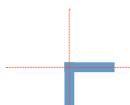


Hopes, Fears, & Reality

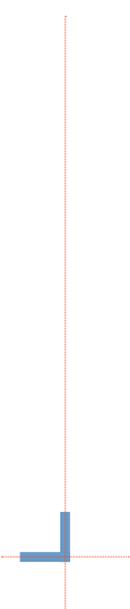


A BALANCED LOOK AT AMERICAN
CHARTER SCHOOLS IN **2009**

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CHAPTER 4

Still Negotiating: What Do Unions Mean for Charter Schools?

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The unionization of charter schools has been a high-profile issue over the past year. Recent newspaper coverage included a front-page story in the *New York Times* as well as editorials in the *Wall Street Journal* and the *Los Angeles Times*. One reason for the interest is the apparent growth in the phenomenon. The United Federation of Teachers (UFT, the New York affiliate of the American Federation of Teachers) opened two of its own charter schools in New York City in 2005 and 2006. In 2007, UFT entered into a partnership with Green Dot Public Schools (a charter school network that operates 17 unionized charter schools in Los Angeles) to operate a New York City charter high school. The past year saw a flurry of activity: teachers voted to unionize at one KIPP (Knowledge Is Power Program) school in New York, at three schools in the Civitas network in Chicago, and at four schools in the Accelerated School network in Los Angeles; a KIPP school in Baltimore announced plans to lay off staff and modify its daily schedule in order to comply with the local collective bargaining agreement; and the UFT and Green Dot reached a tentative collective bargaining agreement for their New York City charter high school.

All of this activity by the American Federation of Teachers (AFT) and its affiliates adds up to representing about 80 charter schools in thirteen states. AFT's activities are not entirely clear sailing from the union's perspective: while the Baltimore school made changes to comply with the local agreement, two other KIPP schools in New York City voted to decertify (withdraw from) their union. Meanwhile, although national figures are not available for the largest teachers union, the National Education Association (NEA), it seems to represent relatively few charter schools.

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Observers are split over the impact of charter school unionization. On one hand, Jeanne Allen of the Center for Education Reform contends that, “A union contract is actually at odds with a charter school.”¹ On the other hand, AFT president Randi Weingarten says, “We have often said that the charter school movement and unionization are things that can be easily harmonized.”² In fact, one of the earliest proponents of the charter school concept was one of Weingarten’s predecessors, legendary AFT president Albert Shanker.³

While the issue tends to polarize opinion, the reality is that charter unionization is not one concept; rather, there are different things going on in different schools motivated by different reasons and yielding different results.

The Center on Reinventing Public Education’s (CRPE) National Charter School Research Project (NCSRP) is conducting an in-depth study of charter school unionization.⁴ With guidance from some of the very preliminary research completed so far, this essay explores how many charter schools form unions, why charter schools unionize, and the potential ways in which newly unionized charter schools can balance charter mission and employee rights.

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A TREND? OR A GOOD MEDIA STORY?

While charter school unionization has attracted much attention recently, to date relatively few charter schools have unionized. As noted above, the AFT and its affiliates represent teachers and staff in about 80 charter schools across thirteen states, whereas the NEA seems to represent a relatively small number of charter schools. This may be a reflection of the fact that charter schools are located primarily in urban areas, where teachers tend to be represented by the AFT. Of the high-profile cases noted at the outset of this essay, the KIPP AMP Academy in Brooklyn is still in negotiations with the UFT, while the Civitas network of schools in Chicago and the Green Dot/UFT school in New York recently signed collective bargaining agreements.

Given these relatively small numbers, it is hard to call charter unionization a trend. While some charter schools are becoming unionized, others are decertifying their unions. Also, unions have tried to organize charter schools in the past with little success. Still, these high-profile examples offer an opportunity to learn something about why

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charter schools unionize and how increased contact between charters and unions can affect both sides.

