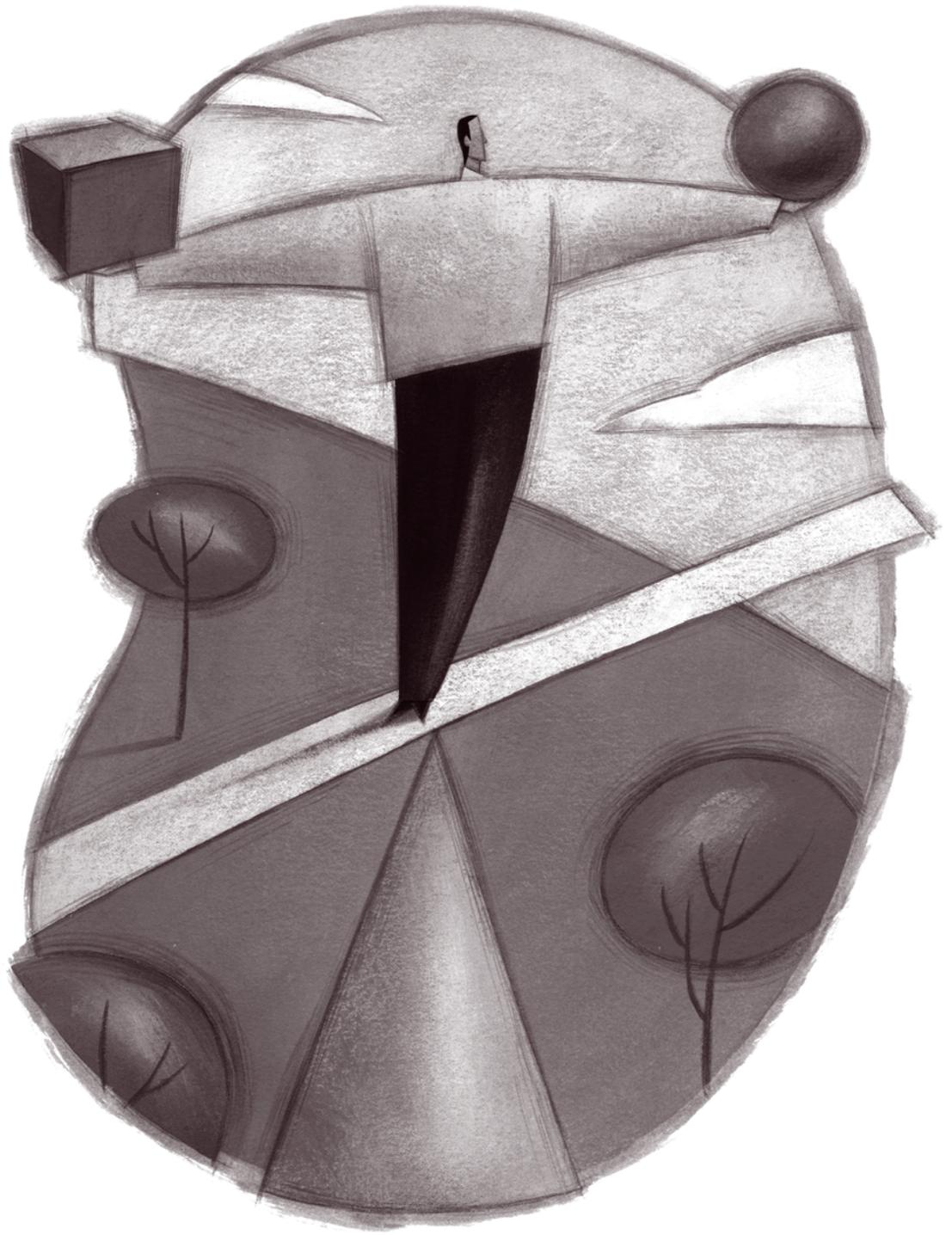


Bargaining Methods and New Forms of Agreements

- Interest-Based Bargaining 19
- Salary Benchmarking 24
- Waivers and Override Procedures 27
- Thin Contracts 32
- Living Contracts 35
- Contract Language on Student Achievement 39

The collective-bargaining process is the most visible ritual and symbol of labor-management relationships in public education. Teachers had to fight long and hard for the right to organize and bargain. Consequently, adversity and mistrust have frequently clouded the relationship between labor and management from its beginning. The relationship did not improve with the expansion of the scope and power of teachers' unions since the 1960s. Even today, the legitimacy of teachers' unions is sometimes questioned, and unions exist in many school districts *despite* state statutes that limit organizing and collective bargaining.

Not surprisingly, the collective-bargaining process has taken on the adversarial nature of the relationship between labor and management. The assumptions that the parties have only divergent, if not opposing, interests and that the satisfaction of any party's interests represents a loss to the other party have rarely been questioned over the years. As a result, collective



bargaining in many districts has become an unbearably contentious process.

The very shape of the agreements that emerge from this contentious process is affected by the characteristics of the process itself. Emerging from long hours of late-night negotiations against punitive deadlines come large volumes of detailed rules delineating the use of authority and discretion, pages of salary schedules, and lists of contingencies for every possible exception. If a collective-bargaining agreement is a set of solutions to some set of perceived problems, the analysis of most agreements would demonstrate that the problem being addressed by the agreements is the relationship between the adults in the district.

The demands of systematic education reform have caused labor and management to consider whether they have some mutual interests and whether adversarial collective bargaining is the best way to achieve agreements to solve the problem of low student achievement. Similarly, as the parties address the varied needs of students, parents, and communities, they are finding that fixed contract terms and centralized policies for all conditions in a school district may hamper responsiveness and innovation.

The innovations in this chapter are illustrations of the ways in which both the process of collective bargaining and the forms of collective agreements are changing to support education reform.

INTEREST-BASED BARGAINING

Interest-based bargaining (IBB) is a departure from “positional bargaining” and the traditional, adversarial, industrial model of collective bargaining¹ that assumes bargaining is a zero-sum activity focused on dividing existing resources. In contrast, IBB focuses on parties’ *interests* rather than their proposed *positions*, making it possible to explore the values and purposes and to learn whether these interests are shared or complementary.² IBB allows parties to identify multiple ways to satisfy interests and to solve problems creatively.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

IBB provides an opportunity to directly address student achievement in the collective-bargaining process. IBB can minimize ritualized adversarial behavior and enable productive relationships to develop, better situating the parties to improve student achievement.

