

A Short History of Collective Bargaining in Washington Public Schools

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June 2010

Key Findings

- Collective bargaining for public school employees began when President John F. Kennedy signed Executive Order 10988 in January 1962.
- In 1967, Washington state passed the Public Employees' Collective Bargaining Act.
- Today, local principals no longer direct the education of public school children.
- Much of a typical principal's time is spent administering the terms of collective bargaining agreements.

Recommendations

1. Put the principal in charge.
2. Let teachers teach.

Introduction

Powerful public-sector unions strongly influence public education today, but it was not always that way. At one time the principal was the primary manager and education leader in each public school, similar to the way private schools are managed now.

Today, however, local principals no longer direct the education of public school children.

Over the years one of the most powerful and politically-connected organizations in Washington, the Washington Education Association (WEA) – the teachers' union – has helped construct a complex web of rules, regulations and limitations that dictate every important decision made in the day-to-day operation of public schools. The main vehicles for creating and policing this regulatory system are hundreds of binding collective bargaining agreements negotiated between the teachers' union and central district administrators.

The result is that today's public school principals do not have the management flexibility to be innovative education leaders, using their ideas, experience and initiative to improve the education of their students. Instead, much of a typical principal's time is spent administering the terms of collective bargaining agreements.

The growth of collective bargaining agreements has had a far-reaching effect on education policy. Public sector unions represent a significant obstacle to public education reform in Washington. The WEA firmly opposes policies centered on public school choice, parental decision-making, merit pay for teachers, voluntary school assignments, accountability for student learning, and recruiting mid-career professionals into teaching jobs.

This study presents a review of how mandatory collective bargaining came to play such a prominent role in public education, and describes the narrow limits this policy approach places on achieving needed improvements in public education. Lastly, this study provides practical recommendations for enhancing the quality of school management and improving learning outcomes for all children in Washington public schools.

The Start of Mandatory Collective Bargaining in Schools

Years ago President Franklin Roosevelt recognized the inherent problem in applying the collective bargaining process to public employees. He said,

“All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussion with government employee organizations.

The employer is the whole people who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies and procedures or rules in personnel matters.”¹

Even so, collective bargaining for public school employees began when President John F. Kennedy signed Executive Order 10988 in January 1962. This order applied mandatory collective bargaining to federal workers.

In the years following, many states, including Washington, passed laws mandating collective bargaining for their own public employees. These laws were modeled after laws establishing collective bargaining for private sector workers, the Wagner National Labor Relations Act (NLRA) of 1935, later modified by the Taft-Hartley Act of 1947. These earlier acts granted special privileges and immunities to organized labor and exempted unions from anti-trust laws. Here are the main regulatory features of the NLRA:

1. The creation of a politically-appointed board, the National Labor Relations Board, to enforce the act.
2. The creation of a list of “unfair labor practices.”
3. NLRB enforcement of majority elections for union representation.
4. NLRB determination of who can vote in union elections.
5. NLRB enforcement of exclusive (monopoly) bargaining for all employees in a bargaining “unit” by NLRB-certified unions only.
6. NLRB enforcement of union dues payments by all employees represented, whether they are union members or not.²

An influential national figure in the unionization of teachers was Albert Shanker, founder of the United Federation of Teachers, which today represents most public educators in New York City. In 1960, he staged the first of many teachers’ strikes. In 1962, he negotiated the first collective bargaining agreement for teachers in a major city.

In that agreement, Albert Shanker designed the pay structure for teachers based, not on classroom performance, but on degrees earned and time served. Unions across the nation adopted this model of teacher pay. Within a decade of this agreement, 70 percent of the nation’s teachers were unionized, with salaries based on time on the job, rather than on work performance.³

¹ “The Public Papers and Addresses of Franklin D. Roosevelt, Samuel Irving Rosenman, editor, 1937, Volume 1, page 325, (published 1941).

² “A History of Labor Unions from Colonial Times to 2009,” by Morgan Reynolds, *Mises Daily*, July 17, 2009, at <http://mises.org/daily/3553>.

³ “Union Man,” by Thomas Toch, *Education Sector, Independent Analysis, Innovative Ideas*, August 17, 2007, at http://www.educationsector.org/analysis/analysis_show.htm?doc_id=516413.

The Washington Public Employees' Collective Bargaining Act

In 1967, Washington state passed the Public Employees' Collective Bargaining Act, RCW 41.56. It created a politically-appointed board, the Public Employment Relations Commission, which writes regulations to enforce the act.⁴ These laws and regulations lay out rules for:

1. The determination of a bargaining unit (defined based on similarity of work conditions, history, and a warning against too much fragmentation).
2. Selection and certification of a bargaining representative.
3. A short, 30-day period for decertification of a union (not more than 90 nor less than 60 days prior to the expiration of an agreement).
4. Mandatory collection of union dues from the paychecks of union members, and agency shop fees deducted from the paychecks of non-union members.

Teachers wishing to ask a competing union to represent them face an uphill battle, particularly since passage of the state Civil Service Reform Act of 2002.⁵ This law locks in the unions, including the Washington Education Association, that existed as of June 13, 2002.

It states that the certified exclusive bargaining representatives [unions] existing as of June 13, 2002, "shall continue as the exclusive bargaining representative without the necessity of an election."⁶ This statute also allowed bargaining units to be consolidated, giving even more power to existing exclusive bargaining representatives. It also relieves union leaders of having to seek the majority support of their members in periodic workplace elections.

