge case took 13 years of litigation and cost the Ann Arbor Public Schools in excess of \$350,000 in attorney fees and back pay for an ex-teacher who was imprisoned in Jackson for murder."⁷⁷ Teachers have been caught sticking children's heads in toilets, reading the newspaper while children gambled in the back of the room, and missing months of school at a stretch, and yet kept their jobs.⁷⁸ The New Teacher Project's recent study of five urban districts discovered that only four teachers out of the 70,000 tenured teachers in those districts were terminated for poor performance. The report explains that "the lengthy and

72. *Master Agreement Between the Colorado Springs Education Association and the Board of Education School District No. 11 2004–2006* (Colorado), article VIII, part 1.

73. Education Trust-West, *California's Hidden Teacher Spending Gap: How State and District Budgeting Practices Shortchange Poor and Minority Students and Their Schools* (Oakland, CA: Education Trust-West, March 2005); Marguerite Roza and Paul T. Hill, "How Within-District Spending Inequities Help Some Schools to Fail," *Brookings Papers on Education Policy 2004* (Washington, DC: Brookings Institution Press, 2004): 201–218.

74. Jessica Levin, Jennifer Mulhern, and Joan Schunck, *Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts* (New York: The New Teacher Project, 2005), 5.

75. *Ibid.*, 6.

76. Munk, *Collective Bargaining*, 30.

77. *Ibid.*

78. Frederick M. Hess, *Revolution at the Margins: The Impact of Competition on Urban School Systems* (Washington, DC: Brookings Institution Press, 2002), 81.

SIDEBAR 5

The Impact of Seniority Transfer Privileges

Unlike managers in most other walks of life, principals in low-performing schools rarely have much freedom to staff their schools. Research by Education Trust-West and by the Center for Reforming Public Education has documented that senior, better-paid teachers tend to stack up in the more attractive, higher-performing schools in any district.¹⁷ Is this because superintendents or principals think it makes sense to staff struggling schools with novice teachers?

Nope, it's because of transfer rules, modeled after job security systems for factory workers, that allow senior teachers to claim jobs with little regard to the appropriateness of the match, the quality of the teacher, or the impact on the school. In a 2005 study that examined collective bargaining provisions governing transfer in five large school systems, The New Teacher Project reported that 64 percent of principals who hired teachers who had transferred

voluntarily or needed jobs because they had been excessed (involuntarily squeezed out) at other schools said they had been required to take on at least one teacher that they didn't want.¹⁸

On average, across the five districts studied in the TNTP report, fully 40 percent of all school vacancies were filled by transfers over whom schools had little or no choice in hiring. In San Diego, 47 percent of principals reported trying to hide their vacancies from central staff in order to avoid hiring teachers who were being transferred in this fashion.

Principals talk frankly about the gamesmanship required by the contract provisions. One principal explained how he hid vacancies in order to hire a sterling candidate: "You say to the HR staffing liaison, 'I don't anticipate that I will need another English teacher.' At the same time, you have already identified the teacher you want for the position. You say to the teacher, 'If you can hang in

there and not start officially teaching until late September, but remain as a substitute until then, I will do everything to try to hire you.' Then you call the liaison back when you know all of the excessed teachers have been placed someplace else, and say, 'Oh, I actually do need someone.' You say, 'I have some resumes' and pretend to just find someone for the slot even though I had them all along."

How did national union leaders respond to The New Teacher Project report? Reg Weaver, president of the National Education Association, declared that the issue of teacher transfer "is another smoke screen to blame so-called union rules for our society's lack of commitment to all children."¹⁹ Adam Urbanski, founder of the Teacher Union Reform Network and patron saint of the "new unionism" movement, resigned in a huff from The New Teacher Project's board of directors after charging that the recommendations would erode teachers' job security.²⁰

17. Education Trust-West, California's Hidden Teacher Spending Gap; Roza and Hill, "Within-District Spending Inequities," 201-218.

18. All quotes and data in this paragraph and in the following two paragraphs are from Levin, Mulhern, and Schunck, *Unintended Consequences*.

19. Jay Mathews, "Teacher Transfer Rules Hurt Schools, Study Says," *Washington Post*, 17 November 2005, sec. A10.

20. Ben Feller, "Schools May Hire Teachers They Don't Want," *Associated Press*, 16 November 2005, accessed online at <www.abcnews.go.com/US/wireStory?id=1319413&page=1> (18 January 2005).

burdensome requirements, coupled with the low likelihood of successful removals... indicate why principals are reluctant to pursue dismissals," suggesting that principals opt to transfer ineffective teachers instead.⁷⁹ Frank Brogan, the former superintendent and education commissioner of Florida, remarks that tenure "was originally designed to protect the best teachers from wrongful termination. Today it protects the worst teachers from rightful termination."⁸⁰

Teachers themselves agree that tenure protects those who should not be in the schools. Seventy-eight percent of teachers report that there are at least a few teachers in their school who "fail to do a good job and are simply going through the motions," while 58 percent say that tenure doesn't necessarily mean that teachers have worked hard or proven their ability.⁸¹ One New Jersey union representative has confessed, "I've gone in and defended teachers who shouldn't even be pumping gas."⁸² A Los Angeles union representative bragged, "If I'm representing them, it's impossible to get them out. It's impossible. Unless they commit a lewd act."⁸³

79. Levin, Mulhern, and Schunck, *Unintended Consequences*, 18. Data calculated from the most recent academic year available.

80. Peter Schweizer, "Firing Offenses," *National Review* 50 (17 August 1998).

81. Public Agenda, *Stand by Me*, 24.

82. *Ibid.*, 21.

83. *Ibid.*, 24.

Even in Texas, where teacher collective bargaining is prohibited, the former business services director in one of the state's largest districts explained,

Firing incompetent teachers for poor performance or for engaging in misconduct is as time-consuming and demanding as trying to convict someone of a crime. . . . The assessment instrument is so full of timeline requirements, that any misstep can result in a dispute, hours of time meeting to process the dispute and often resulting in rendering the assessment null and void. . . . While the teacher is awaiting the hearing, he/she is still on the payroll, then add to that the cost of the substitute, attorney's fees, court reporter costs, hearing officer costs, transcripts, copying files and documents, and most importantly, staff time. . . . Are we saying it can't be done? Of course not. What we are saying is that it requires almost 100 percent of a principal's time to *hope* to win a case to fire one bad teacher.⁸⁴

The process of removing ineffective educators is an intimidating burden for other reasons as well, not least the elaborate and time-consuming requirements for documenting poor performance before initiating the removal process. As economist Dale Ballou concluded in a study of the impact of collective bargaining agreements on districts in New York state, "There is also an emotional cost, as principals can look forward to having their motives and their professional judgment challenged throughout the proceedings." One principal complained, "The process sets you up for personal ridicule by the union." Another added, "The Board of Education doesn't show principals how to prepare the necessary documentation. You walk through a legal minefield with no help."⁸⁵

The burden of removing weak teachers has meant that principals often find it easier to shuffle poor teachers around the district than to remove them. In what has been termed "the dance of the lemons," principals agree not to give a teacher negative evaluations so long as the teacher agrees to transfer to a new school the following year—simply shifting the problem onto another principal and another class of students.⁸⁶

Work Rules

In addition to provisions establishing compensation and personnel policies, the typical collective bargaining contract also contains a host of highly specific work rules governing teachers' day-to-day activities. For instance, provisions routinely stipulate the amount of time that teachers can be required to spend working with students, the

⁸⁴ Hess, *Common Sense School Reform*, 124–125.
⁸⁵ Regarding the *Agreement Between the Board of Education and the City School District of the City of New York and United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO*, as cited in Ballou, "The New York City Teachers' Union Contract," 11.
⁸⁶ Schweizer, "Firing Offenses," 27–29.

number of students a teacher will instruct, the number of lesson plans a teacher will prepare, the number of parental conferences a teacher will hold, and even how and how often teachers will evaluate students' written work. Examples of areas in which work rules often seem to undermine teacher professionalism and students' academic interests include professional development, evaluation, and absenteeism.

