

The Business of Teaching: Can a New Contract Change the Culture?

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Teachers, unions, and the contracts governing the teacher-school relationship stand at the center of the current debate regarding education reform. Under today's typical contract, unions and districts are often positioned as adversaries, rather than partners working together to improve student outcomes. Recently, critics of public-sector collective bargaining have increased claims that dismantling teachers' unions is the only way to improve the U.S. public school system. This Note argues, instead, that a new conceptual approach to the contracts governing teachers should be a central component of any education reform plan.

Based on an interdisciplinary analysis of existing literature grounded in both qualitative and quantitative research, this Note identifies four concepts that should guide this new approach: (1) effective training of new teachers; (2) an emphasis on employee engagement; (3) allocation of time for collaboration; and (4) minimization of attrition. It then analyzes how judicial opinions have reinforced the historical perception of public-sector collective bargaining as anti-democratic, and the resulting polarization of education reform camps. This Note finds that current education reform philosophies fail to meaningfully empower teachers. Based on this conclusion, this Note recommends a new approach toward teachers' contracts that is grounded in a more nuanced understanding of teachers' role within the classroom, and that recognizes their important role within the broader education reform movement.

I. INTRODUCTION

The public education system in the United States is at an important crossroads. When Congress passed No Child Left Behind

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(“NCLB”)¹ in 2001, supporters on both sides of the political spectrum hailed the new legislation as a meaningful first step on a long journey to comprehensive education reform.² The law sought to give the federal government a larger role in guiding public education without unduly undermining state autonomy. Almost fifteen years later, virtually all education reformers recognize that there remains much work to be done — but they hold increasingly polarized views regarding the best tools and methodologies to fix the system of teaching. While some reformers call for improved accountability via teacher evaluations tied to test scores and increased teacher monitoring by central authorities, a view adopted to varying degrees by a majority of state legislatures,³ other reformers demand a more *laissez-faire* approach that treats teachers as true “professionals” rather than mere “at-will” employees.⁴ Neither side, however, has fully demonstrated how its respective solution will empower teachers to improve student outcomes.

In his second State of the Union address, President Barack Obama emphasized that, after parents, the most significant impact on a child’s success comes from the teacher standing at the front of the classroom.⁵ President Obama explained, “In South Korea, teachers are known as ‘nation builders.’ Here in America, it’s time we treated the people who educate our children with the same level of respect.”⁶ This is a worthy sentiment, but what does it mean to treat teachers with more “respect,” and how do we

1. No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

2. U.S. DEP’T OF EDUC., A GUIDE TO EDUCATION AND NO CHILD LEFT BEHIND 13 (2004) (documenting that the law received overwhelming bipartisan support). Prominent members of both political parties helped secure the bill’s passage: Senators Ted Kennedy (D-MA) and Judd Gregg (R-NH) were the chief sponsors in the Senate while Congressmen George Miller (D-CA) and John Boehner (R-OH) were the chief sponsors in the House. *Id.*

3. KATHRYN M. DOHERTY & SANDI JACOBS, NAT’L COUNCIL ON TEACHER QUALITY, STATE OF THE STATES 2013 CONNECT THE DOTS: USING EVALUATIONS OF TEACHER EFFECTIVENESS TO INFORM POLICY AND PRACTICE (2013). As of September 2013, thirty-five states and the District of Columbia mandate that student achievement “is a significant or the most significant factor in teacher evaluations.” *Id.* at *i*. Only ten states (Alabama, California, Idaho, Iowa, Montana, Nebraska, New Hampshire, North Dakota, Texas and Vermont) have no formal policy requiring evaluations to include an objective measure of student achievement when evaluating teacher effectiveness. *Id.*

4. Diane Ravitch, *American Schools in Crisis*, SATURDAY EVENING POST, Sept.–Oct. 2011, available at <http://www.saturdayeveningpost.com/2011/08/16/in-the-magazine/trends-and-opinions/american-schools-crisis.html>.

5. Barack H. Obama, U.S. President, Second State of the Union Address (Jan. 25, 2011), available at http://www.nytimes.com/2011/01/26/us/politics/26obama-text.html?_r=0&pagewanted=all.

6. *Id.*

ensure that increased respect translates into tools, training, and conditions that enable them to provide more effective instruction? Does respect for teachers mean respect for their unions and collaboration with unions to improve student results? And if so, what should be the goals of the management-union partnership?

In attempting to answer these questions, this Note argues that it is necessary to rethink what it is that we, as a nation, expect teachers to do within the education system and how we expect the teacher-school relationship to be structured. The basic document on which unions have long relied to govern relations between teachers and their supervisors is the collective bargaining agreement (“CBA”).⁷ While there is no single CBA that governs across district or state lines, there are common traits that characterize the vast majority of teacher contracts. For instance, many teacher CBAs ensure comparable salary increases, provide almost identical tenure requirements, and similarly stipulate how teachers must allocate their time among various daily tasks.⁸ Although recent arguments have focused on whether teacher CBAs should further narrow or widen the scope of teacher autonomy, the more relevant question is how the contract should define autonomy such that it accords teachers sufficient independence to contribute to a school’s overall educational mission without abandoning teachers’ need for institutional support.

As cities across the country seek to renegotiate teachers’ contracts in a manner that will facilitate rather than impede educational progress,⁹ it is imperative that these revised contracts reflect this nuanced understanding of teacher autonomy. Although a fragile bipartisan consensus emerged under NCLB and gained traction under President Obama’s Race to the Top, the implementation of both programs — which were largely spearheaded by

7. The U.S. Bureau of Labor Statistics Glossary defines collective bargaining as a “[m]ethod whereby representatives of employees (unions) and employers negotiate the conditions of employment, normally resulting in a written contract setting forth the wages, hours, and other conditions to be observed for a stipulated period (e.g., 3 years).” *Glossary*, U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/bls/glossary.htm#B> (last modified Feb. 28, 2008).

8. See, e.g., UNITED FED’N OF TEACHERS & BD. OF EDUC. OF THE CITY SCHOOL DIST. OF THE CITY OF N. Y., COLLECTIVE BARGAINING CONTRACT, 2007–2009, at 15 (2007), available at http://www.uft.org/files/contract_pdfs/teachers-contract-2007-2009.pdf.

9. See, e.g., Editorial Board, *The New Mayor and the Teachers*, N.Y. TIMES, Dec. 2, 2013, at A32 (explaining that one of the major challenges facing newly elected New York City Mayor Bill de Blasio is that the United Federation of Teachers — which represents forty percent of the City’s work force — has been without a contract since 2009).

non-educators — “cast[s] considerable doubt” on both the value of teachers’ unions and the quality of teachers themselves.¹⁰ A reinvigorated CBA presents an opportunity to empower teachers and reorient the focus of the unions that represent them.

In order to be effective, the reinvigorated CBA must prioritize the goal of promoting meaningful employee engagement. Employee engagement is a widely recognized key indicator of a high performance workplace.¹¹ Engagement is defined as “the extent to which an employee expends discretionary effort in alignment with corporate goals.”¹² McKinsey’s Organizational Health Index — a database that includes over 750,000 responses from both public and private sector actors — determined that organizations with top-quartile scores in employee motivation to act in accordance with organizational objectives are fifty-nine percent more likely to have top-quartile overall organizational health scores.¹³ McKinsey proposes the following solution to improving worker engagement in any industry: “[t]hink about the ways in which your company does or does not articulate its higher purpose — the mission that lifts it out of the mundane.”¹⁴

It is essential that educators use new CBAs to allow teachers, as represented by unions, to embrace schools’ “higher purpose.” Only if the CBA forges a meaningful management-labor partnership will teachers receive support from administrators and peer educators, participate in the design and implementation of reforms, and obtain the flexibility needed to respond to localized challenges. Without such a partnership, attempts to empower teachers to improve educational outcomes will be hamstrung from the start.

Nearly thirty years ago, Albert Shanker, former president of the American Federation of Teachers, acknowledged the risk that educational progress in the United States would stall during a 1985 speech to union members. Shanker, in a prophetic pronouncement, explained, “[w]e can continue working away at col-

10. Arthur E. Wise & Michael D. Usdan, *The Political Future of the Teaching Profession*, 32 EDUC. WEEK, Mar. 2013, at 26.

11. MCKINSEY & CO. & THE CONFERENCE BD., *THE STATE OF HUMAN CAPITAL 2012: FALSE SUMMIT 30* (2012).

12. *Id.* at 30.

13. *Id.* at 30. “Organizational health” is defined as the organization’s capacity to deliver above-average operating and financial performance over the long term. See *Organizational Health Index*, MCKINSEY SOLUTIONS, <http://solutions.mckinsey.com/index/solutions/organizational-health-index> (last visited Feb. 28, 2015).

14. MCKINSEY & CO. & THE CONFERENCE BD., *supra* note 11, at 34.

lective bargaining, as I believe we should; but if that is our only decision, I predict that in 10 or 15 years from now we will find that we have largely been on a treadmill.”¹⁵

This Note considers how teachers can get off this treadmill by examining the failure of current and past organizational systems to improve student learning and identifying the potential role of contracts and unions in implementing constructive change. The following sections explore why a new CBA, grounded in the concept of teachers and schools as working partners, should be a central tenet of any educational reform agenda.

Section II discusses the key attributes of effective organizations within both the private and public sectors and identifies important lessons that translate to the teaching profession. It also compares strategies that have proven successful in other nations’ education systems to those utilized in the United States.

Section III explores how judicial opinions have reinforced the perception of public sector collective bargaining as an anti-democratic practice. It discusses how, in an attempt by both parties to use CBAs to limit the other side’s discretion, all involved parties became trapped in an inflexible bureaucracy. The section also looks at the teachers’ union as a political interest group and its failure to advocate for teachers’ differentiated classroom needs.

Section IV explores two extreme “solutions” to the problems of bureaucracy embraced by current education reformers. First, it examines the flaws inherent in the “craft model,” which assumes that teachers’ diagnostic capacities can never transcend pure intuition. Next it examines the impact that unilaterally imposed reforms can have on the spirit of inquiry and collaboration that reformers should seek to encourage among teachers.

Finally, Section V discusses the importance of forging a meaningful management-labor partnership by engaging teachers as active participants in the “mission” of educating students. This Section explains how a new CBA — created in partnership with unions — can empower teachers and enable schools to become more effective organizations.

15. Albert Shanker, President, Am. Fed’n of Teachers, In Support of Teachers: The Making of a Profession, Address Before the Representative Assembly of the New York State United Teachers (Apr. 1, 1985).

II. KEYS TO EFFECTIVENESS

Countless studies have documented flaws in the way that the United States treats its teachers. These studies compare the U.S. model to education systems in other nations as well as human capital strategies utilized by successful organizations in other industries operating in both the public and private sectors.¹⁶ A consensus conclusion emerges: the human capital approach, embraced by school districts and unions, grounded in the CBA, fails to align with best practices.¹⁷ A recent report by the Council on Foreign Relations explains that the U.S.'s "reluctance to embrace new ideas in human capital management . . . places high costs on the educational system, dampens innovation, and increases the turnover rate among the best educators."¹⁸ This Part explores human capital strategies shared by successful companies and educational systems across the world, contrasting them with tactics embraced by the U.S. teaching profession. It also begins to examine why current CBAs have hindered rather than facilitated improvement in these various areas.

A. PRE-JOB TRAINING OF NEW WORKERS

One of the greatest challenges for both public and private sector organizations is training future workers to be true problem solvers.¹⁹ However, unless an industry or profession dedicates

16. See, e.g., COUNCIL ON FOREIGN RELATIONS, INDEPENDENT TASK FORCE REPORT NO. 68: U.S. EDUCATION REFORM AND NATIONAL SECURITY (2012); Thomas Fuchs & Ludger Wößmann, *What Accounts for International Differences in Student Performance? A Re-examination Using PISA Data*, 32 EMPIRICAL ECON. 433, 433–64 (2007); MCKINSEY & CO., CLOSING THE TALENT GAP: ATTRACTING AND RETAINING TOP-THIRD GRADUATES TO CAREERS IN TEACHING (2010).