Interest-based bargaining involves a good-faith effort by both sides to understand the other side’s needs, interests, and concerns.³ IBB provides a framework that loosens the rigidity of “positional bargaining” where each party comes to the table with a set of desired terms that it believes is the only way to satisfy its own interests. IBB requires that the parties look beyond specific demands and, through substantive discussion, brainstorm possible solutions. The parties negotiate with one another, instead of against one another. They consider problems to be matters of shared concern, where each has an interest in finding a solution satisfactory to both parties. Successful implementation of IBB does not call upon the parties to compromise principles or neglect the legitimate roles and needs they each have in the employer-employee relationship.

Nancy Peace, noted mediator and facilitator of IBB in public education,

believes that a key IBB strategy is in the manner that proposals, or issues, are presented at the outset of the bargaining process. Ordinarily, in traditional bargaining, each party states a problem and identifies a unilaterally determined solution. Both are overstated: the problem is portrayed as worse than it really is and the solution involves a request for more than is expected. A familiar adversarial process is kicked off. Both parties struggle to justify their positions and argue that they are unable or unwilling to meet the demands of the other. They often accuse each other of being unreasonable. There is little probing discussion of the interests that underlie the positions. In contrast, using the IBB approach, the parties initially generate a list of issues, but stop short of proposing one-sided solutions. In IBB, the issues are considered problems, and the negotiations become problem-solving exercises, in which both parties thoughtfully engage. Honest discussion and debate almost preclude posturing and force parties to articulate their actions and reactions effectively.

Some practitioners report that at the outset IBB is process-intense and time consuming, especially if the parties are distrustful of each other. Since successful IBB requires disclosures about interests that make parties feel vulnerable to exploitation, the parties need trust that it is safe to make these disclosures. Trust is built slowly over time and only with mutually satisfying transactions. Ultimately, as the process matures, IBB should save time in collective bargaining by eliminating the rituals of traditional adversarial posturing.

In addition to problem-solving contracts, IBB can lead to several additional benefits. Relationships and trust between the parties can develop that are helpful during implementation of the contract. Implementation problems are fewer and solved at lower and less costly levels of the process. In addition, Peace makes the important point that IBB sometimes goes a long way toward improving the school district's image in a community. This can only be beneficial to the system as a whole since parents and taxpayers do

not respond well to districts fractured by labor disputes, no matter who (if anyone) is perceived as being "right."

IBB may be enhanced by the use of a third-party-neutral to facilitate the bargaining process. The facilitator should be someone acceptable to both parties and skilled in helping the parties to identify interests and brainstorm solutions. The facilitator must help the parties sustain a commitment to the IBB process to avoid a breakdown into traditional adversarial bargaining. Most certainly, the parties will require training in the principles and practices of IBB at least the first time it is used but most probably each time to refresh skill sets, bring new players into the process and improve the listening skills and problem-solving capacity of the parties. Even with good intentions, without training, the process can be derailed.⁴

IBB has been successfully used in many types of complex, multi-party interactions, not just collective bargaining. The Consortium for Policy Research in Education (CPRE) reports that IBB has been helpful in negotiating the *principles* of knowledge- and skills-based compensation schedules for teachers, leaving the details of the system to be hammered out by a formal working committee.⁵ However, some practitioners in public education find IBB less helpful when the only issue on the table involves money, a topic that easily becomes zero-sum. Precisely because improving student achievement is not a zero-sum concern, IBB is well suited as a process by which innovative collective bargaining terms may be designed.

CASE EXAMPLE:

When Two Sides Move Beyond "Art of Adversarial Bargaining"

BOSTON. Ed Doherty, past president of the Boston Teachers Union (BTU), and then-Superintendent Laval Wilson jointly wrote a thoughtful article describing their experience with IBB — one of the

earliest and most complex examples of how IBB helped to achieve a contract focused on education reform.⁶ Referring to themselves as “traditional adversaries” who “had long practiced the art of adversarial bargaining,” the parties were brought together by interested community power brokers, who threatened to withhold corporate contributions if the union and administration did not agree how to establish site-based shared management of schools during the 1988 collective-bargaining cycle.

From surveys of the BTU membership, Doherty learned that teachers were interested in greater participation in school-level decision-making and professional development. Wilson had experimented with decentralized management in other districts and was in favor of trying it in Boston. Despite agreement on the larger principle of decentralization, the first two months of active negotiations resulted in a face-off between the parties, each advocating their own designs for the new management structure.

Union and administration leaders only began to make progress when the corporate community intervened and asked both sides to use an outside facilitator. Doherty and Wilson attribute the path-breaking contract they achieved to the use of IBB, particularly to a process known as the “option-seeking exercise,” during which each party offers options that would satisfy the other party’s interests, while “still protecting the interests of his or her own side. Nobody ‘owns’ any option offered.”⁷ The parties examine the list of options and then mutually agree to the most satisfactory of the alternatives.

The innovations designed through this contract were not limited to the terms of the agreement. Next, the parties worked together on a joint labor-management steering committee to implement the new school site-based-management structure and on additional projects as they emerged. The authors attribute this to the IBB process:

“Both parties recognize that this contract could not have been achieved through traditional bargaining. ... Through third-party facilitation, the

negotiations highlighted the interests of both sides and allowed each side to explore the goals of the other.

The open dialogue at the negotiating table brought to light new alternatives to achieve mutual goals...The process encouraged the development of collaborative options, ways of accommodating both sides’ goals and interests.

Despite a profound state fiscal crisis, the powerful education reforms in the contract enabled the parties to return time and time again to key business, municipal and state leaders to garner support for the contract’s funding.”⁸

CASE EXAMPLE:

N.J. Officials Say Focus Is On Issues, Rather Than ‘Win’

PERTH AMBOY, N.J. In 1999, only 34 percent of the 10,000 students in this blue-collar urban school district earned “proficient” ratings in language arts on the New Jersey assessment test. At the same time, a new superintendent introduced interest-based bargaining to the adversarial relationship with the teachers’ union, using this innovative approach to achieve a collective-bargaining agreement. This contract established the joint labor-management *Partnership for Academic Excellence* that, among other things, provided district financing for research-based innovations in classroom practice by teachers. The *Partnership* was directed by the Professional Review Committee—a 22-member, multi-stakeholder group that met biweekly to plan strategies to improve professional and student performance. As with the interest-based bargaining sessions, attorneys representing the school board and teachers’ union jointly facilitated the Review Committee.

