The multiplicity of ills facing our nation’s public schools can depress even the most optimistic. How can we be hopeful when we have 30 million illiterate children? And it is no longer just the well-being of our poorest children that we need worry about; our top-performing public schools are no match for the international competition. China and India, among others, will finish our lunch if we do not find a way out of our education quagmire.

My views on how to solve some of these seemingly intractable education problems have been informed by two experiences: my four years as chair of the New York City council’s education committee and, more recently, my role as founder and executive director of a new charter school. During the years I spent as a public school student in the city, my time teaching social studies to public school students, and now my experience as a public school parent, I have seen a great deal. But one of the most striking phenomena I have observed is the education industry’s ability to preclude any dramatic improvement in the schools. It is a monopolistic structure in which management and labor have colluded for the better part of four decades to protect the interests of adults over those of children. The labor agreements signed by both public
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The Long and Longer of Union Contracts

The teacher union contract is more than 200 pages long; with the various side agreements and state laws that supplement the terms of the contract, it grows to 600. These pages determine nearly every aspect of what a teacher does, and does not do, in a New York City school, and what can and can't be done to them. For example, a high-school teacher in New York City cannot be asked to teach for more than 3.75 hours per day. A teacher can't be asked to teach for more than 3.75 hours per day. Nor can a teacher be asked to help supervise a lunchroom or study hall, help special-education students on and off the bus, help college applicants prepare their transcripts, score city-wide tests, or write truant slips. One New York City teacher cannot be paid more, or less, than any other teacher at the same level of seniority, regardless of the particular teacher's talents and effort or the difficulty of recruiting a teacher for a hard-to-find position such as math or science. The right to hire or not to hire a teacher is limited by teachers' “transfer rights,” which gives them first choice on a position in another school. The right to fire a teacher is limited by teachers' “retention rights” and a complex and lengthy set of due process procedures. Assistant principals have similar rights.

In short, although principals are supposed to be the CEOs of their schools, they have little control over their management teams. Hiring, firing, promoting, setting compensation, determining work hours and assignments, setting requirements and expectations: these powers, taken for granted in most organizations, are, for all practical purposes, outside the purview of a principal.

This is as true for maintenance as for instruction. The school custodian presides over his (there were no women at the time of my hearings) own domain, even though it is the same building that the principal is supposed to run. The school custodian has his own budget (computed from a complex set of rules and algorithms that factor in the size of the building and amenities like pools, escalators, and gyms) and hires his own staff, which does not technically work for the city. The custodial staff doesn't work for the principal, who must get permission from the custodian to keep a building open beyond the regular school day.

Many custodians are quite entrepreneurial, but the system's incentives tend to channel this entrepreneurial spirit in directions that are less than optimal, for taxpayers at least. Since a principal has no power to fire a custodian, the best way for a principal to get rid of a bad custodian is to give him high marks so that he can transfer to a larger building, where, according to the contract, he automatically earns more money. Thus is incompetence rewarded. By the same token, to keep a good custodian, a principal will give him mediocre marks, penalizing competence. Think of it as the Peter Principle on steroids: custodians are promoted from jobs they can't do to those they can't do even better.

As with other New York City school employment contracts, myriad work rules limit the activities of a custodian. However, the custodians aren't complaining. Thus they sweep, but they...
don’t vacuum. This particular rule created a big problem because the chancellor mandated “reading rugs” in all elementary-school classrooms so that children could sit on the floor. When he learned that the custodians wouldn’t clean them, the chancellor and the deputy mayor were forced to negotiate a “rug cleaning policy.” Unfortunately, those long and complex negotiations (memorialized in a two-page, single-spaced memorandum of understanding) turned out to be for naught because the contract protected custodians’ right to limit their cleaning responsibilities.

Other limitations abound. A personal favorite of mine is the ten-foot rule, which I learned about when I asked why school walls frequently seemed to be painted only to a certain height; above that line and on the ceilings, the paint was often peeling. Why? Because the contract says custodians cannot be asked to paint above ten feet. The painters union has another collective bargaining contract … which is another story.

A final twist to the already contorted custodian incentive system can be found in the “custodian trust fund,” a term of some amusement once you understand how it functions. According to the contract, if the custodian can maintain his building to a standard that he judges satisfactory, without using all of his budgeted funds, he can simply keep the remainder. You’d be amazed what a custodian would consider satisfactory in these circumstances.

Unfortunately, perverse incentives such as these are not limited to teachers and custodians. School principals, whose union contract is a slim document (150 pages) by New York City union...
standards, also work by rules that reward uniformity before excellence. Principals are paid in lockstep, regardless of their performance, abilities, or even the size of the school they oversee. Their agreement also spells out in mind-numbing detail the circumstances under which a superintendent can relieve a principal of his or her responsibilities. Tenured principals have to do something truly egregious to be fired. The process for removing a principal begins with sending letters of complaint to the personnel file, any and all of which can be appealed by the principal. The process, if successful, can take as long as 150 days, which is most of a school year. By the same token, even small procedural details in the contract can have profound effects on the operation of a school. Principals and assistant principals, for instance, are not required to notify superintendents in advance of their retirement, a circumstance that can create significant disruptions. You can “retire” in the middle of the year and head off to Bermuda, as my son’s principal did, without any penalty or deduction from the pension.

Remarkably, while the school system purports to hold children to a standard of excellence, principals can be removed only if they engage in “persistent educational failure.” Intermittent failure or persistent mediocrity is perfectly acceptable.

The Way Out
Recently I had the opportunity to begin seeing things from a slightly different perspective. As a legislator, I looked at the language of the labor agreements and concluded that their provisions impede our ability to educate children. Now, as the director of a school, Harlem Success, I see that the major education questions cannot even be asked within the confines of labor agreements.

At Harlem Success, for instance, we know that our most important resource is our teachers, so we have extensive internal discussions about how to pay them in a way that most benefits our kids. We are asking whether a teacher with three years of experience should be paid more than a teacher with two years of experience. What about someone with 20 years of experience? In determining salaries, should we place as much value on five years spent at another school as five years spent at our school? None of these questions about compensation can be asked by schools subject to the teachers contract. The contract preordains every decision about compensation that a school leader would want to make. Those givens can only be changed every few years when the contract is up for renegotiation and when the mayor and the president of the United Federation of Teachers (UFT) complete their political dance.

While employment contracts make it almost impossible to redesign a traditional school around the needs of students, we can do that redesign at our charter school. Harlem Success kids will have a school day of 8 hours and 40 minutes, compared with 6 hours and 40 minutes in the traditional public schools, because we determined that that was the amount of time the kids needed. In an effort to determine our core competencies, we are asking whether it makes sense to have extracurricular activities, such as supplemental sports and art classes, taught by the school’s teachers or contracted out to nonprofit groups who may offer these services at reduced prices and provide higher-quality services. Even seemingly small decisions such as the number of minutes for science instruction cannot be made in traditional public schools because they are fixed by the contract. At Harlem Success, we determined that our kids need 60 minutes for science labs, rather than the 50-minute periods prescribed by the union contract, and so they got them.

As we have been thinking through all the education questions, I am struck by the fact that we couldn’t even be posing these questions if we were constrained by the labor contracts governing the regular public schools. Our hands would be tied by the contracts and by the powerful precedents that enshrine them in stone even in the face of so-called negotiations. There is no doubt in my mind that we will be able to do a far better job educating our students because we are free from these constraints. That is important to me, not least of all so that I can keep my job. My one-page contract, which I negotiated and drafted myself, states: “I will serve at the pleasure of the Board as an at-will employee.”

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