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Because of the advent of collective negotiations, public education will never again be completely in control of local school boards. Collective negotiations will probably improve the quality of education to the extent that quality (higher salaries, smaller classes, better working conditions, etc.) coincides with the self-interest of teachers. The power accorded to teachers by collective negotiations can be crucial in professionalizing public school teaching, but if used selfishly it can encourage mediocrity, be detrimental to educational quality, and defeat the purpose for which the status of professionalism is awarded. Local school boards are anachronistic in many respects. Collective negotiations may focus attention upon their deficiencies and thereby bring about a more rational organization of local government along broader functional lines rather than wholly political lines. The logic of broadening the unit base for collective negotiations does not seem to square with developments in New York City's decentralization controversy. However, the problem in New York is one of identifying who the employer is. A possible solution is overlapping bargaining, with city-wide issues negotiated at the city level and local issues negotiated at the local board level in a manner similar to private industry. (TT)

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# PUBLIC EDUCATION: SPECIAL PROBLEMS IN COLLECTIVE NEGOTIATIONS -- AN OVERVIEW *

By Walter E. Oberer

Just seven years ago, here in the City of New York, the United Federation of Teachers established the beachhead for what has since become a full-scale invasion. The invasion is in a highly sensitive area. A free society consigns its most intractable problems, sooner or later, to that universal solvent--public education. Before December of 1961, public education in the United States was largely in the control of local school boards. It is not that way now in the City or State of New York, nor in those other sections of the nation which traditionally serve as bellwethers of social change. For better or for worse, it will never be that way again.

The catalyst for this change has been the advent of what is euphemistically called "collective negotiations," a supposedly strikeless form of collective bargaining. The function of collective bargaining is to take power away from the boss. Unilateral determination of the "terms and conditions of employment" is supplanted by bilateral determination. As applied to teacher-school board relations, this change is a camel's head in the tent of educational policy. Most issues of consequence in education impinge upon the "conditions of employment" of school teachers. Public school teachers, through their bargaining representatives, have thus been admitted to the sanctum sanctorum of democracy. The guardian-

ship of the heartland of a free society -- public education -- is now subject to the innovative and veto power of the American Federation of Teachers, the National Education Association, and their local affiliates.

This "changing of the guard" in public education, while well under way, is still in its formative stages. It entails, in its ramifications, questions of the ultimate concern for the future of our country. All of our most vital problems converge in public education: civil rights, race relations, the development of our most basic national resource -- young Americans -- for the continuation of our unique experiment in constitutional democracy. We are now in the 180th year of that experiment. As human experiments come and go, this one is still a child. Our success or failure will provide a precedent for beleaguered mankind the globe around.

All of which is to say that the impact of collective negotiations in the public sector is most important in the field of education -- not merely because of the vast number of public employees involved, but because of the mission of those employees.

Against this backdrop, I raise the following questions for our panel of speakers, representing, as they do, on the one side, what a syndicated columnist recently characterized as the "two teacher unions," and, on the other side, the "management"interests in public education.

## Questions

1. My first question is this: What impact will collective negotiations have upon the quality of education in our free society?

This question goes to the core of public concern, and I cannot resist prejudicing the issue by giving my own tentative reactions. The advent of collective negotiations will improve the quality of education to the extent the latter coincides with the self-interest of teachers generally. Higher salaries, smaller classes, better working conditions, more "teacher say" on questions of educational policy will conduce to attracting and keeping better people in public education and to raising the quality of their performance. This is all to the good. But it leads quickly to my second question.

2. At what point does the self-interest of teachers depart from the public interest in the high quality of public education? Put otherwise, to what extent have public school teachers become professionalized?

These questions necessarily raise a definitional problem: What <u>is</u> a profession? My answer is that a profession is a calling possessed of two attributes: (1) the services provided by the calling are of crucial importance to society, and therefore members of the calling must be held to higher standards than those generally applicable; (2) the higher standards required of the calling can only be effectively formulated and enforced by members of the calling because of the special education and training necessary to practice the calling.

To illustrate, physicians are of crucial importance to society and must be held to the highest standards humanly achievable, but who can evaluate the quality of performance

of a brain surgeon except other brain surgeons? In gross cases of malpractice -- where, for example, the surgeon leaves a pair of scissors in the brain cavity -- we all know he has not measured up. But would we be content to hold brain surgeons to no higher duty than the mere avoidance of gross malpractice? If the answer is no, as of course it is, how then are we to formulate and enforce higher standards for doctors?