TYPES OF UNIONIZED CHARTER SCHOOLS

One of the early lessons of NCSRP’s exploration of the merits and effectiveness of charter unionization efforts is that any such assessment depends on the individual charter school’s situation. Some charter schools are automatically unionized as a result of state law. Others are unionized only if management designs the schools to be unionized, or if teachers vote to accept union representation.

UNIONIZED BY LAW. Nineteen states currently require some or all public charter schools to be bound by the district collective bargaining agreements or personnel policies.⁵ Eight states consider all charter schools to be bound by district collective bargaining agreements. Eleven states require that only certain types of charter schools—typically conversion schools or district-authorized schools—remain bound by the local district’s collective bargaining agreement. The vast majority of unionized charter schools are of these types.

UNIONIZED BY DESIGN. Green Dot Public Schools is an example of a charter school network that is unionized by design—that is, the schools have had a unionized teaching staff from the start, as part of the original model. Green Dot founder Steve Barr explains,

You improve working conditions by having smaller schools, you have a clear vision of where you want the school to go so there is no gray area, you reward teachers ultimately with [the dollars getting into the classroom]. But you also ask them to be accountable, and performance has got to be part of it. If you are consistent with that, I think there is a lot in there for teachers and teachers unions.⁶

Barr also contends, “I don’t see how you tip a system with a hundred percent unionized labor without unionized labor.”⁷

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UNIONIZED BY TEACHER VOTE. Except in the eight states that require unionization of all charter schools, teachers in newly formed charter schools may decide whether they want to be represented by unions. Charter school teachers are public employees and subject to the public employment laws in their respective states, most of which give all teachers the right to organize and bargain collectively. These state laws typically allow teachers to negotiate as a separate bargaining unit with the charter school governing body or to work independently; some of these same states also allow charter school teachers to remain covered by the school district collective bargaining agreement if they prefer.⁸

Teachers pursue unionization for a number of reasons, but it is hard to tease out the most important in the midst of controversial labor disputes and union and management efforts to spin messages. Teachers and union officials cite the need to reduce burnout and turnover, or to insure fair disciplinary and evaluation systems. They also talk about more abstract reasons, such as securing a stronger “professional voice” for teachers, developing a more collaborative workplace, and making sure educators are respected. Obviously, there are many sides to every labor dispute. It is almost certainly true that there are examples of charter schools not treating employees fairly, as well as examples of schools where disgruntled teachers have turned to unions but were disappointed by the results.

It is also worth noting that we are currently in the midst of a concerted effort on the part of the AFT to organize charter school teachers, so the schools taking this third option—unionizing by teacher vote—are not all simply doing so spontaneously.⁹ AFT president Randi Weingarten has called the gains of the past year “a precursor.” “You’re going to see far more union representation in charter schools,” Ms. Weingarten said. “We had a group of schools that were basically unorganized, groups of teachers wanting a voice, a union willing to start organizing them, and now money in our organizing budget to back that up. And all of that has come together in the last 6 to 12 months.”¹⁰

CAN CHARTER SCHOOLS AND UNIONS COEXIST?

The logic of teachers unions is to serve all of their members equally and is based on a one-size-fits-all approach—for example, a core element of most collective bargaining agreements is a standard salary schedule that treats all similarly situated teachers alike. Meanwhile, the logic of charter schools is to create unique, distinctive, innovative

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schools that give teachers and parents new choices for learning and work. Charter applications are typically reviewed by authorizers on a case-by-case basis, with charters being granted one at a time—essentially the opposite of a one-size-fits-all approach. Is this an inherent conflict? Or can it be reconciled?

The motivation for unionizing in charter schools is complex—everything from charter schools that are forced by law into district contracts (whether or not teachers wanted to be unionized) to charter schools unionized from the start by management to support the school’s priorities. In the middle are charter schools that for one reason or another have lost teachers’ confidence in management and are forced to the bargaining table.

