

Teacher Unions and No Child Left Behind

Paul Manna
Assistant Professor

Department of Government
Thomas Jefferson Program in Public Policy
College of William and Mary

Revised draft: July 28, 2005

This chapter examines the relationship between the No Child Left Behind Act of 2001 (NCLB) and teacher union interests.¹ NCLB is the latest reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). Teacher unions enjoy opportunities to influence NCLB's implementation because the law relies on policy work in several venues across the country. The nation's thousands of school districts are particularly important. In those locales, union and district officials negotiate and then sign teacher contracts. Historically, these contracts have shaped school governance considerably,² and they still wield influence in the present environment.

Overall, I argue that NCLB's multifaceted content and its demanding implementation requirements present opportunities and potential threats to teacher unions as they attempt to advance their members' interests. The chapter develops this argument in four parts. The first part summarizes NCLB's major dimensions, including how the law addresses collective bargaining. The second part describes relationships between the policy venues responsible for carrying out NCLB and how those venues provide opportunities for teacher unions to influence the law. The third part analyzes NCLB's key dimensions through the lens of union preferences. The fourth section discusses how union reformers and federal education officials may affect the future relationship between NCLB and teacher unions.

The No Child Left Behind Act

Using the text of the NCLB (P.L. 107-110) and several sources,³ this section outlines the components of the law particularly relevant to union interests and educational reform: teacher quality, annual testing, and adequate yearly progress (AYP). But before discussing these issues, I explain how NCLB's authors also addressed collective bargaining in the statute.

NCLB's coverage of teacher quality, testing, and AYP have received much attention since 2001. Among its many pages, the law also contains a short provision that addresses collective bargaining. That passage, which resides in the AYP portion of the law (Section 1116d), reads: "Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers." Similar language appeared in the previous ESEA reauthorization, the Improving America's Schools Act of 1994 (IASA). To date, this provision has not provoked much popular press coverage or controversy. As NCLB implementation deadlines approach, however, and if state and federal officials vigorously enforce the law, this part of NCLB will likely become a hotter topic in bargaining discussions.

Also directly relevant to union members are NCLB's requirements that by 2005-06 schools must hire highly qualified teachers in core academic subjects.⁴ What "highly qualified" means varies somewhat depending on whether a teacher is new or a veteran, and whether the teacher works in an elementary or a secondary school. The law also contains provisions governing qualifications of paraprofessionals, such as aides hired with funds from the ESEA's Title I.

Generally speaking, NCLB considers regular classroom teachers highly qualified if they hold at least a bachelors degree, possess full state certification and are not teaching on a temporary license, and demonstrate competency in their subjects. Depending on the grade levels they teach and their experience, teachers can demonstrate subject matter competency by completing a college major in their subject, passing a state-designed test, or, for veteran teachers,

by meeting a high objective uniform state standard of evaluation, known as HOUSSE. Because states can define certification requirements and HOUSSE procedures, what it means to be a highly qualified teacher can vary greatly from state to state. Title I paraprofessionals must also be highly qualified, which means they have completed at least two years of college and have demonstrated their skills through an examination or another mechanism proven to uphold rigorous quality standards.

NCLB's requirement for annual student testing is more prescriptive than the IASA of 1994, which included testing requirements but allowed more testing options. NCLB compels states to test all of their 3rd through 8th graders every year in reading and math starting in the 2005-06 school year. NCLB also requires states to conduct math and reading exams at least once during grades 10-12, and, starting in 2007-08, to implement science tests at least once annually for grades 3-5, 6-9, and 10-12. As in the 1994 reauthorization, NCLB lets states decide the material on these tests and the levels of proficiency students must attain.

Further, to guarantee that students of all backgrounds achieve at proficient levels or better, NCLB continues a requirement from the IASA that test scores be disaggregated by student subgroups. This provision prevents overall averages from suggesting all students are learning reading and math when key groups, typically more advantaged students, are driving the results. Thus, NCLB requires that states, school districts, and individual schools report test scores by racial group, gender, economic disadvantage, and disability, as well as for students learning English as a second language.

NCLB diverges from the IASA, however, in what can result from these disaggregated scores. These consequences emerge from NCLB's AYP provisions, which require states to define sufficient progress each year for each participating school and district. In practice, AYP

usually refers to the state-defined percentage of a district's and school's students (including student subgroups) who must score at proficient levels on state assessments each year.

Regardless of the definitions states have adopted, by the 2013-14 school year NCLB requires all students in all states to perform at proficient levels or better in key subjects, most notably reading and math. Schools must meet several requirements to remain on track for AYP, including that students in all subgroups demonstrate achievement consistent with the state's AYP goals. Put another way, if a school contains four student subgroups in 5th grade (e.g., low income, limited English, disabled, and African-American), but only three achieve at expected levels, then the school will not have reached its AYP target. If a school receives Title I funds but fails to make AYP for two consecutive years it is labeled "in need of improvement," which sets in motion several measures to lift the school's performance.

During the first year in improvement, schools becomes eligible for support to help develop improvement plans. Schools must also offer parents the option of transferring their children to another public school in the district. Schools that remain in improvement for a second year must allow parents to use part of their school's Title I money to obtain tutoring or related supplemental services from state-approved providers. Schools in improvement for three consecutive years must continue offering these parent options and must adopt corrective actions that could include significant changes in school personnel and organizational structures. Finally, schools in improvement for four consecutive years must undergo major organizational overhauls. This could include reconstituting the school (shutting it down and opening it from scratch), converting it to a public charter school, or having a private management company or the state run the school.

Policy venues and group interests

This section develops a basic framework to understand how groups use venues to achieve their goals. In subsequent sections, I relate this framework to NCLB and teacher union interests. To begin, consider the role that policy venues play in the American political system. Venues are institutions with the authority to act on behalf of all people in a specific political jurisdiction.⁵ They are more than places where individuals debate issues and offer opinions. Rather, their inhabitants wield formal power, derived from public law, to pass legislation, craft rules, or adopt other orders that govern human and institutional behavior. Congressional committees, executive agencies, courts, state legislatures, and local special districts are all examples of policy venues.