We seek to do so by "professionalizing" the practice of medicine -- which means that we grant doctors the exalted status of a profession, and in return demand that they demonstrate their deserving of this status by, in effect, policing themselves. They seek to accomplish the latter by formulating and enforcing codes of professional ethics. Legislatures do not formulate these codes; legislators do not know enough. Juries do not enforce these codes; jurors do not know enough. Doctors both formulate and enforce these codes -- these higher standards. To the extent they do so, we honor them as members of a "profession." To the extent they do not do so, we sneer at them as money-grubbers. The same is true of lawyers and of every other calling we exalt to professional status out of our own need for self-protection.

What are the implications of the foregoing with respect to public education? If school teaching is truly a profession, as teachers not only concede but contend, higher standards than those generally applicable are required. The higher

standards must, as a matter of definition, be both formulated and maintained by the members of the "profession" -- by the school teachers themselves.

This,in turn, raises a question of fundamental importance. If school teaching is a profession, it is a profession much hampered in the achievement of its professional goals by the nature of its environment. Unlike most doctors and lawyers, for example, public school teachers are employees. As such, they are subject to the standards set by their employers -- local school boards. But their employers are not themselves members of the teaching profession. There exists, therefore, a tension between the role of school teachers as members of the teaching profession and the role of school teachers as employees. As members of a profession, teachers must set and police their own standards; by definition, non-members of the profession are not qualified to do so. As employees, however, teachers are subject to the standards set by their non-professional employers.

In this regard, the power accorded to teachers by the advent of collective negotiations, to participate in the setting of their own standards for performance, in the shaping of the terms and conditions under which they are called upon to perform, and in the establishing of the processes by which their performances are evaluated, is a good thing. It facilitates the professionalizing of public school teaching. But to the extent that this power is utilized selfishly, it tends to

defeat the very purpose for which the status of professionalism is awarded. That purpose is to hold the practitioners of the particular calling to higher standards than are generally in effect. If the members of the calling refuse to adhere to the higher standards, they attest to their own disqualification for the higher status of professionalism.

I do not expect any of this to move the teacher-organization representatives on our panel appreciably, although it should, since the essence of the professionalism which they attest is the pursuit of excellence, which means adherence to the standards of excellence. Why don't I expect to move them? For two reasons, the first of which is spurious, the second unfortunately profound.

The spurious reason is that the two teacher organizations tend to/(equate one more so than the other, but the other is catching up) talk of professionalism with teacher peonage. Their constituents have been "paid off" -- which is to say, held down -- with the cheap coin of bombast about "professionalism" for years. Translated, what this means, the more militant teachers assert, is poor pay and menial status, to be accepted with "professional" gratitude.

That may be what professionalism has come to mean to many school teachers; it is <u>not</u> what it means to me. <u>Of course</u> teachers have been underpaid. And whenever any one is underpaid, he is, by definition, overworked. <u>Of course</u> teachers have been subjected to authoritarian rule, occasionally

administered by granite heads. And of course the new environment of collective bargaining in public employment should be viewed and used by them as a means of emancipation. I don't flinch at calling it collective bargaining either, because I am increasingly of the mind that there is a place for the strike in public-sector labor relations.

So much for the spurious reason for militant leaders of teacher organizations to reject my plea for professionalism in public education. The second reason, the profound reason, for them to reject that plea is the one which really disturbs me. They reject it because they cannot accept it. They cannot accept it because they are political prisoners. The bars which bind them are the natural laws of politics. They are bound by the necessity to "deliver the votes." The necessity is created by their desire for organizational, if not also personal, aggrandizement.

What policies "deliver the votes" in representation elections and in internal organizational elections? In the "one man-one vote" context of democratic unionism, the vote is, unfortunately, not apt to be delivered by a program of incentives toward excellence. The majority of the voters in any organization of large size are apt to be quite mediocre and therefore desirous of protecting themselves in their mediocrity. The program most apt to move them is one of across-the-board benefits -- the helium among them carrying the lead. I have served as mediator and fact finder in disputes between school boards and teacher representatives both in the State of New York and without, and I have made

this tentative finding, among others: teacher representatives at the bargaining table are extremely chary of any proposal which entails more output from the teachers they represent, however worthy the extra time and effort might be from the standpoint of the enhancement of public education. Their bargaining guide tends to be "less work for more pay, period."

