

**Teacher Employment and Collective  
Bargaining Laws in California:  
Structuring School District Discretion over  
Teacher Employment**

**William S. Koski & Aaron Tang  
(special thanks to Kristen Bartlett)**

# Overview

- Why might collective bargaining laws matter?
- What do teacher employment and collective bargaining laws say in California?
- How do those laws constrain administrative decision-making?
- How do those laws compare to the laws in other large, diverse states?
- Some tentative thoughts on the effects of teacher collective bargaining and teacher employment protections

## Why might teacher employment and collective bargaining laws matter?

- Broad consensus that teachers matter
- Recognized maldistribution of teachers and evidence of difficulty terminating poor performers
- Local policy and administration: efforts to improve teacher quality and distribution of teachers
- Collective bargaining agreements: govern terms and conditions of employment and constrain administrative discretion
- State law: permits collective bargaining and shapes the employment relationships

## Teacher employment and collective bargaining laws, generally

- Collective bargaining permitted or prohibited? (prohibited in 5; mandatory in 35)
- Regulations re:
  - Teacher tenure?
  - Teacher discipline and dismissal?
  - Teacher evaluation?
  - Teacher compensation?
- Scope of bargaining: What are the “terms and conditions of employment?”

## Pending legislation aimed at collective bargaining

- Idaho

- Limit negotiations to wages and compensation
- Require negotiations to be held in open meetings
- Disallow “continuation clauses”
- Post district budgets and collective bargaining agreements on website

- Indiana

- Remove from collective bargaining: teacher-evaluation procedures, teacher-dismissal procedures, school restructuring options
- Limit contract terms to two years
- Allow district to impose terms upon impasse

- Tennessee

- Prohibit collective bargaining

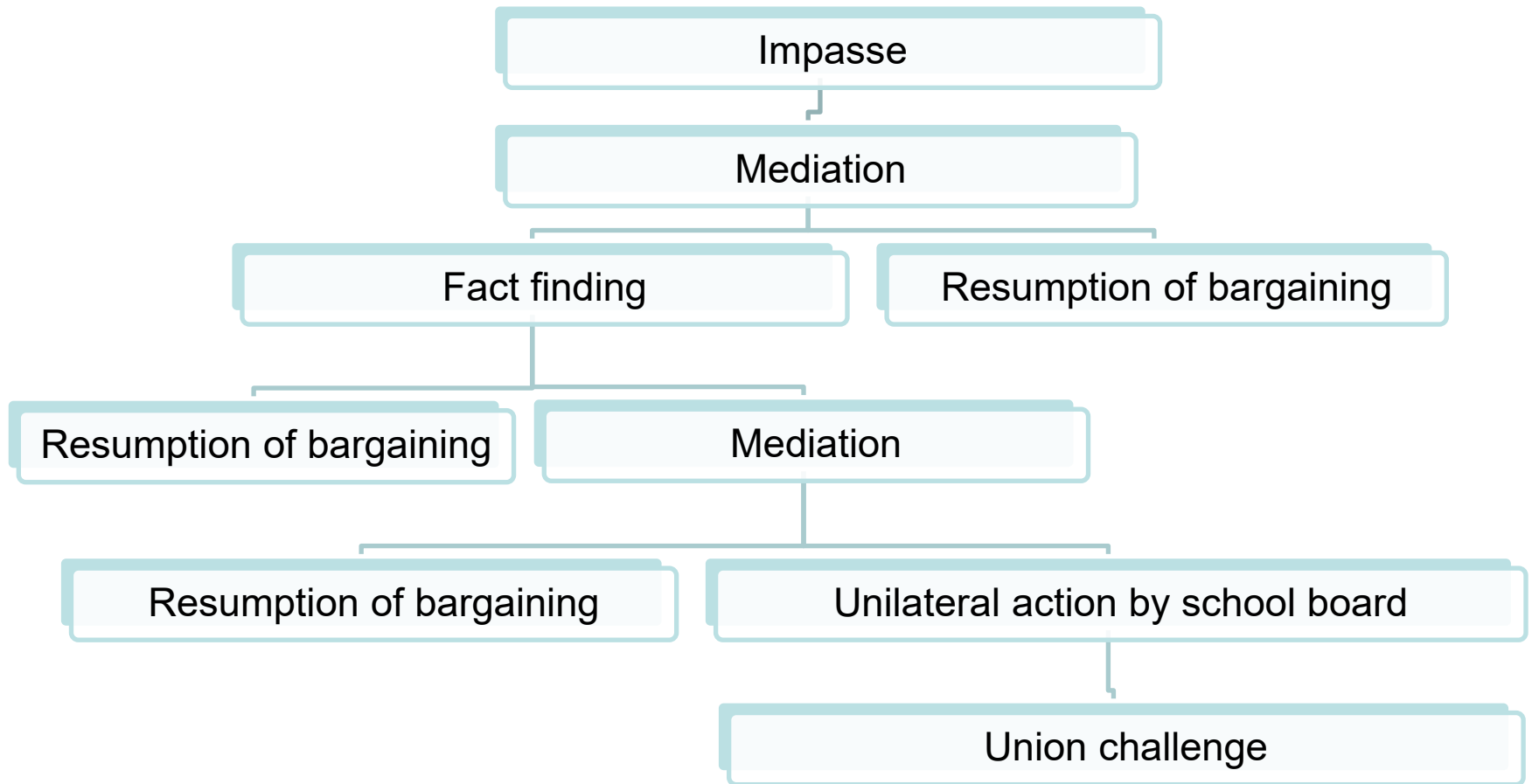
## What do we know about the content and effects of state laws?