The first group, charter schools unionized by law, has always been around. The question is whether these schools can use the autonomies they do have to improve student achievement. The research is not clear on that front. There is some evidence from NCSRP’s *Inside Charter Schools* study that charter schools operating under typical district and union regulatory constraints are less likely to experiment with alternative teacher compensation policies. Such contracts may provide some room for determined and entrepreneurial leaders,¹¹ but there is a real question whether charter schools under district labor agreements offer enough flexibility for schools to realize breakthrough innovations and gains in student learning. States that only allow unionized charters may also dissuade entrepreneurial leaders from starting schools in the first place.

On the other hand, some charter schools required to operate under district contracts have found creative ways to expand their autonomies, sometimes by just ignoring the contract and keeping their own teachers happy. These schools retain their freedom of action, but only as long as the union contract is not strictly applied.

The second group, charter schools unionized by management strategy, is a relatively new development in the charter sector. Will the Green Dots of the world demonstrate that an intentionally thin contract (featuring, for example, “just cause” employment protections instead of traditional tenure rights, and an untimed “professional workday” as opposed to a prescribed number of hours per day) is an effective strategy to attract a bigger labor pool and retain employees? Will the contract grow more complex and prescriptive over time and come to resemble a traditional district contract?¹²

The third group, charter schools unionized by their workers, is also a relatively new development and presents important questions for the charter sector. Will charter

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schools find ways, as they mature, to make teachers feel respected and productive, and thus head off union organization campaigns? If not, can the schools negotiate contractual language that preserves their ability to innovate, reward performance, and keep promises made to parents and authorizers? Can the best of the charter school concept be retained while working with union-negotiated collective bargaining agreements?

MAKE-OR-BREAK CONTRACT ELEMENTS

Policy analyst Andrew Rotherham has argued, “What matters is what’s in the contract and not unionization per se.”¹³ The specific contract language that matters most is a question NCSRP is exploring in the course of the next year. It is interesting to note, however, that the charter schools in current labor negotiations are converging on two priorities: trying to preserve what they see as mission-critical labor expectations, and the ability to build and sustain a high-quality team.

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CUSTOMIZING TO FIT THE MISSION OF THE SCHOOL. Charter schools are supposed to be distinctive. They are supposed to have a clear mission and clear ideas about how that mission should be delivered in the classroom to improve student achievement.

It is not surprising, then, to see that charter school heads focus on mission-critical elements in contract negotiations. Jonathan Williams, the leader of the Accelerated School network in Los Angeles, told *Education Week* that, “I just want to be sure that our mission is a core part of the agreement. If that is there, I think everything else will come together.”¹⁴ But the specific elements that matter to each school will likely vary tremendously based on each school’s priorities.

KIPP’s David Levin said, “For the past 15 years, it has been the ability of everyone to work together, and to do that with flexibility, that has been the key to our success. We were created as an alternative to the public schools, and we need to be committed to and maintain our work and focus on results.”¹⁵ At KIPP, mission has very well-defined implications for teachers’ jobs, as reflected in the school’s core set of operating principles, known as the Five Pillars.¹⁶ According to KIPP leaders, examples of the Five Pillars in practice include:¹⁷

- Evaluation of teachers and principals is performance-based.
- Students, parents, and staff are committed to an extended school day, week, and year.

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- Staff takes on additional responsibilities, such as meeting with parents, visiting students at home, supervising meals, covering for absent colleagues, and participating in cocurricular activities and field trips.
- Employment is subject to the discretion of school leadership, while a grievance process provides for multi-level review of principals' decisions.

Other schools will have different priorities. A school or management organization that rests its success on a specific curriculum and testing system, for example, may not be willing to allow teachers much flexibility about materials and methods but may be able to live with restrictions on the length of the workday.

