

SENIORITY PAY

Summary

Seniority pay is the practice of granting pay increases solely on the basis of longevity and education level. Simply put, seniority pay rewards time on the job. Both seniority pay and the use of seniority to determine staff allocation prevent districts from making the best use of staff and of money.

Analysis

Combined with stringent standards for teacher discipline and discharge, seniority pay removes virtually all incentive for a teacher to be creative and to achieve. The teacher receives no monetary reward for doing well, nor consequences for doing poorly. Seniority pay supports mediocrity. Teachers who strive to excel out of concern for their students face the discouragement of watching unmotivated colleagues advancing at exactly the same rate.

Seniority pay and the state salary schedule

State law, in large part, enforces seniority-based salary schedules. The Washington state Constitution declares that “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders. . . .”¹ In 1977, the Washington Supreme Court found that the state had failed to provide an adequate level of funding for education.² The court ruled that the legislature must define basic education, and fully fund that level of education. In response to this decision, the legislature adopted the Basic Education Act of 1977.³

The Basic Education Act began the process of standardizing education funding across the state. One of the elements of the act was the establishment of a statewide salary allocation model. The state established a base salary for a teacher with a BA and no years of teaching experience, and then provides a standard increase formula for each year of experience and for additional advanced education. Each district informs the state of the number of teachers it has at each step in the state’s salary schedule. The state uses the information as one factor in its calculation of how much money to send to each district. (Other factors in the funding equation include the staff-to-student ratio and the size of the district.)

School districts are required to create a salary schedule for all teachers.⁴ State statute sets limits on the district’s schedule: teachers cannot be paid less than state-established minimums, and basic education employees⁵ as a whole cannot be paid more than the amount the state provides. Over the last few decades, the state has attempted to bring all districts into compliance with the salary allocations, but some districts still have noncompliant schedules.⁶ Although the state allocation leaves each district with a little leeway in allocating the money, flexibility is fairly limited; most districts simply follow the state schedule.

Consequences of the seniority-based salary schedule

Because of the state allocation model, a teacher in Okanogan County, which has a median community income of \$26,074, makes exactly the same income as a teacher with the same education and experience in Snohomish County, with a vastly higher cost of living and a median income of \$45,651.⁷ School districts have little flexibility to accommodate different situations in different districts. When teacher salaries fall behind in one area, all salaries across the state must be raised, even if that may be unwarranted in some districts.

Seniority pay schedules hinder districts in attracting teachers with expertise in more difficult disciplines. If a degree in physical education entitles a teacher to just as much pay as a degree in an advanced science, no incentive exists to procure degrees in the more difficult studies. Those individuals who already have degrees in technical subjects are more likely to seek employment that will give them financial recognition for their abilities and achievements.

Seniority pay schedules further limit districts to considering only experience as a public school teacher; other experience of equal or greater value for the teacher's work assignment provides no benefit. A

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teacher's prior work may lead to a deeper knowledge and experience in a given subject and enable the teacher to impart his or her knowledge to others more effectively than the same time spent teaching an unrelated subject. However, seniority pay scales provide no process for acknowledging outside experience, even if that experience is teaching. A teacher with twenty years of experience in a private school would start at the same pay level as a teacher with no experience at all.

The salary schedule creates other unexpected consequences. School districts and teachers enter into supplemental contracts for work beyond the standard contract, whether for particular activities, such as coaching, or for working extra days beyond the school year. Payments for supplemental contracts are often tied to the salary

schedule, even though these are paid for out of funds the district must raise independently of state funds. Thus, if the legislature decides to raise the salary of beginning teachers, it is also increasing the burden on districts in matters unrelated to basic education. It may be wise for districts to anticipate this difficulty and not tie supplemental pay to the salary schedule.

The worst consequence of the state salary schedule is that all districts in the state must conform to the schedule, limiting each district's ability to experiment with alternative methods of allocating its resources. Washington's seniority pay scale limits districts' options. Currently, districts may not consider tying pay to teacher or student performance to improve education at their schools. Legislators should consider modifying the state's funding structure to allow districts flexibility in salary payments.

Use of seniority for staff allocation

Seniority also arises as an issue when districts lay off or transfer employees. Virtually all contracts require seniority to be considered as one factor in the process, and some make it the sole consideration. State law does not require districts to consider seniority,⁸ but the district must follow its own policies or contracts, and those usually make seniority relevant.

Some contracts designate seniority as the primary factor, without regard to what kind of experience is needed to continue the educational program:

Seniority placement shall be as follows:

Initial ranking on the District's seniority list shall be by the total years of certificated experience in the profession. Each full year (90 days or more) of regularly contracted, certificated experience in and out of Washington state shall be counted equally.⁹

A contract may include seniority as a subsidiary factor, to be considered after factors more closely related to the district's educational responsibilities are reviewed:

In considering and determining whether or not a certificated employee should be retained to fill a particular position or should be given notice of probable cause or causes for non-renewal of his/her contract under the procedures provided above, the following factors shall be considered:

1. Past performance as indicated by the annual evaluation report of such certificated employee.
2. Academic preparation for such position or similar positions; and
3. Experience in such position or similar position.

