School boards need to drive a harder bargain

Four decades after collective bargaining came to public education, school boards and the superintendents they hire still routinely blame teacher unions for causing massive inefficiencies, stifling innovation, and preventing changes designed to promote student learning. “Our hands are tied,” school boards commonly complain when school budgets are debated or far-reaching reforms are proposed. Unacknowledged is that every contract provision—from the lockstep salary schedules that reward longevity over excellence to the rigid work rules that dictate the rhythms of school life—was agreed to by those very same school boards.

BY FREDERICK M. HESS AND MARTIN R. WEST
You don't have to be a conspiracy theorist to wonder whether collective bargaining in education hasn't become something more like collusion. In fact, the best evidence to support that position may be the steady decline in labor unrest. Despite some high-profile incidents—like the teacher “sick-out” which shut down 53 of Detroit’s 235 schools last spring—strikes by teachers have become increasingly rare since 1975, a high-water mark, when there were 241 nationwide. By 2004 there were just 15. During this same period, the number of public school teachers rose from 2.2 million to more than 3.1 million, several times the rate of increase of the students they serve, whose numbers edged up only slightly, from 44.8 million to 48.4 million.

The current era of labor peace is typically attributed to laws in 31 states barring teachers from striking and mandating mediation or binding arbitration procedures. In addition, both sides have gained negotiating experience. However, that’s not the whole story. Superintendents in cities like San Diego, Milwaukee, and Houston have reported being urged by civic officials, business leaders, and philanthropists to seek “consensus” and to “partner” with the local union.

Has all this labor peace actually been good for education? Is it perhaps time for some discord?

The suggestion at first seems absurd. Parents and the voting public frown on labor conflict and teachers’ strikes for good reason, not least among them the disruptions for family and schooling that are caused by even temporary school closings. Yet the public’s aversion to conflict, combined with the political heft of teacher unions, can make school boards unduly deferential to union demands.

Despite the National Education Association’s claims to be an advocate “for children and public education,” we should not expect unions at the bargaining table to be for anything but their own interests. Naturally enough, those interests favor existing arrangements, which protect jobs; limit the demands placed on members, including their accountability for student performance; and safeguard the privileges of senior teachers. Teachers who entered the profession under these rules and patiently served their time, waiting for the rewards of seniority, are understandably resistant to measures that would significantly alter pay scales, job protections, or work rules.

As Robert Barkley, former executive director of the Ohio Education Association, 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.”

These roles have been too often conflated.

Teachers agree that current policies on termination protect those who should not be in the schools. Seventy-eight percent of teachers nationwide report that there are at least a few in their school who are “simply going through the motions.”

And the topics covered in those pages extend far beyond bread-and-butter questions of salary and benefits; there are dozens of clauses covering a district’s ability to evaluate, transfer, terminate, and manage the workload of teachers, all having potentially serious effects on the management of schools and student achievement.

What’s Good for the Goose … Is Good for the Goose

Collective bargaining agreements demonstrate the failure of school boards to fight for the interests of students and taxpayers, not to mention the prerogatives of sensible management. The contracts are long, complicated, and replete with both tediously detailed and needlessly ambiguous restrictions on administrators. The 199 collective bargaining agreements for teachers on file at the Bureau of Labor Statistics in January 2005 averaged 105 pages in length.

Teachers agree that current policies on termination protect those who should not be in the schools. Seventy-eight percent of teachers nationwide report that there are at least a few in their school who are “simply going through the motions.”

As Robert Barkley, former executive director of the Ohio Education Association, 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.”

These roles have been too often conflated. And the topics covered in those pages extend far beyond bread-and-butter questions of salary and benefits; there are dozens of clauses covering a district’s ability to evaluate, transfer, terminate, and manage the workload of teachers, all having potentially serious effects on the management of schools and student achievement.
The Jefferson County, Kentucky, contract, for example, mandates that the district may not use student test scores “in any way to evaluate the work performance of employees unless they agree voluntarily.” Restrictions on matters as important as evaluations of teachers can also be maddeningly ambiguous. The Little Rock, Arkansas, contract, for instance, specifies: “An individual teacher’s lesson plan book shall be subject to the review of the principal at any time.” But then it clarifies: “Teachers shall not be required to make their lesson plan books available on a scheduled basis.”

