

A Critique of the Analysis of Collective Bargaining
Agreements in Kentucky Districts

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Summation of the Analysis

This paper has been written as a critical analysis of the methodology and research found in Office of Education Accountability (OEA) draft entitled “Analysis of Collective Bargaining Agreements in Kentucky Districts”. It will examine different elements of the document’s presentation to determine if in fact the OEA draft represents a strict compliance to professionally accepted research procedures, or if it tends to be a compilation of opinions regarding Collective Bargaining Agreements, (CBAs) and related aspects of the topic.

The Definition of the Object of Study

Professional research requires a clear operational definition of the subject that will be researched. Without this, there will be no way of determining what it is that is being studied, and how the instruments chosen for the study are specifically relevant to the chosen topic. Again, it is this precision that differentiates research from generalized information gathering.

The OEA draft states in its summary that its report, “focuses on the impact of Collective Bargaining Agreements specifically in the areas of: a) teacher hiring, b) teacher evaluation, c) and school-based decision making in nine Kentucky districts”. Throughout the report it focuses on a contrast between CBAs as established in Jefferson County Public Schools (JCPS) and eight other districts included in the study. While JCPS is by far the largest district included in the study, no mention is made as to criteria used in selecting the other eight districts as comparisons, or in fact what specific difficulties have been observed in JCPS in the three above mentioned categories of CBA that merits research. The tone of the report tends to represent that of an “investigation” rather than that of research.

Justification

Research requires appropriate justification for initiating its efforts. This is especially applicable when the OEA determines that the implementation of such research will involve the expenditure of time, facilities, and especially the use of tax payer funds to finance its investigation.

The OEA report states that the process will impact the educational reform across the state with JCPS’s CBA being the most “comprehensive and cumbersome”. It does not clarify how the former term implies the latter, but rather implies, without confirming data, that the implementation of a CBA in Jefferson County impedes educational progress for school administration. The investigation’s comparison of JCPS’s CBA and practices with the other eight districts gives insight into the real purpose behind this report. What is evident is that the OEA’s justification for conducting its investigation, is to have all

statewide CBA's "aligned with educational reforms such as SB1 and HB 176". It thus gives evidence that the justification for this investigation is to serve other ends than those truly educational in nature.

Study Implementation

Since the CBA is a publicly prepared document, one would expect a high level of transparency as to its origins, staffing, total expenditures, overall time frame for implementation, and finally its actual distribution to the general public.

An examination of the Draft document indicates that the OEA makes no effort to disclose public information as to the justification or this investigation, or a clear statement of the purpose it serves for the general public. There is no mention made as to who was the actual administrator of the investigation, his/her professional qualifications or that of the staff. No mention is made as to the actual expenditures of this entire project, nor of the time frame in which it was implemented. Finally, there is no statement as to how the final document will be distributed for access by general public. While it conceivably is a public document, will its primary distribution be to legislative officials or department of education employees?

Technical Concerns

The proper implementation of professional research or a general investigation study requires a number of prerequisites that will determine the applicability of information obtained for more extensive use.

Validity and Reliability

Validity refers to what degree the research demonstrates the objectivity of that which is being studied, while reliability refers to how consistent are a set of determined measurements. Basically validity indicates that the results of a study are a close approximation to reality. Reliability indicates that when a testing procedure is repeated several times similar results will be observed.

The OEA study does not state that it used a standardized questionnaire in its investigation, or one that had been previously tested for validity, nor did the OEA use instruments that had been tested for reliability. In effect, the OEA did not use a consistent questionnaire instrument that would be administered in the same manner to all respondents. The OEA paper admitted inconsistencies in how information was obtained, some by face to face interviews, some via telephone. This lack of using consistent and professionally standardized methodology separates mere opinion gathering from strict research investigation. Without demonstrated evidence of either validity or reliability the OEA study is deficient in producing any meaningful information.

Non-Verifiable Terminology

Statements and conclusions presented in scientific research must be verified by references and professional opinions that can be examined by document's readers. It is expected that any piece of research will avoid words or phrases that are generalizations presented by the researcher, especially when such assumptions can not be substantiated by verifiable evidence.