- Very little: almost no research on the effects of state law on teacher employment arrangements and student outcomes
- Effects of teacher unionism, collective bargaining, and collective bargaining agreements: more on this later
- Approaches to understanding the effects of state laws on collective bargaining
  - Inferences from variation in contract terms
  - Categories of statutory provisions

## Stages of collective bargaining

	Unionization	Contract negotiation	Contract administration
Character	Organizing drive	Bilateral (employer-employee)	Parties meet and confer
	Union competition	Adversarial	Grievance processing
	Certification election		Adjudication by arbitrators
Results	Exclusive agent selected	Written agreement	Rationalize organizational processes
	Begin Contract negotiation	Rights and responsibilities	New rounds of negotiation

# Resolving impasse





# Mandatory bargaining topics

- “[M]atters relating to wages, hours of employment, and other terms and conditions of employment” (Cal. Gov. Code §3543.2(a))
- Includes:
  - Health and welfare benefits
  - Leave, transfer and reassignment policies
  - Safety conditions
  - Class size
  - Teacher evaluation procedures
  - Organizational security
  - Procedures for processing grievances
  - Layoff of probationary certificated staff
  - Alternative compensation or benefits for employees already adversely affected by pension limitations

## The *San Mateo* test

- The subject is logically and reasonably related to hours, wages, or an enumerated term and condition of employment.
- The subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict.
- The employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives essential to the achievement of the district's mission.

*San Mateo City Sch. Dist. V. PERB*, 33 Cal. 3d 850 (1983)

## Four tiers of constraint

- No school district discretion: (1) policies that would violate the Education Code and (2) teacher discipline procedures, reduction in force policies, compensation and salary schedule based on anything other than years of training and experience
- Limited district discretion: Mandatory bargaining topics
- Strong district discretion: Mandatory consulting on (1) the definition of educational objectives, (2) the determination of the content of courses and curriculum, and (3) the selection of textbooks to the extent permitted.
- Absolute district discretion: (1) would violate Education Code and (2) All other matters.

## Four tiers of constraint

<div> <div>Most Restrictive</div> <div>Least Restrictive</div> </div>				
Tier	<b>Tier 1</b> No School District Discretion	<b>Tier 2</b> Limited District Discretion	<b>Tier 3</b> Strong District Discretion	<b>Tier 4</b> Absolute District Discretion
<b>When district can impose unilateral action.</b>	Never	Only after following bargaining steps laid out in CGC§3548 re: “impasse” (mediation, fact finding, multiple renegotiations)	After giving the union the opportunity to “consult” on the topic	Whenever
<b>General topics included in this tier.</b>	<ul style="list-style-type: none"> <li>Any policy that would violate a provision of the Cal Ed Code (CGC§3540)</li> <li>Topics described in CGC§3543.2(b)-(e) where union must agree otherwise Ed Code rule is default</li> </ul>	<ul style="list-style-type: none"> <li>Wages</li> <li>Hours</li> <li>Terms &amp; Conditions of Employment (defined in §3543.2)</li> <li>Matters relating to (1) - (3) above (San Mateo test)</li> </ul>	<ul style="list-style-type: none"> <li>Definition of educational objectives</li> <li>Determination of course and curriculum content</li> <li>Selection of textbooks</li> </ul>	<ul style="list-style-type: none"> <li>All matters not specifically enumerated in §3543.2 (and not included in the San Mateo test)</li> <li>Matters explicitly reserved to district officials (such as using data in teacher evaluation, CEC§10601.6)</li> </ul>
<b>Examples of issues included in this tier.</b>	<ul style="list-style-type: none"> <li>Discipline Procedures for Certified Employees</li> <li>Procedures for Forced Reduction Due to Lack of Funds</li> <li>Bonuses and Salary Schedule Not Tied to Training/Experience</li> </ul>	<ul style="list-style-type: none"> <li>Class Size</li> <li>Retirement Benefits</li> <li>Teacher Assignment</li> <li>Teacher Prep Time</li> </ul>	<ul style="list-style-type: none"> <li>Same as General Topics Above</li> </ul>	<ul style="list-style-type: none"> <li>Procedures for terminating probationary employees</li> <li>Using data in teacher evaluations</li> </ul>

