

A Presentation by Andrew J. Rotherham

Andrew J. Rotherham is co-founder and co-director of Education Sector, a national education policy think tank, and a senior fellow at the Progressive Policy Institute. He has also served on the Virginia Board of Education since his appointment by Governor Mark Warner to that position in 2005. Previously, Rotherham served at the White House as special assistant to the President for domestic policy during the Clinton administration. He is the author of numerous articles and papers about education and co-editor of three books on educational policy, most recently *Collective Bargaining in Education: Negotiating Change in Today's Schools* with Jane Hannaway (Harvard Education Press). He serves on the board of directors of the National Council on Teacher Quality and on advisory boards and committees for a variety of organizations, including the Bill & Melinda Gates Foundation, the Broad Foundation, the National Governors Association, the National Charter School Research Project, and New Visions for Public Schools.

Andrew Rotherham was invited to give the Opening Presentation at the conference on collective bargaining in public education in December 2006. In his remarks, he describes the changing policy landscape in education as well as in labor and politics and how those changes can - and must - affect contract negotiations. Emphasizing that the current misalignment between educational goals and the systems embodied in contracts is not caused by those contracts but simply reflected in them, he offers three recommendations - more transparency, more research, more participation - for building contracts that best position educators and schools to meet the common goal of how best to serve the nation's public school students.

Before I begin my prepared remarks, I want to say a word about the late Tom Mooney, former head of the Ohio Federation of Teachers, who would have been here with us. Tom was at a conference I co-produced on teacher collective bargaining in Washington, D.C., in May 2005; he was a terrific speaker – one of our best panelists. He made an important contribution at the conference and continued to make vital contributions to that debate until his death earlier this month. These contributions reflected two valuable traits of his that will be sorely missed. First, Tom was able to disagree without being disagreeable. That's an increasingly lost art in politics and other public discourse overall, and on this issue in particular. Second, and the reason behind the first, is that Tom understood that there are no absolute truths in this business. He understood that the debate is very subjective – he never forgot that we're moving around a pole and that this is very contested terrain.

That doesn't mean he didn't have strongly held views and values – it means that he respected the views of others and understood that, collectively, we're lumbering toward something, not seeking or debating revealed truth. He was tireless in his work and was truly in his prime when he was taken from us, much too soon. Tom will be missed by many – personally and professionally – and he leaves a void. The world is better off for his having been here.

Detoxifying Collective Bargaining

I'd like to start my remarks on a personal note. I'm always asked why I turned my attention to teacher quality and, in particular, to doing a book on teacher collective bargaining [see sidebar]. The queries tend to run in two veins. One is genuinely friendly and curious: "Why did you go down this road?" and the other is of the "Nice career you've got there; it would be a shame if something were to happen to it" variety.

The answer isn't that exciting. In late 2001, not too long after I left the White House, Chester Finn [of the Thomas B. Fordham Institute] and I did a bipartisan project on IDEA. We figured that if we could come to some agreement there, we might be able to detoxify some of the politics. If you remember the 1997 reauthorization of IDEA, it was terribly contentious, and partisan, and really ugly. We thought maybe we could lay the groundwork to head that off. The project actually turned out pretty well. We put out a volume, and a lot of the ideas we came up with ended up in the law – and it did take some of the partisan sting out. But it was an exhausting project. When that was done, I decided to turn to something less controversial. Jane Hannaway [currently at the Urban Institute] and I had wanted to collaborate on a project, and we decided, Why not teacher collective bargaining? A quiet, non-contentious, non-controversial, non-political issue!

It's because this issue is contentious that I want to applaud the NGA Center for Best Practices for taking it on and hosting this forum. There are real questions here that

A New Look at Collective Bargaining

Collective Bargaining in Education: Negotiating Change in Today's Schools, edited by Jane Hannaway and Andrew J. Rotherham (Harvard Education Press, 2006), grew out of a conference on teacher collective bargaining co-produced by Andrew Rotherham in Washington, D.C. The idea for the conference came from realizing that there was a scarcity of school-reform research on collective bargaining across the country and that maybe it was time to bring together a group of people who had systematically studied the area, those with well-articulated views about collective bargaining, and several well-respected education researchers and analysts to begin a conversation about collective bargaining.