Similarly, I have found that teacher organizations tend to espouse the lowering of standards in several important respects -- for example, in the granting of tenure to teachers and in the rendering of teacher evaluation reports. They do not take this position overtly, or perhaps even consciously. They take this position in the name of procedural due process. But they can hardly be blinded to the implications for excellence which their procedural demands entail. How many of us would be willing to exercise our best judgment of the performance of a colleague in a context which entails, in the case of an adverse evaluation, the potential of cross-examination before an outside arbitrator? Most of us would simply heave a sigh and stay out of trouble by making a favorable report, however much this might curdle our stomachs.

The teacher organizations defend this kind of dilution of standards on the ground of what I would characterize as a paranoidal concern over administrative favoritism and incompetence. I concede that such favoritism and incompetence exist, but I seriously question the wisdom of a policy which seeks to deal with isolated cases in a manner which dilutes

standards in all cases. There is a phrase, developed in private-sector labor relations, which is pertinent. The phrase is "trade union mentality." It entails proscriptions against "rate-busting," against, in effect, aspirations toward excellence by individual union members. It exalts seniority, mere time-serving, the ascendancy of quantitative standards over qualitative ones. While this point of view is defensible in the shop, it is, by my lights, an albatross of blighting proportions with respect to public education. A society confronted with this kind of self-oriented protectionism will not long accord the status of professionalism to its school teachers, even after it has learned to pay them what professionals are worth. In my view, this will be a loss.

But I do not want to be one-sided in my attentions. I have thus far ignored, though I have had him much in mind, the third member of our panel -- the president of the National School Boards Association. I have a third set of questions to propose to him.

3. To what extent are local school boards, as we presently know them, anachronisms? Do they still serve the values they were created to serve in days long past?

I am afraid I am not very sanguine here. Local school boards, as we presently know them, are indeed anachronistic in many respects. The process by which board members are usually selected leaves much to be desired. Whether chosen by

election or appointment, school board members are too apt to be unconversant, even unconcerned, with the problems of public education as they exist today. The educational process they oversee is increasingly sophisticated and beyond their power to evaluate. Typically, they are non-educators, with some business, political, or personal interest in membership on a board of education, which interest is not often enough the product of either an understanding of, or a desire for, the best education that can be afforded to our children. Not that they oppose high-quality education; they merely fail to recognize its elements or to be willing to pay its price.

The advent of collective bargaining in public education may have a salutary impact in this regard. It may focus attention upon the deficiencies of local school boards and thereby bring about their improvement or demise. Since the financial support of public education is increasingly a state and federal responsibility, the local fund-raising justification for local control is a decreasingly consequential factor. And the increasing mobility of our populace, conjoined with other de-localizing aspects of our society, conduces to a broader view of public education than is involved in the local school district scheme of reference.

In this regard, the sheer economics of collective bargaining in public education harbor the prophecy of, at minimum, a regionalization of school administration. Informal regional alignments, remindful of multi-employer bargaining in the

private sector, are already developing. Their purpose is to contend with the across-school-districts bargaining strategy of teacher organizations and the leap-frogging, whipsawing potential inherent therein. A gratuitous concomitant of this effect of collective negotiations in public employment may well be a highly desirable stimulus to more rational organization of "local" government generally -- along functional lines, as opposed to mere political lines, largely attributable to historical accident.

The thrust of my third set of questions inherently leads to a fourth question -- particularly in view of the events of the past several weeks in New York City.

4. How does my point concerning the logic of broadening the unit base for collective negotiations in public education square with the recent developments in New York City, where the controversy has been over <u>de</u>centralization?

I could be flippant in my response to my own question and say -- with considerable accuracy -- that New York City is simply "something else." History suggests, however, that New York is a leader among our cities not merely in population, but also in the emergence of problems. Race relations cut across employment relations in public education in other municipalities as well. Accepting the situation in the City of New York as symptomatic of other metropolitan areas, the following points should be made.

Viewed from the standpoint of one trained in labor relations generally, the current problem in New York may be characterized as one of unit determination. What is the appropriate unit for collective bargaining in the City with regard to public education? This raises a question peculiar to public, as opposed to private, employment. In private employment, there is usually little question as to who the employer is. In public employment, by way of contrast, no question is more puzzling nor of more critical importance for effective collective negotiations.

Who, indeed, <u>is</u> the employer of the teachers in the Ocean Hill-Brownsville school district? Is it the City board of education or the local Ocean Hill-Brownsville community school board? The appropriateness of the unit for collective negotiations with a public employer, the pertinent Taylor Act teaches us, is dependent in part upon the echeloning of management discretion. Section 207.1(b) provides:

> the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority . . . with respect to, the terms and conditions of employment upon which the employees desire to negotiate . . . .

