

EDUCATION REFORM AND COLLECTIVE BARGAINING: C FOR COMPATIBILITY

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Executive Summary

After reviewing the Massachusetts Education Reform Act of 1993 (MERA) and the contract between the School Committee and the Educational Association of Worcester (EAW),¹ the Research Bureau offers the following suggestions:

- **Salaries (pages 4-12)**

Teacher compensation should be better aligned with the goals of MERA and the Federal No Child Left Behind Act (NCLB) to improve student achievement. Teacher salaries have increased at a rate above inflation over the last 12 years due to pay increases for years of service, additional education, and salary schedule raises. A teacher with a bachelor's degree would have averaged 8% annual raises starting in 1990 through 2002. This salary structure is fiscally unsustainable, as increases in state funds have leveled off and decreased in recent years. Merit-pay systems should be considered in order to better align teacher compensation with teacher quality and student achievement. Other unions across the country can provide helpful examples of merit pay proposals that have been union-led or union-supported. The Teachers' Union Reform Network (TURN) should be tapped as a resource for innovative teacher compensation proposals.

- **Benefits (pages 12-15)**

The Worcester Public Schools (WPS) should bear a smaller percentage of employee health insurance costs. It currently pays 87% of Blue Cross Blue Choice and 90% of Fallon Community Health Plan premiums. Worcester pays more than most private employers and many Massachusetts municipalities. New State employees pay 25% of health insurance premiums and current employees pay 20%. If the WPS paid 75% of the lowest cost provider for health insurance (currently Fallon) for teachers, the WPS would save over \$4 million dollars in one year and \$9 million if the plan were applied to all school employees and retirees. In negotiating health insurance, the School Committee and the EAW should be prepared to amend or reject IAC recommendations since its role, by statute (MGL 32B), is only advisory.

- **Hiring and transfer process (pages 16-20)**

The current contract language for hiring (including transfers) leaves principals very little input in the process and may impinge on their statutory authority—as defined by recent Supreme Judicial Court decisions—to determine who works in their schools. Applications (including transfers from inside the district) should be judged on criteria other than seniority that allow principals to use judgment. Teaching vacancies should be open to application from outside the school district in order to expand the pool of talent from which principals may choose.

- **Evaluation and dismissal process (pages 20-24)**

The WPS should make use of all the authority granted by statute with respect to teacher dismissals. According to statute (MGL 71 sec. 42), in addition to inefficiency, incompetence,

¹ The EAW is an affiliate of the Massachusetts Teachers' Association, which is an affiliate of the National Education Association.

incapacity, insubordination, and conduct unbecoming a teacher, teachers may be dismissed for failure to meet teacher performance standards. The process for such dismissals in Worcester takes two years or more to complete. This process should be streamlined while maintaining a fair process for teachers. Principals and other supervisors who perform observations and evaluations should be formally trained in the contractual requirements of evaluations.

- **Small Learning Communities (pages 25-28)**

The current arrangement regarding Small Learning Communities² (SLCs) should be altered to allow for genuine flexibility including hiring processes, professional development, and length of school day. An amendment to the contract requires that assistant principals—who are members of an EAW collective bargaining unit—lead these small schools. According to MGL 71 sec. 41, school leaders “by whatever title their position may be known” cannot be represented in collective bargaining. Therefore, the School Committee should encourage state lawmakers to remove all assistant principals from collective bargaining, as they—like principals—are managers. Union-led reform efforts in school-based management—particularly in TURN affiliated unions—should be examined as models.

I. Introduction

WPS contract with the local teachers’ union, the EAW, expires on December 31, 2003, and the two parties must negotiate a successor contract in the context of the challenges of the 1993 MERA, the City’s recent Carnegie Foundation-funded small schools initiative, NCLB, the state and City budget crises, and the expectations of taxpayers, teachers, and parents that student achievement will improve. From the Federal government to the school district, from top administrators to people just entering the teaching profession, organizations and individuals have had to focus on student achievement and school accountability as education reform expands. In this report, we will examine the collective bargaining agreement between the EAW and the Worcester School Committee to see how far it harmonizes with the goals of education reform.

As a result of the MERA and NCLB, public schools face an increased degree of scrutiny and accountability: students are required to take MCAS tests; teachers are required to take a teacher test to qualify for a position; and principals are held individually accountable for their schools’ performance, since they are no longer members of a collective bargaining unit. Contract constraints on hiring, firing, transfers, salaries, evaluation, and a number of other issues continue to be set by collective bargaining. However, MERA also addresses issues of hiring, firing, and teacher evaluations—creating the potential for friction between the letter of the law and the letter of the local contract. In some cases the law simply trumps local contracts—superintendents, rather than school committees now make hiring decisions, for example.³ In other areas, districts and unions need to work together to create a contract that helps the school system meet the demands of MERA—for instance, the law requires teacher performance standards,⁴ but the content of those standards is subject to collective bargaining. Similarly, NCLB requires improved

² SLCs are small stand-alone schools and academies within larger school facilities

³ Massachusetts General Laws, Chapter 71, sec. 42.

⁴ Massachusetts General Laws, Chapter 71, sec. 38.

performance from public schools and mandates consequences for schools officially designated “in need of improvement;” these consequences, in some cases, could require substantial changes to current collective bargaining agreements.

Facing both the demands of post-education-reform accountability and pre-education-reform contract constraints, principals may feel themselves in what local football fans might call Bill Parcells’s predicament, for the former New England Patriots coach famously quipped, “If they want you to cook the dinner, at least they ought to let you shop for some of the groceries.”⁵ Principals are in what has been described by one school official as a “no man’s land” and are “on an island” according to a union official. One aim of this report is to evaluate the accuracy of these descriptions and ask how fully school administrators have accepted the responsibility granted by MERA. We also consider how the current contract might be improved in the next round of negotiations.

Since teachers’ unions changed in the 1960’s from professional associations that shunned a labor-union image to industrial-style labor unions that bargained for wages and benefits (and gained the right to strike to back up their demands), critics have at times attacked unions for hindering educational progress. Union advocates argue that union-led efforts to secure higher pay, smaller classes, and better training for teachers will yield better-qualified teachers who are in a position to offer more individualized attention to students.

Recently, some union leaders nationwide have acknowledged failures in the current practices of teachers’ unions. Teachers’ unions themselves have advanced proposals for restructuring unions to make them agents rather than opponents of education reform. TURN includes 21 teachers’ unions from across the country that are redefining collective bargaining to include professional development, pre-service education, and compensation redesign, while limiting industrial-style work rules.⁶ TURN includes unions from New York City; Rochester, NY; Seattle, WA; Denver, CO; and Montgomery County, MD, among other cities.

II. Collective Bargaining Basics: Education Reform and Union Bread and Butter

The basic operation of unions and collective bargaining merits a brief introduction. The primary role of the teachers’ union is to engage in collective bargaining. State law permits a majority of teachers in a district to elect an exclusive representative to negotiate the terms of all employees’

⁵ *Boston Globe*, Feb 1, 1997. Parcells left his position in part because he did not have the authority he sought over personnel decisions.

⁶ Adam Urbanski and Peter Erskine, “School Reform, TURN, and Teacher Compensation,” *Phi Delta Kappan online*, 28 January 2000. www.pdkintl.org. TURN charter members include the following: Albuquerque, NM (AFT); Bellevue, WA(NEA); Boston, MA (AFT); Cincinnati, OH(AFT); Columbus, OH (NEA); Dade County, FL(AFT); Denver, CO (NEA); Hammond, IN(AFT); Los Angeles, CA (AFT/NEA); Memphis, TN (NEA); Minneapolis, MN (NEA); Montgomery County, MD(NEA); New York City, NY (AFT); Pinellas County, FL(NEA); Pittsburgh, PA(AFT); Rochester, NY(AFT); San Diego, CA(NEA); San Francisco, CA(AFT/NEA); Seattle, WA(NEA); Toledo, OH(AFT); Westerly, RI(NEA).

contracts. A non-union-member teacher⁷ would also have his or her salary set by the contract (even if the teacher voted against this particular union representation), because collective bargaining laws permit a *majority* of workers to elect a representative for *all* workers.⁸ In this way, unions obtain the right and responsibility to be the sole representative for all employees at the bargaining table—members and non-members alike. The EAW has represented Worcester teachers in collective bargaining since the state passed a collective bargaining law for public employees in 1965.

We will begin with an analysis of the “bread and butter” issues in the Worcester contract. Specifically, we will discuss how the contract governs teachers’ pay, teachers’ benefits, and teachers’ rights. Salary and health insurance are not only two of the most important issues to teachers, but also are the two largest items in the school budget. Teachers’ salaries are 75% of all salaries in the school budget (\$113 million of \$148 million). Combined, teacher salaries (\$113 million) and health insurance (\$15 million) total \$128 million (56%) of a \$228 million budget. Here we address the following questions: How well have Worcester teachers fared under recent contracts? Is the current system fiscally sustainable? How do current salary and health insurance provisions affect Worcester’s ability to improve student achievement and meet both the demands of MERA and the Federal NCLB? What alternate approaches to compensation have other unions explored? What options might be best for Worcester?

A. Teachers’ compensation

Teachers’ compensation in the current contract consists of four elements: 1) base salary; 2) pay for years of service; 3) pay for additional education (these are all illustrated by the salary schedule, Figure 1.1); and 4) benefits. Teachers’ pay increases come through three methods: 1) percentage raises to the entire salary schedule; 2) automatic pay increases for additional years of service (steps down on the schedule); and 3) pay increases for additional levels of education (moving across the lanes in the schedule). Each move toward a new degree and each additional year of service results in additional pay in addition to whatever percentage raise might be applied to the entire schedule.