If two or more certificated employees are deemed equally qualified to handle a position under the three (3) criteria listed above, determination of the teacher to be retained shall be based upon time of service in the public schools of Washington.¹⁰

In the private sector, where an employer must succeed to survive, managers must respond to budget cuts by determining which staff members are best equipped to handle the workload under the constraints. Although seniority may be one factor, other considerations such as skill in the area of assignment, compatibility with others, or ability to handle increased stress may be more important. Seniority-based policies make the school district look to time clocked rather than the educational needs of students.

When seniority is made the primary consideration for transfer to new positions within the district, administrators trying to fill the position have limited discretion to determine what teacher is best qualified. Instead of being able to consider talent, outside experience, and flexibility, districts must simply accept the most senior employee who is interested in the position.

Pitfalls in existing seniority clauses

Reduction policies contain other problems. Many collective bargaining contracts still contain language that makes racial and ethnic backgrounds a principal consideration for retention:

The District shall continue to maintain its affirmative action commitment to employ employees of racial and ethnic background minorities. When an employee reduction in force is necessary, minorities shall be affected as follows:

1. If the layoff of employees can be accomplished according to procedures in this Article without lowering the current percentages of minorities within the bargaining unit, the standard procedures shall apply and this special provision shall not be used.
2. If the layoff of employees cannot be accomplished according to procedures in this Article without lowering the current percentage of minorities within the bargaining unit, the number of minority employees within the underrepresented group shall be reduced only to the extent of the percentage of minorities existing in that group before the layoff.
3. Layoff within the underrepresented groups shall take place on the basis of seniority.¹¹

This provision violates Initiative 200's prohibition on "grant[ing] preferential treatment to...any individual or group on the basis of race...ethnicity, or national origin in the operation of public

employment.”¹² Racial classifications in hiring and lay-off procedures also violate the United States Supreme Court’s decision in *Wygant v. Jackson Board of Education*.¹³ Districts need to be certain that any measures taken to develop a diverse teaching staff are in compliance with state and federal law.

Some local unions negotiate for the union leadership to have super-seniority, with rights exceeding those of all other members of the bargaining unit:

The president, president-elect, and three (3) negotiators of the Association, as designated on or before February 15 for the year during which this procedure is to be implemented for the purposes of retention, will be placed ahead of the most senior Employee in the District.¹⁴

Under such a clause, union leaders will not be subject to the same reduction in force policies as the other teachers in their district, even if they have fewer years of experience. This benefits union leadership at the expense of all other employees.

Although seniority provides a simple standard for making decisions on pay, transfers, or reduction in force, it should not outweigh considerations more closely tied to effective education. Overly broad seniority provisions may interfere with the school board and administration’s obligation to manage their district effectively. Where districts are not bound by law to follow seniority, they should avoid contract provisions that make seniority a primary consideration.

If seniority is added as a consideration, the contract should clearly state that it will be considered only when all other factors are equal.

Recommendations

If seniority is used at all in the assignment or dismissal of personnel, it should be a secondary consideration.

The school district’s primary goal in work force reduction or in assignment transfers must be the same as in all decisions it makes: to ensure quality education for students. Therefore, districts must retain the right to primarily consider staff needs in each department, teacher performance, and experience and education in necessary subject matters.

If *reduction-in-force policies* are included in the contract, the district must clearly state its right to consider all issues necessary to make an appropriate determination:

In considering whether an employee will be retained when a reduction in force is necessary, the District shall be entitled to consider all relevant factors to ensure the maximum effectiveness of the District’s education program. Such factors may include, but shall not be limited to:

1. The district’s educational program
2. The staffing needs in each department and building of the district
3. The employee’s performance and skills, including past evaluations; and
4. The employee’s education and experience in the position for which he or she would be retained.¹⁵

If seniority is added as a consideration, the contract should clearly state that it will be considered only when all other factors are equal.

School districts should remove language allowing race or ethnic background as a consideration in reduction in force.

School districts should take the next available opportunity to remove language from contracts that could open them up to liability for preferential treatment based on race.

INSURANCE BENEFITS

Summary

In the 1997–98 school year, districts statewide spent over \$1 billion dollars on employee benefits and payroll taxes—more than any other budget category except salaries. State law requires districts to seek competitive bids on almost all major purchases and projects.¹ Yet, no such requirement applies to employee benefits. Districts have no obligation to look for ways to provide better coverage for employees, and the current system often makes it difficult to do so. Health care costs have been unstable for some time and the insurance marketplace has suffered the loss of many providers. But, for districts willing to make the effort, several options exist.

Analysis

Insurance benefits are a part of the “wages” the employer must bargain with the union. The dollar amount a district can spend on insurance benefits is tied to the state’s contribution for insurance. If the average amount the district pays out per employee is more than the state contributes, the excess benefits must be counted as salary. The total amount a district can pay in salaries is in turn limited by the state salary schedule.² This does not mean that each employee must receive the same dollar amount of coverage. In fact, state law encourages districts to “pool” the benefit allocation so that excess funds from those who need less coverage can be applied toward coverage for those with more dependents.

The challenge for school districts is to find insurance that provides maximum benefits for employees with the limited dollars available.

