



P A C E

POLICY ANALYSIS FOR CALIFORNIA EDUCATION

*Organizing the Other  
Half of Teaching*

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September 1996

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This paper was prepared for the National Commission on Teaching and America's Future. It is adapted from *United Mind Workers: Representing Teaching in a Knowledge Society*, by Charles Taylor Kerchner, Julia E. Koppich, and Joseph W. Weeres, to be published by Jossey-Bass Publishers, 1996.

# Policy Analysis for California Education

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## PREFACE

In 1975 California Governor Edmund G. Brown, Jr. signed the Rodda Act into law. Formally known as the Education Employment Relations Act (later changed to the Public Employment Relations Act), this statute gave the state's public school teachers the right to bargain collectively and negotiate with their employer legally binding contracts governing the terms and conditions of their employment.

Though the Rodda Act is on California's books, the law's provisions are not unique to this state. Laws in the 37 states that authorize collective bargaining for teachers are patterned on the federal National Labor Relations Act, and outgrown of the New Deal and the rise of industrial America.

This paper, which originally was prepared for the National Commission on Teacher and America's Future, argues for the transformation of education labor relations. Specifically, it proposes a set of ideas which can position teachers, and their unions, as leaders in creating a 21st Century institution of education by focusing their efforts on new roles and responsibilities and a new definition of professionalism.

The authors hope that this paper will inform continuing discussions throughout California about ways in which to improve the quality of education for the state's 5.2 million public school students.

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## ORGANIZING THE OTHER HALF OF TEACHING<sup>1</sup>

There is a story told in union circles—perhaps it is apocryphal—that as Franklin Delano Roosevelt was preparing to sign the National Labor Relations Act into law in 1935, he was visited by a delegation of American captains of industry. The businessmen urged the President not to sign the NLRA. Providing employees with the right to organize and to bargain collectively with their employers, asserted the executives, would seriously jeopardize management's ability to conduct business as they saw fit and, in so doing, would threaten the foundation of industrial America and the economic stability of the nation.

The President listened to the pleadings of the businessmen and then informed them that he would sign the bill into law. But he urged the business leaders not to be concerned. American unions, said the President, will never be able to organize American workers.

But organize they did. During the 1930s and into the 1940s and 1950s, employees made use of their right to join unions, to bargain collectively with their employers, and to influence the conditions under which they worked. Far from sending the American economy into spiraling decline, unionized workers helped to bring about the most productive and the most secure economy the world has ever known.

Beginning in earnest in the 1960s, the impulse to organize spread to American public school teachers. Collective bargaining bills began to appear

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on legislative agendas and on governors' desks. Interestingly, attempts to assuage the anxiety of those opposed to teacher collective bargaining were shaped, consciously or not, by the argument FDR had advanced with business representatives three decades earlier. Worry not, collective bargaining opponents were told, teachers will never join unions, embrace the industry-inspired trappings of labor-management relations, or be caught up in the world of negotiations and contracts.

They were wrong. Teacher unions built powerful organizations and influential constituencies. Collective bargaining for public school employees became law in 37 states. Today, nearly 90 percent of this nation's more than two million teachers are members of the American Federation of Teachers or the National Education Association, and teachers' professional lives are shaped in important ways by the actions of their unions and the process of collective bargaining.

Achievements notwithstanding, America's teacher unions today are at a crossroads. They face a period of simultaneous strength and vulnerability.

Unions appear strong because they are the most stable and well organized constituents of the existing institution of education. The NEA and the AFT have arguably been the most potent forces in American public education over the last half-century. They effectively have dwarfed the influence of school administrators and college school of education deans, the other two legs of the historic "iron triangle" of education. Over the past decades, the two national unions have been active and visible symbols of the existing institution of education and of the struggles to reform it.

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Still teacher unionism remains highly vulnerable. American education labor relations and the conventional structure of schooling have developed a powerful symbiotic relationship. Unions are now utterly dependent on the existing organization and power alignments within public education. This situation might be tenable if the nation's public school system were stable and secure. It is not.

America's public schools, for all they have accomplished, increasingly are seen as ill-fitted to the requirements of post-industrial society. Characterized by a massive, rule-bound hierarchical public bureaucracy, the organizational arrangements which form the architecture for schooling in America are often now described as anachronistic and outmoded. Moreover, despite the whirlwinds of rhetoric, rush of activity, and abundance of good intentions, the education reforms of the 1980s and early 1990s have left the education bureaucracy largely intact.

As education structures have remained untouched, so, too, has labor relations remained relatively unchanged. Thus, teacher unions have become vulnerable because they spend enormous energy defending the old system, to which they are institutionally tied, and relatively little designing and bringing about a new one.

We argue in this paper that teacher unionism, like education itself, faces a clear challenge. The task for unions lies not in sustaining the existing institution of education, but in helping to construct the new one. By thinking about, planning for, and creating public policy around institutional arrangements other than those that now bound education, unions can maintain their historic commitment to employee welfare, create of teaching a



true profession, and help to bring about a new and revitalized system of education.

### BUILDING A NEW INSTITUTION

In making the case for a teacher unionism fitted to a new institution of education, we assert the following:

1. *Fundamental changes are taking place in the organization of society and the economy.* One need not look very far to see the wrenchings of a society once again (or still) in transition. The rapid shift from an industrial economy to a service-based economy to an economy increasingly dependent on "smart workers" with high level technological skills has both redefined America's industrial base and produced a widening gap between the economic "haves" and "have nots". Devolution of governmental authority and responsibility to state and local entities, part of the "reinventing government" trend, simultaneously tears at the fabric of decades-old social policy and reshapes the arena of public versus private responsibility. The concurrent emphasis on recreating community is causing us to consider what a "community" is --who comprises it, supports it, and sustains it.
2. *These changes will cause fundamental reorganization of education.* Preparing students to meet the workplace challenges of the 21st century requires a much different education system than the one created for, and adequate for, an economy based on farms and factories. The concurrent policy taste for devolving authority will continue to create pressure on the traditional education hierarchy to move decisions to local schools and communities.

3. *At the core, many of these changes in education are about reorganization of learning.* What is learning, who is capable of learning, and what is the responsibility of teachers in creating learning? We call these relationships the Instructional Core of Education. The instructional core contains the transactions between teachers and students, books and blackboards, corridors and curriculum, through which learning takes place.
4. *Changes in the Instructional Core of Education will cause major dislocations in the way schools are organized and governed.* The schools we have now rest on behavioral psychology and a belief that learning can be broken down into small steps arranged sequentially. Since W.W. II, however, behavioral approaches to learning have been increasingly challenged by the rise of cognitive science. Learning, we now know, is not so easily compartmentalized or standardized.

Under the new instructional core, knowledge is created in *schools*. This is a far different conception of knowledge than that which occurs in our current industrial era schools, and it has profound implications for teaching. One gains knowledge of practice by engaging in it, not by reading manuals or participating in college seminars. It is in the creation of knowledge of practice that teaching lays claim to the title profession. This type of autonomy forces teachers to confront the three keys to creating knowledge of practice: innovation, adaptation, and continuous improvement.

5. *Changes in school organization and governance will change existing power and influence relationships.* Teacher unions will find their

conventional sources of power and influence vastly diminished. At the same time, new terrain for organizing will open.

If unions are to follow the emerging sources of power, they will need to shift from organizing around job control, work rules, and uniformity, to organizing around career security, increased productivity through innovation, and quality control.

### THE NEW LABOR RELATIONS DESIGN

We have written previously<sup>2</sup> of the need for conventional teacher unionism to transform itself into a form of organization we have called "professional unionism." Professional unionism represents a sharp turn away from industrial unionism which creates a separation between management work and labor work, emphasizes adversarial relations between employers and employees, and has as its principal activity developing and maintaining contracts designed to protect workers' self-interests. The hallmarks of professional unionism, by contrast, are joint union-management custody of reform, employer-employee collaboration, and an emphasis in contract negotiations and work rule formation on institutional welfare and the public interest.

We now expand this notion of professional unionism by introducing a new conceptual model of labor relations. In this proposed new system, the union becomes a partner with the district in educational improvement and assumes a large measure of responsibility for insuring the quality of the teaching force. The focus of responsibility for educational performance shifts from

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<sup>2</sup>Charles Taylor Kerchner and Julia E. Koppich, *A Union of Professionals: Labor Relations and Education Reform*, New York: Teachers College Press, 1993.

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centralized district bureaucracies to individual schools. This is a new unionism suited to a new institution of education.