Scope of Collective Bargaining Rules

The unions worked over the decades to support the election of public officials who in turn created the network of laws and rules that preserves the status of existing unions. These laws and rules directly impede the ability of school managers to negotiate strong collective bargaining agreements with local teachers' unions. Collective bargaining agreements govern the following:

1. All aspects of a teacher's pay, benefits, hours of work, vacations, paid days off, short term leave, benefits and insurance. None of these personnel policies are under the control of local school principals.
2. Assignment of teachers to schools within the district.
3. Number of students in each class.
4. Performance evaluations and placing a teacher on probation.
5. Workplace grievances raised by teachers.
6. Layoff and recall of teachers.

State laws that prevent school district managers from influencing the terms of local collective bargaining agreements include the following:

⁴ Washington Administrative Code Title 391.

⁵ Revised Code of Washington 41.80.070.

⁶ Ibid.

Union security clause – RCW 41.59.100. As a condition of employment, teachers are required to become a member of the existing union, and pay monthly dues, or pay the union an agency shop fee. Teachers who say they want to opt-out of supporting union political activities receive a small yearly rebate of their dues. School district managers are required to deduct automatically union dues from employee paychecks and deposit them each month in union bank accounts.

Salary schedule – RCW 28A.400.200. School districts are required to pay teacher salaries in accordance with the statewide salary allocation schedule, for 180 days, plus one learning improvement day in 2009-10. The state pay schedule is based on years of service and degrees and credits earned. Districts can add higher levels to this schedule and heavily reward teachers for obtaining additional degrees and credit. Districts also use local levy dollars to increase teacher pay through supplemental Time Responsibility and Incentive contracts. The added cost of these optional pay increases, for example, costs the Seattle school district \$26 million a year, or about 22 percent of total teacher payroll.

Teacher tenure and seniority – RCW 28A.405.220 (and SB 6696, 2010 Legislative Session Laws). Teachers in the first three years of work are designated as “provisional” employees, so their contracts are subject to nonrenewal. Once a teacher has taught for three years, contracts are automatically renewed every year, unless administrators decide to follow the complicated provisions of RCW 28A.405.100 for evaluating and removing an unsatisfactory teacher. As a matter of policy the WEA resists the dismissal of almost any teacher, regardless of the teacher’s conduct or poor work performance. This makes the removal process so burdensome and time-consuming that administrators very rarely use it. Firing a bad teacher is one of the most difficult administrative actions in the public sector.⁷

SB 6696, the Governor’s Race to the Top bill, passed in the 2010 Legislative Session, requires school districts to create a four-tier evaluation process for teachers. This bill does not require use of student achievement growth as a significant factor of teacher and principal evaluations, in direct conflict with federal Race to the Top rules. Powerful unions and their allies in the legislature succeeded in blocking meaningful efforts to make it easier for school administrators to dismiss a poor-performing teacher.

Recommendations

Following are two key policy recommendations that would dramatically improve educational outcomes for all children in Washington’s public schools. Additional recommendation are described in the Washington Policy Center study *Eight Practical Ways to Reverse the Decline of Public Schools*, available at www.washingtonpolicy.org.

⁷ For example, in 2007-08, only a tiny proportion, 0.5 percent, of teachers employed by the Seattle School District were found to be unsatisfactory. Here is a short summary of the process for removing an underperforming teacher required by this statute: Teachers rated as unsatisfactory are placed on probation for a period of 60 school days, which can take more than three calendar months. The probation period must be over by May 15, because on this date school districts must notify teachers who contracts are subject to nonrenewal. The principal must meet with the teacher and his or her union representative twice a month, and give them written plans for teacher improvement. If the teacher doesn’t improve, this constitutes “probable cause” for not renewing the teacher’s contract. RCW 28A.405.210 requires that such teachers receive further notice and have the opportunity to file four additional appeals of this decision, including to courts of law. Failure of school administrators to follow any of these steps will result in the poor-performing teacher being retained in the classroom.

I. Put the Principal in Charge

Under the current system, collective bargaining agreements give principals almost no control over the budget, staffing or daily management of their own schools. Today's principals are more building managers than education leaders.

Principals should be able to hire the best person to teach in the classroom, like private schools do, even if the most qualified person does not happen to have a teaching certificate or has not been sent by the central office.

The position of principal should not be limited to applicants who hold a teaching certificate. Principals must be skilled at leading and motivating adults and students. Anyone with demonstrated skills gained from private businesses, non-profits or the military should be allowed to enter a principal training program. Principals who cannot manage a budget and oversee a staff of teaching professionals should be replaced with ones who can.

2. Let Teachers Teach

Research shows that placing an effective teacher in the classroom is more important than any other single factor, including smaller class size, in raising student achievement. Students taught by a high-quality teacher three years in a row consistently score higher on standard tests than students of ineffective teachers.

Research shows that a teaching certificate does not indicate a good teacher. A Harvard Graduate School of Education study shows that a teaching credential “matters little” in raising student achievement. Far more important than a teaching credential is the academic skill of the teacher.

Collective bargaining agreements should allow school principals to hire and promote teachers who show they can actually raise student learning, especially for hard-to-teach populations. Teachers should be hired based on a deep knowledge and enthusiasm about their subject area.

State legislators have created an exemption that allows education leaders at private schools to hire any qualified teacher they like. They should allow public schools the same broad benefit.

Weak public school teachers should be asked to seek work opportunities in another field. A primary reason private schools excel is they seldom allow a non-performing teacher to remain in the classroom and waste students' learning time.

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