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# Teacher Collective Bargaining: Evidence on Flexible Deployment of Teaching Resources

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### Abstract

This study examines limitations on teaching resource allocation contained in the collective bargaining agreements between teachers and school districts in the ten largest cities in New York. The nature of unionism and bargaining in public education is described as the outcome of a mutual process resulting in an agreement representative of both teacher and school district interests. Especially important is the recognition that teacher *and* school administrator motivations must be considered as affected by self-interest factors. We demonstrate that collective bargaining has not precluded administrative discretion by mandating seniority-based decisions on teacher assignment in these urban New York school districts.

### Introduction

It is a common assertion that public schools in the United States fail to provide education of adequate quality to many of their students, or at least that the quality of education they provide is well below what they could and ought to provide. Many of the critics of public education have identified teacher unions and the collective bargaining agreements that they negotiate as one of the causes, often the primary cause, of the perceived inadequacy of public education. This study is designed to look at one aspect of that issue.

In particular, the assertion is sometimes made that teacher collective bargaining agreements set such tight restrictions on the deployment of teaching resources that school districts are unable to allocate their teachers across subjects, classes, and school buildings in a manner that would be most beneficial to their students. This assertion is often made without examination of what is actually included in those collective bargaining agreements or with evidence from just a few of them. This study examines limitations on the allocation of teaching resources contained in the collective bargaining agreements between teachers and school districts in the ten largest urban areas in the state of New York.

### Literature

Politicians and the popular media are fond of decrying the U.S. system of public education, and they often blame teacher unions and teacher collective bargaining for what they see as the dysfunctions in the system. A particularly egregious example occurred when the Secretary of Education in the administration of President George W. Bush referred to the National Education Association, which was then opposing the administration's proposed changes in federal education law, as a "terrorist organization" (Toppo 2004).

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The U.S. edition of the British news magazine *The Economist* has been particularly insistent on blaming educational collective bargaining for what it perceives as the shortcomings of U.S. public education. For example, in October 2009, *The Economist* asserted that “charter groups usually prefer to start new schools, rather than improve existing ones burdened by bad habits and union rules” (2009:34). *Newsweek* has characterized the attempt by the chancellor of the Washington, D.C. school district to reform schools there as “entering into a struggle with the local teachers union ... a profound threat to politically powerful teachers unions nationwide” (Thomas, Conant, and Wingett 2008).

Not all of the popular literature is so clearly anti-education collective bargaining. Much of the literature that isn’t recognizes the difficulties that led to teacher unionization. For example, *The New Yorker* acknowledged that before unionization of the New York City schools, “teachers endured meager salaries, tyrannical principals, witch hunts for Communists, and gender discrimination against a mostly female workforce ...” (Brill 2009:30). However, even many of these commentaries view current teacher collective bargaining as a major impediment to student achievement.

As one might expect, the academic literature on educational collective bargaining is both more diverse and more balanced. Teacher collective bargaining has its defenders among academics, although the tone of these researchers is generally not as strong as the tone of the critics (Hess and Kelly 2006; Johnson and Donaldson 2006). Nonetheless, there is much in the academic literature that supports the assertions of education’s critics in the media and among politicians.

For example, Paul T. Hill, commenting on developments over the previous 40 years, asserts that “local school boards have gradually given unions control over teacher placements, performance evaluations, working conditions, and work assignments within the schools.” He concludes that these policies “are starting to bankrupt school districts and render them unable to adapt education to the needs of a changing population and a more demanding economy” (Hill 2006:89–90). Hill asserts that “most school superintendents recognize this problem,” and says some have worked on it in collective bargaining. Districts such as New York City, Philadelphia, Boston, and Seattle have allowed school leadership teams to fill vacancies with a teacher who is not the most senior, but such teams usually are made up primarily of teachers and must follow complex procedures in those cases (Hill 2006:99). He and others argue that seniority provisions mean that needy schools in low-income neighborhoods are largely staffed by the least senior teachers and that the neediest schools also have the highest teacher turnover (Hill 2006; Moe 2006). Hill concludes that this results in districts actually transferring resources from needy neighborhoods to schools in better neighborhoods because those schools have teachers with higher salaries (Hill 2006).