Among the components of this expanded version of professional unionism are the following:

1. A modern electronic hiring hall that allows teachers to move from school to school with relative ease and organizes teachers' professional lives around career security rather than job security.
2. A career ladder concept that places teaching at the top and creates training and job mobility opportunities for paraprofessionals and others interested in pursuing careers in the classroom.
3. Mandatory peer review of teacher performance as a central means of securing and maintaining quality within teaching practice.
4. A bare bones district-wide contract that includes measurable education goals, a new teacher salary schedule in which teacher pay is based on knowledge and skills, and portable pensions and benefits.
5. School-based educational compacts comprised of statements of school philosophy, measurable student performance targets, resource allocation mechanisms, criteria for hiring and evaluating staff, and programs for ongoing professional development.
6. A new labor law fitted to the outlines and requirements of this new labor relations system.

## CREATING A LABOR MARKET FOR TEACHERS

The structure we outline anticipates a highly decentralized system. We assume, in other words, that the individual school becomes the primary employer. We assume moreover that unions must become part of the market solution to obtaining an adequate supply of qualified workers.

The literature on modern, productive organizations, those which have come to be called knowledge era organizations, suggests that they put a premium on flexibility and organic change, the very qualities that cause problems for existing bureaucratic and union structures. We suggest rearranging the teacher labor market to make it simultaneously self-advancing and socially productive. We attempt here to strike a balance between the two legs of unionism: workers' rights of self-determination and society's need for institutions that are simultaneously productive and just. Doing this requires several major changes in the teacher labor market.

### Emphasizing Career Security Rather Than Job Security

Classically, organizations have been defined by their boundaries. One was either part of an organization or was not, and employee status set the boundary. If one had a job, one belonged to the organization; no job, no membership.

In teaching, belonging has been *achieved* through the hiring process. It has been *secured* with the passage of time, the accumulation of seniority, and the granting of tenure. Seniority and tenure have provided teachers with a comfortable kind of security of employment and position.

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To be sure, job protection is not now, and never has been, absolute. Teachers are not shielded from layoff in times of fiscal crisis and, conventional wisdom notwithstanding, bad teachers can be fired. Nonetheless, a teacher has been relatively safe in assuming that, absent some sort of crisis, a job with the district, and even a position in a particular school, was secure. Union contract provisions in large measure created this kind of stability for teaching employees.

But the historical relationship of the teacher to the education institution is beginning to break down. The organization we know as school increasingly operates with part-time employees who are part of the organization, but not entirely, contractual services where people perform vital functions but are not on the payroll, consultants who perform highly strategic activities but only for a short period of time, and volunteers or community resources from other organizations and agencies in which the participant may never have an economic relationship to the school.

One gains a picture of a highly organic organization that changes rapidly with conditions and combines and recombines itself with fluidity. In this setting, the union's historical weapon of building a set of rights around a particular job is challenged, and the union has two possible avenues of action. One is to fight each of the boundaries: redefinition of teacher work, contracting out, the use of interns, substitution of volunteers or employees of other organizations or agencies. Or the union can begin to organize around career security rather than job security.

By career security we mean that union members would be buffered from the winds of organizational change through a series of mechanisms that would

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allow members to move relatively easily from school to school, from job to job, and from one type of economic relationship to another. A new version of an old union classic, the hiring hall, would make this possible.

## Creating the Modern Hiring Hall

The hiring hall grew from the craft tradition of project-based employment, relatively frequent job changes, and peripatetic workers. In an era when the nature of work is rapidly changing, it is an idea whose time has come again.

The union ought to become the exclusive provider of teachers to the schools in a district for which it is the recognized exclusive representative. As in the case with the old craft unions, one would gain access to work through the union. Unlike the historic craft union hiring hall, where individuals lined up daily for their work assignments, this hiring hall would function as a sophisticated human resources organization offering placement and counseling services and access to training and development.

Historically, teacher supply has been a primary problem for school districts. Teacher shortages cause districts to greatly compromise the standards they use in hiring teachers. The union, through the hiring hall, could bring the supply and demand of labor into balance and assure schools that there will be a supply of qualified people to work.

In our conception, the hiring hall would have multiple functions:

1. Registration—Just as a personnel office now does, the hiring hall would receive and qualify applications. It would determine whether the person had the basic legal requirements for a job and whether the person met the requirements of an individual posting.

2. Preparation and recommendation—The hall would assist applicants in preparing employment portfolios, more compact versions of the kinds of presentations now being required for certification by the National Board for Professional Teaching Standards. Of course, for those teachers who were Board certified, their certification would become part of their registration information. The hall might also provide screening, career counseling, and assistance in interview training.
  
3. An electronic database—Registration information, including selections from a teacher's portfolio, would be made available to all schools in a hiring hall's service area and, given compatible data formats, could be transferred among geographic locations as well. A school could thus screen applicants according to criteria they chose, with the knowledge that if they followed the proper screening techniques, their search would meet all the anti-discriminatory and civil rights requirements. All the information, including registrant preferences and work experience, would be available to a school.
  
4. Employment broker—Particularly for employees with highly specialized skills, or a desire to work an unusual schedule, the hiring hall would serve an additional brokerage function. The hall, for example, would be able to create full time employment for teachers of art or music, who might not be affordable at a single elementary school, but who might find a shared arrangement among several schools. Or it would be able to assist teachers who choose a practice centered on creating curriculum or developing educational software, skills that a single school might have need of for an intense period of development lasting only a few months but which several schools might require over the course of an academic



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year. The hiring hall, in other words, would enable teachers to develop the kinds of professional practice options suited to their talents and needs while maintaining steady employment.

Under the hiring hall plan as well, persons who were not employed at a school would become part of a pool of workers in transition between jobs. Members of the pool would be supported by a fund financed by all employees as part of districtwide bargaining agreements. The length of time an employee would be economically supported while in the pool would depend on the employee's seniority in the union.

We recognize that there is always the possibility of poorly run hiring halls that discourage or discriminate against applicants. Thus, the hiring hall would be the personnel office of first resort. Schools would be obliged to seek teachers through the hiring hall mechanism before turning to other sources. A persistent failure of a school or schools to use the hiring hall or of the hiring hall to have qualified workers available would be grounds for an unfair labor practice complaint, just as failure to bargain in good faith is now.

## **Developing a Career Ladder with Teaching at the Top**

Decades after the publication of *Schoolteacher* (Lortie), teaching remains an "unstaged career." To be sure, informal leadership and positions of respect and influence accrue with experience. And over the past 20 years we have witnessed substantial differentiation in teaching work in the form both of job specialization and job enlargement. But these arrangements, whether they be mentor teacher programs or career ladders, fall far short of constituting the kind of career progression that other occupations of highly trained individuals enjoy.

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We focus here on the career ladder. Most existing career ladder plans take entry level teaching as their bottom rung. Classroom teachers, the individuals who work with children everyday, are at the bottom of the ladder. The message that is sent is clear: those who work with children have the lowest status, and those who work with adults have the highest.

We suggest a different ladder, one that places teaching at the top and creates an orderly career progression into teaching. The duties and responsibilities now ascribed to lead teachers would become part of the normal responsibility of senior teachers, part of the world into which they become socialized.

Putting teaching at the top of a career ladder allows those who are classroom teachers to have a teaching relationship with other adults. It makes possible real apprenticeships in the schools. It creates a natural situation in which teachers can train and socialize new entrants and insure their quality.

And it offers the potential of connecting teachers with communities.

Unions and districts together should develop such career ladders. These arrangements would enable paraprofessionals, or teachers' aides, for example, to work their way toward college degrees, teaching certification, and employment as full-fledged teachers. Paraprofessionals bring important qualities to schools. They generally live in the community in which the school is located and often, particularly in immigrant communities, speak the home language of the students. These individuals have worked in classrooms. If they indicate a desire to earn the title of teacher, one can have reasonable confidence that the commitment is a serious one.

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A few districts and unions have begun to develop components of the career ladder described here. We believe these efforts need to be expanded and become significantly more widespread.

### Implementing Peer Review

We place peer review in the section on creating a quality labor market because, in our judgment, peer review is central to the issue of teacher quality. Peer review is probably the most powerful demonstration of teacher creation and demonstration of a knowledge of practice. In the 20 or so districts that have tried it, peer review brings higher standards to teaching. It significantly changes the conception of teaching work by recognizing the importance of engagement and commitment as well as skill and technique. It recognizes a legitimate role for teachers in establishing and enforcing standards in their own occupation. Peer review also fundamentally changes the role of the union. As Al Fondy, President of the Pittsburgh Federation of Teachers notes, "It is not the primary purpose of the union to defend the least competent of its members."

