



National School Boards Association

LEADERSHIP Insider

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PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

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A New Role for Bargaining

How to make changes that improve student achievement

By Lisa Soronen

Using collective bargaining to improve student achievement is a hot topic, studied and written about frequently by researchers and social scientists. The academic literature does an excellent job of suggesting what issues should be addressed in bargaining, what language should be changed, and how it should be revised.

These articles rarely suggest *how* changes can be made, however. Rather, they seem to assume that such changes can just “happen.”

But any school board member experienced in collective bargaining knows that even under the best of circumstances, bargaining is a slow process in which change comes out of compromise.

Perhaps researchers seldom address how to make such changes through collective bargaining because so many factors affect the outcome of a negotiation. These factors are unique to each school district and each bargaining session. They may include the personalities, experience, and goals of members of the bargaining team, for example, or financial constraints, the influence of the state or national union,

the history of the relationship between the parties, or settlements of comparable issues in other districts.

Despite the uniqueness of each situation, some general principles for success-

Valerie Forti of the Education Partnership echoes the call for training, saying boards need to learn about the implications of bargaining language. And, she adds, they need the assistance of an experienced lawyer at the bargaining table.

Another important factor is gathering data to determine which issues will most affect student achievement, says Bill Raabe of the National Education Association. He also advises boards to bring cre-

“ **Even under the best of circumstances, bargaining is a slow process in which change comes out of compromise.** ”

fully bargaining change to improve student achievement emerge from the articles contained in this issue.

For example, Tom Young writes that his Florida school district achieved major reforms by hiring top administrators who were committed to labor-management collaboration; working with union leaders who were committed to using collaboration to improve student achievement; and training board and union members extensively in collaboration and consensus building.

ativity and an open mind to the search for solutions.

Steps You Can Take

If a school board could take all of these suggestions, perhaps change would really happen. But what if your district cannot replace its superintendent with someone more skilled at maintaining positive labor relations? Or, more realistically, what if you cannot change the mind of a hard-

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Bargaining for Reform

Collective bargaining is part of the solution to improving student achievement—not part of the problem

By **Tom Young**

Improving student achievement is a legitimate aim, considering the global economy and our students' need to compete in the global workforce. Presidents and governors have made educational reform a focal point of their administrations. Congress and state legislatures have mandated programs intended to compel improved student performance. The results have been unremarkable.

One common theme at all levels of these efforts has been the notion that collective bargaining and teachers unions inhibit or prevent educational reform and improved student achievement. As Frederick Hess noted in "Reform at the Table" (*American School Board Journal*, November 2005), superintendents in major city school districts have faulted collective bargaining contracts for impeding district improvement, arguing that teacher contracts "usurp managerial authority, stifle creative staffing, and protect ineffective educators."

I respectfully disagree. Collective bargaining is not the villain in these failed initiatives. In my opinion, the participants in the process—teachers unions and district leadership alike—share the responsibility for the lack of success.

My observation is based on 35 years of experience with the collective bargaining process. I have been practicing labor and employment law in the public sector since 1971, representing both management and labor, dealing with school districts with less than 1,000 students and those with more than 250,000. I served as a hearing officer and assistant general counsel for the Florida Public Employees Relations Commission, the state agency charged with implementing and enforcing the collective bargaining law in Florida. I have also mediated and arbitrated bargaining and employment disputes in the public sector. From 1984 to 2000, I was general counsel for the state teachers union, the Florida Education Association.

What makes my perspective unique, however, is the fact that I was an elected school board member for the Leon County School District in Tallahassee, Fla., 1996 to 2000, serving as chairman of the board for the last two years of my term. Many attorneys have represented both labor and

management, but I know of no others who have the additional perspective of being an elected school board member.

In short, I have seen collective bargaining from every side—the good, the bad, and the ugly.

My experience has led me to appreciate collective bargaining as an effective problem-solving process that is well suited, when the parties to the process are properly aligned, to addressing education reform and improving student achievement. But my experience has also shown that when management attempts to use the collective bargaining process to impose reform, those initiatives are almost certain to fail.

Under the No Child Left Behind Act, Hess notes in "Reform at the Table," collective bargaining agreements may not contradict the implementation of NCLB-mandated remedies and policies. As a result, he says, NCLB "gives school districts a potentially mighty new club with which to push for managerial autonomy." Hess concludes: "How district leaders opt to wield this new club, and how unions will respond, remains to be seen."

As this article and its concluding statement suggest, "reform at the table" continues to be viewed in the context of traditional bargaining—that is, the use of power and position at the bargaining table to achieve desired results.

A Commitment to Change

There is another alternative: using collective bargaining as an effective tool in education reform. I have recently experienced such a situation. From July 2002 through July 2005, I served as an assistant superintendent in Florida's Charlotte County Public Schools. Before I arrived, the district and the unions had a traditional bargaining relationship. Bargaining was positional, with a formal structure, chief negotiators for each side, proposals and counter-proposals, concessions and compromise.

The process was adversarial and occasionally acrimonious, and everyone wanted to change that. All parties saw that the relationship was not producing positive results. Consequently, when the school board began looking for a new superintendent,

ent, an essential requirement was a commitment to improving the labor-management climate. The unions made it known that they were of the same mind. The new superintendent, Dave Gayler, gave assurances to the board and the unions that he shared their enthusiasm for change.

I sought the newly created position of assistant superintendent for human resources and employee relations because I saw that the ingredients for a true labor-management partnership were in place, and I wanted to be part of making it happen. The superintendent made it clear from the beginning he believes, as do I, that meaningful reform must be developed from the bottom up. He believes, as do I, that meaningful collaboration with the unions is essential to accomplish the changes necessary to improve student achievement. Not surprisingly, these beliefs are shared by John Klenovic, president of the local teachers union.

What followed demonstrates how unions and management can create an atmosphere that has great potential for improving teaching and learning. It did not happen because management used NCLB or pending state legislation as a “club.” It happened because the school board, the superintendent, and the union president recognized we were all confronted with the same need to improve the quality of teaching and learning, and all had a common interest in positive student outcomes.