Professional Development Derived from the old factory model of school governance, collective bargaining restrictions on professional development impede efforts to treat teachers as serious, committed professionals. Many contracts set tight limits on when teachers can be asked to pursue professional development and how much can be required. The Paterson, New Jersey, contract reads, "The District agrees to utilize full-day sessions designated for staff in-service training and identified as non-student contact days during the school year or student early dismissal sessions designated for staff in-service training during the school year, or a combination of both, for the purpose of providing at least eighteen (18) hours of professional development opportunities." The contract also stipulates that, unlike most other professionals, teachers cannot be asked to contribute to the development of their own skills. Instead, "The District agrees to pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which an employee is required and/or requested by the administration to take."⁸⁷

Contractual limits on professional development can inhibit efforts to enhance faculty quality. For instance, the Multnomah County, Oregon, contract stipulates that the school board must provide the funds to pay teachers' expenses to attend professional development conferences, but says, "funds will be allocated based upon seniority of the unit members who make application."⁸⁸ Such provisions turn development from a lever for school improvement into a perk for long-serving faculty.

Evaluation Agreements routinely detail explicit directives regarding the ability of supervisors to monitor or evaluate teachers. The contract for Anne Arundel County, Maryland reads, "Although formal ratings shall be presented to Unit I members by their immediate supervisors, the rating must be based on the conclusions and assessments of more than one staff member when the rating is unsatisfactory and for all non-tenured Unit I members."⁸⁹ The Multnomah County contract cited above stipulates, "Student performance on District-wide and/or other standardized tests may indicate where modifications of instruction are required ... however, evaluations or criticism of a teacher shall not be based specifically on the issue of comparisons of such student performances."⁹⁰

87. *Contract Agreement Between the Paterson School District and the Paterson Education Association 2000–2004* (New Jersey), article 22, part 3 (section 1) and part 4 (section 1).

88. *Agreement: School District No. 1, Multnomah County, Oregon and Portland Association of Teachers 1998–2002* (Oregon), article XVI.

89. *Negotiated Agreement Between the Teachers Association of Anne Arundel County and the Board of Education of Anne Arundel County 2004–2005* (Maryland), article XVI, part B.

90. *Agreement: School District No. 1, Multnomah County, Oregon and Portland Association of Teachers 1998–2002* (Oregon), article VIII, section K.

91. Michael Podgursky, "Fringe Benefits," *Education Next* 3 (Summer 2003): 71–76.

SIDEBAR 6

Teacher Dismissal in Illinois

Illinois Education Association (IEA) President Ken Swanson has dismissed the belief that tenured teachers are rarely fired as nothing more than an “urban legend.”²¹ In 2005, reporter Scott Reeder of the state’s *Small Newspaper Group* challenged this claim, filing 1,500 Freedom of Information Act requests over the course of six months to determine how many of the state’s tenured teachers had been dismissed in the past 18 years. Over that period, which began in 1986—just after the legislature had passed a comprehensive education reform package intended to increase teacher accountability—two teachers per year were fired in the state for poor performance. These figures are for a state that employs more than 95,000 tenured teachers. (Another five teachers, across the state, are annually dismissed for misconduct.)

Just 61 of Illinois’s 876 school districts have even attempted to fire a tenured teacher since 1986, and just 38 of those succeeded at firing even a single teacher. Numerous large districts, including Springfield, Peoria, and Carbondale, hadn’t fired a single teacher in nearly two decades. Moreover, it costs

a district, on average, more than \$100,000 in attorneys’ fees to fire a teacher. As of late 2005, Genesco Public Schools had been trying to fire Cecil Roth for five years due to poor performance, had already spent \$400,000, and was still negotiating the appeals process.

The IEA and the Illinois Federation of Teachers quickly released statements discounting the report, calling it “misleading.” The IEA believes most poor-performing tenured teachers who are unable to improve leave their positions voluntarily before being dismissed.²² The *State Journal-Register* reported that IFT President Jim Dougherty said few teachers are fired “because few need to be fired.”²³

The state’s most recent test scores, however, may suggest otherwise. The 2005 Illinois State Report Card revealed that 41 percent of high school juniors failed to meet minimum state standards in reading and 47 percent failed to meet the standards in math. In the Chicago Public Schools, 59 percent failed to meet minimum standards in reading and 73 percent failed to do so in math. The state’s achievement data also reveal disturbing racial disparities. While 28 percent of

white 5th-graders failed to meet state standards in reading and 17 percent failed to do so in math, the corresponding shares for black 5th-graders were 63 percent in reading and 56 percent in math.²⁴

While these results cannot simply be laid at the feet of Illinois teachers, who earn an average annual salary of \$53,820, they do suggest a need for more energetic efforts to ensure teacher quality.²⁵ The *Chicago Tribune* editorial board went even further in arguing, “Yes, the state could find ways to make it easier to remove bad teachers. But ... there is no compelling reason to keep the tenure system in public schools. It doesn’t protect good teachers. It protects incompetent ones.”²⁶

Finally, the Illinois data also raise questions about the efforts of school boards and superintendents to exercise existing authority. Swanson has argued, “After the probationary period is over, a teacher is guaranteed just two things: an evaluation by their principal every two years and due process if questions about the quality of their teaching are raised. There is no excuse for a bad teacher to be in any classroom once that teacher has been properly evaluated and given an opportunity to improve.”²⁷

21. Scott Reeder, “Teacher Unions’ Clout Keeps Tenure Strong,” *Small Newspaper Group* (Springfield Bureau), accessed online at <<http://thehiddencostsofsoftenure.com/stories/?prcss=display&id=266548>> (18 January 2006).

22. Illinois Education Association Press Release, “Current System ‘Weeds Out’ Unqualified Teachers,” 6 December 2005, accessed online at <www.ieanea.org/about/newsArchive/newsArticle.asp?did=1015> (18 January 2006).

23. Editorial, “Teachers’ Tenure Worthy of Discussion,” *State Journal-Register*, 6 December 2005, pg. 6.

24. Illinois State Board of Education, “2005 Illinois State Report Card,” available online at <<http://webprod1.isbe.net/ereportcard/publicsite>> (18 January 2006).

25. Data for 2003-2004 is taken from the Illinois State Board of Education Data Analysis and Progress Reporting Division, Teacher Service Record Analysis. Includes full-time teachers, grades Pre-K-12.

26. Editorial, “Protecting Mediocre Teachers,” *Chicago Tribune*, 9 December 2005, pg. 18.

27. Illinois Education Association Press Release, “Current System ‘Weeds Out’ Unqualified Teachers,” 6 December 2005, available online at <<http://www.ieanea.org/about/newsArchive/newsArticle.asp?did=1015>> (18 January 2006).