Using state-provided insurance funds, a district can offer five basic types of insurance: medical, dental, vision, long-term disability, and life. Bargaining units negotiate with the district which of these they want the district to offer. Other forms of insurance may be offered through paycheck deductions. If all five of the basic forms have already been offered, other forms of insurance could also be offered out of the state allocation,³ but this tends to be cost-prohibitive. Where the state allocation is inadequate to cover an employee, the remainder of the premium is usually made up through a deduction from the employee’s paycheck. The challenge for school districts is to find insurance that provides maximum benefits for employees with the limited dollars available. This section of the study focuses on the different methods districts may use to provide basic benefits, particularly health, dental, and vision.

Traditional Private Insurance

The most common way for a school district to provide insurance benefits is through contracting with private insurers. The district usually binds itself to a particular insurance provider(s) in the collective bargaining contract or allows the union to choose the provider(s). The WEA has a list of approved providers, such as Washington Dental Services and Blue Cross, the major medical insurance provider in Washington state.

Under this system, districts have reported difficulty finding out how the money they have allocated for insurance is actually being spent. WEA-endorsed carriers generally cannot release utilization data—

specific information on how insurance has been used—at the district level. This is true because WEA, as the policyholder, owns the utilization data.⁴ Thus, districts cannot know specifically what coverage employees are receiving in exchange for the money the district pays for insurance premiums.

The unavailability of utilization data also makes it more difficult for districts to obtain competitive bids, since potential insurers will have no way of knowing what they would be insuring. Districts also may experience difficulty in calculating the cost of providing the insurance themselves.

Public Employee Benefits Board (PEBB)

Thirty-two school districts obtain health insurance through PEBB, a division of the state Health Care Authority. PEBB contracts with various private insurers to provide insurance to public employees. PEBB also provides the state-administered Uniform Medical Plan. When a district chooses PEBB, all eligible employees in the school district must enroll. However, once enrolled in PEBB, the employee may choose any of the offered plans that are available in his or her area. PEBB does not press for employer specific premium and claims information, particularly from small districts.

Insuring through PEBB has its advantages and disadvantages. If a district insures through PEBB, some of its administrative burdens may be lightened. For example, PEBB would handle program administration and employee enrollment, while districts would remain responsible for payroll deductions for insurance, local control of eligibility and applications, and so forth.⁵ In return, however, districts would be sacrificing a certain amount of control over benefits and purchasing decisions. Districts may find they enjoy increased flexibility outside of PEBB.

Finally, insuring through PEBB would not solve school districts' problems regarding the lack of utilization data because PEBB does not track information on a district specific level.⁶

Self-insurance

Districts may provide their own insurance, either alone or in combination with other districts.⁷ Through self-insurance, districts have the potential for greater control over insurance costs and increased options when it comes to selecting employee benefits. For example, a district that self insures is entitled to its own utilization data. It knows where its premium money is going, and it can make adjustments accordingly. By self-insuring, school districts are also able to realize investment income gains on their insurance pool.⁸

A districts' decision to self-insure will generally begin with a feasibility study to see whether a self-insurance system will be cost effective and whether the district has enough revenue to cover projected claims. If district-specific utilization data is unavailable, a district may use industry norms to estimate the necessary allocation per employee.⁹ It may be wise for a district to start slowly, self-insuring a portion of their benefits (*e.g.*, vision only) while working toward complete self-insurance over a number of years. This provides the district with the opportunity to build up its reserves and refine its self-insurance system.

Before a self-insurance program for health benefits is established, the district must obtain the approval of the state risk manager, at the department of general administration.¹⁰ Self-insurance

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programs are subject to an investigation fee to cover the cost of review and approval of their programs and may be subject to a start-up assessment. Self-insuring districts may also be subject to fees for subsequent investigations.¹¹ Districts that have terminated their self-insurance programs may still be assessed for administrative costs until the districts' liabilities and responsibilities have been fulfilled.¹² On the other hand, multi-district self insurance programs are exempt from insurance premium taxes.¹³

Sound Partnership

One example of a successful school district self-insurance program is the Sound Partnership, a self-insured trust. The Sound Partnership consists almost exclusively of Tacoma School District employees. Although it has undergone some structural changes, the Partnership has been in existence since the early 1980s. The trust includes fifty percent employer and fifty percent employee representation, and it offers employees all of their basic benefits: health, dental, vision, life, and long term disability.

Under its self-insured medical plan, the Partnership covers individual claims of up to \$150,000 per employee. It also has a reinsurance policy through Regence which covers employees' actual claims over that amount in any given year. In addition, there is an aggregate "stop-loss" limit, which protects the Trust in the event that actual group losses exceed projected costs by twenty-five percent.

Some districts that self-insure handle employee claims through a third party administrator.¹⁴ The Sound Partnership, on the other hand, maintains its own benefits office, which operates as a liaison between employee-members and benefit providers. Essentially, the office handles the financial aspects of the system, paying bills to carriers and walking employees through the process of filing a claim under the plan they have selected.