17. See generally note 16, *supra*.

18. COUNCIL ON FOREIGN RELATIONS, *supra* note 16, at 33.

19. This problem is not limited to the teaching profession. See MCKINSEY & CO., PROBLEM-SOLVING BOOTCAMP BROCHURE (2013). Indeed, teaching individuals to accurately identify the right problems is a herculean task. *Id.* at 2 ("The most frequent cause of failures in business is not people who answered the right questions incorrectly, but people who answered the wrong questions correctly."). For examples of attempts to grapple with this problem in other professions, see, for example, David M. Schizer, *Should Law School at Columbia Be Three Years?*, COLUM. L. SCH. MAG., Fall 2013, <http://www.law.columbia.edu/magazine/622318/should-law-school-at-columbia-be-three-years?> (arguing that, the third year of law school is important in order for students to enhance their connections to the profession, sharpen their interdisciplinary expertise, and explore the international scope of the law school's curriculum); William Branch Jr. et al., *A Good Clinician and a Caring Person: Longitudinal Faculty Development and the Enhancement of the Human Dimensions of Care*, 84 ACAD. MED. 117, 117–25 (2009) (finding

appropriate resources to training aimed at this goal, workers remain ill-equipped to deviate from current practices in order to address unanticipated circumstances.²⁰

Various top-performing nations have recognized that the teaching profession is no exception, and teachers must be provided with the tools that empower them to be true problem-solvers. Since Finland emerged as the top-scoring nation on the 2000 Program for International Student Assessment (“PISA”), it has garnered interest from education reformers across the world who hope to adopt Finnish techniques to their own countries.²¹ Although Finland dropped slightly in the most recent 2012 PISA results,²² Finland’s impressive student performance still offers various lessons for reformers across the world.²³ A primary example is Finland’s strong focus on educating its current and future teachers, a policy that has been labeled the “secret to Finland’s success.”²⁴ All teachers in Finland hold a master’s degree,²⁵ and teacher preparation programs focus on building pedagogical skills that empower teachers to manage their classrooms in accordance with research-guided best teaching practices.²⁶ One study explains that such a focus enables each future teacher to gain a fuller understanding of “the systemic, interdisciplinary nature of educational practice.”²⁷

that the combination of “experiential learning of skills with reflective exploration of values” can positively impact future doctors’ humanistic skills).

20. See MCKINSEY & CO., PROBLEM-SOLVING BOOTCAMP BROCHURE (2013).

21. See, e.g., PASI SAHLBERG, STANFORD CTR. FOR OPPORTUNITY POLICY IN EDUC., THE SECRET TO FINLAND’S SUCCESS: EDUCATING TEACHERS (2010).

22. According to the 2012 PISA report, Finland dropped to the twelfth slot in math. See ORG. FOR ECON. CO-OPERATION & DEV., PISA 2012 RESULTS IN FOCUS 5 (2012), available at <http://www.oecd.org/pisa/keyfindings/pisa-2012-results-overview.pdf>. Finland’s mean scores are 519, 524, and 545 in math, reading, and science respectively. *Id.* The overall mean scores for the three subjects are 494, 496, and 501. *Id.* In 2012, the United States received scores of 481, 498, and 497. *Id.*

23. See Valerie Strauss, *Are Finland’s Vaunted Schools Slipping?*, WASH. POST (Dec. 3, 2013), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/12/03/are-finlands-vaunted-schools-slipping/>. One explanation for Finland’s drop in the 2012 PISA results is Finland’s “focus on explaining the past to thousands of education tourists” which may have “shifted attention away from developing Finland’s own school system.” *Id.* Another explanation is that since PISA is graded on a curve, “what other nations have learned from Finland and put into practice has necessarily brought down Finland’s results.” *Id.*

24. SAHLBERG, *supra* note 21, at 1.

25. *Id.* at 2.

26. Ian Westbury et al., *Teacher Education for Research-Based Practice in Expanded Roles: Finland’s Experience*, 49 SCANDINAVIAN J. OF EDUC. RES. 475, 475–85 (2005).

27. SAHLBERG, *supra* note 21, at 4.

The education system in Singapore — whose students scored first in mathematics and science on the Trends in International Mathematics and Science Study (TIMSS) assessments in 2003 — also emphasizes training of new teachers.²⁸ Singapore overhauled its approach to teacher education in 2001, increasing the emphasis on engaging future teachers “in the kind of inquiry and reflection in which they are expected to engage their students, so they can teach for independent learning, integrated project work, and innovation.”²⁹ Additionally, a new school partnership model has increased hands-on experience by involving schools more proactively in supporting the training of future teachers.³⁰

In the United States, meanwhile, recent research analyzing the impact of teacher preparation programs reveals that in the aggregate, “it does not appear to matter if a teacher is traditionally trained, receives ‘fast track’ training through an alternative program, or gets no training at all.”³¹ Although this finding has led some to recommend abandoning such programs altogether, research shows that the better conclusion is that the United States lacks a sufficient number of high-quality teacher preparation programs and thus any impact they may have is diluted by the large number of ineffective programs.³²

The National Council on Teacher Quality (“NCTQ”) recently published a comprehensive report analyzing the quality of teacher preparation programs across the country.³³ Under its evaluation — which analyzes the programs using 18 standards grouped into the four categories of selection, content preparation, professional skills, and outcomes³⁴ — over seventy-five percent of the programs earned two or fewer stars, “ratings that connote, at best, mediocrity.”³⁵ Nevertheless, while states have implemented

28. Tan Lay Choo & Linda Darling-Hammond, *Creating Effective Teachers and Leaders in Singapore*, in *TEACHER AND LEADER EFFECTIVENESS IN HIGH-PERFORMING EDUCATION SYSTEMS* 33, 35–36 (Linda Darling-Hammond & Robert Rothman, eds., 2011). Approximately ninety percent of Singapore’s students scored above the international median on the TIMSS tests. *Id.* at 33. In 2009, when it first entered the PISA, Singapore also scored near the top of the rankings in mathematics, science, and reading. *Id.*

29. *Id.* at 35.

30. *Id.*

31. JULIE GREENBERG, ARTHUR MCKEE & KATE WALSH, NAT’L COUNCIL ON TEACHER QUALITY, *TEACHER PREP REVIEW: A REVIEW OF THE NATION’S TEACHER PREPARATION PROGRAMS* 10 (2013).

32. *Id.*

33. *Id.*, *passim*.

34. *Id.* at 8.

35. *Id.* at 3.

a seemingly endless list of changes to their teacher policies, they have made barely any changes to their teacher preparation programs.³⁶

One explanation for the lack of change among teacher preparation programs is that the vast majority of current teacher CBAs rely on the steps and lanes salary schedule.³⁷ Under this system, teacher salaries increase incrementally based on the number of years they have taught and additional professional degrees they obtain with no consideration as to whether an additional degree empowered the teacher to be more effective. The system, which was implemented in the early 1900s, was intended to provide transparency in response to charges that teacher salaries were susceptible to societal bias based on both race and gender.³⁸ An unfortunate downside of the outdated system is that it removes the impetus for teachers or their unions to advocate for higher quality education programs. After all, it is not in their short-term interest to advocate for higher standards — even if such a change would ultimately strengthen the profession — because such advocacy efforts would make it more difficult to obtain advanced degrees and thus also more difficult to obtain salary increases.

B. A CULTURE OF ENGAGEMENT

Employee engagement is inextricably linked to both employee performance and organizational recruitment efforts. An analysis of Apple, for instance, which is among the most valuable corporations in the world,³⁹ reveals distinct evidence of the importance of meaningful employee engagement. McKinsey highlighted the company in its report on human capital as an example of a company that boasts more qualified and motivated talent than any of

36. *Id.* at 4. *But see* Press Release, N.Y. State Governor's Press Office, Governor Cuomo Announces New Admission Requirements for SUNY Teacher Preparation Programs (Sept. 23, 2013), available at <http://www.governor.ny.gov/press/09232013-suny-teacher-preparation-programs> (announcing the adoption of new admission requirements for incoming teachers at SUNY colleges and universities across New York State).

37. CAROLYN KELLEY & ALLAN ODDEN, CPRE FINANCE BRIEFS, REINVENTING TEACHER COMPENSATION SYSTEMS 1 (1995). *See, e.g.*, UNITED FED'N OF TEACHERS, *supra* note 8, at 41.

38. KELLEY & ODDEN, *supra* note 37, at 1–2.

39. *See, e.g.*, *The World's Most Valuable Brands*, FORBES, <http://www.forbes.com/powerful-brands/list/> (last updated Nov. 2014) (listing Apple as number one of its list of the world's most valuable brands).

its competitors, without shelling out disproportionate salaries or allowing employees to slack off during the workday.⁴⁰ In examining the secret behind Apple's success, McKinsey concludes, "[i]n short, to work at Apple is not a job, it's a crusade. And some of the world's finest computer engineers flock to it."⁴¹ In other words, Apple attracts talented individuals because it successfully articulates what about its core mission elevates the company above the mundane.

A 2010 McKinsey & Company report details the United States' failure to attract "top-third" college graduates to the teaching profession.⁴² McKinsey concluded that the U.S. currently attracts the majority of its teachers from the bottom two-thirds of college classes, with almost half coming from the bottom third.⁴³ This contrasts sharply with many top-performing nations that recruit almost exclusively from the top third of the academic cohort and emphasize the need to foster a professional working environment for teachers.⁴⁴

Persuading sought-after employees to "flock" to a workplace is no small task, especially when that workplace is one as demanding as the classroom — however, other countries have shown that it is an achievable goal. Finland, for instance, emphasizes trust in teachers and a high degree of individual teacher autonomy, which Finnish educators analogize to the professional independence and commitment to high standards that is characteristic of doctors in many countries.⁴⁵ Illustrative of this professional respect, the Finnish word for schoolteacher is the same used for university professors.⁴⁶ Teachers are expected to serve as "action researchers" who can contribute not only to the implementation, but also to the creation and design of various reform efforts.⁴⁷ Among young Finns, teaching is consistently the most admired

40. MCKINSEY & CO. & THE CONFERENCE BD., *supra* note 11, at 30.

41. *Id.*

42. MCKINSEY & CO., *supra* note 16, at 5.

43. *Id.* at 10.

44. *Id.* at 9–10.

45. *Id.* at 24.

46. ORG. FOR ECON. CO-OPERATION & DEV., BUILDING A HIGH-QUALITY TEACHING PROFESSION: LESSONS FROM AROUND THE WORLD 11 (2011), *available at* <https://www2.ed.gov/about/inits/ed/international/background.pdf>.

47. *Id.*

profession in regular opinion polls of high school graduates.⁴⁸ In fact, “Finland has raised the social status of its teachers to a level where there are few occupations with higher status.”⁴⁹ Annually, approximately 20,000 applicants compete for roughly 5,000 slots.⁵⁰

In stark contrast to nations whose students consistently achieve high PISA rankings, only about twenty-five percent of U.S. teacher preparation programs restrict admissions to students in the top half of their class.⁵¹ Other nations have begun to notice the lax admission standards in the U.S. An interview with a young math teacher in Ontario, in which he was asked whether the path to becoming a teacher had really become as difficult as policymakers had claimed, reveals the extent to which the U.S. teaching profession has run adrift:

Yes, he said, adding that many of his college friends who wanted to become teachers couldn’t get accepted into a teacher preparation program. “But,” he added, “there is a loophole.” What’s that? “You can go across the border. Everyone knows that anyone can become a teacher over there.”⁵²

Improving recruiting efforts and strengthening employee engagement are parallel endeavors. Although increasing teachers’ salaries is one enticing recruitment tool, such a strategy is neither necessary nor adequate on its own.⁵³ Additionally, given that the United States already spends significantly more dollars

48. Pasi Sahlberg, *Developing Effective Teachers and School Leaders: The Case of Finland*, in *TEACHER AND LEADER EFFECTIVENESS IN HIGH-PERFORMING EDUCATION SYSTEMS* 13, 14 (Linda Darling-Hammond & Robert Rothman eds., 2011).

49. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 46, at 11.

50. SAHLBERG, *supra* note 21, at 2.

51. GREENBERG, MCKEE & WALSH, *supra* note 31, at 2.

52. Jal Mehta & Joe Doctor, *Raising the Bar for Teaching*, PHI DELTA KAPPAN, Apr. 2013, at 8, *available at* <http://www.jstor.org/stable/23611688>.

53. Various studies show that increasing salaries does not significantly improve school districts’ abilities to attract or retain high-quality teachers. *See, e.g.*, JASON RICHWINE & ANDREW G. BIGGS, HERITAGE CTR. FOR DATA ANALYSIS, *ASSESSING THE COMPENSATION OF PUBLIC-SCHOOL TEACHERS* 1–2 (2011), *available at* http://thf_media.s3.amazonaws.com/2011/pdf/CDA11-03.pdf (questioning standard analytical approaches to analyzing teacher compensation that directly compare teacher salaries to the salaries of similarly educated and experienced private-sector workers and finding that teacher compensation could be reduced with only minor effects on recruitment and retention).

per pupil than other developed nations,⁵⁴ throwing more money at the problem is not the solution. McKinsey's 2010 study concluded that U.S. schools can more than double the portion of top-third new hires in high-need schools without raising salaries by focusing on improving the experience of teaching, a goal ultimately grounded in rethinking teachers' role within the education system.⁵⁵ The question thus becomes how to work with unions to create a labor-management partnership through which teachers can meaningfully participate in reshaping their profession. Such a partnership would also help attract candidates with greater intellectual capacity and who view teaching as a "crusade."