Moe argues that by the early 1980s, most school districts outside the south were unionized, and teachers’ unions “were by far the most powerful force in American education.” He laments this development, “for there are persuasive reasons to think that the power of teachers’ unions is in many ways quite bad for public education and ultimately works to the disadvantage of children” (Moe 2006:229–30).

Moe asserts that union influence in local and school board elections is likely to be substantial. He also asserts that most people would be shocked by actually reading what is in teacher collective bargaining agreements (Moe 2006). He does not account for the political influence of other groups in local and school board elections, such as taxpayer groups, whose agendas are sometimes antithetical to the best interests of students.

Some of the criticisms of teacher collective bargaining are clearly not relevant to New York State (Hill 2006). For example, as in most states, teachers in New York State are legally prohibited from going on strike. It does happen but it has become quite rare. In addition, while many of the critics have discussed class size limitations in teacher collective bargaining agreements, in New York State, class size is a non-mandatory topic of negotiations. That is, the union would violate the law if it insisted on negotiating that topic against the wishes of the school district.<sup>1</sup> While teacher collective bargaining agreements are often blamed for making it difficult to fire incompetent teachers (actually this is a by-product of making it difficult to fire any teachers), in New York State this is largely accomplished through state education law and would apply even to districts where teachers chose to be unrepresented by a union. Finally, it is frequently asserted that teacher unions negotiate raises that are actually much larger than the percentage increases announced because of the way most teacher collective bargaining agreements provide teachers with step raises based on longevity. Aside

from the dubious mathematics of this proposition, in much of upstate New York it is not relevant because teacher-negotiated wage increases are almost always “inclusive of increment.”<sup>2</sup>

Overall then, there is a vocal cadre in academia, the media, and politics that holds unions and collective bargaining to blame for much of what ails public education. In many cases, little or no evidence (or at best selective evidence) is cited to reach this conclusion.

## Zogby Data

The authors of this article have available to them a unique data set collected as part of the December 8, 2008, Zogby America Poll by Zogby International of Utica, New York. We were able to include a small number of questions in the survey that were designed to elicit attitudes toward teacher unionization and collective bargaining and to determine the correlates of those attitudes. The most basic information being sought was whether the public shared the views expressed by the critics that teacher collective bargaining is damaging to educational outcomes.

The raw survey data themselves are quite revealing. A strong majority of the respondents (73.1%) agreed with the statement that teachers should have the right to join unions to negotiate pay and benefits, with over half of the sample strongly agreeing with the statement. Only slightly fewer (70.6%) agreed that public schools in their state give most students a good education. Even more interesting, only 36.2% of respondents agreed that schools in their state would give students a better education if teachers were not permitted to engage in collective bargaining, while 55.5% disagreed with this statement—35.3% disagreeing strongly. At least on the surface, it does not appear that the public has accepted the views of the critics of educational collective bargaining, although these results seem to conflict with some other publicly reported polling data (*The Economist* 2009).

The Zogby data allow us to go further in analyzing these responses. We were able to ask survey questions designed to elicit whether respondents’ parents had been public school teachers or if anyone else in the household was a public school teacher. We were also able to ask if respondents had ever worked in a unionized environment, thus identifying those whose views about unionization are based on first-hand experience. Finally, we were able to use the demographic data contained in the Zogby survey, including the region in which the respondents live as well as their gender, age, and education, to examine demographic correlates of attitudes toward teacher unionism and collective bargaining.

Statistical analysis did reveal differences by age, education, and region of the country but often these factors interacted in complex ways.<sup>3</sup> Some of the findings were noteworthy for our purposes here. In particular, respondents who were union members or lived in households with union members were significantly more likely than others to disagree with the statement that public schools would provide a better education if teachers were not unionized. In addition, those who had worked in a unionized workplace were more likely than others to disagree with that proposition. Not surprisingly, being a public school teacher (or having one in the household) significantly increased disagreement with this statement. However, having a parent who was or is a public school teacher had no significant impact on responses.

