

School Finance Redesign Project

center on reinventing public education

RESOURCE ALLOCATION IN TRADITIONAL AND REFORM-ORIENTED COLLECTIVE BARGAINING AGREEMENTS

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The School Finance Redesign Project

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Introduction

Given its importance in the education policy world, surprisingly little research exists on teacher unions or their measurable impact. We know anecdotally that many teachers, administrators, and policy makers are interested in change, but we know little about the depth or breadth of that interest. Perhaps more importantly, while collectively bargained contracts have substantial resource allocation implications, these results are rarely tracked or evaluated.

The combination of the federal *No Child Left Behind Act* and state accountability systems has shone an ever brighter light on student achievement and, collaterally, on teacher unions and their work. Recent reports have asserted, for example, that unions, and the contracts they negotiate on behalf of the teachers they represent, handicap schools, needlessly constrain administrators, and disadvantage students (see, for example, *The Education Partnership 2005*; Levine, Mulhern, and Schunck 2006; Hess and West 2006). Continuing this theme, field work for The School Finance Redesign Project at the University of Washington revealed the following oft-repeated comments by school administrators about the impact of teacher contracts:

- The contract won't let me hire whom I want.
- The contract forces me to take teachers I don't want.
- There are too many procedures I have to follow exactly.
- I can't reward really good teachers.
- I can't ask teachers to do anything outside the contract.
- It's too hard (or too time consuming or too cumbersome) to get rid of bad teachers.
- The contract is too inflexible to . . . [*fill in the blank*].

These allegations are neither uncommon nor atypical. They mirror complaints heard often and reflect at least the conventional wisdom about teacher contracts.

In fact, perhaps the principal criticism of teacher contracts is that they constrain management's prerogatives. To many school and district administrators, this "fact" is unsettling, confining, and inappropriate. As a high-level administrator in a large urban district remarked when asked what most vexes principals about contracts, "Principals are uncomfortable with the intricacies of due process" (School Finance Redesign Project, Interview with District Administrator, November, 2005).

Creating procedures and due process—rationalizing what is still an exquisitely bureaucratic education system—is a key purpose of collective bargaining. But the choice is not between unfettered management determination and a collectively bargained contract. Even in the absence of collective bargaining, statute and policy (e.g., civil service provisions which preceded collective bargaining laws, occupational health and safety laws, special education rules and regulations) apply brakes to management action. In fact, the choice is between a union-

management contract that shapes policy that is mutually acceptable to teachers and administrators, or some other mechanism that renders policy decisions with which all parties are bound to live.

In school districts in 37 states and the District of Columbia, collective bargaining is the choice that has been made. In these jurisdictions, the negotiated contracts that result shape a significant percentage of a district's budget, as well as much about operational procedures.¹

This paper explores resource allocation through the lens of the contract. In particular, the paper focuses on three central contract-related issues:

- What gets allocated through the collectively bargained agreement?
- What mechanisms are used to allocate fiscal resources in the contract and what assumptions underlie these distributions?
- In what ways do contracts link resource allocation with student learning?

Data for this study consist of empirical evidence derived from an examination of teacher contracts from a diverse array of districts.

The nine numbered districts in Table 1 represent districts that are part of a study by the School Finance Redesign Project (SFRP). These districts were promised anonymity as a condition of their participation in that study. Five of these districts are in states with teacher collective bargaining laws; four are in states with no teacher collective bargaining. An additional six contracts, named in Table 1, also were examined.

The selection of districts and contracts for this paper represents a purposeful sample, rather than a random one. Nine of the School Finance Redesign Project districts were selected because they embody the range of states and types of districts that compose that study. The six named districts reflect diversity of both geographic location and organizational representation and are among the most prominent examples of new forms of bargaining that will be described later in the paper. The purpose here is to illustrate the relationship between resource allocation and teacher collective bargaining in different types of contracts—traditional and reform—not to generalize about this relationship across all bargaining agreements.

As Table 1 illustrates, teachers in six of the districts—Districts One, Two, Three, Columbus, Denver, and Montgomery County—are represented by the National Education Association (NEA). Those in the remaining five districts (Districts Four, Five, Minneapolis, Toledo, and Rochester) are represented by the American Federation of Teachers (AFT).

¹ The remaining states, many of them in the South, do not permit teacher bargaining.

Table 1. Selected Districts

District	Location	Type	Representation
District One	Mid-West	Urban	NEA
District Two	West	Urban	NEA
District Three	West	Suburban	NEA
District Four	Mid-West	Urban	AFT
District Five	Mid-West	Urban	AFT
District Six	South	Urban	No Collective Bargaining
District Seven	South	Urban	No Collective Bargaining
District Eight	South	Urban	No Collective Bargaining
District Nine	South	Urban	No Collective Bargaining
Columbus	Mid-West	Urban	NEA
Denver ²	West	Urban	NEA
Minneapolis	Mid-West	Urban	AFT
Montgomery County	Mid-Atlantic	Suburban	NEA
Toledo	Mid-West	Urban	AFT
Rochester	Northeast	Urban	AFT

Traditional and Reform Bargaining

Collective bargaining reflects an evolutionary process. Shaped by experience, the exigencies of changing times, and shifting policy tastes and preferences, two types of bargaining, and two types of contracts, have emerged: traditional and reform. Table 2 displays the differences between these types.

As Table 2 illustrates, traditional bargaining emphasizes the separation of labor and management with strict lines of demarcation between teaching and management. Reform bargaining blurs this distinction as union and management recognize the interconnectedness of their work.

In traditional bargaining, separation of labor and management exists because the union and the district are assumed to have different, and often conflicting, interests. Thus, the bargaining unit—the employees covered by a negotiated agreement—is defined as a “community of

² Colorado actually has no collective bargaining law for teachers. Nevertheless, as a result of history and tradition, unions and districts in Colorado do negotiate contracts.

interest.” In this arrangement, teachers are workers who follow orders, and if they are unhappy with the orders, to follow them anyway and file a grievance. Management’s job is to determine what teachers do and oversee how they do it.

Table 2. Bargaining and Contract Types

Bargaining Characteristics	Traditional (Industrial) Bargaining	Reform (Professional) Bargaining
Labor-Management Relationship	Separation of labor and management	Blurred labor-management distinctions
Style of Negotiations	Adversarial	Collaborative
Bargaining Type	Positional bargaining	Interest-based bargaining
Scope of Negotiations	Limited	Expanded
Focus of Protection	Individual interests	Teachers and teaching

Reform bargaining turns labor and management separation on its head, making it a kind of policy fiction. Administration and the union form a professional partnership in which they foster mutual goals while acknowledging and attempting to reconcile continuing differences.

Traditional bargaining is adversarial. Union and management engage in an ongoing jousting tournament to see who can gain the upper hand as negotiations are played out as a zero-sum game. Labor relations operate as permanently contested terrain; an “us versus them” mentality permeates the relationship. The National Labor Relations Act³ discouraged labor-management cooperation as a way of warding off company unions. Teacher collective bargaining laws contain no such admonition, but adversarial labor-management relations remain a borrowed consequence of industrial-style unionism (Koppich 2006).

Reform bargaining tends to be more collaborative, with union and management emphasizing the collective aspect of their work and assuming joint custody for reform (Kerchner and Koppich 1993). The functional slogan of collaborative bargaining (sometimes called “win-win” or interest-based bargaining) is, “Hard on the problem, not hard on each other” (Fisher and Ury 1984). To be sure, collaborative bargaining does not imply that union and management always agree; they do not. But collaborative bargaining enables the parties to reach accord by recognizing their mutual interests and finding common ground.

Sometimes the contract itself is clear about the process used to reach the agreement. The contract in District One, for example (a traditional agreement), describes a conventional, formal negotiating process involving the exchange of proposals and counter-proposals, with no mention of mutual interests. Language describing negotiation meetings and reporting of progress is stark and formal as well: “Meetings between the negotiating team of the [union] and the Board shall be scheduled for a mutually convenient time within 15 days after the request for a meeting.... Interim reports of progress may be made to the [union] by its representatives and to the Board by

³ The National Labor Relations Act (NLRA) is the nation’s principal (private sector) labor law, enacted in 1935.

the superintendent and his/her designee; however, each party shall be restricted to reporting to its own organization.” Clearly there are “sides” here and little stated evidence of mutuality or collaboration.

District Two’s contract, on the other hand (a reform-oriented agreement), states, “This agreement commits [the union and district] to building a collaborative partnership” and describes how students and student learning are at the center of the agreement. While this agreement spells out salaries and conditions of work, the foundation on which the contract is built is a joint union-management interest in the fundamental business of the enterprise: student achievement.