The decentralized nature of American education means that several venues exercise authority over the nation's schools.⁶ Key federal venues include Congress, the White House, the Department of Education, and the federal courts. Typically, states have parallel institutions and state boards of education. Regionally and locally, intermediate school districts, school boards, and individual schools round out the venue mix. This array of actors led authors of a recent volume to ask "Who's in charge here?" as they explored "the tangled web of school governance and policy."⁷

The web may be tangled, but it is analytically tractable. Venues are typically linked in two basic arrangements. The research literature on principal-agent theory⁸ describes one configuration as a delegation chain in which a principal, or boss, delegates authority to an agent, the boss' subordinate. That agent then acts as a second principal because he or she delegates authority to yet another agent, thus creating a hierarchy. The hierarchy of a delegation chain implies that bosses can issue commands to control their subordinates. In reality, principals and agents in these chains constantly negotiate the terms of their agreements because they commonly

possess different information and divergent goals. Most federal grant programs, including Title I of NCLB, illustrate that principals may possess formal authority over agents, but those subordinates are far from powerless.⁹ In fact, classic works have shown that policymaking does not really end until agents implement laws at the street level.¹⁰

In addition to delegation chains, venues are also connected in policy networks. Networks contain more fluid and flexible relationships than the formal lines of authority in delegation chains.¹¹ Conceptually, one can consider individual venues in a network as nodes linked by informal bonds of common interest and lines of communication. In the broadest sense, networks may also contain embedded delegation chains. Research on the diffusion of policy innovation reveals the power of informal network ties. Ideas that prove successful or politically popular in one state venue, for example, can emerge relatively quickly in others as information spreads and experience accumulates.¹² Change occurs not because principals have sent orders down a delegation chain, but because voluntary exchanges between officials across network nodes have fostered policy innovation.

Arrangements such as delegation chains and policy networks generate avenues for organized interests to enter the policy process. In general, I define organized interests or interest groups as membership and advocacy organizations that try to influence government policy.¹³ Their concerns may be narrow or broad, and sometimes even benefit non-members. Organized interests have proliferated in the American political system since at least the 1960s.¹⁴ Today, it is hard to imagine a policy area that lacks even a small constellation of active groups. Education is no exception.¹⁵

Teacher unions are a powerful organized interest in the United States.¹⁶ In representing educators, NEA and AFT members wield significant power even though their opinions and

strategies regarding NCLB and other reform matters sometimes diverge.¹⁷ In part, unions possess power because their members reside in essentially all school districts, and thus all congressional districts, in the United States. That does not mean local union affiliates are equally adept or march in lock step with their state and national organizations. Variation exists across unions as well. One author, for example, has suggested that the NEA has a top-down orientation while AFT locals operate with relatively more autonomy.¹⁸

Overall, literally thousands of union locals exist across the country. Their members are sometimes enthusiastic, lukewarm, or even hostile to the policy priorities of union leaders. A recent survey of teachers by the non-partisan group Public Agenda found that over 80 percent of teachers believed unions protected them against administrative abuses and prevented deterioration in their working conditions. Still, only 46 percent described their union as "absolutely essential," and 47 percent believed that unions sometimes prevented districts from firing incompetent teachers.¹⁹ Thus, in using the term "union interests" I may sometimes overstate the degree of cohesion within unions themselves.

Despite diversity in their ranks, teacher unions are well-positioned to advance their interests because they are highly organized and operate in local, state, and national policy venues. Union leaders work within and across these venues using different modes of coordinated action. That redundancy means that losses in one venue or with one tactic may not stifle union interests if members can achieve their goals in other ways. Pressing for legislative changes that filter through a delegation chain may enable unions to have broad systematic impacts on policy. When those efforts fail (and even when they succeed), unions can work laterally across networks to advance their members' interests, as when union locals press for

similar priorities in collective bargaining discussions. Those impacts may be less systematic but still significant if successes aggregate across many network nodes.

AFT and NEA members have recognized that policy advocacy and local collective bargaining discussions can work together to achieve union goals. The unions' multi-venue, multi-tactic approach illustrates how national and state venues are important for NCLB implementation. In short, all politics isn't local after all. Still, history suggests that choices in the local venues where most union members work will powerfully influence whether NCLB advances or undercuts broader union interests.²⁰

NCLB implementation and union interests

I rely on two types of evidence to study NCLB implementation and union interests. First are print sources, which include government and union documents, press accounts, and published reports. In particular, I considered a convenient sample of approximately 30 teacher contracts obtained via basic Internet searches. From that collection, I identified a smaller subset based on geographic diversity, variation in school district characteristics, date of contract ratification, and whether state law guarantees collective bargaining rights to teachers. I focused on contracts ratified after 2001 to see if they explicitly addressed NCLB. Table 1 identifies this subset of contracts and relevant district characteristics.

Second, approximately 30 personal interviews inform my analysis. Most of these interviews occurred between May 2001 and June 2002. At that time, those respondents worked in the policy community in Washington, D.C. and came from several governmental and non-governmental organizations. The remaining interviews transpired during spring 2005 and involved a few similar respondents, but focused primarily on teachers, district administrators,

and union leaders in local venues. These respondents lived in New York, Michigan, Maryland, Florida, and Wisconsin.

Table 1. Summary of teacher contracts consulted^a

District	Contract period	Students^b	Schools^b
Albuquerque, NM	2002-2004	88,120	144
Beech Grove City, IN	2003-2007	2,445	5
Brevard County, FL	2004-2005	72,601	110
Buckfield, ME	2003-2006	660	2
Calvert County, MD	2001-2004	17,153	25
Chicago, IL	2003-2007	436,048	608
Davis, UT	2004-2005	60,367	85
Denver, CO	2002-2005	71,972	144
Minneapolis, MN	2003-2005	46,037	144
Portland, OR	2003-2005	51,654	104

Notes: (a) All contracts were downloaded from the Internet in January or February 2005. The full documents, quoted in subsequent pages, are available from the author. (b) Totals are based on the 2002-2003 school year and come from the Common Core of Data District Locator, available at <http://nces.ed.gov/ccd/districtsearch/>.

As of mid-2005, my sources suggest that NCLB has not overwhelmingly influenced local collective bargaining discussions. Certainly, the debates in national and state policy venues between union advocates and others have been noticeable and sometimes heated. In some local districts, NCLB and bargaining have intersected. However, local conversations have been less salient in most school districts, in part because many of NCLB's deadlines are only recently coming to pass and guidance from the Department of Education has frequently been slow in coming or in flux.

People national and local venues have told me that contract negotiations still tend to focus on bread and butter issues, such as the increasing costs of health care. Because contracts are often multi-year agreements, bargaining that concluded in the two years after NCLB became law would not have fully explored its ramifications. My interview respondents expect local

bargaining will focus more on NCLB once key deadlines for testing and teacher quality arrive. Certainly, some agreements have already tackled these issues, but it appears most have not. In general, across NCLB's key dimensions, which the rest of this section explores in detail, teacher unions have considered how policy advocacy and local bargaining can help align NCLB implementation with their members' interests.

Collective bargaining guarantees

Teacher unions have made protecting collective bargaining rights a top lobbying priority in federal venues. Union leaders believe that securing these rights will promote more consistent union influence over implementation as NCLB's requirements flow down the delegation chain to states and local school districts. Union advocacy in federal venues has also illustrated how NEA and AFT members recognize the synergies that can emerge when tactics across venues work in concert to promote union members' interests. Success in federal or state venues may facilitate union priorities in district bargaining over individual contracts.