The parties report that interest-based bargaining contributed to shorter, more productive negotiations.⁹ Interest-based bargaining helped

parties to focus more quickly on their common interest in student achievement. In reflecting on the experience, Director of Labor Relations William Stratton says: “The focus on ‘issues,’ not ‘who’ is going to ‘win,’ puts a whole new spin on the process. It calms the emotions and seeks solutions to the real issues facing education today.”¹⁰ Student achievement in the district improved as well. By 2002, 77.7 percent of students achieved “proficient” ratings, doubling the percentage similarly rated just three years earlier.

ADDITIONAL DISTRICTS THAT HAVE USED INTEREST-BASED BARGAINING

- Cincinnati
- Greece, N.Y.
- Groton-Dunstable, Mass.
- Hamilton-Wenham, Mass.
- North Andover, Mass.
- Sudbury, Mass.
- Williamstown, Mass.

ADDITIONAL READING

- Consortium for Policy Research in Education (2001). *Enhancing teacher quality through knowledge and skills based pay*. Philadelphia. Policy Brief RB34.
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- Lum, G. (1996). Collective bargaining in education: Getting started in interest based negotiation. *Journal of the North American Association of Educational Negotiators*. Obtainable from ThoughtBridge. (Glum@Thoughtbridge.com)

CHAPTER FOOTNOTES

1. Susan Moore Johnson and Susan M. Kardos use the term “industrial model of unionism” to refer to the traditional form adopted from heavy manufacturing, which assumes: interests of the parties are in conflict; standard practice is desirable; similarly skilled workers are interchangeable and should be treated alike. See Johnson, S.M. and Kardos, S.M. (2000). Reform bargaining and its promise for school improvement. In Tom Loveless, (Ed) *Conflicting missions? Teachers unions and educational reform*. Washington, D.C.: Brookings Institution.

2. For a full exposition of IBB see: Fisher, R. and Ury, W. (1992). *Getting to yes: Negotiating agreement without giving in*. New York: Houghton Mifflin Co..

3. Nancy Peace is an arbitrator, mediator, and trainer in private practice in Newburyport, Mass. She has assisted school districts throughout Massachusetts in implementing IBB in contract negotiations. Her articles include: Peace, N. (1994). A new way to negotiate: Collaborative bargaining in teacher contract negotiations: The experience in five Massachusetts school districts. *Journal of Law & Education* 24(3):365-387.

4. William Stratton, Director of Human Resources, Perth Amboy, N.J., Public Schools. Personal interview. Nov. 29, 2004.

5. Consortium for Policy Research in Education (CPRE). “Enhancing Teacher Quality through Knowledge and Skills-Based Pay,” Page 6.

6. Doherty, E.J. and Wilson, L.S. (1990). The making of a contract for education reform. *Phi Delta Kappan* (6) 791-796. The authors labeled their IBB process: “principled negotiations.”

7. Ibid. Page 793.

8. Ibid. Page 796. Ultimately, it did take strike threats and political action to win final support for the contract, but the authors believe these would not have been successful if not for the educational reform the contract promised.

9. Beach, A. and Kaboolian, L. (2003). *Public Service, Public Savings*. Washington, D.C. www.Pslmc.org./pslmc.asp

10. William Stratton, personal correspondence. Dec. 1, 2004.

RESOURCES AND REFERENCES

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SALARY BENCHMARKING

‘Salary benchmarking’ is the practice of determining teacher salaries in the collective-bargaining process by referring to indicators outside the district.

Salary scales of nearby school districts set the standard, rather than traditional formulas such as “cost of living increases.” Parties negotiate the list of referent districts and the formula that will determine the relationship between the district’s new salary scale and the scale at referent districts.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

The primary benefit of benchmarking is that it helps districts be more competitive in recruiting, hiring, and retaining successful, highly qualified teachers. Secondly, it saves time and reduces conflict on money matters, enabling parties to spend more time and energy for collaboration and negotiation on strategies for improving student achievement.

Salary benchmarking is premised on two theories:

- Teacher quality affects student achievement; and
- There is a competitive labor market for high-quality teachers, operating on differentials in salary and working conditions.

Eric Hanushek, an education economist, tested the first theory and found that, “The estimated difference in annual growth between having a good and having a bad teacher can be more than one grade-level equivalent in test performance.”¹¹ In later work, Hanushek and others found that teacher quality is the most important determinant of school quality.¹²

If the market is competitive, evidence suggests that salary and working conditions do affect the ability of a district to attract and retain high-quality teachers.¹³ Benchmarking bases the salary formula on a negotiated set of mutually accepted goals and standards, addressing conditions as well as future needs. Benchmarking may incorporate long-term goals, financially unachievable in the short run, but accepted by both parties as a priority where ‘catch-up’ is needed in order to attract and retain high-quality teachers.

Salary benchmarking can benefit all parties to contract negotiations. The practice makes the disparities with competitor districts more visible to all of the school district stakeholders, not just the union and administration. As a result of the comparison, salaries can be defined by a strategy to improve student achievement rather than by power or bargaining history.

Practitioners believe that it is easier to agree to the list of districts with which comparisons must be made and the formula for benchmarking than to negotiate a detailed salary schedule. Once established, a formula may not have to be adjusted from one bargaining cycle to another, although both parties will want to preserve the right to do so.

Benchmarking enables parties to concentrate more on substantive reform because they:

- Save substantial amounts of time, otherwise spent on protracted salary negotiations
- Minimize the direct cost of hiring professional negotiators
- Reduce indirect costs of district staff time needed to support professional negotiators by supplying them with numbers, comparisons, budgets, projections, etc., and
- Preserve emotional energy and labor-management relationships

While not every district can be “above average” in its compensation structure, it is still possible to use benchmarking. Salary benchmarking does not require that the parties agree to match or exceed pay levels in other districts but to peg compensation relative to identified districts. Relevant factors that distinguish a district, such as tax base or the value of benefit packages can be factored into the benchmarking process. When done carefully, salary benchmarking has produced satisfactory and fair results.