The Montgomery County Public Schools (MCPS) and Montgomery County Education Association (MCEA) have perhaps the most expressive self-definition of their contract. The parties refer to their agreement specifically as “a compact for collaboration”:

This negotiated agreement was created using an interest-based bargaining process between the Montgomery County Public Schools and the Montgomery County Education Association. It is much more than a contract that describes the wages, hours, and working conditions of the unit members covered by it.... MCPS is committed to creating organizational structures and processes that solidify the collaborative relationship between MCPS and the ... MCEA so that parties will work together to do what is best for students.”

Yet another difference between traditional and reform bargaining is found in the scope of negotiations. Collective bargaining laws specify those items that are mandatory, permissive, and prohibited subjects of bargaining. Delineating the scope of negotiations—what can, must, and is barred from bargaining—represents an effort to balance employees’ interests in negotiating working conditions with the impact of an issue on managerial prerogatives and public policy (Malin and Kerchner 2006). Traditional contracts maintain a limited scope of bargaining, typically staying within the commonly understood meaning of the conventional negotiations triumvirate of “wages, hours, and working conditions.”

Traditional agreements reinforce a basic assumption of collective bargaining, namely, that the system restricts teachers’ voice to the conditions of work while management maintains control over the conduct and content of it. In traditional or industrial bargaining, in other words, the union represents employees’ economic and day-to-day work concerns; management, acting for the school board, is responsible for making educational policy.

Reform contracts, however, operating under the same collective bargaining laws as traditional agreements, illustrate the remarkable elasticity of the legal scope of negotiations. These agreements shape much of what we consider education policy by broadening the definition of negotiable items to include topics such as new forms of teacher professional development and evaluation, alternatives to traditional teacher pay schemes, mentoring programs for novices, and linking contract provisions to district-wide efforts to improve student achievement.

Nevertheless, unions that seek to expand the contract portfolio face a potential legal dilemma. Under the industrial model, workers who exercise discretion and have a voice in decisions affecting the operation of the enterprise are not employees; they are managers and, as such, are not eligible for collective bargaining (Malin and Kerchner 2006). This theory derives from the 1980 U.S. Supreme Court decision in *NLRB vs. Yeshiva University*.

In 1974 the unaffiliated faculty at New York's Yeshiva University petitioned the National Labor Relations Board (NLRB) for the right to represent the university's full-time faculty. University management claimed the faculty were not employees, but rather managers and supervisors ineligible for collective bargaining, as their recommendations on matters of hiring and tenure were often accepted. The National Labor Relations Board sided with the faculty; the University appealed to the United States Supreme Court. In a 5-4 decision, the Supreme Court ruled in favor of the University.⁴ Faculty were declared not eligible to negotiate a contract setting their wages, hours, and terms and conditions of employment. Although no state has applied the *Yeshiva* decision to a K-12 district, the decision has had something of a chilling effect on efforts at labor-management cooperation as well as attempts to broaden teachers' involvement in education decisionmaking through collective bargaining.

Finally, traditional contracts are about protecting the interests of individual teachers, a statement, in effect, of teachers' accrued rights (Kerchner and Koppich 1993; Kerchner, Koppich, and Weeres 1997). In this bargaining tradition, the contract is more about how teachers as solitary practitioners interact with the system that employs them than it is a collective professional compact about how the work of teaching gets done. As a result, many contracts are quite long in order to provide inclusive language for various subgroups of teachers, from those in specialized fields to those with specialized assignments. Traditional bargaining thus reflects something of a conundrum: Negotiations are handled collectively by the union, but contract provisions apply squarely to individuals, not to the larger profession to which its members belong.

Reform contracts take a somewhat different tack. Ensuring that individual teachers' rights are not abrogated remains an important union function. But beyond this, the contract becomes a vehicle to engage teachers in conscious thought about the ways in which their collective professional actions impact on their public obligations as members of the teaching profession (Koppich 2006). Reform bargaining, in other words, aims to protect teaching as well as teachers.

In sum, the differences between traditional and reform contracts can be substantial. In traditional bargaining, union and management operate in separate spheres in a well-established hierarchy. The contract reflects the distinctly different places union and management occupy and the roles they assume. In reform agreements, mutual interests shape roles and responsibilities; they are no longer predictable by titles.

Agreement is reached in traditional negotiations after a period of adversity and open dispute. Reform agreements tend to be achieved through a process that is more collaborative, centered on mutual interests. Industrial contracts adhere to a narrow, traditional definition of "wages, hours, and working conditions." Reform contracts expand that narrow scope of negotiated items to include issues that fall into the realm of educational policy. Traditional contracts protect the rights of individual teachers. Reform agreements are shaped largely by union-management concern for the welfare of the profession and the health of education as an institution.

Collective bargaining is a dynamic process. Thus, the differences between traditional and reform contracts continue to evolve. The source of these differences may become clearer with some understanding of the historical underpinnings and central events in the relatively short history of teacher collective bargaining.

⁴ NLRB vs. Yeshiva University 444 U.S. 672 (1980).

The Origins and Evolution of Collective Bargaining for Teachers

In 1935 President Franklin Roosevelt signed the National Labor Relations Act (NLRA) into law. Enacted during heightened public support for organized labor in the period of the New Deal, the NLRA gave private sector employees (mostly working in the nation's factories) the right to "form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection."

Teachers, as public sector employees, did not come under the provisions of the NLRA or gain the right to negotiate contracts with its passage. Teachers' terms and conditions of employment were set by a process called "meet and confer." Sometimes this process was supported by statute, as in California, but often it was simply a matter of custom. In some places, it did not take place at all.

Meet and confer reflected quasi-negotiations, more akin to union advisory consultation with the school district. These sessions rarely resulted in written agreements and never in legally binding contracts. Teachers only half-jokingly referred to this process as "meet and defer" or "collective begging."

Under meet and confer, teachers were assumed to achieve their influence because their interests coincided with school district goals. In other words, teachers were powerful because they wanted what school districts wanted and both were expected to express a selfless interest in "what's good for kids." Open displays of self-interest were frowned upon (Kerchner and Mitchell 1988).

This was a classically paternalistic system. Teachers were spoken for; they did not speak for themselves. Decisions of any importance, from salary to transfer and assignment to class size, were made by school boards and administrators. It was the duty of the *institution* to look after teachers' welfare. Administrators were to function as teachers' advocates, school boards as trustees of the common good (Kerchner and Mitchell 1988). Teacher organizations were seen as legitimate only so long as they recognized the ultimate authority of the administration and school board and did not challenge it publicly. When teachers' goals diverged from those of management and school boards, they were expected to defer and acquiesce (Kerchner and Mitchell 1988).

By the 1950s, industrial-style collective bargaining—the process legitimized by the NLRA in which employees elect a single organization to represent them for purposes of negotiating a legally binding contract with their employer—began to look more appealing to teachers. Private sector unions were winning substantial wage increases through collective bargaining. At the same time, wages of college-educated teachers were lagging substantially behind those of blue-collar factory workers. In addition, teachers were chaffing under nearly uniformly poor working conditions, including large class sizes, a plethora of assigned non-teaching duties, and multitudes of administrative directives (Kahlenberg 2006).

The bonds of meet and confer finally frayed irreparably with the social activism of the 1960s. Teachers came to see their interests as different from administrators' and began to seek an alternative means for dealing with their employer. They turned to industrial-style collective bargaining (Koppich 2006).

A Turning Point

On April 12, 1962, 20,000 New York City teachers, led by the AFT-affiliated United Federation of Teachers (UFT), walked out of their classrooms and onto the picket line. Newspapers called the strike leaders, including a young Albert Shanker, “hotheads.” The city’s other labor leaders refused to support the teachers. New York law made striking punishable by firing, and the President of the Board of Education declared, “Teachers themselves have terminated their employment.”

The strike lasted just one day. The *New York Times* editorialized in favor of higher teacher salaries. Governor Nelson Rockefeller offered money for the schools, and New York City teachers had a contract (Kerchner and Mitchell 1988; Kahlenberg 2006; Koppich 2006).

The events in New York City precipitated a flood of state-level legislative activity. From the mid-1960s through the 1970s, states began to enact collective bargaining laws covering teachers.⁵ Today, 37 states and the District of Columbia legally recognize teacher collective bargaining.⁶ Unions rapidly organized teachers, and teaching became a highly unionized occupation. Whereas organized labor membership declined from 35 percent of the nation’s workforce in the 1950s to just 12.5% today, during this same period, the American Federation of Teachers (AFT) and National Education Association (NEA) grew from a combined membership of 750,000 in 1960 to four million today (Kahlenberg 2006). Together these organizations—the nation’s two major teacher unions—represent about 90 percent of the nation’s public school teachers.⁷

The Rise of Industrial Unionism

Unions and collective bargaining first gained strength among teachers because school district officials were perceived to be arbitrary, punitive, and politically motivated (Johnson and Donaldson 2006). The kind of bargaining teachers adopted—called industrial bargaining because of its antecedents in the nation’s factories—gave teachers voice through a legally binding contract that shaped the terms and conditions of their employment. As teachers adopted industrial-style bargaining, teacher unionism came to be identified by its hallmarks: separation of union and management, adversarial labor-management relations, a limited scope of bargaining, and a focus on individual interests.