## Nature of Unionism and Bargaining in Public Education

Several points should be made before delving into the content of specific collective bargaining agreements. These points seem obvious, but they are both fundamental and routinely overlooked (or at least underemphasized) by both the popular and scholarly critics of the impact of collective bargaining on educational outcomes.

The first and most important is that collective bargaining agreements are the outcome of a mutual process. That is, they represent the outcome of negotiations between teachers and their representatives on one side and the management of the school district and its representatives on the other. When these agreements are called, as they so often are in the literature, “union contracts,” this aspect of mutuality is lost. Some of the critics acknowledge this, although most do not emphasize it or they assert that the provisions are “forced on the districts by the unions ...” (Moe 2006:240; Hill 2006:90).

In reality, the content of collective bargaining agreements represents not only teacher interests but the interests of the school district as well. When concessions are made to teacher unions, those concessions are presumably those the representatives of the school district feel can be accommodated with the least negative impact on its goals and its mission. It is ironic that the critics of educational collective bargaining seem to believe that these same school administrators whose judgment is so poor that they have “given away the store” in collective bargaining with their teachers could be trusted to run their school districts smoothly and with much better outcomes on their own if only the teachers’ unions disappeared.

The second point, closely related to the first, is that in most states in the United States, school teacher unions are not permitted to avail themselves of either the ability to strike or the ability to have their contract disputes resolved by binding arbitration. In New York State, where the collective bargaining agreements analyzed below were negotiated, teacher unions are legally precluded from striking, a requirement enforced with strict penalties against both the unions and the individual teachers. Nor do they have recourse to binding arbitration. Accordingly, the provisions of teacher collective bargaining agreements have been agreed upon by school district management and have not been forced upon them.

That being said, it is not claimed here that school districts can take the existing collective bargaining agreements covering teachers (or other school district personnel) and simply decide to negotiate out any provisions they find inconvenient or distasteful. State laws on public sector collective bargaining make such a process cumbersome and awkward, and it can take many years. However, it is true that most state public sector bargaining laws as they apply to teachers give most of the leverage in negotiations to the school districts, and the principal weapons the teachers’ unions have in trying to negotiate contract provisions for their members are persuasion and persistence.

The third point is that most of the critics of educational collective bargaining take an extremely benign view of the things that motivate school boards and school administrators. The common argument is that teacher unions are there to benefit teachers, not students, and that this must be expected. Within certain limits, that argument seems unassailable. However, the motivations of school administrators (and board of education members) are virtually never discussed. It is simply assumed that they have no motivation other than the best possible education for the students in their districts. That unspoken and generally unwritten assumption is flawed in several ways. First, it contradicts what we have believed about the leadership of organizations ever since Robert Michels was analyzing organizations in 1911 (1962). That analysis, in its most simple form, demonstrated that leaders of organizations always have interests and agendas that do not coincide completely with the interests and agendas of the organizations themselves.

The assumption made here is that school administrators, like teachers, have a variety of motivations. One that seems to be widespread among administrators (and teachers) is to do their best to educate children. However, administrators, like teachers, have a desire to retain their positions, to obtain high pay and benefits, and to have prestige within their communities. Even elected school board members, who typically have unpaid positions, have more at stake than just the education of the community’s children and the efficient use of the community’s financial resources. If they are anything like other elected officials, they want to be re-elected, and they tend to justify this desire by convincing themselves that they are better able to serve their communities than those who might replace them. In our mediation and arbitration practices, we have sometimes run across school board members who have described themselves as the advocates for particular constituencies (e.g., the retired or fixed-income taxpayers in the community) and have told us that they will not agree to anything that damages the perceived interests of that constituency. Nor are such motivations present only in the case of elected school board members. Just as elected members want to be re-elected, appointed school board members want to be reappointed. Achieving reappointment can involve a fairly subtle and complex relationship with those who make the appointments (often elected officials) that encompasses more than educational outcomes for students.