C. ALLOCATION OF TIME FOR COLLABORATION

Successful multi-dimensional organizations must allocate time for meaningful collaboration both among co-workers at the same level and vertically within the organization.⁵⁶ Public sector organizations are not alone in struggling to promote such collaboration. Almost eighty percent of senior executives surveyed in a 2005 McKinsey study reported that effective coordination across product, functional, and geographic lines was crucial for growth.⁵⁷ Despite such recognition, only twenty-five percent of those surveyed described their organizations as "effective" at sharing knowledge across these boundaries.⁵⁸

Within the education sector, collaboration can help teachers recognize common student knowledge gaps and learn from one another's mistakes. In fact, Canadian education researcher Michael Fullan identified "collective capacity" built through structured collaboration as the "hidden resource" that U.S. schools have failed to foster.⁵⁹ Fullan explains that collective capacity, or

54. ORG. FOR ECON. CO-OPERATION & DEV., EDUCATION AT A GLANCE 2013 159–80 (2013), available at <http://www.oecd.org/edu/eag2013%20%28eng%29--FINAL%2020%20June%202013.pdf>.

55. MCKINSEY & CO., *supra* note 16, at 6.

56. See, e.g., Robert L. Cross et al., *Mapping the Value of Employee Collaboration*, MCKINSEY Q., Aug. 2006, at 29, 29–41, available at http://www.mckinsey.com/insights/organization/mapping_the_value_of_employee_collaboration.

57. *Id.*

58. *Id.* at 30.

59. MICHAEL FULLAN, ALL SYSTEMS GO: THE CHANGE IMPERATIVE FOR WHOLE SYSTEM REFORM 4 (2010). See also Carrie R. Leana, *The Missing Link in School Reform*, STAN. SOC. INNOV. REV., Fall 2011, at 30, 30–35 (reporting on research linking the social capital that educators produce through collaboration to gains in student achievement).

the untapped potential to effect positive results when individuals across an organization collaborate rather than independently pursue parallel goals, improves organizations for two reasons:

One is that knowledge about effective practice becomes more widely available and accessible on a daily basis. The second reason is more powerful still — working together generates commitment.⁶⁰

Harvard Business School professor Amy Edmondson, who lays out several building blocks that are critical to successful organizational learning, identifies a supportive learning environment in which individuals feel “psychologically safe” to speak up and ask for help when they need it as one such foundational element.⁶¹ One tool to facilitate collaboration is through the creation of strategic inquiry teams, which bring teachers together to identify and focus on specific “learning gaps” that prevent struggling students from succeeding.⁶² Applied correctly, strategic inquiry teams have the potential to shift their members’ focus — and the schools’ focus — from teaching “do’s and don’ts” to the actual student learning that is or is not taking place in the classroom.

The majority of schools, however, have failed to create a culture supportive of adult learning and the sharing of educational practices. The root of this problem is the way in which schools expect teachers to allocate their time. Current CBAs often regulate with painstaking specificity how teachers must spend every minute of their days. The following provision drawn from the New York City teachers’ contract is representative of the level of detail common in many such contracts across the country: “The 37 ½ minutes of the extended four (4) days per week shall be used for tutorials, test preparation and/or small group instruction”⁶³ Despite such detail on certain points, most CBAs fail to allot sufficient time for teacher collaboration. A recent study by *Scholastic* and the Bill & Melinda Gates Foundation reveals that teachers spend less than four percent of their teaching day collaborating with colleagues and that the majority of lesson plan-

60. FULLAN, *supra* note 59, at 72.

61. Amy Edmondson, *Psychological Safety and Learning Behavior in Work Teams*, 44 ADMIN. SCI. Q. 350, 351 (1999).

62. See generally NELL S. PANERO & JOAN E. TALBERT, STRATEGIC INQUIRY: STARTING SMALL FOR BIG RESULTS IN EDUCATION (2013).

63. UNITED FED’N OF TEACHERS, *supra* note 8, at 15.

ning still occurs alone.⁶⁴ Teachers recognize that such a system ultimately falls short:

Many teachers crave more time for collaborating with colleagues. When teachers are asked how much time they actually spend on certain activities during their work day and how much time they would like to spend on the same activities, time for collaboration was among the top three “time disconnects” for teachers.⁶⁵

Dan Lortie identified the problem of teacher isolation in his well-known 1975 book *Schoolteacher*.⁶⁶ Lortie argued that the segregation of teachers into self-sufficient classrooms — which has been taking place since at least the 19th century — functions as one of the main roadblocks to improved instruction.⁶⁷ Even as an increasing number of private sector companies shift toward a team-based, collaborative model, changing institutionally entrenched norms is difficult. As American Federation of Teachers Vice President Adam Urbanski recognized, “We tend to confuse the familiar with the natural, so much so that letting go of old practices can prove more difficult than adding new ones.”⁶⁸

D. MINIMIZATION OF ATTRITION

Unnecessary employee attrition harms organizations in both the public and private sector. It has the greatest impact in work environments, such as schools, that have production processes necessitating continuous interaction among participants.⁶⁹ “Such organizations are unusually dependent on commitment, continuity, and cohesion among employees and are therefore especially

64. SCHOLASTIC & THE BILL & MELINDA GATES FOUND., PRIMARY SOURCES: 2012, AMERICA’S TEACHERS ON THE TEACHING PROFESSION 14 (2012), available at http://www.scholastic.com/primarysources/pdfs/Gates2012_full.pdf.

65. *Id.* at 61.

66. DAN C. LORTIE, *SCHOOLTEACHER: A SOCIOLOGICAL STUDY* 55–81 (1975).

67. *Id.*

68. Adam Urbanski, *Real Change is Real Hard: Lessons Learned in Rochester*, 4 STAN. L. & POL’Y REV. 123, 124 (1993).

69. Charles E. Bidwell, *The School as a Formal Organization*, in HANDBOOK OF ORGANIZATIONS 973, 973 (James G. March ed., 1965).

prone to suffer when subjected to high rates of employee turnover.”⁷⁰

Many countries have recognized the value of continuity within the school building. When new teachers are hired in Finland, for example, they typically plan to “stay for life.”⁷¹ Official estimates state that only ten to fifteen percent of Finnish teachers leave the profession during the course of their career.⁷² In Singapore, the attrition rate of teachers is less than three percent annually.⁷³ These statistics suggest that rapid turnover should not be viewed as an inevitable byproduct of the demands of the teaching profession.

In the United States, however, attrition rates range from six to eight percent annually.⁷⁴ Rather than address this issue, a large cohort of U.S. education reformers have abandoned the idea that we should seek to recruit candidates who plan to commit to teaching as a life-long career. Many school turnaround plans focus on enlisting Teach for America (“TFA”) corps members, recent high-achieving college graduates eager to make a difference but who are not necessarily expected to continue teaching after their two-year placements end.⁷⁵ Without seeking to vilify TFA — an organization that has played a substantial role in beginning to chip away at the achievement gap as well as bringing educational issues into the national spotlight — it is worth asking whether continued teacher attrition may negatively impact student learning more than we care to admit. Approximately forty to fifty percent of teachers leave the classroom within their first five years, and the attrition rate of first-year teachers has increased by one-

70. Richard M. Ingersoll, *The Teacher Shortage: A Case of Wrong Diagnosis and Wrong Prescription*, NASSP BULL., June 2002, at 16, 19.

71. Pasi Sahlberg, *The Professional Educator: Lessons from Finland*, AM. EDUCATOR, Summer 2011, at 34, 36.

72. *Id.*

73. Tan Lay Choo & Linda Darling-Hammond, *supra* note 28, at 35.

74. *Id.*

75. Numerous articles weigh the various pros and cons of TFA teachers and there have been several warring editorials by former TFA participants. Compare Olivia Blanchard, *I Quit Teach for America*, THE ATLANTIC (Sept. 23, 2013), <http://www.theatlantic.com/education/archive/2013/09/i-quit-teach-for-america/279724/>, with Tre Tennyson, *I Stayed*, AJC.COM (Oct. 3, 2013), <http://www.ajc.com/weblogs/get-schooled/2013/oct/03/remember-i-quit-teach-america-heres-counterpoint-i/>. A 2011 study found that only 60.5% of TFA teachers continue as public school teachers beyond their two-year commitment and that of that number, over half leave their initial placements in low-income schools after two years. Morgaen L. Donaldson & Susan Moore Johnson, *TFA Teachers: How Long Do They Teach? Why Do They Leave?*, PHI DELTA KAPPAN, Oct. 2011, at 48.

third over the past two decades.⁷⁶ This attrition is worst in low-income schools where many students already perform behind grade-level.⁷⁷

III. UNIONS' PAST AS PROLOGUE

Recent reform efforts have failed to empower schools and educators to embrace the tactics laid out in Part II and instead have reinforced cultural norms that stand in the way of meaningful improvement.⁷⁸ A direct outgrowth of this is the “lack of respect” of which countless teachers complain. A recent article in *The Atlantic* quoted a teacher’s “sort of intangible” but “real” explanation of why the teacher left the profession: “It’s just a lack of respect Teachers in schools do not call the shots. They have very little say. They’re told what to do; it’s a very disempowered line of work.”⁷⁹

The term “disempowered” strikes at the heart of the problem — teachers are not receiving the respect they need in order to be effective problem-solvers. The nexus of the current view of human capital management — a view that too often leaves educators feeling more like bureaucrats than professionals — lies in the CBA. CBAs negotiated by teachers’ unions borrow heavily from organized labor, which means they have insulated teachers from traditional employment risks.⁸⁰ This Note argues that unfortunately it also means that CBAs have cabined teachers’ flexibility to diagnose student learning problems and help design innovative solutions.

Current CBAs are the natural outgrowth of a history of judicial opinions and public sentiment that viewed public sector collective bargaining with suspicion.⁸¹ Legal doctrine has reinforced

76. Richard M. Ingersoll, *Beginning Teacher Induction: What the Data Tell Us*, PHI DELTA KAPPAN, May 2012, at 47, 47–51.

77. Richard M. Ingersoll, *Teacher Turnover and Teacher Shortages: An Organizational Analysis*, 38 AM. EDUC. RES. J. 499, 516 (2001) (finding that teacher turnover is 50% higher in high-poverty schools than in low-poverty schools).

78. See generally PANERO & TALBERT, *supra* note 62, at 1–7.

79. Liz Riggs, *Why Do Teachers Quit?*, THE ATLANTIC (Oct. 18, 2013), <http://www.theatlantic.com/education/archive/2013/10/why-do-teachers-quit/280699/>.

80. Richard D. Kahlenberg, *The History of Collective Bargaining Among Teachers*, in COLLECTIVE BARGAINING IN EDUCATION: NEGOTIATING CHANGE IN TODAY’S SCHOOLS 7, 7–12 (Jane Hannaway & Andrew Rotherham eds., 2006).

81. See, e.g., TERRY M. MOE, SPECIAL INTEREST: TEACHERS’ UNIONS AND AMERICA’S PUBLIC SCHOOLS 175–79 (2011).

the perception of that bargaining process as an anti-democratic practice, one that replaces ordinary pathways for determining and implementing policy with private negotiations.⁸² The vast majority of CBAs reflect both parties' desire to limit the other side's discretion, creating an inflexible bureaucracy that at best limits teachers' ability to innovate and at worst encourages teachers to do no more than the bare minimum needed to keep their jobs.⁸³ Because the CBA excludes teachers from all involvement in policy decisions, interest group bargaining in the political sphere has filled this gap. Yet such bargaining reflects only the ways in which teachers are alike and fails to address teachers' differentiated needs in the classroom.⁸⁴ Thus unions, in their current role, fail to provide teachers with a meaningful voice in the education reform conversation.

A. HISTORY OF COLLECTIVE BARGAINING

Although the National Labor Relations Act granted private employees the right to organize in 1935, teachers and other public sector employees remained without collective bargaining rights until the 1960s.⁸⁵ Without legally binding contracts, teachers struggled with low wages, poor working conditions, and rampant administrative favoritism.⁸⁶ Despite this situation, public sector collective bargaining was believed to inherently conflict with the majoritarian values upon which America was built.⁸⁷ Because collective bargaining replaces the typical legislative and

82. See, e.g., *Nutter v. City of Santa Monica*, 168 P.2d 741, 748 (Cal. Dist. Ct. App. 1946) (discussed in Part III.A., *infra*).

83. Linda Kaboolian, *Table Talk: The Case for Collaboration*, EDUC. NEXT, Summer 2006, at 14, 16.

84. See *infra* Part III.C.

85. National Labor Relations Act § 7, 29 U.S.C. § 157 (2012) ("Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title]."). The National Labor Relations Act does not cover state and local employees. See *id.* at § 152(2) (defining "employer" for purposes of the act as excluding all state or political subdivisions of a state).