Teacher contracts⁸ developed in response to centralized education decisionmaking. As power and authority accrued to school district headquarters, so, too, did unions consolidate their efforts in master contracts to influence the terms and conditions of those whom they represented (Kerchner, Koppich, and Weeres 1997).

Early contracts served important, but frequently limited, purposes. They applied a district-wide template to teachers’ employment conditions, codifying, often for the first time, the terms

⁵ Collective bargaining for public employees, including teachers, is authorized by state, not federal, statute.

⁶ The NEA, whose membership included college presidents, professors, and school administrators, opposed collective bargaining for teachers until the late 1960s. At that point, the NEA eliminated college and school administrators from its ranks and embraced collective bargaining for teachers.

⁷ This number includes teachers who belong to the NEA or AFT in states with no collective bargaining.

⁸ Though negotiated agreements are often referred to as “teacher contracts,” in fact they are bilateral agreements between districts and unions. Contracts are neither legal nor legally binding unless they carry the signatures of both the union and the school board (or superintendent acting as the board’s designee).

and conditions that shape teachers' work lives. They created a modicum of fairness in a bureaucracy in the form of equitable, across-the-board treatment, uniform policies, and standardized procedures. And they protected teachers from arbitrary and capricious actions of the employer (Kerchner, Koppich, and Weeres 1997).

A Shifting Scene

By the mid-1980s, circumstances had begun to shift; some districts and their unions began a gradual process of reforming their contracts. The triggering event was the 1983 release of *A Nation at Risk*, the report of the National Commission on Excellence in Education (National Commission on Excellence in Education 1983). This report riveted the nation's attention to the public schools, calling for fundamental reform in a system the Commission argued persuasively was shortchanging the nation's students and jeopardizing the future of the American economy.

At the AFT convention in Los Angeles that year, the national union's president, Albert Shanker (the "hothead" of the 1962 New York City strike), stunned delegates when he announced to them, "In a period of great turmoil and sweeping changes, those organizations and individuals who are mired in what seems to the public to be petty interests are going to be swept away in the larger movement. Those ... who are willing and able to participate, to compromise, and to talk will not be swept away. On the contrary, they will shape the direction of all the reforms and changes that are about to be made" (Shanker 1983).

Teachers had expected Shanker to excoriate *A Nation at Risk* as yet another example of unwarranted "teacher bashing." Instead, he publicly acknowledged problems with the education system, said the system needed to change, and asserted that teachers and their union needed to be part of the solution. Shanker called for better, more comprehensive systems of teacher evaluation, advocated standards for students and teachers, supported the testing of beginning teachers, raised the prospect of differentiated pay, and called for more rigorous accountability systems. In short, he called not only for fundamental changes in public education, but for a new form of unionism based on teacher professionalism.

The NEA for some years resisted reform, just as it had previously resisted collective bargaining. In February 1997, the organization's new president, Bob Chase, gave a speech to the National Press Club in Washington, D.C. Titled, "It's Not Your Mother's NEA," Chase acknowledged the NEA as a traditional, narrowly focused union, inadequate to the needs of contemporary education. He called for higher academic standards, less bureaucracy, schools better connected to parents and communities, and contract bargaining focused on school and teacher quality (Chase 1997).

By the late 1990s, both national teacher unions had come to recognize that with education reform the stakes had changed for both students and teachers. School districts were faced with increasing calls for tougher academic standards and better student learning results. Some unions began publicly to acknowledge that they too had an organizational stake in how well or poorly students in their districts fared. This recognition gave rise in a handful of districts to a new kind of contract development, called reform or professional bargaining, that was different in both form and substance from traditional industrial-style bargaining.

Resource Allocation Through the Lens of the Contract

Table 3 displays bargaining and contract types for the districts and agreements that are the subject of this paper. As can be seen, three of the numbered districts (One, Two, and Four) have traditional collective bargaining agreements; two (Two and Five) are reform-oriented. As the chart illustrates, the form of negotiations and type of contract are not predictable by the organization (AFT or NEA) that represents the teachers in a given district.

Table 3. District Characteristics

District	Union	Form of Bargaining	Type of Contract
District One	NEA	Adversarial	Traditional
District Two	NEA	Collaborative	Reform
District Three	NEA	Collaborative	Traditional ⁹
District Four	AFT	Adversarial	Traditional
District Five	AFT	Collaborative	Reform
Columbus	NEA	Collaborative	Reform
Denver	NEA	Collaborative	Reform
Minneapolis	AFT	Collaborative	Reform
Montgomery County	NEA	Collaborative	Reform
Toledo	AFT	Collaborative	Reform
Rochester	AFT	Collaborative	Reform

The remaining four numbered districts (Six, Seven, Eight, and Nine, not on Table 3) are located in non-bargaining states with no collective bargaining laws for teachers and no teacher contracts. Nevertheless, in each of these districts, there is a dominant teachers' organization that participates to some degree in shaping teaching conditions and the allocation of scarce fiscal resources. Most teacher contracts are quite long, often running to more than a hundred pages. And in many, regulations and procedures are spelled out in excruciating detail.

It would be easy to assert that every contract provision has resource implications. In a sense, this is true. Every part of the agreement requires, at a minimum, some amount of administrative staff time to implement. Thus, every provision incurs costs, however modest. However, for purposes of this discussion, the focus will be on those negotiated items that are likely to have *substantial* monetary implications, as displayed in Table 4.

⁹ Although union and management in District Three say they use collaborative bargaining, the content of the contract itself is quite traditional. Collaboration alone does not signify reform. An expanded range of topics, many of them student-oriented, does.

Table 4. Major Monetary Items Allocated Through the Contract

Item	Districts	Type Of Contract
Salaries	All ¹⁰	Traditional and Reform
Benefits	All	Traditional and Reform
Workday/Work Year	All	Traditional and Reform
Leaves of Absence	All	Traditional and Reform
Non-teaching Duties	All	Traditional and Reform
Class Size	Most ¹¹	Traditional and Reform
Transfer/Assignment	All	Traditional and Reform
Professional Development	All	Traditional and Reform
Evaluation	All	Traditional and Reform
Tenure	All	Traditional and Reform
Dispute Resolution	All	Traditional and Reform
Layoff/Dismissal	All	Traditional and Reform
Career Development	District Five, Toledo, Minneapolis, Rochester	Reform
Improving Student Achievement	Denver, Minneapolis, Montgomery County	Reform

As Table 4 illustrates, there is a great deal of overlap in the types of major provisions that have fiscal implications and are contained in both traditional and reform contracts. However, knowing that an item is in a contract is different from knowing what that provision holds. All contracts, for example, contain provisions on salaries and transfers. Yet, as this section will describe, the differences in these provisions between traditional and reform agreements can be substantial. On other issues, such as workday or leaves of absence, the differences between

¹⁰ “All” in this context refers to all of the contracts reviewed for this paper. However, for the topics indicated, “all” could apply to all contracts more generally.

¹¹ Most contracts contain provisions on class size, but not all do. Minneapolis’s contract, for example, does not refer to class size goals or maxima. Montgomery County does not have a provision on class size, per se, but does make reference to staffing allocations being based on each year’s budget numbers.

reform and traditional contracts tend to be slight. Table 5 provides a visual display of contract provisions for which differences are likely or rare between traditional and reform contracts.

Table 5. Comparing Traditional and Reform Contract Provisions

Provision	Differences Likely	Differences Rare
Salaries	✓	
Benefits		✓
Workday/Work Year		✓
Leaves of Absence		✓
Non-teaching Duties		✓
Class Size		✓
Transfer/Assignment	✓	
Professional Development	✓	
Evaluation	✓	
Dispute Resolution		✓
Tenure/Layoffs/Dismissal		✓
Career Development	✓	
Improving Student Achievement	✓	

In the area of benefits, for example, all contracts provide for employee health care coverage. Both traditional and reform contracts specify the health care plans from which teachers can select, what employees' share of the cost is, and whether and under what circumstances dependent coverage is available. In addition to health care, districts also typically shoulder the primary costs of prescription drug, dental, vision care, and long-term disability plans as well as professional liability insurance, workers' compensation for on-the-job injuries, and retirement.¹²

Another area in which it is difficult to find any substantial differences between traditional and reform contracts is in the outline of the workday and work year. All contracts spell out the salaried work year and day. The agreement limits the number of workdays (including teaching days and non-instructional days) and describes the hour boundaries of the salaried teacher workday.