Peer review began in 1981 when the Toledo, Ohio schools and the Toledo Federation of Teachers added to their collective bargaining agreement a one-sentence clause by which teachers agreed to police the ranks of their veterans in return for the right to review the professional performance of new teachers. In the last decade-and-a-half peer review has spread among a number of progressive school districts.

Peer review brings higher standards to teaching in two ways. First peer review systems generally have more resources, and thus put forward a more thorough system of evaluation, than do conventional administratively-

driven evaluation schemes. In districts with peer review plans, unions and districts negotiate substantial financial set-asides (approximately \$2,000 for each teacher to be reviewed) for purposes of implementing the evaluation system.

Second, peer review systems link good teaching and professional development. The traditional evaluation system captures only a sliver of a teacher's work, principally that which can be observed in a brief administrative visit to a teacher's classroom. It is designed as a kind of checklist accountability system. Peer review, on the other hand, taps a broader segment of a teacher's professional portfolio through prolonged and extensive engagement with and observation by teaching colleagues and an emphasis on enhancing professional practice.

Most peer review systems are patterned after the Toledo Plan. Novices are supervised, assisted, and evaluated by experienced teachers, who are selected in a competitive process by others who have done the same job. The evaluators, called consulting teachers, spend fulltime for up to three years in their positions as peer reviewers.

Another component of the peer review system involves the effort to assist experienced teachers "in trouble". Cooperating teachers work with these individuals, recommend a program of remediation, and then, at the end of a designated period of time, assess the success of the improvements efforts.

In the case of both novices undergoing their early-years assessments and experienced teachers participating in the remediation (often called "intervention"), consulting teachers report to a joint union-management Board of Review which makes recommendations to the district school board

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regarding the status of continuing employment for the teachers who have been reviewed.

Available evidence suggests that peer review is tougher than conventional administrator-driven evaluation. There is no evidence that teachers will soft peddle evaluation in order to save the jobs of colleagues. To the contrary, unionized teachers *will* vote to fire other union members who are not living up to teacher-established standards of professional practice.

In addition to providing novice teachers with intensive early assistance and offering support and assistance to veteran teachers experiencing difficulty, peer review can be a means by which teachers whose professional practice is not in question can engage in ongoing professional development. Poway, California, a district in San Diego County, has expanded its peer review program so that the system now operates as an alternative to conventional evaluation for successful experienced teachers. The program involves the development by a participating teacher of a goal statement and evaluation plan that may include collaboration with a group of colleagues to conduct self-evaluations, create professional portfolios, undertake peer coaching, conduct classroom action research, participate in structured staff development, and observe other colleagues in their classrooms.

Peer review changes the stakes in evaluation. As Miles Myers, executive director of the National Council of Teachers of English and former president of the California Federation of Teachers has observed, "Peer review forces teachers to define good teaching. Teachers have to be able to express good teaching in language that other teachers understand and accept."

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Peer review also represents a radical departure for teacher unions from established industrial norms in which evaluation is the province of school administrators. The union's role, in this scenario, is to watchdog the process and protect members from violations of their due process rights. Under peer review, the union's role becomes one of balancing protection of individual teachers with the protection of teaching.

## **Providing Portable Pensions and Benefits**

Localized pensions and benefits, the standard in education today, create pronounced rigidity in the teacher labor market. Just as teacher job protection is tied to a particular employer, so too are benefits. Thus, another component of creating a new labor market for teachers is the development of pension and benefit plans that teachers can carry with them when they move to a different locale.

Pensions are largely part of state plans in which employee contributions are only matched by the state at retirement. Moving employment out of state carries heavy penalties. Other fringe benefits, particularly health benefits, are usually school district specific. Simply moving to a different district, even in the same geographic region, can jeopardize a teacher's continuing coverage. We are convinced that creating the new labor market for teachers requires that pensions and benefits be portable. Teachers must not be tethered to their current, and often their first, school district for fear of losing accumulated retirement or health benefits.

Teaching ought to abandon state-run pension plans in favor of an independent national pension cooperative outside of school employers, states, and direct union control. A model, not unlike TIAA-CREF which has

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had a 70-year scandal free reputation for pension and investment services to teachers and college professors, would be well worth consideration.

In health care and other benefits where services must be locally delivered, the unions themselves should serve as the plan holder, contracting with HMOs and other care providers. The key is to move access to health care from the employer to the occupation so that benefits continue when employment status changes.

## **Additionally Expanding the Portfolio**

Developing a modern hiring hall, creating a career ladder with teaching at the top, requiring peer review of professional performance, and implementing a system of portable pensions and benefits all are designed to insure the quality of the teaching workforce and expand the flexibility of employment opportunities for its members. An additional set of organizational and institutional changes will enhance the viability of this new quality labor market.

## *Teacher Preparation*

Teacher unions traditionally have taken a backseat role when it comes to the preparation of new members of the profession. While the NEA in particular has established programs to recruit individuals in teacher education programs into the union's ranks, this activity has been undertaken with an eye toward capturing new members, and cementing organizational loyalty, in anticipation of future employment. Recruitment has not typically included substantive participation in core teacher preparation activities. We believe union involvement in preparing new entrants to the profession is critical.

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For teaching, licensure remains a muddle. Public policy and the market for teachers drives licensure simultaneously in two directions. Advocates of higher formal entry standards seek longer training programs and more rigorous examinations. Meanwhile, the forces of supply and demand cause even existing licensure standards to be trivialized, and advocates of a more fluid and diverse supply of teachers seek alternative pathways that in some cases obviate the meaning of licensing altogether. Between these two pressures, supply and demand is always the stronger.

Unions need to reestablish teachers as primary agents of socialization and education of novices. Unions are not likely to be successful in going it alone to create a new genre of teacher preservice preparation, but can be powerful collaborators, either with universities unconventional programs or through alternative routes to certification. Professional involvement in preservice standard setting and program development, particularly in the case of alternative certification programs, ought to become a legitimate and expected union function as a means of maintaining quality in teaching.

One of the most promising opportunities to link practicing professionals with their novice colleagues is offered by Professional Development Schools. The PDS model offers an institutional structure for unions to help teachers embed learning in their own work.

### *Professional Practice Contracts*

Professional practice contracts are the means by which high-paid workers are linked to organizations. The ability of teacher unions to assist teachers to form this type of organization is an important ingredient in what is likely to be a long period of experimentation in how schools are organized.



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Unions should assume as one of their responsibilities serving as broker to arrange agreements between a group of teachers and a school to provide educational services. In a situation such as this, the teachers would not be employees of the school, but would be members of their own professional services corporation.

Unions would be in a much stronger position by creating the machinery that allows their members to form professional practice organizations and to support members in doing so than they would in fighting a war of attrition against structural changes in how education is delivered.

### *Contracting Out*

Contracting out seriously threatens existing union structures. Historically in education most contracting out has been done in ancillary service areas—food service, maintenance, janitorial. But increasingly the use of contract workers has come closer to the core functions of teaching and learning. As schools decentralize, and as budgetary decisions are made at school sites, teachers themselves, as members of school site decision bodies, are likely to be involved in decisions about how labor is to be divided. Some services are likely to be contracted out.

Unions ought not simply to adopt the conventional anti-contracting out stance. At a minimum, this position will diminish the support of those of their members who believe some educational services at their particular schools can be better provided through outside-of-district contract workers. Instead, we believe unions ought to insist on and help to establish a set of baseline enforceable rules about contracting out. We suggest two rules in particular.

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First, no one should be forced to accept bad services. No local site council should be forced to accept the services of either bad employees or bad contractors. Since the people most affected by bad services are those in the schools, decisions about contracting out should be lodged in schools.

Second, all contracts should require basic worker protections. Placing decency structures on contracts tends to level the field and allow groups of workers internal to an organization to compete with outsiders for contract relationships.

## The Logic of the Labor Market

Our goal in the proposals thus far is to link union security with an institutionally useful labor market, one that provides high quality workers, allows the market to adjust for supply and demand, and provides career continuity for educators without hobbling school reform and change in the process.

Creation of a quality labor market for teaching is the first major component in our reconceptualized model of professional unionism. The second encompasses a comprehensive revamping of the purpose and substance of collectively bargained contracts.