Such convergence of common interests is essential to a meaningful labor-management partnership. No true partnership can be created when only one party is committed to it. Without training and a thorough understanding of collaboration, however, commitment and enthusiasm are not enough.

In Charlotte County, everyone was impatient to begin collaborative bargaining, but there was no common understanding of what constituted collaboration. Our experiences differed. There was no common ground, but there was pressure to begin.

Learning to Collaborate

We did not begin. We were fortunate to have a superintendent who saw the value of training his team in process before beginning the process itself.

The district leadership team was already well into training in facilitative leadership, and union leaders had received some training in collaborative bargaining, but collaboration and consensus building were not skills that all parties had in common. Had we yielded to impatience and begun the

process, I believe we would not have been successful. And having tried and failed, it would have been difficult to generate a favorable climate for partnership again.

Enter the Federal Mediation and Conciliation Service (FMCS). Another new member of the superintendent’s team, Chuck Richards, had previously served with the U. S. Department of Labor under Robert Reich. As the department’s representative on the Secretary of Labor’s Task Force on Excellence in State and Local Government through Labor-Management



**I have seen collective bargaining from every side
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Cooperation, he had the opportunity to observe firsthand what worked and what did not.

His positive experience with FMCS training led to contact with Sergio Delgado, Florida’s FMCS director, who enthusiastically supported our labor-management partnership initiative.

Charlotte County was the first school district in Florida to take advantage of the FMCS training in Interest Based Bargaining (IBB). The training was extensive and time consuming. Nevertheless, both union and management made a commitment that all participants in the process would receive the same training and receive it together. It should be noted that the training took place during work hours, and the district assumed the cost of substitutes for those involved—the only cost the district incurred.

IBB is not bargaining in the traditional sense. It does not involve proposals and counterproposals, concessions and compromise. Instead, it involves problem solving; using the tools of empathic, active listening; seeking first to understand, then to be understood; and getting to a decision based on consensus rather than imposition.

The joint training was critical to the success of the venture. The FMCS facilitators encouraged the development of relationships and understanding that transcended typical labor-management roles. As the training progressed, we began to see each other as individuals—not as representatives of a position. We began to talk in terms of issues and interests. We began to trust each other’s motivation and information. We learned how to reach

consensus, and what responsibilities that entailed once we embarked on the process. We learned that trust could be taught and learned, as well as earned.

The training and facilitation by FMCS continued for more than a year. As we addressed issues and interests as a group, it would have been difficult for an outsider to determine which members of the discussion were labor and which were management. We were part of a group process that focused on issues, common interests, and solutions, as opposed to taking posi-

tions and seeking concessions.

A Focus on Performance

As the result of this training, the district and the teachers union have created a countywide Partnership and Performance Council, cochaired by the superintendent and union president, which collaboratively addresses issues that are raised by either labor or management. The council is confirmed by the collective bargaining agreement, which states in part,

The [Council] is the chief policymaking body for our collaborative initiative. It will be a forum for communication and cooperation in support of our mission to deliver high-quality education; to maintain a high-quality work environment for employees of CCPS; and to generate gains in efficiency, effectiveness, and accountability through policies, programs, and services that are economically feasible and justifiable.

... The Council will use the FMCS Interest-Based Process outlined in the FMCS training modules as the method by which decisions are made.

With the help of an FMCS grant of approximately \$100,000, the union and the district have established partnership committees at each school to collaboratively address issues that previously would have been addressed in opposition, or not addressed at all. All members of these committees received FMCS training in interest-based problem solving before taking part in the committee problem-solving process.

The school-based partnership committees are confirmed by contract language similar to that for the district council.

On Aug. 22, 2005, the Charlotte County Public Schools was honored by FMCS at the Florida Labor Management Conference with an award recognizing the district as the Florida Labor Management Program of the year. CCPS was the first Florida school district to receive this award.

The focus of these collaborative efforts has been improving student performance. Addressing the issues involved in improving student performance requires problem-solving skills, not concession and compromise. It requires the collaboration of everyone who will be asked to make changes in teaching and learning.

The initial efforts have been impressive. The parties, meeting jointly for more than a year, have developed a proposal to change the way business is done in Charlotte County. At a school board workshop in February 2006, representatives of the union and the district leadership presented a proposal for the Charlotte Academy of Professional Educators. CAPE will address common interests: recruiting and retaining high-quality, high-performing teachers and focusing on the highest needs of the district—student success.

The Partnership and Performance Council created two committees to oversee the development of CAPE—a design team and an implementation team. The focus of CAPE is on training that will produce positive results in the classroom. Intended as a career development program, as opposed

to in-service training, the training will take place during times when teachers are not working with students.

The program's content and methods will be based on research; evidence of completing the program will be application in the classroom, as opposed to "seat time." The program will involve coaching and mentoring and will use a sequenced progression of teaching and learning skills. It is intended to be self-perpetuating as CAPE graduates become trainers, mentor-coaches, and researchers.

As envisioned, CAPE will consist of course work in tiers, each the rough equivalent of one year. Compensation is yet to be determined, but it is expected to be in the form of salary supplements, rather than stipends, so that the additional compensation will be carried from year to year and be included as a contribution to the employee's retirement. Supplements will be in addition to compensation for degrees. Costs and fees have yet to be determined, but it is expected that some portion of the costs will be borne by the employee.

The anticipated long-term benefits will include the retention of high-quality teachers, the development of a source of mentors and coaches, a recruitment incentive, encouragement of self-motivation to initiate change in teaching methods, and ultimately improved student achievement and student success. The intent is to measure student success before and after teachers apply what they have learned. If the data indicates that the training is not producing the desired results, the content of

the tier will be changed—we will fix the problem, not the blame.