CASE EXAMPLE:

Rochester, N.Y., Sees Benchmarking As Way To Retain Experienced Teachers

ROCHESTER, N.Y. The City School District of Rochester and the Rochester Teachers Association agreed in 2000 to benchmark teachers’ salaries in response to a survey of teachers who had left the district with between five to eight years of experience. As part of an effort to retain experienced teachers, the parties began to look at more competitive contracts.¹⁴

Their July 2002 collective-bargaining agreement states six basic steps and principles in their process:

- The parties identify a comparison group—school districts paying salaries within the top third of the county region. The parties state their intention to remain “reasonably competitive” with the comparison group at designated career junctures for teachers (e.g., entry level, five years’ experience, 10 years’ experience, etc.). They specify that their formula for salary increases shall “provide the basis for design of a formula intended to inform bargaining for specific increases in salaries for unit members.”¹⁵
- The parties agree that they will determine the most recent average salary increases in the comparative districts, and then “apply the result in an agreed-upon manner so as to achieve reasonably competitive salaries for unit members, particularly at the designated career junctures.”
- The parties express their present intention that the formula will survive the duration of the current contract, though in the next section they state their understanding that they are not contractually bound beyond the current contract.
- The parties clarify that either party may reject the formula as a basis for determining salaries upon expiration of the current contract, and a

timeline related to the state budget cycle is specified.

- The parties state that if the current formula is rejected for the next contract, and another formula or process for establishing pay rates has not been agreed upon by a specified date, teachers will all advance one step on the existing salary scale until settlement is reached.
- Step advancements that occur because the formula has been rejected and not replaced shall be retroactive to the first day following expiration of the current contract.

The current superintendent and union president in Rochester both cite the salary benchmarking process in Rochester as a significant step forward. They suggest that there may be other contract areas in which benchmarking could reduce the strain and tedium of collective bargaining, enabling parties to focus instead on creative reforms that promote student success.¹⁶

ADDITIONAL DISTRICTS THAT HAVE USED SALARY BENCHMARKING

- Andover, Mass.
- Webster Central School District, N.Y.

RESOURCES AND REFERENCES

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11. Hanushek, E.A. (1992) The trade-off between child quantity and quality. In *Journal of Political Economy* 100(1):84-117.

12. Rivkin, S.G., Hanushek, E.A. and Kain, J.F. (1998). *Teachers, schools and academic achievement*. Paper presented at Association of Public Policy Analysis and Management, New York, N.Y.

13. See Murnane, R.J., Singer, J.D., Willett, J. B., Kemple, J.J. and Olson, R.J. (1991). *Who will teach? Policies that matter*. Cambridge, Mass.: Harvard University Press. Also see Odden, A. and Kelley, C. 1997. *Paying Teachers for What They know and do: New and smarter compensation strategies to improve schools*. Thousand Oaks, Calif.: Corwin Press.

14. Correspondence with former superintendent Clifford B. Janey, February 2004.

15. Agreement Between the City School District of Rochester, N.Y., and the Rochester Teachers Association. July 1, 2002. Section 46, 3a(1&2).

16. Panel discussion with Adam Urbanski, chief negotiator and president of the Rochester Teachers Association, and Manuel Rivera, superintendent, at event sponsored by Worcester Regional Research Bureau and the Rennie Center for Education Research & Policy at MassINC, Worcester, Mass., Dec. 1, 2003.

CONTRACT WAIVERS & OVERRIDES

Increasingly, contracts include waivers or override language that allow the parties to sidestep specific contractual language in limited circumstances and for specific purposes, usually related to reform efforts. Waivers and overrides frequently have temporary effect only, and are always subject to joint approval.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

As specific changes are needed in the learning environment to address student achievement, the terms of the collective-bargaining agreement can be modified to accommodate those changes.

While contract waivers and overrides may seem familiar and have been part of collective bargaining in most settings, education reform has extended the scope and frequency of their use. Many contracts now anticipate the need for substantial changes to accommodate the innovation of reform efforts and provide defined mechanisms to make changes during the life of multi-year contracts. Institutionalized in contract language, waiver provisions further legitimize concern for student achievement, making it clear that “business as usual” should not continue if students are not learning. They normalize the change process through defined procedures and standing committees to consider needed changes. They assign joint responsibility for improvements to both parties.

In most cases, all parties at the local level must ratify the changes proposed under these provisions. In some circumstances, parents’ representatives may be involved in decision-making. While the thresholds for ratification might appear high, it is also the case that necessary changes are more likely to be implemented and affect performance if the vast majority of teachers agree to them.

CASE EXAMPLE:

Worcester, Mass., Uses Side Letter To Try Small Learning Communities

WORCESTER, MASS. The Worcester School District, with the support of the Carnegie Foundation for the Advancement of Teaching, has been working on the creation of small learning communities at the secondary level in an effort to improve student outcomes. In the process, the Worcester School Committee and the Educational Association of Worcester (EAW) recognized that their plans for effective small learning communities might require substantive changes to the existing district-wide collective-bargaining agreement, as well as a collaborative problem-solving process that will be less cumbersome than collective bargaining. Accordingly, in 2003 the Worcester School Committee and the EAW entered into a side letter, “to accomplish the flexibilities required to make the small learning communities successful without making permanent modifications to the underlying collective bargaining agreement.”¹⁸

The side letter is of limited duration, expiring at the end of the 2004-2005 school year. It is also limited in scope, prohibiting changes to grievance procedures, supervision and evaluation, transfers, reductions in force, and teacher dismissal. The parties clarified their intent, stating explicitly in the side letter that this waiver was not intended to affect governance issues, but rather to allow flexibility in operational areas, including meetings, workday, scheduling, hours and work load, block scheduling, duties, preparation time, and “such other areas not specifically excluded herein.”¹⁹

The side letter requires that contract waiver proposals be carefully scrutinized. Plans for small learning communities must be written, and all areas of the master agreement that might be affected by the plan must be specifically identified. The plan must also state the proposed manner of dealing with those sections of the contract. The committee and the

EXAMPLES OF CONTRACT & SIDE LETTER LANGUAGE

Side Letter, Small Learning Communities. Executed Feb. 26, 2003 by the Worcester School Committee and the Educational Association of Worcester.