## SHIFTING THE FOCUS OF BARGAINING

We have made the case that knowledge is created—knowledge work is done—in *schools*, more particularly, in schools which operate as relatively autonomous centers of learning. Districts (or states or the federal government) need to establish the architecture for operational autonomy via measurable education goals, standards, and systems of accountability and

appraisal. But it is schools themselves that function as the individual units of production. In this conception, the schools, and the knowledge workers in them, need a great deal of discretion to make fundamental decisions about matters such as personnel deployment, resource allocation, and the content and conduct of the instructional program.

This sort of operational independence flies in the face of the conventional American education structure in which education decision making authority is largely lodged at the center, in school district headquarters. Standard education labor-management arrangements, which result in districtwide master contracts, serve to reify the centralized nature of schooling.

Reconceptualizing teaching as knowledge creation work entails a fundamental redistribution of power and authority. Critical to breaking the centralized hold on education decisions is shifting the emphasis of collective bargaining from negotiating districtwide contracts, which standardize work rules, to achieving school-based agreements which allow for considerable site discretion and variability.

We propose here the development of a new set of interlocking models of union-management accord. A slender district level contract would establish salary minima, a benefits package, a basic school year calendar, and newly conceived hiring, assignment, and evaluation procedures. School site educational compacts, which would shift resources and workplace decisions to employees and hold them responsible for educational performance, would include salary ranges above minimum levels as well as procedures regarding resource allocation, class and course organization, hiring, and professional development.

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These types of agreements represent a sea change from conventional collective bargaining contracts on matters of purpose, substantive scope and content, and the assumed professional relationship of union and management.

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INDUSTRIAL STYLE CONTRACTS	KNOWLEDGE ERA CONTRACTS	
	"District" Level Contract	Site Level Compact
<b>RECOGNITION AND SCOPE OF BARGAINING</b> <ul style="list-style-type: none"> <li>• union recognized to represent members' economic rights and protect their employment security</li> <li>• policy and operational decisions reserved to management</li> <li>• assumed division of interest between labor and management</li> </ul>	<ul style="list-style-type: none"> <li>• union recognized to represent members' interests in all areas of educational improvement</li> <li>• assumed partnership in much education decision making</li> <li>• assumed common interest in educational improvement</li> </ul>	<ul style="list-style-type: none"> <li>• employees gain the right to make workplace decisions</li> <li>• employees assume responsibility for educational performance</li> </ul>
<b>WAGES AND BENEFITS</b> <ul style="list-style-type: none"> <li>• standard salary schedule</li> <li>• salary levels based on longevity and college credits</li> <li>• negotiated benefit package administered by district</li> <li>• benefits attached to employment in district</li> </ul>	<ul style="list-style-type: none"> <li>• salary schedule establishes baseline minima</li> <li>• salary levels based on demonstrated knowledge and skills</li> <li>• negotiated benefit package administered through pension and benefits trust</li> <li>• benefits portable</li> </ul>	<ul style="list-style-type: none"> <li>• annual salaries above minimum levels possible</li> </ul>
<b>WORK RULES AND CONTENT</b> <ul style="list-style-type: none"> <li>• specific days and hours of employment, including school year calendar</li> <li>• delineation of allowable non-teaching duties</li> <li>• class size parameters</li> </ul>	<ul style="list-style-type: none"> <li>• basic school year calendar outlined</li> </ul>	<ul style="list-style-type: none"> <li>• school budget and program decision procedures</li> <li>• class and course organization procedures</li> <li>• quality assurance mechanisms</li> </ul>
<b>PERSONNEL</b> <ul style="list-style-type: none"> <li>• assignment and transfer</li> <li>• evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• hiring hall operations and structure</li> <li>• peer review procedures</li> <li>• professional development system</li> </ul>	<ul style="list-style-type: none"> <li>• hiring criteria and decision procedures</li> <li>• peer review implementation</li> <li>• professional development</li> </ul>
<b>DISPUTE RESOLUTION</b> <ul style="list-style-type: none"> <li>• hierarchical grievance procedure</li> <li>• early stages informal</li> <li>• binding arbitration (often) as final step</li> <li>• disputes resolved solely on the basis of contract language</li> </ul>	<ul style="list-style-type: none"> <li>• simplified procedure</li> <li>• first stage informal</li> <li>• second stage, dispute submitted to "permanent umpire"</li> <li>• disputes resolved by balancing welfare of institution and individual teacher equity</li> </ul>	<ul style="list-style-type: none"> <li>• informal resolution at the school</li> <li>• unresolved issues submitted to district level binding arbitration</li> </ul>
<b>ASSUMED RELATIONSHIP OF THE PARTIES</b> <ul style="list-style-type: none"> <li>• adversarial—assumes management-labor conflict over roles and division of resources</li> <li>• conflict tempered by dispute resolution techniques surrounding limited scope agreements</li> <li>• cooperation employed as means of achieving détente, but substance of contracts remains virtually unaltered</li> <li>• efforts at cooperation leave underlying assumptions intact (e.g. inherent conflicts between labor and management)</li> </ul>	<ul style="list-style-type: none"> <li>• cooperative—assumes union-management partnership focused on educational improvement</li> <li>• conflict arises over issues of educational improvement</li> </ul>	

**Industrial-Style Bargaining: A Short Course**

Collective bargaining is designed to give teachers a formal and legally recognized purchase on the conditions of their employment. Prior to collective bargaining, teachers did not speak for themselves, they were spoken for. Salaries, hours of employment, class sizes, and assignment and transfer procedures were set by school boards and enforced by administrators. Teachers generally had little influence over, and even less say in, establishing the conditions of their professional employment.

Negotiated contracts, the products of bargaining, represent legal “footprints” of discussions, compromises, and agreements between teachers and their school district employers. Through the contract, an often long (some contracts run to more than 100 pages) and quasi-legalistic districtwide agreement, rules, procedures, and, to a large extent roles, are set to writing in a legally binding and enforceable document that is the product of mutual agreement between teachers, as represented by their union, and the school board, as represented by district administration.

Contracts establish teachers' rates of pay and benefit packages. They delineate procedures by which teachers who desire to transfer to a different school or a different assignment may do so. They outline agreements for setting the level of class sizes, define the length of teachers' salaried work day and work year, establish procedures for evaluating professional performance, and provide a mechanism for adjudicating procedural and substantive disputes that arise between teachers and school or district administration.

## **Organizing the Other Half of Teaching**

Contracts are meant to create fairness in a bureaucracy. The union is deputized by its members to represent their economic interests, through salary and benefit arrangements, and to protect their employment security, through standardized work rules and districtwide personnel procedures. Negotiated agreements apply a districtwide template to teachers' conditions of employment. The same professional rules of engagement attaches equally to all teachers in a given school district.

Conventional collective bargaining agreements, which grow out of the industrial union tradition, assume a division of interests between labor and management. The union, through the contract, represents the economic and day-to-day work concerns of the employees. Management establishes policy and makes operational decisions. This implicit separation of interests lays the groundwork for adversarial labor-management relations.

Adversarial bargaining establishes a dynamic in which teacher unions and school management are enmeshed in a continual test of wills. Labor relations becomes permanently contested terrain as employers and employees each strive to have their particular interests reflected in bilateral agreements. Union and management eventually achieve a written treaty, the contract, but relations between the parties, even after the contract is signed, often more closely resemble an uneasy truce than a cooperative partnership.

### **The Issue of Scope**

The adversarial nature of bargaining is enhanced by the legally limited scope of contract agreement. "Scope" refers to the issues and items about which the parties to the collective bargaining agreement are required or allowed to negotiate.

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The central tension in the scope debate is framed by the unresolved matter of which decisions should be delegated by the school board, the legal representative of the district, to the union in the process of collective bargaining. Professional employees desire to stake a larger claim on the content and conduct of their work. Their employer, the school board, entrusted with representing the public in critical policy decisions, generally is reluctant to relinquish authority over significant education matters.

Teachers and school management thus discuss and reach agreement about how long teachers work and how much they are paid. But the district is under no obligation, in fact is often expressly prohibited by state law from reaching agreement with its teachers on matters related to the organization of the educational enterprise, the allocation of resources, or the implementation of educational programs. Bargaining law enshrines the assumption that employees' interests stop at compensation and work rule issues. It is management which has an interest in, and assumes responsibility for, the policy and operational decisions which shape the education system.

The limited, and limiting, nature of the statutorily determined scope of bargaining creates a false dichotomy. Namely, restricting the topics of allowable discussion between professional employees and their employers assumes that the conditions of employment can be separated from the substantive work of the enterprise. Utilizing this framework, "bread and butter" issues of compensation, benefits, job security, and general conditions of employment are properly part of the employee's purview. The mission of the institution and the content of the work are not. The narrow scope of union-management bargaining serves to constrain districts and unions from



engaging in substantive discussions about matters central to improving schools and enhancing student achievement.