86. Kahlenberg, *supra* note 80, at 10.

87. Martin H. Malin, *The Paradox of Public Sector Labor Law*, 84 IND. L.J. 1369, 1374 (2009) ("The view that public sector collective bargaining is antidemocratic is not confined to opponents of collective representation of public employees.").

administrative processes for drafting and implementing policy with closed-door negotiations, many alleged that unions exert disproportionate influence, leading to anti-democratic outcomes that contradict public preferences.⁸⁸

This view, that mandatory public-sector collective bargaining requires government officials to shirk their proper decision-making role, found expression in early court decisions. These decisions cited the anti-democratic nature of CBAs to justify limits on the subject matter over which public sector employers may be required by law to bargain. In *Nutter v. City of Santa Monica*, municipal bus operators sued the city arguing that California's labor laws compelled their employer to collectively bargain.⁸⁹ The court, however, found that mandatory bargaining violated non-delegation principles:

Public officers . . . do not have the same freedom of action which private employers enjoy. Their authority is confided to them by public law, and by that law is limited. That authority may not be delegated or surrendered to others, since it is public property. And so it has been almost uniformly held that governmental authority may not discriminate in favor of union labor.⁹⁰

Similarly, in *Fellows v. LaTronica*, the Colorado Supreme Court held that collective bargaining in the public sector “would result in taking away from a municipality its legislative power to control its employees and vest such control in an unelected and uncontrolled private organization (a union).”⁹¹

A key assumption underlying these early court rulings was that collective bargaining is always a “zero-sum game,” in which

88. See, e.g., MOE, *supra* note 81, at 175–79 (arguing that the collective bargaining process creates a power imbalance that produces policy favoring union interests over student outcomes). See also JOSEPH E. SLATER, PUBLIC WORKERS: GOVERNMENT EMPLOYEE UNIONS, THE LAW, AND THE STATE, 1900–1962 23 (2004) (alleging that public sector unions are inherently anti-democratic due to an irreconcilable contradiction between the interests of government employees and the interests of the public).

89. *Nutter v. City of Santa Monica*, 168 P.2d 741 (Cal. Dist. Ct. App. 1946).

90. *Id.* at 745.

91. *Fellows v. LaTronica*, 377 P.2d 547, 550 (Colo. 1962). See also *City of Springfield v. Clouse*, 206 S.W.2d 539, 545 (Mo. 1947) (declining to declare that cities may engage in collective bargaining with their employees by explaining that if the terms of public employment cannot be delegated, they surely cannot be bargained or contracted away), *overruled by Independence-Nat. Educ. Ass'n v. Independence Sch. Dist.*, 223 S.W.3d 131 (Mo. 2007).

gains by employees always generate a corresponding loss for the public, violating democratic principles. In actuality, cultivating employee engagement can be a vital tool used to enable teachers to bring their on-the-ground expertise to bear on school reform.⁹²

In 1968, teachers won a nominal victory when *McLaughlin v. Tilendis* held unambiguously: “Teachers have the right of free association, and unjustified interference with teachers’ associational freedom violates the due process clause of the 14th amendment.”⁹³ Following this case, opponents of public sector collective bargaining shifted their argument from the idea that bargaining should be prohibited to an attempt to limit its scope so as not to intrude on important issues of public policy.

Despite this shift, the same concerns regarding collective bargaining’s “anti-democratic” nature persisted and virtually guaranteed that CBAs would not serve as a vehicle for reform. For instance, prior to the enactment of the Virginia statute prohibiting public sector collective bargaining,⁹⁴ the Virginia Supreme Court held in *Commonwealth v. County Board of Arlington County* that the bargaining process conflicted with democratic principles:

There can be no question that the two boards involved in this case, by their policies and agreements, not only have seriously restricted the rights of individual employees to be heard but also have granted to labor unions a substantial voice in the boards’ ultimate right of decision in important matters affecting both the public employer-employee rela-

92. See *supra* Part II.B.

93. *McLaughlin v. Tilendis*, 398 F.2d 287, 288 (7th Cir. 1968). See also *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) (“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. . . . [I]n view of the nature of the teacher’s relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation.”).

94. VA. CODE ANN. § 40.1-57.2 (West 2014) (“No state, county, municipal, or like governmental officer, agent or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service.”).

tionship and the public duties imposed by law upon the boards.⁹⁵

In *Montgomery County Education Association v. Board of Education of Montgomery County*, the Maryland court cited the “unique nature” of collective bargaining between school boards and school employees in holding that school calendar and employee reclassifications are prohibited subjects of bargaining.⁹⁶ The court explained that unlike private sector employers, local school boards must respond to community needs:

Public school employees are but one of many groups in the community attempting to shape educational policy by exerting influence on local boards. To the extent that school employees can force boards to submit matters of educational policy to an arbitrator, the employees can distort the democratic process by increasing their influence at the expense of these other groups.⁹⁷

As a result of these suspicions toward public sector collective bargaining — which the courts reinforced for decades⁹⁸ — both administrators and unions sought to use the CBA to limit the other side’s discretion. The consequence has been a system of schools run as bureaucracies in which teachers lack much-needed flexibility.

95. *Commonwealth v. Cnty. Bd.*, 232 S.E.2d 30, 39 (Va. 1977).

96. *Montgomery Cnty. Educ. Ass’n v. Bd. of Educ.*, 534 A.2d 980, 987 (Md. 1987). See also *Aberdeen Ed. Ass’n v. Aberdeen Bd. of Ed.*, 88 S.D. 127 (1974) (holding that the phrase “other conditions of employment” as it appeared in a state public sector labor law referred only to employment conditions that materially affect pay rates, wages, employment hours and working conditions and did not include conditions relating to elementary school conferences, teachers’ aides, elementary school planning, class size, audio-visual expansion, budget allowances, school-wide guidance and counseling programs, and mandatory retirement of administrators), *overruled by* *Rapid City Educ. Ass’n v. Rapid City Area Sch. Dist. No. 51-4*, 376 N.W.2d 562 (S.D. 1985).

97. *Montgomery Cnty. Educ. Ass’n*, 534 A.2d at 987 (internal citations omitted). See also *In re City of Concord*, 651 A.2d 944, 946 (N.H. 1994) (expressing similar apprehensions).

98. In response to similar concerns, twenty-four states have enacted “right-to-work” laws, which allow citizens to decline to join a union and prohibit mandatory union fees. NAT’L RIGHT TO WORK COMM., STATE RIGHT TO WORK TIMELINE, <http://nrtwc.org/facts-issues/state-right-to-work-timeline-2/> (last visited Feb. 28, 2015). Michigan became the most recent state to pass such a law when it implemented Public Act 348, 2012 Mich. Pub Acts 180, covering private sector workers, and Public Act 349, 2012 Mich. Pub Acts 204, covering public sector workers.

B. CREATION OF AN INFLEXIBLE BUREAUCRACY

In order for schools to become high-performing workplaces, it is imperative to rethink the way in which teachers identify with broader educational goals. As they currently stand, teacher CBAs are accurately characterized as “the scar tissue of the struggle between the parties’ attempts to limit the arbitrary discretion of the other side.”⁹⁹

Although the initial idea behind teachers’ unions and collective bargaining was rooted in a desire to protect teacher autonomy and ensure that principals did not fire teachers without due cause, unions unfortunately “wage[d] a war of formalization against principals,” in which educators lost both managerial and policymaking power.¹⁰⁰ The consequences are negative for all parties involved: teachers and principals are stuck working in the same building alongside one another, but are effectively prevented from taking any action that would bring about positive change. “In a bureaucratic system dedicated to the elimination of discretion, especially on matters of personnel, all of the intangible properties so necessary for effective performance are ‘ruled out’ and cannot be recruited or mobilized for the pursuit of school goals.”¹⁰¹

All elements of collaboration and teamwork are stripped away and what is left is a collection of individuals who happen to work in the same building. Improving student learning outcomes, however, is a process highly dependent upon cooperation. Students are not all the same — not only do they arrive with vastly different skills, respond differently to various modes of instruction, and process concepts in different ways at different speeds, they also arrive with different personalities and experiences. Some require more nurturing while others need an authority figure to lay down the law.¹⁰² Yet, the most accepted models of

99. Kaboolian, *supra* note 83, at 16.

100. JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS, AND AMERICA’S SCHOOLS* 49 (1990).

101. *Id.* at 51.

102. For a detailed exploration of the pedagogical implications of student diversity that have important consequences for teaching and learning, see Richard M. Felder & Rebecca Brent, *Understanding Student Differences*, 94 *J. ENGINEERING EDUC.* 57, 57–58 (2005) (discussing how a deeper understanding of differences in students’ learning styles, approaches to learning, and intellectual development levels can improve the quality of teaching). And there is reason to believe that some teachers do not understand how to use differentiated instruction. See Greenberg, McKee & Walsh, *supra* note 31, at 48. Addi-

teaching do not enable teachers to address these differences effectively.

For too long, strategies preferred by teachers that do not align with those favored by management are too often dismissed as conflicting with what James Atleson calls the “Genesis view” of management:

The notion that a set of inherent managerial prerogatives exists suggests a timeless historical imperative. . . . “In the beginning” there was management and some employees. Management directed the enterprise until limited by law and collective bargaining agreements¹⁰³

Under this view, a group of central experts are responsible for determining policy, leaving workers (in this case teachers) to focus only on implementing instructions developed at the center.

The problem of the “street-level bureaucrat” within a centralized hierarchy has been discussed by leading authors in various contexts ranging from the police to private sector labor to the education field.¹⁰⁴ Street-level bureaucracy produces a difficult paradox. Organizations strive for a certain degree of uniformity in both process and outcomes. Street-level discretion can lead to lack of uniformity in implementation that can reduce the credibility of the organization and create impressions of unfairness among the general public. Moreover, sometimes actions taken as a result of discretion do not align with the organizational goals of the institution. On the flip side, however, controlling decisions too tightly — namely removing all discretion — is rarely feasible or desirable because this would disempower front-line individuals from responding to unforeseen and changing circumstances.

A key lever with which to control street-level discretion is division of labor and standardization. Such strategies are evident throughout current teachers’ contracts. For instance, many CBAs specify teachers’ time allocation during the school day down to

tionally, requirements in teacher preparation programs are overly general in some documents. *Id.*

103. JAMES B. ATLESON, VALUES AND ASSUMPTIONS IN AMERICAN LABOR LAW 122 (1983).

104. *See, e.g.*, MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES 13–25 (2010).

the minute.¹⁰⁵ Such a strategy, however, is costly, leading to what some have labeled “trained incapacity” or “the inability to depart from well-established routines even when they are obviously inappropriate and counterproductive.”¹⁰⁶

The above discussion does not suggest that bureaucracy is always a poor management choice.¹⁰⁷ In fact, bureaucracy is an extremely effective way to organize workers when their tasks can be reduced to simple routines. In certain cases, for instance, “routines and the application of unambiguous rules allow the employment of workers who are not expected to demonstrate much in the way of creativity, innovation, or the ability to solve unique problems.”¹⁰⁸ Workers’ only responsibility thus becomes to ensure that formal procedures are applied uniformly day in and day out. While CBAs assume that a bureaucratic management system is helpful within the school setting, common sense refutes such a claim. Of course, some elements of education are well suited to bureaucracy (stocking supplies, issuing paychecks, etc.). But few aspects of classroom teaching belong on this list.

Sociologist Rudi Volti highlights several problems with bureaucracy in the educational context. First, the process by which students learn and internalize material is only partially understood.¹⁰⁹ One of the main problems with NCLB as originally drafted is that there was insufficient flexibility for states to adjust their strategic plans and expectations in the face of unexpected developments. A legislative or contractual provision mandating overly detailed responses to pre-determined scenarios is counter-productive when there are an infinite number of scenarios that may arise. In deciding to grant Elementary and Secondary Education Act (“ESEA”) waivers to nearly all States, the District of Columbia, and Puerto Rico, the U.S. Department of Education (“DOE”) acknowledged a major drawback of NCLB: “Instead of fostering progress and accelerating academic improvement, many NCLB requirements have unintentionally become

105. See, e.g., UNITED FED’N OF TEACHERS, *supra* note 8, at 15 (“The parties agreed, effective February, 2006, to extend the teacher work day in ‘non Extended Time Schools’ by an additional 37 ½ minutes per day, Monday through Thursday following student dismissal.”).

106. RUDI VOLTI, AN INTRODUCTION TO THE SOCIOLOGY OF WORK AND OCCUPATIONS 72 (2007).

107. *Id.* at 85.

108. *Id.* at 65.