The AFT called NCLB's bargaining provision "a key lobbying priority" because it "spells out a pivotal role for union-negotiated contracts and agreements in NCLB implementation. From public disclosure of teacher qualifications to use of school improvement funds for professional development under NCLB, the union-negotiated contract can hold great sway in keeping the process fair, constructive, and tuned to the law's worthy goals."²¹ The NEA agreed with the need to protect bargaining rights, and has reminded its members how it "pushed hard to keep the law from voiding protections that local affiliates have bargained into their contracts."²² Underscoring these points, one Washington lobbyist centrally involved in NCLB advocacy, but not representing teacher unions, recalled to me that defending bargaining was a "make or break issue for NEA" during 2001.

The NEA and AFT's push for bargaining protections continued in regulatory venues as the Department of Education developed policies for NCLB's implementation. When a dear colleague letter from Secretary of Education Rod Paige appeared to suggest that proposed regulations would restrict collective bargaining rights for contracts adopted after January 8, 2002 (the day NCLB became law), union leaders and their supporters lobbied to preserve the rights they believed NCLB had guaranteed. The union position eventually prevailed when Secretary Paige withdrew the proposed regulations.²³ Antonia Cortese, of the New York State United Teachers, dubbed the victory "enormous—not only for protecting our members and their local unions—but for improving the overall effectiveness of this federal initiative."²⁴

At first glance, NCLB's collective bargaining protections appear to align with a key union interest. The law and its supporting regulations recognize that bargaining occupies a legitimate role in NCLB implementation. Union advocates toiled to secure that protection and, thus, achieved a key objective. However, the law's bargaining protections may not pay dividends commensurate with the effort union lobbyists expended to win their approval. If so, the union drive to include broad bargaining protections in NCLB might have actually distracted union leaders from other substantive issues (such as teacher quality and testing) that are highly relevant to their members' interests.

One veteran Washington, D.C. education lobbyist told me that the AFT and NEA's vested interest in protecting bargaining rights made union leaders "sidetracked with a feint at the core of their powers." When early drafts of NCLB appeared to undercut bargaining rights, the national unions responded vigorously and, as this lobbyist conjectured, lost their focus and much potential influence on other more important elements of the law in 2001. Another ESEA expert disagreed, though, noting to me that the unions "are so well-funded and staffed, they can carry

many issues at once without distraction or compromising their capacity to lobby full-force for any one of them." Citing as evidence the policy debates from 1994 and 2001, this person continued, saying "I was there for both IASA and NCLB; they [the teacher unions] had their lobbyists' eyes trained on all issues of importance to them."

It is unclear whether the AFT and NEA's effort to protect bargaining in NCLB will eventually pay off. As of mid-2005, high-profile showdowns over this part of the law have not occurred. However, conflicts may emerge if states or local school districts push policies that clash with the bargaining prerogatives of union members. Appearing to anticipate that possibility, NEA has advised its local affiliates to negotiate the following language into new teacher contracts: "Without the agreement of the Association, the Employer shall take no action to comply with ESEA, as amended, 20 USC 6301 et seq., that has an adverse impact on any bargaining member."²⁵ That language would protect union members against possible negative consequences of NCLB. In theory, at least, the law's bargaining protections could foster conditions where union members could persuasively argue their complaints through grievances and collective bargaining.

Recognizing the possible impact of the NEA's employee protection language, some districts have prepared counter-language of their own. The Wisconsin Association of School Boards (WASB) warned its members that several union locals had "been making sweeping contract proposals" that copied NEA's language I just quoted. WASB told its affiliates: "Do not agree to this language under any circumstances." Further, it suggested that local districts "focus on removing barriers to NCLB compliance from the teachers' collective bargaining agreement."²⁶ The Oregon School Boards Association (OSBA) went even further. It encouraged its members to push for contracts that included broad enabling language that could upset teachers but would

give boards maximum flexibility to meet NCLB's demands. One suggested "management rights article" read: "No provision in this Agreement shall be construed to prevent or prohibit the Board or District from taking required actions under the NCLBA of 2002 concerning school improvement, school corrective actions, or school restructuring."²⁷

Responses to district questions from the Department of Education also suggest possible future conflicts. One guidance letter²⁸ from a department official noted that NCLB's collective bargaining protections "must be implemented in concert with the purpose of Title I, which is quite clear: 'to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments.'" According to the letter, that means a school district using NCLB's Title I funds "must comply with all of the requirements of the act, notwithstanding any terms and conditions of its collective bargaining agreements." The letter emphasized that Congress intended new collective bargaining agreements to be consistent with NCLB's AYP requirements (section 1116). Based on the statute and congressional intent, the letter concluded, "it is our view that school officials, in renegotiating collective bargaining agreements or negotiating new agreements, should ensure that they preserve their authority to pursue a full range of options for implementing section 1116."

If school districts follow the approaches that WASB, OSBA, and the Department of Education suggest, then union efforts to preserve bargaining protections in NCLB may be mainly symbolic victories. Put another way, although NCLB affirms collective bargaining rights in local venues, union leaders in school districts still must work hard to make those protections meaningful. In some situations, as my Florida respondents suggested, aligning contracts with NCLB or getting union locals and districts to agree that existing contract language does not

violate NCLB have not produced undue stresses at the moment. It is an open question, though, whether stresses will emerge in the future.

Teacher quality

Three years into NCLB's implementation, how its teacher quality elements will unfold in practice remains uncertain. Because the law delegates to the states discretion over certain aspects of teacher quality, union advocates have remained active in several policy venues to prevent regulatory and other actions from undermining their priorities. For example, as of early 2005, the Department of Education has not clarified what, if any, consequences will ensue if states or school districts do not employ highly qualified teachers in core subjects by 2005-06. Further, some states are still developing criteria for how teachers can demonstrate their highly qualified status. As key deadlines arrive and as state criteria emerge, union members and local school leaders will likely become more interested in these issues at district bargaining tables. Presently, one can observe how NCLB's teacher quality dimension might support and clash with union interests.

In general, NCLB's emphasis on teacher quality affirms what union advocates push in their lobbying, public information campaigns, collective bargaining sessions, and messages to their members. Unions claim that students are much less likely to succeed academically without outstanding classroom teachers. Parents have recognized this for years. Today, a growing research literature has produced systematic evidence that students who learn from talented teachers are more likely to excel.²⁹ This is especially true for children in disadvantaged schools and communities. Thus, NCLB's emphasis on the teacher's classroom role has helped advance the unions' core belief that education reform agendas will fail unless they recognize the key daily contributions of classroom teachers in local venues.