## California vs. other states: primary differences

- Permission for or prohibition on collective bargaining
- Definition of “terms and conditions of employment”
- Judicial interpretation of “terms and conditions of employment”
- “No discretion” and “absolute discretion” topics
- Mandatory consulting
- Unilateral district action upon impasse

State	Tier 1 No Discretion	Tier 2 Weak Discretion	Tier 3 Strong Discretion	Tier 4 Absolute Discretion
New York	<b>Mixed.</b> <b>Less Restrictive:</b> school districts are not subject to statutory provisions prohibiting unilateral action regarding due process protections. <b>More Restrictive:</b> New York has a Tier 1 statutory prohibition against district negotiation of teacher retirement benefits.	<b>Less Restrictive:</b> Districts have similar authority as California districts to act unilaterally upon impasse, but fewer topics are subject to a mandatory bargaining duty than in California (see Table 3).	<b>Less Restrictive:</b> No Tier 3 exists in these states because statute does not compel districts to “meet and confer” with unions on any topics.	<b>Mixed, But Generally Less Restrictive.*</b>
Florida	<b>Mixed.</b> <b>Less Restrictive:</b> School districts are not subject to statutory provisions prohibiting unilateral action regarding due process protections. <b>More Restrictive:</b> Florida has a constitutional amendment setting maximum class size limits that districts cannot negotiate around.	<b>Less Restrictive:</b> Districts have similar authority as California districts to act unilaterally upon impasse, but fewer topics are subject to a mandatory bargaining duty than in California (see Table 3).	<b>Less Restrictive:</b> No Tier 3 exists in these states because statute does not compel districts to “meet and confer” with unions on any topics.	<b>Mixed, But Generally Less Restrictive.*</b>
Texas	<b>Less Restrictive:</b> Districts have absolute discretion to set school policy under state law without union influence.	<b>Less Restrictive:</b> Districts have absolute discretion to set school policy under state law without union influence.	<b>Less Restrictive:</b> Districts have absolute discretion to set school policy under state law without union influence.	<b>Less Restrictive:</b> Districts have absolute discretion to set school policy under state law without union influence.
Illinois	<b>Less Restrictive:</b> School districts are not subject to statutory provisions prohibiting unilateral action regarding due process protections.	<b>Less Restrictive:</b> Districts have similar authority as California districts to act unilaterally upon impasse, but fewer topics are subject to a mandatory bargaining duty than in California (see Table 3).	<b>Less Restrictive:</b> No Tier 3 exists in these states because statute does not compel districts to “meet and confer” with unions on any topics.	<b>Mixed, But Generally Less Restrictive.*</b>