A particularly illuminating version of how absurd such rules can get is provided in the contract negotiated in Jefferson County, Kentucky. [See *Sidebar 7*]

Absenteeism Language on teacher absenteeism yields some particularly troubling provisions. On this count, it is worth noting that the U.S. Department of Education reports that, in 1999–00, 5.2 percent of teachers were absent on a given day—about triple the 1.7 percent absentee rate that the Bureau of Labor

SIDEBAR 7

Teacher Evaluation in Jefferson County

The contract provision that addresses teacher evaluation in the Jefferson County, Kentucky, school district gives the impression that no one has ever before attempted the exotic, perilous task of employee evaluation. Spanning two pages, the discussion sketches in great detail how, when, and under what conditions a principal may try to gauge the work of her faculty. The agreement requires evaluators to “take into consideration and note in writing any circumstances that may adversely affect an employee’s performance” but prevents them from using student test scores “in any way to evaluate the work performance of employees unless they agree voluntarily.”²⁸

The contract further specifies, “Tenured employees will be evaluated at least every three years. Non-tenured employees will be evaluated yearly. Employees on deficiency may be evaluated within the year of the deficiency.” The language regarding observed “deficiencies” may explain why few supervisors are eager to flag poor performance: “When significant deficiencies in work performance have been observed,” the contract specifies, “The evaluator shall observe the employee’s work performance a minimum of four (4) 30-minute periods within a twelve-week period (60 worked days) beginning with notification. For the employee not

assigned to a classroom, the evaluator must observe the work performance of the employee for four (4) 30-minute periods when the employee is fulfilling the employee’s job responsibilities.”

The evaluation of deficient personnel also requires the evaluator to “identify professional staff services and/or materials which the employee may use to help correct the identified deficiencies. There shall be identified at least one (1) professional staff person who will not evaluate the employee.” For having been unwary enough to initiate this process, the evaluator is given her due reward: “The evaluator shall summarize the observations and conferences in writing and provide a copy to the employee.”

28. All quoted information in this sidebar is from Memorandum of Agreement Between Jefferson County Board of Education and Jefferson County Teachers Association 2002-2004 (Kentucky), article XIII, section A (part 6, 7, and 13) and section B (part 2, 4, and 5).

Statistics reports for all managerial and professional employment.⁹¹ Article XII-A of the current teacher contract between the Los Angeles Unified School District and United Teachers Los Angeles describes the Attendance Incentive Plan, which seeks “to reduce employees’ use of illness and personal necessity leave” by providing an annual payment of \$250 to \$1,500 for not using allotted sick days. The provision also includes a peculiar clause that allows two teachers to cover for one another, so the absent teacher is counted as present for the purpose of the incentives. In phrasing remarkable both for its naïveté and its surprising honesty, the contract states, “It is agreed that reciprocal coverage is not intended to cause or result in any increased absenteeism,” but that “there are no payroll or time reporting consequences to the arrangement.”⁹²

A Reminder

In any discussion of the impact of collective bargaining on district management, it is important to remember that a unilaterally imposed “union contract” does not exist. The frustrating reality is that every one of the provisions described above, from the lockstep salary schedules that reward longevity over excellence to work rules that dictate the rhythms of school life, was negotiated in good faith by school boards charged with representing the public interest. While the union’s political influence in school board politics may distort this process, the blame for troublesome contract language must be shared, and not casually assigned to union officials.

92. *Agreement Between the Board of Education of the Los Angeles Unified School District and the United Teacher Los Angeles 2003–2006*, article XIA, section 10, part 4e and 4g.

Teachers Unions and Education Politics

Union strength in collective bargaining is bolstered by the strong hand that the unions exercise in politics. Quite simply, school board elections offer teachers unions the unusual opportunity to influence the makeup of the management team they will face at the bargaining table. It is as if the board of directors of General Motors was not selected by its shareholders but by the residents of Detroit. The result of such a scenario would be a management team that is much more concerned with workers' perceived entitlements than with holding down costs or chasing efficiencies.

Actually, it is worse than that, as GM is ultimately subject to the discipline of the marketplace. If the company were to allow efficiency to decline too far, it would be driven into bankruptcy by other automobile manufacturers, domestic or foreign. In public education, however, market pressures are weak at best. A union official in Cleveland offered a telling insight when describing the frustration a negotiator experienced when demanding concessions after a state takeover. The official recalled: "We looked at him and said, 'Why do we have to do that?' His background was in the private sector, where he can threaten, 'If you don't do this, we're moving the factory to Mexico.' Well, we knew the school system wasn't moving to Mexico, so we just said, 'No, we're not doing that.'"⁹³

School Board Politics

School board elections are typically low-turnout affairs, so organized and energized interests—like teachers unions—can exert significant influence. Teachers unions are reportedly the most active interest group in board elections; almost 60 percent of board members nationwide say the teachers unions are "very active" or "somewhat active" in their local elections.⁹⁴

School boards are relatively weak governing bodies, generally composed of part-time members with limited expertise and little incentive to engage in

⁹³. Quoted in Hess, *Revolution at the Margins*, 152.
⁹⁴. Frederick Hess, "School Boards at the Dawn of the 21st Century: Conditions and Challenges of District Governance" (Alexandria, VA: National School Boards Association, 2002).

contentious negotiations.⁹⁵ A 2001 National School Boards Association survey found that most school board members are unpaid, devote less than 10 hours a week to board-related business, and have served on the board for five years or less.⁹⁶ Moreover, as one former board member explained, “Board members...are completely dependent on the central administration for information and the interpretation of the contract and how it functions.”⁹⁷

Using data from school board election in California, Stanford political scientist Terry Moe has documented union success in electing favored candidates. Moe finds that school board candidates endorsed by the union win 76 percent of the time, while others win just 31 percent of the time. Even among incumbents, who enjoy advantages that might counter union influence, those backed by the union win 92 percent of the time, while those not endorsed win just 49 percent of the time. Not surprisingly, union-endorsed candidates hold much more positive attitudes than others toward collective bargaining.⁹⁸

Union influence in local elections can clearly alter the dynamics on a school board. After the 85,000-member United Teachers Los Angeles (UTLA) spent \$1.4 million on a successful 2003 campaign to defeat the reformist board president Caprice Young and her allies on the Los Angeles Unified School District school board, UTLA president John Perez had high expectations for the new board, saying, “Hopefully, they will listen to what we have to say before they make their votes. The other board wasn’t interested in that.”⁹⁹ By spring 2004, two-term board member Mike Lansing was complaining openly that the “UTLA is controlling the puppet strings” to his fellow board members.¹⁰⁰

Union political influence can also shape the tenure of the superintendents school boards appoint to manage their districts. Former San Diego City Schools superintendent Alan Bersin maintained a stormy relationship with his district’s union, the San Diego Education Association, from his arrival in 1998 through his departure in 2005. Among the first “non-traditional” superintendents in the country, Bersin came to the district as an agent of change. A 3-2 majority among board members allowed him to push through a series of dramatic curricular and managerial reforms but left little margin for error if the political winds changed.