Furthermore, to assume that school administrators, unencumbered by unions and collective bargaining agreements, would make decisions based on the educational interests of children with no other criteria in mind ignores the history of public education in the United States that led teachers to choose unionization virtually everywhere that it became legally possible and practical. Limitations on the deployment of teachers, the principal topic of this paper, arose in large measure because of perceived abuses of administrative discretion that took place in the past. These abuses included more than the termination of

teachers who expressed unpopular views or gave the children of influential community members poor evaluations. They also included practices such as giving undesirable or difficult classes or assignments to teachers who challenged administrative policies (often on behalf of the educational needs of their students) or even just those who refused to act in a sufficiently deferential way toward administrators. Sometimes, it was simply a matter of trying to get teachers to quit so that other candidates (family or friends of the administrators in question) could be given those positions. It is hard to see how such practices served to benefit students. Thus, when Hill comments that “in collective bargaining agreements, school boards generally let school staffing be driven by rules, not the judgment of school leaders,” he is partially correct but he is also making some very strong assumptions about the judgment and practices of school leaders that have been historically questionable (Hill 2006:98). Critics rarely seem to present arguments as to why, in the absence of teacher collective bargaining, administrators would not return to such practices.

To put it simply, one of the academic critics of teacher unions and collective bargaining states, “Just as union interests are not the same as the interests of children, so teacher interests are not the same as the interests of children” (Moe 2006:232). If he simply extended this statement to include school administrators (and perhaps school board members), we would be getting somewhere near a fair and balanced assessment of the situation.

The claim is not being made here that such abusive practices were the norm. However, it is extremely naïve to ignore the fact that they did occur and that they were not rare events. It is also important to recognize that in the pre-union pre-collective bargaining era, even schools and school districts with good administrators who did not engage in such practices could quickly replace those administrators and teachers would have no protection against the emergence of such practices. Thus, the argument being made here is not that administrators and school board members are just self-interested but rather that a more balanced and perhaps more subtle view of the complex motivations on both sides would help observers reach a better understanding of the operation of schools both with and without collective bargaining.

It is interesting that little attempt has been made by the critics to look at administrative decision-making and educational outcomes in public school systems that are not unionized. Some critics have compared unionized environments with those of charter or private schools, although for a variety of reasons such comparisons are problematic. However, there are states where public school teachers do not engage in collective bargaining, and it would be interesting to see how teaching resources are allocated in such systems compared with similar unionized systems elsewhere.

## **Content of Collective Bargaining Agreements and Analysis**

Since much of the criticism of teacher collective bargaining focuses on the issue of the flexibility school districts have to deploy their teachers in the way they believe is most educationally effective, we examined collective bargaining agreements from that perspective. In particular, we looked at the agreements for language on vacancies (and how they are filled), assignments, reassignments, promotions, and transfers. We considered assignments, reassignments, and transfers that are both voluntary and involuntary in nature. We were not able to analyze the actual practice of how these passages are implemented; we looked only at the language itself. We believe this is appropriate because if the collective bargaining agreements provide school administrators with discretion that those administrators choose not to exercise, then it would seem that the problem is not the collective bargaining agreements themselves. On the other hand, if the practice in some districts gives administrators more flexibility than is obvious from the language, our analysis would not capture that.

Our study is very much along the lines of that conducted by Cohen-Vogel and Osborne-Lampkin (2007) in Florida. Their study looked at provisions in all 66 of the unionized school districts in the state of Florida. As in our study, their focus was on provisions that limit the discretion of administrators in allocating teachers.

It should also be noted that, in deciding to look at large urban school districts, we have chosen those that seem most likely to have restrictions on the deployment of teachers.<sup>4</sup> Many school districts are small, often with just one building at each level (i.e., elementary schools, middle schools or junior high schools, and high schools) and sometimes with one building serving to house all of the students in the entire district, so

issues of teacher deployment arise less often and are less complex, although they still arise. There may be an opening for a third-grade teacher. Can the superintendent of schools assign a fourth-grade teacher to that assignment if s/he feels it is in the best interests of the students? Does a second-grade teacher with seniority have the right to claim that position? Still, these are less complex and pressing issues than those that arise in complex urban districts with multiple schools to staff at each level and with schools located in a variety of neighborhoods with very different socioeconomic profiles.

