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The Status of Teachers Unions: Are Rumors of Their Demise Exaggerated?

By Charles J. Russo, J.D., Ed.D

Three out of four public school teachers in the United States are represented by a union or a professional association.

Recent legislation raised questions about the status of teachers unions and public-sector collective bargaining. Although the changes in Florida, Idaho, and Tennessee occurred with a minimum of disruption, the same was not true in Ohio and Wisconsin. Voters in Ohio repudiated a law that would have placed significant limits on the rights of public employees to bargain collectively (McNeil 2011a). Conversely, voters in Wisconsin defeated a recall election intended to remove the governor and legislators who acted to curtail the bargaining power of teachers unions (Stein 2012).

Organized labor and collective bargaining in education have grown to the point at which three out of four public school teachers in the United States are represented by a union or a professional association (National Center for Educational Statistics, n.d.). The situation in public education stands in stark contrast to what is taking place in the private sector, where fewer than 7% of workers belong to unions, one-fifth of membership at its height in the mid-1950s (Bureau of Labor Statistics 2011). In light of the rising costs associated with salaries, benefits, and pensions gained through bargaining, it appears that reforms are needed to help school boards and states keep their budgets in order.

Insofar as the conflict between public-sector unions and their employers in Wisconsin and Ohio, in particular, generated controversy over teacher bargaining, these states are the focal point of this column. Because the status of bargaining will likely remain in a state of flux, this column is an initial attempt to examine a reform that will likely play out for some time to come.

Reform in Wisconsin

Wisconsin was the first state to mandate negotiations for public-sector employees, including teachers (Tyler 1976), yet it became the initial jurisdiction to enact reforms aimed at limiting their scope.

Almost 16 months of controversy ensued after Republican Governor Scott Walker, who ran on a platform of promising to balance the state budget, signed Wisconsin Act 10 into law on March 11, 2011. Act 10 was designed to address Wisconsin's projected "budget shortfall of \$137 million for the remainder of the current fiscal year, and a projected shortfall of \$3.6 billion over the next two years" (Cavanagh 2011a, p. 1) by limiting the rights of teachers to bargain collectively with their school boards (Wis. Stat. 2011).

In a cost-reducing measure, Act 10 allows boards to use competitive bidding processes for health care rather than to rely on union-backed plans, resulting in significant savings to local school systems and the state (Wis. Stat. 2011). Act 10 also limits the ability of teachers unions to bargain collectively on topics other than base wages in most districts; about one-third of boards signed new bargaining contracts with their teachers unions before Act 10 went into effect (Richards and Tolan 2011). Moreover, Act 10 requires Wisconsin's 63,000 teachers, most of whom pay nothing toward their pensions (Cavanagh 2011b), to contribute 5.8% of their salaries to fund their retirements and at least 12.6% of the cost of their health insurance premiums (Merrick 2011).

Act 10 passed solely with the support of Republicans after Democratic legislators left the state rather than vote on the proposed law. In protest, an estimated 70,000 people rallied outside the state capitol in Madison

while others defaced its interior. The act took effect on June 29, 2011.

Unhappy with Act 10, teachers unions filed suit claiming that state officials violated Wisconsin's open meetings law by failing to provide the required public notice in enacting a budget repair bill that included language mandating extra employee contributions for health care and pensions, limiting bargaining for most state and local public employees, and making appropriations. A trial court issued a temporary restraining order against the bill on March 18, 2011 (*State of Wisconsin v. Fitzgerald* 2011a, 2011b), primarily declaring that the legislature violated the open meetings law. An intermediate appellate court certified the question for appeal to the Wisconsin Supreme Court (*State ex rel. Ozanne v. Fitzgerald* 2011a).

As the litigation over Act 10 was wending its way through the judicial process, a related controversy took center stage: the election of David T. Prosser as a justice to the Wisconsin Supreme Court. Ultimately, Prosser, who joined the majority in rejecting a challenge to Act 10, was reelected.

On further review, the Wisconsin Supreme Court vacated the temporary restraining order in *State ex rel. Ozanne v. Fitzgerald* (2011b). In a 4–3 ruling, the court reasoned that the trial judge lacked the authority to enjoin a law of great public importance. The court added that the lawmakers violated neither the open meetings law nor state constitutional provisions mandating open doors of both houses of the legislature except when public welfare requires secrecy.

Following *Ozanne*, opponents of Act 10 initiated recall elections to remove legislators who voted in its favor. In July 2011 elections, Republicans retained four of the six contested seats, allowing them to preserve their majority in the upper chamber, albeit by a one-seat margin rather than the five-seat advantage that they had before the elections (Cavanagh 2011c).

On another front, a federal trial court in Wisconsin rejected a major challenge to Act 10, finding that the limits it set on the bargaining rights of general public employees, but excusing public safety workers, did not violate the equal protection clause of the Fourteenth Amendment (*Wisconsin Education Association Council v. Walker* 2012). At the same time, the court decided that mandating annual recertification of the unions that represent general public employees and forbidding dues deductions from their paychecks but excusing public safety workers from these requirements violated equal protection.