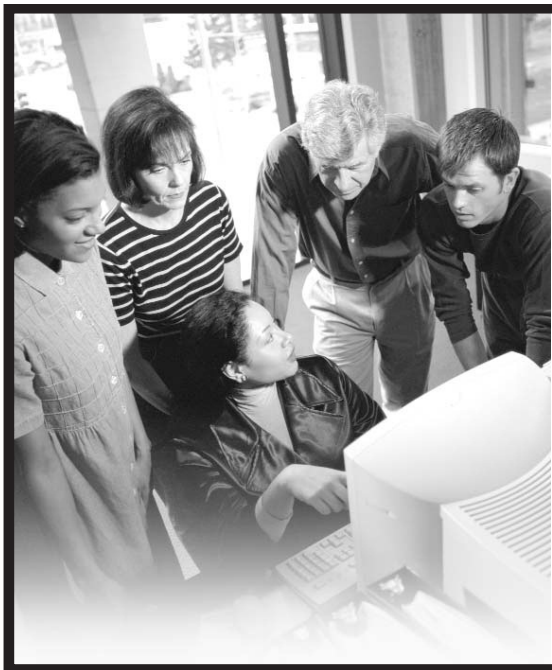
Positive Benefits

CAPE must be submitted to bargaining before being implemented, so its effect on student achievement is yet to be determined. Logic and reason suggest, however, that a plan developed by teachers and administrators together is more likely to have a positive impact than a plan that is imposed from above.

The positive benefits of interest-based problem solving in Charlotte County are indisputable. It cannot be overemphasized, however, that this process was achieved after three years of training and patient implementation. There were missteps, and were it not for the unwavering commitment of the school board, the superintendent, and the union leaders, the process could easily have come undone.

Nevertheless, the trust that has been established in Charlotte County will pay dividends as the inevitable hurdles to implementation are encountered and overcome. The quality of teaching will improve, and student achievement will improve as well. Charlotte teachers and administrators can be proud of their innovative and creative efforts and their contribution to student success.

Tom Young was formerly assistant superintendent for human resources and employee relations in the Charlotte County Public Schools, Port Charlotte, Fla. He retired from the position in July 2005.



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NCLB and Bargaining

Coordinating the requirements of the law with the provisions of the contract

By Melanie Peterson

Are any of your district schools reaching the advanced stages of program improvement? As the end of the 2005-06 school year approaches, have you determined whether all relevant staff is “highly qualified,” as required by NCLB? Will the language of your collective bargaining agreement allow you to take the necessary actions to meet the needs of your students?

Although NCLB has been around since 2002, many phases of its implementation are just beginning to come into play. As school districts work to reach the law’s goals, a variety of actions involving teachers and paraprofessionals may be necessary. Districts should consider coordinating any actions they may need to take with the language of the current collective bargaining agreements. A thorough review is essential.

Here are four important areas to consider:

1. Verify the qualifications of your teaching and paraprofessional staff.

Staff must be “highly qualified” by the end of this school year. Unless your state is applying for a waiver, paraprofessionals in Title I-funded programs and all teachers of core academic classes must be highly qualified by state and federal definition by the end of the school year.

If your district has teachers or paraprofessionals who are not highly qualified, you should have developed a course of action to transfer or release staff. This type of action may be covered under your district’s collective bargaining agreements or state or local policies. That’s not impossible: Kevin Harty, a partner at the Lansing, Mich., office of the Thrun Law Firm, said he met little resistance from unions when his clients suggested adding contract language to cover the NCLB qualifications for teachers.

Many contracts now contain language requiring that teachers meet the definition of highly qualified to be able to bid on or retain their position. Should teachers not meet the qualifications, including appropriate language in the contract allows districts to transfer, lay off, or ultimately dismiss those teachers.

The timing of such actions is critical to

compliance. Districts should, at this point, be well along the path of identifying those who don’t meet the requirements and helping them become highly qualified.

2. Review or revise the transfer language in your collective bargaining agreement.

For schools that have reached the advanced stages of program improvement, districts may be presented with the option of restructuring the school or removing staff members who are “relevant to the failure” of the school. Typically that could include transferring staff out of the school.

If your current contract language has a restrictive definition of “involuntary transfer” or only allows transfer by seniority, you may be severely hampered in moving staff.

To avoid going into crisis mode to manage this problem, meet with your unions before any such action becomes necessary.

3. Consult with the union regarding HOUSSE components.

Districts have a choice regarding which leadership and service activities can be considered when evaluating a teacher under HOUSSE, the NCLB “high objective uniform state standard of evaluation.” In all likelihood, unions will want input on the type of activities that will receive credit.

Depending on the language of your state’s obligation to bargain, your district

may have to bargain or consult with the union over which committee memberships, curriculum work, or core subject area service activities will be given credit. These leadership and service activities may directly affect a teacher’s “highly qualified” status, so it is necessary to review the activities carefully and make sure they are directly linked to work in the teacher’s subject area.

4. Bargain flexible contract language.

If it isn’t obvious which collective bargaining provisions may put a stumbling block in your path, don’t ignore the issue. The creative ideas and innovative programs your district may develop to help solve Adequate Yearly Progress issues may also raise collective bargaining concerns.

The following language from the Oregon School Boards Association may provide the flexibility to implement district programs and take needed action with staff:

- No provision of this Agreement shall be construed to prevent or prohibit the Board or District from taking required actions under the NCLB Act of 2002 concerning school improvement, school corrective actions, or school restructuring.

- Any timelines, notifications, or other provisions of this Agreement shall be subordinate to, and adjusted by the NCLB Act and its implementing regulations in order to meet the required actions and deadlines of the NCLB Act.

- Furthermore, if any of the anticipated NCLB Act actions result in a duty to bargain, bargaining shall commence and shall be initiated by the parties in a time-frame sufficient to allow completion of bargaining prior to implementation under the deadlines specified in the Act.

As for the time approaches to meet the deadlines and qualifying events of NCLB, your district should be prepared for staff transitions and program changes. Advance planning with unions and staff will better serve the needs of everyone—especially your students.

Melanie Peterson is an attorney with the California law firm Lozano Smith and a member of NSBA’s Council of School Attorneys.