In the 2004 board elections, the only candidate endorsed by the SDEA lost to Sheila Jackson, a former teacher.¹⁰¹ The union continued its battle, however, blanketing radio stations with commercials pressuring the three newly elected board members to remove the superintendent. In December 2004, the SDEA gathered 40,000 (reported but not verified) signatures from district employees and community members, urging the new board members to “take back public education,” and end Bersin’s “authoritarian rule.”¹⁰² Finally, after seven years in

95. William G. Howell, ed., *Besieged: School Boards and the Future of Education Politics* (Washington, DC: Brookings Institution Press, 2005).

96. Hess, “School Boards at the Dawn of the 21st Century.”

97. A former school board member, telephone interview by author, 22 November 2005.

98. Terry Moe, “Teachers Unions and School Board Elections,” in Howell, *Besieged*, 254–287.

99. Solomon Moore and David Pierson, “Teachers Union Wins Back the Power in L.A. Schools,” *Los Angeles Times*, 6 March 2003, part 1, pg. 1.; Cara Mia DiMassa, “Election Over, Board Turns to Budget Gap,” *Los Angeles Times*, 22 May 2003, part 2, pg. 4.

100. Cara Mia DiMassa and Jean Merl, “L.A. Teachers Union Chief Pressures Supt. Romer to Dissolve Subdistricts,” *Los Angeles Times*, 30 May 2004, part B, pg. 1.

101. Helan Gao, “Bersin Backers, Business Fund 3 for School Board,” *San Diego Union Tribune*, 29 October 2004, pg. B-1, B-3.

102. Helen Gao, “School Union Petitions Call for Bersin’s Replacement,” *San Diego Union Tribune*, 15 December 2004, pg. B-1, B-3.

SIDEBAR 8

Successful Superintendents Resign in Face of Union Discontent

In fall 2005, two superintendents who had enjoyed significant success at improving low-performing school systems resigned amidst complaints that they were too hard-charging and clashed with the local teachers unions.

In San Francisco, superintendent Arlene Ackerman's 2005 resignation marked an end to a tenure noted for rising student achievement and renewed fiscal health. Despite elevating the district to the point where it was a finalist for the prestigious 2005 Broad Prize for Urban Education, launching her "Star School" and "Dream School" initiatives that targeted resources to low-performing schools, and consistently improving performance district-wide while narrowing the racial achievement gap, Ackerman was attacked by critics and the teachers union for being stingy. Pointing out that other Bay Area districts had encountered financial

trouble after signing unaffordable union contracts, she had resisted increases in pay and benefits and had shuttered five schools in response to a yawning budget gap. Ultimately, plagued by heated criticism of her "autocratic" style, Ackerman resigned her position.²⁹

In Anne Arundel, Maryland, Superintendent Eric J. Smith's 2005 resignation shocked many observers, coming as it did after years of dramatic improvement in the district's academic performance. After his 2002 hiring, Smith oversaw a dramatic increase in student achievement, strong gains for minority and special needs students, and a spike in the number of students performing at an advanced level in math. Nonetheless, after three years of clashes with the teachers union regarding his management style and pay and workload issues, as well as criticism from some school board members for inadequate communication,

Smith resigned in 2005.³⁰

Not content with his announced departure, union leaders planned a no-confidence vote a month before Smith's tenure ended in order to express their displeasure with policies such as the implementation of block scheduling and Smith's taking only "token action" to decrease teacher workload. Bob Burdon, chief executive officer for the county chamber of commerce fumed, "The school superintendent has already indicated he's moving on.... For some reason, the union leadership is trying to beat this guy up, and I don't know what their agenda is in doing it." The union chief argued that the vote was intended to send a warning to the next schools chief. "What I hope is the interim superintendent will be more concerned about the concerns of teachers and other employees," she said. "My motto is what's good for teachers is what's good for kids."³¹

29. Heather Knight, "Miracle Worker Sought As Next Schools Chief," San Francisco Chronicle, 11 September 2005, sec. A21.

30. Heather Dinich, "Schools Make the Grade on Tests," Maryland Gazette, 8 June 2005, sec. A1.

31. Ryan Bagwell, "Teachers Plan One Last Shot At Smith," The Capital, 19 October 2005, sec. A1.

office, during which San Diego was widely acknowledged to be among the leading districts nationwide in advancing reforms to increase student achievement, Bersin agreed in January 2005 to step down one year before his contract would expire. The life-long Democrat soon accepted Republican Governor Arnold Schwarzenegger's invitation to become California's education secretary. Other high-profile superintendents to resign under union pressure despite rising achievement levels include Arlene Ackerman in San Francisco and Eric Smith in Anne Arundel, Maryland. [See *Sidebar 8*]

State and National Politics

State politics influence the environment for collective bargaining by determining both the specific policies governing the bargaining process and the broader policy context in which that process takes place. To the extent that unions are effective in state politics, they can shape the bargaining environment to their advantage. National politics is less directly relevant to collective bargaining but, particularly

since the enactment of No Child Left Behind, has the potential to upend or reify the routines of education assessment and governance.

The National Education Association (NEA) ranks third in the Center for Responsive Politics' ongoing study of the biggest total contributors in America. Between January 1989 and August 2005, the NEA reported total contributions of \$25,059,748 to federal candidates, of which 94 percent went to Democrats.¹⁰³ In recent years, with Republicans dominant in Washington, the NEA has invested millions in a nascent effort to poll Republican voters, cultivate select Republican leaders, and develop a foothold in Republican circles.¹⁰⁴ The second largest national teachers organization, the American Federation of Teachers (AFT), is also highly involved in political giving and is even more partisan in allocating its resources. The AFT contributed \$3,467,000, with 99.7 percent going to Democrats.¹⁰⁵ The combination of financial resources and the ability to mobilize vast cadres of members has led Moe to assert, "No other political group in the country can claim such a formidable combination of weapons, whether in education or any other field of public policy."¹⁰⁶

The political weapons of California's NEA affiliate, the California Teachers Association (CTA), were on full display in the special election held in California in November 2005, in which two education-related ballot initiatives embraced by Governor Schwarzenegger went down to resounding defeat. Proposition 74 would have lengthened from two to five years the time required for a public school teacher to earn tenure. And Proposition 75 would have given members of any public sector union, teachers included, a check-off option to keep their dues from being used for political purposes, thereby weakening the unions' future political influence. Although polls initially showed both measures had strong public support, each failed to pass after an intense campaign in which the CTA and allied public sector unions outspent the Schwarzenegger forces \$104 million to \$41 million on these two ballot questions alone.¹⁰⁷ These examples illustrate the degree to which unions' political power can influence contract negotiations and provisions.

Teachers unions nationwide have been especially fierce in their opposition to measures that would alter the bargaining environment by introducing authentic competition among schools and districts or promoting a focus on efficiency. New financial reporting documents available from the U.S. Department of Labor show that in 2004 the AFT contributed \$550,000 and the NEA \$45,000 to the Economic Policy Institute, a Washington think tank that regularly issues reports and policy briefs critical of charter schools and vouchers.¹⁰⁸ And when a successful businessman, Robert Thompson, in association with the Skillman Foundation,

103. This ongoing tally—entitled "Blue Chip Investors"—is conducted by the nonprofit Center for Responsive Politics and is available online at <www.opensecrets.org/orgs/index.asp> (18 January 2006).

104. Diane Shust and Carrie Lewis, "The National Education Association's New Bipartisanship," in Henderson, Urban, and Wolman, *Teacher Unions and Education Policy*.