Section 207.1(c) further provides:

> the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

As applied to the problems of Ocean Hill-Brownsville and other similarly situated community school districts, where do the foregoing provisions of the Taylor Act lead us? Where

they lead me is to a deeper recognition of the importance of unit configurations in public employment. They lead me also to the conclusion that overlapping units may often provide the most rational basis for the implementation of the scheme of bilateral determination of the terms and conditions of public employment.

What do I mean by "overlapping units"? I mean this. Issues as to which power is delegated by the New York City school board to the new "community" school boards, pursuant to the recently enacted state statute mandating decentralization of the New York City school system, should be the subject of collective bargaining at the local or community level. Matters over which the City board of education retains jurisdiction should be the subject of collective bargaining between the UFT and the City school board. In other words, the levels of bargaining ought to accord with the levels of administrative discretion over the subjects of bargaining. If Issue A is within the sole discretion of the City school board to deal with, then Issue A should be the subject of collective bargaining between the City school board and the UFT. If Issue B, on the other hand, is within the sole discretion of the community school board to deal with, because power over that subject has been delegated by the City school board to the community school boards, then Issue B should be the subject of bargaining between the community school board and the bargaining representative of the teachers in the community school district.

Before we go farther, it may be well to spell out the effect of the new state statute which mandates decentralization in the New York City public school system. The product of considerable political maneuvering and debate in the state legislature, the new statute seeks, as I read it, to reconcile two irreconcilable principles. The UFT-Ocean Hill-Brownsville confrontation is simply round one in the resulting tug-of-war.

The statute requires the New York City school board to formulate a blueprint for the creation of as many as thirty local community school districts, replete with community school boards and community school superintendents. The blueprint must provide for the delegation of certain of the powers of the City school board to the community school boards. Section 1 of the decentralization statute accordingly states:

> The need for adjusting the school structure in the city of New York to a more effective response to the present urban educational challenge requires the development of a system to insure a community oriented approach to this challenge. . . .
>
> It is appropriate therefore that a detailed program for decentralization be formulated by the board of education of the city of New York against the background of urban educational problems in the city of New York, and after review by the board of regents of the university of the state of New York, be presented to the legislature.

The statute directs that the presentation of the plan to the legislature shall occur no later than March 1, 1969.

The statute elsewhere provides that:

> The [City] board of education, with the approval of the regents, shall have the power to delegate to such local school boards any or all of its

> functions, powers, obligations and duties in connection with the operation of the schools and programs under its jurisdiction . . . .

Similarly, the statute mandates that the decentralization plan of the City school board shall provide for:

> the transfer to each community board of all employees of the city district serving in or in connection with the schools and programs under the jurisdiction of such community board . . . .

So much for the first of the two irreconcilable principles which the decentralization statute seeks to serve -- namely, the principle of local community autonomy over local schools.

The second of the two irreconcilable principles which the statute seeks to serve is this: that for purposes of collective negotiations under the Taylor Act the City school board shall be "the 'government' or 'public employer' of all persons employed by the city board and community boards." The latter provision was, I assume, essential as a political concession to the UFT, in recognition of the UFT's hard-earned position as incumbent exclusive bargaining representative of the teachers of the entire City school district, prior to decentralization.

The trouble with this decentralization scheme is that it is unworkable. It seeks to permit the City to eat the cake of decentralized school administration while still having the cake of centralized collective bargaining. The problem is that both are the same cake. No one has recognized this fact more profoundly than the UFT and the Ocean Hill-Brownsville community school board. Power cannot be, at the same time,

delegated to the community school board and retained by the City school board. Yet, to the extent that the powers delegated impinge upon the "terms and conditions of employment" of the teachers in the community schools, this is precisely the effect.

There are only three ways that I can think of for attempting to deal with this problem of reconciling the decentralization of public school administration in the City of New York with the scheme of collective negotiations under the Taylor Act. The first is to have overlapping units -- that is, a City-wide unit and local "community district" units. The teacher organization representing the teachers in the City-wide unit would bargain with the City school board over those issues as to which the City school board retains power. The bargaining representative of the teachers at the community level would, on the other hand, bargain with the community school board over those issues the control of which the City board delegates to the community boards.