HAVE YOU TAKEN THESE ACTIONS?

1. Verify the qualifications of your teaching staff and your paraprofessionals.

2. Check the transfer language of your collective bargaining agreements.

3. Meet with your employee unions to develop flexible contract language.

4. Develop a plan for implementing needed personnel actions.

Rethinking the Salary Schedule

One district's pioneering pay-for-performance plan

By Dennis Dahlman

The traditional “step/lane” teacher salary schedule increases teacher pay in three ways: by experience (step), additional education credits (lanes), and negotiated increases to the schedule. It is inexpensive and simple to administer. Teachers are entered on the schedule on the basis of their experience and education. Once placed, they receive a salary increase for each year of service or for obtaining additional educational credits, which are usually granted in 15-credit blocks for postgraduate coursework. Negotiated increases usually are equal across the board, either as dollar or percentage increases.

These schedules are often viewed as fair because they are easily understood and treat all teachers equally. But are these schedules really fair? More important, do they reward high-quality teaching?

In Minnesota, new legislation provides \$260 per student to school districts that reform their traditional salary schedules and base compensation on teacher performance and student learning. Districts wishing to seek these funds must complete an extensive application and describe the district's educational improvement plan, individual site plans (aligned with the district plan), and an alternative professional pay system. The state Department of Education approves applications on a first-come, first-served basis.

The Hopkins School District 270 (located in the western suburbs of Minneapolis) was the first district in the state to receive these new dollars. The district will receive an additional \$2.1 million per year for two years. Hopkins proposed three initiatives, which were subsequently approved by the state Department of Education:

1. Master teachers, a new licensed teacher position charged with evaluating tenured teachers;
2. Additional instructional leadership at each school to assist in meeting the building's performance goals; and
3. A performance bonus.

How the Plan Works

The performance bonus has three parts. Part one is successfully meeting

performance expectations as defined by the Hopkins Framework for Effective Teaching. Master teachers evaluate tenured faculty members twice a year on the basis of the criteria in this framework. The master teacher and principal work as an evaluation team. The principal is the final authority in determining whether a faculty member is meeting performance expectations. Successful teachers earn \$1,600 for meeting these performance expectations.

Part two is assessing whether the teacher's students are learning appropriately. Teachers can choose to provide evidence of demonstrated student learning in various ways, including portfolios, standardized test scores, pre- and post-test results, checklists, anecdotal evidence, projects/products, certifications, performance assessments, and other such tools. Principals are responsible for determining whether students are learning appropriately in a teacher's classroom. Successful teachers earn \$200 for meeting these student-learning expectations.

Part three is whether the building's student-performance goal is met. Site goals are based on standardized test results. Teachers can earn another \$200 for meeting the building's performance goals.

At the beginning of the 2005-06 school year, base pay was set for Hopkins teachers on the basis of the traditional salary schedule. A performance bonus of up to \$2,000 will be awarded this spring to all faculty members who have met all three performance expectations. Next spring another performance bonus will be awarded to all teachers meeting expectations.

In addition, all teachers in their first 12 years of service who have met performance expectations are eligible for an additional \$2,000 performance increment in 2007. Finally, staff members will be eligible for educational increments of \$2,000 for approved 15-quarter credits of postgraduate course work.

The performance and educational increments are permanent additions to the base. The performance bonus is not. There is no automatic increase in salary: Unless the teacher is meeting district

expectations, no increase is granted.

A Learning Process

The new legislation provided guidance and financial incentives. Our faculty leaders took ownership in explaining the new model to the teachers. Five schools piloted the model during the 2004-05 year. In June 2005 all teachers voted, by a significant majority, to implement the model at all district schools.

Developing and implementing a new compensation model is a learning process. A labor/management committee created guiding principles, including collaboration, goal-setting, objective and understandable criteria, a guarantee that staff members' salaries would not be reduced, adequate funding for initiatives, and a desire to improve the teaching profession.

Collaboration continues as we develop and improve the model. Many departments are involved in making decisions, which has led to productive discussions about learning and teaching at many levels—an important contribution to professional practice.

We are in the early phase of implementation. We know our model will change as we learn from our experiences. Unquestionably the system is more challenging to implement and administer than the traditional salary system, and it is more costly. But initial feedback is encouraging.

Teachers are discussing and sharing their experiences. They appreciate the feedback regarding their practice. We believe student learning will be enhanced as a result. And we believe we are on the road to a better compensation system—one that aligns district and site goals, teacher performance, and student learning.

Dennis Dahlman is the owner of Dennis Dahlman Consulting in Golden Valley, Minn. He is chief negotiator for Minnesota's Hopkins Public Schools 270 and has extensive experience helping school districts and other organizations in the areas of collective bargaining, labor relations, alternative compensation, consumer-driven health care, and human resource policy development. He may be reached at (612) 750-9780 or dennis@dahlman.com.

NEW ROLE

Continued from page 1

line union negotiator or afford extensive training or the services of an experienced attorney negotiator?

No matter what your circumstances, there are at least three steps all school boards can take to try to use collective bargaining to improve student achievement. All three are alluded to in almost all of the articles in this issue, and none take much time or cost much money to try.

1. Educate yourself about everything and anything related to using collective

bargaining to improve student achievement—including research and professional and academic writing; school district contract language; school district student achievement data; local, state, and national union bargaining goals; grievance history and administrators' perceptions of flexibility of contract language. It will be difficult to persuade unions to agree to major changes that are not well supported.

2. Take to heart Valerie Forti's suggestion to start "every conversation, every policy, and every negotiation with these simple words, 'This will improve student outcomes by ...'" At minimum, this focus will help you view board and union pro-

posals through a common lens and stay committed to a common goal despite pressure to capitulate. It might even motivate the union to think about its positions from the perspective of improving student achievement.

3. Be creative. Of all the elements essential to making change, creativity is one of the simplest and most overlooked. All of the reforms discussed in this issue have one thing in common: They represent a change from the status quo that came as a result of people thinking differently about things.