105. Data retrieved October 14, 2005 from the "Soft Money Donor Search" database for the 2002 election cycle at <www.opensecrets.org/softmoney/>. This website is maintained by the Center for Responsive Politics, which states "this database contains all soft money contributions of \$200 or more that were reported to the Federal Election Commission."

106. Moe, "Teachers Unions and School Board Elections," 254–287.

107. Arnold Steinberg, "Losing Propositions," *The Weekly Standard* 11 (21 November 2005): 31–5; Martin A. Davis Jr., "California Ed Reform Terminated?" *The Education Gadfly* 5 (10 November 2005); "Let's Try This Again..." *The Education Gadfly* 5 (17 November 2005).

108. LM-2 financial disclosure reports for the NEA and AFT are available online at <www.union-reports.dol.gov> (18 January 2006).

wanted to give \$200 million to create 15 charter schools in Detroit, the Michigan Federation of Teachers, according to media reports, “urged a walkout, declaring a school holiday so that union members could march on the state capitol in protest of charter schools.” Thompson said he was shocked: “We thought if we tried to do good things, people would appreciate it. I guess we were naïve.” He withdrew his donation in October 2003. Ultimately, in March 2005, he partnered with former Detroit Pistons basketball star Dave Bing to resurrect the proposal. The Detroit Federation of Teachers responded by threatening that it would no longer cooperate “with the [Skillman] foundation on other city school projects” if the foundation went through with the charter school proposal.¹⁰⁹ As of December 2005, Thompson and the Skillman Foundation had scaled back the plan to open 15 charter schools and will focus instead on opening a single charter high school with Bing in 2007.¹¹⁰

Unions have also been highly critical of accountability systems that include real consequences for schools or teachers. The No Child Left Behind Act (NCLB), which merely threatens school-level consequences, has been fiercely fought by the NEA in Congress, the states, and the courts. While the AFT’s more nuanced stance on NCLB has earned the union much praise, it continues to denounce state accountability plans that incorporate meaningful sanctions for schools or teachers.¹¹¹ Both the NEA and the AFT have sought to deflect criticism on this issue by endorsing toothless accountability programs that emphasize increased professional development for struggling teachers rather than explicit rewards and sanctions based on performance.¹¹²

Some of those most frustrated with teachers union politics are Democrats who see the party’s unwillingness to challenge the NEA and AFT as hindering its efforts to embrace centrist, common sense reforms. Those uncomfortable with the strong influence of teachers unions include Andy Stern, the leader of the Service Employees International Union (SEIU), who recently complained, “We [Democrats] can’t talk about education. We can’t discuss when it is failing our members’ (children) in public schools in urban areas. You know, we’re the experiment. Maybe vouchers aren’t the only answer, but then what is? I’m tired of hearing if we just pay teachers more, you know, life will be terrific. It’s a huge problem.”¹¹³ Robert Gordon, John Kerry’s education advisor during the 2004 election, explained in *The New Republic*, “It matters whether we set high expectations for schools and teachers or accept mediocrity, and whether we impose consequences for failure or excuse it. That Republicans are fond of making these points—and unions and school officials are not fond of hearing them—does not make them less true.”¹¹⁴

109. Henry Payne, “An Offer They Could Refuse,” *The Weekly Standard* 11 (3 October 2005): 18–19.

110. Christine MacDonald, “Plan Cuts Detroit Charters to 1 School,” *The Detroit News*, 11 December 2005, sec. 1B.

111. *Ibid.*

112. Frederick M. Hess, “Refining or Retreating: High-stakes Accountability in the States,” in ed. Paul Peterson and Martin West, *Taking Account of Accountability* (Washington, DC: Brookings Institution Press, 2003).

113. Williams, *Cheating Our Kids*, 110.

114. Robert Gordon, “What Democrats Need to Say About Education,” *The New Republic*, 6 June 2005, accessed online through *The New Republic Online* electronic database (8 November 2005).

The False Promise of “New Unionism”

The case for change has become so strong that even union sympathizers have acknowledged the need for a new approach to collective bargaining. The favored strategy is the long-standing campaign to convince union locals to abandon the industrial model for a more collaborative “new unionism.” Thoughtful, well-intentioned advocates such as Susan Moore Johnson, Charles Kerchner, Julia Koppich, Adam Urbanski, and others call for unions and districts to work together to foster professionalism, create pleasant working conditions, make teachers feel valued, and involve teachers more in governance and decision-making—all of which they posit will promote student achievement.¹¹⁵ The “new unionists” point to the 1996 formation of the Teacher Union Reform Network and to widely touted collective bargaining agreements in Dade County, Seattle, Cincinnati, Columbus, and Toledo.¹¹⁶ Their aim is to expand the scope of bargaining to give union representatives even more say in shaping district practice on accountability, staffing, curriculum, and school governance.

Prominent union supporters contend that new unionism has already emerged and unions have effectively transformed themselves. Wayne Urban, a professor of education and longtime NEA consultant, maintains that NEA president Bob Chase gave a pivotal address on behalf of new unionism at the National Press Club in 1997, calling for “the transformation of his organization away from the adversarial stance institutionalized in collective bargaining toward one that was more professional” and that, for the next half decade, Chase “tirelessly advocated his new union agenda.”¹¹⁷ Likewise, a handbook penned in 2006 by a respected scholar of reform unionism asserts that “a great deal of collaborative innovation exists and has been ongoing for many years” and enthuses about the “wide breadth of positive work being accomplished around the nation.”¹¹⁸ In short, serious union voices believe they have *already* committed themselves to new unionism. What we see today—for better or

115. Susan Moore Johnson, *Teachers at Work: Achieving Excellence in Our Schools* (New York: Basic Books, 1990); Charles T. Kerchner, *A Union of Professionals: Labor Relations and Education Reform* (New York: Teachers College Press, 1993); Kerchner, Koppich, and Weeres, *United Mind Workers*; Charles Taylor Kerchner and Julia E. Koppich, “Organizing around Quality: The Frontiers of Teacher Unionism,” in Loveless, *Conflicting Missions?* 281–317; Julia E. Koppich, “The As-Yet-Unfulfilled Promise of Reform Bargaining: Forging a Better Match Between the Labor Relations System We Have and the Education System We Want,” in Hannaway and Rotherham, *Collective Bargaining in Education*; and Adam Urbanski, “Reform or be Reformed: A New Agenda for the Teacher Unions,” *Education Next* 1 (Fall 2001): 51–53.

116. Christine E. Murray, “Innovative Local Teacher Unions: What Have They Accomplished?” in Henderson, Urban, and Wolman, *Teacher Unions and Education Policy*.