The cities whose school districts we examine here range considerably in size as indicated in Table 1. The largest, New York, has over eight million inhabitants. The five smallest ones have fewer than one hundred thousand each. New York City has hundreds of schools (approximately five times as many as the other nine districts combined) while the smaller cities have relatively few. Still all the cities covered in this study have multiple schools at the various levels. All have teachers who are unionized and all have teacher collective bargaining agreements in place and have had them in place for many years, characteristics that are common to school districts throughout the state of New York.

TABLE 1  
School Districts Studied

City	Population, 2005	Schools*	Agreement years
New York City	8,143,000	1,600	2007–2009
Buffalo	280,000	59	1999–2004
Rochester	211,000	81	2006–2009
Yonkers	196,000	39	2007–2011
Syracuse	142,000	37	2008–2012
Albany	94,000	16	2006–2011
New Rochelle	73,000	10	2009–2011
Mount Vernon	68,000	16	2007–2009
Schenectady	61,000	20	2007–2011
Utica	59,000	13	2000–2005

\*From the websites of the school districts: number of schools in district.

Like Cohen-Vogel and Osborne-Lampkin, we have chosen to examine school districts in a single state. By doing so, we hold constant a variety of public policy variables. For example, the tenure process and the process by which tenured teachers can be disciplined or terminated are covered in great detail by New York State education law but are the same for all the districts in this study. So, while collective bargaining agreements in some other states may cover these issues in a variety of ways, the way they are addressed in New York is narrowly circumscribed by the law and that same law applies to all of the districts discussed below.

All of the teachers in the school districts examined are represented by the New York State United Teachers. This is a somewhat complex situation. There are two large unions that represent primarily teachers in the United States, and the overwhelming majority of unionized teachers belong to one of these two. They are the American Federation of Teachers (AFT) and the National Education Association (NEA). Both are now among the largest labor organizations in the United States, with the NEA having approximately 3.2 million members and the AFT approximately 1.4 million (many of whom are not public school teachers).<sup>5</sup> Their history and their often-fraught relationship have been discussed in many places and need not be covered here. Suffice it to say that while the AFT was traditionally stronger in New York State, the NEA also represented teachers in many districts, some of them quite large and important. Thus, while New York City teachers were represented by an AFT local, Buffalo, the second largest city in the state, was the NEA flagship district. In 2006, the New York State United Teachers (NYSUT) and the New York State branch of the NEA merged so that NYSUT now represents virtually all unionized teachers in New York State.

Among these ten urban school districts, there is tremendous variation in how collective bargaining agreements deal with the allocation of teaching resources. All of them address these issues by dealing with such topics as the filling of vacancies, the assignment of teachers, and the transfer of teachers (which may be

voluntary or involuntary), and many address the issue of “promotion.” However, the first clear conclusion is unavoidable: even among these ten urban school districts, the limitations placed on the allocation of teaching resources by teacher collective bargaining agreements vary widely.

Some provisions are so common as to be all but universal. For example, all have general language about attempting to honor the preferences of teachers. For instance, the agreement in Buffalo stipulates that transfers and assignments are to be “on a voluntary basis whenever possible.” The agreement in New Rochelle talks about changes being voluntary “as far as possible,” and the Rochester agreement says that “such changes will be voluntary to the extent possible.” None of the agreements in question went further in defining what was “possible” and it seems likely that such language is deliberately vague. That vagueness can lead to disputes, but some degree of vagueness is probably unavoidable in practice.

The Syracuse agreement is also vague, but it specifies an additional set of considerations that the parties clearly intend to be dominant. Its language is, “In making transfers or teacher assignments, the convenience and wishes of the individual teacher will be honored to the extent that they do not conflict with the best interests of the District and the pupils.” Clearly in this case, the interests of the district and pupils are intended to prevail where these conflict with teacher interests.