Lisa Soronen is an NSBA staff attorney.

Strategies for Small Districts

Lessons from the front-runners about reforming teacher pay

How can small, rural school districts negotiate innovative approaches to teacher pay?

School board members, administrators, and even teachers have been criticizing the traditional salary schedule probably since its inception, but only recently have a number of school districts—including those in Denver, Houston, and Hopkins, Minn.—actually overhauled their teacher compensation systems.

To accomplish this change, these districts invested a great deal of time and money, both of which may be easier to come by in large urban or suburban school districts. The Denver Public Schools, for example, spent five years developing its Professional Compensation System for Teachers. Four full-time employees worked on the design team, and the district received donations from at least seven major foundations—including more than \$1 million from one foundation.

In small, rural districts, it might not be realistic to completely change the compensation plan in one bargaining cycle. But these districts can take some of the lessons learned by the front-runners and use them to bring about change.

Here are some tips for small, rural school districts interested in modifying their pay plans to improve student achievement:

1. **Make sure the board is committed to the goal.** A change of this kind will take time and money and may draw criticism. A board that is fully committed to

changing the compensation system—and that recognizes the likely costs and consequences—is less likely to be discouraged during the ups and downs of negotiations.

2. **Seek the support of the union and the community.** Changing teacher compensation will require the support of the majority of union members, not just the bargaining team. Proposals developed jointly by the board and union bargaining teams will likely be better received by the

"distinguished schools." Successful teachers can receive salary increases and bonuses.

Denver's ambitious pay plan started as a pilot program in which 13 percent of district teachers were eligible to receive \$500 if they accomplished agreed-on student growth objectives. Similarly, a small, rural district could begin by modifying one or two aspects of teacher pay, rather than trying to negotiate a completely new pay

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Changing teacher compensation will require the support of the majority of union members, not just the bargaining team.

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union membership. To come up with a joint proposal, the board and the union may want to form a committee to study this issue and make recommendations. If the district will need additional funds to pay for a new compensation system, it is crucial to inform the community about how the pay plan will work and how it is intended to improve student achievement.

3. **Start slowly and small.** The Hopkins, Denver, and Houston plans measure and reward success differently. For example Denver's plan rewards additional education, performance evaluations, working in hard-to-staff positions and hard-to-serve schools, meeting specific objectives, improving test scores, and working in

plan with many features in one round of bargaining.

4. **Negotiate what you really need, not what you really want.** Restructuring your salary schedule and giving bonuses based on performance on standardized tests might be your board's ideal pay plan. But you might be facing an immediate need to recruit math and science teachers. Getting the union to agree to give starting bonuses or higher salary schedule placement to hard-to-staff positions might help pave the way for further negotiations over pay for performance.

5. **Do your homework.** A school district's biggest fear when modifying the compensation system is not being sure it

can pay for its proposal. Getting a detailed financial analysis of what the proposed plan would cost over a number of decades will help you decide whether the district can afford the plan. If taxes have to be increased to pay for it, be sure to get a commitment from taxpayers before implementing the plan.

The district's second biggest fear may be that the hours spent in bargaining will result in no agreement. Work collegially

with the union to develop a pay plan jointly, and research pay innovations in comparable districts and others in the state. A pay plan supported by comparable districts may be more palatable to the union—and ultimately to an arbitrator.

Finally, put all your research to good use: Don't lose union members' votes because they don't understand how your proposal may benefit them. While collective bargaining laws may prevent your bar-

gaining team from negotiating with the general union membership, putting together easy-to-understand information on how your proposal works may help your proposal sell itself.

For example, Denver developed a website where teachers could calculate their pay under the proposal pay plan and the traditional salary schedule. What worked in a big city like Denver might work in small, rural districts, too.—*Lisa Soronen*

Priority Number 1

Putting student achievement at the top of the agenda in teacher contract negotiations

By Valerie Forti

The great majority of school board members serve for the right reason: to help students. Some may seek to lead because of a special area of interest—in the performing arts, perhaps, or sports or special education. Others may serve with an eye toward keeping taxes in line by matching spending to needs, or simply to support good schools.

But board members rarely think ahead about how they will perform one of their most important and influential duties: negotiating the teachers' contract.

This lack of preparation can put the public at a real disadvantage, since union officials may exploit their expertise in negotiating and applying political pressure. School board members usually have no such expertise—and, indeed, may not be trained to approach negotiations with clear goals and a full understanding of contract language and its implications. They may not be aware of best practices from contracts within their own state that they can use during negotiations.

With education contracts representing 80 to 85 percent of local tax dollars, this lack of preparation can be a problem.

Unfortunately, that often means students' interests may take a back seat to the unions' economic interests. Management rights that could help promote excellence and accountability can be stripped away, while tax dollars are spent on sometimes lavish entitlements, rather than on improving education. The result is that students lose out, unequipped for the intense global competition they will face in the future.

Serving Students

The Education Partnership recommends that school boards start *every* conversation, *every* policy, and *every* negotiation with these simple words, "This will improve student outcomes by ..." If each and every decision began with that phrase, there would be a reduction in excessive adult entitlements, which have little or nothing to do with improving student achievement. If school board members make clear to the public that serving students is their focus, the public will strongly support them.

The Education Partnership, a nonprofit alliance of business and community leaders, decided to tackle this problem. We began studying contracts in depth to find out what was in them, and we urged board members to better arm themselves with knowledge so they could be staunch defenders of students' interests.

Since the release of The Education Partnership's landmark March 2005 report, *Teacher Contracts: Restoring the Balance*, we have spoken to more than 100 groups in our home state of Rhode Island, and we are beginning to broaden our reach to states around the nation. We have discussed contracts with dozens of school board members, and we regularly seek their advice. This spring, we plan to release the second edition of the report, which was written in collaboration with board members from around Rhode Island.

In the 2005 report, we expressed concern that board members do not have enough training to understand the full

impact—fiscally and operationally—of what they are negotiating in teacher contracts. Those who have read the report have repeatedly told us that is exactly the problem.