The need for highly qualified teachers also gives union members an entrée to argue for greater teacher pay and classroom support. Offering teachers higher salaries, which unions advocate in national, state, and local policy venues, is one way to attract more highly qualified individuals into the profession, they say. Promoting quality also suggests a parallel need for strong commitments to ongoing professional development for current teachers. For example, NEA has advised its members that "the new law puts collective bargainers and local policy advocates squarely in the middle of efforts to improve professional development opportunities."³⁰ AFT President Sandra Feldman echoed this idea when she noted that NCLB provided an "opportunity ... to replace meaningless requirements with high standards and sound practices for qualifying teachers," something that could produce better "professional development programs."³¹

Consistent with this advocacy from national union leaders, local teacher contracts routinely address district and teacher obligations for professional development. Sometimes these sections are relatively open-ended. For example, the Buckfield, Maine agreement addresses professional development in a single sentence. Other contracts describe professional development activities more elaborately and some, in fact, have begun to explicitly earmark development funds to support NCLB implementation.

Consider Chicago's teacher contract, which contains a section entitled "Educational Support Personnel and No Child Left Behind." That provision states the local district will provide up to \$50,000 to help offset union expenses associated with helping "educational support personnel members of the bargaining unit to pass the test option required by No Child Left Behind." A memorandum of agreement accompanying the Portland, Oregon, teacher contract creates a joint labor-management committee to "manage those programs and funds ... including

but not limited to the career development fund and the inservice fund." The contract notes this committee's first priority is funding activities that "support the acquisition of knowledge and skills necessary for affected bargaining unit members to meet the qualification requirements for No Child Left Behind." When teachers help make these development decisions, unions can influence the paths that NCLB-related training will take. Union involvement may also minimize uncertainty about possible consequences for teachers that do not meet the law's requirements.

Certainly, NCLB's teacher quality provisions could potentially clash with union interests. AFT and NEA leaders have pressed these concerns in national policy venues. In 2004, Feldman addressed this topic in a letter to key congressional authors of NCLB. She noted that "many states have failed to develop the objective standard of evaluation required by law" to determine whether teachers are highly qualified, and that the Department of Education had not "addressed what would happen to paraprofessionals [e.g., Title I teacher aides] who are unable to demonstrate their qualifications by 2006 because states and districts have yet to develop the assessments required by the act."³²

Feldman wanted Congress to clarify that teachers and paraprofessionals would not face punishments for delays in state venues. Such reassurances from Washington, through an amended NCLB or clearer regulations, would help local union affiliates address situations more consistently. For example, teachers may sometimes teach outside their content area due to staffing emergencies or unexpected contingencies. Technically these teachers might not be highly qualified in their assigned classrooms even though they are highly qualified in another field. Should responding to a pressing or unexpected local staffing need make otherwise highly qualified teachers vulnerable to sanctions? Union advocates have said no.

The NEA has anticipated that its members could face negative consequences if they fail to meet NCLB's highly qualified teacher requirements. The union recommended its members use collective bargaining to "play a meaningful role in establishing district responses if and when goals for higher qualified teachers are not met."³³ The OSBA has recognized this possible union response. Because NCLB does not specify what should happen to teachers not meeting the standard, OSBA reasoned that "we may be seeing proposals at the bargaining table that forestall discipline or dismissal and insert additional training, remediation, assistance, and other efforts up to and including providing alternative work within the district."³⁴

Federal deference to states on teacher certification issues may also cause NCLB's teacher provisions to clash with union interests. Recall that NCLB's definition of "highly qualified" primarily emphasizes subject matter expertise, while preserving state powers to determine teacher certification and licensing requirements. Section 200.56 of NCLB regulations issued December 2, 2002 supports state efforts to create routes to teaching via alternative certification and licensing.³⁵ Thus, individuals in alternative programs may count as highly qualified provided they are progressing satisfactorily (as their state defines) toward full certification. Unions have generally criticized alternative certification because they argue it will bring poorly trained people into the nation's classrooms.

NCLB's charter school elements reveal a further wrinkle in the certification issue. In Section 9101(23), the law exempts charter school teachers from the certification and licensing component of the highly qualified standard, as long as those teachers meet "the requirements set forth in the State's public charter school law." Thus, if a state does not require charter school teachers to have the same credentials as teachers in traditional public schools, then charter school teachers may be highly qualified without full certification. This flexibility clashes with union

members who argue that charter teachers should meet the same requirements as teachers in regular public schools.

The distinction between charter and traditional teachers may have implications and produce local-level clashes in future bargaining sessions. Both sorts of teachers, defined as highly qualified by different criteria, could fall under the same contract. Laws in 16 states, for example, require traditional public schools that convert to charter status to remain bound to local collective bargaining agreements.³⁶ Those arrangements could become more common because one NCLB-defined route to improvement is for schools missing AYP to convert to charter status. If this path becomes popular, collective bargaining agreements will need to creatively address such issues as work rules, compensation, job security, and benefits for charter and non-charter teachers alike.³⁷ Addressing both kinds of teachers under the same district-wide contract will not be easy, especially if unions continue to resist broadly expanding charter schools.

Annual testing

NCLB's requirements for annual testing in grades 3 through 8 have generated polarized opinions across the United States. Teacher unions have typically opposed the law's strong reliance on test results, arguing that focusing too much on testing can pull funds from other worthy initiatives, such as reducing class size, increasing teacher pay, and improving teacher working conditions. Union officials I spoke with from the NEA and AFT's national offices, and one union official in Florida, also criticized heavy reliance on student tests because results might be used to evaluate teachers without considering other measures of student success. They also worry that some tests might be used to evaluate teachers even though these tests might not have been designed for that purpose.

Despite these concerns, NCLB's testing could serve union interests in two ways. First, the data that tests generate may bolster union arguments that needy communities require additional funds for education. By focusing on student subgroups, NCLB will eventually generate mountains of data that document the performance of traditionally disadvantaged youngsters. Key architects of the law, including liberal members of Congress who are typically union allies, have argued that policymakers will be more likely to attend to less fortunate students when testing data inform the debate. Several staff members I interviewed on Capitol Hill noted as much, and Democrat George Miller of California has voiced concerns when the Department of Education's regulatory choices have seemingly undercut the bite of NCLB's testing provisions.³⁸

Some legal advocates are preparing to use NCLB's testing data in state and federal courts, two key policy venues, to highlight educational inequities.³⁹ If lawyers can link poor student performance to inadequate funding or large class sizes then they may be able to persuade courts to remedy these situations through state finance reform or other means. Unlike NEA's lawsuit, *Pontiac v. Spellings*, challenging NCLB implementation until additional federal dollars are forthcoming,⁴⁰ this legal strategy depends on the law moving forward and leverages its results to press for additional resources. Certainly, that strategy is not without potential costs. However, it is perhaps ironic that the very mechanism that unions, particularly the NEA,⁴¹ have often decried—annual testing—may help them increase school funding if the data prove persuasive in judicial and legislative venues.

