
education policy analysis archives

A peer-reviewed, independent,
open access, multilingual journal



Arizona State University

Volume 18 Number 24

10th of October 2010

ISSN 1068–2341

The Teachers Union-Charter Impasse: Moving Forward from the New York Caps Fight¹

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Citation: Stulberg, L. M. (2010) The teachers union-charter impasse: Moving forward from the New York caps fight. *Education Policy Analysis Archives*, 18(24). Retrieved from <http://epaa.asu.edu/ojs/article/view/833>

Abstract: The public narrative generally frames teachers unions and the charter movement as mistrustful opponents locked in an unresolved impasse. There is little scholarly literature to correct this simplistic narrative of the relationship between charters and unions. This article examines the teachers union-charter relationship through a recent case of active and sometimes bitter charter politics: the fight to lift the charter cap in New York state in 2006 and 2007. This study examines the dynamics of the relationship through an analysis of media coverage of the New York caps fight and interviews with nearly 30 experts with varied views on charter schooling and from a wide range of professional backgrounds. The New York case suggests that ultimately, creating strong unions and effective charter schooling depends on these two sides finding common ground.

Keywords: charter schools; teachers unions; politics; policy.

El callejón sin salida entre los sindicatos docentes y las escuelas “charter”: Avanzando desde el “conflicto por los límites” en Nueva York.

Resumen: En discusiones publicas es frecuente colocas a los sindicatos docentes y a el movimiento de escuelas “charter” como adversarios, desconfiados, encerrados en un callejón sin salida. Es escasa la

¹ Accepted under the editorship of Sherman Dorn. A version of this piece was published in 2007 as a report for the National Charter School Research Project, Center on Reinventing Public Education, University of Washington. See Stulberg (2007).

Manuscript received: August 27, 2008

Revisions received: February 12, 2010

Accepted: June 25, 2010

literatura académica que corrija esa narrativa simplista sobre la relación entre las escuelas “charter” y los sindicatos. Este artículo examina la relación entre los sindicatos de maestros y las escuelas “charter” por medio de un caso reciente de política, activa y a veces amarga del caso “charter”: la lucha en Nueva York durante los años 2006 y 2007 para eliminar los límites a las escuelas “charter” en ese estado. Este estudio examina la dinámica de la relación a través de un análisis de la cobertura periodística en la lucha de límites en Nueva York. Incluye también entrevistas con casi 30 expertos con perspectivas diversas sobre las escuelas “charter” y con una amplia variedad de experiencias profesionales. El caso de Nueva York sugiere esencialmente que la creación de sindicatos poderosos y un modelo de escolarización “charter” efectiva depende de que los dos lados encuentren terreno común.

Palabras claves: escuelas “charter”; sindicatos de maestros; política; políticas educativas.

O impasse entre os sindicatos dos professores e as escolas charter: Avançando desde “o conflito sobre limites” em Nova York.

Resumo: As discussões públicas muitas vezes colocam os sindicatos dos professores e o movimento das escolas charter como adversários que se fecham em um impasse sem saída. Há pouca literatura acadêmica que corrija esta narrativa simplista sobre a relação entre as escolas charter e os sindicatos. Este artigo analisa a relação entre sindicatos de professores e escolas charter através de um caso recente de ativa e, às vezes amarga, política charter: a luta em Nova York durante os anos 2006 e 2007 para remover limites de escolas charter nesse estado. Este estudo analisa a dinâmica das relações através de uma análise da cobertura da mídia sobre a eliminação dos limites que controlam as escolas charter em Nova York. O estudo também inclui entrevistas com cerca de 30 especialistas com diferentes perspectivas sobre as escolas charter e com uma grande variedade de experiências profissionais. O caso de Nova York sugere essencialmente que a criação de sindicatos poderosos e um efetivo modelo de escola charter depende dos dois lados encontrar um terreno comum.

Palavras-chave: escolas charter, os sindicatos de professores; política; políticas de educação.

Introduction²

Where there are charter schools, there is union opposition. This is at least what we have come to expect from the politics of charter schooling, particularly in urban districts with strong teachers unions. Despite the fact that charter schools have become an established part of the ecology of public schooling in many urban districts, that many charter schools *have* unionized faculties and that unions vary in their approach to charter schooling, the public narrative generally frames teachers unions and the charter movement as mistrustful opponents locked in an unresolved impasse. While this narrative on union-charter relations remains overly-simplistic, the scholarly