Most bargaining units, including school administrators, participate in the trust. (The exceptions to this are employees who are members of trade unions and have coverage through their own unions.) This system has been credited for making the benefits bargaining process more collaborative and less adversarial.

Sound Partnership plans are experience-rated, that is, their premium rate is based on their past experience. This helps control Partnership costs. Another advantage to the Sound Partnership is direct membership input. Members have influence over plan designs through their union representative, their trustee representative, or by calling the Sound Partnership office directly.¹⁵

Interlocal Agreements

Another solution for districts that are disillusioned with the traditional insurance system is to form an interlocal agreement with other districts. This system, which has been used in California for some time, is relatively new to Washington state. Although still in its fledgling stage, the Whatcom County School Districts Interlocal Agreement is one example. The districts involved in the agreement will have a countywide insurance committee comprised of a set number of representatives from each school district, with fifty percent employee representatives and fifty percent management representatives.

Individual school districts in the Whatcom County area are still in the process of forming their interlocal agreement, but employee response so far has been positive. The benefit package to be provided is somewhat uncertain, but the district insurance committees plan to move toward self-insurance in a 3–5 year time if advisable. Participants are hopeful that the arrangement will increase employee choice in medical benefits and will help districts control rising health care premiums. By combining a number of districts into a single insurance buying pool, the districts' overall buying power will increase.

While some providers have been willing to release utilization data to the districts involved in forming the interlocal agreement, another has refused to do so.¹⁷ Lack of utilization information may be overcome, but districts seeking to form an interlocal agreement will have a more difficult time without a clear picture of the risks they are insuring.

Recommendations¹⁸

School districts should consider the option of self-insurance.

Self-insurance has a number of advantages. Through a self-insurance system, districts may be able to save money, while increasing district control and employee choice in benefits. Although the initial change may be difficult due to funding, lack of utilization data, or simple inertia, districts may find the effort was well worth it in the end.

On the other hand, self-insurance is not for every district. Districts with a smaller number of employees will probably find that their risk pool is too small to make self-insurance a viable option, unless they combine with other districts in an interlocal agreement.

Districts interested in beginning a self-insurance program should view it as a process rather than an immediate change. By self-insuring only a portion of their benefits initially, districts allow time to build up their reserves and increase employee confidence in the new system.

School districts should avoid bargaining away their ability to find a competitive benefits plan.

Without being able to obtain utilization data, school districts will have much greater difficulty in determining whether their rates are competitive or obtaining bids from a prospective carrier. In addition, districts will face unnecessary challenges in projecting the costs of self-insuring employees.

Districts should avoid agreeing to any contractual terms that will prevent them from obtaining utilization data. It would be wise for districts to negotiate their right to any utilization data up front.

NO-STRIKE CLAUSE

Summary

Teachers' strikes have become a tolerated, if annoying, part of life. Whether they disguise the action as a "sick out" or openly proclaim a strike; whether they take a few days to protest, or delay school for weeks, striking teachers bring education to a grinding halt for the strike's duration. Collective bargaining contracts often try to prevent strikes by negotiating no-strike clauses; however, the lack of penalties or existence of exceptions may cause these clauses to do more harm than good.

Analysis

Legality of teachers' strikes

Not only do teachers' strikes hurt education, they also break the law. Under the common law of Washington state, no government employee may strike.¹ However, Washington teachers have participated in more than fifty strikes over the last few decades.² Unions justify this by stating that even though there is no law granting the right to strike, there is also no statute expressly prohibiting teachers from striking, or providing remedies against those who do strike.

Even if teachers had a right to strike under state law, most strikes would be unlawful because most collective bargaining agreements require binding arbitration. Labor law principles hold that if parties have agreed to arbitration as their means of resolving disputes, they may not resort to other methods such as striking.³ Many collective bargaining agreements also include a clause explicitly prohibiting strikes.

Although districts have the opportunity to clarify their rights in their collective bargaining agreements, any lasting solution may have to come from the legislature. Washington law clearly states that most state employees do not have the right to strike.⁴ However, the statute governing K-12 certificated staff does not address the subject.⁵ Even though prior court rulings make it clear that no government employee has a right to strike, the discrepancy sends a mixed message about the legality of teacher strikes. The legislature may wish to consider clearly establishing that teacher strikes are a violation of their responsibility to fulfill the state's paramount duty: the education of the children in the state.

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Effect of no-strike clauses

Most no-strike clauses read fairly simply:

The Association agrees that during the life of this Agreement, the Association and the bargaining unit employees shall not authorize, condone, sanction or take part in any strike, walkout or work stoppage of employees covered by this agreement.⁶

Standard legal remedies for a strike in violation of contract or law include injunction, damages against the union, and discipline or discharge of striking employees.⁷ Even so, a strike does not relieve an employer of its duty to bargain with the union, or allow the employer to make unilateral changes in working conditions.⁸ If a district expects to be able to take action in response to a strike, such as verifying proper use of sick or personal leave or deducting pay, it needs to have negotiated the right to do so in advance.