NCLB's testing requirements have generated a second benefit for union advocates. Much like the school voucher issue often fosters strange political bedfellows, criticism of NCLB's approach has surged across the political spectrum since 2004. Leaders in typically Republican

states including Virginia, Utah, and Texas have offered passionate arguments about testing that mirror common union criticisms.⁴² This convergence likely does not foreshadow a new partnership between the GOP and the nation's largest teacher unions. However, if frustrations continue to build, the unions may be more able to change NCLB testing (and other matters) as Washington policymakers feel increasing pressure from local and state venues. Victories that NEA and AFT failed to secure in national venues in 2001 may now be more attainable when networks of actors launch parallel criticisms or consciously coordinate.

Furthermore, if the law's testing requirements continue to draw fire, unions may have greater luck joining with local school districts to challenge NCLB.⁴³ The NEA's recent lawsuit, which involves districts in Michigan, Texas, and Vermont as plaintiffs, is an illustrative example of that possibility. Some local partnerships addressing NCLB have even appeared in collective bargaining agreements where unions and districts share frustrations. In Chicago, for example, the teacher contract creates a joint board-union commission to "study, discuss, formulate, and submit recommendations to the Chief Executive Officer and President of the Union regarding a joint legislative strategy to advance the shared interests of the Board and Union." One shared interest is to promote "passage of legislation" that will produce "modifications to No Child Left Behind." Similarly, a memorandum of agreement accompanying the Minneapolis teacher contract notes how "the new federal requirements of the Elementary Secondary Education Act or No Child Left Behind has compounded already onerous state testing and reporting requirements, which, in addition to District data collection and grant requirements, have compounded the blizzard of paperwork."

Although NCLB's testing requirements could enhance union interests, they may also undermine other union priorities. First, as noted earlier, test data that reveal achievement gaps

may illuminate persistent student needs. However, policymakers could respond by expanding parental choice and encouraging more private sector involvement in public schools, which NEA and AFT have resisted, rather than increasing school funding. Choice supporters are pushing for this result. Reflecting on the 2001 legislative process, some congressional staff members I interviewed explained that the potential for greater school choice moved some reluctant congressional Republicans to support NCLB even though they worried about increasing Washington's role in the nation's schools.

Second, and perhaps more significantly, the flood of new testing data may increase pressure on unions to accept merit pay plans. As most educational observers know, nearly all teacher contracts use teacher experience and educational attainment to compute teacher salaries. Those variables produce a salary schedule, which identifies compensation levels for teachers who have served for a particular number of years (the row or "step" of the schedule) and who possess certain levels of educational training (the column or "lane" of the schedule). These salary schedules usually consider all regular classroom teachers the same.

The rigidity of the salary schedule creates challenges for districts and schools attempting to meet NCLB requirements. Deviating from standard schedules may be one way for districts to attract teachers in needed subjects. Similarly, districts may wish to pay more for teachers with exceptional skills whose service or degrees may understate their teaching potential. In a draft strategy document, WASB noted how Wisconsin school districts should consider modifying "current pay systems to better retain and attract competent teachers," a change that could include "premium pay for teachers with difficult to find or multiple certifications."⁴⁴

Offering bonuses or merit pay for teachers who help schools hit NCLB's accountability targets would also require districts to veer from the salary schedule model. Union affiliates have

frequently challenged merit pay proposals linked to test score improvement. One union representative explained to me that tests are poor or incomplete indicators of teachers' good works, and that tests should not single out teachers because student success ultimately emerges from the long-term collective efforts of entire school staffs. The NEA has advised its locals to bargain against "the establishment of a two-tiered system that creates a super-salaried strata of elite teachers and educators," which merit or bonus pay plans could foster.⁴⁵

Looking ahead, union resistance to expanding performance pay will likely be untenable in the long run. As a principal from New York state told me, when more NCLB data become available, citizens will hold teachers primarily responsible for student achievement and will eventually support rewarding teachers they believe produce superior results. He also noted that principal contracts increasingly incorporate pay-for-performance clauses, providing a foundation for extending such clauses to teacher contracts. Because in loosely coupled local networks "everyone looks at everyone else's contract," once test score performance finds a foothold in administrator contracts, "it will be easier to get it into others, too," he said. As evidence of this potential future trend, pay-for-performance arrangements have begun to appear in districts across the country. Policy choices in state venues often prompt or enable these local initiatives, which sometimes enjoy union support.

One example of how NCLB is influencing teacher pay comes from the Minneapolis teacher contract. In that district, teachers may earn additional "professional growth credits," which can reclassify teachers on the salary schedule "for each year of teaching in a designated Tier 1, Tier 2, or 3rd year AYP school setting" (emphasis added). Denver is another example. In the Mile High City, union members and the district created a pay-for-performance pilot from 1999 to 2003. Reflecting how policy choices in state venues can influence local districts, in a

separate memorandum of agreement to the 2002-2005 teacher contract, teachers and district officials also agreed on a framework to implement a state law offering incentive bonuses. The district plan focused on "improving the achievement of all students, closing the achievement gap and setting high standards." Among other things, the agreement made recruitment bonuses available to teachers who filled "a vacant position with all necessary qualifications (including the requirements of 'No Child Left Behind')."

Interestingly, unless altered, NCLB's testing requirements may create a barrier to vastly expanding merit pay. In the end, that would serve officially stated union interests. NCLB requires states to adopt tests that monitor achievement within grade levels but do not track particular students. In other words, the law is most concerned with comparing this year's 5th graders with next year's 5th graders. Conversely, a common version of the value-added model would use testing to track the progress of specific students and their cohorts in each grade. This model would involve assessing students at the beginning and end of the school year.

Advocates of the current NCLB framework have eschewed value-added testing because they believe it would leave children behind if students demonstrate progress but still do not achieve at grade-level. However, using value-added scores may be the most effective way to implement merit pay for individual teachers. Value-added testing focuses on progress that can be related more directly, albeit still imperfectly, to a specific teacher's work. That would be better than the apples-to-oranges comparisons that can occur when student cohorts with diverse characteristics, which are unrelated to teacher performance, drive year-to-year score differences. Because NCLB does not allow states to use value-added accountability to meet AYP, it is debatable whether the law as presently written and enforced provides an adequate foundation to widely expand merit pay. Certainly, that does not create an insurmountable barrier for advocates

of the approach. NCLB does not prevent states or even local school districts from rewarding teachers based on value-added systems, so NCLB and these systems could exist simultaneously.

Adequate yearly progress and schools in need of improvement

NCLB's choice provisions and corrective actions, which could involve privatizing management or closing schools that repeatedly miss AYP, appear to clash most directly with stated union interests. But some consequences could also bolster union positions. Remember that as of 2005, the complete menu of NCLB's AYP components has rarely played out because few schools have reached the latter stages of improvement status. Apparently large consequences, then, may yet unfold in unexpected ways. Still, it is worth considering some of the intersections between AYP and union interests where a minimal track exists.

