

The U.S. Supreme Court has ruled that agency fee provisions are justified because union representation cost-sharing supports important governmental interests such as promoting labor peace and stability and preventing individuals from receiving services they haven't paid for.⁹ On the other hand, the high court has agreed that agency fee payers have the right to exclude fees spent for "political or ideological activities" that are not related to collective bargaining, contract administration, or grievance processing.¹⁰ Agency fee payers can and do appeal the calculation and ask for partial rebates when they think this fee has not been calculated correctly.

Collective bargaining recognized as a basic right

On July 5, 1935, Congress established the right to collective bargaining by passing the National Labor Relations Act (NLRA). This law laid out these basic rights with the words:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.¹¹

With the enactment of the NLRA, Congress signaled that union rights are a building block in achieving the fundamental American value of fairness. And through the NLRA and similar private and public sector laws, America's working families have a vehicle to remedy unfair practices, enforce workplace protections, and work toward a more just society.

9 *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977).

10 *Lehnert v. Ferris Faculty Association*, 500 U.S. 507, 520 (1991).

11 National Labor Relations Act, 29 U.S.C. §§ 151-169 1935.



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NEA COLLECTIVE BARGAINING AND MEMBER ADVOCACY

COLLECTIVE BARGAINING

UNIONS AND BARGAINING: SETTING THE RECORD STRAIGHT

Collective bargaining is a pragmatic process through which employee and employer representatives exchange positions, solve problems, and reach a written contract. It provides workers with a voice in their workplace. The final agreement, which typically addresses compensation, hours, and working conditions, binds both groups to their decisions.

Collective bargaining has greatly benefitted Americans' quality of life. Thanks to unions and bargaining, many U.S. workers enjoy middle-class wages and health care, retirement benefits, time off for the weekend, training and supplies for their work, and the ability to meet the employer as an equal to resolve concerns.

Public employees did not provoke the recent recession

Public employees, just like other workers, are feeling the effects of the recent recession. The public sector has been battered by short-term furloughs and long-term layoffs. From 2008 through 2011, the AFL-CIO reported that municipal and county governments jettisoned at least 535,000 jobs—which translated into service cuts for the public and higher workloads for public employees remaining on the job.

The congressionally appointed Financial Crisis Inquiry Commission traced the economic crisis to factors such as a "cratered" housing market, risky investments, poor financial oversight by government and corporate leaders, mortgage defaults, and a "systemic breakdown in accountability and ethics."¹

State and local budget deficits were "primarily caused by the housing crisis and subsequent economic downturn, which resulted in a decline of revenues," noted a 2011 report from the Labor Center of the University of California, Berkeley. "[C]ontrolling for the decline in housing prices, we find no statistically

1 United States, Government Printing Office, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, by The Financial Crisis Inquiry Commission, February 25, 2011, xv-xxvii, <http://www.gpo.gov/fdsys/pkg/GPO-FCIC/content-detail.html>.

significant correlation between union density, union strength, and the size of state budget deficits."² While union critics have accused labor contracts of contributing to the recent economic recession, the facts show that's simply not true.

Public employees' wages and benefits are no more than those of their counterparts

Research has consistently shown that public sector employees are paid the same or less than similar private sector workers when taking into account relevant factors that affect compensation,



2 S. A. Allegretto, Ken Jacobs, and Laurel Lucia, The Wrong Target: Public Sector Unions and State Budget Deficits, Policy Brief, October 2011, 3, http://www.irl.berkeley.edu/research/state_budget_deficits_oct2011.pdf.

such as education, age, and experience. According to the Economic Policy Institute (EPI), state and local governments pay college-educated employees on average \$22,906 less in annual wages than private employers do.³

That pay gap extends to the education sector. Analyzing the U.S. Census data, EPI found that public school teachers in 2010 earned about 12 percent less than comparable college-educated workers. EPI estimated that this gap narrows—to 9 percent—when benefits are included in the analysis. The bottom line is that teachers are at a disadvantage when it comes to total compensation.

And according to the Census Bureau, the average annual pension benefit of public employees in 2009 was just \$23,407.⁴ That’s because their pensions are based on salary earned. And for approximately one-third of public school employees, their pensions are paid in lieu of Social Security—their pensions are their only retirement check.⁵

Tenure laws provide the framework for dismissing incompetent teachers

In 47 states, the system used to promote fairness and equity in teacher personnel decisions—whether it’s called tenure, a continuing contract, or a fair dismissal process—is created through legislation, not collective bargaining. The Education Commission of the States (ECS), a network of state policymakers and education leaders, says teacher tenure is not a job guarantee but “a job security device protecting against termination of employment in cases where there are no grounds for termination or where the teacher has no opportunity to present a defense.”⁶

According to ECS, the fair dismissal procedure for K-12 teachers “does not require continuing the appointment of an incompetent teacher,” adding that “all tenure laws provide for dismissal of incompetent teachers.” Under Massachusetts law, for instance, a school employer can terminate a teacher on proven charges of inefficiency, incompetence, incapacity, “conduct unbecoming a teacher,” insubordination, failure to satisfy performance standards, or any “just cause.”

On average, state fair dismissal laws require a three-year probationary period for new teachers, which means teachers can be dismissed without appeal rights during that time period. After that, an education employer can still discipline or terminate a

3 Jeffrey H. Keefe, Debunking the Myth of the Over-Compensated Public Employee, Briefing Paper #276, September 15, 2010, Table 2, http://www.epi.org/publication/debunking_the_myth_of_the_overcompensated_public_employee.