One example provides a detailed indication of penalties:

During the term of this Agreement, there shall not be authorized or recognized any strike, slow down or work stoppage or concerted activity by the employees and/or the Association, regardless of whether an unfair labor practice is alleged or otherwise. Should a strike, slow down or other stoppage by the employees or the Association occur, the Association will immediately instruct the employees in the bargaining unit to return to work. If the employees in the bargaining unit do not resume work immediately as required by this Agreement, any such refusal shall be sufficient cause for discharge and such employee shall be subject to disciplinary action, including discharge, and the Association shall be subject to damages for any failure or refusal to make all reasonable efforts to have the employees return to work.⁹

Some districts' sick leave policy preserves the district's right to examine the use of sick leave when a strike is suspected.¹⁰ PERC has upheld a public employer's use of existing sick-leave policy to withhold pay from those who are abusing the system.¹¹

Exceptions in no-strike clauses

Some no-strike clauses, purporting to prohibit strikes, contain exceptions so broad that they negate the rule. For example, a no-strike clause may explicitly allow the union to strike if the district is found by PERC to have committed an unfair labor practice.¹² This ignores the legal process PERC provides as a remedy for unfair labor practices. It assumes that one entity's illegal conduct justifies illegal conduct by another.

Other clauses allow strikes if they are conducted in concert with the state association,¹³ or other local associations.¹⁴ However, mere participation by affiliated associations in a strike does not justify breaking state law.

Some districts prohibit the employer from taking action if employees refuse to cross a picket line. This means that a "sympathy strike," or refusal to work because other unions are striking, is permitted:

It shall not be a violation of this Agreement nor shall any employee be disciplined or discriminated against for refusing to cross any lawful picket line in the course of performing his/her duties.¹⁵

One district allows strikes whenever the collective bargaining agreement is reopened, which occurs any time a "rule, regulation and/or law is changed."¹⁶ If "rule" includes a rule of the school district, this would allow the association to strike whenever the board changes its procedures—leaving the no-strike clause perpetually ineffective.

Recommendations

The legislature may wish to consider explicit statutory language prohibiting strikes and providing penalties.

Washington law provides no penalties for teachers' strikes. In contrast, other states have established not only clear prohibitions against strikes by public employees, but also explicit penalties on both employees and labor organizations.¹⁷ Possible penalties could include fining teachers an additional day's wages for every day they refuse to work, and fining the local organization or taking away payroll deduction rights if the union instigated the strike.

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Negotiated no-strike clauses should clearly define the legal rights and remedies of the parties.

No-strike language in a contract can be a useful way to establish the parties' responsibilities, duties, and remedies in the event of a violation. Explicit language should state the district's right to discipline or discharge striking employees. The no-strike clause should also state potential remedies: an injunction against continuing the strike, reduction of wages for days not worked by teachers, and liability for damages caused to the district by the striking teachers or by the union. No-strike clauses also should not make the union exempt from penalties for any illegal conduct.

A clause in the leave policy retaining the district's right to demand verification for sick or personal leave requests during a strike can be vital in ensuring the district is not subsidizing illegal activity. Following is a sample clause providing for verification of sick leave requests:

In the case of a strike or work stoppage by any association or union associated with the District, the Board of Directors and/or Superintendent reserve the right to ask for a doctor's validation of illness.¹⁸

No-strike clauses are not self-executing. They are only as strong as the will of the Board and administration to hold the union to its promise and ensure that public education continues without interruption over private disputes.

CLASS SIZE

Summary

Collective bargaining agreements often contain detailed provisions attempting to reduce class size. Although this is a popular education reform measure, it may not be the best use of resources. School districts should retain the flexibility to consider what use of district funds will result in the greatest improvement of learning for students.

Analysis

Class size reduction is one of the most popular education reform components. It is easy to understand, and the benefits seem self-evident. It is particularly well-liked by education unions. The NEA claims that excellence in the classroom can best be attained by small class sizes, optimally fifteen.¹ Most collective bargaining contracts contain a provision on class size—often including incredibly complex formulas and balancing factors.

It is not surprising that class-size reduction is so popular with the NEA and its state and local affiliates. Class-size reduction is a win-win situation for teachers and their unions. Teachers get decreased work loads and unions get more paying members. However, districts must never forget that the primary concern must be educating students. If class size reduction is not the most effective way for a district to improve education, then the district must retain the flexibility to use other options.

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The state funds districts at a certain level of “certified instructional staff” per student. The state funding level works out to approximately 22 students per certified teacher for fourth grade and above. If a district does not abide by the ratio, the Superintendent of Public Instruction will decrease the funding for that district.² Actual class sizes, although not well-documented, are higher. Grades K–3 are funded at a level of 18 to 20 students per teacher; the district will receive additional funds for staying closer to the lower class sizes.³

Costs and benefits of class size reduction

Implementing class size reductions is neither as simple nor as beneficial as it may seem. Early research does not show significant improvement in academic achievement until class size drops to 15 or fewer.⁴ Even the STAR experiment, often cited to support the importance of class size reduction, involved class sizes of 14–16 students and indicated that positive outcomes are less likely for class sizes of over 17.⁵ However, districts do not have the funds to support class sizes at that level. Collective bargaining contracts must deal with economic realities and establish class sizes usually in the low to mid twenties at the grade school level—a range commensurate with the state funding level. Even if a class size clause reduces class size from what the district would otherwise have, research has not established that reducing class size by a few students improves student achievement.