The work from that conference was presented in *Collective Bargaining in Education*. In their introduction to the book, Hannaway and Rotherham clarify their role as neither advocate nor antagonist of teachers unions and summarize seven conclusions about teacher collective bargaining:

- Collective bargaining was the right intervention at the right time, but the environment has changed, as have the public demands on public schools.
- The lack of empirical evidence on the effects of collective bargaining by teachers on education practice, finance, and operations is striking.
- A vitally important distinction exists between collective bargaining in the private sector and collective bargaining by teachers.
- Many collective bargaining agreements have serious problems: what is good for teachers is *not* automatically good for students.
- It is unfair to lay the blame for the current state of affairs at the feet of the teachers unions.
- Asking teachers unions to look after the interests of their members *and* the children they serve is asking them to shoulder a responsibility exceptional to organized labor.
- Too often, political concerns cloud analysis of the issues and decisions.

Adapted from the introduction to Andrew Rotherham's presentation by Valerie Forti, president of The Education Partnership

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demand attention. There are complicated policy and political questions, and there are no cut-and-dried answers. But it's an issue that policy-makers must look at, and the line-up today shows the dynamic people who are turning their attention to this issue from all sides.

Let's be honest – this is pretty contested terrain. There are two strident talks I could give today to set the stage for the conference. First, I could give a bombastic one, blaming the teachers unions for all the various problems that face public education – for refusal to change, inflexible defense of an unworkable status quo, and so forth. That one would make the critics swoon, but it wouldn't be honest, because the teachers unions are not the root cause of our educational challenges. In fact, many aspects of teacher contracts that we'll discuss at this conference are really *symptoms* of the larger problems we're facing in public education today.

Conversely, I could talk about how the teachers unions are being singled out, unfairly blamed, targeted by forces opposed to their very existence. I could say that there is really no issue here at all

and that around the country there are plenty of examples of why these contracts present no problems, and why this is all a witch hunt. That one would make some of my union friends cheer, because I hear that a lot, but it wouldn't be honest, either. Because, in some ways, the teachers unions – or more specifically, the contracts we're discussing – *are* part of the problem facing American public education.

You can find both those viewpoints in our book. But the truth, as it often does, lies in between these extremes. This morning, I will lay out the landscape as I see it and the challenges that we, collectively, have to tackle together on this issue. You'll hear the key findings from the book woven throughout, but the idea that changing times demand changing practices animates the book and, I hope, will animate our discussion.

Changing Times Demand Changing Practices

I submit to you that teacher contracts, or teachers unions for that matter, are not the root problem in American education. And if you think we've got problems now, it's worth reflecting on where American education would be in their absence. Some of the things that contracts are criticized for are merely symptoms of larger problems in public education today – namely, a system that is misaligned with

the goals it's expected to meet. And, if you look historically at collective bargaining and the rise of teachers unions, I think a convincing case can be made that it was the right intervention at the right time.

The thing is, times have changed since then. A lot. And the practices and norms that are embodied in many of these contracts just haven't kept up. And education is changing fast. It's worth stepping back and reflecting on just how much, because what we're asking our schools to do – the norms, the external culture, and so forth – has changed a great deal in just a few decades. If you think back to *A Nation at Risk* in 1983, to the Education Summit in 1989, to the ESEA Reauthorization in 1994 codifying the standards movement, to No Child Left Behind in 2001 – each period marked a pivot toward a system focused on not just universal *access*, but also universal *attainment*.

I don't need to recount the significance of each of those events for the people in this room. We're shifting from a society focused on "strong backs" to one focused on "strong minds." And our schools – particularly, what we're asking them to do – reflect that: improving performance and closing achievement gaps are today's charge, and it is a vital one for our domestic social cohesion and our international competitiveness. Consequently, educators who joined the ranks of teachers in 1983 are being asked – less than a

quarter-century later – to perform a mission very different from the one they signed up for.

Not long ago, compliance was the ethic; today, it's performance. Not long ago, stability was cherished; now it's agility. We used to build policies around uniformity; now we worry increasingly about customization.

At the same time, our labor market has changed. One of the reasons I come to work each day is that I believe positive social change is possible. And the opening of various professional doors to women and minorities over the past forty years validates that. But that particular success has also dramatically changed education's labor market – and we haven't kept step. We're not an attractive field for many of the very people we need today – and the cold, hard truth is that in some ways, we're probably too attractive for the kind we don't.

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The Role of Contracts in a Changing Landscape

And contracts matter to all of this, since they govern the norms by which schools operate day to day. So, while you'll hear from some circles that the increased attention to teacher contracts is merely part and parcel of a right-wing assault on unions or an anti-public education theme that's loose in the land, that caricature misses the mark. True, a few years ago, hardly anyone was paying much attention to this issue except a few conservatives. But in the time since Jane and I published our book, groups like the Citizens Commission on Civil Rights, The Education Trust, the New Teacher Project, and the National Council on Teacher Quality were all undertaking substantial projects to examine the impact of various provisions in teacher contracts. Major foundations are also interested in and supporting this work. This conversation is broad, and it isn't going away.