117. Wayne J. Urban, “Teacher Politics,” in Henderson, Urban, and Wolman, *Teacher Unions and Education Policy*.

118. Kaboolian, *Win-Win Labor-Management Collaboration*, 13.

worse—are the fruits of those efforts. Even in the handful of districts that have made serious attempts to pursue a comprehensive new unionist agenda, the results have been disappointing.¹¹⁹

The bleak track record shouldn’t surprise. It is only the rare local union leadership that has the vision and member backing essential to make immediate sacrifices in order to strengthen the enterprise and promote professionalism. As one 2004 analysis noted, “Unions that are quick to ask for participation in the reform process typically are not as eager to see their members held accountable for the outcomes.”¹²⁰ In fact, as discussed previously, incumbent union leaders who have embraced a strategy of collaboration or have simply been regarded as too cooperative have been voted out of office by teachers desirous of more combative leadership. Despite recurrent predictions of the imminent arrival of a new breed of teachers less wedded to traditional practices, the fact is that most new teachers who remain in the profession are rapidly subsumed into the existing culture and learn to appreciate the protections of the existing agreement—not to bemoan the lost opportunities it represents. Most teachers remain highly satisfied with how their unions currently approach collective bargaining. A national poll of teachers conducted by Terry Moe in 2003 revealed that 77 percent of union members report that they are either somewhat or very satisfied with their union. When teachers are asked specifically about the job their unions do in representing their interests in collective bargaining, the percentage who say they are satisfied jumps to 84 percent.¹²¹ As veteran education reporter Joe Williams has observed, “Even powerful union leaders who understand full well that their unions are steering public education toward certain disaster may not be in a position to do much of anything about it.”¹²²

Rather than wishful thinking, we need policies that compel union leaders—however grudgingly—to recognize those places where the interests of members are at odds with those of students, and to accept concessions that put the interests of students first. Unions in any industry are loathe to contemplate givebacks. Even when firms have declared bankruptcy or are on the verge of doing so, as has recently been the case in the airline and auto parts industries, union leaders can be expected to resist concessions on wages, benefits, or work conditions. Historically, unions have agreed to concessions only when the leadership calculates that the costs of holding firm outweigh the losses they’ll incur at the table—and when they can convince their members of the same.

This calculation typically occurs only when external pressure demands it—when prospects for a firm are so grim that union leaders are convinced that

119. Koppich, “As-Yet-Unfulfilled Promise.”

120. Randall W. Eberts, Kevin Hollenbeck, and Joe A. Stone, “Teacher Unions: Outcomes and Reform Initiatives,” in Henderson, Urban, and Wolman, *Teacher Unions and Education Policy*.

121. This poll was designed and commissioned by Terry M. Moe and carried out by Harris Interactive on a national sample of current public school teachers in 2003.

122. Williams, *Cheating Our Kids*, 61.

inaction will lead to massive lay-offs or bankruptcy. As economists Richard Freeman and James Medoff explain,

Because of the political nature of unions, the key factor in a union’s decision to make concessions is the extent to which existing wage packages threaten employment of a sizeable portion of the membership. A change in demand for labor that reduces new hires or leads to the layoff of relatively junior employees is unlikely to produce concessions, but potential cutbacks—particularly threatened plant closings—that risk the jobs of senior workers are likely to lead to concessions. Concessions are therefore found only in industries undergoing extreme economic problems.¹²³

Meanwhile, except when its back is to the wall, management is typically hesitant to ask for significant givebacks, fearing the conflict and publicity. The result is that change only occurs when circumstances finally panic both management and labor.

The economic forces that have yielded reform in other sectors remain absent in education. The lack of meaningful competition has offered no consequences for short-sighted union behavior and has allowed inertia to rule. Limited experiments with school vouchers and charter schooling, passed in the face of staunch union resistance, haven’t yet gained sufficient market share to threaten jobs or alter this dynamic. The growth in state accountability systems during the past five years has fueled increased public attention to student achievement, but very few have included strong sanctions for district officials, principals, or teachers for even sustained poor performance.

123. Freeman and Medoff, *What Do Unions Do?* 56.

Recommendations

Reformers should seek to create pressures that give district officials incentives to negotiate aggressively on behalf of students and that give unions self-interested reasons to make concessions that serve student needs. The aim should be to strike a healthier balance between teachers' understandable preferences for fair compensation, job security, and a comfortable work environment on the one hand and the cost, quality, and equity of public schooling on the other.

Contract Language

The essential task, of course, is to rewrite collective bargaining agreements (or, in non-bargaining states, relevant state laws). Officials should pursue six types of changes:

First, compensation systems should recognize and reinforce professionalism by basing pay on the scarcity and value of teachers' skills, the difficulty of their assignments, the extent of their responsibilities, and the caliber of their work. For instance, districts should be able to pay high school science or math teachers more than social studies teachers and reward effective teachers who are willing to teach in low-performing or less desirable schools. Denver's new ProComp salary schedule, with its multidimensional system for rewarding teachers' skills, performance, and contributions, is a modest step in the right direction. Even more promising are systems like the one developed in the Chattanooga, Tennessee, school district, which offers bonuses for teachers whose students make strong gains on state tests.

Second, pension and health-care benefits should be structured like those offered by other organizations seeking to hire mobile, skilled, college-educated professionals. This entails shifting from defined-benefit plans to defined-contribution plans (such as the 401k or 403b) that are better suited to the new economy. Similarly, cost considerations make it imperative that districts wean teachers from gold-plated health insurance, instead offering flexible benefit

plans that are similar in design and employer burden to those provided to other professionals. Such modifications will allow districts to reallocate resources to the classroom, make it easier to target spending on deserving educators, and make it less costly for entrepreneurial teachers to launch new programs or to switch to charter schools. They will also allow district compensation systems to more readily accommodate changes in the job market and local budgetary circumstances.

Third, administrators should be empowered to terminate ineffective educators much more readily. While this authority should be subject to those safeguards employed in other professional environments, local contracts should make it clear that employment in the district is “at-will.” Altering the dynamics of termination would also require increased flexibility in the evaluation process. Even the following simple clause can allow for the more efficient and timely identification of ineffective teachers: “Classroom observations and/or conferences may be increased at the discretion of the administration to provide the level of supervision and guidance necessary to resolve the identified problem(s).”¹²⁴

Fourth, personnel should be assigned to schools on the basis of educational criteria rather than seniority. To that end, contracts should not require schools to accept teachers transferring within the district or call for teacher assignment to be based on considerations other than the quality of the candidate in question and his or her fit with the relevant position. At the same time, reformers should be cautious about implementing utopian schemes for teacher assignment. They ought not presume that effective teachers can be blindly assigned to difficult schools without hurting their morale or losing them altogether. Instead, contracts should ensure that districts have the flexibility to assign staff in ways that promote learning, attract and retain quality faculty, and serve the needs of the entire district. A sample contract clause that allows districts appropriate flexibility reads, “It shall be the intent of the Board of Education to provide qualified members of the bargaining unit an opportunity to be considered for transfer. The welfare of students and, secondly, that of teachers will be the preeminent factor in all transfers.”¹²⁵

Fifth, collective bargaining provisions relating to work rules and governance should, to the extent possible, be weeded out of contracts. While it is useful and appropriate to involve teachers and union officials in crafting district policy and practice, the contract should not give the union a formal role in such discussions. On questions such as class size, curricular development, professional development, and school start and stop times, contract language should avoid ambiguity and maximize operational flexibility.

124. *Agreement Between Poway Unified School District and Poway Federation of Teachers 2001–2004* (California), section X, “Evaluation Procedures,” “Remediation.”

125. *Ibid.*, section V, “Transfer Policy.”