Collective bargaining agreements also typically restrict the amount of time that teachers may be required to spend working with students, the number of students a teacher will instruct, and the number of lesson plans a teacher will prepare. In some cases they stipulate, as in Multnomah County, Oregon, that professional development “funds will be allocated based upon seniority of the unit members who make application,” thus converting these expenditures from a lever for school improvement into a perk for long-serving faculty.

Similarly, when it becomes necessary to fill a classroom vacancy or to remove an ineffective teacher, district officials are often hobbled by contract language. A 2005 study by the New Teacher Project, the national nonprofit organization that works with school districts to recruit high-quality teachers, examined five urban districts and concluded that seniority-based transfer privileges written into contracts often force principals “to hire large numbers of teachers they do not want and who may not be a good fit for the job and their school.” All but five states have laws giving teachers lifetime tenure after three years or less. While procedures for removing tenured teachers for “just cause” appear in most contracts, the available procedures are so burdensome that they are rarely used. A recent study of Illinois public schools found that, since 1986, an average of just two tenured teachers a year have been removed—in a state with more than 95,000 tenured teachers. The New Teacher Project report cited above found just four tenured teachers out of 70,000 fired for poor performance in the five districts studied.

Tellingly, teachers themselves agree that current policies on termination protect those who should not be in the schools. According to Public Agenda, 78 percent of teachers nationwide 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.” The same Public Agenda study quoted one New Jersey union representative: “I’ve gone in and defended teachers who shouldn’t even be pumping gas.” 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.” While such admissions may be startling, they highlight an important aspect of the union’s role: having been granted the exclusive right to represent teachers in the district, the union is legally bound to advocate for all of them. This obligation limits the capacity of unions to serve as partners in reform.
Passive Implementation

Once negotiated, collective bargaining agreements do not implement themselves. And the manner in which superintendents, school boards, and district personnel interpret and apply the often ambiguous contract language has significantly aggravated the problem. As one former school-board member from a large urban district noted, “Too often school boards and superintendents complain that they cannot do something because of the teachers union contract. Often what they complained was restricted wasn’t actually prohibited … but might cause some political difficulties or raise some public issues.” Boards and their appointed administrators seemingly find it easier to sink into this “zone of ambiguity” than to take stands that may provoke visible unrest, negative publicity, or a work stoppage.

Some of management’s reticence is understandable. When a union believes that management actions violate contract terms, it typically files an appeal or a grievance in accordance with procedures spelled out in the contract. Critics of teacher unions assert that resources and specialized expertise give the union a pronounced advantage in the ensuing proceedings. A striking example of union capacity is the National Education Association’s UniServ system, a nationwide network of 1,650 full-time and 200 part-time NEA employees who provide guidance to local affiliates on matters such as negotiations and grievance resolution. The NEA itself touts the UniServ program as “a vast cadre of human resources,” on which it spent some $50 million in 2001, but it also attempts to downplay the system’s impact, saying that each employee has multiple responsibilities and works with multiple districts. What UniServ offers, union proponents claim, pales beside the legal, staff, and budgetary resources available to school boards.

In truth, unions seem to navigate the grievance process more adroitly than district officials, but that is only partly due to resources. It is also because they aggressively exploit contract language, while school boards and superintendents are often more interested in avoiding confrontation than in asserting managerial prerogatives.

More Pay and Benefits, Less Quality

If we assume that better salaries attract better candidates, it would initially seem that compensation is an area where collective bargaining advances the interests of students as well as teachers. However, while unions have fought to increase salaries and to improve benefit packages, they have resisted
efforts to ensure that this spending recruits, rewards, and retains the most essential or effective teachers.

Virtually all teachers’ collective bargaining agreements establish salary schedules based strictly on years of experience and accumulated graduate credits. These “step-and-lane” schedules, which legislatures and school boards have accepted, reflect union preferences for wage agreements that increase member solidarity and benefit the most union members. Unfortunately, there is good reason to believe that they have contributed to the well-documented decline in the aptitude of new teachers and to shortages in high-need subject areas. At a minimum, the rigidity of existing salary schedules restricts superintendents’ options for remedying these problems.

Nearly all contracts also still call for defined-benefit retirement plans, which provide a traditional pension and disproportionately reward educators who stay in place for 20 years. As 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.”