All of the ten agreements we analyzed specify or request some form of early notification to teachers of their assignments. Some specify particular dates (the Buffalo agreement specifies July 1 and Utica the last Monday of the preceding school year), while others do not (the Rochester agreement says, “as soon as is practicable.”) Few seem to indicate what happens if the district misses the specific dates indicated, although some provide for circumstances where notification can be delayed (e.g., Buffalo).<sup>6</sup> Virtually all of the agreements require vacancies to be posted so that eligible teachers may apply for openings within the district. The Utica agreement simply states that all vacancies must be posted. Almost all of the collective bargaining agreements examined here entitle a teacher who has been transferred involuntarily to know the reasons why. However, they generally don’t designate what reasons are “valid.”

Most agreements indicate the rights that existing teachers have over potential teachers. That is, they place limitations on new hiring to fill positions. For example, the Syracuse agreement requires that all transfer requests be considered before a new teacher is hired to fill a vacancy. However, sometimes even in this situation, there can be exceptions. In the case of the Mount Vernon agreement, the district management can elect to hire from outside “when, in their judgment, the education needs of the local system will be better served by such selection.”

In a significant number of agreements, there is very little constraint placed on the decisions of school managers with regard to the assignment or transfer of teachers. One example is the Mount Vernon contract, which places almost no substantive constraints on district decisions about teacher allocation. Seniority must be considered in such decisions but there is no requirement that seniority determine any such cases. The Buffalo agreement allows building principals to make assignments within their buildings for the following year. The teacher may protest but ultimately the principal has the authority to make the assignment.

Such agreements typically impose only procedural limitations, if any, but leave the final decisions in the hands of the school management. The procedural limitations often just require prior consultation. For example, the Syracuse agreement allows the superintendent of schools to assign teachers each year, and teachers may be reassigned within buildings by principals as long as the teachers are consulted. Seniority governs only in the case of a reduction in force.

While some agreements give considerable weight to seniority, others leave seniority as simply one consideration in allocating teachers. In Table 2 we indicate whether seniority plays a role that is minimal, significant, or dominant with regard to specific categories of allocation decisions. We call the role of seniority “minimal” if seniority is not mentioned or if it is used only to break ties among otherwise equal candidates or if it is one of a large number of criteria that must be considered. We call the role of seniority “significant” if it is one of two or three criteria that must be taken into account or if it is used to break ties when candidates are approximately equal or relatively equal. Finally, we call the role of seniority “dominant” if it is the only criterion that is normally considered, even if the language provides the possibility of ignoring seniority in some cases.

TABLE 2  
Role of Seniority in Teacher Assignment and Involuntary Transfer\*

District	Assignment	Involuntary transfer
Albany	Minimal	Minimal <sup>+</sup>
Buffalo	Minimal	Dominant
Mount Vernon	Minimal	Minimal
New Rochelle	Minimal	Dominant
New York	Minimal	Significant
Rochester	Significant	Dominant
Schenectady	Minimal	Dominant
Syracuse	Minimal	Minimal
Utica	Minimal	Significant
Yonkers	Significant	Significant

\*Minimal = Seniority plays no role or only a “tie-breaking” role.

Significant = Seniority is one of two or more important factors.

Dominant = Seniority is the only criterion or usually the most important criterion.

<sup>+</sup>Involuntary transfer not explicitly discussed in Albany collective bargaining agreement.

The role of seniority often differs depending on the issue in question. Some discussion of vocabulary is required here. Different agreements do not always use the same terms to refer to the same or similar issues. The term “assignment” is usually used to describe a teaching post within a particular school building, and reassignment means a movement within that school or building, while the term “transfer” often means moving the teacher to a different school or building. However, this usage is far from universal and may even vary within a single agreement, with the term “assignment” being used to mean the initial placement of a teacher (or the initial placement for a given year) in any particular teaching post (i.e., grade level, subject, and school building). We have tried, as best we are able, to discern how the terms are used in each collective bargaining agreement and to compare them on the basis of the commonality of the issues addressed, regardless of what terms are used.

Seniority more often plays different roles in assignment within a building than in transfer between buildings. It may also play different roles in voluntary and involuntary movements. Likewise, it may also play different roles depending on the reasons for such movements. All of these situations will be illustrated below.