### Attempts at Change

Over a decade of contemporary American education reform efforts, some courageous districts and their teacher unions have attempted to confront the twin challenges of industrial-style bargaining: the adversarial nature of labor-management relations and the artificially restricted scope of negotiated agreements.

A number of school districts have adopted the "win-win" approach to collective negotiations. Popularized by the Harvard Negotiation Project, win-win bargaining represents a turn away from traditional distributive bargaining, in which a fixed pot of resources is divided up issue by issue, and a concurrent move toward integrative bargaining in which issues and interests overlap.<sup>3</sup> Union and management seek common interests and solve common problems. The product of these discussions, the contract, is the product of a set of compromises that, cumulatively, represent a "win" for both sides.

Throughout the 1980s and into the 1990s, collaborative bargaining, the generic name for the win-win approach, was adopted by an expanded number of districts, and by affiliates of both the American Federation of Teachers and the National Education Association. Some districts, Miami, Florida; Rochester, New York; and Cincinnati, Ohio, for example, have been visible and vocal about their determination to alter the way in which union and management

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<sup>3</sup>Most bargaining is actually "mixed bargaining." See Walton and McKersie, A Theory of Behavioral Negotiations, 1965.

conduct business with one another. Other districts have been quieter about their changing labor relations milieus, but no less determined to redefine the form of the union-management relationship.

At the same time as districts and unions have sought ways to dampen the adversarial nature of bargaining, a number of school districts and their unions (often the same ones who embraced collaborative bargaining) have initiated reforms designed to modify the lockstep nature of the contract. These efforts, which have been designed with the dual purpose of expanding the range of union-management discussions and providing added professional decision making flexibility and discretion, generally have proceeded along three paths: joint union-management committees, educational policy trust agreements, and contract waivers.

Joint union-management committees have been established to extend union-management decision making into relatively uncharted cooperative waters. Pittsburgh, Pennsylvania, for example established a joint committee to oversee the district's school-based management undertaking. In Cincinnati, the union and the district removed the thorny issue of resolving class size disputes from the contract grievance procedure and placed it in the hands of a joint committee. Poway, California's peer review system is overseen by a committee composed of union and management representatives. Joint committees are meant to expand the portfolio of the negotiated agreement in a cooperative labor-management environment.

Trust agreements, legally binding bilateral accords which sit outside the collectively bargained contract, are designed to deal with issues that arguably fall outside the scope of bargaining (particularly important when discussions

of legally allowable scope are likely to eclipse discussions of substance) or that are better handled in an arena less formal than contract negotiations with an outcome less rigid than a contract. A four-year-long California experiment involving 12 school districts resulted in union-management trust agreements covering issues such as peer review, professional development, and school site collaborative management and decision making. Another means of expanding union-management cooperative decision making, trust agreements also serve as vehicles for expanding the envelope of union involvement in education policy formation and implementation.

A few contracts have established procedures that enable individual schools to request waivers from specific portions of the agreement for school-determined educational reasons. For example, a school wants to experiment with some very large classes and some quite small ones. Doing so would violate the class size provision of the contract. A waiver provision allows the school to request relief from that portion of the agreement.

Contracts which include waiver provisions require that the school seeking the waiver submit a written request to a team of designated central union and management representatives. The team considers the request and makes a decision, which is binding on the school. The waiver, if granted, is limited to the school requesting it, and is in effect for a specified period of time.

### *Good But Insufficient*

In our judgment, reforms in bargaining form and substance, no matter how faithfully conducted and thoughtfully executed, have failed to move unions and districts much beyond the education reform starting gate. Many efforts aimed at collaborative bargaining seem to stop there. Achieving an enhanced

level of cordiality, without changing the substance of the negotiated agreement, is assumed to be the goal.

Even efforts aimed at altering the substance of the negotiated pact have produced only modest change. Trust agreements and joint committees expand the range of union-management discussion, but they are, themselves, centralized accords, offering little in the way of school site flexibility. The clearest effort to decentralize decision making authority, waivers, are enmeshed in their own web of rules.

Moreover, waivers, trust agreements, and joint operating committees sit outside the regular bureaucratic structure and have about them a perpetual air of impermanence. Generally accorded about equal status as other "pilot projects" in a school district, these efforts at reforming the labor-management relationship tend to be seen by teachers and administrators as temporary educational aberrations. The bureaucracy continues to operate as if little had changed. In the inevitable test of wills between change and the status quo, change invariably blinks first. None of these bargaining reforms has had the effect of moving teaching professionals and school management significantly closer to confronting the complexities of improving education in measurable and demonstrable ways.

#### FROM CENTRALIZED CONTRACTS TO SCHOOL-BASED COMPACTS

We propose that the all-encompassing, standardized districtwide contract be replaced by two separate kinds of agreements, a slender, limited version of the centralized contract and a more encompassing school-based educational compact.

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The districtwide agreement would contain a set of basic wage and working condition provisions (many of which would be subject to school site modification). More importantly, it would recognize the union for purposes of representing members' interests in all areas of educational improvement. Unlike conventional bargaining agreements which assume a division of interest between labor and management, this new form of districtwide agreement would be structured around and framed in language which makes clear the union's and management's shared interest in educational improvement.

The central agreement would provide a kind of bare bones philosophical and operational architecture. More comprehensive educational agreements, in the form of operational compacts, would be forged at local schools.

We borrow the notion of the modern day workplace compact from the work of Irving and Barry Bluestone. In their book, *Negotiating the Future*, the Bluestones write:

A contract is essentially adversarial in nature, representing a compromise between the separate interests of each party to the agreement. In contrast, a *compact* is fundamentally a cooperative document, providing for a mutual vision and a joint system for achieving common goals that foster the general well-being of all stakeholders in a given endeavor. [With a compact], labor takes on greater responsibility for productivity and quality; management assumes a greater obligation to provide employment security. *Together*, management and the ... union work jointly to make decisions at every level of the [enterprise].

The educational compact would confront one of the key dilemmas posed by conventional collective bargaining. Namely, it would be school-based. Fundamental educational decisions would shift from the central school system to individual school sites.

Signators to the educational compact would include all of the staff members at a particular school—administrators, teachers, paraprofessionals, the clerical and custodial staff. In union parlance, the compact would be a “wall-to-wall” agreement.<sup>4</sup>

There would be an additional party to the compact, namely, the community. In a sense, the educational compact would serve as a social contract between the employees of the school and the parents and community. Obligations and responsibilities would be mutual and mutually reinforcing. The parties to the agreement—union and management in the case of the districtwide agreement, the full school community in the instance of the site-based educational compact—would reach decisions based on their assessment of a *common* vision of education and *common* goals for the district or school.

The reach and range of both negotiated documents would be broad. Both the centralized contract and the school site compact would adopt as their organizational and operating framework improving the quality of the educational enterprise through a continuing focus on means of ratcheting up student achievement. In order to achieve such agreements, all topics of educational purpose and substance would be fair game for discussion.

### The New Central Agreement

Six basic provisions would compose the districtwide contract: 1) union-district joint responsibility for improving education, 2) a new kind of pay schedule and a basic benefits package, 3) professional development and assessment of professional performance, 4) a standard minimum school year calendar, 5)

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<sup>4</sup>This paper deals only with teachers. Thus, the descriptions of some compact provisions offered in the following sections apply particularly to the teaching staff.

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union and employment security guarantees, and 6) a mechanism for resolving disputes.

### *Joint Responsibility*

This would be a clear statement of the union's and district's intention to assume mutual obligation for improving and maintaining the health of the educational enterprise. Both parties—the union as the recognized representative of employees and the district as the employer—would commit to joint action which furthers the district's educational mission. The agreement would be grounded in the assumption that union and management share a *common* purpose in improving schooling. Thus, the union would be recognized to represent members' interests in all areas of educational improvement.

As a means of framing joint action and establishing a clear course and direction, the union and the district together would set broad-based, measurable educational goals toward which the district, and all schools in the district, would strive. Goals would be focused on student achievement, as defined in multiple ways—levels of academic performance, school attendance and completion rates, rates of student participation in extracurricular activities, levels of parent and community participation in schools and school-related activities, and the like. Goals would be specific enough to be measurable, but not so specific as to limit schools' ability to adapt the goals to the needs of their particular student populations. Measurable educational goals would serve as a public statement to the community of the union's and district's commitment to educational improvement and their willingness to be held accountable for the results of their efforts.