Evidence similarly suggests that teachers’ benefit packages are poorly equipped to deal with the rising costs of health care. A 2005 study by the Rhode Island Education Partnership, for example, found that public school districts in that state uniformly allowed employees to select their own health carrier and plan design and that 73 percent of districts offered no-cost health benefits for retirees; not one of the private-sector firms in the state the study examined offered these perks. In short, much like troubled industrial-era firms General Motors (GM) and United Airlines, many school districts are sinking enormous sums into benefit plans that are poorly designed to attract new talent and may ultimately prove unaffordable.

Unions and Education Politics
One reason school boards are hesitant to take a stronger stance in negotiations and in contract implementation may be the firm hand that unions exercise in education politics. Quite simply, school-board elections offer teacher unions the unusual opportunity to influence the makeup of the management team they will face at the bargaining table. (See Terry Moe, “The Union Label on the Ballot Box,” page 58.) It is as if the board of directors of General Motors were not selected by its shareholders, but by the residents of Detroit. The result of such a scenario would be a management team focused on workers’ concerns more than on 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 allowed efficiency to decline too far, it would be driven into bankruptcy by competitors, domestic or foreign. In public education, however, such market pressures are muted by the lack of market competition and organizational inertia. A union official in Cleveland offered a telling insight when discussing a negotiator who was demanding concessions after a state takeover. The union official recalled: “We looked at [the negotiator] 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.’”
And since school-board elections are typically low-turnout affairs, organized and energized interests, like teacher unions, can exert even more influence on the outcome than their raw numbers would suggest. Almost 60 percent of board members nationwide say the teacher unions are “very active” or “somewhat active” in their local elections, according to research published by the National School Boards Association. By comparison, fewer than one-third of the board members reported that business groups were “very” or “somewhat” active in elections in their districts.

Unions are also active in state and federal legislatures, using their lobbying clout to safeguard their collective bargaining muscle and to ensure that negotiations unfold on a hospitable playing field. Union dues provide resources to pursue ever more favorable laws. And the dues are augmented by dollars deducted from the paychecks of non-members as a result of state laws that allow unions to collect funds from all teachers covered by the contract. Ironically, even the No Child Left Behind Act offers a telling example of union influence as the first federal law to recognize explicitly, and ultimately defer to, collective bargaining’s role in education governance. In theory, the law empowers districts to replace staff members at persistently low-performing schools. This provision was promptly eviscerated at the behest of the unions: the Department of Education sheepishly allowed that the authority can be exercised only if the district’s contract allows it.

The False Promise of “New Unionism”
The case for reforming the collective bargaining process has become so strong that even some union supporters have sought to persuade union locals to abandon an industrial model of contract negotiations for a more collaborative “new unionism.” Thoughtful, well-intentioned advocates such as Charles Kerchner and Adam Urbanski call for unions and districts to work together to foster professionalism, create pleasant working conditions, and involve teachers in governance and decisionmaking (see “Reform or Be Reformed,” forum, Fall 2001). The “new unionists” point to the 1996 formation of the Teacher Union Reform Network and to widely touted collective bargaining agreements in Dade County, Florida; in Seattle; and in Cincinnati and Toledo, Ohio.

Many union sympathizers contend that new unionism has already changed the character of the nation’s major teacher unions. Wayne Urban, professor of education and an expert on teacher unions, notes that NEA president Robert 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.” He says for the next half decade, Chase “tirelessly advocated his new union agenda.” Likewise, a handbook written in 2006 by Linda Kaboolian, a respected academic proponent of reform unionism (see also Kaboolian’s essay “Table Talk,” forum, page 14), asserts that “a great deal of collaborative innovation exists and has been ongoing for many years.” In short, serious voices believe that the teacher unions have already committed themselves to new unionism.

In reality, sustained attempts to instill new unionism have occurred in just a handful of districts, and the results have been fairly disappointing. This bleak track record should be no surprise. Union leaders are elected by current members to protect their interests, and most teachers remain highly satisfied with their unions’ conduct of collective bargaining. A national poll of teachers conducted by Terry Moe in

A telling example of union influence is provided by the No Child Left Behind Act, the first federal education law to recognize explicitly, and ultimately defer to, collective bargaining’s role in education governance.
Collaborative Union Leaders Get Lauded—and Unseated

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

Six years ago, for instance, Cincinnati Federation of Teachers President Rick Beck agreed to a modest merit-pay experiment, only to be ousted the following April by a challenger who opposed the plan. The new policy would have eventually based teachers’ salaries in part on evaluations by the principal and a number of outside evaluators hired by the district. It 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.” He concluded, “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. Taylor claimed the presidency in a landslide, winning 78 percent of the vote.