Figure 1.1 Worcester Public Schools Teacher Pay Schedule

First Day of School, 2003								
Step (Years)	Education level						CAGS/2M*	DOC
	BA	BA+15	MA	MA +15	MA +30			
1	\$33,258	\$35,087	\$37,968	\$38,886	\$40,127	\$41,568	\$46,105	
2	\$35,217	\$37,046	\$39,927	\$40,848	\$42,088	\$43,530	\$48,064	
3	\$38,048	\$39,874	\$42,755	\$43,675	\$44,915	\$46,358	\$50,895	
4	\$40,008	\$41,838	\$44,717	\$45,636	\$46,878	\$48,319	\$52,856	
5	\$41,969	\$43,797	\$46,678	\$47,597	\$48,838	\$50,279	\$54,815	
6	\$43,928	\$45,759	\$48,637	\$49,557	\$50,798	\$52,239	\$56,777	
7	\$45,891	\$47,718	\$50,598	\$51,520	\$52,760	\$54,201	\$58,737	
8	\$50,229	\$52,058	\$54,939	\$55,860	\$57,099	\$58,540	\$63,076	
9	\$53,365	\$55,196	\$58,074	\$58,996	\$60,235	\$61,676	\$66,213	

Source: Memorandum of Agreement, 2001

*Certificate of Advance Graduate Study

⁷ Non-Union member teachers are rare in Worcester (the EAW suggests that there may be four). Under state law, they are required to pay a per-teacher share of the costs of collective bargaining. See also the later section of this report on teachers’ rights.

⁸ Massachusetts General Laws, Chapter 150E, sec. 4.

The following example illustrates how step and lane increases combine to increase teacher pay. If a teacher were hired with a bachelor's degree and that teacher acquired a master's after two years, then the teacher would be on the third step for years of service, and in the third lane for the master's degree, receiving a salary of \$42,755. That salary is 26% (\$6,616) more than the teacher's starting salary two years earlier. This pay increase would be the result of step and lane increases only, without any "raises" to the entire pay schedule over those three years.

Under the current contract, in the fall of 2003, a first-year teacher with a bachelor's degree earns \$33,258; a first-year teacher with a master's makes \$37,968 (14% over the first year bachelor's); a five-year veteran with a master's and 15 credits toward another degree earns \$47,597 (43% more than the first-year bachelor's salary); and a nine-year veteran with a doctorate (the highest step and education level) earns \$66,213 (99% more than the first-year bachelor's).⁹

Figure 1.2

Step and Lane Pay Increases as a Percentage of Starting Salary with Bachelors Degree							
Step (Years)	Education level						
	BA	BA+15	MA	MA +15	MA +30	CAGS/2M	DOC
1	\$33,258	5.5%	14.2%	16.9%	20.7%	25.0%	38.6%
2	5.9%	11.4%	20.1%	22.8%	26.6%	30.9%	44.5%
3	14.4%	19.9%	28.6%	31.3%	35.1%	39.4%	53.0%
4	20.3%	25.8%	34.5%	37.2%	41.0%	45.3%	58.9%
5	26.2%	31.7%	40.4%	43.1%	46.8%	51.2%	64.8%
6	32.1%	37.6%	46.2%	49.0%	52.7%	57.1%	70.7%
7	38.0%	43.5%	52.1%	54.9%	58.6%	63.0%	76.6%
8	51.0%	56.5%	65.2%	68.0%	71.7%	76.0%	89.7%
9	60.5%	66.0%	74.6%	77.4%	81.1%	85.4%	99.1%

This chart assumes no "raise" to the entire salary schedule for all 9 years. Increases are indicated in percentage of year 1 salary with a Bachelor's degree.

Source: Memorandum of Agreement, 2001 Prepared by Worcester Regional Research Bureau

Examining WPS teacher salaries in relation to inflation the past decade shows a substantial real increase in this aspect of teachers' compensation. After comparing salary schedule increases to the rate of inflation, we will examine how an individual teacher working in the WPS for the last 12 years would have fared on the basis of pay increases from salary schedule raises, step increases, and lane increases.

- **Salary schedule raises vs. inflation¹⁰**

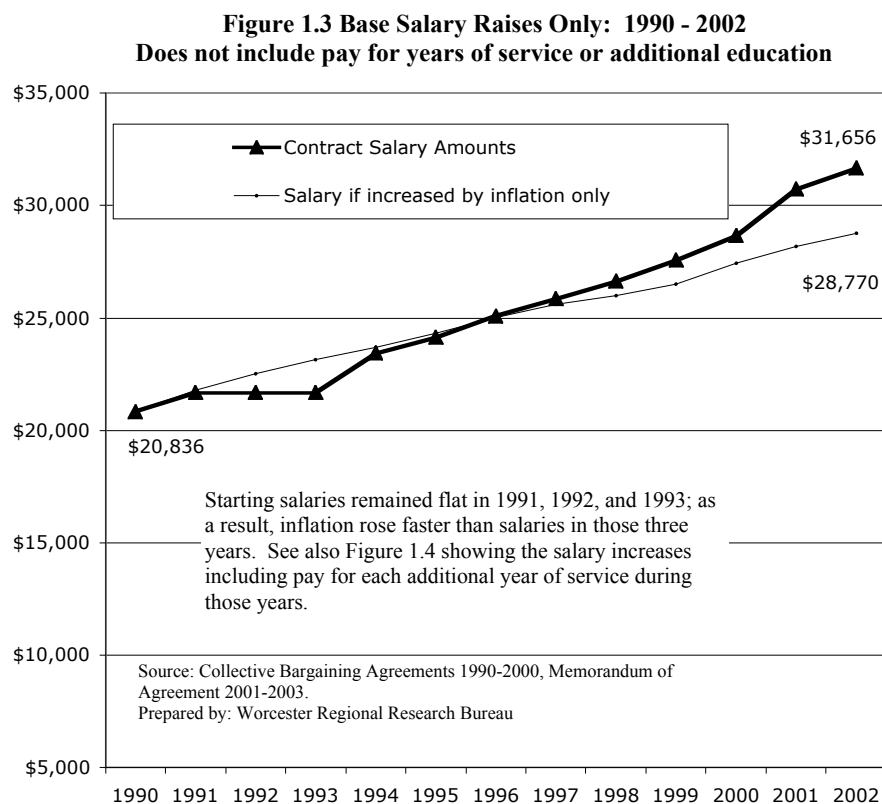
Since the passage of MERA in 1993, the salary schedule has been raised every year (6% in 1994, 3% in 1995, 4% in 1996, 3% in 1997, 3% in 1998, 3.5% in 1999, 4% in 2000, 3% in 2001, 5% in 2002, 4% in 2003).¹¹ Here we analyze the progress of starting salaries in the salary schedule compared to inflation as an indicator of the progress of the salary schedule in general. Figure 1.3

⁹ It is possible for teachers to make more than their step and level salary through extra-pay positions as department heads, leaders of extracurricular activities, or coaches.

¹⁰ Unless otherwise noted, inflation calculations are based on National Bureau of Labor Statistics Northeast Urban CPI for the years mentioned.

¹¹ We have included 1990-1993 data on starting salaries as well; during most of these recession years, the salary schedule remained constant (no raises to the whole schedule).

displays the base salary (starting salary with a bachelor's degree) from the contract for each of the years documented.¹²



This figure illustrates pay raises to the entire schedule. The thin line represents the 1990 starting salary increased by inflation only. With the exception of the early nineties, salary schedule raises outstripped inflation. The maximum salaries have also increased in the newer contracts. In 1990, an eleven-year veteran with a doctorate would have earned \$37,340 (\$51,202 when adjusted for inflation to 2002 dollars); a teacher in that same position in 2002 would have earned \$61,092—a 19% increase in real pay for the same position and level of education. No teacher would have experienced these income histories (except those on the highest step), as these are the pay increases that were applied to the entire pay scale, not counting increases for years of service and any additional degrees earned during the period.

- ***Teachers' salaries vs. inflation***

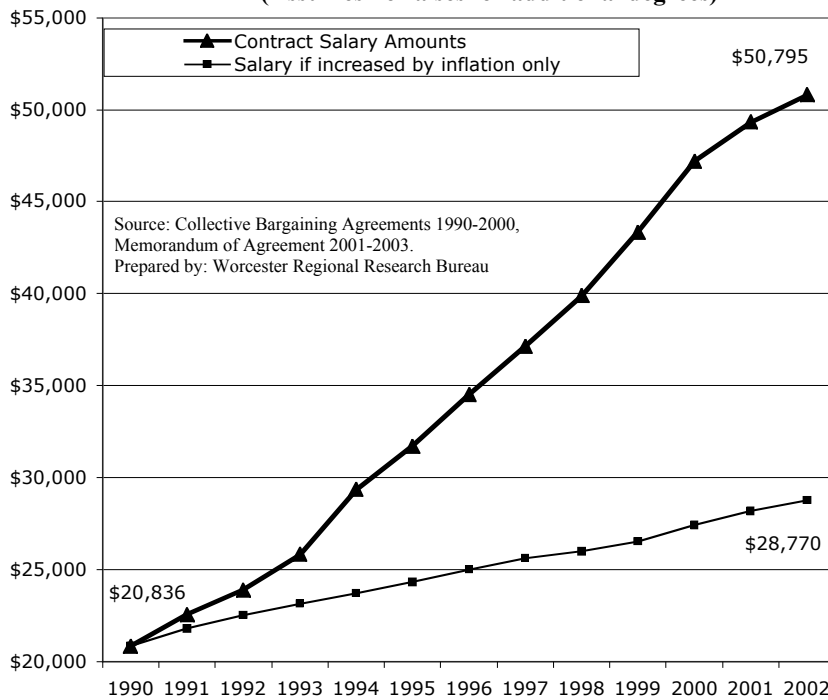
All teachers not yet on the highest step receive additional pay increases for years of service¹³ and all earn increases for additional degrees. In 1990, a first-year teacher with a bachelor's degree would have earned \$20,838 (\$28,571 after adjusting for inflation to 2002 dollars). In 2002, that same teacher would be on the highest step, and, assuming the teacher earned no additional degrees (which is uncommon for veteran teachers), the teacher would have

¹² Salary figures are as of January 1, 1990-2002 from the respective collective bargaining agreements.