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As an additional component of assuming joint responsibility for educational quality, the union and district would develop a quality review procedure for nonperforming schools. "Nonperformance" could be established in three ways.

A school could experience some sort of disaster that makes it impossible to operate the educational program. Such a school would be unable to meet its instructional obligations, and would therefore be subject to district takeover.

Alternatively, a school might be declared nonperforming if it is unable to reach agreement on an educational compact. Since the compact essentially establishes the plan of operation for the school, failure to construct such a plan, after an agreed upon period of time, would qualify as nonperformance and render the school a candidate for district takeover.

Finally, the district and union would agree that schools that do not meet established educational goals, that in effect are failing to provide adequate education, could be declared nonperforming. The districtwide contract would spell out procedures for certifying schools as nonperforming as well as processes by which the district would assume responsibility for such schools.

### *A New Salary Structure and Benefits Package*

The standard single salary schedule which currently governs pay setting for nearly all of the nation's two million teachers is not calibrated to take into account teachers' demonstrated knowledge or expertise. This is not simply a case of poorly performing teachers rating the same pay as superb teachers, however "poor" and "superb" are judged.



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In terms of considerations for salary adjustment, the salary board would also need to be sensitive to the extent to which its alterations to the districtwide schedule would limit the flexibility of schools to offer teachers additional compensation. This would require a delicate balancing act. If the board set the districtwide salary bar too high, schools would be constrained in their ability to delegate resources. Alternatively, if minimum salaries were not kept competitive with at least neighboring districts, the low levels of compensation might cause teachers to seek employment elsewhere.

Economies of scale likely will warrant a districtwide (or even regional) benefits package. Our purpose here is not to suggest a specific benefits plan, but simply to recommend a structure for such a plan.

The district and union would establish a set rate to be contributed by the employer per employee for a package of coverages such as health insurance, a dental plan, vision care, life insurance, retirement, etc. The rate, which might be adjusted annually, would serve as a “cap” for the employer benefit contribution. Employees would be free to supplement this amount.

Two provisions of the benefit plan—health care and retirement—would be standard. Employees would be required to subscribe to health care coverage (though they would have a range of options from which to choose) and they would be required to participate in the retirement plan. Beyond these two requirements, a range of possible benefits would be offered to employees in the form of a “cafeteria plan.” As previously described, benefits would be administered *outside* the district and pensions overseen by a TIAA-CREF-type agency.

*Professional Development and Professional Performance*

Means for assisting teachers continually to improve their professional skills, and procedures for assessing the results of their professional efforts, would constitute two of the fundamental components of the centralized union-management agreement.

*Professional Development*

We know the dimensions of quality professional development. It is largely teacher-driven, teacher-directed and continuous. Perhaps most significantly, good professional development is school-based and directed at what teachers actually do in schools and classrooms (Little, 1994; Corcoran 1995).

In the new bargaining model we propose, the majority of professional development would be school-based. However, the union and the district, as part of their central agreement, might choose to join forces on some development dimensions.

For example, the National Board for Professional Teaching Standards might be the focus of some districtwide professional development efforts, particularly if certification by the National Board carried with it added financial compensation for teachers. Together, the union and district could offer courses to assist teachers to prepare for National Board certification. Or they might set aside funds to reimburse teachers who achieve Board Certification for the fees required to undergo the process.

Additionally, the district and union might take the long view, extrapolate the district's future needs and determine areas of anticipated teacher shortage. Joint professional development programs might then be organized for the

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purpose of "retraining" willing teachers who would develop new professional skills and competencies designed to meet the district's future educational needs.

The principal purpose of districtwide statements about and programs for professional development would be to reinforce joint expectations for or commitment to ongoing professional growth. This would be an additional tacit signal that the teaching career is not static, and that learning is a continuous undertaking both for those who teach and for those whom they teach.

### *Assessing Professional Performance*

We asserted previously that peer review, the process by which teachers assess the professional competence of their colleagues, is an essential component of the union assuming responsibility for the quality of the teaching profession. Thus, a procedure for implementing peer review would be contained in the new districtwide contract.

The assessment of professional performance would be governed by a Board of Professional Practice, composed principally of teachers. The Board would have two fundamental responsibilities. First, it would act on any recommendations for mandatory professional development or termination submitted by peer reviewers. As part of this process, the Board would review the evidence submitted by reviewers, including reports of classroom observations, portfolios of teachers' work, and information regarding steps taken by reviewers to assist the teachers in question to improve their professional practice.

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The Board of Professional Practice would have a second important function, namely, to hear appeals from decisions made by school principals to remove individual teachers for dereliction of duty. This is designed as an important safeguard, both for teachers and for schools.

A teacher, for example, is habitually late for work, or consistently exhibits inappropriate professional behavior. This teacher is not eligible for the peer review sequence for another year, but the principal believes the teacher must be removed from the school or classroom as quickly as possible. The principal would submit to the Board of Professional Practice the reasons for requesting removal of the teacher. The Board would hear the principal's case, listen to the teacher's response, perhaps conduct some sort of independent investigation, and render a decision.

In cases of prospective termination, imposition of mandatory professional development, or the removal of a teacher from an assignment for specified professional malfeasance, all decisions of the Board of Professional Practice would be final and binding.

### *School Year Calendar*

The majority of a conventional district-based collective bargaining agreement centers on work rules and content—days and hours of employment, class size parameters, delineation of nonteaching duties. The new districtwide agreement would contain just one “work rule” provision. The contract would establish a standard school year calendar which would specify the days during which schools typically would be expected to be in session. Individual sites, through their educational compacts, would be free to modify this calendar by increasing the minimum number of school days.

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All other workload matters that typically would be part of a district wide negotiated agreement would be included in school-based educational compacts.

### *Union and Employment Security*

The district's obligation in this new mutual arrangement would be to guarantee to *teachers* employment security and to guarantee to the *union* organizational security. The purpose would be to provide a stable work environment, and a ready supply of qualified labor, without imposing undue restrictions on either school site flexibility or professionals' ability to market their services and accept the most attractive job offer.

We differentiate here, as we explained more fully in an earlier section of this paper, between employment security and job security. *Employment* security—the right to a teaching position in the school district, assuming satisfactory performance—would be assured by a no layoffs provision in the agreement. *Job security*—the right to remain at a particular school—would not be a contractual guarantee. Decisions about which teachers were assigned to which schools would rest with school staffs and would be based on schools' particular needs.

The district and union would also agree to a *union* security contract provision in the form of the hiring hall. This portion of the agreement would have the effect of preserving the institutional integrity of the union as the source of the supply of competent professional labor for the district.

*Dispute Resolution*

Disagreements regarding the application or interpretation of provisions of both the central districtwide agreement and school-based educational compacts are bound to arise. Thus, the union-district pact would include means by which to resolve these kinds of disputes.

The emphasis in adjudicating disputes would focus largely on preserving the integrity of the educational institution and the goals it is attempting to achieve. Thus, this new sort of grievance procedure would need to balance institutional welfare with individual rights, insuring at the same time that school-based educational programs remain intact *and* that the system does not treat individual teachers in an arbitrary or capricious manner.

For purposes of adjudicating disputes regarding the districtwide agreement, the union and the district jointly would select an individual to serve as a kind of "permanent umpire."<sup>7</sup> Disagreements which are not resolved through informal district and union discussions would be submitted to the umpire, who would be empowered to render a binding decision which would take into account the obvious language of the disputed contract provision *as well as* the intent of the parties in developing it. In other words, the permanent umpire would enter the dispute resolution process with a clear sense of the district's, and schools', goals, missions, and rules of engagement. That understanding would contribute substantially to the umpire's resolution of the dispute.

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<sup>7</sup>Actually, the parties might agree to a panel of "permanent umpires" rather than to a single individual.

## Focusing on the School Site: The Educational Compact

The new districtwide contract serves to frame the basics. Much of the "heart" of the educational enterprise would be shaped by and incorporated into a new "educational compact" whose authority is lodged at the school site.

By means of the compact, employees would gain the right to make essential workplace decisions. In exchange for this new authority, the parties to the compact would assume responsibility for the educational performance of the school. In order to ensure that the compact was structured in a manner designed to assist the school to reach established educational goals, the school district would retain authority to approve these agreements.

The basic components of the enterprise compact would include the following: 1) a statement of educational philosophy, 2) student performance targets, 3) resource allocation mechanisms, 4) hiring procedures, 5) means for achieving salary decisions, 6) class and course organization procedures, 7) programs for professional development and assessment of professional performance, 8) a statement about quality assurance and community support, and 9) a dispute resolution plan.