Similar circumstances led to the ouster of the union chief in Hartford, Connecticut. After they were taken over by the state in 1997, the Hartford Public Schools won widespread acclaim as an example of effective management and labor collaboration. The Hartford Federation of Teachers even served in 2001 as host of a national American Federation of Teachers (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’s 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 Hartford Federation of Teachers (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 to happen to me,” Murphy told the Courant.

A palace coup 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 to 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 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.”

— Frederick Hess and Martin West

2003 revealed that 84 percent of union members report that they are either somewhat or very satisfied with the job their unions do in representing their interests in collective bargaining. Predictably, 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 seeking more combative leadership. (See sidebar.)

Unions in any industry are loath to contemplate givebacks. Even when firms have declared bankruptcy or are on the verge of doing so, as in the airline and auto parts industries in recent years, union leaders frequently 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

Getting Serious

Those looking to reinvent American schooling for a new century must recognize that unions are holding fast to

www.educationnext.org SUMMER 2006 / EDUCATION NEXT 45
contracts designed to address the challenges and inequities of an earlier era. Union leaders often invoke norms of justice when seeking to ensure that veteran teachers continue to enjoy the same perks and protections they were implicitly promised when they entered the profession a quarter century ago—despite intervening changes in the larger world, in the needs of students, and in management and organizational practice. One can sympathize with union locals and simultaneously see the contracts they’ve negotiated as enormous obstacles to retooling schools for the 21st century.

The answer, then, is not in fond hopes that union leaders will be sweet-talked or shamed into embracing change. With rare exceptions, their position simply won’t permit it. At the same time, eliminating collective bargaining is not a useful goal. Not only is it politically hopeless, but evidence from other industries suggests that unions can be a constructive force given the proper conditions.

Established practices in negotiating teachers’ compensation and the rules governing hiring, termination, and work routines need to come of age. The challenge is not in deciding what changes are needed, as there is already broad agreement on many of the desirable modifications. The challenge is making them happen. Changing collective bargaining means changing the environment in which it is conducted. A crucial first step, already under way, is establishing meaningful competition and accountability for schools—creating pressure on management and giving union leaders the cover to say to their members, “We need to deal, because if the schools don’t improve, all the alternatives are going to be uglier still.” But we also need more transparency, accompanied by a big change of heart.

Promoting Transparency The habits of district-union collusion are due in large part to the public’s ignorance of what collective bargaining agreements say and to a strong desire for tranquility and smooth school operations. Experience suggests that when parents, policymakers, or civic leaders are made aware of the costs, rules, and protections the agreements impose, they are much less willing to accept the status quo and more willing to back hard-nosed district leadership.

The failure of the general public and more than a few policymakers to understand the stakes is largely due to the scant attention the media give these dealings. A 2005 study of how newspapers cover collective bargaining revealed that in 12 out of 20 large school districts, the local daily newspaper printed no more than one article on contract negotiations. 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.” While productive negotiations require the confidence 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.

Local officials could take a page from the playbook of former New York City councilwoman Eva Moskowitz (see forum, page 24) and hold hearings on the local contract, inviting public scrutiny and media coverage. The Moskowitz inquiry was especially valuable in providing reporters a context for writing about the contract’s implementation and its impact on district operations. Officials and civic leaders should 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 education editors may not be in a position to redirect coverage or to 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 broad public concern.
**Acting Decisively** Most managers prefer to avoid conflict. However, when nimble competitors, irate stockholders, and the need for self-preservation demand it, executives in the private sector take a deep breath and accept the inevitability of painful fights over staffing, operations, and work rules. Only a similar firmness of purpose will enable school boards and superintendents to do what must be done. In particular, they need to:

*Negotiate hard.* If you haven’t missed an airplane recently, management consultants tell us, you’re spending too much time in airports. Considering the contracts that school boards have come to accept, one might similarly conclude that boards that don’t provoke a work action once in a while aren’t pushing hard enough at the table. In the short run, schools may need more, fiercer, and uglier contract disputes. That would show that school boards and superintendents are fighting hard for the children, the community, and the taxpayers. Superintendents and board members are not independent agents, however. They can’t do it alone.