It is agreed by the parties that the formal plans, as drafted, and as implemented in certain cases, involve changes to the terms and conditions of employment of the teaches and assistant principals at the secondary schools which would require decisional bargaining. . . the Parties will agree to utilize this Side Letter and the agreements contained herein to accomplish the flexibilities required to make the small learning communities successful without making permanent modifications to the underlying collective bargaining agreement. The parties are in agreement that this Side Letter shall not authorize modifications in the following areas of the contract: Grievance Procedure; Leaves of Absence with or without pay; Sick Leave; Supervision and Evaluation; Transfers; Reduction In Force; and Dismissal of Teachers...¹⁷

executive board of the association must approve the full plan. If they do, two-thirds of the teachers in the proposed small learning community must vote by secret ballot to accept the plan before it can be implemented.

CASE EXAMPLE:

Florida District Creates Panel To Review Waiver Requests

DUVAL COUNTY, FLA. The 2002-2005 Duval County teachers’ contract creates a joint Contract Waiver and Oversight Committee “...authorized to provide oversight for contract compliance and to review contract waiver requests necessitated by new innovative programs and/or school improvement efforts.”²⁰ The eight-member committee includes the

2002-2005 Agreement between the Duval County Teachers Union and the Duval County School District

A committee comprised of the President of DTU and three designees, the General Director, Human Resource Services, and three designees of the Superintendent, shall function as the Contract Waiver and Oversight Committee. The Contract Oversight and Waiver Committee will be authorized to provide oversight for contract compliance and to review contract waiver requests necessitated by new innovative programs and/or school improvement efforts...

2003-2006 Agreement Between United Teachers of New Orleans and Orleans Parish School Board. Article 53.

The BOARD and the UNION recognize the need of the District to take meaningful steps to increase the academic

performance of students. The implementation of programs and initiatives directed at increasing student achievement levels requires the BOARD and the UNION to be flexible in applying policies, rules and regulations of the District and provisions of the UTNO/OPSB Collective Bargaining Agreement. On occasions, this flexibility necessitates the waiving of provisions of the Teacher Collective Bargaining Agreement. To this end, the BOARD and the UNION have agreed to the following procedures for granting waivers from complying with provisions of the OPSB/UTNO Teacher Collective Bargaining Agreement.

July 1, 2002, Agreement between City School District of Rochester and the Rochester Teachers Association Rochester.....

[Lead teachers shall] agree to accept assignments which meet school needs regardless of contractual/seniority rights....

union president and three union designees, as well as the human resources director and three designees appointed by the superintendent.

As in Worcester, there is a fairly elaborate review and approval process that must be completed before contract waivers can take effect. Written waiver requests must be reviewed and approved by the regional superintendent involved, as well as by the Contract Waiver and Oversight Committee. Submissions to the committee must include supporting documentation. The committee may request personal appearances by teachers and/or members of the administration to discuss the waiver proposal. If the committee approves a waiver request, it issues a recommendation to the executive board of the union and the superintendent's task force on waivers, both of which must agree before a waiver can be granted. Significantly, waivers can be approved for periods

of no longer than the remainder of the school year. After that, the collective-bargaining teams for the respective parties determine whether they will be continued.²¹

CASE EXAMPLE:

New Orleans Board, Union Negotiate Collective-Bargaining Waiver

NEW ORLEANS. The board and the union in New Orleans jointly recognize the value of contract flexibility in efforts to improve academic performance through innovation. Accordingly, they have negotiated an article entitled "Collective Bargaining Provision Waiver," describing a process whereby 70 percent of the members of the bargaining unit at a particular school may agree

by secret ballot to seek a contract waiver. The union’s executive board and the board of education must both approve a waiver request.²²

contractual/seniority rights.²⁴ This enables schools to pursue strategies such as placing Lead Teachers in difficult teaching assignments, where their advanced knowledge and skills can have the most impact on student outcomes.

CASE EXAMPLE:

Rochester Officials Agree on Flexibility To Place Teachers in Struggling Schools

ROCHESTER, N.Y. The City School District of Rochester and the Rochester Teachers Association have negotiated a provision that allows seniority provisions to be overridden during teacher assignment, in order to improve the performance of struggling schools. Among other provisions, the contract defines “Lead Teachers” as highly qualified teachers with additional responsibilities that are intended to shape and improve public education in Rochester (as measured by student attainment and performance).²³ To facilitate the strategic placement of teachers, the contract contains an override clause, stating that Lead Teachers shall agree to accept assignments that meet school needs *regardless of*

OTHER DISTRICTS THAT HAVE USED CONTRACT WAIVERS & OVERRIDES

- Cleveland
- Palm Beach County, Fla.
- Pittsburgh
- Seattle ²⁵

CHAPTER FOOTNOTES

17. *Side Letter, Small Learning Communities*. Executed Feb. 26, 2003, by the Worcester School Committee and the Educational Association of Worcester.

18. See Worcester Regional *Research Bureau (2003). Education reform and collective bargaining: C for compatibility*. Worcester, Mass. Report No. 03-05.

19. 2002-2005 Agreement between the Duval County Teachers Union and the Duval County School District, Article IV, Sec.2B.

20. Ibid.

21. 2003-2006 Agreement between United Teachers of New Orleans and Orleans Parish School Board. Article 53.

22. July 1, 2002, Agreement between City School District of Rochester and the Rochester Teachers Association, Sec. 52-11.

23. Ibid., Sec. 12-f-1.

24. In Seattle, the contract states that the terms of the Staff Training, Assistance and Review Program (STAR) will supersede the terms of the collective-bargaining agreement if there is a conflict between the two documents. Memorandum of Understanding Concerning The STAR Program Between the Seattle School Committee and the Seattle Education Association. Section A-6.