In its presentation of the CBA the OEA study does not utilize standardized footnotes that are referenced to bibliographic listings which would substantiate certain assertions. It furthermore uses vague non-verifiable words such as: "most" (at least ten times), "few" or "very few" (at least eight times), "some" (at least five times), throughout the document. Such unacceptable terminology is frequently used to vindicate a particular biased view point.

The Inclusion of Unspecified Areas of Investigation

In conducting scientific research, the investigator limits oneself to the parameters established at the initiation of the research. To violate these self-imposed parameters may disclose the author's additional intent, and present personal opinions that will vitiate the total purpose of the research. In this study the limits of the investigation were clearly indicated as being an analysis of Collective Bargaining Agreements, and three elements related to CBA's.

There is evidence that these professional standards were not strictly followed, as is evidenced in the last paragraph of the investigation's summation. There we find the statement that, "One final issue of importance, political activity, applies only to Jefferson County". It is noted that political activism was not included in the original parameters of study. The study does not even attempt to justify any direct relationship between levels of Collective Bargaining and political activity. As a point of fact, any such activity of the Teachers Association is purely a matter of the association's membership and not subject to personal assertions as those included in the investigation's summary.

What this inappropriate inclusion of political activism clearly indicates is the author's overt bias against the Jefferson County Teachers Association, and such private deliberations that are permissible by Kentucky statutes. However, the document proceeds further to make pejorative statements against the Jefferson Teachers Association in declaring that it, "provides substantial political clout in the election of school board members". Such a blatant violation of research norms reveals that the real justification for this investigation is to promote a personal or political agenda, one that is prejudicial to the Jefferson County Teachers Association, and the effective use of Collective Bargaining.

Chapter One

Contract Overview

Methodology

The OEA study of Collective Bargaining must be judged both on its own merits and the manner in which it compares to similar scientific studies on this subject. Here one can cite a number of comparable studies including: “The Impact of Teacher Collective Bargaining Laws on Student Achievement”, written by Benjamin Lindy for the Yale Law Journal March 2011; “Problems with the Use of Student Test Scores to Evaluate Teachers”, by Baker et al. published by the Economic Policy Institute, August, 2010; “Review of Teacher Evaluation 2.0” reviewed by H. Richard Minor for the National Education Policy Center, 2010; “Toward a New Grand Bargain”, written by Bluestone et al., for the Boston Foundation, October, 2011; and “Using Value-Added Measures to Evaluate Teachers” by Jane L. David, appearing in the publication of the Association for Supervision and Curriculum Development, May 2010, Vol.67, No. 8. These studies clearly demonstrate a level of investigative proficiency not found in the OEA study.

Among the failings found in the OEA study one can note: its use of biased materials to support its positions, its lack of using pre-tested instruments to demonstrate validity and reliability, its inconsistent methodology in administering the study, its method of selecting study subjects, its comparison of different district areas without considering variations in school demographics or locations, its preference for presenting random opinions rather than data substantiated by quantifiable facts, its lack of well defined terminology, its apparent bias against the use of Collective Bargaining as negotiated by the parties involved in the largest teachers association in Kentucky, its lack of scientific comparisons with the findings of other studies like those cited above, and in summary, the OEA study does not maintain the high level of investigative standards that one would expect from an institution of its standing in the community.

Memoranda of Agreements and Recommendations

The focus of the three recommendations in this chapter appears to be focused on the implementation and notification of the memoranda of agreements. This appears to be a legal question between the Jefferson County Teachers Association, the local school based decision making council, the Jefferson County Public Schools, and the Kentucky Department of Education in accordance with Kentucky statute KRS 160.345(2)(1). The issue appears to center on a twenty-five million dollar grant to the JC school system by General Electric. The legal resolution is beyond the scope of these comments. While the issue of how Collective Bargaining Agreements are negotiated may be related to these specific negotiations, it appears that it is a separate issue apart from CBA s per se, and should be resolved in a more appropriate document.