The costs of implementing class-size reductions are not just increased salary costs. Additional classes require additional support costs and facilities—facilities that may not be available to the district. Large classes are likely to exist throughout different grades and subject areas. Adding one or two staff in a building will not address all problems at once, even if it does reduce the overall average.

Some will undoubtedly argue that the increased costs are worthwhile if they improve student learning. This is only half true. Funds are limited. Increased costs are worthwhile only if they increase learning more than any other activity that can be done with the same funds. During the 1980's, class size reduction efforts in Austin, Texas, resulted in dramatic improvements only in classes that were implementing other reform measures.⁶ Furthermore, the STAR experiment sug-

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gests that class size reduction produces a one time gain in academic achievement with no subsequent increase in student performance.⁷ Research conducted by Washington's Joint Legislative Audit and Review Committee suggested that "steps other than reducing class size can improve student performance at less cost."⁸ Districts should consider whether funds spent on class size reduction would be better used for education reform measures with greater long-term results.

Another crucial factor in the learning equation is experience and skill of the teacher. A child would be better educated in a classroom of thirty with an excellent teacher

than in a classroom of fifteen with a poor one. Class-size reductions disregard experience and skill and simply look to more teachers of whatever quality, requiring districts to hire new teachers and perhaps overlook deficiencies in existing teachers. California's class size reduction measures have resulted in a teacher shortage. Twenty-one percent of the California teachers hired during 1996-1997 had emergency teaching permits.⁹

Impact of class size limits

School districts that are bound by class size limits in their contracts cannot consider whether limited funds might be better used to increase learning in other ways. Perhaps the funds that might be used to reduce average class size by two students could better be used to provide additional teacher training, but a district bound by a class size clause may not consider such action. It may make sense to increase class size in some subjects requiring little individual contact in order to provide decreased class size for subjects requiring more intense work. For example, students might benefit more from a small class during an intensive science lab than during a history lecture. Unfortunately, a district with a class size clause stating a maximum for every class would be prohibited from using this option.

Class size clauses also expose a district to charges of unfair labor practices if budget constraints or policy considerations require it to violate established limits. Even a general clause, such as the following one, could create similar problems if the union alleges that the district has not been "*reasonable*":

Every attempt shall be made to maintain uniform class size consistent with staff and facilities. The counselor(s) and building administrator(s) will take all *reasonable* steps to fairly distribute students, within grade level or subject area, recognizing exceptional students may warrant lower class size due to increased demands for instructional support.¹⁰
[emphasis added]

Most class size clauses are far more detailed, including different levels for different grades and class types, and state averages, ranges and/or maximums on class size. Complicated clauses attempt to implement some degree of flexibility, realizing that across-the-board limits do not acknowledge different situations in subject matter and grade level. What they fail to acknowledge is the need for flexibility chronologically, assuming that the same structure will be appropriate to the district three or more years down the road.

Class size provisions may even create financial incentives to increase class sizes, in disregard of educational quality for students. Many provide for additional pay for teachers who have students beyond the maximum class size. Usually the pay increases as the number of students increases. This class size provision gives teachers incentive to seek as large a class assignment as possible.

Recommendation

School districts should remove or cut down on contract language establishing class size limits.

Districts must retain the necessary flexibility to determine how staff and funds can best be allocated to maximize student learning. Class size provisions should be removed from contracts where possible.¹¹ If class size provisions are included, districts should ensure that limits are based on averages or recommendations, not mandatory limits, and are feasible given district resources. Districts should also guard against providing remedies that may exacerbate the problem.

EDUCATIONAL POLICY

Summary

Education policy is the responsibility of the school board.¹ Teachers do have a considerable stake in the education policy at their schools, and the board should take advantage of their experience and earnestly seek their input. But the collective bargaining contract negotiated by the union is not the place for this. Giving the union control over education policy through contract provisions is abdicating the board's ultimate responsibility as elected officials.

Analysis

Curriculum selection

A few contracts include the district's philosophy concerning educational materials. These are generally phrased in broad and non-objectionable terms: "materials appropriate for student's abilities"; "respect democratic traditions"; "respect both sexes and the multi-cultural reality of our society"; "meet district objectives."² These vague terms are subject to multiple interpretations, philosophically or legally. Districts must remember that this is a legally binding contract and all of its provisions

will be interpreted as part of that contract. The district's past practice will be used to interpret the terms, subjecting any change in the curriculum to a potential legal challenge as a violation of one of the philosophic statements in the contract.

Some contracts give the union authority to appoint or approve most or all of the members assigned to the curriculum selection committee.