Of the ten school systems examined here, essentially none make seniority the exclusive or even the dominant consideration in making teacher assignments or voluntary transfers. As indicated in Table 2, while most of the agreements make reference to seniority, typically it is only one factor to be considered or it is the determining factor only when qualifications are equal or comparable. The Schenectady agreement specifically designates the judgment of administrators as one factor in assigning teachers and in assessing voluntary transfer requests, and seniority governs only when all other factors are equal. The Utica agreement has a very similar provision with regard to voluntary transfers. Even the Rochester agreement, which has the most detailed and complex procedures, makes seniority only one consideration and requires that voluntary transfers be approved by a joint teacher–administrator committee.

Involuntary transfers are a different matter. Here seniority often plays a greater role. Sometimes the reasons for the transfer are relevant. Thus, when the transfers are occasioned by the closing of a school (or in the case of New York City, the opening of a school), special procedures may be applied. A general reduction in the size of the teaching staff in a building or in the district overall may give rise to specific considerations.

In the case of involuntary transfers, most of the agreements require the district to seek volunteers before making involuntary transfers. Mount Vernon, New York City, and Rochester are among those that do so.

Some contracts place significant limitations on the discretion of school managers in making involuntary transfers, usually by making seniority a dominant consideration (sometimes the only consideration among teachers whose certification is appropriate for the position). For example, the New Rochelle contract requires that when the number of teachers in a building has to be reduced, teachers with the greatest building



seniority get the first choice of where to move, while in the case of involuntary transfers, district seniority must prevail. Similarly, the Rochester contract requires that involuntary transfers be based on district seniority, and the Utica contract requires that, where more than one teacher is being considered for an involuntary transfer, the one with the greatest district seniority must be “given priority.”

Even contracts that seem to use seniority in a fairly strict way sometimes still provide administrators with some flexibility. On its surface, the Yonkers contract is among the most rigid, basing virtually all involuntary movements on seniority. However, such transfers can be made without regard to seniority “in the best interests of the school district” for a variety of reasons listed in the collective bargaining agreement. A teacher so transferred may appeal, but the appeal is to a committee with an equal number of administrators and teachers, and if that committee does not resolve the issue, the superintendent’s decision stands.

Even districts that impose significant seniority or other limitations have moved in the direction of increasing the discretion of school management in recent contracts. In New York City, for example, relatively recent contract changes mean that school principals do not have to accept teachers transferred to their schools that they do not want (Dillon 2008). In fact, several of these districts that have traditionally given great weight to seniority have moved in the direction of loosening those requirements by giving greater control to school-based committees. Buffalo and Rochester are other examples.

New York City has a requirement that school principals post openings within their buildings before hiring from outside, but the principal has the final say in choosing from those available. In Rochester, exceptions to the fairly rigid procedures for assigning and transferring teachers can be made where the district shows a special academic or extra-curricular need. There is also a joint “Living Contract Committee” that can make either voluntary or involuntary transfers without regard to the contractual procedures “if reason is shown,” and these decisions are not subject to the grievance procedure.

Some contracts achieve similar goals by giving high priority to educational needs in allocating teachers. The best example is the Syracuse agreement, which contains the following language: “When administrative transfers are necessary, a teacher’s area of competence, certification, major and/or minor field of study, quality of teaching performance, and length of service in the District will be considered in determining which teacher is to be transferred. Considered with equal weight will be such items as the need for equitable distribution of experienced and inexperienced staff in all schools, and other matters related to the best interests of the District and the students.”

Finally, some agreements are quite vague on these issues. For example, the collective bargaining agreement for the Albany district contains virtually no mention of seniority in the provisions on assignment, transfer, and promotion. Indeed, that agreement seems to have no provisions covering involuntary transfers at all or language that describes how transfers will be made. This doesn’t necessarily mean that the parties have no clear and well-articulated procedures for dealing with these issues—only that they are not specified in their collective bargaining agreement.