Union members may exercise new influence in local venues when schools reach improvement status. Consider two possibilities. First, recall that NCLB explicitly instructs schools failing to make AYP to establish improvement committees. NCLB does not clearly define specific tasks for how these committees must operate, so local collective bargaining agreements will sort out many of these details. Policies flowing from state venues also inform these choices. State laws in Florida, for example, govern aspects of the school improvement process. By participating in improvement committees, union members could steer reform discussions toward their favored approaches. In one scenario, union advocacy and work on improvement committees, combined with community advocacy, could nudge local districts to support class size reductions in schools slated for major overhauls based on AYP. According to one national union official I spoke with, because NCLB provides much flexibility for local districts to select improvement strategies, unions would have important opportunities to argue for approaches they believe are supported by the evidence and that serve their members' interests.

The second school improvement issue that may serve union interests flows from NCLB's supplemental services requirements. As noted earlier, NCLB requires states to identify approved providers where parents can use their school's Title I money to buy additional help for their children. Controversy over local administration of supplemental services has emerged where district personnel and private providers both offer these services. In Chicago, for example, public school employees tutor 40,000 students and private providers instruct another 42,000. Local teacher unions in Rochester, New York, and Toledo, Ohio, are also supplemental service providers.⁴⁶ Should parents respond favorably to supplemental instruction from unionized public school teachers, that could bolster union criticisms of private or non-profit providers that are not required to employ instructors that meet NCLB's highly qualified definition. Parents who choose district-provided supplemental services will also minimize the number of Title I dollars flowing to non-district entities, thus serving another union interest.

The complicated logistics of implementing NCLB's supplemental services can affect union interests in other ways. The law requires districts and external providers to jointly formulate plans for increasing student achievement. Could contract protections or certification requirements in bargaining agreements also apply to supplemental providers who work outside the schools but coordinate closely with teachers and their students? The NEA has raised this question with its members, explaining that locals should negotiate for "Codifying the definition and scope of the bargaining unit. For example, determining if outside agencies, such as community-based organizations that provide supplemental services required under ESEA are covered under collective bargaining agreements."⁴⁷ It is unclear how those clarifications might emerge in practice, but this potential illustrates how local choices at the end of NCLB's delegation chain can influence how this AYP provision plays out. Thinking more speculatively,

if supplemental service providers become de facto school employees who work closely with regular school teachers, creative union locals may try to recruit these providers into their ranks.

NCLB provisions that govern school improvement may also threaten union interests. Perhaps most significant, principals and district administrators will certainly seek more aggressive control of teacher assignment to help schools make AYP. It is hard to understate the importance of this issue. NEA has resisted involuntary transfers based solely on a district-defined need to meet AYP; it has advised its members to bargain for contract language that specifies "No bargaining unit member shall be involuntarily transferred in order to implement a school improvement plan developed pursuant to ESEA."⁴⁸ But being able to shuffle personnel is particularly important when districts wish to move especially skilled or veteran teachers to schools serving the neediest students.⁴⁹ This is a challenging argument for unions (or anyone else) to rebut given that union advocates and researchers see strong links between quality teachers and student performance.

Contracts often contain elaborate procedures to govern teacher assignment. Two features are especially common. First, contracts usually guarantee teachers due process procedures for within-school assignments, voluntary and involuntary transfers between schools, and layoffs. For instance, Minneapolis teachers subject to internal reassignment are afforded a four-step process that allows them to question the reassignment decision. The contract in Utah's Davis School District contains parallel, but simpler, procedures for involuntary transfers or reassignments. Davis's procedures give teachers due process while also affording principals and district officials some discretion.

Second, seniority typically weighs heavily in assignment decisions. In Albuquerque, New Mexico, a certified teacher with three or more consecutive years of service "shall not be

laid off if there is an available teaching position in the District for which the instructor is certified and qualified." If involuntary transfers or reductions become necessary in the Davis School district and no volunteer steps forward, "the teacher in the grade level or subject area where the position is being eliminated who has the least overall seniority in the District will be identified as the one for transfer." However, while general regard for seniority is important, it does not imply absolute deference. The New Mexico contract also notes that changes in assignment "shall be based on verifiable instructional program environments." When laying off teachers in Portland, Oregon, the district is supposed to account for seniority but also consider "special qualifications, areas of experience, program, minority employment, and levels of training."

In today's environment where concerns over test-based accountability and AYP are paramount, district administrators and local boards have and will continue to press for greater control over teacher assignments. Tensions over this issue vividly emerged during recent contract negotiations in Boston and Philadelphia. Boston Superintendent Thomas W. Payzant and Philadelphia schools' Chief Executive Officer Paul G. Vallas proposed to give district administrators more power to assign teachers in schools not making AYP. In March 2004, Payzant and the Boston Teachers Union compromised by giving the superintendent some additional, but relatively limited, flexibility that still protected seniority rights. Specifically, the Boston agreement allowed the superintendent to identify five low-performing district schools and to freeze half their teaching vacancies. He could then fill those slots with teachers regardless of seniority or other transfer rights. Payzant could repeat the process the following year if a school did not improve student scores.⁵⁰

In Philadelphia, Vallas had craved similar powers over staff assignments. After lengthy negotiations, the final teacher contract met with Vallas's approval, even though some groups thought it deferred too much to seniority. Among other things, the agreement gave principals at current schools, in consultation with school Staff Selection Committees (made up of parents and teachers), control over half of their building vacancies. The selection committee would recommend candidates, but the principal would make the final hiring decision. Principals in new schools would have even more power over staff selection.⁵¹

Challenges, opportunities, and uncertainties ahead

In the interest of space, this chapter has set aside examining whether union priorities on NCLB might serve student interests. Other chapters in this volume shed light on that subject, directly and indirectly. Despite the present hoopla surrounding NCLB, the law is still in its infancy when measured against the trajectory of its long-term objectives. Ultimately NCLB embraces a hugely ambitious goal: to guarantee that the nation's students will be proficient in reading and math by 2013-14. As that deadline approaches it will be interesting to watch how two broad issues affect the future relationship between NCLB and teacher union interests.

The first issue is the potential growth of "reform unionism."⁵² This movement focuses on tempering the adversarial debates that often ensue when union advocates and their critics engage in national and state venues or in local collective bargaining discussions. In the words of the Teacher Union Reform Network (TURN), this shift could protect teachers but simultaneously "restructure the nation's teachers' unions to promote reforms that will ultimately lead to better learning and higher achievement for America's children," a goal consistent with NCLB's spirit.⁵³

It is debatable whether reform unionism will generate the progress its advocates have promised.⁵⁴ Evidence from Chicago, where the union and district have collaborated to turn

around failing schools,⁵⁵ and in Florida, where my respondents described local district successes emerging from collaborative interest-based bargaining, suggests that unions do not always approach reforms with the skepticism that their adversaries sometimes claim. The recent NEA lawsuit challenging NCLB as an unfunded mandate, however, may have undermined some of the union's credibility with borderline critics. Advocates of reform unionism will need to do much heavy lifting to transform their vision into a national movement. Skeptics doubt this transformation is even possible. If the movement succeeds, though, it may help improve NCLB's long-term impact.