¹³ At the top step, teachers see pay increases through raises to the entire schedule, pay for additional degrees, and longevity bonuses (see note 14).

earned \$50,795, a 78% increase in pay after adjusting for inflation. Figure 1.4 shows the income stream of a teacher in the system receiving both step increases and schedule-wide raises for 12 years. This teacher averages an 8% raise per year due to the combined step increases and schedule-wide raises.

**Figure 1.4 A Teacher in WPS from 1990 - 2002:
Step Increases and Base Salary Raises
(Assumes no raises for additional degrees)**



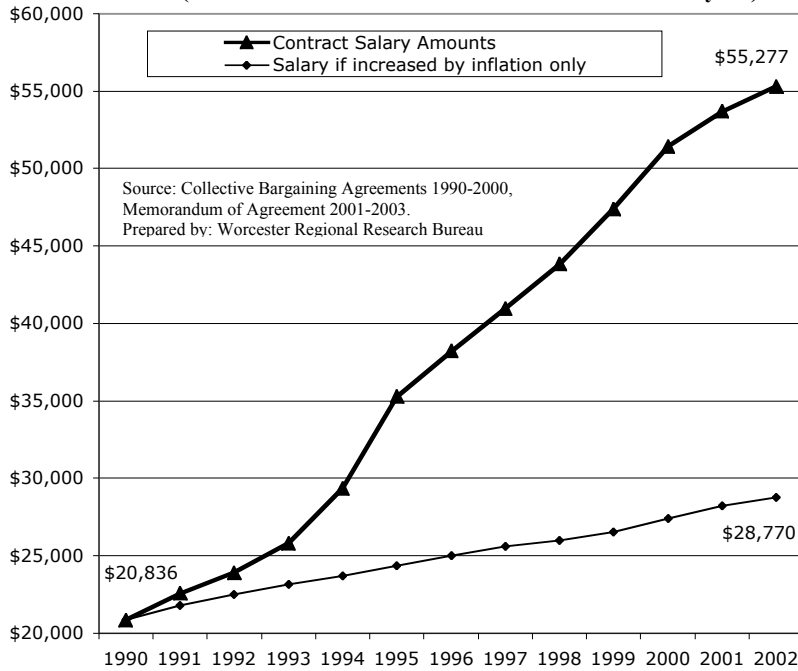
Teachers are required to get a master's degree in order to complete their certification and earn professional teacher status in Massachusetts; hence, the majority of teachers have earned at least a master's degree. Figure 1.5 shows the income history of a teacher who earned a master's after his fifth year in the WPS. This teacher would have averaged nearly 9% raises each year in combined step, lane, and schedule-wide pay increases.¹⁴

Even in years where the salary schedule was flat (1991, 1992 and the first half of 1993), a teacher in the system received pay increases that outstripped inflation (by 3.2%, 2.4%, and 5.1% in 1991, 1992, and 1993 respectively) due to step increases. The smallest jump is at the end of the pay scale, as the teacher has hit the top step on the scale.¹⁵ In addition to receiving higher pay at each level and step, teachers now have fewer steps between the lowest and the highest salaries, as two steps have been removed in the most recent contract.

¹⁴ The percentage jump is biggest between years five and six, when the teacher earns the master's. The teacher would have earned a 20% pay increase that year alone.

¹⁵ Teachers at the top step for years of service can continue to earn increases through both schedule-wide raises and pay for additional degrees. The contract also includes longevity bonuses at 15, 20, 25, and 30 years (\$500, \$1000, \$1500, and \$2000 respectively).

Figure 1.5 A Teacher in WPS from 1990 - 2002
Step Increases and Salary Schedule Raises
 (Assumes Master's finished in before 94/95 school year)



- **Worcester salaries vs. similar cities**

Worcester's pay scale is comparable to other Massachusetts union salary schedules. Boston teachers make \$6,000 to \$8,000 (or just over 15%) more than Worcester teachers at the same step and education level. Boston's cost of living, however, is estimated at roughly 15% greater than Worcester's.¹⁶ Teachers with only a bachelor's degree in Framingham make almost \$1,000 more than Worcester teachers with the same degree; however, Worcester teachers with a master's earn slightly higher salaries than their Framingham counterparts. Framingham's cost of living is estimated at 14% higher than Worcester's,¹⁷ suggesting that Worcester teachers are better off in real terms than those in Framingham. Starting salaries in the Wachusett Regional School District (WRSD) are higher for teachers with only a bachelor's, but the WRSD caps step increases for teachers without a master's at step five, so the maximum salary for a WRSD teacher with a bachelor's degree is \$44,277 and \$53,365 in the WPS. Teachers with a master's in WPS earn nearly \$2,000 more in their first year than their WRSD counterparts. Similarly, at step nine (Worcester's top step), a WPS teacher with a master's or a PhD earns nearly \$5,000 more than a WRSD with the same credentials and years of service. The WRSD teachers can earn higher maximum salaries than are available in Worcester; however, Worcester's maximum salaries (step 9) are higher than WRSD salaries for steps, 9, 10, and 11 (of 14 total steps).

¹⁶ USA Today cost of living estimates.

¹⁷ Homefair.com cost of living estimates.

Analysis and Recommendations

This summary has shown that Worcester teachers' salaries have considerably outstripped inflation over the past decade and that even when raises to the entire salary schedule were zero, teachers in the WPS who were not at the top step still earned pay increases greater than the rate of inflation. Worcester salaries are comparable to those in Framingham, Boston, and the Wachusett Regional School District. However, Worcester's salary schedule contains no incentives to advance the goals of MERA and NCLB to enhance student achievement. Also important is that the salary increases of the past decade, which have resulted largely from the infusion of state Chapter 70 funds as part of MERA, cannot be sustained over the long term. We will address each of these issues in turn.

- ***Compensation, student achievement, and teacher quality***

Teachers' unions across the nation are experimenting with teacher compensation reforms that harmonize better with various elements of education reform. TURN is a group of unions that have explored alternatives to the traditional teacher contracts and pay structures. For instance, the Denver Public Schools and the (TURN affiliate) Denver Classroom Teachers' Association Joint Task Force on Teacher Compensation have developed a comprehensive system for teachers' compensation which eliminates automatic pay raises for years of service: "The new system would reward teachers who consistently meet rigorous and high expectations—including growth in student learning—with accelerated career earnings."¹⁸ Merit-pay programs reward excellent teachers and provide incentives for others to improve. The Douglas County Federation of Teachers, in Douglas, Colorado, has had a broad performance-pay system in place since 1993 which rewards positive teacher evaluations from principals, group performance (i.e. schools or grade levels meeting student achievement benchmarks), additional skills (acquisition of specific skills that are a priority for the school district, i.e. test data analysis) and other contributions (school or district curriculum work, colleague mentoring).¹⁹

Six TURN districts offer financial rewards directly to teachers when their schools meet student-achievement targets (Cincinnati, Columbus, Denver, Memphis, Miami/Dade County, and New York City). Others have added incentives for teachers to achieve national board certification,²⁰ which requires teachers to submit portfolios including videotapes of their teaching as well other materials and take grade-appropriate tests (Bellevue, WA; Boston, MA; Cincinnati, OH; Columbus, OH; Hammond, IN; Los Angeles, CA; Miami/Dade, FL; Minneapolis, MN; Montgomery County, MD; New York City, NY; Pinellas County, FL; Rochester, NY; San Diego, CA; San Francisco, CA; Toledo, OH). In addition, Kentucky, Maryland, Charlotte-Mecklenburg, North Carolina and Dallas, Texas have all instituted forms of merit pay.²¹ In order

¹⁸ Denver Public Schools-Denver Classroom Teachers Association Joint Task Force on Teacher Compensation, *Recognizing and Rewarding Teachers in the 21st Century*, May 2003.

¹⁹ Douglas Hartman and Rob Weil, "Developing a Performance Pay Plan for Teachers: A Process, Not an Event," American Federation of Teachers Research: <http://www.aft.org/research/models/dougco/pppwebat.htm>.

²⁰ National Board for Professional Teaching Standards

²¹ Allan Odden, "Rewarding Expertise" *Education Next*. Spring 2001. Cited here from <http://www.educationnext.org/2001sp/16odden.html>

to connect teacher compensation and student achievement, the School Committee, in collaboration with the superintendent and the EAW, should consider some of these approaches for the WPS.

In the 1998-2000 contract, Worcester did put in place a modest rewards program that provided money for schools (not the teachers in the schools) that met certain criteria. Teachers did not get bonuses themselves—an important element in changing teacher performance;²² the schools received the bonus and the teachers chose how the additional resources were used. In each school that wanted to participate, a committee of teachers, administrators and parents would select what improvement the school would focus on. They could work toward improved student or staff attendance, increased parental involvement, improved student test scores, etc., and they were measured against their own stated goals. Participation was voluntary and not many schools sought the bonuses; the program was shut down in the face of budget pressure in 2001. Despite its limitations, this modest plan did demonstrate the possibility for innovation and collaboration between the WPS and the EAW.

Teachers, in general, are receptive to changes in pay structure that would include merit-based incentives, according to a recent nationwide poll by Public Agenda, a non-profit public opinion and research organization. Sixty-seven percent (67%) of the teachers polled supported offering financial incentives to “teachers who consistently work harder, putting in more time and effort than other teachers;” 62% supported financial rewards for “teachers who consistently receive outstanding evaluations from their principals;” 70% endorsed rewarding “teachers who work in tough neighborhoods with low performing schools.” Most teachers were opposed to linking financial incentives to student performance on standardized tests—only 38% of teachers surveyed favored such a plan.²³ Such plans are often seen as unfair due to socio-economic differences and differences in student abilities from one classroom to the next.