State law requires each school board to establish an instructional materials committee.³ Its function is to recommend educational materials to the school board. The union may be given an inappropriate level of control here through negotiated contract terms. The goal of a curriculum selection committee should be to give those who have a stake in the chosen curriculum a chance for input. Teachers, administrators, and parents all have an

interest. The teachers' union does not. Its function is to negotiate the terms and conditions of employment for its members, not to control district education policy. Yet some contracts give the union authority to appoint or approve most or all of the members assigned to the curriculum selection committee. These contract provisions contradict the state law, which places that authority with the superintendent and school board.⁴

Academic freedom

School districts should also be cautious about clauses governing academic freedom. Academic freedom is the teacher's and student's freedom to explore a variety of ideas. It is an aspect of freedom of speech. However, this freedom should not detract from the district's control over curriculum and education policy.⁵ In fact, the district is required by statute to enforce its course of study by not paying teachers who refuse to comply.⁶ Clauses that govern academic freedom and the introduction of controversial materials should be worded so that they reiterate the district's control over curricu-

lum. Education subject matter is inextricably linked to education method. Who can say whether a choice to use whole language or phonics to teach reading is a matter of method or subject matter? Because of this, a statement of the teacher's control over "methodology" might grant more discretion than is intended.

Academic freedom clauses often address the district's policy on controversial materials. These clauses often leave presentation of controversial material solely to the employee's discretion:

The District believes that controversial issues are a part of the District's instructional program when related to subject matter in a given grade level or specific curricular field. Employees will use professional judgment in determining the appropriateness of the issue to the curriculum and the maturity of the students.

In the presentation of all controversial issues, every effort will be made to effect a balance of biases, divergent points of view, and opportunity for exploration by the students into all sides of the issue.

In discussing controversial issues, the employee will encourage students to express their own view [sic], assuring that it be done in a manner that gives due respect to one another's rights and opinions. When discussing controversial issues, the employee will respect positions other than his/her own. Students will be encouraged, after class discussions and independent inquiry, to reach their own conclusions regarding controversial issues.⁷

By comparison, other contracts specifically reserve both the administration's and the board's right to review the introduction of controversial subjects:

The Employer recognizes the educational profession's right and responsibility to insist that children must be free to learn and teachers free to teach. Employees shall accept the responsibility of a commitment to the democratic tradition, the pursuit of truth, and a concern for the welfare, growth and development of students. Thus, no special limitations shall be placed upon study, investigation and interpretation of facts and ideas, except that:

- A. The employee must be acting within the scope on [sic] his/her certified area in accord with accepted and/or adopted courses of study.
- B. When an employee believes that he/she may be entering into a controversial area of instruction, he/she will first meet and discuss the area with his/her building principal prior to presentation. If the principal believes the area to be controversial, he/she may request an outline of the areas to be covered and the resources to be used in the instruction. The building principal shall approve with specific conditions/modification or reject proposed instruction in any such controversial area. Employee(s) may appeal the principal's decision to the superintendent. The decision of the superintendent may be appealed to the school board at its next regular session.
- C. The employee must exercise responsibility and prudence, and must realize that teaching in an elementary or secondary school places special responsibility upon the employee to carefully consider the maturity level of the student and the special circumstances that surround the teacher/learner relationship.

While the employee must feel free to teach and live according to his/her conscience, so must his/her students and the public he/she serves. The employee may not infringe upon the freedom of those he/she serves. Proselytism has no place in a public school. Opinion or theory must be stated as such for what it is.⁸

Districts should maintain a proper level of control over the topics introduced to students in the classroom and the method in which these topics are introduced.

Student discipline

State statutes and regulations govern student discipline in considerable detail, requiring consistent policies and cooperation between teachers and administration. Many contracts also contain a student discipline clause, which often only duplicates the statutory requirements. A student discipline clause tracking statutory requirements has little impact other than making student discipline another subject over which a third-party arbitrator may be able to rule in grievance, and reinforcing the union's image as the 'protector' of the teachers against potential unfair acts of management. Where districts are already bound by law, there is no need for them to incur further liability by binding themselves through additional contract provisions. When the student discipline clause is more detailed than the statutory provisions, the district has bargained away its responsibility and control over the learning environment.

Recommendation

Eliminate contract provisions that relinquish school board authority over curriculum, education policy, and student discipline.

Contracts should be carefully reviewed for clauses that bargain away portions of the school district's core responsibility for education. Districts should eliminate language that limits their control over curriculum selection or that allow union domination of the curriculum selection committee. Academic freedom clauses should clearly state the district's ultimate control over curriculum, and provide for administration and board review of controversial subject matters. Student discipline should not be included in collective bargaining agreements.

OTHER CONSIDERATIONS

Collective bargaining raises too many issues to be addressed in a single study. Time and space allocated for this study simply did not allow some crucial issues to be fully developed, but a number of these are noted below.

Supplemental Contracts

Because school districts are tied into the state salary schedule, it is easy to pull out an average employee compensation amount and state, “This is what teachers are being paid.” But simply looking at the state salary schedule does not provide an accurate picture of teacher compensation. School districts also have the option of paying teachers for “additional time, additional responsibility, or incentives.”¹ These amounts come primarily out of district levy funds, although some state allocations can be used to cover these costs.

In 1997, the Joint Legislative Audit and Review Committee (JLARC) issued a report on the use of supplemental contracts.² It found that 93 percent of all certificated instructional staff held at least one supplemental contract. The average amount all teachers received by supplemental contracts was \$3,529—eight percent of their total compensation.