Finally, it is vital to explicitly spell out managerial prerogatives in every contract, though the utility of doing so will depend upon the energy and ingenuity of district officials. Much of the language recommended here already exists in some contracts. Nonetheless, officials in those districts frequently discuss their frustration with the contract in language remarkably similar to that of administrators and board members in districts with less contractual flexibility. This suggests the necessity of explicit language to minimize the “zone of ambiguity.” Districts must ensure that staff know how to take advantage of management rights, while school boards must ensure that the superintendent and staff are actually making full use of managerial prerogatives.

Enabling Reform

This list is neither new nor surprising. Some version of it will be familiar to many readers. The problem is less determining the contents of a sensible 21st-century collective bargaining agreement than overcoming resistance to change. To that end, would-be reformers must take steps at the federal, state, and local levels that change the dynamics of bargaining. This requires federal and state leadership and stiff spines at the local level. We propose steps to be taken by each of these actors.

Federal Reforms First and foremost, federal education policy should maintain its focus on increasing transparency and accountability in public education. By requiring states to collect and publicize information on student achievement, the No Child Left Behind Act has helped put the effects of collective bargaining on the reform agenda. The Department of Education should hold firmly to the law’s core principles while improving it to provide more accurate indicators of school effectiveness.

The most pressing area for improvement in the law is in the evaluation system it requires states to use to measure school performance. That system is based only on students’ performance against state standards at a single point in time, making it an unhelpful and even misleading gauge of the work that a school’s teachers are doing. Schools that serve large numbers of disadvantaged students are more likely to be sanctioned, even if those students are making progress toward the law’s goal of universal proficiency.¹²⁶

The Department of Education’s recently announced pilot program to allow states with the requisite data systems to develop school accountability systems based on the achievement growth (over the previous year) of individual students is an important first step toward producing a better system. However, too few states currently have a statewide database that would permit implementation of

¹²⁶ Martin West, “No Child Left Behind: How to Give it a Passing Grade,” *Brookings Policy Brief #149* (Washington, DC: Brookings Institution Press, December 2005).

such an accountability system. Beyond offering flexibility, the federal government should help states share expertise and provide matching grants for any state investing in such systems.

State Reforms

States, too, should pressure district and union leadership to concentrate on improving student learning, even when it upends established routines or produces unwelcome conflict. First, they should deploy accountability systems that accurately measure school performance and include meaningful rewards and sanctions. This will require developing data systems that provide detailed information on individual students, teachers, and schools. A key component of this effort is to assign each teacher an “identifier”—a unique numeric code similar to a Social Security number—that allows districts to link teachers to the students they teach each year, as has already been done in states like Tennessee and Florida. Such databases make it possible to identify those teachers whose students make particularly noteworthy progress as well as those whose students consistently fall short. Accountability coupled with such data can help management and unions to find common cause: improving the performance and reputation of the profession as a whole by systematically identifying ineffective teachers and giving them the assistance they need or counseling them out of the profession altogether. Transparency can also be served by legislation requiring districts to report data on actual expenditures at specific schools. One example of such legislation is a 2005 California law that requires districts to report the actual cost of teacher salaries at each school, laying bare the fiscal impact of seniority-based transfer policies that permit high-salary, veteran teachers to cluster at certain schools.

Second, states should foster meaningful competition among schools and districts, through mechanisms such as charter schooling, school vouchers, and funding systems that link most state and local funding to actual per-pupil enrollment. Such mechanisms, so long as dollars do follow students, can begin to threaten budgets and jobs—giving management and local union leaders common cause for concern. Competition from both non-profit and for-profit education management organizations will ensure that inefficient contractual agreements start to have real consequences for local district management and union leaders. If local schools are performing poorly and local officials appear incapable of overhauling contractual constraints, state officials should consider transforming entire districts into systems of charter schools—thereby avoiding many statutory and contractual provisions.¹²⁷

127. For those enamored of this strategy, however, it's worth noting that turning a school or district into a charter does not necessarily offer the imagined freedoms; state laws frequently apply to districts even after they are turned into charter districts. The Education Commission of the States reports that, as of 2003, "In the case of existing districts that convert fully or partially to a charter district, 16 states require them to be bound by school district collective bargaining agreements for all schools, while five states require them to be bound for some schools." The 16 states are Alaska, Arkansas, Connecticut, Hawaii, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, North Carolina, Rhode Island, Texas, Virginia, Wisconsin; the five states are Indiana, New Jersey, New York, Ohio, South Carolina. Education Commission of the States, *Collective Bargaining and Teachers Unions in a Charter District* (Denver, CO: Education Commission of the States, December 2003), 1.

SIDEBAR 9

New Approaches to Teacher Pay

Teacher pay is one of the areas where states have made some sensible, if incremental, progress in recent years. Typically working with far-sighted union officials, who have been enticed to cooperate through promises of additional funding, states have pursued various measures to tinker with compensation, introduce incentives, and link pay to performance. In 2005, governors in 14 states proposed reforms to the traditional teacher compensation system. While observers should regard such efforts with appropriate skepticism—after all, several such efforts were launched with great fanfare in the 1980s, only to crash and then vanish—they are promising developments.³²

Minnesota may have launched the most interesting effort, with Governor Tim Pawlenty and the legislature in 2005 enacting an alternative pay system called Quality Compensation, or “Q Comp.” Funded by \$86 million in state aid, the new system provided

substantial additional funding for districts that design a teacher pay plan in accordance with a set of state requirements. To qualify for the state monies, which amount to an additional \$260 per pupil, districts had to work with the local union to establish multiple career paths, objective assessment systems, and professional development programs that are aligned with performance pay. Only schools that shift away from the conventional “step-and-lane” salary schedule and craft a qualified system receive the aid. While Education Minnesota, the state teachers union, generally did not support Q Comp, the promise of extra dollars has sparked interest among some local unions. As of October 2005, seven school districts and charter schools—Hopkins, Minneapolis, St. Francis, Mounds View, St. Cloud, Duluth Public Academy, and ARTech charter school—had been officially approved for Q Comp.

Other states are contemplating or pursuing various forward-looking measures. Rhode Island governor John Carcieri has proposed funding a pilot study of performance-based pay, and Wisconsin governor Jim Doyle has proposed nearly \$2 million in grants to help 20 districts design, implement, and report on the success of alternative compensation systems. In 2005, Alabama appropriated \$725,000 for incentives to attract teachers to high-poverty schools. Iowa has a continuing program, funded with \$24 million in 2005, that includes individual performance awards based on student achievement. In September 2005, Governor Mitt Romney of Massachusetts proposed an especially comprehensive merit pay package offering bonuses of up to \$5,000 for math and science teachers, teachers of Advanced Placement classes, and up to one-third of teachers in each district who demonstrate effectiveness in improving student achievement on state tests.

³² All data and information for this sidebar are from Jennifer Azordegan, Patrick Byrnett, Kelsey Campbell, Josh Greenman, and Tricia Coulter, *Diversifying Teacher Compensation* (Denver, CO: Education Commission of the States, 2005), 6–7. The one exception is the Massachusetts program; its details are from Maria Sachetti and Tracy Jan, “Romney Wants Teacher Merit Pay,” *Boston Globe*, 22 September 2005, sec. A1.