25. The Teachers Urban Reform Network (TURN) founded in 1995 is a group of teachers' union locals belonging to the American Federation of Teachers (AFT) or the National Education Association (NEA). TURN describes itself as a union-led effort to restructure the nation's teachers' unions to promote education reform. The following districts are members: Albuquerque, N.Mex.; Bellevue, Wash.; Boston; Cincinnati; Columbus, Ohio; Dade County, Fla.; Denver; Hammond, Ind.; Los Angeles; Memphis, Tenn.; Minneapolis; Montgomery County, Md.; New York; Pinellas County, Fla.; Pittsburgh; Rochester, N.Y.; San Diego; San Francisco; Seattle; Toledo, Ohio; Westerly, R.I. See www.turnexchange.net

RESOURCES AND REFERENCES

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THIN CONTRACTS

In comparison to traditional encyclopedic contracts, “thin” contracts are abbreviated agreements negotiated at the district level to address basic issues and standardize conditions across the district. Thin contracts address issues such as base compensation, benefits, and compliance with legislative mandates. Supplemental, more detailed contracts are negotiated at the school site level to address local needs, concerns, and working conditions. Thin contracts and local supplements recognize that important differences and needs exist among schools within a district. They shift more control over policy and programming to the local level, requiring that teachers and administrators at the school site negotiate comprehensive agreements about the day-to-day operations.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

With thin contracts, decisions affecting teaching and learning are made closer to the school site and can be tailored to meet the specific needs of students, practitioners, and the community. The two-level contract allows for flexibility within a district and avoids the rigidity of one-size-fits-all conditions.

The concept of a “thin contract” goes hand in hand with other reform efforts that are focused on breaking out of the “one-size-fits-all” bargaining model to focus attention on local needs and conditions for improving student achievement. Sandra Feldman, former president of the American Federation of Teachers, was one of the first and, perhaps, biggest proponents of thin contracts. The Teacher Union Reform Network (TURN)²⁶ has also proposed thin contracts as a model for shifting detailed collective bargaining away from district-level negotiations and to school settings where terms can be more sensitive and responsive to local needs.

An important distinction between the thin contract model and other reforms is that the thin contract model does not contemplate local agreements as *exceptions* to a master agreement. Under the thin contract model, school site agreements are the norm. Thin contract supplements do not have to be authorized by contract waivers, contract over-ride clauses, or a special contractual recognition of a specific site (such as a small learning community, pilot, or charter school). Thin contract supplements serve as the only place that local school issues—student performance targets, resource allocation, class size, professional development programs, and similar matters—are contractually addressed.

One concern with the thin contract model is that site-level leaders—school principals and union building representatives—assume more of the burden for collective bargaining, despite being already overburdened with the instructional and management demands of education reform. In reality, thin contracts can be achieved at lower costs than assumed, especially when professional negotiators from the district level assist with local level discussions. While site-level bargaining may

require a greater investment of time and resources by schools, the ensuing benefits of this “hands-on” involvement over traditional district-level collective bargaining are significant over time. Traditional collective bargaining typically results in generalized work rules that lead to local school inefficiencies and time-consuming problems for principals and union representatives. Conversely, when parties have an opportunity to present and negotiate rules that best match their school’s conditions, the resulting work rules better fit the school’s needs and the specific desires of the school’s teachers than a district-level agreement.

CASE EXAMPLE:

N.Y. Charter School Finds Flexibility In Nine-Page Contract Agreement

AMBER CHARTER SCHOOL - NEW YORK. In contrast to the very extensive 2000-2003 agreement between the New York City Board of Education and the UFT, the 2002-2004 agreement between the UFT and Amber Charter School is a “thin contact,”

CONTRACT LANGUAGE EXAMPLE: THIN CONTRACTS

2002-2004 Agreement between The United Federation of Teachers and The Amber Charter School.

Introduction

WHEREAS, the parties desire to maintain a collaborative relationship beyond their collective bargaining relationship so as to provide the best opportunity for Amber Charter School to succeed in its educational mission;

NOW THEREFORE, the parties have entered into this unique Agreement in the expectation that the flexibility it provides will help Amber School grow and thrive, to the benefit of the entire Amber School family.

Article 2, Personnel Manual

The Amber Charter School Personnel Policy and Procedures Employee Manual (“Manual”) describes the general conditions and benefits applicable to Amber School employees. Bargaining Unit Members are covered by the Manual, and it is incorporated into this Agreement, to the extent its terms are not contrary to or inconsistent with this Agreement.

which is nine pages long, including a one-page payroll deduction form. The agreement contains 13 articles addressing almost exclusively matters of compensation, benefits, and employment security.²⁷

The preamble of the agreement states the parties' desire:

- "...to maintain a collaborative relationship beyond their collective bargaining relationship so as to provide the best opportunity for Amber Charter School to succeed in its educational mission."
- The preamble also states the parties' expectation that the flexibility provided by their 'unique agreement' will help Amber Charter School grow and thrive, to the benefit of the entire "Amber School Family."²⁸ Two additional clauses in the Amber contract are particularly important to understanding thin contracts.

Article Two specifically incorporates the school's pre-existing Personnel Policy and Procedures Employee Manual, making it part of the master agreement (to the extent that the manual's terms are not contrary to or inconsistent with the UFT-Amber agreement). Amber's previously adopted personnel policy manual serves as the local supplement to a thin master contract. This model is helpful because it demonstrates how a local supplement can function as a personnel handbook might—covering operational teaching and learning issues, having contractual status, and describing the rights and responsibilities of teachers and school administrations within each building or small school site.

The second clause shifts policy work to the local faculty of this small school. The clause addresses continuing salary discussions and states that the parties have agreed to involve the Amber School teachers in considering alternative and/or supplemental compensation systems. The agreement further states that the parties wish to encourage the Amber School faculty to use their special skills,

achievements, talents, and qualifications to design and implement projects that will enhance the Amber School experience.

RESOURCES AND REFERENCES

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- **Amber Charter School Personnel Policy and Procedures Employee Manual**, 11.24.03
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CHAPTER FOOTNOTES

26. Article headings are: Recognition, Personnel Manual, Due Process, Rates of Pay, Maintenance of Benefits, Union Security, Payroll Deduction of Union Dues, Layoff and Recall, No Strike-No Lockout, Conformity to Law, Amendment, Duration, and Termination.

27. 2002-2004 Agreement between the United Federation of Teachers and the Amber Charter School. Page 1.

28. Nov. 24, 2003, telephone interview with Rita Siegel, labor relations officer and attorney for Albuquerque School District.