109. *Id.* at 87.

barriers to State and local implementation of forward-looking reforms designed to raise academic achievement.”¹¹⁰ Second, there is the matter of human diversity.¹¹¹ Since no two students learn in precisely the same manner, teachers should be encouraged to develop into practitioners who can tackle unique problems, not shy away from such a role. Although educators have embraced the philosophy of “differentiated instruction,” teachers are often inadequately prepared to implement such a strategy effectively in their classrooms.¹¹²

C. WHAT POWER POLITICS IGNORES

While collective bargaining is one vehicle through which unions exert influence, unions also enjoy significant power in the political sphere as a sizable interest group.¹¹³ Although it might not seem that teachers have a lot of disposable income to invest in campaigns, “when you have a lot of people each giving a little, it adds up.”¹¹⁴ Unions consistently rank among the top campaign spenders at both the state and national levels and are ranked number one in many states.¹¹⁵ The sheer number of teacher union members means that unions are “a looming presence in almost every electoral district in the country.”¹¹⁶ Additionally, the policies teachers’ unions seek to influence are often voted on in

110. Letter from Arne Duncan, U.S. Educ. Sec’y, to Chief State School Officers (Sept. 23, 2011), available at <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>.

111. VOLTI, *supra* note 106, at 87.

112. Greenberg, McKee & Walsh, *supra* note 31, at 48 (determining that the majority of teacher preparation programs provide lesson planning guidance that is “voluminous and incoherent”). For instance, “[r]equirements are overly general in some documents (e.g., ‘Differentiate instruction to deal with the diversity of your classroom’), or unrealistically expansive, asking the candidate to delineate means of differentiating instruction for students with a dozen or so specified characteristics in a daily lesson plan.” *Id.*

113. Michael Hartney & Patrick Flavin, *From the Schoolhouse to the Statehouse: Teacher Union Political Activism and U.S. State Education Reform Policy*, 11 ST. POL. & POL’Y Q. 251, 251–68 (2011) (measuring teachers’ union political activity by calculating the percent of campaign contributions to candidates for state office that come from unions versus other funding sources).

114. Press Release, Baylor University Media Communications, Teacher Unions That Have Lost Collective Bargaining Will Use Money to Flex Political Muscle, Study by Baylor University Professor Shows (June 9, 2011), <http://www.baylor.edu/mediacommunications/news.php?action=story&story=95297> (noting also that teachers vote at much higher rates than the general public, leading to a potent political force).

115. Terry M. Moe, *Political Control and the Power of the Agent*, 22 J.L. ECON. & ORG. 1 (2006) (highlighting the ability of public sector bureaucrats to influence policy and analyzing the impact of teachers’ unions on the selection of key governing authorities).

116. *Id.* at 10.

low-turnout elections. Voter turnout at local school board elections, for instance, is often as low as fifteen percent of eligible voters, giving teacher voting blocs a disproportionately large impact.¹¹⁷

Organized interest groups in various industries serve an important purpose — in advocating for the interests of their members, they provide a voice, at least in theory, to those whose concerns would otherwise be ignored. Additionally, they serve as a vehicle through which Americans can advance their freedom of assembly, a right safeguarded by the First Amendment.¹¹⁸ Interest group bargaining is generally tolerated because if others disagree with the ideas or policies being advanced, they can organize their own competing interest group and advocate a contrary position.

One problem voiced by many union critics is that other groups lack the ability to check the power of teachers' unions.¹¹⁹ This is partially because teachers' unions have a significant advantage with respect to the ability to organize as a group.¹²⁰ Public school employees are physically concentrated in school buildings and generally understand how they can benefit from the system. Parents, taxpayers, and members of the general public, however, are geographically dispersed and find it more difficult to grasp the impact of policy changes because of their distance from educational matters.¹²¹

Finally, there is a unique labor-management relationship in the education sector that differs in an important way from labor-management relationships in the private sector:

[T]eacher unions (i.e. labor) help elect many of the policy-makers (i.e. management) with whom the teacher unions

117. Hartney & Flavin, *supra* note 113.

118. U.S. CONST. AMEND. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

119. Richard D. Kahlenberg & Jay P. Greene, *Unions and the Public Interest: Is Collective Bargaining for Teachers Good for Students?*, EDUC. NEXT, Winter 2012, at 60, 65 (“The normal process of checks and balances among competing interest groups, however, has failed when it comes to education.”).

120. *Id.* While it is not unique to education that concentrated interests have a distinct advantage over dispersed interests, this is one factor contributing to teachers' unions disproportionate influence. *Id.*

121. *Id.*

bargain and rely upon for sympathetic policies tied to their professional career advancement as public employees.¹²²

A recent study found that a school board candidate who receives union support increases his probability of winning by approximately fifty six percent.¹²³ In private companies, meanwhile, “[w]hen they sit down to negotiate pay, benefits, and work conditions, members of management are inclined to represent the interests of shareholders, not those of employees.”¹²⁴

There is, however, a less studied but more interesting concern — despite the disproportionate influence exerted by teachers’ unions discussed above, this influence is hemmed in to a significant degree. All advocacy conducted by teachers’ unions must reflect ways in which teachers’ needs are the same and thus fails to reflect teachers’ individualized needs. The bottom line is that teachers’ unions are effective advocates because of their *united* political influence, not the differentiated needs of their members. A candid statement by NEA General Counsel Bob Chanin in his farewell address admits the following:

Despite what some among us would like to believe it is not because of our creative ideas; it is not because of the merit of our positions; it is not because we care about children; and it is not because we have a vision of a great public school for every child. The NEA and its affiliates are effective advocates because we have power.¹²⁵

Conservative media outlets quickly seized on this strongly worded statement and used it in isolation to distort Mr. Chanin’s intentions and suggest that he had admitted that the union does not “care about the children.”¹²⁶ While it is clear that Mr. Chanin’s words were indeed misrepresented, his statement is interesting for a related, but far more nuanced, reason. Unions as they are structured today are only effective because of their

122. Hartney & Flavin, *supra* note 113.

123. Moe, *supra* note 115, at 13.

124. Kahlenberg & Greene, *supra* note 119, at 66.

125. Bob Chanin, General Counsel, Nat’l Educ. Ass’n, Farewell Address at 2009 National Education Association Representative Assembly Meeting (July 2009) (video recording available at <http://www.youtube.com/watch?v=bqn1rvv7Fis>).

126. Hardeep Dhillon, *Conservative Media Use Cropped Video To Vilify NEA*, MEDIA MATTERS FOR AM. (Feb. 25, 2011, 12:49 AM), <http://mediamatters.org/research/2011/02/25/conservative-media-use-cropped-video-to-vilify/176882>.

members' collective action, which stems from their similarities. Because all members want greater job security and higher pay, these are the issues on which unions have focused. The union apparatus remains intact in most school systems, but the unions themselves have become nothing more than mere "shells,"¹²⁷ claiming to look out for the interests of their members but failing to bring about reforms that would empower teachers to teach their students more effectively. The current relationship between unions and their members — under which unions serve as teachers' exclusive bargaining agent and collect agency fees covering the expense of negotiating and enforcing the contract — has led to "a totally bureaucratic approach to contract enforcement, member passivity, and erosion of the union's school-site presence."¹²⁸ Rather than serve as a vehicle through which teachers can voice their individualized concerns or a source of information-sharing, unions advocate for a one-size-fits-all approach, reminiscent of centralized mandates that fail to account for differentiated local needs. Both local and national union leaders have remained "clueless about how to respond to the blitzkrieg of vitriol" from anti-union voices and have shown themselves "unwilling to 'rock the boat.'"¹²⁹

In order to rebuild their damaged credibility and become an effective voice for teachers, unions must adapt. But unions' current bargaining and political activism have failed to reinvigorate the profession. A new CBA — one that buttresses a meaningful management-labor partnership — has the potential to serve as a vehicle for such reform. However, two extreme views, discussed below, threaten to undermine such collaboration.

IV. TACKLING THE TEACHING CHALLENGE FROM TWO EXTREMES

Reformers seeking to improve the teaching position have largely split between two camps: those advocating for a "craft model" under which teachers enjoy almost complete independence and those arguing for strengthened top-down direction. In exploring both of these responses, this Note finds that each approach

127. Lois Weiner, *Teacher Unionism Reborn*, NEW POL., Winter 2012, at 89.

128. *Id.*

129. *Id.*

ultimately encounters significant obstacles and thus fails to meaningfully empower teachers.

A. THE CRAFT MODEL

The various problems that emerge under the current educational bureaucracy — and unions' inability to use their political activity to advocate for the differentiated needs of individual educators — may suggest that reformers should free teachers from virtually all constraints in order to improve student learning. Under this idealistic vision, CBAs would specify various ways in which supervisors cannot interfere with teachers — such as prohibiting principals from requiring teachers to work long hours or assume an overabundance of non-academic duties — but would remain silent regarding classroom expectations and student outcomes. In other words, CBAs would provide basic protections and then free teachers to teach however they see fit; CBAs would thus support a craft model of teaching. One of the most vocal supporters of this craft model is Diane Ravitch — an outspoken education reformer who has spent the past decade loudly denouncing the neoliberal reforms enacted under NCLB, for which she was formerly a well-known supporter.¹³⁰ Ravitch decries the “de-professionalization” of teaching and fears that recent reforms will eventually turn teachers into “at-will” employees “who can be fired at the whim of a principal.”¹³¹

While the idea of teaching as a craft or art form may sound appealing in theory, there are several serious problems in its actual application. These serious problems are perhaps nowhere more evident than in the classrooms of first-year teachers. NCTQ's recent study compares first-year teaching to “the equivalent of fraternity hazing.”¹³² The authors explain that beginner teachers “deal with so much anxiety and exhaustion that many just crash and burn.”¹³³

In embracing the idea of teaching as a craft, educators have decided that “preparation” is more appropriate for new teachers

130. See DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM* (2010).

131. Ravitch, note 4, *supra*.

132. Greenberg, McKee & Walsh, *supra* note 31, at 2.

133. *Id.*

than “training.” While the two terms are related, they are far from interchangeable. As NCTQ’s study explains:

By abandoning the notion that teacher educators should arm the novice teacher with practical tools to succeed, they have thrown their own field into disarray and done a great disservice to the teaching profession. . . . The goal is for each candidate to develop his or her own unique philosophy of teaching, no matter how thin the ground is underneath.¹³⁴

By placing faith in new teachers’ ability to develop their own unique approaches to teaching, the education field has failed its students. Reformers should indeed be wary of endorsing overly formalistic training programs that treat teacher preparation as analogous to teaching new surgeons specific surgical methods. But in straying too far in the other direction — and seeking to arm teachers with only a “professional mindset”¹³⁵ rather than detailed instructions — teacher preparation programs have left teachers without the necessary tools to manage their classrooms. A 10th and 12th grade science teacher responding to the NCTQ survey stated the following: “I found when I entered the classroom on my own that I was inadequately prepared in the day-to-day, immediate management techniques that would have made my first few years successful.”¹³⁶

Ultimately, viewing teaching as a craft — and only a craft — also denies teachers access to a new view of problem-solving that relies on the effective transmission of information across multiple levels of the organization. In his work, *The High-Velocity Edge: How Market Leaders Leverage Operational Excellence to Beat the Competition*, Steven Spear, a senior lecturer at the Massachusetts Institute of Technology, chronicles how various organizations — which differ greatly with respect to market, core technologies, and professional disciplines — have created systems of shared responsibility for managing complex institutions and promoting real partnership between management and employ-

134. *Id.* at 93. For further exploration of the shortcomings of teacher preparation programs, see also Kate Walsh, *Ed Schools Don’t Give Teachers the Tools They Need*, EDUC. NEXT, Summer 2013, at 18–21 (discussing how poor teacher education programs have directly hindered the goal of improving student outcomes).

135. Greenberg, McKee & Walsh, *supra* note 31, at 6.

136. *Id.* at 46.

ees.¹³⁷ One of Spear's case studies focuses on Alcoa, a company that invented the modern-day aluminum industry and whose work has driven improvements in the aerospace, automotive, construction, and transportation industries. Spear focuses on Alcoa because during a period of twenty years, it simultaneously outperformed the Dow Jones Industrial Average and optimized workplace safety by reducing the risk of recordable injuries by eighty percent, compared to a fifty percent reduction among manufacturing companies overall.¹³⁸

Spear summarizes Alcoa's approach as cultivating a three-step "see a problem, solve a problem, share what you have learned" dynamic.¹³⁹ Under the first step, business unit presidents were required to notify the CEO within 24 hours of a workplace incident. This policy both conveyed urgency and preserved "perishable" information that might otherwise be lost.¹⁴⁰ Second, within two business days, the business unit president had to report what the initial investigation revealed about the causes of the injury and steps being taken to prevent the problem from recurring. Finally, the third step focuses on ensuring that "what was discovered locally was shared organizationally."¹⁴¹ Ultimately, Alcoa's new view of problems shifted its entire approach toward operations — the company no longer sought to *design* "perfect processes" but instead strove to *discover* them through strategic analysis of what caused both major and minor hiccups in the system.¹⁴²

Alcoa moved from an approach in which problems are accepted as unavoidable—the 'one thing after another' we expect with complex systems—to an approach in which problems are clear signals, beneficent warning, the system saying, 'There's something important you don't know about me, but if you listen, I'll tell you.'¹⁴³

This new approach toward problems could not emerge under a pure craft model under which employees are given free rein to act

137. STEVEN J. SPEAR, THE HIGH-VELOCITY EDGE: HOW MARKET LEADERS LEVERAGE OPERATIONAL EXCELLENCE TO BEAT THE COMPETITION 109–54 (2010).