Educational Alternatives

The examples cited in the OEA study appear to present a position favoring the elimination of the CBA process in its entirety. It presents a number of examples of issues that would favor this position namely: a) the educational systems of Washington, D.C. and its former superintendent Michelle Rhee, b) legislative measures in different states that eliminate teacher tenure, and c) the procedure of measuring teacher effectiveness based primarily on student academic achievement. Subsequent information related specifically to the Washington D.C. school system's administration might question the viability of Ms. Rhee's actions, especially in implementing her method of teacher evaluation. It ought to be noted that her actions have been consistent with her past promotion of charter school systems. However, what is of greater importance is that the educational studies previously cited call into question many of the assumptions cited by legislators in several states regarding questions of teacher seniority, evaluation methods, and tenure.

The Role of Unions in Education

The OEA study generally assumes a negative position toward the CBA process. In so doing it does not present both sides of the question. Opinions cited in the study tend to be those of administrative figures voicing their view that CBAs only complicate administrative proceedings. It should have been noted that there is another manner of describing the role of teacher associations in the negotiation of CBAs.

Rather than describe the positions of the teachers associations and local school boards as being adversarial in nature, it might be useful to envision the two parties as different entities both with a common goal of improving educational systems and the learning environment for their students. In the publication, "Waiting for Superman", Randi Weingarten, the president of the American Federation of Teachers, offers her perspective on this relationship, "Schools that succeed are built on collaborative relationships. They do not wait for "Superman . . . they create environments where ordinary people can work together to collaboratively achieve extraordinary things on behalf of children". "Principals, administrators, policy makers - all of these people have a role to play as well. We believe that holding teachers solely accountable for student achievement is only partial accountability. We want to see everyone whose actions and leadership (or lack thereof) impacts education and are held to accountable as well". It would seem that whatever educational philosophy one may assume, collaborative coordination is necessary for true progress to be achieved.

Chapter Two

Contract Authority and Contract Contents

This Chapter presents the basis for contract authority of CBA s and the contractual content found within them. It cites the National Labor Relations Act of 1935, and the case of the Board of Trustees Fayette County Education Association v. Hardy, 1980. Both of these documents establish the statutory or constitutional right to collective bargaining. The case of Jefferson County Teachers Association v. the Board of Education, 1970, decided that public employees have the right to unionize, but not the right to strike. In 1990, state statute KRS 160.345(2)(h)(1) recognized the right of a CBA to deviate from SBDM, School Based Decision Making committees, in the hiring protocol and the contractual language used to establish a process for transfer requests. The OEA study states that Kentucky statutes grant the contract almost unfettered authority in determining the staffing and hiring process in the district. The OEA study goes on to state that KRS 160.380(1) (c) effectively allows districts with CBA s to implement their own procedures for defining and filling teacher positions.

Given these well defined delineations for the implementation of CBA s in establishing the procedures for hiring and filling teacher positions, the rest of this chapter presents a confusing note. If CBA s, working within the legal restrictions of state and federal norms, may establish their own procedures, then why does the OEA study seem fit to challenge such implementations, or make comparisons between the procedures of one district with another? These comparisons, and challenges to the constitutionality become even more uncertain in the section entitled “Collective Bargaining Provisions”.

This section begins with the words that “Currently Kentucky statutes provide no other guidance of restrictions on what a CBA can control. Without such guidance each union contract provision must be considered against the governing statute and regulation. Contract provisions must be in compliance with the statute, unless exempted by statute, and they cannot circumvent or control any rights granted to district boards of education, principals, or school councils”. The question however arises, if Kentucky statutes provide no other guidance or restrictions on what a CBA can control, then how can a CBA either be in compliance with, or exempt from, a statute that does not exist?

This in a nutshell seems to be a major thrust of the OEA study, is namely that existing CBA with unions and, by the direct implication, the boards of education, are in violation of the state and federal mandates. Special emphasis appears to have been placed on the largest of the Teachers Associations, namely that of Jefferson County, since it appears to exercise what the report terms as the most “clout” of all the nine associations.

The study goes on to compare the contract subjects existing among the nine districts surveyed. Here it uses such imprecise terms as, “some and many”, referring to individuals involved in formulating the contracts, and offers the reader no frame of reference as to what comparisons are being made. This is simply a question of poor research methodology. The study continues to question the appropriateness of procedures adopted by CBA s in the evaluation process, and the use of seniority in determining position vacancies. But even in questioning seniority, the report does state that, CBA s mirror statute language.