Salaried is the operative word here. The contract typically specifies a six or seven-hour workday. The Columbus contract states, for example, "The regular work day for all full-time

¹² Teachers are members of state-specific retirement programs; the amount the district and each employee contribute is often a negotiated matter.

teachers shall normally be 7 1/2 hours” (25). However, this time parameter refers to the number of hours teachers are required to be on site. Work done at home (additional planning, grading papers, etc.) is not part of this calculation.¹³

All of the contracts reviewed for this paper contain provisions for various kinds of leaves of absence. Few differences can be found between traditional and reform agreements. Some leaves are of the paid variety, costing the district money; others are unpaid, ostensibly saving money if the absent teacher is replaced by a substitute and only the substitute’s salary is encumbered.

Among the leaves most commonly found in the contracts examined for this paper are sick leave (typically 10 days per year), bereavement and childcare leave, and leaves for military service and jury duty.¹⁴ All of the contracts in this set (except District Five) offer partially paid sabbatical leaves, usually after a minimum seven years of service.¹⁵

These agreements also provide paid leave for the union president to conduct union business. This provision reflects acknowledgment by both union and management that running a union is a full-time job requiring more than part-time attention.

Contracts typically limit the non-instructional duties to which teachers can be assigned (bus duty, yard duty, hall patrol, etc.). The contract in District Three, fairly typical, states that teachers are not required to supervise the cafeteria, collect money from students, supervise halls or bus loading at the secondary level, or supervise study halls. Non-teaching duty provisions are an effort both to ensure that non-classroom duties are spread fairly evenly among the faculty and that teachers are not overburdened with responsibilities that lessen the time they have to spend in their classrooms.

Most contracts contain provisions on class size, or pupil-to-teacher ratios. Some, such as District Four’s, require payment to the teacher when class sizes exceed these limits:

The class size limit in elementary schools shall be 25, except by expressed written consent of the teacher. If the administration cannot meet that limit in one or more classrooms, ...one or more of the following options will be utilized: 1) reassignment of students; 2) add an additional classroom teacher; 3) pay the affected teacher \$5.00 per day for each student above 25.”

District Three’s agreement has class size maxima, but for every student above, the teacher must be allocated 55 minutes of paraprofessional time per day or a half hour of release time. Class size provisions acknowledge the significance of limiting class size as both a teacher working condition and a student learning condition and reinforce the importance for both union and management of adhering to their negotiated agreement. They also provide a bit of “give” for a situation that may not have a quick or an easy resolution.

¹³ Contracts also limit secondary teachers’ preparations (the number of different classes they can be required to teach in a single semester), the number of classes to which they are assigned each day (most commonly five), and indicate whether elementary teachers have salaried preparation time. Also included in this section are the numbers of meetings teachers can be required to attend each month (e.g., faculty meetings, parent-teacher meetings).

¹⁴ Teachers are credited with a negotiated number of sick days per year (usually 10 to 12). Unused sick leave can be accumulated year-to-year. Some jurisdictions allow some portion of unused sick leave to be “cashed in” on retirement.

¹⁵ District Five’s contract provides for unpaid study leaves.

The contract in District Five contains class size limits, but has a unique way of resolving overages. In this district, a joint union-management Teacher Allocation Committee is given money and paraprofessional time at the beginning of each year. When a teacher alleges an overage, the Committee has the authority to resolve the matter with money or support time, or let it stand as is. The Committee's decision is final.

Procedural Issues

As Table 5 indicates, differences between traditional and reform contracts are rarely found in the language of four significant, potentially expensive, procedural areas: dispute resolution, tenure, dismissal, and layoff. Moreover, while tenure, dismissal for cause, and layoff are often described in contracts, the procedures for each of these, as well as legally permissible reasons for layoff and dismissal, typically are specified in state law separate from the collective bargaining statute.¹⁶

Nevertheless, in practice, traditional and reform contracts handle these matters somewhat differently. All contracts, for example, include a mechanism for resolving alleged violations of the agreement, called a grievance procedure, with progressive levels of hearing: school, district, (sometimes) school board, and, finally, advisory or binding arbitration in which a neutral third party renders a decision. Under traditional negotiating arrangements, nearly all problems become formal written grievances. Reform contracts, on the other hand, tend to have fewer grievances as the parties employ more informal mechanisms, such as regular meetings between union and district officials, to resolve disputes before they reach the formal grievance stage.

In most districts, earning tenure is a rather pro forma process involving periodic (and often brief) classroom reviews by the principal over a period of two to three years.¹⁷ Classroom support is often minimal and nearly everyone achieves tenure. As described in the section on evaluation, many reform contracts substitute a process of peer assistance and review (PAR) for probationary teachers and underperforming tenured teachers. While the primary purpose of PAR is to improve teaching, the result of this process is that fewer (poor) teachers make it to tenure and more underperforming tenured teachers are dismissed.

One district—Minneapolis—has negotiated a unique tenure procedure. As a result of agreement between the Minneapolis Public Schools and the Minneapolis Federation of Teachers, probationary teachers undergo a structured three-year process of professional development and peer and administrator review while they assemble a professional portfolio of accomplishments. At the conclusion of the three years, the probationers appear before a panel of teachers and administrators to make a case for granting them tenure. Not everyone earns tenure in Minneapolis.

Finally, under traditional bargaining scenarios, layoff and dismissal for cause are lengthy, often cumbersome processes. In reform bargaining arrangements these matters are sometimes handled in a more streamlined way without violating teachers' right to due process.

¹⁶ Tenure provides that teachers who have successfully passed a probationary period are entitled to due process before being dismissed. Layoff results when some circumstance (e.g., reduced funding) requires the district to reduce the number of staff members.

¹⁷ Not all states have a tenure law, per se. In fact, tenure is more common to higher education. Some states use a notion of a "continuing contract" for K-12 teachers.

High-stakes decisions on matters of tenure, layoff, and dismissal—often called matters of “employment security”—typically are enmeshed in procedural obligations, as a result either of contract language or state law. The goal is to ensure that issues related to maintenance of employment are dealt with as fairly as possible. Traditional contracts rely on well-established, often cumbersome procedures in these areas. Reform contracts often find ways to protect due process without paralyzing the system.

Examining Significant Contract Differences

In a number of resource-significant areas, substantial differences are evident between traditional and reform contracts. These include salary setting, transfers, professional development, evaluation, career development, and improving student achievement.

Setting Salaries. In many contracts (including in Districts One, Two, and Four in this study), salaries are constructed on the standard single salary schedule. Teachers advance in pay on the basis of years of experience and units accrued. The contract specifies rates of pay for each step and column of the schedule as well as extra dollars earned for added responsibilities. Increasingly, standard salary schedules also include pay boosts for teachers who earn certification through the National Board for Professional Teaching Standards.¹⁸

The standard single salary schedule has been widely criticized as providing neither encouragement nor incentive for teachers to upgrade their professional skills or willingly assume more challenging assignments. Increasingly, reform contracts are diverging from this traditional salary construct.

Table 6 displays the district contracts reviewed for this paper and whether salaries are constructed on the standard single salary schedule or some alternative arrangement.

As Table 6 displays, a number of districts with reform contracts are adopting various forms of differentiated pay. Teachers in District Three, for example, with more than 15 years in this district (or 20 years in the profession) can apply for Career Teacher Assignment that carries with it an extra \$1,700 per year: “The District recognizes that experienced teachers provide extra value, expertise, and professionalism to the school program. In recognition of this, employees who have worked longer than 20 years (15 in-District), may apply for a Career Teacher Assignment and be compensated at the rate of \$1,700 per year. A committee composed of equal number of [District] and [union] representatives shall determine the criteria....”¹⁹

¹⁸ Many states provide state-paid bonuses for teachers who earn Board Certification. But many districts “top off” these bonuses with additional dollars.

¹⁹ The contract states that a joint union-management committee has responsibility for approving teachers who are eligible for this, but it does not describe what duties attach to this designation.

Table 6. Compensation Arrangements for Selected Districts

District	Standard Salary Schedule	Differentiated Compensation
District One	✓	
District Two	✓	
District Three		✓ ²⁰
District Four	✓	
District Five		✓
Columbus		✓
Denver		✓
Minneapolis		✓
Montgomery County	✓	
Rochester		✓
Toledo		✓

District Five has a career ladder on which teachers advance in pay as they accrue experience and responsibility and earn favorable teaching evaluations. The top rung of the ladder is lead teacher status, for which teachers earn added compensation by serving as peer evaluators, curriculum specialists, and university clinical faculty. The contract makes clear the purpose of the career ladder: “The [Union] and the Board are both committed to improving the profession of teaching. A profession offers opportunities for professional growth, involvement in decisionmaking, communication and collaboration, and increased responsibilities and accountability.... The parties ... view a career ladder as a way to give incentives to attract and keep quality teachers in the profession.”