*Rally the public.* Newspaper editorial boards, civic leaders, local chambers of commerce, and parent groups have made it eminently clear that they want everyone to find a way to “get along,” and they expect district leaders to find a way to avoid upsetting the apple cart. These stakeholder groups need to rethink their belief that labor unrest is uniformly a sign of leadership failure. Labor unrest can be a good thing when the alternative is to continue to accept an anachronistic, stifling, and perversely constructed status quo. Taking back prerogatives and language that unions have won in previous rounds of negotiations will inevitably be a bruising, unpleasant struggle—one that only the staunchest district officials will undertake, and one that they will win only if the community is committed to seeing it through. As long as they cannot count on community support in the face of labor unrest, sensible board members and superintendents will continue to fold on the important questions.

*Make arbitration work for students.* Some states, like New York, Pennsylvania, and Wisconsin, have well-defined mediation or arbitration procedures that kick in when the parties can’t reach agreement. These policies can effectively take the bat out of a school board’s hand, sometimes imposing mandatory settlement terms on even those boards willing to drive a hard bargain. There is surprisingly little systematic research on the outcomes of the arbitration process. However, arbitrators and mediators, who must be approved by both sides, tend to be risk-averse.
consensus seekers who frown on calls for radical changes to existing provisions. This tendency is undoubtedly aggravated in some cases by “past-practice” contract clauses, which treat established routines as controlling. The availability of arbitration therefore highlights two additional considerations for would-be reformers: the need to scrutinize state laws governing a contract impasse to ensure that they do not stack the deck in favor of union interests and the importance of raising public awareness of contract provisions that arbitrators might otherwise leave untouched.

Implement smart. It’s not enough to stand firm at the table. District officials must also aggressively exploit existing language or interpret ambiguous language in whatever way provides the most flexibility to respond to student needs. With their hands stayed by the desire to maintain a cordial working environment, a fear of negative publicity, and concern about costly and time-consuming grievance proceedings, administrators frequently treat the absence of clear managerial prerogatives in contracts as an excuse for inaction. This suggests that district leaders need a new mindset about implementation. It also shows how important it is to thrash out at the bargaining table language that minimizes the “zone of ambiguity” regarding managerial rights on issues like compensation, termination, teacher transfer, and work rules. Ultimately, however, district leaders must ensure that their staff members know how to take advantage of management rights, and school boards must charge the superintendent and senior staff with actually making full use of managerial prerogatives.

Increasing Capacity Finally, we must recognize that school boards are relatively weak governing bodies, composed of part-timers with other obligations, limited expertise, and little incentive to engage in contentious negotiations. A 2001 National School Boards Association survey found that most school-board members are unpaid, devote fewer than ten hours a week to board-related business, and have served on the board for five years or less. It is asking a lot to expect these part-timers, even with the aid of experienced attorneys, to go toe-to-toe with seasoned union leaders in the kind of public controversy engendered by a contract standoff. Board positions need to be made more attractive and augmented with research and staff support, or districts need to move toward alternative forms of governance in which the costs of inefficiency and lagging achievement become intolerable. Above all, school-board members and those who elect them must never lose sight of the fact that collective bargaining is an adversarial process. Ironically, the current crop of teacher union leaders seem less like such labor lions as Samuel Gompers and Walter Reuther and more like Charlie Wilson, the imperial president of General Motors. “What’s good for GM is good for the country,” Wilson blithely remarked in testimony before the Senate Armed Services Committee a half century ago. The National Education Association and the American Federation of Teachers have long argued that what is good for America’s teachers is good for America’s children—and, by implication, for America itself. The willingness of too many superintendents, school boards, and legislators to act as if this were true has been a crippling handicap for America’s schools. It is time to move beyond utopian dreams, or overwrought efforts to goad unions into good behavior, and to recognize that labor strife may be the birth pains of real school reform.

Frederick M. Hess is director of education policy studies at the American Enterprise Institute and executive editor of Education Next. Martin R. West is a research fellow in governance studies at the Brookings Institution and the research editor of Education Next.