Another approach—and one that may be more palatable to teachers opposed to merit-pay that differentiates one teacher from another—is to link bonuses to school-wide performance measures. If the school’s aggregate test scores meet predetermined levels, then each teacher in the school would be rewarded, regardless of the performance of any specific teacher’s students. School-wide accountability measures could use refined MCAS data to eliminate factors that create a less accurate picture of school performance, such as student mobility.²⁴ A more ambitious project, but one worth considering for the long term, would be to include in a pay-for-performance model an evaluation of teachers’ “value-added” inside each classroom. The school’s combined “value-added” could be measured and rewarded when appropriate. Once an annual testing system is in

²² Allen Odden reports that “Research in the private sector has found that in order to affect a worker’s motivation, annual bonuses need to be at least 5 to 8 percent of salary—about \$2000 for the average teacher.” Ibid.

²³ Steve Farkas et. al. *Stand By Me: What Teachers Really Think about Unions, Merit Pay, and Other Professional Matters*. Public Agenda, 2003. The poll was a national survey of 1,347 public school teachers.

²⁴ A common concern regarding the use of test data is that some data are uninformative. For instance, if a student arrives at a school mid-year and does badly on the MCAS, it is not a true reflection of the school’s performance. MCAS data available to schools and the state can be disaggregated by student so mobility and other factors could be minimized when determining school performance.

place (MCAS is not yet at this point), MCAS data could be used to track the progress for each student in a school. Rather than comparing a school's average passing rate on MCAS, for instance, the school's rate of student achievement improvement could be assessed. While school Y may be scoring well below school A in overall passing rate, the rate of student improvement in school Y might be much greater than school A. Research suggests that such a program would increase the accuracy of the school evaluation.²⁵ The entire faculty of a school could then be rewarded financially when their school meets student achievement improvement benchmarks.

This "value-added" approach does raise some potential problems, however. First, students in higher socio-economic status (SES) schools tend to perform better on state tests, and their scores may not be a reflection of quality of teachers in those schools. Teachers may try to frustrate principals' aims by having more academically-challenged and behavior-problem students moved to someone else's class. Schools may attempt to have minority or immigrant students moved to another school—particularly if school performance affects teachers' compensation. Administrators may have difficulty comparing the effects or success of teachers with honors or tracked students compared to those with heterogeneous classes. Teachers or schools may attempt to have more students labeled special education so that their "value-added" rating is not adversely impacted. School-based merit pay may create competition among teachers to transfer to schools with a higher SES that are more likely to earn the bonuses. The challenges of creating a fair and effective merit pay system are great, but some districts have moved toward that end.

Most successful performance-pay systems include a variety of ways for teachers to receive additional financial rewards, and do not simply tie raises to test scores. Douglas County, Colorado, for instance, provides for a base salary, an "outstanding teacher" designation (determined by administrators through a review of a portfolio, parent/student surveys, and formal evaluations), pay for acquiring important "skill blocks" (professional development focused on particular areas that are important to the school), a "master teacher" designation (in Colorado, a state-defined level of licensure), "Group Incentive" pay (individual schools set student achievement goals and are rewarded for meeting them), and "Responsibility Pay" (pay for district or building responsibilities beyond teaching.)²⁶ Similarly, the Denver Classroom Teachers Association teacher compensation plan includes pay for student achievement (evaluation of student improvement over time as well as student performance on standardized tests of reading and math), professional evaluations, skills and knowledge (acquisition of school-approved degrees, demonstration of school needed technical or administrative skills, or national board certification), and market incentives.

- ***Challenges for the current teacher compensation system***

The second reason for altering the current compensation system is that the salary increases of the last decade cannot be sustained over the long term. The budget of the WPS has doubled since the

²⁵ Eric A Hanushek. and Margaret E. Raymond, "Improving Educational Quality: How Best to Evaluate Our Schools?" in *Education in the 21st Century: Meeting the Challenges of a Changing World*. Ed. Yolanda K. Kodrzycki. Federal Reserve Bank of Boston, 47th Economic Conference. June 2002. Pg. 205.

²⁶ Hartman and Weil, <http://www.aft.org/research/models/dougco/pppwebar.htm>.

passage of MERA in 1993, from \$107 million to \$228 million. This is largely the result of the infusion of Chapter 70 funds from the state, \$154 million or 67% of the WPS budget in FY04 alone. In addition to increasing the pay scale for all teachers, the WPS have filled over 600 additional teaching positions since 1993 (a 45% increase).²⁷ This has allowed the WPS to reduce class sizes and restart some programs that had been cut in previous years.

Under the current compensation plan, salary obligations due to step and lane increases will add approximately 1% per year of the total salary figure (\$1.1 million based on the FY04 budget). That 1% increase is in addition to whatever percentage raise is negotiated to the salary schedule in the successor contract.

According to the WPS business manager, the majority of non-salary costs for the WPS are fixed. Salaries total \$148 million (\$113 million for teachers), while non-salary accounts total \$68 million. The biggest non-salary budget items are health insurance (\$30 million), tuition for special education placements (\$9 million), retirement (\$8 million), transportation (\$6 million), fuel (\$2.7 million), electric and gas (\$2.1 million), instructional materials (\$1.6 million), and building repairs (\$1.4 million). One non-salary area with flexibility, instructional materials, was cut by nearly 50% this year (from \$3.5 million to \$1.6 million). It is teacher and other school jobs that will be the likely area where future cuts—if necessary—will be made. This year, more than 110 of the 160 teachers originally laid off were recalled, but school and union officials indicated that these recalls were due to late retirements and resignations. Since the recalled teachers are filling those unexpected vacancies, 135 positions that were filled last year remain vacant. The Romney administration is currently projecting a \$2 billion shortfall at the state level for FY05, which makes it likely that Chapter 70 funds will remain level or be reduced. How will the WPS and the EAW address a level-funded budget that requires a \$1.1 million teacher pay increase, even in the absence of raises to the entire salary schedule in a new contract?

In the short term, in the absence of more comprehensive reform, future salary schedule raises should be limited to the rate of inflation. Teachers in the system would still enjoy the step increases for years of service and education level on top of the inflation adjustment each year. This moderate change would save jobs, preserve or improve class sizes,²⁸ and maintain fairness to teachers. Both the EAW and the School Committee should also consider more fundamental changes to teacher compensation in order to align teachers' pay with the aims of improving student achievement.

B. Teachers' benefits

A substantial portion of teacher compensation and annual expense for the WPS is the cost of health insurance for employees and retirees—\$30.4 million for all employees and retirees, or 13.3%, of the FY04 budget. Current teachers account for almost half of that figure (\$15.1 million

²⁷ According to the FY04 school budget, WPS employed 1,462 teachers in 92/93 (and served 21,935 students) and reached a high of 2,132 in 01/02 (25,817 students). The number of teachers budgeted for in the 03/04 school year is 1,942 (24,888 students estimated for this school year. Source: WPS).

²⁸ The savings from this salary adjustment might allow WPS to hire additional teachers to bring class size down.

or 6.6% of the FY04 budget). Worcester teachers pay 13% of Blue Cross Blue Choice premiums and 10% of Fallon premiums. Teachers' annual payments amount to \$583 for an individual and \$1,527 for a family in Blue Cross; \$389 and \$1,006 for Fallon Select; \$356 and \$920 for Fallon Direct. Of the 1,820 teachers enrolled in WPS health insurance, 1,262 enroll in Blue Cross programs and 555 enroll in Fallon.²⁹

Worcester teachers pay a lower percentage of their health insurance premiums than state employees, and generally less than private sector employees and many other municipal employees across the state. Due to changes initiated this year by the Romney administration and approved by the state legislature, all new state employees are required to pay 25% of their health insurance costs, while current state employees pay 20% of their health insurance premiums over the next two years. A 2001 Massachusetts Division of Health Care survey indicated that private-sector employee payments average 19% of the total premium and 27% for family coverage.³⁰ The employee contribution rates in Worcester are also lower than in many other Massachusetts municipalities. Of the 69 Massachusetts municipalities (with populations over 25,000) responding to the Massachusetts Municipal Personnel Association's "Benchmark Titles Salary Survey," Worcester is tied for the highest city contribution to HMO plans (90%) and 5th highest for PPOs (87%).³¹

In trying to address health insurance, however, the School Committee and the EAW face the additional obstacle of the perceived authority of the Insurance Advisory Commission (IAC).³² Some City officials are under the misconception that all city unions are required by law to have the same health coverage arrangement and that the IAC must approve any changes to health insurance plans. According to state statute, the City must provide uniform coverage only for indemnity plans,³³ but other forms of health insurance can vary from bargaining unit to bargaining unit.³⁴ While the current City practice would suggest otherwise (all City unions currently have the same health plans and percentage payments), the School Committee and the EAW can negotiate health plans and contribution rates different from those recommended by the IAC. The IAC's role is—by statute—only advisory.³⁵

²⁹ Worcester also pays 75% (\$43,072 for a family and \$17,323 for an individual), for an indemnity plan, Master Medical. No current teachers and only nine employees or retirees use this option. Source: Worcester Public Schools.

³⁰ Massachusetts Division of Health Care Finance Policy, *Findings from the 2001 Massachusetts Employer Health Insurance Survey*. December 2001.

³¹ HMOs (Health Maintenance Organization) manage both payment and delivery of healthcare. PPO (Preferred Provider Organizations) Healthcare providers provide services at a fee to the PPO, and a larger number of healthcare providers are usually available.

³² The IAC consists of representatives of each of the bargaining units in the City who recommend their preferred health insurance package to the City Manager.