The attention to contracts today is symptomatic of two broader changes in the education-policy debate. First, the low-hanging education reform fruit is gone.

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We've already solved the easy challenges and problems. The issues we're tackling today are *by definition* the harder ones – politically, substantively, or both. And there is evidence – compelling evidence – that some practices codified in these contracts are misaligned with the goals of today's school systems.

Second, the political landscape has changed. The old left-right delineations don't apply to this debate anymore; that's why unions understandably feel under siege from all sides. But there is also a pretty clear signal in the alignment today. It's not just the conservatives expressing an interest in these issues; there is a growing, strong, and irresistible demand for reform from many on the left, too, and it's forcing people to turn their attention to these more fine-grained, subsurface issues in education.

So what does all this mean in terms of how we organize our industry?

First, our industry is pretty hierarchical. We treat all our workers alike – as Julia Koppich [of J. Koppich & Associates] and Chuck Kerchner [of the Claremont Graduate University] have said, we treat them like “*mine* workers, not *mind* workers”; we emphasize uniformity, compliance, and regulation. And we do this at a time when the most successful American enterprises – both in the for-profit and non-profit sectors – generally reject these characteristics and, instead, are seeking to

be more horizontal, embrace dynamism and agility, and offer customization to their customers. Teacher contracts do not yet reflect a lot of those characteristics.

Second, our industry is struggling with how to incorporate performance into our operations. How to define, measure, and reward performance in a field like ours is a difficult and complicated question. But as we try to figure it out, innovate, fail, and make progress, contracts will have to reform to incorporate these ideas.

Third, our industry is facing increased pressure between consumers and producers. This is an old story in other fields, from ice and railroads to modern businesses like airlines and telecommunications, but it's relatively new in our field. Narrowly, it plays out as an increasing demand for quality and mass customization – in other words, changing appetites on the part of parents. More generally, it plays out as increased demand for performance from policy-makers and stakeholders like business groups. But in terms of that narrow demand, Americans, increasingly, want choice and customization in *all* areas of their lives – and education is no exception. Around the country, in fits and starts, we're becoming more pluralistic in how we deliver public education. Contracts will have to undergo substantial changes for this new environment, too.

Contracts: A Two-Sided Coin

You'll notice that I've said so far that the contracts *reflect* this misalignment between goals and systems. That was deliberate – because I don't think they *cause* it. The reality is that two sides sign every contract and, as Rick Hess pointed out in one of the chapters of our book, management doesn't fully exploit the contractual language that exists today and often does not seek out such language. That's important to remember, because often more of this is laid at the feet of the teachers unions than they deserve.

And we can't forget that this issue is a two-sided coin. More dynamism also means sharper edges for workers; and more customization and choice means less stability for workers: more agility can lead to unfairness. I think these trends are positive ones, but we must acknowledge that they are complicated changes and we

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must not dismiss out of hand the legitimate concerns that teachers and union leaders raise about them. Workers – in this case, teachers – do deserve protections and rights. In this environment, we obviously have to protect workers' rights as contracts evolve.

But, that said, the unions are not doing all they could to help tackle the problems we face and, I'd argue, not living up to their promise as the powerful, tectonic institutions they are in our society. There are some exceptions, to be sure – some examples of inspired thinking, brilliant,

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cutting-edge leadership, and leading-edge ideas. Randi Weingarten opening a pair of charter schools in New York City and Brad Jupp championing new models for teacher pay in Denver were as seismic in the union community as Dylan going electric here in Newport in 1965 was in the music world. There are other examples of inspired leadership, but too often our teachers unions are behind the pace of where and how change *has* to happen

today and where it *is* happening. And too often, despite unions' avowed progressive rhetoric, they are actually conservative, even in the face of the radically new environment public schools operate in. It's hard to look at the body of contracts – not the exceptions that get highlighted as the rule, but the body across the country – and not conclude that they're very conservative in how they approach schooling today.

Of course, some of this is simply the result of how large, complicated membership organizations have to operate; they're not designed to be leading edge. And we can never forget that the first charge of the teachers unions is, and should be, to look after the welfare of their members, many of whom find themselves whipsawed in a rapidly changing industry where the rules of the road are much different than when they entered the profession. It's easier to come to someplace like Newport and talk about change than bring it about inside large, complicated organizations, and the critics of teachers unions have to respect that.

But in the end, in today's fast-changing educational debate, it can put them out of step; and the discussion we're having about contracts is merely the flashpoint for that tension.

The Real Issue: How Best to Serve Students

Unfortunately, the debate too often devolves into a back and forth about unions good, or unions bad, or who is more for the kids. And that obscures the issues. Excuse the double negative, but no one in this debate is not for the kids.

