



Table Talk

BY LINDA KABOOLIAN

How can we measure the effects of collective bargaining on the education of our children? Shall we look to student outcomes? Joe A. Stone of the University of Oregon says that average students do better in classrooms with unionized teachers, but less able and more able students do not. Or should we look to the economic effects? Stone says that collective bargaining increases the cost of wages and fringe benefits, but not by much. And Frederick Hess (in the *American*

administrators have more discretion than is commonly thought, though they fail to take advantage of it.

Despite this lack of empirical clarity, I'm sure many administrators and school board members feel that it would be much easier to reform public education if teacher unions would just go away. In the age of accountability, if the benefits of collective bargaining to students are not both significant and measurable, we might wonder if it is time to restrict or prohibit it.

The case for collaboration

School Board Journal) tells us that the old chestnut about restrictive work rules limiting administrators' initiatives to improve student achievement turns out to be exaggerated; it seems to be as much a story about the differences between what administrators *choose to do* under the terms of the contract as what they *can do*. Dale Ballou of Vanderbilt agrees, arguing that

The fantasy of union-free school districts, however, like many fantasies, rests on false premises: on the one hand a stereotype that union contracts stand in the way of education reform, and on the other, an administrators' paradise where labor markets and managerial discretion are unbridled and collective action by teachers is unknown.

Whatever ambiguity might shroud past and current effects of collective bargaining, the future is more certain: collective bargaining and unionization aren't going to go away, and education reform wouldn't be better off if they did.

Collective Bargaining Isn't Going Away

Teacher unions and collective bargaining are here to stay, not simply because of the political clout that unions carry among elected officials or because the courts have determined that the Constitution protects union organization, but because teachers want the benefits of union membership. Eighty percent of K–12 teachers belong to a union. Meanwhile, less than 10 percent of the private sector is unionized, the lowest percentage of unionized employees among advanced industrial nations. At the same time, our country has the most restrictive laws on unionization, exempting many employees, prohibiting compulsory membership, and barring many forms of collective action (that are allowed in the European Union, for example).

Public education has, by every measure, the highest density of membership and coverage by collective bargaining of any industry, public or private. Even in states where employees are covered by right to work laws that weaken unions or where other public employees cannot organize or bargain, teachers have won collective bargaining rights through local ordinances and executive orders.

Teachers across the range of age and experience support their unions. A 2003 national survey of teachers (veterans and novices) by the Public Agenda Foundation shows that 87 percent of the veterans say a union is “absolutely essential” or “important,” and 79 percent of new teachers feel similarly. The same percentage of veterans (87 percent) say that without a union they would be “Vulnerable to school politics or administrators who abuse their power”; 76 percent of new teachers agree. When asked about collective bargaining, 87 percent of veterans agree that “Without collective bargaining, working conditions and salaries of teachers would be much worse”; 73 percent of new teachers think so too. While the survey suggests that new teachers may demand different services from their unions and are more open to innovations such as merit pay, there is every reason to believe that these teachers intend to hold onto their union membership and collective bargaining rights.

Prohibiting unions or restricting collective bargaining will not prevent teachers from organizing resistance to managerial discretion, just as outlawing strikes by teachers has not eliminated walkouts over contract disputes. Where employees feel aggrieved, they will organize. The question is whether that organization will be regulated by laws. The labor statutes we question today evolved from the compromises made to control the chaos of unregulated collective action. For example, employers confronted by multiple organized factions within their workforce, each with its own set of demands, may see the wisdom of recognizing a single union as the exclusive bargaining agent. Employers clearly see the advantages of collective bargaining over chaos. By legalizing unions, the government assures employers that the union representatives they are facing are duly elected and are authorized to negotiate a contract that binds the members. The range of permissible topics for negotiation and collective action are defined, as are state-sponsored mechanisms for dispute resolution.

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Unions as an Asset

But before we dismiss out of hand the fantasy of a nonunion world, let's consider whether there is any empirical evidence that deunionization improves student achievement. Is there any reason to believe that school administrators, free from union contracts, have either the technical or the leadership abilities to design and implement innovations? Do administrators at the school level have the capacity to provide the necessary instructional leadership? No research makes these claims.

So, if the evidence about the effects of collective bargaining on student outcomes is mixed, and teachers want union representation, and there is no good evidence about the value of alternative models of governance, then perhaps the question we should examine is, Under what conditions

could collective bargaining be an asset to public education?

To understand how collective bargaining can be good for public education, we must appreciate the nature of collective bargaining. Since unions are creatures of laws that prescribe the scope and processes of organizing, they focus on adherence to the precise terms of a contractual agreement rather than on problem solving. This guarantees a rigid, adversarial posture that is unhelpful when conditions change or when management needs to make accommodations during the life of an agreement.

Most maddening to administrators, board members, and parents is union advocacy on behalf of nonperforming teachers. How can unions justify protecting adults when outcomes for children are at stake? This posture may not be the union's preference, but it is required by law to advocate for the teacher. In the evolution of labor relations law, the trade-off for the right to exclusive representation was the Duty to Fair Representation (DFR), a demand made by forces mostly hostile to unions to ensure that the unions treated their members fairly. When it was established, DFR was seen as strengthening democracy within unions; today, it is a legal obligation that seems, in the case of the teacher unions, to hamper the rights of children.

Every teacher union officer will tell you that 5–8 percent of the members consume 90 percent of their time and the union's resources. The majority of these are people they would rather not defend. Union representation of nonperformers makes other union members angry: they may be picking up the slack for that teacher, or they're paying for that person's defense and the process denigrates the value of their performance and calls into question legitimate concerns. Nevertheless, unions have an obligation to defend the member with enough vigor to withstand a legal claim that they discriminated against the member. If the member is a racial, gender, age, or even political minority, then the claim may carry additional consequences.