Columbus, Ohio, offers \$1,500 for teachers who agree to “be assigned at the superintendent’s discretion” to low-performing schools in an effort to try to ameliorate the problem endemic in urban districts of the most challenging schools being staffed by the least experienced, often least well qualified teachers. This contract also provides for “gainsharing,” or bonus money to schools that meet established performance goals. In addition, Columbus has developed a voluntary Performance Advancement System in which teachers who participate can earn \$2,500 a year for

²⁰ The contract gives the impression that this district has an alternative compensation arrangement. However, this district is in a state in which the finance formula has been converted to a statewide salary schedule. It is not entirely clear, therefore, from reading the contract, if salary alternatives represent true differentiated compensation or simply a way to circumvent the statewide salary schedule.

each of two years, renewable, “based on student achievement and demonstrated accountability for student progress.”

The differentiated pay plan that has received the most publicity was negotiated by the Denver Public Schools and the Denver Classroom Teachers Association. Under ProComp, as it is called, teachers have a number of options for advancing in salary: increased student test scores, outstanding evaluations, demonstrated knowledge and skill, and teaching in hard-to-staff schools or subjects. In Denver, simply accruing units and teaching longevity no longer results in higher pay.

Rochester, New York’s contract provides a \$1,500 annual stipend to teachers who qualify for lead teacher status and agree to transfer to low-performing schools, again an attempt to balance the staffing of under-resourced schools. Minneapolis is in the process of implementing a professional compensation plan that will include elements of the Denver plan as well as the Milken Foundation’s Teacher Advancement Program (TAP) that bases pay on multiple career paths, ongoing professional development, and performance-based accountability.

Yet another differentiated compensation plan is found in the contract between the Toledo Public Schools and the Toledo Federation of Teachers. The Toledo Review and Alternative Compensations System, or TRACS, is designed to attract and retain high quality teachers, reward teachers who raise student achievement, and support and reward experienced teachers who choose difficult teaching assignments:

The overriding goal of TRACS is to promote teacher quality while improving the academic performance of students. This goal will be achieved through integrated and focused objectives that include ongoing professional development targeted to specific student academic and school improvement needs; more effective teaching and learning; retaining the most accomplished teachers in the classroom by acknowledging and rewarding teaching excellence; maximizing the talents of recognized teachers by assigning additional responsibilities and leadership roles; and/or placing teachers in high needs schools and challenging teaching assignment (TRACS brochure).

Critics allege that these new pay plans, by and large, are not truly differentiated compensation, that they reflect but slight deviations from conventional pay patterns. But, in fact, paying more for challenging assignments and subjects and making evaluation results and test scores part of the pay calculus represent substantial changes, well out of the traditional union-negotiated salary norm.

Transfer and Assignment. Transfer and assignment are significant provisions of all teacher contracts. This category has three component parts: (1) voluntary transfer, (2) involuntary transfer, and, (3) assignment. Voluntary transfer refers to a situation in which a teacher seeks a different school assignment. Involuntary transfer results from a required reduction in staff at a school, typically because of a drop in enrollment or loss of funding. Assignment refers to a teacher’s in-school teaching assignment.

Conventional wisdom has it that all teacher transfers and assignments are governed by seniority (a teacher’s length of service in the district). However, as Table 7 displays, conventional wisdom is not foolproof.

Table 7. Voluntary Transfers

District	Seniority as Principal Criterion?	
	Yes	No
District One	✓	
District Two		✓
District Three		✓
District Four	✓	
District Five	✓	
Columbus	✓	
Denver	✓	
Minneapolis	✓	
Montgomery County	✓	
Rochester	✓	
Toledo	✓	

In Districts One and Four, both traditional agreements, seniority is the principal criterion for voluntary transfers, but the language of the agreement provides some “wobble room.” District One’s contract, for example, states: “The variables to be weighed in consideration of transfer requests include, but are not limited to, specific professional competencies, experience, ... preferences, diversity, and seniority. Of this, seniority will be the most important consideration, except where other variable(s) require greater consideration.” Circumstances where “other variable(s) require greater consideration” are left unstated in the contract, subject to case-by-case analysis.

District Three also has a traditional contract. However, here, voluntary transfers are not governed by seniority at all, but by “qualifications, as per the posted job description.”

Districts Two and Five, both with reform contracts, use school interview teams composed of teachers and administrators to select volunteer transfer applicants. The language of District Five’s contract is representative:

Teachers shall be considered for vacancies by school interview panels.... The Board and the [Union] agree that teachers and principals should have a greater role in selecting teachers to fill vacancies. Therefore, the parties agree that such decisions should be jointly made by the principal and teachers in that department, team, or level of the school.

District Two’s contract does not mention seniority at all. Seniority applies in District Five only if all other circumstances (training, experience, individual qualifications) are substantially equal and “the transfer is consistent with the racial balancing of the staff.”²¹

Several of the comparison reform contracts—Columbus, Denver, and Rochester—have eliminated seniority for voluntary transfers and have substituted a procedure as in Districts Two and Five, where school-based teams of teachers and administrators interview applicants and make selections based on “fit” with the available position.

Involuntary transfers in nearly all contracts continue to be governed primarily by seniority. Here, too, however, considerations of credential and, often, racial balance, come into play. The language in District One’s contract is illustrative: “The administration may displace professional staff members due to pupil enrollment, program reduction, or staff realignment. When a professional staff member is to be displaced, the administration shall consider the following: (a) racial balance, (b) system seniority, (c) areas of certification” (40). From the union perspective, some reliance on seniority represents an effort to reduce arbitrariness or personal favoritism from the decision about who stays and who leaves a school when a reduction in staff is required.

Although it is often assumed that teachers hold sway over in-school assignments, almost all contracts give principals the right to make these decisions. The language of District Three’s contract is fairly typical: “Assignment is based on qualifications and [should] take into account the interests and aspirations of the employees.” Principals may be obliged to solicit teachers’ preferences, but the final decision about assignment remains with the administration.

In sum, while traditional contracts maintain an often substantial reliance on seniority for purposes of voluntary transfers, reform contracts rarely do. Most often, they engage a school-based team of teachers and administrators to select a candidate for a job based on “fit” with the available position.

Building Teachers’ Professional Capacity

How do contracts address the issue of building teachers’ professional skills? Four provisions, found in a number of reform contracts, deal with this issue: new teacher induction, professional development, evaluation, and career development.

New Teacher Induction. Providing induction for new teachers is increasingly part of negotiated (reform) contracts. District Two provides a mentor for every new teacher. Some district-union partnerships, such as those in Minneapolis and Montgomery County, jointly run orientation and induction sessions for new teachers. These are not mentioned in the contract but are contained in extra-contract agreements.²² In these agreements, the union assumes an obligation to help induct novices into the profession of teaching.

Professional Development. All contracts contain some reference to professional development, or continuing education for teachers. Districts historically have favored large group, limited session presentations or workshops as being efficient. Yet the research on

²¹ Interviews with principals in District Five reveal their complaints that seniority governs all transfers, but the language of the contract does not indicate this to be the case.

²² Extra-contract agreements typically are in the form of memoranda of understanding or trust agreements, which sit outside the collectively bargained contract.

professional development is clear that the most effective professional development is school-based and related to teachers' professional assignments.

Traditional contracts often try to limit required professional development as much as possible based on teachers' rather consistent views that training rarely relates to improving professional skills. This assessment of professional development, however, is changing with the demands of standards-based education. The contract in District One, otherwise among the most traditional, places professional development in a section on "professional accountability" and requires that each teacher participate in at least 20 hours of professional development per year, though it is not specific about the nature of the professional development provided.

District Two's contract refers to an Educator Academy, still in the developmental stage at the time of negotiations, to take care of teachers' long-term professional development needs. That contract establishes a joint union-management steering committee "for professional development led by the Chief Academic Officer and the [union] president. The steering committee's primary role is insuring professional development to support sustainable progress in raising student achievement."

In District Five, wide-ranging professional development has long been provided through a local Academy funded by a corporate sponsor. Union and management in this district also have implemented professional practice schools to provide on-the-job training for novices, in cooperation with a local university.

The Minneapolis contract focuses extensively on professional development, with support for teachers attempting to earn National Board Certification as well as a comprehensive process that requires teachers annually to prepare individual, as well as school team-based, professional development plans focused on increasing student achievement. The contract also defines what the union and district mean by professional development and what purpose it is designed to serve: "Professional development is the process by which teachers individually and jointly enhance and update their knowledge of standards, curriculum, and content, and improve their instructional skills and strategies. Effective and continuous professional development extends the knowledge base and repertoire of practices and skills necessary [for] all students [to] acquire the highest quality of education. Successful professional development is focused on student learning and achievement" (57).