What's at issue is competing views about what the best ways to serve kids are. And that's a healthy debate for us to be having.

Too often, of course, the debate gets framed in zero-sum terms. And there is plenty of blame to go around for that on all sides. Whether or not to have contracts is an impoverished question and isn't a very productive discussion. First of all, as a practical matter, teachers unions aren't going anywhere – nor, in my view, should they. For a variety of reasons, I'd argue that an atomized teaching force isn't desirable and that collective representation, if understood in context, is positive. Second, we can never forget that since education is a public-sector enterprise, some codification of expected practices, rules, benchmarks, and so forth is necessary as we conduct our business.

And so these contracts, as much of a flashpoint as they often are, also offer us a place to think about how we can change some of our basic practices to better reflect the charge being put upon our schools today. So, while I'd argue that we

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can't expect to address the maldistribution of teachers that exists today within the constraints of most current contracts, we also can't expect to turn around low-performing schools without much more sustained support – things that can be codified in these contracts – for instance, shielding teachers from the constant churn of reforms that Rick Hess dubbed “spinning wheels.” This is the direction we need to be looking at today.

In other words, the discussion we should have today – and the conversation policy-makers and policy leaders should have – is around what contracts should look like in today's environment in order to *best* position educators and schools to meet the goals they're now challenged with. That's the foundation for a rich discussion, and nothing should be off the table. We often talk of this in the language of “thin” contracts, and I'm a fan of some of the innovations that are going on under thin contracts. But that terminology may be too limited – and, rather than “thick” or “thin,” the conversation really needs to be about *different*.

What's Needed Now

For our part, Jane and I made three core recommendations, which bear on this discussion.

First, we called for more transparency. That's a no-brainer. It's striking just how little hard data there are about some aspects of this issue, where the questions are empirical. While some unions – for instance, the one that Randi Weingarten heads in New York City – make it possible to view their contract and associated documents with the click of a mouse, others make it a deterring challenge. That's starting to change. With the support of the Bill & Melinda Gates and Joyce foundations, the National Council on Teacher Quality and Citizens Commission on Civil Rights are about to unveil a database that examines the contracts in the fifty largest districts in the U.S. across a range of dimensions. Hopefully, it will trigger greater attention to what is in these documents. I'm always

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struck that newspapers dutifully reprint the texts of presidential news conferences, even where nothing of any consequence is said, but don't print the texts of these contracts, which are of enormous consequence in their communities.

Second, we called for more research and analysis. That's a no-brainer, too, since we make our living doing that. But actually, it is much needed – again, it's striking how thin the evidence base is. Much more research is needed.

Third, we called for greater participation in the *political* process. There have been calls to simply ban collective bargaining by public sector employees like teachers. We think that's a cure far worse than the problem. Rather, we argued that the problem is not that teachers unions enjoy too *much* power in the process, but rather that other groups exercise too *little*. There are a variety of political and non-political activities to help change that mix, but more voices are needed.

And, very much related, we called for greater participation in the *bargaining* process. This is a public process, and these are, ultimately, public documents codifying public practices. Only two sides, ultimately, will actually *sign* a contract, but there is no reason more stakeholders cannot be actively *involved* in the framing, creation, and process of these agreements. This recommendation is

often perceived as anti-union but, under the right circumstances, it's actually a powerful lever for the teachers unions. Union leaders like to quip that management gets the union it deserves, and there is a lot of truth in that. But I think that among many stakeholders, there is no understanding of the often arbitrary, capricious, and unfair treatment teachers receive, especially in our larger school systems.

That's not to say the problems do not run the other way, too, but merely to point out that it's a two-way street, and that the desire of teachers, particularly in larger school systems, to want protection is completely understandable. More-involved stakeholders would increase awareness of issues like that. These contracts are long and cover a lot of ground for good reasons, and public awareness of that is not inherently bad for the unions.

In Conclusion

We face a challenge that boils down to operating norms and procedures that are mismatched to goals. That's a challenge that reasonable people should be able to solve. And, while I don't minimize the political and substantive complexity, I also do not think that it's Pollyanna to think that there are a number of grand bargains out there to be struck, from benefits and pay to professional autonomy and advancement for teachers. Getting this right is not only good for kids, it's good for teachers and good for public education.

And that's why this conversation, if we have it in the right way, is a win-win. I can't imagine that my friends in the union movement don't look to places like Detroit – and I'm talking about the automakers, not the schools – with some trepidation. Industries, even ones as seemingly durable as public schools, can slide toward irrelevance if they do not change with the times. That's the challenge we face, and this discussion of contracts is one part of meeting it.

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