4 Ilana Boivie, Pensionomics 2012, March 2012, 2, http://www.nirsonline.org/storage/nirs/documents/2012_pensionomics_report.pdf.

5 National Association of State Retirement Administrators, “State and Local Government Spending On Public Employee Retirement Systems,” NASRA Issue Brief, January 2011, 1, <http://nasra.org/resources/ERContributions.pdf>.

6 Education Commission of the States, “Teacher Tenure or Continuing Contract Laws,” August 2011, 1, <http://www.procon.org/sourcefiles/Teaching-Quality-ECS-2011.pdf>.

tenured teacher—someone who has successfully completed those three years—by proving its case through proper procedures and forums. The union’s role in this situation is to represent the teacher during a fair disciplinary process.

Educators, including education support professionals, enter the profession because they are committed to student achievement and success, says NEA President Dennis Van Roekel, and they should be well prepared for the work they do. All students deserve well-qualified and caring teachers, he emphasizes. “Consistently poor performing teachers should not be paid less—they should not be paid at all,” says Van Roekel. “They should not be in the classroom. We should work on changes to our public education system so that we continually attract, hire, and support highly qualified teachers.”

How seniority is used in the workplace

The first state tenure law was passed in 1909 to protect teachers from unfair firing in cases where school board members sought to award jobs to friends or relatives; to punish teachers for political views or marital status; to discriminate against women or people of color; to punish practitioners for instructional or student disciplinary decisions; or simply to replace experienced educators with cheaper hires.

Seniority (which is calculated based on date of hire) remains the only objective, neutral means to rank educators for layoff order during tough economic times. Without seniority, some administrators might choose to save funds by targeting higher paid veteran school employees for reductions in force (RIFs). Some administrators might also target teachers who speak out on instructional practices that they believe are best for their students, on safety issues such as indoor air quality, or on other critical issues. Seniority also protects against age discrimination and other forms of bias.

Protection from unjust dismissal also promotes stability in the system, giving veteran teachers a chance to become school community leaders and mentors for newer staff.

Collective bargaining can address the needs of both students and staff

It’s easy to see how negotiating competitive, professional salaries helps attract and keep the highest quality people in education. But bargaining also can be used effectively to address workplace issues that affect teaching and learning. Where the legally prescribed scope of bargaining is broad, education unions routinely bargain for student-friendly provisions such as class size limits, relevant staff training, collaborative time for sharing effective classroom techniques, school building health and safety, needed classroom materials and equipment, and joint union-management problem-solving on ways to better teach students in low-performing schools.

It’s difficult to attribute student learning gains directly to bargaining, but consider these statistics: In 2011, the top 10 states with the highest SAT scores had collective bargaining for teachers, and states with collective bargaining laws for teachers were also the top 10 states for graduation rates in 2007-08 (most current data available).⁷

Bargained agreements can be modified as needs change

Each contractual provision is negotiated by the employer and union, and can, as conditions change, be dropped or modified during bargaining for a successor agreement. And in the education sector’s most collegial union-management settings, joint labor-management committees meet regularly to resolve workplace concerns and tackle student learning issues.



7 College Board, “College-Bound Seniors 2011: SAT Total Group and State Reports Provide Broad Context of Student Performance,” College-Bound Seniors 2011, 2012, <http://professionals.collegeboard.com/data-reports-research/sat/cb-seniors-2011>; and “Table 12. Averaged Freshman Graduation Rate of Public High School Students, by State: School year 2007–08, December 2010, http://nces.ed.gov/pubs2011/dropout08/tables/table_12.asp.

Opponents of collective bargaining are wrong when they say collectively bargained contracts are static documents that tie employers’ hands and block reforms.

In fact, while contracts can be complex, they often provide desired flexibility, notes the Center on Reinventing Public Education (CRPE) at the University of Washington. CRPE researchers concluded: “[Any] contract can be used flexibly or inflexibly, depending on the inclinations of both parties.... Upon further investigation, it often turns out that the [contract] does not in fact prohibit what the reform advocates want to do....”⁸ In addition, a memorandum of understanding (MOU) can set forth an agreement between the parties that serves as an addendum to the collective bargaining agreement. An MOU usually addresses a significant issue that emerged during the term of the agreement, and it represents the mutual understanding between the parties on that issue.

Union dues—governed by law, member preference, and convenience

Payroll deduction of union dues is a voluntary, convenient, and cost-efficient way for members to make regular payments. A variety of organizations ranging from charities to credit unions and banks receive funds through payroll deduction, and union members also like the convenience.

When employees join a union, they can sign an authorization form requesting that their dues be deducted from their paychecks and sent to their union. With today’s technology, the employers’ cost for this administrative task is minimal. In addition, employees may choose to give additional money to their union for political activities. If an employee wishes to have this money deducted from his/her paycheck, an additional authorization is required.

In states with laws authorizing public sector collective bargaining, a union chosen by employees in a specified bargaining unit—a group with a “community of interest”—has exclusive bargaining rights for both union members and non-members in that unit.

To help unions meet their legal obligation as the bargaining agent for non-members (called “the duty of fair representation”) in both contract negotiations and grievance cases, some states permit unions to negotiate a non-member “agency” or “fair share” fee, a prorated share of union dues. The discounted agency fee exempts non-members from paying for legally defined “non-chargeable” union expenses, such as lobbying legislators outside “the limited context of contract ratification or implementation.”

8 Mitch Price, Teacher Union Contracts and Hlgh School Reform, report, January 2009, 20-27, www.crpe.org/cs/crpe/download/csr_files/pub_crpe_unioncont_jan09.pdf.