A second issue influencing NCLB's future relationship to teacher unions and collective bargaining is how strictly policymakers in federal venues enforce the law. Since 2002, the Department of Education has struggled to send clear signals and consistent guidance down the NCLB delegation chain.⁵⁶ Many potential benefits or threats to union interests will only emerge if the federal government holds actors in state and local venues accountable for faithful implementation of NCLB. Today, even though federal officials have promised to hold states and localities to NCLB's provisions, the law's success will continue to depend as much on politics and federal persuasion as it will on tough enforcement. Parents dissatisfied with NCLB could give union advocates important political support as unions coordinate allies in national, state, and local venues to change the law. Alternatively, if parents react more favorably and NCLB supporters beat back critics, unions will have to work more creatively to sustain their interests. Unions and their adversaries will certainly study where federal officials bend or hold firm as Washington fields future waiver requests or responds to complaints.

Perhaps the biggest challenge facing union advocates and their critics is how to translate broad agreement on key principles into specific actions that benefit the nation's students. Even

amidst the advocacy swirling about NCLB, all serious educational observers recognize a few basic facts. Most schools and students are not performing as well as they could. Achievement gaps among youngsters foster inequities that can snowball during adolescence and adulthood. The nation's classrooms need more great teachers, especially in areas with high concentrations of disadvantaged students.

Serious observers also recognize that teacher unions and NCLB will likely remain fixtures of the nation's educational landscape for many years to come. Realistically, union advocates and their critics will never see all their wishes completely fulfilled. Perhaps the best scenario for NCLB success, then, would be for advocates and critics to reach for pragmatic, perhaps even second-best but still useful, solutions to address the country's persistent educational challenges.

Notes

¹ I owe many thanks to Jane Hannaway, Andrew Rotherham, Amanda Cargile, Russlyn Ali, William Raabe, Jennifer King Rice, Dianne Piché, and my interview respondents. The Dirksen Congressional Center and the University of Wisconsin provided financial support.

² Frederick M. Wirt and Michael W. Kirst, *The Political Dynamics of American Education* (Berkeley, CA: McCutchan Publishing Corporation, 1997); Tom Loveless, *Conflicting Missions? Teachers Unions and Educational Reform* (Washington, DC: Brookings Institution, 2000); David T. Conley, *Who Governs Our Schools? Changing Roles and Responsibilities* (New York: Teachers College Press, 2003).

³ Center on Education Policy (CEP), "A New Federal Role in Education" (Washington, DC: CEP, 2002); CEP, "From the Capital to the Classroom: State and Federal Efforts to Implement the No Child Left Behind Act" (Washington, DC: CEP, 2003); House Committee on Education and the Workforce, "House-Senate Panel Approves H.R. 1 Education Reform Bill," press release, December 11, 2001; Wayne Riddle, "Education for the Disadvantaged: ESEA Title I Reauthorization Issues" (Washington, DC: Congressional Research Service, 2002);

Wayne Riddle, "K-12 Education: Highlights of the No Child Left Behind Act of 2001 (P.L. 107-110)" (Washington, DC: Congressional Research Service, 2002).

⁴ Core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

⁵ Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993).

⁶ Conley, *Who Governs Our Schools?*

⁷ Noel Epstein, ed., *Who's in Charge Here? The Tangled Web of School Governance and Policy* (Denver, CO, and Washington, DC: Education Commission of the States, and the Brookings Institution, 2004).

⁸ Gary J. Miller, *Managerial Dilemmas: The Political Economy of Hierarchy* (New York: Cambridge University Press, 1992); Jonathan Bendor, Amihai Glazer, and Thomas Hammond, "Theories of Delegation," *Annual Reviews of Political Science* 4 (2001).

⁹ Bendor, Glazer, and Hammond, "Theories of Delegation"; Terry M. Moe, "Politics, Control, and the Future of School Accountability," in *No Child Left Behind?*, ed. Paul E. Peterson and Martin R. West (Washington, DC: Brookings Institution, 2003).

¹⁰ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 1980); James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989).

¹¹ H. Brinton Milward and Keith G. Provan, "How Networks Are Governed," in *Governance and Performance: New Perspectives*, ed. Carolyn J. Heinrich and Laurence E. Lynn, Jr. (Washington, DC: Georgetown University Press, 2000).

¹² Virginia Gray, "Innovation in the States: A Diffusion Study," *American Political Science Review* 67, no. 4 (1973); Michael Mintrom and Sandra Vergari, "Policy Networks and Innovation Diffusion: The Case of State Education Reforms," *Journal of Politics* 60, no. 1 (1998).

¹³ Frank R. Baumgartner and Beth L. Leech, *Basic Interests: The Importance of Groups in Politics and in Political Science* (Princeton, NJ: Princeton University Press, 1998); Jeffrey M. Berry, *The Interest Group Society*, 3rd ed. (New York: Longman, 1997).

¹⁴ Robert H. Salisbury, "The Paradox of Interest Groups in Washington--More Groups, Less Clout," in *The New American Political System*, ed. Anthony King (Washington, DC: American Enterprise Institute, 1990).

¹⁵ Diane Ravitch, *The Language Police: How Pressure Groups Restrict What Students Learn* (New York: Alfred A. Knopf, 2003); Wirt and Kirst, *The Political Dynamics of American Education*.

¹⁶ Michael W. Kirst, "A History of American School Governance," in *Who's in Charge Here?* ed. Noel Epstein (Denver, CO, and Washington, DC: Education Commission of the States, and the Brookings Institution, 2004).

¹⁷ The NEA's complaints have been more comprehensively critical of NCLB, while the AFT has more consistently expressed general support for the law's principles and even some of its strategies. The AFT's critiques have tended to focus on specific aspects of the law, such as how AYP is calculated. See Julia E. Koppich, "A Tale of Two Approaches--the AFT, the NEA, and NCLB," *Peabody Journal of Education* 80, no. 2 (2005).

¹⁸ Ibid.

¹⁹ Steve Farkas, Jean Johnson, and Ann Duffett, "Stand by Me: What Teachers Really Think About Unions, Merit Pay, and Other Professional Matters" (New York: Public Agenda, 2003).

²⁰ David Tyack and Larry Cuban, *Tinkering toward Utopia: A Century of Public School Reform* (Cambridge, MA: Harvard University Press, 1995).

²¹ AFT, "NCLB Watch," November 2003, http://www.aft.org/pubs-reports/american_teacher/nov03/nclb.html. Accessed March 1, 2005.

²² NEA, "No Child Left Behind?" May 2003, http://www.nea.org/nea_today/0305/cover.html. Accessed March 8, 2005.