138. *Id.* at 2.

139. *Id.* at 8.

140. *Id.* at 5.

141. *Id.* at 7.

142. *Id.* at 4.

143. *Id.* at 8.

autonomously without any significant oversight. Rather it requires an institutional culture that recognizes the dual importance of management-led oversight and employees' on-the-ground observations in strengthening institutional problem-solving capabilities.

Spear also highlights the U.S. Navy's Nuclear Power Propulsion Program, which effectively invented and operated nuclear technology more quickly and more reliably than peer organizations facing similar challenges. Like Alcoa, the Navy program embraced a unique approach toward problems. It implemented a "much lower threshold of what it deems an 'incident' and a much higher threshold of what must be done when an incident occurs."¹⁴⁴ Such an approach mandates greater reflection among individual employees at various levels in order to implement better-tailored solutions. Spear contrasts the Navy's approach to the approach used at Three Mile Island, well-known as the site of a 1979 partial nuclear meltdown, and concludes the following:

At Three Mile Island, the system spoke up, but the staff had learned to work around chatter which could not be understood. NASA found that within the Navy, alarms are simplified, so they don't sound so often. But when they do sound, or when other things go wrong, they are taken seriously.¹⁴⁵

Searching for and actively responding to internal alarms is important for all organizations. In order to accomplish this, structures must be in place that empower employees to "make latent assumptions explicit and then test them."¹⁴⁶ Such structures are necessary because continuous learning only occurs when organizations readily acknowledge the imperfect nature of employees' early understanding of problems and use this openness as a foundation upon which to collaborate to further explore problem areas. Such continuous learning is stunted when an organization gives individual employees complete freedom and abandons the need for coordination and oversight at the institutional level.

Ensuring that teachers "co-labor in a coordinated and systematic effort to support the students they serve" is an important

144. *Id.* at 18.

145. *Id.* at 21.

146. *Id.* at 22.

obligation,¹⁴⁷ but one that schools cannot fulfill under a pure craft model of teaching. Tom Carroll, president of the National Commission on Teaching and America's Future, espoused the increasing importance of cooperation among teachers in the 21st century. "The idea that a single teacher, working alone, can know and do everything to meet the diverse learning needs of 30 students every day throughout the school year has rarely worked, and it certainly won't meet the needs of learners in years to come."¹⁴⁸

B. UNILATERALLY-IMPOSED REFORMS

At the opposite end of the spectrum from the craft model are top-down reforms imposed unilaterally on teachers without union input. Such reforms fail to improve the profession of teaching for several key reasons. Excluding teachers from the design and implementation of the reforms causes central administrators to overlook local conditions while encouraging teachers to treat universal mandates as nothing more than the latest bureaucratic hurdle to overcome. In other words, such exclusion creates a culture that stifles the very inquiry and collaboration that reformers should encourage among teachers.

A prime example of these unintended effects can be found in teacher evaluation systems across the country. Teacher evaluations first entered the national spotlight in 2009 when President Obama signed the American Recovery and Reinvestment Act, which included \$4.35 billion for states to improve their education systems through a competition called Race to the Top that distributes funding to states based on their ability to meet specified criteria.¹⁴⁹ Of the 500 total points available to states, 58 points were based on "improving teacher and principal effectiveness based on performance,"¹⁵⁰ a condition that drove teacher evaluations into the national spotlight. This condition included designing and implementing "rigorous, transparent, and fair evaluation systems" for both teachers and principals that use data on stu-

147. Rick DuFour, *Work Together: But Only If You Want To*, PHI DELTA KAPPAN, Feb. 2011, at 57, 59.

148. Tom Carroll, *The Next Generation of Learning Teams*, PHI DELTA KAPPAN, Oct. 2009, at 8, 13.

149. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 14006, 123 Stat. 115, 284 (2009).

150. U.S. DEPT. OF EDUC., RACE TO THE TOP PROGRAM EXECUTIVE SUMMARY 3 (2009), available at <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

dent growth “as a significant factor.”¹⁵¹ According to the U.S. DOE guidance, these annual evaluations were to inform decisions regarding professional development; compensating, promoting, and retaining teachers; whether to grant tenure; and the removal of ineffective teachers.¹⁵²

The criteria provided by the DOE also states that evaluations systems should be “designed and developed with teacher and principal involvement.”¹⁵³ Ignoring this language, former District of Columbia Public Schools (“DCPS”) Chancellor Michelle Rhee launched IMPACT — a teacher evaluation system known for its prioritization of value-add assessments and use of incentive-based compensation — without any input from the teachers’ union.¹⁵⁴ Although the evaluations of IMPACT have been mixed,¹⁵⁵ what became clear was that Rhee’s top-down, “no-nonsense” approach — exemplified by a menacing photograph of Rhee on the cover of Time Magazine with a broom in hand¹⁵⁶ — alienated the union and its teachers. In a May 2009 interview, Washington Teachers’ Union President George Parker explained that Rhee’s “out to get you culture . . . created an environment where the morale is so low, it would be very difficult to have folks truly buy in to where you want to go.”¹⁵⁷ In fact, Parker stated that teacher morale was the lowest he had experienced in his 25 years of working with D.C. public schools and that Rhee gave teachers the

151. *Id.*

152. *Id.*

153. *Id.*

154. See Bill Turque, *D.C. Launches Rigorous Teacher Evaluation System*, WASH. POST (Oct. 1, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/30/AR2009093004729.html>.

155. Compare Thomas Dee & James Wyckoff, *Incentives, Selection, and Teacher Performance: Evidence from IMPACT* 1–27 (Nat’l Bureau of Econ. Research, Working Paper No. 19529, 2013) (finding that IMPACT’s dismissal threats increased voluntary attrition of low-performing teachers by more than fifty percent and improved the performance of teachers who remained while financial incentives further improved the performance of high-performing teachers), with COMM. ON THE INDEP. EVALUATION OF DC PUB. SCH., NAT’L RESEARCH COUNCIL, *A PLAN FOR EVALUATING THE DISTRICT OF COLUMBIA’S PUBLIC SCHOOLS* 119 (2011) (finding that it is premature to draw general conclusions about the reforms’ effectiveness and that standardized test scores are of limited value in determining causes of improvements in student performance).

156. Photograph of Michelle Rhee, *How to Fix America’s Schools*, TIME, Dec. 8, 2008, cover.

157. Interview by John Merrow with George Parker, President, Washington D.C. Teachers’ Union (May 3, 2009), available at <http://learningmatters.tv/blog/podcasts/michelle-rhee-in-dc-series-podcast-a-history-of-michelle-rhee-george-parker-and-teacher-unions/2573/>.

impression that her solution “was all wrapped up into this little ball called fire everybody.”¹⁵⁸

IMPACT was revised for the 2012–2013 school year to broaden its measurement of student achievement.¹⁵⁹ Although it continues to weigh student achievement as fifty percent of a teacher’s evaluation, this is no longer measured by a single statistic.¹⁶⁰ Value-added constitutes thirty-five percent while each teacher “will work with her or his principal to collaboratively select an assessment and set learning goals against which the teacher will be evaluated” for the remaining fifteen percent.¹⁶¹

DCPS solicited and compiled feedback from hundreds of teachers, school leaders, staff members, and other stakeholders, a positive step toward greater union involvement.¹⁶² But, across the nation, not enough attention has been focused on the importance of union and teacher buy-in, with various cities adopting a steamroller approach similar to that of Rhee. As of September 2013, thirty-five states and the District of Columbia Public Schools mandate that student achievement “is a significant or the most significant factor in teacher evaluations.”¹⁶³ But whether a teacher evaluation system has a lasting effect on education quality almost entirely depends on local implementation, according to a 2009 study by The New Teacher Project (“TNTP”), an organization focused on teacher quality.¹⁶⁴ The study drew attention to the “widget effect,” which refers to “the tendency of school districts to assume classroom effectiveness is the same from teacher to teacher.”¹⁶⁵ TNTP identifies inadequate teacher evaluation systems as a major cause of this fallacy — while such evaluations

158. *Id.*

159. D.C. PUBLIC SCH., KEY CHANGES TO IMPACT FOR 2012–2013 (n.d.), available at <http://dcps.dc.gov/DCPS/Files/downloads/ABOUT%20DCPS/Human%20Resources/Downloadables/IMPACT%202012-2013%20Key%20Changes.pdf>.

160. *Id.*

161. *Id.*

162. *An Overview of IMPACT*, D.C. PUBLIC SCH., <http://dcps.dc.gov/DCPS/In+the+Classroom/Ensuring+Teacher+Success/IMPACT+%28Performance+Assessment%29/An+Overview+of+IMPACT> (last visited Feb. 28, 2015).

163. DOHERTY & JACOBS, *supra* note 3, at i. Only ten states — Alabama, California, Idaho, Iowa, Montana, Nebraska, New Hampshire, North Dakota, Texas and Vermont — have no formal policy requiring evaluations to include an objective measure of student achievement when evaluating teacher effectiveness. *Id.*

164. DANIEL WEISBERG ET AL., THE NEW TEACHER PROJECT, THE WIDGET EFFECT 19–23 (2009).

165. *Id.* at 4.

should serve as a primary tool to assess teacher evaluations, in practice they reveal little, except in the case of teachers whose performance is egregiously inadequate. The result is “an environment in which teachers cease to be understood as individual professionals, but rather as interchangeable parts.”¹⁶⁶

While union leadership continues to emphasize that “teacher evaluations must be about improving teaching, not just rating teachers,”¹⁶⁷ the two largest teachers’ unions — both of which once bitterly opposed any form of teacher evaluations that incorporated student learning metrics — have softened their stances.¹⁶⁸ In acknowledging that teachers must lead the overhaul of teacher evaluation “rather than reacting to others’ evaluation plans,”¹⁶⁹ the unions have acknowledged the idea of working alongside districts to improve accountability. Yet unions across the country have resorted to the courts to challenge teacher evaluation systems that further alienate teachers.¹⁷⁰ In Florida, for example, the NEA and Florida Education Association challenged the constitutionality of the teacher evaluation policies enacted under the Student Success Act.¹⁷¹ The plaintiffs allege that the evaluation policies infringe upon their due process and equal protection rights by evaluating some teachers based on student test performance in subjects the teachers did not instruct.¹⁷² In Chicago, meanwhile, an impasse over the teacher evaluation system led to a seven-day teacher strike in September 2012.¹⁷³

The exclusion of unions and teachers from the design of evaluation systems inevitably backfires because reforms imposed unilaterally ignore the true meaning of accountability. James Lieb-

166. *Id.*

167. *Teacher Development and Evaluation*, AM. FED’N OF TEACHERS, <http://www.aft.org/issues/teaching/evaluation.cfm> (last visited Feb. 28, 2015) (quoting American Federation of Teachers President Randi Weingarten).

168. See Sharon Otterman, *Union Shifts Position on Teacher Evaluations*, N.Y. TIMES, July 5, 2011, at A15 (discussing the NEA’s approval of a new policy affirming for the first time that evidence of student learning must be considered in the evaluations of teachers and the AFT’s previous statement that student test scores “based on valid assessments” should be part of teacher assessments).

169. *Teacher Development and Evaluation*, *supra* note 167.

170. See, e.g., First Amended Complaint for Declaratory and Injunctive Relief at 1, *Cook v. Bennett*, No. 1:13-cv-00072-MW-GRJ (N.D. Fla. Oct. 21, 2013).

171. *Id.*; FLA. STAT. § 1012.34 (West 2014).

172. First Amended Complaint for Declaratory and Injunctive Relief at 1–2, *Cook v. Bennett*, No. 1:13-cv-00072-MW-GRJ (N.D. Fla. Oct. 21, 2013).