Denver's contract also is clear about the purpose of professional development: "Professional development will focus on building teacher quality to increase student progress and growth," as is Columbus's: "Professional development will focus on building teacher quality to increase student progress/growth."

Montgomery County has one of the most extensive contract foci on professional development. A Staff Development Teacher, whose sole job is facilitating professional growth linked to the schools' school improvement plan, is assigned to each school to work with the teachers there. As that contract states, "To be effective with a diverse and challenged student population, teachers need a significant repertoire of skills, strategies, and practices derived from research about teaching and student learning, and the knowledge to match these skills to student instructional needs" (25).

Professional development thus is coming to occupy a more prominent place in many teacher contracts. Increasingly, especially in reform-oriented agreements, professional development

acknowledges an important link between enhancing teachers' professional skills and improving student learning.

Evaluation. Evaluation is a negotiable item under most state collective bargaining laws. The contract typically specifies the frequency of evaluation, who is responsible for conducting it, what procedure is to be used, and whether or not the teacher can grieve the results.²³

Evaluations in districts with traditional contracts tend to be conducted by administrators on average once every two years (every year for probationary teachers). Standards for evaluation are negotiated district-to-district. But teacher evaluations have long been criticized as pro forma, only modestly based on standards of good practice, and little related to improving teaching or learning (McGreal 1983; Medley and Coker 1987). With increased accountability pressures, changes in evaluation are becoming ever more evident.

District Two's contract provides for an intervention program for underperforming experienced teachers and is clear that, "Evaluations of certificated employees will include the contractually mandated criteria *as well as student achievement*...[emphasis added]." Development and implementation of a professional growth plan can be substituted for the usual evaluation sequence for teachers who receive satisfactory reviews.

In District Three, evaluation is based on standards and rubrics detailed in the contract. These include knowledge of subject matter, instructional skills, professional preparation and scholarship, classroom management, handling of student discipline and attendance problems, continuous efforts toward improvement, and professional responsibility.

District Five, as well as Toledo, Rochester, Minneapolis, Montgomery County, and Columbus, have adopted a standards-based process of peer assistance and review (PAR) to evaluate probationary teachers and tenured teachers in trouble. PAR uses experienced teachers, called Consulting Teachers, jointly selected by the district and the union to provide intensive support and then evaluate these teachers' professional practice. Consulting Teachers' reviews and recommendations are submitted to a joint union-management PAR committee that makes recommendations to the superintendent and school board for final decision. Review of PAR programs point to this system as rigorous and effective, combining individual support and professional development with performance review (see, for example, Koppich 2004).

PAR also reflects a clear example of the difficulty of change for both union and management, and the challenge of reform unionism. While the districts named earlier in this section have utilized PAR programs for better than a decade, these efforts, in which the union and district share responsibility for the evaluation of teachers' professional practice, still are not the norm. Teachers are often reluctant to evaluate their colleagues ("That's management's job") and principals are not eager to relinquish what they view as "their turf." Peer review challenges one of the key tenets of industrial unionism: separation of labor and management. Neither side finds change easy and both, at least initially, resist.

Experience shows, however, that after about a year with peer review, both teachers and administrators become enthusiasts. Teachers view the support they receive as crucial and administrators come to recognize that teacher peer reviewers are able to provide the colleagues with whom they work far more intensive and targeted assistance than principals can.

²³ Often what is grievable is whether or not the procedure was followed, not the outcome.

Nevertheless, the birth pangs can be severe and must be carefully handled by both union and management if the process is to succeed.

Career Development. Teaching is famously an unstaged career (Lortie 1975) in which teachers historically have had few opportunities to move beyond day-to-day classroom teaching routines without leaving teaching for administration. While most traditional contracts do not directly address teacher career development, a number of reform contracts do. The District Five career ladder and Toledo TRACS, previously described, fall into this category. These systems make it possible for teachers to advance in pay and differentiate their professional responsibilities as they accrue knowledge and experience.

The Rochester contract also describes a Career in Teaching program in which teachers advance from intern to resident to professional to lead teacher status on the basis of their evaluations. Under the program, which is governed by a joint union-management committee, lead teachers must agree to accept any school assignment as well as serve as mentors and professional development providers.

Under some reform agreements, then, union and management have together begun to professionalize teaching by differentiating roles and tasks. Taking on differentiated responsibilities no longer need mean leaving the classroom teaching for administration.

Improving Student Achievement

To what extent do contracts specifically address issues of student achievement? It certainly can be argued that increasing teacher capacity falls into this category, given research-based findings on the link between teacher quality and student learning. But do contracts specifically link teaching and student achievement? Traditional contracts, by and large, do not. They are concerned principally with teachers' economic and day-to-day work concerns. Reform contracts are direct and specific about teachers' and the union's role in impacting student achievement. This is one of the principal issues that distinguishes traditional from reform contracts. That said, this paper does not claim that a direct link exists between reform contracts and measurable student achievement gains. Data required to make that judgment were not collected, and that is not the purpose of this paper. What this paper's data do suggest is that reform-oriented contracts reflect a clear understanding about teachers' responsibility for improving student learning.

The contract in District Two, in a provision titled "Partnership for Closing the Achievement Gap," states, "We commit to ensuring that all students are provided the support they need to meet ...standards. ... We are committed to changing the odds for student success and creating a culture of success. We are focused on closing the achievement gap...." The Montgomery County contract contains a specific provision on "Shared Responsibility for Student Achievement and Student Improvement" in which the district and union acknowledge their mutual obligation and responsibility for consistently increasing student achievement results.

Much of the Minneapolis contract focuses on strategies for effective instruction—how to get there, what it means, and standards for same, including detailed rubrics. This agreement includes a section on "teacher professional ethics," as well as teachers' responsibilities to students, families, communities, and colleagues. And the "Fresh Start" provision deals with how management and union together will reconstitute chronically low-performing schools.

The Rochester contract also focuses on teachers' responsibility for student performance. This agreement includes a section on Group Accountability which states, in part, "...The Rochester City School District and Rochester Teachers Association recognize that schools or groups of educators within schools are the essential unit of accountability and that student achievement is the essential indicator of progress. Annual assessment of progress is linked to school improvement results. Logical consequences [including the possibility of assigning an intervention team] must exist for schools that are unable to demonstrate progress toward agreed upon standards."

To be sure, the provisions described in this section focus primarily on administrator-teacher collaboration and mutual responsibility. More a reiteration of the earlier described joint custody for reform, these sections typically are not specific about desired achievement goals or the specific strategies to reach them. Nevertheless, acknowledging in the bilateral agreement the mutual obligation to raise student achievement represents a substantial expansion of the traditional parameters of collective bargaining.

Joint Labor-Management Committees

Joint labor-management committees provide a vehicle for the union and district to discuss topics of mutual interest that may not lend themselves to readily negotiable contract provisions. Table 8 displays the joint union-management committees named in the contracts examined for this paper.²⁴ The types of joint committees often signal the nature of the union's involvement in policy and operational decisions in the district.

As Table 8 displays, District One's traditional contract refers to a District-Association Collaborative Budget Committee to "review the district budget, identify unfunded needs for the current year, and make recommendations to the superintendent." District Three's contract cites a joint curriculum advisory committee whose responsibility is to "review curriculum recommendations and provide input into the implementation process." Neither of these suggests that the union is involved in actual decisionmaking in the joint committee areas; rather, the union plays an advisory role.

District Four, with a traditional contract, nevertheless has a number of joint committees on important topics: school climate, teacher recruitment, class size, and academic intervention for underperforming schools. These appear, from the contract language, to be advisory only.

The contract in District Two refers to a joint professional development steering committee whose "primary role is insuring professional development support[s] sustainable progress in raising student achievement." District Five's contract includes a number of joint committees: on evaluation, education improvement (though a collaborative labor-management Education Initiatives Panel), professional development, and teacher recruitment. These committees call for joint union-management decisionmaking.

²⁴ There may be additional committees that operate but are not named in the contract. For example, in Montgomery County the union is directly involved with the district in developing the budget, but there is no budget committee, per se, listed in the contract.

Table 8. Types of Joint Union-Management Committees

Committee	District One	District Two	District Three	District Four	District Five	Denver	Minneapolis	Montgomery County	Rochester	Toledo
Budget	✓									
Curriculum		✓								
School Climate			✓		✓					
Class Size			✓	✓						
Teacher Recruitment			✓	✓						
Professional Development		✓		✓						
Academic Intervention			✓	✓		✓		✓		
Evaluation				✓			✓	✓	✓	
Shared leadership, U-M Collaboration—District Level				✓		✓	✓	✓		
Shared leadership, U-M Collaboration—School Level	✓	✓	✓	✓		✓	✓	✓		

Rochester has a unique joint committee: the Living Contract Committee. Rochester’s contract does not expire; the union and district work continuously to resolve problems and deal with new issues as they arise. Thus, a “living contract.” And in Montgomery County, the joint Labor-Management Collaboration Committee meets regularly to resolve issues before they mushroom into problems. These committees create venues for collaborative decisionmaking on whatever issues arise at any given time. They are not subject specific.