²³ Rod Paige, "Dear Colleague Letter to Education Officials Regarding Implementation of No Child Left Behind," June 14 2002, <http://www.ed.gov/print/policy/elsec/guid/secletter/020614.html>. Accessed September 21, 2004. For the proposed regulations, see the *Federal Register*, August 6, 2002, pp. 50994 and 51018. The *Federal Register* of December 2, 2002 (p. 71763) describes the withdrawal of these proposed regulations. The register is on-line at <http://www.gpoaccess.gov/fr/index.html>.

²⁴ New York State United Teachers, "Regs Leave Contract Protections in Place," January 15 2003, <http://www.nysut.org/newyorkteacher/2002-2003/030115nochildleftbehind.html>. Accessed January 15, 2005.

²⁵ NEA, "ESEA Action Guides: Collective Bargaining/Policy-Making" (Washington, DC: NEA, 2002).

- ²⁶ WASB, "Bargaining over PI34 and No Child Left Behind," 2004, http://www.wasb.org/employee/2004_PI34NCLB.pdf. Accessed March 1, 2005.
- ²⁷ OSBA, "Human Resource and Collective Bargaining Impacts of the No Child Left Behind Act of 2002," May 6 2003, <http://www.osba.org/hotopics/funding/nclb/nclbimpa.pdf>. Accessed January 15, 2005.
- ²⁸ Many thanks to Michael Petrilli at the Department of Education for sharing this letter with me.
- ²⁹ Kati Haycock, "The Elephant in the Living Room," in *Brookings Papers on Education Policy*, ed. Diane Ravitch (Washington, DC: Brookings Institution, 2004); Jennifer King Rice, *Understanding the Effectiveness of Teacher Attributes* (Washington, DC: Economic Policy Institute, 2003); Charles Clotfelter, Helen F. Ladd, and Jacob Vigdor, "Teacher Quality and Minority Achievement Gaps" (paper presented at the Annual Research Conference of the Association for Public Policy Analysis and Management, Atlanta, GA, October 2004).
- ³⁰ NEA, "ESEA Action Guides."
- ³¹ Sandra Feldman, "QuEST Conference Keynote Address," July 10 2003, <http://www.aft.org/presscenter/speeches-columns/speeches/feldman071003.htm>. Accessed November 9, 2004.
- ³² Sandra Feldman, "Letter to Congress - NCLB Implementation," February 2 2004, <http://www.aft.org/topics/nclb/downloads/ImplementationLetter.pdf>. Accessed March 8, 2005.
- ³³ NEA, "ESEA Action Guides."
- ³⁴ OSBA, "Human Resource and Collective Bargaining Impacts."
- ³⁵ NCLB regulations are available at the U.S. Department of Education's web site at <http://www.ed.gov/policy/elsec/reg/edpicks.jhtml?src=ln>.
- ³⁶ Alex Medler, Bryan Hassel, and Todd Ziebarth, *Collective Bargaining and Teachers Unions in a Charter District* (Denver: Education Commission of the States, 2003), 1.
- ³⁷ Ibid.
- ³⁸ Lynn Olson, "Testing Rules Would Grant States Leeway," *Education Week*, March 6, 2002.
- ³⁹ Siobhan Gorman, "Can't Beat 'Em? Sue 'Em!" December 2001, <http://www.washingtonmonthly.com>. Accessed December 18, 2001.
- ⁴⁰ The NEA filed the suit in April 2005, and posted the complaint and other information on its website at <http://www.nea.org/lawsuit/index.html>. The U.S. Department of Education has posted a brief response at <http://www.ed.gov/news/pressreleases/2005/04/04202005.html>. Both sites accessed April 26, 2005.

⁴¹ The AFT has generally been more enthusiastic about student testing and standards than the NEA. See Koppich, "A Tale of Two Approaches."

⁴² Jo Becker and Rosalind S. Helderman, "VA Seeks to Leave Bush Law Behind," *Washington Post*, January 24, 2004; Justin Gest, "Texas Fined for No Child Defiance," *Houston Chronicle*, April 25, 2005; Sam Dillon, "Utah Vote Rejects Part of Education Law," *New York Times*, April 20, 2005.

⁴³ See Frederick M. Hess and Andrew P. Kelly, and Terry M. Moe in this volume.

⁴⁴ WASB "2005-07 Proposed School Board Teacher Bargaining Goals," n.d., http://www.wasb.org/employee/0507teacher_goals_d2.pdf. Accessed March 4, 2005.

⁴⁵ NEA, "ESEA Action Guides."

⁴⁶ Catherine Gewertz, "Chicago, Ed. Dept. Settle Tutoring Dispute," *Education Week*, February 9, 2005; Koppich, "A Tale of Two Approaches," 140.

⁴⁷ NEA, "ESEA Action Guides."

⁴⁸ *Ibid.*

⁴⁹ Jeff Archer, "Districts Targeting Teacher Seniority in Union Contracts," *Education Week*, April 12, 2000.

⁵⁰ Bess Keller, "Boston Teachers Reach Contract Settlement," *Education Week*, March 31, 2004.

⁵¹ Bess Keller, "Phila. Activists Cite Lost Opportunity on Teachers' Pact," *Education Week*, November 17, 2004; Bess Keller, "Phila. Principals Gain Say in Hiring under New Pact," *Education Week*, October 20, 2004.

⁵² Susan Moore Johnson and Susan M. Kardos, "Reform Bargaining and Its Promise for School Improvement," in *Conflicting Missions?*, ed. Tom Loveless (Washington, DC: Brookings Institution, 2000); Adam Urbanski, "Improving Student Achievement through Labor-Management Collaboration in Urban School Districts," *Educational Policy* 17, no. 4 (2003); Charles Taylor Kerchner and Julia E. Koppich, *A Union of Professionals: Labor Relations and Educational Reform* (New York: Teachers College Press, 1993).

⁵³ Cited from the TURN web site at <http://www.gseis.ucla.edu/hosted/turn/turn.html>. Accessed March 8, 2005.

⁵⁴ Terry M. Moe, "No Teacher Left Behind," *The Wall Street Journal*, January 13, 2005; Justin Torres, "Don't Believe the 'New Union' Hype," February 10 2005, <http://www.edexcellence.net/foundation/gadfly/archive.cfm>. Accessed March 8, 2005; Andrew Rotherham, "Fordham Unsheathed!" February 14 2005, <http://www.eduwonk.com>. Accessed March 8, 2005; Charles Taylor Kerchner, "Deindustrialization," *Education Next* 1, no. 3 (2001).

⁵⁵ Ana Beatriz Cholo, "Union Seeks to Save 8 Schools," April 26 2005, <http://www.chicagotribune.com>. Accessed April 27, 2005.

⁵⁶ Ellen Forte Fast and William J. Erpenbach, "Revisiting Statewide Educational Accountability under NCLB" (Washington, DC: Council of Chief State School Officers, 2004).