### *Educational Philosophy*

An initial feature of the compact would be a statement of the school's operating mission and principles. In effect, this provision would provide an opportunity for the school staff and community mutually to determine the fundamental philosophy and educational underpinnings of the institution. The purpose of this section would be to reach consensus on the answer to the question, "What is it our school stands for?"

*Student Performance "Targets"*

The compact would contain a set of measurable student performance targets. Keyed to the student achievement goals enunciated in the central union-district pact, the compact targets would be tailored to the school's clients and mission. Targets would be more specific than goals, but would, like the goals, focus on measures of student achievement.

Compact-enshrined targets would serve as a set of quality indicators for the school. Annually the school would assess and make public the degree to which it was making progress toward reaching the targets and achieving the districtwide goals. The school would also be obliged to study, attempt to understand, and explain to the wider school community conditions or impediments which might, in any given year, prevent the school from reaching its anticipated targets.

*Resource Allocation*

The majority of resources, as much as 90 percent, would be controlled at the school site. Resources would be allocated to the school by the district on a per pupil basis. In other words, each school would be able to anticipate its complement of fiscal resources based on its student enrollment. The union and district might determine, at the district level, additionally to develop a "weighted" pupil allocation formula for special needs students (e.g., limited- and non-English speaking pupils, those with physical and mental handicaps, etc.).

The principle purpose of the per pupil allocation arrangement is to prevent the central district office from skimming resources that ought to be the



province of the school. Insofar as schools are able to predict their student populations, they ought to be able to predict their revenue streams.

Parties to the school-based educational compact would establish procedures by which to determine resource allocation priorities. All resource decisions would be stated in terms that clearly link resource distribution to efforts to further the educational program of the school. Here is where the staffing rubber meets the conventional union road.

Should a school collectively decide that an individual teacher's skills, while perhaps valuable in past years, no longer meets the needs of that school, the staff would have the authority, based on the school's mission and educational targets, to replace that teacher with another staff member (another teacher with different skills, an administrator, a classified employee). The displaced teacher's seniority would not provide him or her with an extra advantage in terms of remaining at the school. Instead, that teacher would contact the union and, through the hiring hall, seek a position more clearly suited to his or her particular professional skills.

### ***Hiring***

Hiring would be a school site function. Prospective teachers would be sent for interviews from the union hiring hall to schools with advertised positions. Schools would develop procedures by which to make decisions regarding the numerical and job specific composition of their staffs as well as mechanisms for adding and deleting staff positions. Hiring decisions would be grounded in judgments about the welfare of the educational program and school-determined priorities regarding resource allocation.

*Salary Decisions*

Teachers' pay would be structured on the basis of demonstrated knowledge and skill. The districtwide salary schedule would serve as the baseline.

Schools would be free, within the limits of their available resources, to offer teachers additional financial compensation.

Added compensation might be paid as a kind of "signing bonus" to induce a particularly well thought of, or well suited, teacher to come to a school. Or a school might decide to award added dollars to a teacher or a group of teachers who have made an especially significant contribution to the school in reaching its performance targets.

Teachers who receive financial compensation above that to which they would ordinarily have been entitled by virtue of their placement on the salary schedule would not have those dollars permanently attached to their pay scheme. Instead, these would become one-time bonuses, renewable at a school's discretion. Determination of the distribution, if any, of added salary to teachers or groups of teachers would be made at the school using the procedure established in the compact.

Allowing schools to supplement teachers' basic compensation serves two essential purposes. Namely, it enables schools to compete for teachers' services and to tangibly reward those professionals whose contributions measurably advance the school toward fulfilling its mission and achieving its performance targets.

We are aware that the option selectively to award teachers added financial compensation might appear to offer the prospect of encouraging a kind of unhealthy interpersonal competition which could constrain teachers from

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cooperating with one another. We believe in practice, however, this system would have a different result. Namely, it would enhance the ability of individual teachers or groups of teachers to be entrepreneurs. Moreover, in most instances of furthering school programs, we believe advantage would accrue to collective rather than individual efforts.

### *Class and Course Organization*

Schools would be free to determine the length of the school day, the number of days school would operate (though they would not be able to fall below the minimum specified in the districtwide contract), and the organization of time. Fifty minute periods might give way to two-hour class blocks in high schools. Elementary schools might structure their day so as to allow teachers to team teach. Class sizes would "float" depending on the school-determined needs of the educational program.

The educational compact would acknowledge time as a flexible and precious resource. The agreement would contain a set of school-determined procedures detailing the ways in which decisions about the allocation and use of time would be made.

### *Professional Development and Professional Performance*

Each school would determine a regular, ongoing program of professional growth and development. This program would be tied specifically to increasing teachers' capacity to improve student educational performance in order to meet school-developed targets and district-promulgated goals.

The compact might, for example, include a set of school-specific incentives, supports, and rewards for teachers who become certified through the National Board for Professional Teaching Standards. Or it might designate

particular areas of needed staff knowledge and skill and establish a program designed to assist teachers to achieve these.

Performance assessment would be accomplished by means of the peer review system previously described. Schools would adhere to the districtwide peer review scheme, although they might contribute additional components of professional accomplishment which individually they elect to assess.

### *Quality Assurance and Community Support*

The educational compact is not simply a bargain among school staff members. It is also an agreement with the school's public, a statement of mutual obligation and commitment, *professional* accountability as well as *public* accountability.

Teachers would agree to guarantee the quality of the educational program. They would agree to act in the service of improved student achievement, to make every reasonable effort to meet measurable educational goals, and to continually upgrade and assess their own professional practice so as to contribute to the welfare of the school.

In exchange, parents and the community would commit to support teachers and the school. Support might be achieved in various ways. Parents, for example, would agree to encourage students at home, assist students to the degree possible with homework, attend parent conferences and back-to-school events, and, to the extent their schedules permit, volunteer at their children's schools. In addition, parents and the broader community would commit to preserving the fiscal viability of schools.

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We believe that by including this kind of provision directly in the educational compact, parents and the broader community are included as partners in the educational program. Partnership does not simply imply some form of modest participation in school or schooling activities. Rather, this arrangement requires a mutual and symbiotic commitment of educators, parents, and the full school community in insuring student success.

### *Dispute Resolution*

The agreement would include a set of procedures to resolve compact issues that fall into contention. The first step would be an informal meeting between the aggrieved parties to try to resolve the dispute. Should this not result in resolution of the disagreement, the issue would be submitted to a school-based panel which would act as a sort of court of competent jurisdiction. Like the permanent umpire in districtwide disputes, the school-based "court" would, in developing a proposed solution to the problem, take into account the welfare of the school and the furtherance of its educational mission *as well as* the rights of the individual or individuals who are asserting that they have been wronged

Disputes that are not resolved at the school level would be submitted to the district-based permanent umpire for final adjudication.

### **New Agreements for a New System**

We have suggested here new forms and a new format for negotiated education labor agreements. Districtwide contracts would establish the basic architecture for a flexible but fair system of employment which focuses on educational processes and outcomes.

Educational compacts would be school-based agreements of interdependent parts. Performance targets would be linked to quality assurance which would be tied to resource allocation and professional development.

Perhaps more important than any single feature of the new system we have outlined here is the principle of operation which underlies the development of the accords. This new vision of collective bargaining assumes that union and management share a common interest in educational improvement. It is this interest that shapes decisions, influences actions, and produces results.

### THE NEED FOR A NEW LABOR LAW

This brings us to the final prong of a reconceptualized education labor relations system, the reform of labor law. Labor law reform is at best dicey, particularly in these uncertain political times. Unions fear that opening the door to statutory change plays into the hands of bargaining opponents and paves the way for substantial diminution of organizing rights. This is not union paranoia at work. Vocal individuals from the "if only" school of thought—"If only we could..."—have asserted, without much evidence, that eliminating the right of teachers to bargain collectively would cure much of what ails American education.

Potential political difficulties notwithstanding, we are convinced that the new labor relations system we have outlined in this paper is a mismatch with existing labor statutes. Reforming the system requires changing the law.

The principles underlying current labor policy are found in the National Labor Relations Act (1935) and two laws which amended the NLRA, the Taft-Hartley Act (1947) and the Landrum-Griffin Act (1959). These laws apply to

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the private sector, but many of their tenets have been employed in the development of state labor relations laws governing teachers and other public employees.