² The autor is grateful to Paul T. Hill, director of the Center on Reinventing Public Education (CRPE) at the University of Washington’s Daniel J. Evans School of Public Affairs, and to Robin Lake, associate director of CRPE and executive director of CRPE’s National Charter School Research Project, for sponsoring the initial project and for their astute and patient guidance along the way; to Jeff Henig for his helpful feedback on the initial report; to James Harvey, Deb Britt, and Julie Angeley for help with the report; to Alison Gash of UC-Berkeley for her thorough research assistance; to the *EPA*A reviewers and to editor Sherman Dorn for their very useful feedback on this piece. I am grateful, too, to all of the district, charter, and union leaders and policy experts in New York and around the country who took the time to share their insights and experiences with me. They were extremely generous in allowing me to include their words and ideas here. Finally, for his intellectual and political courage and his friendship, I am forever indebted to Eric Rofes, who brought me into this project. His bold and creative voice, on school choice and a wide range of social justice issues, is greatly missed.

literature on the relationship between charters and unions is almost non-existent. There is almost no academic literature to ground or to help us understand the complicated relationship between teachers unions and charter schooling.

In this piece, I examine the teachers union-charter relationship through a recent case of active and sometimes bitter charter politics: the fight to lift the charter cap in New York state in 2006 and 2007. To study New York caps politics, I began by collecting and analyzing local and national media coverage, both partisan and relatively neutral. From media accounts, I developed a list of experts and participants in the caps debate from a wide range of professional backgrounds and with varied views on charter schooling. The list included district and charter leaders in New York and nationally; teachers union leaders from across the state, including the largest urban districts in the state; nonprofit professionals; and charter school analysts from across the country. I contacted the people on this list and requested an in-person interview or, in some cases, a phone interview when an in-person meeting was not logistically possible. I generally had a positive response from both charter supporters and charter skeptics. In the end, I interviewed nearly 30 experts—some multiple times—from March of 2006 to April of 2007, during the most active period of the caps fight. I asked a range of open-ended questions about my participants' professional backgrounds, their experience with charter schools and charter politics, their analysis of the politics of charter caps in New York and the role of the caps debate in broader charter politics, and their reading of the political landscape with respect to charter schooling in New York state and nationally.

The charter school caps fight in New York is an instructive place to examine the teachers union-charter relationship for a number of reasons. First, the politics of charter schooling in New York has been particularly active in the past few years, and the state union and some local teachers unions have played a significant role in these politics. Also, New York has had a highly-visible, partisan charter debate. At the time of the most active caps debate, New York had an outgoing Republican governor with broader political ambitions, a steadfast champion of charter schools who failed to lift the cap during his tenure. He was joined by a powerful Republican mayor of the largest city in the country who also plays to a national audience and who enthusiastically supports charter schools. Republican Governor George E. Pataki was followed by an aggressive, incoming Democratic governor with a wide mandate and political ambitions of his own, who was able to work with key sources of Democratic resistance in the state legislature to lift the cap within his first few months in office. In addition, New York has a small core of influential state legislators and a number of large urban school districts—and their elected or appointed leaders—with widely varying views of charter schools. Finally, New York has a forceful teachers union at the state level. The largest local teachers union in the state is New York City's United Federation of Teachers (UFT), which also is in the unusual position of being in the charter business. It runs two charter schools of its own in New York City and now partners with a charter management organization on a third New York school. Thus, the teachers union-charter movement relationships in New York have been both contentious and politically complicated.

I begin this piece with a discussion of the general history of teachers union-charter relations. I then briefly introduce the politics of caps nationally. This is followed by a discussion of the New York caps example. I then examine the specific dynamics of the conflict between the charter movement and the teachers unions in New York state with respect to charter caps. I conclude with some lessons on the union-charter relationship that we can draw from the New York case. The example of New York charter caps politics generally fits the typical narrative about the polarized nature of union-charter relations. For the most part, in New York the teachers unions and leaders in the state's charter movement were mistrustful of each others' motives and tactics, used strong rhetoric to engage with each other, and viewed each other as opponents with widely varied agendas

rather than as potential allies with common interests. Yet as I argue in the last section of the piece, because the New York case actually provides a complex picture of the role of both charter leaders and unions in the charter movement, it provides some important lessons for how both sides could begin to move forward, beyond the intractable impasse. This cooperation is necessary for both unions and the charter movement if both hope to remain vibrant and relevant actors in today's school reform efforts.

Teachers, Unions, and Charter Schooling

Charter schools are no longer a new phenomenon in most states. From their 1991 beginnings in Minnesota, charter schools quickly have become a national reform. There are now charter school laws in 39 states and the District of Columbia, with more than 4,900 schools across the country (National Alliance for Public Charter Schools, 2009). During the 2008–2009 school year, the more than 1.4 million students in charter schools represented just under 3% of the nation's public school students (National Alliance for Public Charter Schools, n.d.).