Teachers unions, on the other hand, are well-versed in contract negotiation. The union contracts we have looked at serve their economic interests very well. But union contracts may not be about serving students or improving student achievement.

Intelligent, well-intentioned board members who *have* done their homework on the impact of their contracts and the skyrocketing costs of benefits have expressed another frustration to us repeatedly. They tell us they have been on their way to a manageable agreement only to be hit with the repercussions of a negotiation by some other school board that has capitulated to union pressure and given away the store. Their own board then comes under intense pressure to cut the same deal, and even well-intentioned boards often capitulate.

In negotiating with unions, school board members should, without question, work with experienced lawyers. Nevertheless, as we will point out in our 2006 report, board members cannot simply count on others to be experts in their place. They must make the effort to fully comprehend their district contracts and the implications of what they are negotiating.

Moreover, in addition to working with attorneys, school boards should be seeking the advice of their superintendents and principals on the impact of proposed and existing contract language, particularly on teaching and learning.

Focusing Resources

School board members should always remember that their Number 1 responsibility is to the students—not the adults

employed by the school system. In our 2006 report, we cite the Oregon School Boards Association's commendable commitment to students. OSBA's list of critical guidance items for negotiating teacher contracts notes that the board's primary concern is to focus resources on improved student achievement.

We agree. But when we looked at Rhode Island education law covering the formation of school boards, we and found that "improved student achievement" was the 14th item on the list of responsibilities. Student achievement should be the Number 1 priority in every state.

As critics complain about the lack of adequate school funding, particularly in poorer districts, and taxpayers feel crushed by escalating school districts costs, doesn't it make sense to look carefully at the way we are currently spending our education dollars?

We certainly do not suggest spending less on education. Good public education is expensive. We want teachers to have good salaries, health care coverage, and retirement benefits, and we want exceptional teachers to be paid more. (We support research-based evaluation using multiple measures and pay for performance.)

But the balance has tilted away from the interests of students.

Taxpayers should not spend less—they should spend smarter. We encourage all school boards to devote whatever time and money it takes to fully comprehend the impact of negotiated agreements. These agreements are our schools' delivery system. To a remarkable degree, they govern the quality of the education our students receive.

Valerie Forti is president of The Education Partnership (www.edpartnership.org) in Providence, R.I.

Unintended Consequences

The trouble with teachers union staffing rules

By Jessica Levin

Initiatives to raise teacher quality and improve urban schools are widespread. Yet all too often, these efforts fall far short of their intended goals because they fail to confront one of the major barriers to improvement: the staffing rules in teachers union contracts.

A new study by our nonprofit organization, The New Teacher Project (TNTP), demonstrates the extent to which contractual staffing rules undermine the ability of schools, especially urban schools, to build high-quality teaching staffs and create and sustain a culture of accountability and improvement.

The study, *Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts*, focuses specifically on the contractual rules governing "voluntary transfers" (teachers, often with seniority rights, who want to move between schools) and "involuntary transfers" (teachers whose positions are cut from their school, often due to school closures or enrollment or budget changes. In some contracts, involuntary transfers are called "excessed teachers" or "surplused teachers.") As a result of these staffing rules, urban schools are often forced to hire large numbers of poorly matched, or worse, poorly performing incumbent teachers; new teacher hiring occurs too late to secure the most talented teacher applicants; and the jobs of even the best novice teachers are constantly in jeopardy.

Highlights of the Study

Five of the study's findings stand out:

1. Widespread forcing of teachers on schools. By analyzing the movement of incumbent teachers in five large representative urban districts across a hiring season, TNTP found that, on average, fully 40 percent of school-level vacancies were filled by voluntary or involuntary teacher transfers. Schools had little or no choice in hiring these teachers, regardless of their quality or fit for the job.

2. Passing on poor performers. Roughly 40 percent of the principals surveyed in one district and 25 percent in another acknowledged using the voluntary or involuntary transfer process to pass a poor performer to another school in their district.

3. Lack of a viable termination process. Passing poor performers along to other schools, albeit a terrible management practice, may also be a rational response to the lack of a viable formal termination process. Labor relations staff in each of the five districts reported that only one or two tenured teachers are formally terminated each year for poor performance.

4. Late hiring. With only one month before the start of school, the studied districts still had to hire and place between 67 and 93 percent of their new teachers. One reason for these delays is that by contract, new teachers often cannot be hired until transferring teachers have secured new placements. TNTP's prior research showed, however, that urban districts that hire teachers after May 1 lose large numbers of their applicants—

including the best ones—to districts that hire earlier.

5. Toll on novice teachers. By contract, and regardless of their contribution to their school, the least senior teachers are generally the first to be involuntarily transferred. They also can be bumped from their jobs if more senior teachers need or just want those positions. In one district, almost 25 percent of the principals said at least one new hire or novice teacher was bumped from their school the prior year. Moreover, 50 percent of first-year teachers were required to post their positions as vacancies in the spring so that more senior teachers could have the chance to fill them.

Taken together, these effects mean that urban schools lack sufficient control over their most important resource for improving student learning: the quality of their teachers.

What School Boards Can Now Do

Fortunately, school boards are uniquely positioned to reverse this situation. In the past, boards have typically signed off on contractual rules, at least in part because these rules appeared to have no economic costs. With data now demonstrating their profound toll on urban schools, however, the importance of far-reaching reforms is now clear.

To achieve such reforms, we recommend board members take the following steps:

- Learn more about the impact of the voluntary and involuntary transfer rules in

your district. Do these rules force principals to hire incumbent teachers whether or not they are right for the job? To delay hiring new teachers? To treat novice teachers as expendable?

- Ask your district to carefully track the between-school movement of incumbent teachers, as well as the new teacher hiring timeline, so you have the data to build a quantitative case for reform.

- Help your constituents (parents and other key stakeholders) understand the effects of these rules on teacher quality and the effectiveness of all schools in your district.