173. Monica Davey, *Teachers’ Strike in Chicago Tests Mayor and Union*, N.Y. TIMES, Sept. 10, 2012, at A1.

man, the former New York City Department of Education Chief Accountability Officer, explains why top-down reforms fall short:

It's about capacity building, which to me means adult learning based on self and team evaluation of what's working and what's not. . . . [W]e have to provide ways for schools to build their capacity to be relatively self-sufficient in evaluating themselves every day and in solving their unique performance problems and, when necessary, in asking for the specific help they need. This will never work if the central bureaucracy behaves as if it has all the answers.¹⁷⁴

Successful labor-management partnerships necessitate widespread institutional support on both sides. A revealing example from the private sector is the attempted partnership between General Motors ("GM") and the United Auto Workers ("UAW"), under which the two sides joined together to form The Saturn Corporation, a wholly-owned subsidiary of GM.¹⁷⁵ This new division, unlike the rest of the company, was founded upon a "fully integrated labor-management partnership."¹⁷⁶ As the division's compact Saturn vehicle gained popularity, this partnership was widely viewed as "the core of this success."¹⁷⁷ The partnership began in July 1985 when GM and the UAW agreed on a Memorandum of Understanding ("MoU").¹⁷⁸ In contrast to the UAW's standard contract, the MoU stated the following as evidence of the partnership's mission: "We believe that all people want to be involved in decisions that affect them, care about their jobs and each other . . . and want to share in the success of their efforts."¹⁷⁹

174. Stacey Childress et al., *Managing for Results at the New York City Department of Education*, in EDUCATION REFORM IN NEW YORK CITY: AMBITIOUS CHANGE IN THE NATION'S MOST COMPLEX SCHOOL SYSTEM 1, 5 (Jennifer O'Day et al. eds., 2011).

175. See John August, *Lessons from the Failure of the GM-UAW Partnership at Saturn*, LABOR MGMT. P'SHIP (Feb. 9, 2011), <http://www.lmpartnership.org/lmptalk/blogs/history-future/lessons-failure-gm-uaw-partnership>. Beginning in the late 1970s, U.S. automobile manufacturers lost significant market share to foreign manufacturers and changing purchasing behavior among American car consumers prompted General Motors to develop Saturn as a new division. *Id.*

176. *Id.*

177. *Id.*

178. Newsweek Staff, *How GM Crushed Saturn*, NEWSWEEK (Apr. 3, 2009), <http://www.newsweek.com/how-gm-crushed-saturn-77093>.

179. *Id.* While the UAW's standard contract contained almost 200 job classifications and prohibited members of one group from completing work reserved for another, the new twenty-eight page MoU contained just a handful of classifications. *Id.*

With both sides making concessions,¹⁸⁰ some hailed the contract as a major victory for labor-management joint decision-making.¹⁸¹ Other labor experts, meanwhile, voiced concern that the supposed partnership was illusory.¹⁸² As new leadership emerged at the helm of both GM and the UAW, the new contract faced increasing opposition from both sides.¹⁸³ In December 2003, Saturn workers voted to return to the GM-UAW master contract that they had previously been eager to avoid.¹⁸⁴ A major lesson from the dissolution of this innovative partnership is the need to ensure that those in positions of power within the organization are fully committed to collaboration in order to ensure that cooperative goals “don’t get drowned by the corporate mainstream.”¹⁸⁵ The failure of leadership at both UAW and GM to “continue to build the systemic learning network” beyond the Saturn plant into other areas of the business severely hindered capacity-building, which contributed to the partnership’s termination.¹⁸⁶ In all labor-management partnerships, emphasis must be placed on the “full integration of the learning network throughout the organization.”¹⁸⁷ Thus in the context of the teaching profession, it is essential that support for a labor-management partnership is cultivated at all levels of management and within the union. Without such focus, various challenges will prevent individual learning from reaching the rest of the organization and impede effective change.

180. Under the new contract, workers would receive only eighty percent of the UAW master-contract wage, with the other twenty percent tied to quality and productivity. *Id.* Rather than a traditional pension, UAW members would partake in a profit-sharing plan analogous to a 401(k). *Id.* GM, meanwhile, agreed to set aside a minimum of five percent of each employee’s annual working hours to skills training. *Id.* GM also promised not to lay off over twenty percent of the workforce except under very limited circumstances. *Id.*

181. See, e.g., A.H. Raskin, Op-Ed., *An Industrial Breakthrough*, N.Y. TIMES, July 23, 1985, <http://www.nytimes.com/1985/07/23/opinion/an-industrial-breakthrough.html>; Paul Chown et al., Letter to the Editor, *What’s Good About the Contract for the New Toyota-G.M. Plant*, N.Y. TIMES, Sept. 13, 1985, <http://www.nytimes.com/1985/09/13/opinion/what-s-good-about-the-contract-for-the-new-toyota-gm-plant-258559.html>.

182. See, e.g., Stephen Diamond, Letter to the Editor, *A Dark Day for U.S. Workers Is Dawning at Toyota-G.M. Plant*, N.Y. TIMES, Aug. 8, 1985, <http://www.nytimes.com/1985/08/08/opinion/l-a-dark-day-for-us-workers-is-dawning-at-toyota-gm-plant-175492.html>.

183. August, *supra* note 175. Among the various problems, capital constraints limited GM’s ability to further invest in Saturn operations. *Id.*

184. *Id.*

185. Newsweek staff, *supra* note 178.

186. *Id.*

187. *Id.* (quoting MIT Professor Thomas Kochan).

V. THE NEW CBA AND THE START OF A NEW PARTNERSHIP

As reformers seek to improve the quality of teaching across the nation, there is an understandable desire to rally against — rather than alongside — teachers' unions. But although the interests of unions and students will never be perfectly aligned,¹⁸⁸ collaboration between schools and unions can still serve as a powerful tool with which to improve the teaching profession. Moving past the current view of teachers as interchangeable parts is essential to improving student outcomes, but such a cultural shift requires “the commitment and investment of all stakeholders in public education today.”¹⁸⁹ Unions are not going to disappear any time soon — although early drafts of NCLB contained language intending to undercut collective bargaining rights, in the end it became the first federal education law to recognize explicitly the role of collective bargaining in education governance: “Nothing in this section shall be construed to alter . . . the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.”¹⁹⁰

As long as unions remain, they control “much of the fiscal contract and most of the psychological contract between teachers and school districts” and “effectively define the occupation of public school teaching.”¹⁹¹ Over a decade ago, Claremont Graduate University education professor Charles Kerchner called on reformers to embrace higher expectations for teachers' unions as the only path to realizing higher expectations for students.¹⁹² Kerchner laid out an insightful analogy:

188. See Kahlenberg & Greene, *supra* note 119, at 68 (“[It] is correct to suggest that teacher and student interests are not perfectly aligned, but who are the selfless adults who better represent the interests of kids? The hedge fund managers who support charter schools and also want their income taxed at lower rates than regular earned income, thereby squeezing education budgets? Superintendents who sometimes junk promising initiatives for which they cannot take credit? I’d rather place my faith in the democratically elected representatives of educators who work with kids day in and day out.”).

189. WEISBERG ET AL., *supra* note 164, at 26.

190. No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1116(d), 115 Stat. 1425, 1478 (2002).

191. Charles Taylor Kerchner, *Deindustrialization*, EDUC. NEXT, Fall 2001, at 46, 46. Teachers' contracts often channel over half of a district's operating budget and thus unless reforms engage the contract's rules and “financial flows,” they will be inevitably stunted. *Id.*

192. *Id.*, *passim*.

Just as it is in our national interest to engage nations and heads of governments our leaders find disagreeable and sometimes pernicious, it is in the interest of governors, legislators, and school officials to engage teacher unions in education reform.¹⁹³

Engaging unions does not connote blind acceptance. In fact, it means quite the opposite. Engaging unions means continuing to ask questions regarding the connections between union policies and student outcomes until a satisfactory answer is provided or CBAs are changed. It is only when people are willing to ask difficult questions of the unions, and challenge them to critically examine their own practices, that education reform will be realized. As Kerchner concludes, “Those who don’t think unions should lead education reforms have just let them off the hook.”¹⁹⁴ Over the past decade, reformers have too often done just this. Instead, the focus should be on engaging unions to help build a better teaching profession, one that exemplifies the four overarching qualities of effective organizations discussed in Part II of this Note.¹⁹⁵

A. EFFECTIVE TEACHER TRAINING

Effective pre-job training is important across professions in both the private and public sector. But for too long, “a vast majority of teacher preparation programs [have] not give[n] aspiring teachers adequate return on their investment of time and tuition dollars.”¹⁹⁶ In an important development, several reports have sought to shed light on the issue in order to inspire a transformation of the teacher training system.¹⁹⁷ But unions represent an untapped ally in the fight for improved teacher education programs: with their political clout and seat at the bargaining table, they have the ability to help effect real improvements in this area.

Under the typical current CBA, however, unions are unlikely to focus resources on arguing for more rigorous teacher education

193. *Id.* at 50.

194. *Id.*

195. *See supra* Part.II.

196. Greenberg, McKee & Walsh, *supra* note 31, at 2.

197. *See, e.g., id.*

programs because of the “steps and lanes” salary schedule that provides teachers with salary increases for each additional degree obtained without any regard for the quality of the degree.¹⁹⁸ A better salary model would provide salary increases based on measurable teacher outputs rather than inputs. Merit pay is controversial, and concerns that merit pay alone does not improve student outcomes are certainly valid.¹⁹⁹ But if reformers want to harness unions in the drive to improve pre-training, they must provide unions with the right incentives. A revised system of merit pay would accomplish this goal. Teachers will demand better preparation if they know they will be rewarded based on their ability to effectively engage their students.

The NEA has highlighted the current labor contract in Portland, Maine as an example of unions’ willingness to experiment with the idea of pay-for-performance.²⁰⁰ This contract includes the Professional Learning Based Salary System under which educators move across five salary lanes based on the earning of “salary contract hours” for participation in various professional learning activities.²⁰¹ But the fact that the applicable activities include simple participation in learning activities or college courses, with no emphasis on any observable outputs, severely compromises the system.²⁰² The contract thus mirrors the traditional, and flawed, “steps and lanes” model in more ways than not.

A better pay-for-performance provision would reward teachers only for receiving credits in courses that have been certified by the NCTQ or similar organizations as effectively preparing teachers to enter the profession. Such a provision represents a workable compromise for both sides: it continues to reward teachers who take steps to improve their skills, while also ensuring that teachers are better armed with the requisite tools and knowledge to effectively teach all the students in their classrooms.

198. See *supra* Part II.A.

199. See, e.g., JULIE A. MARSH ET AL., RAND CORP., A BIG APPLE FOR EDUCATORS, NEW YORK CITY’S EXPERIMENT WITH SCHOOLWIDE PERFORMANCE BONUSES: A FINAL REPORT 103 (2011), available at http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1114.pdf (finding that teachers who receive cash incentives neither exhibit more positive attitudes toward their work nor yield better performing students).

200. John Rosales, *Pay Based on Test Scores?*, NAT’L EDUC. ASSOC., <http://www.nea.org/home/36780.htm#> (last visited Feb. 28, 2015).

201. *Id.*

202. *Id.*

B. EMPLOYEE ENGAGEMENT

Although merit pay alone does not increase employee engagement, CBAs still have power to accomplish this goal. If both sides are willing to move past an “us-versus-them” mentality and use the contract to forge a true partnership, a CBA can directly improve employee engagement. Teacher evaluations offer a promising avenue forward. As discussed above, evaluation systems imposed unilaterally negatively impact teacher morale.²⁰³ But ignoring teacher evaluations entirely, the other extreme, eliminates a major source of accountability. Thus reformers should embrace strategies for implementing these assessments with the active involvement of unions and their teachers.