LIVING CONTRACTS

Living contracts remain open to modification during the course of their stated term, adapting to evolving circumstances unforeseen at the time they are drafted. The parties define an ongoing collaborative process to identify and design changes to existing language as need arises. Addressing the problem of multi-year contracts with terms no longer appropriate to the dynamic, innovative demands of education reform, living contracts allow for flexibility and innovation.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

As parties seek to improve student outcomes with new strategies or programs, existing prescriptive contract language and re-opening the contract are not insurmountable barriers to reform.

“Living contracts” are comprehensive, district-wide collective-bargaining contracts that contain provisions to allow continual renegotiation and modification during the course of their stated term. More radical than waivers or override language, “living contracts” make provisions for continual negotiations and make the assumption that fundamental changes are possible through the work of a standing committee that negotiates new terms. Living contracts allow the parties to operate outside of the boundaries of negotiated contract language, in accordance with a process designed to protect the rights of the parties.

Living contracts remain in full effect unless modified through a joint process involving labor and management representatives and ratification by some stated majority of union members. Members of the negotiating committee meet to discuss issues and concerns of mutual interest as they arise. While living contract committees can be powerful vehicles for promoting reform between negotiations, they are not necessarily focused on reform or student outcomes. They are sometimes used to foresee conflict and head off grievances. Living contracts also may be used to facilitate the next round of negotiations by studying issues outside of the negotiating process.²⁹

CASE EXAMPLE:

Rochester Uses ‘Living Contract’ To Tackle Issues of Mutual Interest

ROCHESTER, N.Y. The current contract in Rochester establishes and charges a Living Contract Committee. This committee is a joint labor-management committee, comprised of at least two and not more than four representatives from both the union and the district. Neither the superintendent nor the union president may serve on the committee; however, their participation in committee meetings is permitted as deemed necessary or appropriate. The district’s chief legal counsel must be one of the district’s representatives on the committee.³⁰

The Living Contract Committee is authorized “to discuss any issue of mutual interest or concern and to reach tentative agreements on issues in a timely manner without delaying action until the expiration *and re-negotiation of the collective bargaining agreement.*” The Living Contract Committee has the power to *amend* the collective-bargaining agreement—“*provided that any substantive amendments shall be subject to internal ratification and approval processes of the district and the union.*”³¹

The committee is charged to:

- Meet monthly on a regularly scheduled basis
- Administer and implement the contract and to resolve disputes in its interpretation and application
- Train teachers and district staff concerning contract responsibility and good practice
- Establish *temporary* joint subcommittees to address contract issues
- Revise the provisions of the agreement in order to clarify language and meaning, correct contradictions or inconsistencies, remove outdated language, and organize and streamline it

CONTRACT LANGUAGE EXAMPLE: LIVING CONTRACTS

Toledo, 2001-March 31, 2004. Memorandum of Understanding.

In addition, the parties recognize the need for resolving mutual problems and concerns as they arise. Both parties agree in principle that an ongoing problem-solving process is necessary and each is committed to achieving mutually established goals and objectives to that end....

To formalize the implementation of this memorandum, the wages, hours, terms, and conditions of employment as set forth in this collective bargaining agreement shall continue

The Living Contract Committee is specifically empowered to address teacher transfer issues outside of regularly bargained transfer provisions. The committee may consider and *approve* such transfers. Involuntary transfers cannot be grieved.³²

CASE EXAMPLE:

Toledo Contract Allows Changes At School Building Level

TOLEDO, OHIO. The 2001-2004 Toledo contract contains a provision allowing contract modification *at the building level*. Each school has a Federation Building Committee, defined as the teacher committee authorized by the union, and elected by the teachers in the building. The Federation Building Committee is entitled to meet with the school principal at least twice per month to address school operations. The normal scope of discussions includes building-level policy formation or modification—consistent with the master contract. “However, if either the principal, or the committee, or both, desire to modify certain

to remain in effect and will be changed or modified on an ongoing basis with the mutual consent of the parties. This Memorandum of Understanding will remain in effect throughout the term of the current collective bargaining agreement, i.e. November 30, 2000.

Eugene. 2003-2005 Agreement between the Eugene Education Association and the Eugene School District 4J. Article XVI.

- **16.2 Joint Administration Committee:** The District and Association will establish and jointly participate in a contract administration committee titled Joint Contract Administration Committee, hereinafter JCAC.

- **16.2.1 Purpose:** The purpose of the JCAC will be to review proposals from the District or Association to waive or modify any terms of the agreement.
- **16.2.2 Decision-Making:** The JCAC will make decisions by consensus. If the JCAC is unable to reach agreement, action to modify or waive the agreement will not be taken except as provided by other terms of this agreement.
- **16.2.3 Composition:** The JCAC will be composed of at least two (2) representatives appointed by the District and two (2) representatives appointed by the Association. The JCAC membership composition may be changed as the District and Association deem appropriate.

contractual provisions, such proposed modification shall be reviewed by a joint committee appointed equally by the Superintendent and the Federation President and its mutual decision to modify such contract terms shall constitute consent to modify. Such modifications shall be reduced to writing and forwarded to the school, and shall be applicable at the school and enforceable as a collateral agreement.”³³

CASE EXAMPLE:

Eugene, Ore., Uses ‘Interim’ Process To Meet Between Contract Talks

EUGENE, ORE. In Eugene, Ore., the district and the union engage in a process they call “interim bargaining.” The system allows the parties to meet between contracts to deal with problems and issues as they arise. The parties may bargain new language, or not. If they do, their language can eventually become binding, upon passage of a series of approvals, including that of the Joint

Contract Administration Committee (JCAC). Agreements approved by JCAC take effect once made, but become part of the negotiated collective-bargaining agreement only following incorporation in the next formal contract negotiation.

JCAC is subject to Oregon’s open meeting laws, so its actions are non-confidential. The committee meets frequently, and operates on a consensus basis. Its purpose, powers, and composition are stated in the collective-bargaining agreement, but without much detail. According to Association President Paul Duchin, JCAC is much more significant than it would appear from the contract. It meets nearly every two weeks. It assigns small groups to resolve problems, and/or attempt to bargain solutions subject to later approval. While there is often disagreement among members of JCAC, Duchin states that overall it is extremely helpful in creating understanding and respectful relationships among members of the association and the administration.