Collective Bargaining Provisions

This segment of Chapter Two restates the different bargaining items included in the district CBA agreements such as: teacher and association rights, teacher evaluation, and the reduction of teaching staff. Unfortunately, it use of imprecise terms, as referred to above, does not make it clear as to what districts it is actually referring to in its comments. With some specific exceptions, the study does not challenge either the right of each contract to designate the broad rights of the union to negotiate exclusively with the board on behalf of the district’s teachers.

Chapter Three

School Staffing

The OEA study focuses on several educational topics that involve the process of CBAs. Among these are the following: 1) The difference in the decisions negotiated through CBAs different school districts, 2) Reference studies used to substantiate the OEA study's basic positions, 3) Seniority as applied to teacher placement, 4) Vacancies as they are defined in the Kentucky statutes and implemented in the school setting, 5) Salaries as determined through the deliberations of CBAs, and 6) CBA resolutions related to low performing schools. This summary will present an objective analysis of the chapter's material, based on the merits of issues presented.

The Differences in the Decisions among the School Districts Included in the OEA Study

The OEA study encompasses a review of CBAs in nine different Kentucky school districts. In so doing, it frequently compares the educational functioning of the Jefferson County, consisting of 6,327 association teachers, with all other districts included in the study, such as the Wolfe County school district with 89 associated teachers. In its analysis of CBAs, one may question the study's unsubstantiated assertion that such proceedings in the larger school district foster a "major impediment to hiring and maintaining a high quality of teaching staff". Comparisons of CBA resolutions in the Jefferson County school district with those of much smaller district systems would appear to be inappropriate, given the difference existing within those districts, and the individualized need to adapt CBA negotiations to address specific district issues.

Reference Studies Used to Substantiate OEA Basic Positions

Scientific research requires that the studies be conducted in the most objective manner possible substantiating conclusions or statements with statistical or professionally unbiased observations. This does not appear to have occurred in the approach utilized by the OEA study. This is especially troubling since the study received public tax payer funding, and as a public document should have made every effort to avoid what might be interpreted as a biased viewpoint. This OEA study, given its stature in the community, ought to demonstrate the highest levels of scientific methodology. Unfortunately, this does not appear to be the case.

The OEA study reports that, "Jefferson County is one of the most restrictive in the nation". How does it define restrictive? It appears that it understands restrictive to mean any CBA deliberations that may limit a specific district school board's role in determining the outcome of CBA negotiations. The OEA study, without reference to page

numbers, cites the study of Hess and Loup to substantiate its assertions. These authors studied fifty major school systems throughout the United States on various topics directly related to educational systems, and other topics of concern. It would appear from the study's cover sheet that they failed to be completely unbiased in their presentation. (A copy of this cover sheet is included in the appendix of this report).

The cover sheet in question clearly depicts, in a derogatory cartoon, leading educators who represent a more liberal educational viewpoint. What OEA study does not indicate is that this reference study was funded by the Fordham Institute, (no relationship to the University of the same name), which is a conservative think tank that promotes Charter schools, and is itself funded by a long list of conservative institutions. Given the evident philosophical leanings of this resource, one may easily question the evidence of bias presented in the Hess and Loup study, and the lack of appropriate objectivity in the OEA study. Further observation into the OEA reference sources reveals similar ideological preferences.

Seniority as Applied to Teacher Placement

The OEA study accepts the proposition that teacher seniority impedes the administration's ability to select teaching staff based primarily on teacher seniority, without consideration for specific school academic needs. The study fails to substantiate this position with academic studies that affirm this position. As such, its stance on the role of seniority is based more on opinion rather than factual data. Furthermore, the study does not include the MOA s, Memorandum of Agreements as part of contractual agreements, in this case the JCTA/JCPS deliberations. One would suspect that Jefferson County CBA agreements regarding seniority not be imposed upon other school districts or visa versa. Further examination of the JCTA/JCPS agreements might have indicated that the school principals, and their school board decision making committee (SBDM), exert a more determined role in teacher selection than the OEA study would have one believe.