The National Labor Relations Act (NLRA), an outgrowth of increased pro-organized labor public sentiment in the wake of the New Deal, defined the rights of employees to select an exclusive representative, established the right of unions to bargain collectively, required that employers negotiate in good faith, and created the National Labor Relations Board to administer the Act. The Taft-Hartley and Landrum-Griffin Acts refined the responsibilities of unions and the rights of employees and employers. Taft-Hartley restricted some union activities, such as the secondary boycott, and created the Federal Mediation and Conciliation Service for the purpose of resolving union-management disputes short of resorting to legal action. Landrum-Griffin, also called the Labor-Management Reporting and Disclosure Act, was designed to regulate the relationship between the union and its members. Labeled by some as the “bill of rights for union members,” Landrum-Griffin allows members to sue unions for inappropriate or unfair representation.

U.S. labor law is built on an industrial model. Collective bargaining statutes, be they federal laws for private employees or state statutes covering teachers and other public employees<sup>8</sup>, create separate functions of labor and management, assume employers and employees have different interests in the workplace relationship, and shelter adversarial union-management interactions.

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<sup>8</sup>All public sector labor-management statutes are *state* laws. There is no federal law covering public employees in their right to organize and bargain collectively with their employer.

The protections of labor law were intended to apply to those whose work content and condition were controlled by others, thus the emphasis on separation of labor and management responsibilities. The 1980 U.S. Supreme Court *Yeshiva* decision reinforced this separation in higher education. Faculty members at Yeshiva University were denied collective bargaining rights because their faculty senate and its committees made substantive decisions at their university.<sup>9</sup> While this federal legal doctrine has never been applied in any state case governing public school teachers, it has a potentially chilling effect on reshaping the boundaries between labor work and management work.

Fearing the continuance of company-dominated unions, the NLRA created a clear prohibition against management acts that would help unions. Subsequent case law made the barrier explicit and reinforced the ideal that labor relations properly understood and practiced required an arms-length, adversarial relationship.

We are thus left with an odd situation in which it is possible for teacher unions to encourage professionalization among teachers but in which existing labor law does not encourage it. Thus far, few reformers have considered driving professionalism through statutory change for the reasons already cited. Teacher unionists strongly fear changing labor statutes except to adopt collective bargaining in those states where it is still illegal. Legislative sentiment is generally not pro-union, and any attempt to change labor statutes would open the door to opponents who would strip bargaining rights from teachers.

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<sup>9</sup>Yeshiva is a private university. Thus, its employees are covered by the provisions of the National Labor Relations Act.



The tactical difficulty of changing labor statutes has inhibited active consideration of the patterning effect of a statute based on the professional union model. However, the potential patterning effect is substantial. It was only after the NLRA was signed, for example, that unionism took off in the 1930s. In teacher labor relations, it was only after the "little NLRA" statutes started to be adopted and copied by the states that teacher collective bargaining expanded rapidly across the country.

Without such a patterning effect, professional unionism is not likely to spread very far very fast. Although professionalism may flow from worker instinct and their communities, it requires statutory institutionalization and changes in authority and norm systems to bring it about.

We do not intend fully to explore the details of a new labor statute in this paper. We can, however, suggest here some of the principal dimensions of a new law.

The statute would need to take into account who is represented and at what level. Current law makes provisions for bargaining units (the constellation of employees covered by a particular contract) at a *district* level. Existing law also creates categories of employees. Professional employees, for example, cannot be part of the same bargaining unit as non-professional employees. The new law would need to make provision for both districtwide and school-based bargaining units and, in the case of school-based units, would need to eliminate the distinction among categories of employees.

The new labor statute would also need to make labor-management cooperation a recognized feature of the relationship, not a source of suspicion. Joint enterprises, such as professional development schools, cannot flourish

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in an atmosphere in which the law looks with disfavor upon collaborative efforts between employer and employee.

We have already spoken of the dilemmas created by a restricted scope of bargaining. Suffice it here to reiterate that the new labor statute should lift all constraints on topics of labor-management agreement. The labor relations system we have suggested builds in professional accountability and public involvement such that citizens should not have cause to worry about collaborative policy formation.

Peer review, we have written, is an essential element of professional unionism. Current law makes peer systems of professional assessment all but illegal.<sup>10</sup> The new law must reverse this and not only allow for, but strongly encourage, peer evaluation.

Current statutes for public sector employees do not envision an arrangement such as the hiring hall. On the other hand, there is nothing in law that would prevent the development of such a mechanism. However, the move away from industrial collective bargaining with its emphasis on district-based rules of work would be enhanced by a provision in the new law that expressly acknowledges the hiring hall function.

We hope that the labor relations system we have outlined will, in practice, be a largely cooperative one. However, it would be naive to assume disputes would never arise. Both districtwide contracts and school-based compacts would contain within them means to resolve disagreements. This is not the

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<sup>10</sup> We say here "all but" illegal because, while the language of collective bargaining statutes would seem to render peer review illegal, there have been no court challenges to peer review systems that have been implemented.

province of state or federal statute. The issue of the right to strike, however, is a legal matter.

We believe it is folly simply to legislate a prohibition on strikes. If employees wish to withhold their labor, they will, law or no law. Recent history, however, suggests that the utility of strikes as a means of resolving labor-management disagreements may nearly have reached its saturation point.

Thus, we suggest a specific set of parameters for strikes be established in the new labor law. We do not believe that under the school-based system we have proposed the right to strike should be extended to individual schools except under two circumstances: when employees are brought into the school improperly (e.g., without making use of the hiring hall), and when work is contracted out in contravention of the processes established in the educational compact. Teachers would retain the right to strike against the central authority. However, since the districtwide contract is slender and salary issues are jointly the province of an independent Salary Review Board and individual schools, we would anticipate instances of economic-based work stoppages would be few. Still, disputes about various matters may go unresolved. The new statute needs to acknowledge this possibility and make provision for it.

Finally, the new labor statute would require a regulatory board to oversee administration of the law. Current labor law administrative bodies—the National Labor Relations Board for federal law, state-appointed public employment relations boards for state statutes—function as legislators, promulgating rules and regulations about the conduct of bargaining and administration of contracts, and as quasi-judicial entities, hearing complaints

of unfair labor practices and illegal or improper work stoppages. The result is agencies which wrap labor-management proceedings in complex systems of legalisms. We foresee a much more attenuated set of responsibilities for labor boards under the new system.

The new statute would be designed around the rights, responsibilities, and obligations of the new system. The law would have the effect of moving labor relations in education from an industrial-based system to that of professional unionism.

We purposely here have avoided discussion of whether the new statute ought to be state-based or federal. Individual state statutes, given the experience with current bargaining law, are likely to be quite similar and, perhaps sufficiently useful. Federal law would have the salutary effect of making the teacher labor market all the more flexible, but public employee representation does not have a history in federal statute. We thus remain agnostic on this issue.

### BRINGING THE NEW SYSTEM INTO BEING

This paper has made the case for a fundamental transformation of the purposes and operational procedures of teacher unions. We are convinced unions can, and should, play a central role in bringing into being a new institutional structure for education. Building the new institution causes unions to let go of tradition and concurrently opens new opportunities for organizing.

We have argued for the creation of a new, flexible labor market for teachers. Teachers and their unions would organize around career security rather than

job security. Exclusive representation would be achieved through the modern hiring hall. A new career ladder would provide opportunities for logical career progression in teaching. Portable pensions and benefits would offer teachers the prospect of marketing their professional services without jeopardizing their long-run welfare. Opportunities for professional practice contracts would allow teachers to be entrepreneurial and create jobs that match their professional skills. Quality control within the profession would be maintained through union participation in teacher preparation, professional development, and peer review.

The reconceptualized labor relations system we have presented here also requires fundamental revision of the nature and substance of written labor-management agreements. Districtwide contracts which encompass centralized work rules and compensation routines would be replaced by two new kinds of agreement. The revised version of the district level contract would establish the union and school district as partners in the educational enterprise. Together they would develop student-focused goals, create redefined salary and benefit packages, and initiate peer systems of professional review. The vast majority of education decision making would shift from the district level to individual school sites. Through educational compacts, school-based employees would have the authority to make workplace decisions and, in exchange, would assume responsibility for educational performance. All of these changes would be enshrined in a new labor law fitted to the new system.

We do not underestimate the challenge set before unions. The system of professional unionism we have outlined here represents a radical departure from established norms. We also do not underestimate the power of unions

to persuade. Should unions embrace fundamental institutional reform, we believe they can succeed not only in preserving their own organizational integrity but, more importantly, they can be instrumental in bringing into being a revitalized system of public schooling in America.

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