## Conclusions

It is clear from the analysis above that some critics have significantly overstated the extent to which collective bargaining has led to seniority-based decisions on teacher assignment and to limits on administrative discretion, at least for urban school districts in the state of New York. Indeed, several of the contracts examined in this study provide the district with considerable flexibility and/or give high priority to the educational needs of the students. Our findings are consistent with those of Cohen-Vogel and Osborne-Lampkin (2007) that there is often more flexibility available to school administrators in the allocation of their teachers than one might expect from an examination of the literature.

Some agreements are considerably less flexible, but even those often provide some degree of flexibility. A recent trend has been to allow for various kinds of joint committees to override the normal rules or to allow the administration to override them in specified circumstances. New York City and Rochester provide examples of this. If school managers find such joint committees to act in a reasonably accommodating fashion, then school managers may not consider loosening of the normal contractual procedures to be necessary. They may find they have enough flexibility to meet the needs of their students already.

These facts would seem to indicate that the school districts we studied are able to negotiate reasonable flexibility when they believe it is essential to their purposes. It seems probable that teachers and their unions are more likely to accept such language when there is a high degree of trust in the administration. One way to establish such trust is to involve teachers and teacher unions in efforts at school reform (Peace 2009). Some of the districts examined here have taken steps in that direction by establishing district-wide or building-wide joint committees. Such involvement is consistent with what has come to be called the “reform union” approach (Koppich 2006). Of course, critics have argued against such involvement, claiming that involving teachers as professionals and unions in school governance will only make student interests a lower priority than they already are (Moe 2006). However, the examination of collective bargaining agreements in this study does not support that contention.

In terms of future research, some analysts have suggested attempting to track administrative practices and changes in student achievement in districts that move toward greater flexibility in the allocation of teaching resources. Such projects are worthwhile but one wonders why we wait for them. Given that approximately one third of teachers in the nation (and virtually all in some states) work without collective bargaining agreements, it should be possible to compare administrative practices and student achievement in non-union environments to those in unionized environments (Farber 2006). If the critics are correct, we should find differences that indicate benefits to students.

However, some have suggested that the actual practice of allocating teachers within public school systems has less to do with the language of collective bargaining agreements than it does with the culture of public education, conventional wisdoms about education, and the political and institutional environment in which school managers operate (Cohen-Vogel and Osborne-Lampkin 2007). To the extent that this is the case, researchers may not find systematic differences in administrative practices or in student achievement gains between unionized and non-unionized public school districts. The “natural experiment” going on as unionized and non-union school districts operate should provide answers to these questions.

It must be noted in these discussions that the suggestion that teachers be allocated based on ability and performance assumes that ability and performance can be measured and that school managers and teachers will accept the accuracy of those measures. It is clear that measures of teacher ability and performance exist, but it is not at all clear that any measure or set of measures has gained acceptance (Johnson and Papay 2009). In that case, granting school managers greater flexibility in allocating teachers may have unintended consequences for teacher morale and performance that need to be considered. Again, studies of the differences between unionized and non-unionized teacher workforces have the potential to cast light on this issue.

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## Endnotes

<sup>1</sup> Several of the agreements analyzed here have provisions with regard to class size. However, most of these are stated as goals or have a list of reasons to make exceptions. Schenectady appears to be an exception.

<sup>2</sup> Authors Donn and Karper have provided mediation and fact-finding services under the auspices of the New York State Public Employment Relations Board to approximately 100 school districts in the upstate area and have almost never run across a general salary increase that was not “inclusive of increment.” The situation downstate, in particular on Long Island, is different.

<sup>3</sup> The authors will report the detailed statistical analyses in a future paper.

<sup>4</sup> Overall, New York State has some 698 school districts (<http://www.oms.nysed.gov/oas/directory.html>).

<sup>5</sup> See [http://en.wikipedia.org/wiki/National\\_Education\\_Association](http://en.wikipedia.org/wiki/National_Education_Association) and <http://www.aft.org/about/>

<sup>6</sup> The Albany agreement is an exception to this, with specific remedies included in the case of late notifications of assignments that provide additional preparation time to the teacher.

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