Many contracts also make provision for school-level committees, typically structured around some form of shared teacher-administrator leadership. District One’s contract provides for a school-based faculty council “to collaboratively resolve building issues.” The contracts in District Three and Four provide for similar site arrangements.

District Five’s agreement establishes instructional leadership teams at each school, “so that the principal [and] teachers may share leadership and make decisions in the following areas: develop, review, and evaluate the instructional program; monitor and improve school operations and procedures that impact instruction; [and] develop and monitor the school budget.”

Minneapolis’s contract describes school-based committees devoted to “shared leadership for continuous improvement” and shared decisionmaking linked to accountability for student results. Montgomery County has analogues to the district-level labor-management committee: school-based labor-management committees. And Rochester has school-based committees with a wide portfolio, “To continue to work on conditions conducive to accountability and success, including expansion of school-based shared decisionmaking to include greater discretion over factors and conditions that affect student learning: the school budget, instructional materials, strategies and assessments; staffing, curriculum, in-service [professional development], student discipline codes, instructional time and schedule, student group and class size.”

A simple reading of the contract, of course, gives little clue as to results of these committees. Nevertheless, knowing whether committees are advisory or imbued with decisionmaking authority tells much about the nature of the union-management relationship.

Deviating From the Contract

To what extent do contracts provide the opportunity to deviate from their provisions? Under what circumstances is this possible? Few contracts, traditional or reform, make provision for waivers (see Table 9). Those that do typically allow waivers only for a single school for a limited period of time (usually one year) on approval from both the union and the district. The purpose is to resolve a school-specific issue or implement a school-specific program.

Table 9. Waiving Contract Provisions

District	Waivers Allowed?	
	Yes	No
District One		✓
District Two	✓	
District Three		✓
District Four		✓
District Five		✓
Columbus	✓	
Denver		✓
Minneapolis		✓
Montgomery County		✓
Rochester	✓	
Toledo		✓

District Two permits contract waivers if schools seek to implement programs or strategies “tied to increasing academic achievement.” In Columbus, a union-management Reform Panel can grant contract waivers “focus[ed] on improving teaching and learning.”

Rochester has perhaps the most unique waiver provision. Under the Rochester contract, School Level Living Contract Committees, whose “purpose is to improve student achievement,” are “authorized to enter into contractual agreements different from provisions contained in the central collective bargaining agreement.” These waivers require a signoff by the principal and union’s school representative. Waivers can encompass a wide range of issues, from the professional day and responsibilities, parent-teacher conferences, teacher assignments, teaching conditions, teacher facilities, the length of the pupil day, and job sharing.

Waivers acknowledge that one size does not fit all, that different schools may require different arrangements. But using waivers” is an option that never really has caught on in the contract world. Few unions (and districts) are willing to grant schools the kind of authority to make decisions that waivers imply.

Summing Up: How Traditional and Reform Contracts Distribute Resources

So what does the description of traditional and reform contracts reveal about the differences between the two in terms of methods of resource allocation? Table 10 illustrates the different assumptions that underlie contract decisions in these different types of agreements.

On balance, traditional contracts are negotiated using adversarial bargaining techniques. Reform contracts tend to utilize more collaborative bargaining practices.

Traditional contracts treat all teachers alike. For example, they rely substantially on the standard single salary schedule. Reform contracts recognize that teachers differ in skills, knowledge and ability. Thus they increasingly offer opportunities for differentiated compensation and roles. Traditional contracts tend to cling to seniority for most voluntary transfers; reform contracts often eliminate seniority for voluntary transfers, replacing it with selection by a school-based team of teachers and administrators who look for the individual who best “fits” the school and assignment.

Whereas traditional contracts view professional development as something to be delimited and restricted, reform contracts use professional development as a means for teacher professional growth related to improving student achievement and try to shape relevant contract provisions to accomplish this purpose. Evaluation also differs between traditional and reform contracts. In the former, professional evaluation most often is administrator-driven, based on vague standards of practice, and little related to improving teaching or student learning. Reform contracts, on the other hand, often use a system of peer assistance and review—more rigorous, standards-based, and combining professional development (helping teachers improve in areas in which they are deficient) with summative performance review and the prospect of dismissal if efforts to improve are not successful. Traditional contracts little concern themselves with teacher career development. Reform agreements, on the other hand, view career development as an important union-management mutual obligation.

Table 10. Contract Issues, Assumptions, and Related Mechanisms

Contract Issues	Assumptions and Related Mechanisms	
	Traditional Contracts	Reform Contracts
Union-Management Relationship	Adversarial	Collaborative
Teacher Differentiation	<p>A teacher is a teacher is a teacher.</p> <ul style="list-style-type: none"> ▪ Standard single salary schedule ▪ Seniority governs transfer and assignment 	<p>Teachers have different interests and skills that need to be acknowledged.</p> <ul style="list-style-type: none"> ▪ Differentiated compensation ▪ Differentiated roles ▪ Job “fit” replaces seniority
Capacity Building	<p>Contract limits professional development</p> <ul style="list-style-type: none"> ▪ Purposely limited offerings ▪ No career development ▪ Pro forma evaluation 	<p>Contract emphasizes professional development</p> <ul style="list-style-type: none"> ▪ Expansive, targeted offerings ▪ Career ladders and differentiated teacher roles ▪ Rigorous, standards-based evaluation
Contract Flexibility	No waivers	Waivers sometimes allowed
Focus of Protection	Individual teachers	Teaching profession
Student Performance	Little reference to student performance	Explicit reference to student performance

Traditional contracts rarely use the words “student achievement,” much less embed it in the negotiated agreement as a joint labor-management responsibility. Reform contracts include improving student achievement as a key obligation of the agreement and those who negotiate and are covered by it.

Both traditional and reform contracts include district and school level labor-management committees. Traditional contracts tend to structure these committees around important but customary issues, such as school climate. Moreover, industrial contracts typically grant these committees only advisory authority. Joint committees in reform contracts tend to revolve around issues that are more fundamental to teaching and the education system: the provision of effective professional development, oversight of a teacher evaluation system, district-wide reform and improvement of student achievement, and shared union-management decisionmaking. The products of these committees’ deliberations often are joint labor-management decisions, not just recommendations by the union to the administration.

Finally, the provisions of traditional contracts tend to be sacrosanct. Any violation, or perceived violation, becomes a formal, written grievance. Individual schools are not allowed to deviate from the negotiated agreement. Reform contracts are more apt to allow contract waivers to enable schools to make decisions attuned to their particular needs.

In sum, in traditional contracts, a teacher is a teacher is a teacher. Differentiation is eschewed. Reform contracts acknowledge that teachers have different skills and strengths and recognizes these with money and authority. Traditional contracts are all about teachers' individual rights. Reform contracts are documents that speak both to teachers' individual interests and the profession's public responsibility in which the union views its job as promoting and protecting high quality teaching as fervently as it protects teachers' rights.

Contract Provisions with No (or Very Limited) Resource Implications

All contracts²⁵ contain a number of important non-monetary provisions. These are sometimes referred to as "rights clauses" as they largely describe a set of obligations and rights granted under the contract. Though not money laden, these contract provisions are essential elements of any bargained agreement regardless of contract type. Table 11 displays an illustrative list of these provisions.

Table 11. Non-Monetary Provisions: All Districts, Both Contract Types

▪ Recognition	▪ Personnel Files
▪ Duration	▪ Reopeners
▪ Bargaining Unit Defined	▪ Dues Deduction
▪ Union Rights	▪ No Strike
▪ Management Rights	▪ Savings
▪ Academic Freedom	

As Table 11 displays, all contracts include a recognition clause, acknowledging the union as the sole and exclusive representative of teachers in the district; a statement of the duration of the agreement (state law specifies the maximum length of the contract, typically three years); and a description of the bargaining unit (in other words, who is covered by the contract). Contracts include a statement of organizational rights, for example, granting the union access to the district's school mail system and the right to have an official, designated representative at each school. Some contracts, though not all, contain a specific management rights clause. Whether stated or not, it is understood that whatever rights are not otherwise granted in the contract are retained by management. The management right's clause found in District Four's contract is

²⁵ Here, again, "all" refers to all contracts in this sample but could be applied more broadly to the range of contracts in districts across the country.

fairly typical: “Management retains the right to direct, supervise, evaluate, and hire employees; determine the overall methods ... by which educational operations are to be conducted; and effectively manage the workforce...”