³³ Indemnity Plans usually include a premium and deductible after which the plan pays a percentage of health care costs, regardless of which provider provides the care. See note 28.

³⁴ Massachusetts General Laws, Chapter 32B, secs. 7, 16. Worcester did not opt to accept section 19 of Chapter 32B, which contains a wider uniformity provision but reduces city government's authority over health insurance.

³⁵ The EAW contends that past practice has been to have uniformity of plans and prices in the City and that the IAC has more than an advisory role.

Analysis and Recommendations

The School Committee and the EAW should examine ways to bring teachers' health insurance (and all school employees' health insurance) costs into the mainstream of coverage offered by Massachusetts state government, businesses, and municipalities, even if they must act independently of the IAC recommendations.

WPS health insurance costs for all employees and retirees increased by \$5.8 million (23%) from FY03 to FY04. In the Research Bureau's report, "Tough Choices for Tough Times: Worcester's FY04 Budget,"³⁶ one option suggested was that the City pay 75% of premiums of the lowest cost provider for health insurance (currently Fallon Direct and Fallon Senior for retirees) for all employees and retirees. Such an adjustment would have yielded savings of \$17.4 million in the City budget in FY04. If current teachers had been operating under this arrangement, the WPS would have saved \$4.07 million this year alone (more than twice the \$2 million cut through teacher layoffs and unfilled vacancies). If all school employees and retirees were switched over to the 75% plan, the WPS would have saved over \$9 million in FY04. Over the last four years, under such a plan, the WPS would have saved approximately \$27 million. Such savings may be necessary in the future to avoid additional layoffs.

- **Salary and health insurance reforms**

If the current EAW contract were simply replicated for the coming three years, a simple—conservative—projection³⁷ results in budget shortfalls of \$4.0, \$8.6, and \$13.9 million over the next three years. Substantial teacher layoffs would be required to balance the school budget (see Figure 1.6).

Figure 1.6

	Teacher Salaries*	Health insurance**	Total***	Projected Budget Amounts****	Projected Shortfall
FY04	\$113,330,618	\$30,463,161	\$228,361,500	\$228,361,500	\$0
FY05	\$118,997,149	\$34,118,740	\$237,683,610	\$233,667,162	\$4,016,448
FY06	\$124,947,006	\$38,212,989	\$247,727,717	\$239,101,090	\$8,626,626
FY07	\$131,194,357	\$42,798,548	\$258,560,626	\$244,666,514	\$13,894,111
	*1% step increases 4% raise per year	**12% increase in health costs per year	***Other budget items held constant (FY04).	****Assumes a 1% increase per year in local aid from the state. ****Assumes a 3% increase per year in city contributions.	

Source: FY04 Data, WPS. Projection Prepared by: Worcester Regional Research Bureau.

³⁶ Worcester Regional Research Bureau, "Tough Choices for Tough Times: Worcester's FY04 Budget." Report No. 03-02. March 2003. <http://www.wrrb.org/Reports/03-02budget.pdf>.

³⁷ This projection holds costs other than teacher salaries and health insurance constant and assumes 1% increases in local aid and 3% increases in City contributions each year. It is likely that other budget items would increase, and it is possible that local aid from the state may remain flat—both factors would make the WPS fiscal situation worse than this projection.

This projection includes yearly increases in local aid from the state (1%) and City contributions to the school budget (3%); it also includes an estimate for annual health insurance cost increases (12%) and assumes salary increases based on the most recent contract (while allowing 1% per year for step and lane increases). Other costs are held at FY04 levels. Making a small change to the salary schedule (tying schedule raises to inflation) and making a substantial reform to health insurance costs (reducing the City’s contribution to 75% of the lowest cost provider) could alleviate a great deal of the financial pressure on the WPS (see Figure 1.7).

Figure 1.7

	Budgeted	Budgeted	Reform	Difference
	FY03	FY04	FY04	
Total WPS salaries	\$115,290,415	\$113,330,618	\$117,596,223	\$4,265,605
Total WPS Health Ins	\$24,659,162	\$30,463,161	\$21,324,213	(\$9,138,948)
Teachers Employed	2,076	1,942	2,076	134
Total WPS Budget	\$224,454,032	\$228,361,500	\$223,488,157	(\$4,873,343)
WPS Funds (City + State)	\$224,454,032	\$228,361,500	\$228,361,500	\$0
Surplus if any	\$0	\$0	\$4,873,343	\$4,873,343

Source: FY03 FY04 Budget Data, WPS. Projection Prepared by: Worcester Regional Research Bureau.

If both salary and health insurance reform had been in place this year, WPS could have kept the same staffing level (2,076 teachers), increased their salaries (by inflation, step, and lane increases) and enjoyed a \$4.2 million surplus—enough to pay the salary and health insurance costs for more than 120 new teachers. Instead, WPS cut staffing levels to 1,942 teachers.

C. Teachers’ rights

The collective bargaining agreement not only sets the boundaries of pay and benefits; it also must address teachers’ rights. Under state law, and following relevant Supreme Court decisions,³⁸ teachers may not be forced to join a union, but they are required to pay a per-teacher share of the costs of collective bargaining, called an “agency service fee.” Agency service fees are intended to cover the costs of collective bargaining and contract maintenance; they cannot be used for political advertising.³⁹ According to the EAW Executive Secretary, the Worcester agency fee is calculated using a formula that allows a modest discount to the national, state, and local dues to adjust for funds that are spent on political advertising.⁴⁰ The description of agency fees in the current contract is less clear: “The [School] Committee agrees that for all present teachers and administrators who as of August 12, 1974, were not members of the Association shall be required to pay an Agency Service Fee which shall be proportionate to the cost of Association dues commensurate with the cost of negotiating and administering this agreement”⁴¹ This seems to

³⁸ *Aboud v Detroit Board of Education* 431 US 209 (1977), *Chicago Teachers Union v. Hudson*, 475 US 292 (1986), and *Communications Workers of America v. Beck*, 487 US 7435 (1988).

³⁹ Charles Baird, “The Permissible Uses of Forced Union Dues: From *Hanson* to *Beck*” CATO Institute. Policy Analysis No. 179. July 1992. See also preceding note.

⁴⁰ Combined dues (\$86 local, \$344 state, and \$134 national) total over \$500, and deductions for political spending vary from year to year.

⁴¹ *Agreement between the Worcester School Committee and the Educational Association of Worcester*. January 1, 1998 – December 31, 2000, Article XXIII, section C, pg 30. The current contract, covering years 2001 to the end of

suggest that all teachers who were not in the union in 1974—even if they are union members today—have to pay only the agency fee. (This could be a large number of members who do not have to pay full dues, as many current members had not been born in 1974.) Under the same article, in a separate section, the contract states, “The [School] Committee agrees to requiring the payment of an Agency Service Fee equivalent to the association dues for all new teachers and administrators.”⁴² This suggests that all new teachers—members and non-members alike—have to pay the equivalent of full dues. Such a policy would be a violation of teachers’ rights as outlined in recent Supreme Court decisions.⁴³

Analysis and Recommendations

The EAW and the School Committee should clarify the contract language regarding agency fees so that it accurately depicts the current practice of deducting a reduced amount from non-member paychecks. Unconstitutional sections of the contract should be removed and teachers’ rights clearly explained.

III. Accountability without Authority? Hiring, Transfers, Dismissals and SLCs

The second half of this report will address the relationship among the collective bargaining agreement, MERA, and the authority of the school principals. Both union representatives and veteran administrators acknowledge the critical importance of the quality of a school’s teaching staff to the accomplishment of its mission. A recent study by Harvard researchers, published in Columbia’s Teachers College Record Online, cited a Boston Pilot School⁴⁴ co-director on the importance of hiring decisions:

Wouldn’t you want to have the opportunity to select your own teachers? My God, that’s the biggest part. All these [Boston] principals talk about how difficult it is; they have no selection right. . . . They don’t have the opportunity to bring a group of teachers together around a common vision, other than bringing them kicking and screaming, other than spending a massive amount of professional development time to convince teachers who don’t choose to be in that building.⁴⁵

Finding, recruiting, keeping and developing excellent teachers are the highest priorities for most school leaders. With hiring and firing as our primary focus, we will examine how the current EAW contract constrains the principal’s authority over personnel decisions.

2003 was published as a Memorandum of Agreement 2001-2003 with only the changes from the 1998 - 2000 contract included. Citations, unless necessary due to changes between the 2000 and 2001 contracts, will be from the 1998-2000 agreement, which is published in its entirety.

⁴² Ibid. pg 29.

⁴³ Supreme Court Cases: *Aboud v Detroit Board of Education* 431 US 209 (1977), *Chicago Teachers Union v. Hudson*, 475 US 292 (1986), and *Communications Workers of America v. Beck*, 487 US7435 (1988).

⁴⁴ Boston Pilot Schools are district schools with a significant amount of autonomy at the school level.

⁴⁵ Susan Moore Johnson and Johnathan Landman, “Sometimes Bureaucracy Has Its Charms: The Working Conditions of Teachers in Deregulated Schools.” *TCRecord.org* <http://www.tcrecord.org>.