The best way for working out this arrangement would seem to be to have the UFT bargain at the City-wide level over City-wide issues, and "local chapters" of the UFT bargain at the community school district level over local issues. This would analogize, for example, to the manner in which the United Auto Workers Union, in the private sector, bargains with General Motors. National issues are the subject of bargaining between the international union and the national

leadership of G.M. A "master" contract results. Local issues are the subject of local bargaining, and provisions agreed upon locally become part of a local contract which supplements the master contract.

Another arrangement for implementing an overlapping-unit scheme for collective bargaining in the New York City school system would be to allow local option as to bargaining representatives at the community level. It seems apparent from the experience in Ocean Hill-Brownsville that a free election among the teachers of that local district would not result in a UFT victory. The trouble with non-UFT representation at the local community level is that there would thus be injected into an already conflict-ridden situation new conflict -- this time between the teacher organization representing the teachers at the community level and the UFT representing the teachers at the City-wide level. Perhaps, on the other hand, this would not inject new conflict, but simply provide an outlet in the collective bargaining structure for conflicts inherent in the New York City public education environment.

A major problem inherent in that environment, I might add, is that, under the existing system, the ghetto schools tend to get the least experienced teachers. Transfer rights of the teachers are geared to seniority. Once sufficient seniority has been achieved, a teacher must be extremely well-motivated to resist the opportunity to escape a teaching

experience in which maintaining discipline is a major problem, where indeed personal security may be in question. It is hard for me to see why some system of extra compensation is not an answer here -- "combat pay" as it is sometimes demeaned -- and yet there is strong reaction from both AFT and NEA affiliates to this seemingly rational market-type response to the problem of adequately manning ghetto schools.

In any event, the first, or overlapping-unit, response to the problems of collective bargaining in a decentralized City school system is, by my reading of the recent decentralization statute, at worst foreclosed, at best not facilitated. The City school board is declared by that statute, it may be remembered, to be "the 'government' or 'public employer' of all persons employed by the city board and community boards for purposes of" the Taylor Act. An earlier version of the decentralization statute provided that "the city board shall continue to have the power and it shall be its duty: . . . To bargain collectively with representatives of employees of the entire city district." (Emphasis added.)

If the intent of the final version is simply to state in other language the same intent as in the earlier version, the decentralization statute would seem to foreclose the possibility of an overlapping-unit scheme for the City school district. If, on the other hand, the incorporation of the language of the Taylor Act in the final version -- i.e., "'government' or 'public employer'" -- is intended to incorporate also the flexibility in unit determination afforded by that Act, over-

lapping units are not foreclosed by the decentralization statute. Neither are they facilitated, however. While the flexible provisions of the Taylor Act would permit the City school board to establish local bargaining units within the City school system, this is hardly feasible as a practical matter at this time. The interests of the UFT, of the Council of Supervisory Associations, and perhaps also of the City board itself are too deeply vested in the existing City-wide scheme of collective bargaining. In any event, the current contract between the City board and the UFT would seem to preclude any unit realignment at least until its expiration on September 9, 1969.

A second alternative for dealing with the problems of collective bargaining in a decentralized City school district is to grant the teachers in the local community school districts the right of representation at the City-wide bargaining table through either local chapters of the UFT or other organizations of their choice. This form of "joint" bargaining might be augmented by having the City school board invite representatives of the community school boards to sit with the City Board at the City-wide bargaining table. There would thus be joint representation on <u>both</u> sides of the table. There would also be an unwieldiness. But some variety or modification of a system of joint bargaining, or joint representation, even if only on an advisory basis, may hold such hope as there is for blending decentralized administration with centralized bargaining in the existing environment.

The third alternative, and indeed the only other one I can think of, is for the City school board, in the decentralization plan it is enjoined to prepare under the new statute, to make a preliminary determination of what is and what is not negotiable under the Taylor Act, and to delegate to the community school boards under its decentralization plan only those powers which relate to matters deemed to be non-negotiable -- i.e., not within the Taylor Act's definition of that which is negotiable, namely, "the terms and conditions of employment." In view of the dynamics of the social and political forces which have produced the decentralization statute itself, this is hardly a viable alternative.

In conclusion, I think I have said enough to focus attention upon the central problem of the decentralization scheme. It seeks to reconcile two irreconcilable principles: (1) local community control over public education in the City of New York; (2) centralized control over the terms and conditions of employment of New York City public school employees.

To repeat a note struck earlier, if this self-defeating course is pursued without revision, the Ocean Hill-Brownsville confrontation is but round one in a fight destined to go to a finish.

And now, having availed myself of this rare opportunity to cast stones in all directions, I am going to retire to my chair and cringingly await the discovery that what I have cast are not stones, but boomerangs.