Policy Matter	California	New York	Florida	Illinois	Texas
<b>Basic Wages, Hours, and Terms of Conditions of Employment</b>	Tier 2 <sup>1</sup>	Tier 2 <sup>3</sup>	Tier 2 <sup>12</sup>	Tier 2 <sup>19</sup>	Tier 4 <sup>#</sup>
<b>Exclusively Managerial Decisions</b>	Tier 4 <sup>1</sup>	Tier 4 <sup>4</sup>	Tier 4 <sup>13</sup>	Tier 4 <sup>19</sup>	Tier 4 <sup>#</sup>
<b>Class Size</b>	Tier 2 <sup>1</sup>	Tier 4 <sup>5</sup>	Tier 1 <sup>14</sup>	Tier 4 <sup>20</sup>	Tier 4 <sup>#</sup>
<b>Retirement Benefits</b>	Tier 2 <sup>1</sup>	Tier 1 <sup>6</sup>	Tier 2 <sup>15</sup>	Tier 2 <sup>21</sup>	Tier 4 <sup>#</sup>
<b>Teacher Assignment</b>	Tier 2 <sup>1</sup>	Tier 2 <sup>7</sup>	Tier 4 <sup>16</sup>	Tier 4 <sup>20</sup>	Tier 4 <sup>#</sup>
<b>Discipline Procedures, Certified Employees</b>	Tier 1 <sup>1</sup>	Tier 2 <sup>8</sup>	Tier 2 <sup>17</sup>	Tier 2 <sup>21</sup>	Tier 4 <sup>#</sup>
<b>Force Reduction Due to Lack of Funds</b>	Tier 1 <sup>1</sup>	Tier 4 <sup>9</sup>	Tier 4 <sup>13</sup>	Tier 2 <sup>22</sup>	Tier 4 <sup>#</sup>
<b>Bonuses and Salary Schedule Not Tied to Training/ Experience</b>	Tier 1 <sup>1</sup>	Tier 2 <sup>10</sup>	Tier 2 <sup>18</sup>	Tier 2 <sup>21</sup>	Tier 4 <sup>#</sup>
<b>Teacher Preparation Time</b>	Tier 2 <sup>1</sup>	Tier 2 <sup>11</sup>	Tier 4 <sup>20</sup>	Tier 2 <sup>21</sup>	Tier 4 <sup>#</sup>
<b>Course Content, Curriculum, Textbook Selection</b>	Tier 3 <sup>1</sup>	Tier 4 <sup>4</sup>	Tier 4 <sup>13</sup>	Tier 4 <sup>19</sup>	Tier 4 <sup>#</sup>



# Policy Implications

- Not clear because we don't have a good understanding of the effects of administrative discretion over teacher-employment-affecting policies
- Reasons for caution
  - Unintended consequences
  - Much discretion exists
  - Not all constraints are equal
  - Power of professional norms
- But what is known?



## What does the research say?

### Pathways of influence

- Collective bargaining
- School district elections and policy-making
- State legislative elections and policy-making
- Ballot initiatives

## What does the research say?

### Discretion and restriction in CBAs

- Much discretion (Hess & Kelly, 2006; Koski & Horng, 2007; Price, 2009; Strunk, 2009)
- More restrictive in:
  - High minority and high-poverty districts (Hess & Loup, 2008; Strunk, 2009)
  - Large districts (Rose & Sonstelie, 2006)
  - Large districts and high salary districts, but not high minority (Strunk & Grissom, 2010)

## What does the research say?

### Effects on teacher salaries and working conditions

- Higher teacher salaries (Baugh & Stone, 1982; Chambers, 1977; Gallagher, 1978; Holmes, 1979; Hoxby, 1996; Kleiner & Petree, 1988; Lemke, 2004; Winters, 2010)
  - Starting salaries (Chambers, 1977)
  - Experienced greater than starting (Winters, 2010)
  - Local revenue resources (Cowen, 2009)
  - Narrow male-female/high school-elementary school gap (Holmes, 1979)
- Higher non-salary compensation (personal leave, sabbaticals, etc.) (Gallagher, 1978)
- Lower teacher-student ratios (Hoxby, 1996)
- Greater teacher preparation time (Kleiner & Petree, 1988; Eberts & Stone, 1984; Eberts, 1984)

## What does the research say?

### Effects on teacher quality gap

- No effects on teacher quality (Johnson & Donaldson, 2006)
- No evidence of effects on teacher distribution (Koski & Horng, 2007; Nelson, 2006)
- Reduce quality of teachers due to internal hiring and late hiring (Levin, Mulhern, & Schunck, 2004; Levin & Quinn, 2003)

## What does the research say?

### Effects on student achievement and attainment

- Greater student achievement (Argys & Rees, 1995; Eberts & Stone, 1987; Grimes & Register, 1991; Milkman, 1997)
  - Non-minority students do better than minority students (Milkman, 1997)
  - Minority students do better (Grimes & Register, 1991)
- Higher student dropout rates (Hoxby, 1996)
- Lower student achievement with higher contract restrictiveness (Strunk, 2010)
- Unclear (Eberts, 2007; Goldhaber, 2006)