MERA created a mandate for increased principal accountability and authority;⁴⁶ but it also preserved collective bargaining rights and allows union contracts to outline procedures that guide hiring—including teacher transfers.⁴⁷ Recent Massachusetts Supreme Judicial Court (SJC) decisions have helped to clarify the extent of the principal’s authority and the point at which contractual procedures create an excessive limit on that authority.⁴⁸ The Court has acknowledged on several occasions, “that the legislature sought to give to school principals the power to select all teachers and staff assigned to their school.”⁴⁹ While the Court recognized that the intent of the law is to give principals the authority to choose the teachers in their schools, it interpreted the laws “to harmonize”⁵⁰ with the collective bargaining laws: “Our courts, both before and after the passage of the Reform Act, have consistently held that such personnel-related procedures may properly be open to collective bargaining, and that the bargained-for procedure will be enforced so long as it does not result in an abdication of the school committee’s, or the principal’s, core statutory authority.”⁵¹ The Court’s definition of “core statutory authority” accommodates most personnel policies that allow the principal final approval of hiring decisions including transfers: “We do not perceive the procedures for filling vacancies to infringe upon the powers of the principal and superintendent so long as they retain the right of approval of the employee selected pursuant to those procedures.”⁵² In a more recent decision, the SJC offered an example to clarify the authority of school principals over hiring: “In the case of voluntary transfers, a process allowing the applicant to change jobs without the consent of the principal . . . would impair the prerogatives of the principals as managers of their schools.”⁵³

Contracts, then, can be less or more restrictive and still within the bounds of the MERA requirement for principal authority, but they cannot remove principals from the decision. The EAW contract falls on the more restrictive end of the spectrum. It is doubtful that the current contract provides authority for principals as outlined in these SJC decisions. According to the EAW executive secretary, principals have no more authority today than they did in 1993, nor has the collective bargaining agreement changed much since then. This description of the situation from a union official suggests that important changes in the law have not been reflected in Worcester practices or recent contracts. In the following discussion, we will examine the Worcester contract in order to see how the contract limits the authority of principals and the

⁴⁶ Massachusetts General Laws, Chapter 71, sec 59B.

⁴⁷ Ibid: “Principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides, and other personnel assigned to the school, and for terminating all such personnel...” See also, *School Committee of Newton v Newton School Custodians Association, Local 454, SEIU*, SJC-08488 (2003).

⁴⁸ See *School Committee of Newton v Newton School Custodians Association, Local 454, SEIU*, SJC-08488 (2003); *School Committee of Pittsfield v United Educators*, 437 Mass 753, SJC-08791 (2003); *Peabody School Committee v Peabody Federation of Teachers, Local 1289, 98-P-2207* (2001); *School Committee of Lowell v Local 159, SEIU*, 42 Mass App. Ct. 690 (1997).

⁴⁹ Quoted from *School Committee of Pittsfield v United Educators*, referencing *School Committee of Lowell v Local 159, SEIU*. (1997)

⁵⁰ *School Committee of Newton v Newton Custodians Association, Local 454, SEIU* (2003).

⁵¹ Ibid.

⁵² *School Committee of Lowell v Local 159, SEIU* (1997).

⁵³ *School Committee of Pittsfield v United Educators* (2003).

administration with respect to hiring (including transfers), firing, teacher evaluation, and the Small Learning Communities initiative.

Given current WPS practice under the contract, principals in many circumstances cannot determine whom they hire, fire, promote or transfer; thus, they cannot control some of the most important factors in developing a successful school.

A. Hiring and transfer process

We begin with transfers, because this is where principals must begin if there is a vacancy in their schools. If a teacher resigns or retires creating a vacancy in a teaching position, the position must be posted internally on a “bid list” that comes out three times a year.⁵⁴ Teachers in the WPS then can bid for open positions throughout the district. Teachers are selected based on three factors: seniority, education level/certification, and performance evaluations. The first two categories are fixed criteria, and the final one allows very little room for judgment, as the principal receiving the transfer cannot substitute his own observation for the previous evaluation in making his decision. As a result, the collectively bargained-for process limits the possibility of a principal retaining decision-making authority. Teachers applying for a position are required to meet with the principal, but the meeting is not one of the criteria on which the candidates are to be evaluated. According to the EAW president, if the teacher meets with the principal, “it is not a hiring interview,” but an informational meeting. The contract includes no specific indication of where principals participate in the process, and it does not indicate if they can refuse or approve a transfer applicant. In practice, the WPS does not permit principals to reject transfer applicants. According to statute and recent SJC decisions cited above, principals must retain authority to approve a candidate selected through contract procedures.⁵⁵

Once a teacher is selected for a bid, that teacher’s previous position becomes vacant and available for bid on the next bid list. No position is ever simply “open” for external applicants. While many mid-year hires come from outside of the district, most of these positions are long-term substitute positions which will appear on a later bid list, allowing teachers with seniority to bid the new teacher out of that position, regardless of the wishes of the principal or the teacher. The most recent contract has offered principals the option of keeping positions filled by new teachers from outside the school district off this list for an additional year, giving the new teacher one extra full year in the position if the principal approves. Even if the teacher is hired under contract (e.g. not as a long term substitute), the new position will appear on the next bid list. Seniority sways decisions in most transfer applications when teachers have the same education/certification level and similar evaluations; therefore, new teachers are unlikely to win bids for their own positions, as they lack seniority and—in many cases—additional degrees. External applicants cannot be selected if an internal applicant has bid for a position. Teachers from outside the district remain in the system by either holding positions that more senior

⁵⁴ The current contract provides for three lists; however, this aspect of the contract has not been implemented and only two lists have been used (one in May and one in June).

⁵⁵ *School Committee of Lowell v Local 159, SEIU* (1997).

teachers do not bid for, or by remaining in the WPS after getting bumped out of their initial position and acquiring the seniority necessary to retain a position.

- ***Involuntary transfers***

The contract also specifies how teachers are to be transferred if there are no volunteers. If teachers are being transferred from one school to another involuntarily, the contract specifies that “area of competence, major and/or minor field of study, quality of teaching performance, and length of service in WPS will be considered in determining which teacher is transferred.”⁵⁶ Seniority, education level and performance evaluations again determine which teacher goes and which teacher stays. The EAW reports that this is the area where teachers have been more likely to resist school decisions. MERA does not specify the authority of principals over involuntary transfers, so the subject is open to determination through collective bargaining.⁵⁷

While seniority, education level, and performance evaluations are the specified criteria for involuntary transfers, the contract states that the “best interests of the school”⁵⁸ may be considered in the process. This means that the administration does not have to rely on strict seniority rules when transferring teachers involuntarily, and perhaps that they do not have to transfer volunteers first if the administration cites the “best interest of the school” as an overriding reason for their decision. The Pioneer Institute, a Boston-based public policy research organization, released a comparison of contracts across the state and indicated that Worcester’s best interest of the school clause makes the Worcester contract more flexible than those of many Massachusetts teachers’ contracts in the area of involuntary teacher transfers.⁵⁹ In practice, the WPS does not invoke this clause often.

Analysis and Recommendations

The current contract language for hiring (including transfers) leaves principals very little input in the process and may remove their statutory authority—as defined by recent SJC decisions—to determine who works in their schools.⁶⁰ Under the current contract, principals have very little substantive input toward which teachers fill vacancies in their schools. Hiring decisions cannot aim to bring together teachers who share common vision, commitment, or expectations, because the decisions are determined by the contract procedures. The process also offers little opportunity to expand the talent pool to include teachers from outside the district.

In the next contract, the criteria for transfer decisions should include categories that give principals greater discretion, and seniority should be removed as a criterion in the transfer evaluation process. Boston’s contract allows principals to choose teachers for voluntary

⁵⁶ *Agreement between the Worcester School Committee and the Educational Association of Worcester*. Article X, Section A.

⁵⁷ *School Committee of Pittsfield v United Educators* (2003).

⁵⁸ *Agreement*, Article X.

⁵⁹ Dale Ballou “Teacher Contracts in Massachusetts.” Pioneer Institute for Public Policy Research. June, 2000.

⁶⁰ See note 46.

transfers “without regard to teacher seniority.”⁶¹ Brockton, Braintree, New Bedford, Springfield, West Boylston and other Massachusetts cities allow external candidates to fill open positions and allow other criteria to trump seniority for transfers.⁶² Principals should be able to use judgment to evaluate candidates and unite teachers committed to a common mission. This will be particularly important for Small Learning Communities (to be discussed below). The School Committee and the WPS should retain experienced legal counsel to advise them on matters concerning principals’ authority and other management rights.

- ***Can principals offer incentives to outstanding candidates?***

According to the contract, if there are teacher vacancies in “Critical Shortage Areas,”⁶³ then the principal may place a new hire on a step other than the first step in the salary schedule. Newly hired teachers may be given step awards for years of related experience (one step for every two years of related experience),⁶⁴ but new teachers cannot be placed on the top step. The EAW must be notified of any teachers hired at any level other than the lowest step. These hires are a source of tension for the union leadership; according to the EAW President, they are mostly high school teachers, and often, men. According to the EAW president, the teachers who tended to receive the higher starting salaries were high school math, science, and special education as well as some minority teachers who were mostly male. Their higher starting salaries were perceived by the EAW President as discriminatory against women (who make up the majority of elementary school teachers). Worcester had more flexibility with starting salaries until May 2001, when the EAW threatened a strike largely because of the greater hiring flexibility employed by WPS at the time. The WPS Human Resources director explained that the most recent contract reduced flexibility in hiring decisions.

Recommendations

Market forces have driven up the salary potential outside of education for qualified math and science teachers nationwide. The WPS should have the authority to take these market forces into account in setting initial salaries in order to hire the best teachers possible.⁶⁵ The WPS must have flexibility with respect to hiring-salary decisions in order to compete for top candidates. The 2001 contract change should be reversed and additional hiring flexibility restored.

B. Evaluations, dismissals, and layoffs

How hard is it to remove a poorly performing teacher? This is the essential question for an assessment of the contract’s treatment of teacher evaluation and dismissal. Teachers and

⁶¹ *Agreement between the Boston Teachers’ Union and the Boston School Committee*. 2000-2003, Article 3, Section C(4)(c).

⁶² Ballou, Appendix, table 6.

⁶³ Math and Science teachers are typically in a Critical Shortage Area. English teachers are now “on the bubble” according to one school official.

⁶⁴ Experience in industry that is related to the subject taught is counted as relevant experience.