Well-defined charter schools like KIPP are likely to have clear non-negotiables based on their school missions and core strategies for delivering effective instruction. Thus, a school that has definite criteria for the skills and attitudes of teachers is not likely to accept involuntary transfers from other schools; a school that is committed to using a particular method or curriculum is unlikely to open itself to grievances from teachers who would prefer to use different materials or methods. Non-negotiables can help guide school leaders in union negotiations, but they could also lead to bargaining impasses that destroy the schools. If management is determined to keep a core practice and organized teachers are determined to force a change, the school might be unable to function. Schools with less well-defined principles linking teachers' daily responsibilities and the school's mission could make concessions whose consequences become evident only later.

ENSURING SCHOOL MANAGEMENT CAN BUILD A TEAM AND RELEASE LOW PERFORMERS WITH REASONABLE SPEED. Though mission-critical areas will likely vary for each school, most charter schools will likely not be willing to compromise on hiring and firing authority. According to a spokesman, KIPP will fight in both New York and Baltimore to preserve the rights of principals to mold their teams.¹⁸

CONCLUSION

CRPE's Paul Hill points out that "a charter school is a more fragile host than a school district. Labor unrest in a charter school can wipe it out fast. It won't go well for unions if the schools they organize decline in quality or go bust."¹⁹ Hill contends that charter school teachers cannot negotiate collective bargaining agreements that make the school

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ineffective or unable to win customers (that is, parents), or cause operators (for example, KIPP) to close the school because they feel it is unable to fulfill its mission. Hill explains that if unions organize individual schools—that is, the individual charter school as the bargaining unit—then the union will be constrained by the need to not kill the host institution. This circumstance—which exists now in most charter school negotiations—will help unions focus on what matters.²⁰

Charter heads fear that unionization will bring onerous process requirements and time demands on both administrators and teachers. This can be a worrisome change in new charter schools that were designed to minimize spending on formal administration and, by distributing leadership functions widely among the staff, blur traditional distinctions between labor and management. School leaders also fear that adult relationships in schools will become less collaborative and more adversarial, though union leaders make the opposite claim. It is possible that both sides are right in particular cases. Ongoing CRPE research will provide evidence on how unionization affects adult relationships in charter schools.

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On the other hand, the threat of unionization may serve as a healthy incentive for charter school leaders to treat their teachers well. Loss of collegiality in a school—whether due to poor leadership or reduced contact between teachers and charismatic school founders—is a precursor to union organizing effort. This is a likely cause of teacher receptiveness to union organizing in multi-school charter management organizations. Creating an environment that teachers feel is collaborative, supportive, respectful, and fair is a valuable and important task for charter school leaders, whether or not the school is unionized.

A critical but overlooked question is the need to understand whether charter schools are actively working to avoid unionization by putting in place effective labor management practices. Another question is what those practices would look like in a charter environment. These issues may be pivotal for the sector. Everyone will benefit if charter school leaders maintain collegiality and address teacher concerns, and if unionized charter schools retain the flexibility to pursue their missions effectively.

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It is too soon to say whether charter schools and teachers unions can adapt enough to accommodate one another's core concerns. Will unionized schools be a small and unstable minority of charter schools, or become more common? Will non-unionized charter schools use their freedoms so wisely that teachers do not want to unionize? The

answers are not predetermined; they depend on the actions of union leaders and charter school heads.

NOTES

1. Steven Greenhouse and Jennifer Medina, "Teachers at 2 Charter Schools Plan to Join Union, Despite Notion of Incompatibility," *New York Times*, January 14, 2009, http://www.nytimes.com/2009/01/14/education/14charter.html?_r=1&ref=education.
2. Ibid.
3. In 1988 speeches before the Business-Higher Education Forum (where he talked about more school choice) and the National Press Club (where he advocated charter schools), Albert Shanker called for teacher-led charter schools where the only inviolate rules would be those governing health, safety, and civil rights. See Shanker, "Restructuring American Education," *Proceedings of a Roundtable on Urban Education, Business-Higher Education Forum*, October 1989. According to his biographer, Richard Kahlenberg, Shanker later came to worry that the charter concept had been hijacked by conservatives opposed to public education. See Kahlenberg, *Tough Liberal: Al Shanker and the Battles over Schools, Unions, Race and Democracy* (New York: Columbia University Press, 2007).
4. The study, funded by the U.S. Department of Education, aims to answer four broad questions: (1) What does charter school unionization look like now? (2) How do various collective bargaining agreement provisions affect charter school operations? (3) How do "slimmed down" charter school collective bargaining agreements compare to contracts in traditional schools? (4) What are lessons going forward for charter and union leaders who wish to improve charter school effectiveness?