There are several promising examples of union-district collaboration on the design and implementation of teacher evaluation systems in cities across the country. The recently finalized CBA in New Haven, CT — which has since been replicated by other cities and highlighted by U.S. Secretary of Education Arne Duncan at national conferences²⁰⁴ — is one such model. The labor-management collaboration began in 2009 when the district and the New Haven Federation of Teachers reached a landmark agreement that allowed the district to begin incorporating student test scores into teacher evaluations and made it easier to get rid of ineffective teachers.²⁰⁵ Four years later, teachers voted ten to one to approve a new CBA that aims to both ensure the effec-

203. See *supra* Part IV.B.

204. Melissa Bailey, *In New Haven, a Teachers' Union Embraces Change*, TIME, June 11, 2013, available at <http://nation.time.com/2013/06/11/in-new-haven-a-teachers-union-embraces-change/>. Unions in both Baltimore, Maryland, and St. Paul, Minnesota, have used the New Haven contract as a blueprint for their own contracts. *Id.*

205. See CITY OF NEW HAVEN & NEW HAVEN FED'N OF TEACHERS, SETTLEMENT AGREEMENT (2009), available at http://www.edweek.org/media/newhaven_teachers_contract.pdf. The contract stated that “[t]he Parties agree that student progress should be a factor in teacher evaluation and that a joint committee should assess and make recommendations on how progress in student learning can best be incorporated in the teacher evaluation process.” *Id.* at 2–3. Regarding teacher evaluation, assistance, and dismissal, “[t]he Parties agree that it shall be appropriate for the Board to terminate as incompetent under the Connecticut Teacher Tenure Act a tenured teacher who is: (a) fairly evaluated, (b) timely notified that he or she has significant deficiencies in his or her teaching performance, (c) provided an opportunity for appropriate assistance, and (d) who nevertheless fails successfully to accomplish an appropriate improvement plan.” *Id.*

tiveness of all teachers and facilitate targeted assistance to those teachers in need of improvement.²⁰⁶

Although the contract does not entirely gut the “steps and lanes” model, it adds monetary consequences to the evaluation system by denying automatic raises based on seniority to all teachers who score on the bottom two levels (“needs improvement” or “developing”) of a five-point evaluation scale.²⁰⁷ Additionally, the contract provides for targeted remedial support to teachers scoring at the bottom two levels, enabling the assessments to serve simultaneously as a tool to evaluate teachers and help them improve.²⁰⁸ The new contract, which “begins to redefine teachers’ careers,”²⁰⁹ also incorporates peer assessments into the evaluation system, allowing teachers to continue to play an active role in the process.²¹⁰

The five-point evaluation scale is based on three factors: instructional practices, professional values, and student achievement.²¹¹ An innovative aspect of the student achievement factor is that along with analyzing student performance on standardized tests, it also considers whether students reach goals jointly decided upon by teachers and principals at the beginning of the school year.²¹² Real consequences accompany both high and low scores: teachers given a one who do not improve by the end of the year may face termination while those who receive a five have the

206. CITY OF NEW HAVEN & NEW HAVEN FED’N OF TEACHERS, SETTLEMENT AGREEMENT (2013), available at http://www.newhavenindependent.org/archives/upload/2013/11/mb/NHFT_Tentative_Agreement_2014-2017.pdf; Melissa Bailey, *10-to-1 Contract Vote Buys School Reform*, NEW HAVEN INDEP. (Nov. 8, 2013), http://www.newhavenindependent.org/index.php/archives/entry/teachers_ratify_contract_by_10_to_1_vote/. The final teacher vote tally was 775 to 79. *Id.*

207. SETTLEMENT AGREEMENT, *supra* note 206, at 4 (“[S]tep movement will occur each year of the contract for those teachers receiving an overall rating of Effective, Strong or Exemplary on their evaluation. . .”).

208. *Id.* (“[T]eachers receiving a Developing or Needs Improvement rating will be notified on or before May 15th of said year and will be given the opportunity to successfully complete up to five (5) sessions of individually designed professional development. . . . Such sessions will be provided by the Board and will expand professional learning responsibilities beyond the already existing immediate and intense development opportunities, including a written Intensive Plan of Improvement and frequent support sessions.”).

209. Bailey, *supra* note 206. The new contract runs from July 1, 2014, through June 30, 2017, and affects 1640 teachers and other staff in city public schools. *Id.*

210. Melissa Bailey, *Teachers Prepare to Evaluate Each Other*, NEW HAVEN INDEP. (Nov. 14, 2013), http://www.newhavenindependent.org/index.php/archives/entry/teachers_trained_to_evaluate_each_other/.

211. *Id.*

212. *Id.*

opportunity for promotion to a literacy coach or team leader for their grade level.²¹³

New Haven's labor-management partnership helped create a flexible system that is more responsive to localized conditions and creates a designated forum through which teachers can reflect upon their teaching successes and failures. Unlike evaluation programs in other cities, New Haven's system allows teachers to revise their goals in cooperation with supervisors at a mandatory mid-year conference.²¹⁴ New Teacher Project consultant Ellen Hur emphasized that New Haven's evaluation system stands "at the forefront of a national conversation" due to its collaborative nature.²¹⁵ The New Haven example illustrates that it is in fact possible to alter the sense of antagonism between labor and management within a city's schools. Marc Anthony Solli, a veteran English teacher, applauded the type of collaboration that enabled the new evaluation system: "We're in a post-industrial version of this profession. . . . This us-versus-them mentality has to give way."²¹⁶

Ultimately, a comprehensive performance evaluation and development system must both differentiate teachers based on their effectiveness in advancing student achievement and use the evaluations to provide targeted professional development. When unions are included in the design and implementation of such a system, it is possible to avoid the morale issues inherent in unilaterally imposed reforms while creating a powerful accountability tool to help ensure all students are taught by qualified educators.

C. COLLECTIVE CAPACITY

CBAs can also support teachers through a provision mandating strategic inquiry. Despite the need to provide teachers with sufficient freedom to design a system tailored to local conditions, it is important to avoid the pitfall of assuming teachers can figure out all the details for themselves. As Rick DuFour, an expert in educational development, explains, "[t]he concept of a collabora-

213. *Id.*

214. *Id.*

215. Thomas MacMillan, *New Evals Link Teacher, Student Performance*, NEW HAVEN INDEP. (Apr. 27, 2010), http://www.newhavenindependent.org/index.php/archives/entry/teacher_evaluation/.

216. Bailey, *supra* note 204.

tive culture of a professional learning community is powerful, but like all powerful concepts, it can be applied badly.”²¹⁷ When teachers are not guided through the collaboration, teams often end up concentrating on matters unrelated to student learning, and merely “getting along” often becomes “a greater priority than getting results.”²¹⁸ While reformers emphasizing the need for flexibility caution schools not to micromanage the strategic inquiry process, a certain degree of “coerced collaboration” is viewed as essential in the majority of other professions. Dufour provides the following illustration:

The law firm that represented our school district when I was superintendent required all of its attorneys to meet on a weekly basis to review the issues and strategies of various cases assigned to individual members One might say this law firm *coerced* its members to attend. The firm, however, believed that all of its clients should have the benefit of the collective expertise of the entire firm, not merely the single attorney to whom the case had been assigned.²¹⁹

The same conclusion applies to the teaching profession. Strategic inquiry is a valuable tool with which to address the fact that “challenges facing schools problems require adaptive rather than technical solutions.”²²⁰ A provision in the CBA, coupled with meaningful support for the process from management and labor, will help teachers approach problems with increased focus and the assistance of the school’s collective knowledge.

As reformers seek to better engage all students in the classroom, New Classrooms, an innovative non-profit, has sought to utilize technology in order to design personalized instructional models catered to the needs of individualized students.²²¹ The organization asserts that these models, which redesign the physical classroom to create various learning stations that students and teachers move between during a single class period, “help teachers personalize learning to the needs of each student.”²²²

217. DuFour, *supra* note 147, at 13.

218. *Id.* at 13.

219. *Id.* at 10.

220. PANERO & TALBERT, *supra* note 62, at 14.

221. *Frequently Asked Questions*, NEW CLASSROOMS, <http://www.newclassrooms.org/believe.html> (last visited Feb. 28, 2015).

222. *Id.*

Although this idea is intriguing for its bold re-imagination of the classroom, it is worrisome that such a model amounts to “teacher-proofing” of classrooms, as it seems to operate on a premise that technology is better suited to address student learning needs than teachers who reflect on and improve their lesson plans as unexpected challenges emerge.²²³ Reforms that rely exclusively on technology to pinpoint student-learning gaps miss the opportunity to capitalize on teachers’ personal and collective knowledge, thus doing students a disservice.

D. INCENTING TEACHERS TO STAY

While much attention has focused on recruiting better teachers, less attention has focused on minimizing attrition. For instance, in an attempt to convince teachers to accept jobs at traditionally under-resourced schools, various districts have offered teachers increased salaries in exchange for their service. Under New Haven’s new contract, teachers will receive extra pay for working in “hard-to-serve” schools, a definition to be determined by a committee of teachers and administrators.²²⁴ Although such bonuses are a step in the right direction, they fail to address a related issue: teachers too often lack incentives to remain in the profession past the first several years.

No single CBA will be a silver bullet that reverses teacher attrition, but there are tangible ways in which it can reduce the problem. First, the new contract should provide various incentives for teachers who remain at schools for multiple years. Financial bonuses should accompany certain milestones, such as the five- and ten-year mark. But more importantly, the contract should provide teachers with a meaningful career ladder. Research shows that many teachers leave the profession because they feel stifled by a flat career trajectory that prevents them from making a difference beyond the four walls of their classrooms.²²⁵ Thus, a carefully constructed career ladder that offers

223. See William Huntsberry, *Meet The Classroom Of The Future*, NAT’L PUB. RADIO (Jan. 12, 2015), <http://www.npr.org/blogs/ed/2015/01/12/370966699/meet-the-classroom-of-the-future>. One Brooklyn teacher stated, “[a] lot of [teachers] just take what’s given to them from the program and do what they’re told: ‘This is my script, these are my kids who are here.’ When used that way, [the program] won’t work. . . .” *Id.*

224. SETTLEMENT AGREEMENT, *supra* note 206, at 9.

225. NAT’L COMPREHENSIVE CTR. FOR TEACHER QUALITY, HANDBOOK ON EFFECTIVE IMPLEMENTATION OF SCHOOL IMPROVEMENT GRANTS 101, 101–02 (2009), *available at*

teachers a real opportunity to “explore new challenges and growth opportunities while at the same time keeping one foot in the classroom” can help limit unnecessary attrition.²²⁶

When designing a career ladder, though, it is important to ensure that teachers who assume mentorship or leadership roles receive adequate institutional support. A study presented at the 2005 American Educational Research Association Annual Conference concluded that a lack of administrative scaffolding significantly impeded the effectiveness of a teacher career ladder:

Only when teachers in these roles were supported by their principals in particular ways did they experience success and, thus, gain satisfaction in their roles. These principals gave more than resources and verbal encouragement. They had clear visions for school improvement coupled with an understanding of how the roles contributed to that vision.²²⁷

Ensuring that teachers receive needed support as they advance up the career ladder will not only help teachers be more effective, but will also provide them with an incentive to continue teaching rather than exit for a different profession.

VI. CONCLUSION

Reframing CBAs so that they help to reinvigorate the teaching profession is key to 21st century educational reform. Under the current typical contract, and school culture that it reinforces, “students are viewed as products, teachers as assembly workers, and school administrators as floor supervisors.”²²⁸ Critics of unions and the collective bargaining process continue to claim that the rigidity of the bargaining process and bargaining agreements eliminate any hope of reforming schools. In a 2011 State of the State Address, Indiana Governor Mitchell Daniels made the following statement about teachers’ CBAs: “We must free our school leaders from all the handcuffs that reduce their ability to meet

http://www.centerii.org/handbook/Resources/Handbook_on_Effective_Implementation_of_School_Improvement_Grants.pdf.

226. *Id.* at 101.

227. JILL HARRISON BERG ET AL., CRACKING THE MOLD: HOW SECOND-STAGE TEACHERS EXPERIENCE THEIR DIFFERENTIATED ROLES 5 (2005) (presented at the American Educational Research Association’s annual conference in 2005).

228. Urbanski, *supra* note 68, at 123–24.

the higher expectations we now have for student achievement.”²²⁹ Governor Daniels was correct that CBAs, as currently formulated, function like handcuffs. But not for the reasons he presumes. Rather, the typical CBA functions as handcuffs because it prevents unions and the district from forming a partnership that would empower teachers to be more effective educators. New CBAs must bridge the increasing divide and ensure that teachers have the tools needed to address the myriad of challenges they face every day in the classroom.

This Note suggests several areas for further research. The first such opportunity for further inquiry is how to best incentivize teachers and school districts to agree upon a new CBA that accomplishes the vision of teaching that this Note advocates. All CBAs are bargained for in good faith by both parties; thus, district management and the unions must share any blame for the fact that CBAs currently impede educational improvement. Further research should explore how to launch targeted efforts to convince both sides that a re-imagined CBA is in the best interests of all involved.

Further research is also needed to pinpoint more precisely what makes an effective career ladder. Although there are various reports on the subject,²³⁰ there are still lingering questions surrounding the proper increase in compensation as teachers advance, the degree to which career ladders should be personalized according to individual teacher goals, and how to determine which teachers can take advantage of the advancement opportunities.

U.S. schools must make a choice. They must choose whether to continue experimenting with various reforms under current CBAs — a contract that expects obedience rather than initiative from American teachers — or the nation must reimagine teachers’ role in the education system and how CBAs can support such a change. A profound shift in the teaching profession is needed, and accomplishing this shift will require various groups including administrators, teachers, and communities themselves to buy in. Procuring this support will not happen overnight. But the alternative — continuing to view teachers as interchangeable parts

229. Mitchell Daniels, Governor of Ind., State of the State Address (Jan. 11, 2011) (video recording of address available at <http://www.in.gov/governorhistory/mitchdaniels/11stateofstate.htm>).

230. See, e.g., BERG ET AL., *supra* note 227.

and unions as an enemy to be overcome — will continue to obstruct even the best-planned reform efforts for years to come.