⁶⁵ Worcester has filled a number of open math and science positions through an alternative entry to the profession program called MINT (Massachusetts Institute for New Teachers). Program candidates were attracted to the teaching profession by a \$20,000 bonus over four years. Without such a program staffing the math and science positions with well qualified teachers would be more difficult, since people with these backgrounds can earn higher salaries in other careers.

administrators both have noted the double edge of tenure-like teacher protections. In a national survey of teachers, a majority—53%—responded that “the tenure system should be changed to make it far easier to remove bad teachers.”⁶⁶ In an another survey, however, 81% indicated that they thought “without a union, teachers would be vulnerable to school politics or administrators who abuse their power.”⁶⁷ Teachers comprehend the problem of rigid systems that obstruct the removal of incompetent teachers, while they also seek guarantees of procedural fairness. The need is to strike a balance between fairness to the teacher who may be misevaluated or need genuine direction and fairness to the students who are left in a failing teacher’s charge. The SJC, following the language of MERA, has acknowledged that the interests of students are at stake in facilitating the dismissal: “The teacher dismissal statute is not only about the relationship between employer and employee, it is about the education of students. Their stake in dismissal of inadequate teachers must now be specifically taken into account . . .”⁶⁸

MERA eliminated teacher tenure and replaced it with “professional teacher status.” Acquiring status requires that teachers be certified while working in the district for three years. Under MERA, if a teacher does not have professional status and has been on the job for less than 90 days, then the teacher may be dismissed for any reason. If a teacher does not have professional status but has been working more than 90 days, the teacher’s contract does not have to be renewed at the end of the school year. If a teacher has professional status, then the teacher has additional protections in law and the collective bargaining agreement. Status teachers who are dismissed are entitled by statute to arbitration if they choose.⁶⁹ In general, arbitrators determine if the school has documented their case for dismissal in a finding of fact, and—in many cases—they also consider if the dismissal meets the standards of the law.

In addition to granting principals and superintendents broader hiring authority, MERA granted additional authority over employee termination—creating another potential area of friction with collective bargaining agreements which also specify rules regarding termination. The statutes specify, “A teacher with professional status . . . shall not be dismissed except for inefficiency, incompetence, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards . . . or other just cause.”⁷⁰ With regard to the first five reasons for dismissal (inefficiency, incompetence, incapacity, conduct unbecoming a teacher, and insubordination), the SJC has recently ruled that the principal and superintendent have the prerogative to dismiss teachers if their grounds for dismissal can be proved, and that an arbitrator “cannot substitute his own judgment for that of the school district.”⁷¹ The arbitrator’s role is to determine if the school has demonstrated that the teacher engaged in the dismissal-worthy behavior, not to determine if—given the behavior—dismissal is warranted. Under this ruling, the principal and the superintendent have the authority to remove a teacher for

⁶⁶ Farkas, p. 20.

⁶⁷ Ibid., 48.

⁶⁸ *School District of Beverly v. Geller*, SJC-0488 (2001).

⁶⁹ Massachusetts General Laws, Chapter 71, sec. 42.

⁷⁰ Ibid.

⁷¹ *School District of Beverly v. Geller*. SJC-08488. October 5, 2001. This case was decided 4-3, with one concurring opinion supporting the majority decision for reasons other than district authority over hiring and firing.

inefficiency, incompetence, incapacity, conduct unbecoming a teacher, or insubordination if the behaviors have been sufficiently documented. Past arbitration decisions did not follow similar reasoning and may have contributed to a district's reluctance to use its authority under MERA. According to a study in the *Massachusetts Law Review*, as of 1998, "teachers, in particular, enjoy more job protection under [MERA] the act than they did previously."⁷² These recent SJC decisions suggest that the legislative intent of the dismissal provision in the MERA was to expand principals' authority over dismissals and that arbitrations should reflect that intent going forward.

MERA also granted schools the authority to dismiss teachers for failure to meet performance standards. In order to use this provision to dismiss a teacher, schools must demonstrate that teachers have failed to meet "teacher performance standards" set through collective bargaining. The statute governing teacher dismissal arbitrations is clear about the importance of performance standards: "In determining whether the district has proven grounds for dismissal consistent with this section, the arbitrator shall consider the best interests of the pupils in the district and *the need for elevation of performance standards*" (emphasis added).⁷³

Before a teacher with professional status may be dismissed for failing to meet "teacher performance standards," the Worcester contract requires a process that takes two years or more to complete (and which can be delayed further through arbitration). The contract specifies that teachers and administrators may not be dismissed "without just cause and due process."⁷⁴ This contract language does not include the specific list of just causes from the statute (inefficiency, incompetence, incapacity, conduct unbecoming a teacher, and insubordination), and the contract does not mention the statutory provision allowing for dismissal of a teacher who fails to meet performance standards. The contract includes standards (the 1996 report on teacher evaluation), but it does not specify the relationship between those standards and dismissal. Nonetheless, the WPS has the statutory authority to dismiss teachers for these reasons.

In order to determine if teachers are meeting performance standards, teachers are evaluated annually. According to the contract, evaluations are governed by a 1996 report on supervision and evaluation developed by a joint study committee of local administrators, teachers, and EAW representatives in response to the requirements of MERA.⁷⁵ The 1996 report indicates that non-status teachers (teachers who have not yet acquired professional status) are to be evaluated with a "summative" evaluation every year for their first three years (after which they would have attained professional status). Professional Status teachers are on a three-year cycle that begins with the more comprehensive "summative" evaluation and is followed by two years of "formative" evaluations that are primarily self-evaluations which are reviewed by administration.

⁷² Henry Stewart and Sally Adams, "Arbitration of Teacher Dismissals and Other Discipline Under the Education Reform Act," *Massachusetts Law Review*. Summer, 1998. p. 31.

⁷³ Massachusetts General Laws, Chapter 71, sec 42.

⁷⁴ *Agreement between the Worcester School Committee and the Educational Association of Worcester*. Article XXV.

⁷⁵ Massachusetts General Laws. Chapter 71, sec. 38.

According to the EAW contract, “The Summative Evaluation is a comprehensive review of all aspects of a teacher’s performance by designated evaluators, culminating in a report which becomes a part of the teacher’s permanent file.”⁷⁶ The summative evaluation includes seven areas of review: “1) Currency in the curriculum; 2) Effective planning and assessment of curriculum and instruction; 3) Effective management of classroom environment; 4) Effective Instruction; 5) Promotion of high standards and expectations for student achievement; 6) Promotion of equity and appreciation of diversity; 7) Fulfillment of professional responsibilities.”⁷⁷

The steps include the following:

1. The teacher and administrator set goals by October 31.
2. The teacher is working on the goals from October through April.
3. An evaluator observes the teacher in the classroom (this does not have to be announced).
4. The teacher and evaluator meet to discuss the results of the observation.
5. The evaluator and the teacher sign a written report (“Professional Evaluation Report”) which is submitted by June 1.
6. If the report is favorable, then the evaluation is complete.
7. If the report recommends either dismissal or a resource team (a group of teachers assigned to assist the teacher correct problems), then the evaluation must be filed by February 1. Resource teams must complete their work by April 15, with performance evaluation reports due by June 1.

After being evaluated, a poorly performing (status or non-status) teacher may be assigned a “resource team,”⁷⁸ a group of 3-5 teachers who work with the struggling teacher. Both school officials and EAW leaders indicated that resource teams are not used very often, but both reported that they are sometimes effective. The EAW Executive Secretary stated that resource teams “usually work” if the teacher wants to improve. In the last five years, resource teams have been employed nine times; In four of these cases, the teacher was dismissed. The WPS has dismissed 45 non-status teachers for poor performance in the last five years (less than one half of one percent of teachers employed).⁷⁹

Under the current implementation of the evaluation system, it is assistant principals—who are members of the EAW’s collective bargaining Unit B—that do the majority of the observations.⁸⁰ To produce negative evaluations that will stand up to scrutiny in a grievance or arbitration,

⁷⁶ Educational Association of Worcester and Worcester School Committee, *Report of the Joint Study Committee. Teacher Evaluation*. 1996.

⁷⁷ Ibid.

⁷⁸ The contract does not require resources teams for non-status teachers, but WPS practice has been to use resource teams for both status and non-status teachers.

⁷⁹ Non-status teachers can be non-renewed at the end of year or dismissed without the “just cause” protections of status teachers.

⁸⁰ The EAW represents teachers, administrators, bus drivers, and other school workers as separate collective bargaining units. Hence, assistant principals while bargained for by the EAW are not a part of the same bargaining unit as the teachers.

administrators need to be well trained in the evaluation process, according to the EAW Executive Secretary. Negative comments need to be specific, constructive, and include recommendations for how a teacher can improve.

MERA removed principals but not assistant principals from collective bargaining, thus leaving assistant principals in the position of evaluating and supervising their fellow union members as they had before MERA. Evaluations are formalized by principals based on their own observations and the observations of assistant principals and other supervisors.

Analysis and Recommendations

State laws regarding dismissal of teachers with professional status define the permissible reasons for teacher dismissal; collective bargaining can dictate how parts of the process work. The WPS should use the authority it has under statute and as articulated by the SJC to remove teachers who demonstrate “inefficiency, incompetence, incapacity, conduct unbecoming of a teacher, or insubordination.” For teachers’ benefit and for contractual clarity, all the legal reasons for dismissal should be included in the contract. In addition, the EAW and the School Committee should consider revising and streamlining the 1996 evaluation process. It should not take two years or more to be certain that a teacher is failing to satisfy teacher performance standards.

Use of supervisors who benefit from collective bargaining in the evaluation process should be minimized. This is one kind of conflict that the MERA sought to minimize by removing principals from collective bargaining. Additionally, any supervisor who performs observations should be formally trained in the contractual requirements of professional evaluations. Finally, the WPS should give serious scrutiny to those teachers who have not yet achieved professional status.