- Develop recommendations for reform that respect the needs of senior teachers while enabling the best match of teacher to school and classroom. (Chapter 3 of our report presents our recommended reforms.) Prioritize efforts to achieve these reforms.

- Understand that reaping the benefits of union reforms also will depend on improving school leadership, human resources, and budgeting, as well as aligning all of your instructional and school restructuring initiatives with the staffing calendar.

It would be a mistake to view contrac-

tual reforms as the silver bullet for raising the quality of urban teachers and the performance of their students. Nevertheless, without significantly changing the contractual staffing rules, another generation of urban students will bear the cost of well-intentioned, but ultimately inadequate, school improvement efforts.

Jessica Levin is chief knowledge officer of The New Teacher Project and coauthor of Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts. The full report can be found at www.tntp.org/newreport/index.html.

On Again Off Again in New Mexico

Public sector collective bargaining returns to the Land of Enchantment

By John F. Kennedy

The road to public sector collective bargaining in New Mexico has had a few twists and turns. The state is now in its second round of such bargaining with the enactment of a new Public Employee Bargaining Act (PEBA), which took effect three years ago.

Two aspects of the first PEBA, however, differentiated it from many other such laws:

- A sunset clause, which provided that the statute would expire in six years.
- A local option provision authorizing public employers other than the state to

ing system in the United States expired. Many public bodies in the state did not continue their collective bargaining relationships once existing agreements expired. Hoping to compel continued bargaining, several unions turned to litigation to enforce “evergreen clauses” in the expiring contracts, but their attempts failed.

Gov. Johnson left office in 2002 after serving two terms and was succeeded by a Democrat, Bill Richardson, former U.S. Secretary of Energy and ambassador to the United Nations. Richardson had received much support from the teachers unions in his election campaign and expressed his willingness to consider reenacting the Public Employee Bargaining Act.

A Slow Beginning

Although the new act took effect on July 1, 2003, it took nearly a year for the governor to appoint and confirm the establishment of the state labor board, which must approve grandfathered systems, certify units, or approve the appointment of local labor boards. There was also a significant lag time in organizing activities under the second law, unlike the first.

In 1993, there was immediate organizing activity and litigation over the attempt by a number of public bodies to create grandfathered systems by adopting local ordinances before the act took effect. The second time around, labor organizations pushed aggressively to seek voluntary recognition of designated bargaining units through “card check” procedures, which require signing forms to designate a collective bargaining representative. As a result, there have been only a handful of contested elections in the

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New Mexico’s experience under its second round of public employee bargaining was less contentious than under its first.

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Historically, collective bargaining in New Mexico’s public sector was voluntary before enactment of the state’s first Public Employee Bargaining Act by in 1992. Before that, some state and local public bodies—including the State Highway Department, the City of Albuquerque, the University of New Mexico, the Albuquerque Public Schools, and a few other school districts—had engaged in voluntary collective bargaining with exclusive representatives of labor organizations, such as the NEA or AFT.

The first PEBA created a relatively standard petition-and-representation election process, supervised by a state Public Employee Labor Relations Board (PELRB), appointed by the governor.

adopt an ordinance, resolution, or charter amendment to create procedures for collective bargaining that were substantially equivalent to those of the state act. A number of school districts took advantage of this local option and created their own local labor relations boards.

Then in 1995, the unexpected happened. Then-Gov. Bruce King left office, and Gary Johnson, a conservative Republican, was elected to the post. Labor organizations tried repeatedly to get the sunset clause repealed, but Gov. Johnson vetoed each attempt, and the sun set on New Mexico’s first Public Employee Bargaining Act on July 1, 1999.

To my knowledge, this is the first instance in which a public sector bargain-

state under the new act.

A few significant changes were made in the act:

1. Reducing from 60 percent to 40 percent the number of employees who must appear and vote at a representation election to validate the vote;

2. Inserting binding arbitration following impasse resolution; and

3. Requiring binding arbitration at the conclusion of all grievance procedures.

Local option was retained, and as a result, a number of local public bodies, including many school districts, have availed themselves of this provision to create local labor management relations boards to oversee the collective bargaining process on the local level, rather than through the governor-appointed PELRB. Since its creation in 2004, the state PELRB has certified 29 state agency units, nine county and municipal units, and five school district and community college units.

Interpreting the New Act

A new provision in the “scope of bargaining” section of the 2003 act reads,

“The scope of bargaining for representatives of public schools as well as educational employees of state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.” To date, there has been no interpretation of this language by the Public Employee Labor Relations Board or any court, so there is no definitive ruling as to what it means.

The statute mandates that the parties negotiate “the impact of professional and instructional decisions.” Labor organizations have been willing to accept that this allows the local school board to adopt policies, establish practices, or create programs within its policymaking authority. We have yet to determine how far this language will expand the scope of bargaining for educational employees. For instance, will it result in demands for union oversight of the evaluation process, curriculum development, or requests for academic freedom?

In addition, there has been little discussion at the table of the clauses that relate to student achievement. This may

result from the recent adoption of statutory provisions imposing a three-tiered state licensing system for certified school instructors as a byproduct of the No Child Left Behind Act. Student achievement and success are included among the “essential competencies” candidates must demonstrate in the performance improvement, growth planning, evaluation, and instructional leadership steps in order to advance from one licensing level to the next. It is equally plausible that student achievement has not yet come up as a priority topic for bargaining in this slowly evolving system.

Overall, New Mexico’s experience under its second round of public employee bargaining has been less contentious than under its first. While the process of organizing public employees and establishing appropriate bargaining units has moved more slowly, the pace is beginning to pick up, and there will be more to report in coming years.

John F. Kennedy is a member of NSBA’s Council of School Attorneys and a member of the Cuddy Firm, LLP in Santa Fe, N.M.

Bargaining for Student Achievement

Don’t let it be a missed opportunity

By Bill Raabe

Can collective bargaining be a tool for improving student achievement? Some might think that’s not possible. Others may believe the concepts of collective bargaining and improved student achievement are mutually exclusive, while still others look for simplistic silver-bullet solutions.