Vacancies

The OEA study cites the definition of a teacher vacancy as established in Kentucky statutes KRS 160.380(2). In so doing, it mentions no incident in which this statute has been violated by either the Jefferson County school district, or any other district mentioned in the study. It does however, postulate an undocumented statement that "very few school level vacancies are declared and posted in Jefferson County". How does one interpret the meaning of the non statistical term "very few"? Where is the documentation for this assertion? Have there been any official complaints regarding compliance to Kentucky statutes? If so they have not been presented in the OEA study.

Nor is there any study data substantiating the quote that “seniority based provisions in the Jefferson County CBA have created a system that allows for higher teacher turnover”. Lacking such data calls into credibility the technical methodology of the OEA study. This issue is even more critical when the study questions that these “seniority based transfer provisions are not associated with best practices”. The study neither defines its use of the term of “best practices”, nor refers to professional literature for collaboration. Once more, while the LRC appears to single out negative commentary on the Jefferson County School District in its use of the CBA, nowhere in the study does it substantiate that JCTA/JCPS deliberations were not in compliance with Kentucky statutes.

Salaries

The OEA study objects that JCTA/JCPS “steadfastly supports a single salary schedule based on rank, certification, and classroom experience and is opposed to merit pay”. The determination of this subject appears to have been decided based on criteria achieved through mutual negotiation agreements of both JCTA and JCPS. Kentucky statutes permit such agreements on criteria as long as they conform to the aforementioned statute, and the OEA study does not offer evidence that this has not been the case.

Low Performing Schools

The OEA study report states that, “Low performing schools are staffed by less experienced teachers”. Once again, there does not appear to be any statistical evidence in the OEA study to substantiate this assertion. Such statements are questionable especially since the OEA study does not offer any criteria for what it defines as a low performing school, or evaluation evidence that those who teach in said schools are less experienced teachers. Lacking such empirical evidence, one questions whether this statement is based solely on the study author’s personal opinion.

Chapter Four

Teacher Evaluation and Contract Impacts

The OEA study concludes with this final chapter focused on teacher evaluation and contract impacts. In stating that eight of the nine contracts analyzed include guidelines that affect teacher evaluation, it does not specify which one does not. Clearly is not the JC contract because such guidelines are clearly delineated in Article 8 of their contractual agreement. While the OEA study specifically states that, “contracts have little direct impact on teacher evaluation as practiced”, quite an opposite opinion is voiced in Benjamin Lindy’s extensive study appearing in the March 2011, edition of the Yale Law Journal.

A review of educational literature indicates that there are difficulties in accurately defining what constitutes an “effective teacher”. The Economic Policy Institute in its paper entitled, “Problems with the Use of Student Test Scores to Evaluate Teachers” (EPI Briefing Paper 2010, p.2), warns that, “there is agreement among statisticians, psychometricians, and economists, that student test scores alone are not sufficiently reliable and valid indicators of teacher effectiveness to be used in high stakes personnel decisions”. This being the case, one would assume that the process of making major decisions regarding maintaining or dismissing a teacher should be an intensive process undertaken by all parties administration, union, and teacher representation, and the teacher. Anything less would be an injustice to all involved parties, and most importantly the student. Teaching should be the responsibility of both the administration and the teaching staff.

The OEA study would give the impression that extensive details in the evaluation process is an excessive burden placed upon any administration, however, massive firings of teaching staff in some school systems has later proven to be inappropriate, not to mention the need to replace all those who have been dismissed. The OEA study does make it clear that there is an evident difference of opinions between administration and teachers as to the degree of difficulty involved in the dismissal of a teacher. Without presenting its own carefully delineated guidelines, the study appears to promote a swifter dismissal process for what it terms “ineffective teachers”, including tenured faculty. Once more, the study fails to identify what procedures it deems to be inappropriate, and what changes it would make, nor does it clearly define its understanding of an ineffective teacher.

Regarding tenure, referred to in Kentucky statutes as an extended contract, the study does mention that two superintendents stated that they supported tenure because they thought that due process was critical in the teaching profession. The importance of teacher dignity is a key factor in teacher effectiveness and permanence, and yet it is never discussed throughout the entire study. While the OEA study might be critical of evaluations, and

the possible implications of subsequent tribunal proceedings, nevertheless, appropriately conducted evaluations do protect teachers, the stability of the educational staff, and most certainly the students.