About 90% of Wisconsin unions recertified even though Act 10 limits their ability to bargain.

The final round in Wisconsin played itself out amid reports that Act 10 helped cut deficits in many school districts, turning a \$143 million deficit into a projected \$154.5 million budget surplus for 2013 (Marley and Stein 2012). Following an acrimonious and expensive recall

campaign, “almost a third of union members who cast a vote did so for Walker, as did 48% of voters who live with a union member but aren’t members themselves” (Cepeda 2012).

Interestingly, unions continue to operate, even under Act 10. In fact, about 90% of Wisconsin unions recertified even though Act 10 limits their ability to bargain (Verburg 2011). This situation is reminiscent of Mark Twain’s dictum that rumors of his demise may have been greatly exaggerated.

In the wake of Act 10, though, “Wisconsin membership in the American Federation of State, County and Municipal Employees plummeted from 62,818 in March 2011 to 28,745 in February 2012. At the American Federation of Teachers, 6,000 of 17,000 Wisconsin members have walked away” (*Chicago Tribune* 2012, p. 22). Consequently, one may wonder about the future of labor organizations if other states follow suit, especially since shortly after the election in Wisconsin, Governor Mitch Daniels of Indiana went on record to suggest that public-sector unions should be abolished (Morris 2012).



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Reform in Ohio

Developments in Ohio were neither as factually complex nor as contentious as in Wisconsin. Ohio's new bargaining law, referred to as Senate Bill 5 (SB 5), was approved along party lines, as none of the Democrats in the state legislature voted in its favor. The bill passed by a one-vote margin (17–16) in the state senate along party lines but made it through the house on a 53–44 vote before being signed into law by Republican Governor John Kasich on March 31, 2011 (Hallett, Vardon, and Siegel 2011). Unlike Act 10 in Wisconsin, an argument can be made that the Ohio bill overreached by including all public employees, including nurses, police officers, firefighters, and educators.

Ohio's bargaining law was drafted to help the state overcome budget deficits by limiting unions to engaging in negotiations with school boards over salary but not health care, sick time, or pension benefits (Ohio Rev. Code Ann.). The law was also designed to eliminate automatic longevity and degree-pay increases for educators, replacing them with merit performance-based pay while banning strikes and obligating public employees to pay at least 15% of their health care costs (Cato 2011).

The Kasich administration estimated that the effectuation of SB 5 would have saved local governments, including school boards, more than \$1 billion per year (McNeil 2011a). However, in a voter initiative, SB 5 was repealed in a decisive 22-point defeat (Provance 2011). Still, both sides recognize that this controversy is far from over.

Reflections

Teachers unions, like other labor organizations, developed at a time when workers needed protection from management in order to help shape the terms and conditions of their employment. Yet in light of the major social and economic changes

that have occurred since teachers unions became a force in the early 1960s (Russo and Raisch, forthcoming), it may be time to reconceptualize their role.

First, questions should be raised about the propriety of allowing teachers unions to “hire” their employers by contributing large sums of money to candidates who support their positions (Kociewski 2012) and by seeking to remove those with whom they disagree. Based on the need for transparency, it is important to protect the public by limiting the power of outside special-interest groups to influence elections for personal gain.

Second, in a related point, the Supreme Court has rejected claims that limiting the extent to which nonmembers or dissenters must provide financial support for unions violated the First Amendment rights of labor organizations (Russo and Raisch, forthcoming). It may be necessary to limit the amount teachers unions can donate to political candidates just as there are caps on the amount that individuals can contribute to specific political candidates.

Third, perhaps management and labor should adopt a new bargaining

model that relies on shared decision and policy making (Kerchner and Mitchell 1988). It may be time to adopt a new approach that focuses less on salary and benefits for members and more on accountability for student performance.

If states and local school boards are to implement lasting union and bargaining reforms, they need to engage in shared decision making and set realistic goals. As demonstrated in Ohio, leaders may have to work in manageable stages, reforming bargaining incrementally rather than attempting to do so in one fell swoop.

Fourth, when teachers unions seek increased costs associated with higher salaries and benefits as being designed to “help the children,” they challenge observers to take a hard look at exactly what that means. It is hard, for instance, to understand how protesting teachers addressed the needs of their students when they absented themselves from their classrooms.

Public school teachers certainly have the right to object to government actions with which they disagree. Still, we can hope that



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protesting teachers will demonstrate their displeasure at the ballot box.

Conclusion

If public education is to achieve its goal of developing an educated citizenry, the relationship between teachers unions and their public employers may need transformation. Clearly, change can be difficult to accomplish.

Yet as school business officials, their boards, and other education leaders work with legislators and union officials to reform bargaining, perhaps they can learn from what happened in Wisconsin and Ohio and devise strategies to make moving forward less daunting.

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