But I see opportunity—opportunity for school employees, administrators, and school boards to sit down as co-equals and reach resolution on issues directly related to student achievement. I see opportunity for a new level of dialogue over issues that often receive too little attention at the bargaining table. I see opportunity to have a direct, positive impact on the learning conditions for students.

Will you move in this direction?

Taking Risks

Deciding to enter into collective bargaining in this arena requires strong and

effective local unions and equally strong and effective school administrators and school boards. It will be necessary to commit to this work over the long run and to understand that this effort will not be limited to the bargaining table.

Bargaining for improved student achievement requires that both parties be willing to take risks. The union and district may be required to:

- Take the risk to bargain in new ways over such issues as curriculum, instruction, professional development, student assessment, recruitment and retention of high-quality personnel, closing achievement gaps, and teacher evaluation;
- Take risks to engage in a different level of dialogue and open exchange;
- Take risks to fully explore the other party’s ideas, not just your own; and
- Take the risk to temporarily remove the management/labor labels often permanently affixed to one’s forehead.

Will you take appropriate action?

The Heavy Lifting

Once it’s been decided to take these risks, and to make the joint commitment to improving student achievement through labor-management collective bargaining, what’s next? Certainly a lot of heavy lifting. Training, research, compromise, study, assessment, and recommitment will all become part of your work. For example:

- Union and management need joint training on a process—probably interest-based bargaining—they can use to deal with achievement-related issues.
- Data on existing achievement gaps must be collected.
- Data must also be collected to determine which issues will have the most impact on improving student achievement in your district.

In addition, both parties should bear this advice in mind:

- Examine (and question) available research that quantifies the impact of selected improvement strategies.
- Avoid being swayed by the political winds that blow in the latest school

improvement fads.

- Listen attentively to other people's stories and interests related to selected issues.
- Be ready to brainstorm solutions, craft solutions that meet your joint interests, and determine the interventions based on those solutions that will have the most positive impact.
- Monitor your solutions and interventions, give them time to work, assess them, and adjust them as needed—improved student achievement should not be subject to the duration clause of your contract.

Success Stories

The idea of using collective bargaining to improve student achievement and close achievement gaps is beginning to take hold, albeit slowly. This work requires long-term commitment by everyone involved. Fads, short-sighted solutions, or state or federal one-size-fits all options never will stand the test of time.

The following selections from three contracts are representative of the progress being made and highlight what's possible. These are but a few of the districts and unions that see collective bargaining as one effective tool to use in improving student achievement.¹

Minnesota: The Minneapolis Public Schools and the Minneapolis Federation of Teachers²

- *Article IV. Shared Leadership for Continuous Improvement*

The Minneapolis Public Schools Strategic Direction calls for the District to support Shared Leadership for Continuous Improvement. The ultimate goal is to improve the quality of instruction and learning for students. It is expected that each school continuously renews itself and develops strategies to improve the achievement of each student served, and eliminate gaps in learning between groups of students.

The Minneapolis Public Schools has adopted an accountability system that addresses individual, school, and system accountability for improved student performance.

- *Article V. Professional Development*

The Minneapolis Public Schools and the Minneapolis Federation of Teachers agree on the importance of professional development and support of its teachers. It is a crucial factor in creating and maintaining an excellent school system focused on ensuring that all students learn.

Maryland: Montgomery County Public Schools and the Montgomery County Education Association³

- *Article 8. School Improvement and Quality: Shared Responsibility for Student Achievement and Student Improvement*

At the district level the Board of Education and executive leadership team are responsible for encouraging, modeling and sustaining a culture necessary to support the shared responsibility for student achievement.

At the school level, administrators and the staff as a whole are accountable for establishing a learning community conducive to the best teaching practices and success for every student.

At the classroom level, teachers are accountable for the instruction they deliver and the classroom environment they create within which every student can succeed.

Washington: Seattle Public Schools and the Seattle Education Association⁴

- *Article II: Partnership for Closing the Achievement Gap*

The SEA and the Seattle Public Schools continue to strive for a relationship that is focused on providing the best possible learning environment for students. The organizational structures described below will help to advance collaboration as we work toward this goal.

1. *Partnership Committee.* The SPS and SEA will create a partners committee consisting of 4 appointees of SPS and 5 appointees of SEA. The purpose of the committee will be to address the issues of the achievement gap. There is not the luxury of time—each day that passes without every effort being made to insure that all students can reach the standards set by SPS for every student to be able to know and do upon graduation is a breach of our

collective responsibility to provide a quality education.

In the Final Analysis

We all believe a great public school is basic right for every child. We all agree that schools and teachers need the resources to prepare students for the future. We know we have to provide students the three R's and teach and exhibit responsibility and respect. Finally, we know that the public is demanding results.

Excuses are not acceptable. Our children are worth more than excuses. It is time to use every tool at our disposal.

Collective bargaining is one of those tools. It is time to employ it as a means to engage the debate. It is time to use it to explore options to close the achievement gaps. It is time to use it to demand, and expect, the best from each of us. It is time to ignore the rhetoric that often keeps the scope of collective bargaining narrowly defined. It is time to step up to the plate and demand from each other a collective commitment to our children.

Let's not miss the opportunity to use collective bargaining as a vital component of our commitment.

Bill Raabe is the director of collective bargaining and member advocacy for the National Education Association, www.nea.org.

Endnotes

1. The full text of the collective bargaining agreements referenced can be found on the web sites of the respective public school systems or local unions. The language provided here is but a small part of each of the referenced contract articles.

2. The selections from the Minneapolis contract highlight the commitment of the MPS and MFT to shared responsibility and the use of professional development as key component for improved student achievement.

3. MCPS and MCEA focus the responsibility on all levels of the school and outline specific roles of each level of the system for improving student learning. The actual article contains substantially more detail.

4. SPS and SEA have developed a comprehensive article on closing the achievement gaps. The selection here highlights one piece of the structure and the urgency of the issue. ■