- ***Can Principals Make Decisions Regarding Layoffs?***

The recent round of layoffs did not affect any teachers with professional status, and, as a result, did not become an official “Reduction In Force.” According to the WPS, principals were given the authority to choose which non-status teachers were retained. Non-status teachers can have their contracts terminated at the end of any year, regardless of seniority (although the EAW encourages the WPS to follow seniority for non-status teachers during layoffs as well). Under certain circumstances, the contract and state law both allow teachers with seniority who are selected for layoffs to replace less-senior teachers in the district, effectively “bumping” the junior teacher out of his or her position. However, state law permits bumping of teachers with status only if the senior teacher is *both* “certified and qualified [according to teacher performance evaluation]” for the junior teacher’s position.⁸¹ The current Worcester contract makes no mention of this “qualified” determination.

⁸¹ Ibid. According to the statute, teachers’ qualifications are to be determined by the same methods (from Chapter 71 sec 38) that would allow dismissal of a poorly performing teacher. By statute those same methods would be employed to determine which teachers are qualified for positions.

The contract does consider seniority in layoffs, and seniority is counted as a part of a broadly defined discipline (elementary, English, science, rather than narrower definitions like early, elementary, literature, or physics). Some districts have defined the disciplines narrowly, which restricts the degree of bumping that is possible and tends to keep bumping from creating large disruptions in discipline staffing. Acton-Boxborough, Lowell, and Randolph have all employed a narrow discipline seniority definition in recent years.⁸² A number of districts including Arlington, Beverly, Lexington, Uxbridge, Ware, and West Boylston have had contract provisions which define qualifications that can trump seniority in the face of layoffs.⁸³

Recommendations

Although it is a longtime collective bargaining provision, following strict seniority during layoffs is not mandated by state law. The law requires schools to determine whether senior teachers are “qualified” for the junior teacher’s position (and “qualifications” may be more than simply certification area). Care should be taken to employ the “qualified” requirement for bumping to restrict the amount of bumping. Principals should be given decision-making authority at the time of layoffs. The contract should include language that defines areas of competence with reasonable narrowness, so that state-mandated bumping of non-status teachers is not overly disruptive.

C. Small Learning Communities

In 2001 the WPS, working in conjunction with the Clark University Worcester Education Partnership, was one of only seven cities in the United States to win a five-year, \$8 million grant from the Carnegie Foundation to embark on a project of restructuring middle and high schools in the City. The goal of the grant is to develop a series of small stand-alone schools and small academies within larger schools. These high schools and middle schools, called “Small Learning Communities” (SLCs), are to have different subject specialties, approaches to learning, and school environments. The first experiment with SLCs, the University Park Campus School, has yielded impressive results.⁸⁴

Development of a number of smaller schools that are distinct from one another will require that teachers and administrators in different SLC’s work under different conditions, expectations, and school cultures. The schools are not intended to be radically different, but the individual schools are to have an important degree of autonomy to develop curriculum, policy, and school culture without excessive intervention from the WPS administration or the School Committee. This presents a unique challenge for the School Committee and the EAW. How can schools have the necessary decentralized authority without jeopardizing teacher protections that the union has negotiated? And how can schools have decentralized authority without undermining the

⁸² Ballou, Appendix, Table 7.

⁸³ Ibid.

⁸⁴ No University Park Campus School student has ever failed the 10th grade English MCAS (2001, 2002, 2003). No student has failed the 10th grade math test since 2001. On the most recent (2003) 10th Grade MCAS tests, 27% scored Advanced and 61% scored proficient in English; 55% scored Advanced and 42% scored proficient in math. Admission to the school requires a parental commitment and a student essay as well as residence in the neighborhood.

Superintendent's management rights? How are a series of schools that are different from one another going to play by the same set of work rules and expectations?

To address some of these questions regarding SLCs, the School Committee and the EAW agreed to a Side Letter to the existing contract in February 2002 that addresses some contractual implications of the SLCs. The Side Letter allows individual SLC design teams to consider changes to certain areas of the contract. The letter states that SLCs may consider changes in “meetings; work day; schedule; hours and work load; block scheduling; duties; preparation time; and such other areas as are not specifically excluded herein.”⁸⁵

Specifically protected against any alteration by the SLCs are hiring, dismissal, and transfer rules.⁸⁶ Leaders of SLCs—who are required to be members of an EAW bargaining unit—are not able to select teachers for these small communities as they are bound by the same transfer hiring requirements as the rest of the WPS.⁸⁷ Also, the primary flexibility in the Side Letter is flexibility in design; final approval of the design must come through the EAW and School Committee in a separate process. Once a design team has finished a plan for a small learning community, either the School Committee or the EAW can reject it, even if the members of the SLC support it.⁸⁸ Boston's contract,⁸⁹ on the other hand, allows for individual schools to waive “any provision of this agreement [the teacher contract], any school committee rule or regulation, or superintendent's policy” if the principal of the school, 66% of teachers, and the parent council agree to the change.⁹⁰ Further, in Boston's Pilot Schools (district public schools with a large degree of school-based authority, which parents can choose for their students), individual schools are given near total freedom from contract work rules: “Pilot Schools . . . will have greatly increased decision-making authority, including exemptions from all Union and School Committee work rules.”⁹¹ Worcester's version of flexibility and school-based control of these SLCs establishes more limited authority at the school level.

School-based management is another area where teachers' unions have taken the lead in other cities. TURN-affiliated unions have suggested a school flexibility approach for all teachers' unions, not just experimental, small learning communities:

⁸⁵ EAW and Worcester School Committee. Side Letter on Small Learning Communities. February 2003.

⁸⁶ The Side Letter excludes the following areas from alteration by Small Learning Communities: “Grievance procedure; leaves of absence with or without pay; sick leave; Supervision and Evaluation; Transfers; Reduction in Force; and Dismissals.”

⁸⁷ According to the Side Letter, SLC leaders are required to be assistant principals in the EAW bargaining unit B.

⁸⁸ EAW and Worcester School Committee. Side Letter on Small Learning Communities. February 2003: “At this point either party [the EAW or the School Committee] shall have the right to reject the plan by a vote of its leadership, which vote shall have the effect of preventing the plan from being submitted to the teachers assigned to the small learning community for their vote.”

⁸⁹ Boston has also received a Carnegie Foundation Grant for developing small schools.

⁹⁰ The Boston contract does not allow schools to waive contract provisions with respect to salary, benefits, or layoff procedures. *Collective Bargaining Agreement between the Boston Teachers Union and the Boston School Committee*, Effective September 1, 2000 through August 31, 2003.

⁹¹ *Ibid.*

“Rather than rely on a one-size-fits-all labor agreement, a union might consider provisions that are tailored to specific schools. For example, instead of an arrangement in which schools negotiate exceptions to a district-wide contractual agreement or policy, there might be contractual provisions that give school-level labor/management teams the authority to decide how issues will be addressed at the school level. Sandra Feldman, president of the AFT, recently proposed adopting such ‘thin’ contracts, which would leave many of the details to individual schools.”⁹²

Other union reform writers have suggested that union organizing should focus on the smaller units of education, the school rather than the district. In *United Mind Workers*, a book investigating union reform possibilities, the authors suggest, “A better strategy [than current practice] is to organize around the smallest feasible unit of organized learning, the school. Schools may look different than they do now, but we think that they will be stable organizational entities for the foreseeable future.”⁹³ They suggest that most teachers’ unions are stuck in an outdated model of industrial unionism and that new models will serve teachers and students better. The President of New York City’s United Federation of Teachers recently pushed to “rid some schools of teacher ‘work rules’ in exchange for giving teachers more say over an individual school’s operations.”⁹⁴ In Rochester, New York, the president of the Rochester Teachers Association (and Vice President of the American Federation of Teachers) has proposed that individual schools negotiate contracts with the staff of each individual school. These proposals could result in teachers in the same district working under different rules, hours, schedules, workloads, and other factors. These unions perceive decentralized, small school flexibility as a benefit for teachers.

Analysis and Recommendations

SLCs should be granted genuine authority to shape the character of their small schools. The EAW and the School Committee should consider increasing school and teacher flexibility at the SLCs. Achieving such a change will be more likely with a new approach to negotiation as well as school and union organization. Changes in class schedules and length of classes are explicitly permitted in the Side Letter agreement, but equality between schools and workers is a priority of the EAW. This opposition to differentiation could prove to be a serious obstacle for SLCs if the contract does not allow for a degree of genuine independence for small schools.

SLC leadership is another potential problem area in the contract. The Side Letter states, “Leaders of small learning communities will be assistant principals or teachers with administrator’s certification who shall be in the Association’s Unit B.”⁹⁵ In other words, the contract requires that small learning community school leaders be represented in collective bargaining, creating a

⁹² Adam Urbanski and Roger Erskine. “School Reform, TURN, and Teacher Compensation,” *Phi Delta Kappan* online. 28 January 2002.

⁹³ Julia Koppich and Charles Kerchner. *United Mind Workers: Unions and Teaching in the Knowledge Society*, (San Francisco: Jossey-Bass Inc., 1997).

⁹⁴ Bess Keller, “N.Y. Unions Call for Schools to Write Contracts” *Education Week*. October 1, 2003.

⁹⁵ EAW and Worcester School Committee. Side Letter on Small Learning Communities. February 2003.

potential conflict with the state mandate that principals be removed from collective bargaining. Directors of SLCs should have flexibility in terms of teacher selection, evaluation, and development. Requiring that these school leaders be members of a collective bargaining unit makes such independence unlikely. This arrangement should be altered in the next contract. Principals who are not bargained-for should lead the SLCs. According to MGL 71 sec. 41, school leaders “by whatever title their position may be known” cannot be represented in collective bargaining. Therefore, the School Committee should encourage state lawmakers to remove all assistant principals from collective bargaining, as they—like principals—are managers.

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