OTHER DISTRICTS THAT HAVE USED LIVING CONTRACTS

- Albuquerque, N.Mex.
- Minneapolis

RESOURCES AND REFERENCES

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CHAPTER FOOTNOTES

29. See generally Section 50, Living Contract Committee, July 1, 2002, contract between the City School District of Rochester and the Rochester Teachers Association.

30. Section 50, Living Contract Committee, July 1, 2002, contract between the City School District of Rochester and the Rochester Teachers Association.

31. *Ibid.*

32. 2001-2004 Agreement between Toledo Federation of Teachers and the Toledo Public Schools. Article I, Section E-3.

33. See the 1999-03 Chicago Agreement Article 12—Re-engineering Failing Schools.

CONTRACT LANGUAGE ON STUDENT ACHIEVEMENT

Not long ago one could read through hundreds of pages of contract language and never come across the word “student,” let alone an explicit concern about student achievement. While there were innumerable regulations outlining expected behavior of the adults in the school system, or limiting their discretion and autonomy, parties often did not articulate the joint purpose of their working relationship as a focus on student achievement. Student needs were often lost in the familiar struggle between labor and management and negotiations that often served predominantly adult interests.

In contrast, some collective-bargaining agreements now explicitly recognize students as the primary client of their working relationship. In these instances, negotiating parties typically attempt to set a new tone for their relationship, moving from a competitive stance to a position that is more collaborative and explicitly focused on improving academic achievement. Similarly, community expectations that teachers and districts will work together to produce good educational results are explicitly acknowledged as legitimate.

USEFULNESS TO IMPROVING STUDENT ACHIEVEMENT

The parties insert language into the contract explicitly stating that the purpose of their relationship is students’ welfare, their academic achievement, and the improved performance of the public school district in meeting these goals. In so doing, parties emphasize student needs and articulate their shared interest in improving student achievement.

The school reform and standards movements have changed the focus and content of some collective-bargaining agreements to reflect a joint commitment to students and high performance standards. Some district contracts contain discrete sections on school reform, citing a new urgency in breaking old patterns for the purpose of improving performance.³⁴ Other districts use side letters or memoranda of understanding to adjust their focus, if they are not yet willing to adapt the contract formally.

Words do not necessarily change actions and

attitudes, but this step can make a difference in the world of collective bargaining. When parties use the collective-bargaining agreement to jointly declare that their joint, primary purpose is the creation and maintenance of strong schools to benefit students, the agreement can help to focus teachers and administrators on goals that extend beyond their own immediate contractual advantage. At the very least, parties discussed this language and agreed to insert it. At the other extreme, this language may guide the parties' relationship and implementation

CONTRACT LANGUAGE EXAMPLES: LANGUAGE ON STUDENT ACHIEVEMENT

2001-2003 Agreement Between The Board of Education of Special School District #1 and The Minneapolis Federation of Teachers

Preamble

This agreement is dedicated to doing better.

We exist to ensure that all students learn. We support their growth into knowledgeable, skilled and confident citizens capable of succeeding in their work, personal and family life into the 21st century.

2004-2007 Agreement Between The Providence Teachers Union, AFT Local 958 and The Providence School Board.

Preamble

Whereas, the Providence School Board and the Providence Teachers Union are committed to planning and implementing educational programs of the highest caliber designed to meet the multifaceted needs of our diverse student population, and

Whereas, in the pursuit of this common goal we also share the fundamental beliefs about educational philosophy and the nature of our joint responsibility to

establish and maintain collaborative working relationship based on trust, mutual respect, clear and direct communication, and a commitment to shared decision making, and ...

Whereas, The School Board and The City of Providence Teachers Union desire to promote good relations among certified teachers and between the School Board and the Union in the best interest of high quality education in the Providence school system...

City and County of Denver, Sept. 1, 2002 – Aug. 31, 2005

Statement of Beliefs

The Board and the Association share the belief that providing a high quality education for the children of Denver is the paramount objective of the District...In negotiating this Agreement, the Board and the Association, with the concurrence of the Community, have three major goals for joint school reform efforts:

- Greater success for all students as reflected in higher achievement.
- A significantly higher completion rate that moves the District toward its goal of graduating all students from the K-12 educational program.
- An improvement in the Community's level of confidence that the Denver Public Schools, as an institution, provides effective education for all students.

of the contract. The inclusion of student-focused contract language also creates a legitimate expectation on the part of other stakeholders that the parties will follow through on their commitment and that there is a standard by which to hold them accountable.

Critics ask if the addition of language has a real impact on the performance of the school district. While a systematic evaluation of the cause and effect relationship has not been performed, it is interesting to note that this language is often found in districts where other innovative practices are found, including innovations in the collective-bargaining agreement. Such research may also provide insight on how best to strengthen parties' commitment to extend beyond purely theoretical language.

CASE EXAMPLE:

Minneapolis Preamble Addresses Learning Gaps Between Children

MINNEAPOLIS. The 2001-2003 agreement between the Board of Education of Special School District #1 and the Minneapolis Federation of Teachers contains an extensive preamble based upon a joint commitment “to the education of the children of Minneapolis.” The preamble acknowledges unacceptable learning gaps between students of color and white students and explicitly refers to challenges faced by children from impoverished and dysfunctional communities. The preamble also notes that many parents or guardians, though committed to their children’s welfare, may not be able to partner with the schools on behalf of their children because they are struggling with work schedules, the difficulties of poverty, and schools that may be intimidating or “out of touch with the culture of their lives.” The contract also acknowledges that teachers, too, are often badly prepared to address the needs of poor children and need help.

The Preamble states:

“... However great the challenges may be of educating each Minneapolis student to her or his full potential, the parties to this agreement are determined to tackle them. This agreement is designed to facilitate whatever change and experiments may be needed.”³⁵

OTHER DISTRICT THAT HAS USED CONTRACT LANGUAGE ON STUDENT ACHIEVEMENT

- Seattle

CHAPTER FOOTNOTES

34. Examples include the 2002-2005 Douglas County Agreement that contains a “Memorandum of Understanding Regarding Statement of Alignment,” Page 64, and the 2001-2004 Toledo Agreement, Appendix X.

35. Preamble, 2001-2003. Agreement Between the Board of Education of Special School District #1 and the Minneapolis Federation of Teachers.

RESOURCES AND REFERENCES

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