Other common contract provisions with limited (or no) resource implications guarantee teachers’ academic freedom, in other words, the right to teach without undue influence; place restrictions on teacher personnel files (for example, requiring that only one file be retained on each teacher and that it be kept in a central location); and authorize union dues deduction.²⁶

Finally, contracts commonly include a “no strike” clause for the duration of the agreement; a provision for mid-contract negotiations on specified topics (called re-openers); and a “savings clause” which holds that should any provision of the contract be declared illegal, the rest of the agreement remains in effect.

The Unpredictability of Budgets

Determining how much money is allocated for negotiating purposes is not a straightforward matter. Districts may choose to set aside a certain percentage of their budgets to settle contracts, but these dollars (both their amounts and specific purposes) must, by nature of the process, be somewhat fungible.

Moreover, school districts and their unions are faced with a chronic problem. That is, both sides, in the interest of labor peace, typically seek longer rather than shorter contracts. However, regardless of the source of funding (local property taxes, state distributions), budgets are developed on an annual basis. Districts often have little hard knowledge about the state of their finances from year-to-year. Thus, agreeing to contract provisions that carry fiscal implications is something of an exercise in educated guesswork for both parties. There is no easy solution for this dilemma.

Non-Bargaining States

Four of the study districts are in states that do not allow collective bargaining for teachers; thus, teachers and their districts do not negotiate contracts. In these jurisdictions, resource allocation and teachers’ terms and conditions of employment are shaped by state law and local school board policy. Teachers often belong to an affiliate of the NEA or AFT and might play an advisory role to the school board, but they hold no official decisionmaking authority.²⁷

In one of these non-bargaining states, state law provides for a process of consultation with teacher organizations of at least 500 members. In this state, state law specifies many of the kinds of agreements that typically are found in contracts. It authorizes a minimum of 180 days per year of instruction for students (187 days of service for teachers); limits class size in the early grades to 22 students; guarantees teachers a duty-free lunch period of at least 30 minutes; specifies guidelines for professional development; authorizes payroll dues deduction; provides grievance

²⁶ This provision may require fair share, in other words, that all members of the bargaining unit either be members of the union or pay a fee to cover the cost of negotiations and administration of the agreement.

²⁷ In these districts there also often is a right-to-work teachers’ organization that opposes collective bargaining.

rights, including a kind of binding arbitration²⁸; specifies termination procedures; grants teachers duty free lunch and preparation periods; and provides for a process of paperwork reduction (Price 2006)

The provisions described above apply in Districts Seven, Eight, and Nine. In District Seven, consultation has resulted in an agreement on a \$2,500 stipend for teachers with a Master's degree and \$1,500 for teachers enrolled in a graduate program as well as a union-management agreement to consider how to implement high school redesign and conduct a study on improving teacher quality (with special attention to recruitment/retention, and incentive pay).

District Eight is implementing value-added pay,²⁹ but without agreement from the union. This district also has a mentor program for new teachers (mentors earn about \$3000 per year) and signing bonuses for teachers in bilingual, mathematics, and special education.

District Six is in a different non-bargaining state from Districts Seven, Eight, and Nine. State law here addresses the issues of maximum class size and maximum teaching load, provides planning time and a duty-free lunch period for teachers, gives teachers 10 annual days of vacation time and at least five days to use as teacher work days, and establishes a statewide salary schedule (Price 2006). District Six, which has a Teacher Advisory Committee that makes suggestions to the administration on various matters, has signing bonuses for teachers in mathematics, science, technology, foreign language, English-as-a-Second Language, and special education; provides stipends to teachers with Master's degrees; and has instituted a pay-for-performance pilot in several schools. National Board Certified Teachers in this district receive a 12% pay boost as a result of state policy.

Thus, even in states without collective bargaining, teachers (and their organizations) are involved in shaping significant education policy.

Making Way for Change

A recent report on collective bargaining asserted, "The job of union negotiators is to defend and advance the economic interests of their members. School [boards] are charged with representing the interests of the district and the taxpayer" (Education Partnership 2006). This sentiment reflects the conventional wisdom about bargaining, reinforced by decades of experience and traditional contracts. But reform contracts reveal a different possibility.

Reform contracts blur the lines of distinction between union and management, acknowledging the collective aspect of work. They place the union in the position of helping teachers assume the obligation to be active partners in the development and implementation of education policy, to tackle thorny issues of colleague competence and resource allocation, to come to terms with the definition of good teaching and issues of educational quality, and to assume their share of responsibility for student learning outcomes (Koppich 2006). Reform contracts thus live at the intersection of individual interests and collective professional obligations.

²⁸ A grievance in this context is defined as a violation of local policy or state law.

²⁹ Teachers' levels of pay will be calibrated to student test scores, calculated on a value-added basis in which students' annual growth is measured.

Reform agreements engage a major challenge of industrial unionism. Industrial unionism gives teachers' organizations the wherewithal to respond to teachers' concerns about essential matters of wages, hours, and working conditions. But it fails to recognize teachers' expertise as professionals, their need and desire to exercise professional judgment in the performance of their duties, the interests they legitimately share with management, or the obligation to involve them in significant decisions about policies affecting their professional lives (Kerchner, Koppich, and Weeres 1997). In short, industrial unionism circumscribes teaching, creating a chasm between teachers and administrators and relegating the union to a backseat role in shaping the education policy that so intimately impacts the organization's members (Koppich 2006).

Those who cling to industrial (traditional) unionism find themselves in the position of defending the status quo. But those who advocate change are in an equally difficult position. Thinking about what collective bargaining *should* be requires deciding what kind of teachers we want.

The conservative critics³⁰ favor a continuation of industrial-style work and workers, with tight managerial authority. Principals are cast in the role of CEOs of their schools, with greatly increased authority to hire, fire, and assign the teachers in their school. Teachers' jobs are largely to follow the rules laid out for them and employ judgment in decisionmaking as little as possible. Those who advocate reform unionism see a different vision for teaching, with teachers organized along professional lines that recognize the work's inherent art and craft. Under this vision, teachers and administrators work cooperatively toward common goals, and share the burden of decisionmaking responsibilities.

Likewise, those who describe reform unionism as labor-management cooperation are missing the bigger picture. Reform unionism is not simply about organizational civility. It is about endorsing a different kind of teaching, a kind of teaching that needs the support of a different kind of collective bargaining policy.

To be sure, reform unionism has not grown very far very fast. While there is nothing currently to prevent more districts and unions from adapting the examples of reform contracts to their own contexts, there also is little policy incentive for them to do so. Current collective bargaining laws shelter unions' and managements' traditional ways.

Unions that want to change have a difficult row to hoe. They must persuade long-time members that a new way of doing business does not mean abandoning traditional union values or issues at the same time as they convince newer members that the union is an important vehicle for educational improvement. This is not an easy sell, even in the places where it is most consistent with reality (Koppich 2005).

Despite the obstacles created by current law and traditionalists (on both the union and management side), unions are increasingly likely to find themselves compelled to change. Research shows that newer teachers, those hired in the last decade or so, have different expectations of their union. Earlier generations of teachers preferred the isolation of the classroom, eschewed differentiated pay and staffing, and looked to the union to protect them in all work-related circumstances. By contrast, teachers newer to the profession welcome collaboration, support differentiated compensation and roles, and want the union to be the organization that both ensures them fair treatment and helps them become more accomplished

³⁰ See, for example, the work of Terry Moe or Dale Ballou and Michael Podgursky.

professionals (Johnson 2000). The first set of values is a good fit with traditional bargaining. The second is not.

A fundamental reordering of collective bargaining requires a new conception of the process, a shift in the expectations for negotiated agreements in order to alter the outcomes. Policy must make requisite contracts that sanction labor-management cooperation; agreements that center on mutually determined, measurable student achievement goals; and an expansion of scope to include a broader swath of significant education policy (Kerchner, Koppich, and Weeres 1997; Kerchner and Koppich 2006). Absent such a policy shift, we are likely to find ourselves continuing to wage old battles in a world that long ago left them behind.

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Contracts³¹

- Agreement and Partnership between School District No. 1 in the City and County of Denver, State of Colorado and Denver Classroom Teachers Association, September 1, 2005-August 31, 2008.
- Agreement between Minneapolis Public Schools and the Minneapolis Federation of Teachers, 2003-2005.
- Agreement between Montgomery County Education Association and Board of Education of Montgomery County, 2005-2007.
- Agreement between the Rochester City School District and the Rochester Teachers Association, 2004-2006.
- Agreement between the Toledo Board of Education and the Toledo Federation of Teachers, 2001-2004.

³¹ Contracts in the numbered districts cited in the text remain unnamed to protect their anonymity.

Contract between the Columbus Board of Education and the Columbus Education Association,
2000-2003 (plus addendum, 2003-2004).