The more difficult question is the exact purpose of the funds. Districts only report which contracts fall into the “additional time” slot. A random sample done by JLARC indicated that only 58 percent of supplemental contract expenditures were made for previously identified duties such as coaching, extra time, or extra-curricular activities. The remaining 42 percent were simply described by districts as “TRI,” an acronym for the statutory authorization of time, responsibility, or incentive. No consistent reports exist to track the exact use of this money.

The use of supplemental contract money is the primary means of providing additional pay for teachers beyond the state salary schedule. Unspecified supplemental contract money could be used in one district to pay for teachers doing after-hour work such as conferences and grading, while teachers in another district simply do so as part of their job. This means that the statewide salary schedule may not accurately reflect what teachers in various districts are actually getting paid to do the same work.

The inconsistencies in supplemental contract tracking make it difficult to make statewide generalizations. If the legislature intends to continue requiring standardization of teacher salaries, it will need to track supplemental contracts more closely, and evaluate how their use complies with its funding mechanisms. School districts should be aware that supplemental contracts, if not carefully used, can be a means of granting salary increases in circumvention of the law. Since supplemental contracts primarily come out of levy funds, each district should consider the possible future financial impact of its supplemental contract policy.

Any time the school district bears part of a union expense, some of the cost of supporting this private organization is resting on taxpayers.

Union Privileges

Most contracts contain a page or more establishing the union's rights—preceding any mention of teachers' rights. Although the precise makeup of these rights varies from contract to contract, standard provisions include:

- The right to transact union business on school property.
- The right to use school property for meetings, usually only compensating for additional maintenance costs.
- The right to use the school district's internal mail boxes, bulletin boards, e-mail, or web page to communicate with members.
- The right to use school district equipment for association business, usually with only partial reimbursement.
- The right to school district financial information provided to the board, proposed policy changes and other information, such as teacher addresses.
- The right to meet periodically with the administration and confer on changes in policy.
- The right to have union members involved in contract negotiation or grievance proceedings to be paid by the district.
- The right to have the school district administer the deduction of union dues from employee paychecks.
- A specific pool of time available for teachers to be released to work on union business. The union generally pays only the substitute rate, leaving the district paying the difference between the substitute's salary and that of the released member.
- In large enough districts, full-time release for the union president and perhaps other teachers with union positions. Although in most districts the union fully reimburses the district for the union president's salary costs, the absent president continues to advance on the seniority scale despite being out of the classroom, increasing the district's salary costs when the former president returns to work. Meanwhile, the district must find a teacher to fill in temporarily for the absent union president.

These rights granted to the association can have a significant cost to the district, both documented and undocumented. Any time the school district bears part of a union expense, some of the cost of supporting this private organization is resting on taxpayers.

Leave

There are two basic types of leave: short-term leave, generally for a specified number of days per year and usually paid; and long-term leave, generally for an amount of time that varies with the situation, and usually unpaid. Both types pose financial and management difficulties for school districts.

Although the state salary schedule does not allow a district to pay teachers extra money for work in basic education, it does allow a district to pay teachers the same amount on the salary schedule for

doing less work. This is because contracts can provide for different amounts of leave, resulting in variation among districts in the number of work days needed to gain equivalent pay. Increases in available leave also mean increases in the district's need to find substitutes.

Long-term leave, although usually unpaid, imposes other burdens. Many districts allow a year or more off for such purposes as child care, recuperation, study, travel, or sometimes no specific reason at all. A teacher on an unpaid leave has the right to be rehired in the future. Thus, the district is missing a staff person it needs for a lengthy period of time without being able to hire a long-term replacement. Another consideration is which benefits continue while a teacher is on leave. If seniority is allowed to accrue while an individual is on a long-term leave, the district will be paying extra in the future for time that was not spent teaching.

LOOKING FORWARD

In the coming years, school boards in Washington state will continue to grapple with collective bargaining as one of the primary influences on education in their district. If school board members are more informed and better prepared to deal with future challenges in the collective bargaining process, they are more likely to arrive at an end result that is beneficial for everyone in education.

One issue on the horizon is that of certification by the National Board for Professional Teaching Standards. Unions are already calling for school districts to offer incentives for teachers to seek this additional national certification. Although the idea of national certification sounds good, concerns have been raised about the level of control exercised over the National Board by the NEA and AFT. National certification may prove to be simply one more method to take discretion over education away from the local, elected school board. Also, a school board that once began offering financial incentives for gaining national certification would find it difficult to go back—thus binding itself to an ever-increasing financial burden.

All education proposals must be evaluated on the merits of their real impact, not on the basis of whether they sound good, or have good intentions. A proposal that gives more control to a private entity and less to the elected school board is a threat to the will of the electorate. Nothing should be undertaken without a clear understanding of who is going to provide accountability, what the costs will be, and what the benefit will be to students.

Many of the challenges posed by collective bargaining stem from the nature of the process itself. Any system that grants a monopoly to one entity is bound to lose its focus on the end product and begin to seek primarily to promote and maintain its own power. The laws governing collective bargaining in this state have allowed a single private entity to dictate much of what occurs in public education. It is time to reconsider whether this system, on the whole, has harmed or helped education. It is time to turn the focus of education back to the students.