Exacerbating the rigidity of the legal framework is the historic relationship between the parties. Collective bargaining agreements are often the scar tissue of the struggle between the parties' attempts to limit the arbitrary discretion of the other side. Flip through a thick contract and you'll see many examples of attempts to define transfer rights and time use. Managers want to impose rules on the behavior of teachers while maintaining maximum flexibility in deploying them as an asset. Unions want to limit the arbitrary discretion of management. Each parry and thrust becomes restrictive contract language that defines in minute detail the limits of each party's discretion until the document itself is an embodiment of the sclerosis of the relationship.

What would be the alternatives to this system? In the absence of union representation, conflicts over discipline and discharges wouldn't go away. In fact, they would become costly legal headaches only for districts rather than for unions.

Districts would face the same requirements for documentation, procedural fairness, and claims of discrimination without the benefit of procedures required by a union contract. However, through collective bargaining, a collaborative approach to the problem of bad teachers has been designed. Teacher unions in some districts (such as Toledo, Ohio) have bargained a Peer Assistance and Review Program, which, over 25 years, has allowed for the firing of many tenured teachers without long waits and legal costs.

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A Reasonable Alternative

What would happen if the law made student performance a mandatory subject of collective bargaining, requiring that unions, professional administrators, and school board members address this issue in their contractual relationship and holding them accountable for the results? Most likely this would require conversation about what resources would be needed to produce what outcomes, just as it does in most other forms of agreement.

Accountability raises the stakes for the participants in the collective bargaining process. Innovative deals are not going to be negotiated by hired guns, people who advertise their services based on the cost of the total

contract, time to completion of negotiations, and cost of their services, rather than student performance. Contractors' interests focus on closing the deal at a fixed cost rather than on the academic outcomes the deal can achieve. The school district, as well as the local community leadership, should step up to the bargaining table, either as negotiators or as members of joint problem-solving committees, to do the hard work of designing mutually agreeable options and compromises that a good working relationship requires.

I fear, unfortunately, that a more likely scenario is one in which collective bargaining becomes yet another part of education reform policy determined by a power struggle between the usual players. Where the parties are unequal in power, the stronger side will win. If this power asymmetry is stable over time, the victorious side will dominate and get the form of collective bargaining it wants. If the power asymmetry is not stable and dominance shifts frequently, with commensurate changes in policy, then no real work on substantive issues will be done. Where the parties are relatively equal in power, there will be a stalemate with continuing but unproductive conflict and avoidance of any real work on substantive issues.

Working Together for Better Schools

The only constructive alternative to these power struggles is an expansion of collective bargaining to include joint responsibility for achievement outcomes, along with balanced, shared roles in governance. In this framework, the parties are likely to identify mutual interests or accommodating agendas (such as what conditions are good for both kids and teachers) rather than focusing on the zero-sum outcomes that collective bargaining too often pursues.

Distributed leadership—that of multiple individuals, rather than one person—strengthens an organization by increasing its capacity to engage in, respond to, and institutionalize constructive change. Research from the National College for School Leadership shows that student achievement is more likely to improve when leadership involved in issues of education quality is selected from among the stakeholder groups.

The union plays an important role as an institutional actor when the distributed leadership model is used. Employee participation in solving problems such as how to deal with poor teaching is most likely to result in improved organizational performance if the union is supportive of the effort and involved in the design and governance of the participation mechanism. It is important to remember, however, that even changes in practices require the consent of all parties. Research on participatory schemes makes clear that the positive effects of participation are greater and longer lasting when unions as well as individual employees are involved and when the domain of discretion is expanded to include strategic issues.

In fact, there seems to be what might be called a consensus on this point across the education spectrum: In order to change instructional procedure, teachers must be active participants in the design and implementation of new practices. “At the end of the day,” says Randi Weingarten, head of the powerful United Federation of Teachers, “no matter how much teachers are regulated or micromanaged or NCLBed, it comes down to the interaction between a teacher and kids in a classroom.”

Even former Milwaukee superintendent Howard Fuller has said, “You don’t want to be antagonistic to the teachers. . . . [Y]ou need effective teachers, so you have a mind-set to do the best you can for them.”

Where a collective bargaining agreement is in effect, the union will insist on representing or selecting the teachers, if

only to protect its role as the exclusive agent. According to James Harvey, author of *The Urban Superintendent*, former urban superintendents agree that the language of collaboration should be incorporated in the collective bargaining contracts themselves. “The contract is the union’s ‘sacred text,’” Harvey writes. “If it isn’t in the contract, it isn’t important.”

These former superintendents recognize that unions have an interest in good schools, and not only because students’ learning conditions are teachers’ working conditions. The accountability movement now contains goals that all the parties to public education share, just as they have shared authentic concern for kids.

The reality is that unions have an institutional interest in being constructive players in education reform. A generational shift in membership is occurring with regard to issues like merit, and perhaps on the value of union membership itself. According to Steve Farkas, Jean Johnson, and Ann Duffett, in a 2003 Public Agenda report, new teachers want a more professional and issues-linked relationship with their union. Other research suggests that those teachers rank salary considerably lower than other professional concerns, including: engaging with supportive administrators, col-

laborating with highly motivated and effective professional colleagues, and working in mission-driven schools that share their teaching philosophies. To survive, unions have to deliver, helping teachers to be successful by providing assistance with instructional practice, facilitating continuous professional education, and meeting the requirements of an increasingly regulated profession.

Innovative collective-bargaining practices and contract language show that student achievement is recognized as important to both teachers and administrators, as well as to students, parents, and taxpayers. As a result, negotiating parties express a growing willingness to look beyond the current ways of doing things and to experiment with new working relationships. Such innovations are open to the possibility that the other side has good ideas and flexibility.

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