The study will involve detailed analysis of collective bargaining agreements at both charter and traditional public schools, as well as interviews with charter school leaders, union officials, and policymakers. The analysis of collective bargaining agreements will compare and contrast provisions in both charter and traditional union contracts. The interviews will explore whether charter leaders in schools with collective bargaining agreements are constrained on hiring, work assignment, and use of time; how much time and money it takes to comply with collective bargaining provisions; whether interviewees believe instruction or use of staff time is affected by collective bargaining agreements; and whether principals and teachers see any advantages, such as improved staff morale or reduced turnover.
5. Education Commission of the States, *Collective Bargaining Agreements* database, <http://mb2.ecs.org/reports/Report.aspx?id=98>.
6. Eliza Krigman, "Using NCLB To Retool Struggling Schools," *NationalJournal.com*, September 8, 2009, <http://insiderinterviews.nationaljournal.com/2009/09/nclb-barr-green-dot.php>.
7. Douglas McGray, Department of Education, "The Instigator," *New Yorker*, May 11, 2009, 66.
8. Education Commission of the States, *Collective Bargaining Agreements*.
9. See Eduwonk, "Wolves And Lambs," July 28, 2009, <http://www.eduwonk.com/2009/07/wolves-and-lambs.html>.
10. Sam Dillon, "As Charter Schools Unionize, Many Debate Effect," *New York Times*, July 26, 2009.
11. Mitch Price, *Teacher Union Contracts and High School Reform* (Seattle, WA: Center on Reinventing Public Education, January 2009); Frederick M. Hess and Andrew P. Kelly, "Scapegoat, Albatross, or What? The Status Quo in Teacher Collective Bargaining," in *Collective Bargaining in Education: Negotiating Change in Today's Schools*, ed. Jane Hannaway and Andrew J. Rotherham (Cambridge, MA: Harvard Education Press, 2006); Frederick M. Hess and Coby Loup, *The Leadership Limbo*:

Teacher Labor Agreements in America's Fifty Largest School Districts (Washington, DC: Thomas B. Fordham Institute, February 2008).

12. For example, the Green Dot contract in effect through June 2006 was 33 pages, while the current contract, in effect through June 2010, is 53 pages. According to analyst Andrew Rotherham, the contract for the Amber Charter School in New York grew from 8 pages to 15 pages when it was renegotiated.
13. Eduwonk, "Charter – Union Action (With Special Adverb Analysis!)," January 14, 2009, <http://www.eduwonk.com/2009/01/charter-union-action-with-special-adverb-analysis.html>.
14. Stephen Sawchuk, "Unions Set Sights on High-Profile Charter-Network Schools," *Education Week*, June 9, 2009.
15. Jennifer Medina, "Charter School's Deadline to Recognize Union Passes," *New York Times*, February 12, 2009.
16. KIPP website, "About KIPP: Five Pillars," <http://www.kipp.org/01/fivepillars.cfm>.
17. Elizabeth Green, "With union decision imminent, KIPP is ready to start bargaining," *Gotham Schools*, April 23, 2009, <http://gothamschools.org/2009/04/23/with-union-decision-imminent-kipp-is-ready-to-start-bargaining/>.
18. Dillon, "As Charter Schools Unionize."
19. Ibid.
20. "Teachers Unions and Professional Work," Online Discussion sponsored by Education Sector, July 1-2, 2009, downloaded September 14, 2009, at http://www.educationsector.org/events/events_show.htm?doc_id=940701.