Third, states should require districts to shift from traditional compensation systems toward more quality-conscious practices. Even modest state programs can embolden teachers who are eager to be treated like professionals; help far-sighted union leaders explain to members that moving away from the old model will yield sizable raises; and force more resistant union officials to explain why holding onto lockstep pay scales is worth sacrificing a pay boost. One promising model now exists in Florida, where state law requires districts to make teachers eligible for bonuses of up to 5 percent of their annual salary based primarily on their students’ progress as measured by the state’s accountability test.¹²⁸ Similar programs have been implemented or proposed in several other states. [See *Sidebar 9*]

Finally, states should work to abolish teacher tenure in K–12 schooling, or at least require that teachers have five years’ experience before receiving permanent job protection. While hardly a panacea—dismissing incompetent teachers also

¹²⁸ More information on Florida’s A+ Plan is available on the government-managed *MyFlorida.com* website at <www.myflorida.com/myflorida/government/governorinitiatives/aplusplan/legislation.html> (18 January 2006).

requires strong local leadership in the face of union criticism—limiting the scope of tenure is an essential step toward improving teacher quality. At the same time, states should take steps to remove teacher evaluation from collective bargaining altogether and establish alternative evaluation policies. New legislation recently proposed in Massachusetts by governor Mitt Romney, which states both that “no aspect of teacher performance standards, criteria, indicators, or procedures of evaluation shall be subject to collective bargaining” and that “the primary performance standard for all teachers shall be their contribution to student learning of content specified in the state’s academic standards,” provides a model worthy of emulation by other states.¹²⁹

Local Reforms

These larger policy efforts will matter only to the extent that they change behavior at the local level. There are three key reforms to be tackled. The first is to promote transparency of the content, implementation, and impact of the collective bargaining agreement. Union efforts to defend established privileges are effective in part because they are so rarely subjected to scrutiny. Publicity will make many of these antiquated preferences harder to defend.

Local officials should take a page from the playbook of former New York City councilwoman Eva Moskowitz and hold hearings on the contract, inviting public scrutiny and media coverage. Moskowitz’s hearings were especially valuable in providing reporters a context for writing about the contract’s implementation and its impact on district operations. Officials and civic leaders must also ensure that influential members of the local media are aware of the contract’s provisions and have information on the nature, conduct, and outcomes of grievance and arbitration proceedings. While beat reporters and editors are rarely in a position to redirect coverage or invite controversy on their own authority, publishers and editorial writers are able and willing to do so when convinced the matter is a pressing issue of wide public concern.

Second, parents, voters, the business community, and civic leaders cannot continue to tolerate tepid district leadership. Even when opportunities present themselves, superintendents and principals have a poor track record of exploiting contractual measures or taking advantage of new flexibility. In the case of charter schooling nationally, or in the case of Michigan after the removal of formal licensure restrictions on school principals, for instance, educators have often failed to exploit available flexibility.¹³⁰ As simple as it sounds, the local community needs to demand that district officials stiffen their spines, negotiate aggressively, and take advantage of concessions regarding pay, benefits, termination, and work rules to

129. “An Act to Reform Education,” House Bill 4375, Section 26 (a) and Section 26 (c) replacing relevant portions of Chapter 71, Section 38 of the General Laws, September 22, 2005.

130. Michael Podgursky, “Personnel Policy,” 10–13; Marguerite Roza et al., *A Matter of Definition: Is There Truly a Shortage of School Principals?* (Seattle: Center on Reinventing Public Education, January 2003).

pursue meaningful reform. This challenge is a political one, and mobilizing those who pay the price for outdated schools can make the crucial difference.

One popular approach to redressing union dominance is promoting mayoral control of school districts. Advocates of this approach argue that broader and more transparent governance weakens union influence, and that mayors, forced to balance union pressure against competing constituencies, will prove less receptive to unions than school boards. While this approach holds some promise in some locales, there is no evidence that mayoral takeovers of school districts have predictable or consistent effects.¹³¹ Moreover, given the record of union influence in state and national politics, mayors may prove as susceptible to it as board members.

Finally, the indispensable step is ensuring that teachers face a stronger, more motivated partner across the bargaining table. Useful steps might include providing more resources to professionalize boards, linking superintendent pay and job security more closely to district performance, refocusing district negotiators on winning concessions rather than getting a deal done, or recruiting management team members from outside of education. It is also worth considering measures to moderate union political influence, through new statutes or regulations that make union affairs more transparent or place tighter limits on the use of mandatory agency fees collected from non-union members covered by bargaining agreements.

131. Jeffrey R. Henig and Wilbur C. Rich, ed., *Mayors in the Middle: Politics, Race, and Mayoral Control of Urban Schools* (Princeton, NJ: Princeton University Press, 2003).

Final Thoughts

Ironically, the historical figure that the current crop of teachers union leaders most readily brings to mind is not a labor lion like Samuel Gompers or Walter Reuther, but rather the imperial president of General Motors, Charlie Wilson. It was Wilson who, when testifying before the Senate Armed Services Committee a half-century ago, blithely remarked, “What’s good for GM is good for the country.” The NEA and AFT have long argued that what is good for America’s teachers is good for America’s children—and by implication, for America itself. As a general statement this is demonstrably false, and the willingness of too many superintendents, school boards, legislators, and governors to act as if it were true has had a pernicious effect on the quality of American schooling.

The dilemma for those seeking to reinvent American schooling for a new century is that unions continue to demand, for the most part, collective bargaining agreements crafted to address challenges and inequities that existed three and four decades ago. Union leaders often invoke norms of justice in working to ensure that veteran teachers continue to enjoy the same perks and protections that were part of the implicit bargain proffered when they entered the profession a quarter-century ago—despite intervening changes in the larger economy, in the needs of students, and in management and organizational practice. One can sympathize with the union position while regarding it as a massive hindrance to providing the schools we need.

All but a handful of collective bargaining agreements continue to enshrine the presumptions of the old factory model of labor relations: that there is no sensible way to distinguish good employees from bad employees; that professional behavior is about obedience rather than initiative; that managers are likely to be corrupt or incompetent; that good employees should aspire to stay in the same school district for 30 years; and that, because employees are interchangeable cogs, the most appropriate way to differentiate among them is on the basis of seniority and college credits. While this model made good sense in plants producing Ford

automobiles or Amana appliances in the 1930s, it is wholly unsuited to the challenges of 21st-century schooling.

In this new century, teachers unions and the role of the collective bargaining process have justifiably risen to the top of reformers' agendas. However, reformers have too often been distracted by efforts seemingly designed to shame unions into acquiescence. Making collective bargaining serve the interests of students will be more readily accomplished by altering the policy context of negotiations. Reformers should pursue a policy agenda that incorporates meaningful accountability for student outcomes, enhanced competition, and aggressive efforts to upgrade the quality of both managers and teachers. Such policies will increase the pressure on districts to perform, giving leadership cause and excuse to bargain hard and execute aggressively. The joint pressures of competition and accountability will push union negotiators to make concessions that will benefit students—especially if the bargaining process and the contract's impact on district operations is made more transparent.

This strategy will require leadership from district administrators and elected officials. The status quo, however, makes it very hard for even the willing to lead. Without cover, resources, and a sense of urgency, even hard-charging district officials or visionary union leaders will be little more than cannon fodder in the campaign to reinvent schooling. So long as they are weighed down by existing collective bargaining agreements, too many districts will prove unequal to the challenges of the new century. Those who would equip the next generation for the road ahead can no longer accept the small comfort of tranquil negotiations. If labor peace can only be purchased by consigning 21st-century students to schools that are run like mid-20th-century factories, the price is much too high.



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