Charter schools began at the initiative of a national teachers union, the American Federation of Teachers (AFT). Its president, legendary union leader Albert Shanker, gave a speech at the National Press Club in 1988 in which he outlined a proposal for “chartered schools.” Drawing on an idea by educator Ray Budde (Negri, 2005), Shanker (1988) proposed that teachers and parents partner in a “bottom-up approach to reform” (p. 9) to build new, small, independent public schools of choice, and he threw the weight of the AFT behind his proposal (on Shanker and charter schools, also see Bulman & Kirp, 1999; Kahlenberg, 2007).

However, as charter schooling grew rapidly from Minnesota to California and beyond, Shanker's support wavered (Kahlenberg, 2008). Jonathan Gyurko (2008), who directed the Office of Charter Schools in New York City's Department of Education and then joined the staff of the New York City teachers union to work on charter school development, writes that the charter reform “quickly diverged from [Shanker's] original vision” (p. 8). The choice reform grew out of the first law in the country, in Minnesota, which deemed charter schools “exempt from pre-existing collective bargaining agreements” (p. 9). It also expanded with the involvement of conservative market-based reformers and for-profit companies.

Shanker, in the “Where We Stand” column that he wrote as a paid advertisement in the *New York Times*, wrote of his concern that charter schools had proliferated without a coherent and organized set of educational goals, and that this was a “recipe for chaos” (1994b, p. E7). For him, school autonomy was “no guarantee of educational excellence or indeed of permanent change” (1994b, p. E7), especially in the absence of some agreement about educational goals and standards (1994a). He (1994b) argued that charter schools *could* flourish but only under a system in which educational goals, assessments, and incentives were clear.

Shanker's skepticism was shared by most local and state teachers unions (Gyurko, 2008). Union leaders and supporters worried that charter proponents were engaged in a number of problematic practices: destroying public education by siphoning financial and human capital from district schools; undermining teachers unions and teacher professionalism through the creation of schools with challenging work conditions, at-will employment, and no collective bargaining mechanism; and selling out students through the development of charter schools by for-profit companies (Bradley, 2000; Keller, 2002; Rainey, Rotherham, & Hill, 2006; Robelen, 2006a; Vergari, 2007). Some also worried that the charter movement was a way to “advance a right-wing political agenda” through public education (Hill, Rainey & Rotherham, 2006, p. 6).

Now, almost two decades into the charter movement, few union leaders are willing to say that they completely oppose charter schooling (Robelen, 2006b), perhaps because they do not want to be seen as anti-reform in the face of incontrovertibly sub-standard public schooling in many areas of the country, particularly urban centers. Both national unions, the AFT and the National Education Association (NEA), have public statements that support charter schools under certain conditions (AFT, 1996; n.d.; Keller, 2002; NEA, 2001). As Nancy Van Meter, a Deputy Director for the AFT, said in an interview with me, “We’ve long supported charters that are done the right way: open to all, accountable, committed to helping all public schools improve, respectful of the right of staff to form a union. That was Al Shanker’s vision, and we’re working to realize it.” But, in fact, many unions *do* oppose many charter school policies and practices.

Teachers union resistance to charter schools is often very local. For example, local unions sometimes work to block the approval of charter applications in their districts and make arguments about the very immediate impact of charter schooling on local district schools. But, sometimes union opposition is quite national and quite high-profile, as was the case when the AFT released a report in 2004 arguing that student achievement in charter schools did not measure up to that of traditional public schools. The national union analyzed data from the 2003 nationally-administered National Assessment of Educational Progress (NAEP) test to produce a broad national comparison of charter school and district school students. The AFT analysis found that charter school students tended to score about a half-grade level of schooling behind district students on fourth and eighth grade math tests and fourth grade reading tests (Nelson, Rosenberg, & Van Meter, 2004). These findings earned the lead article in the *New York Times* on August 17, 2004. The story began: “The first national comparison of test scores among children in charter schools and regular public schools shows charter school students often doing worse than comparable students in regular public schools” (Schemo, 2004, p. A1). The AFT report also garnered swift reaction from charter advocates. The critical and prolific response took issue with the union’s methodology and its politics (see Viadero, 2004; for accounts and analyses of the controversy surrounding this study, see Carnoy, Jacobsen, Mishel, & Rothstein, 2005; Henig, 2008).

Teachers unions may have some serious misgivings about charter schooling. But charter school leaders and supporters are, for their part, sometimes quite anti-union (Malin & Kerchner, 2007). Charter school advocates often place a large burden of the blame for the failures of public education on ostensibly obstinate unions, often viewing teachers unions as substantial barriers to school reform. Some charter leaders paint unions as selfishly guarding the interests of teachers at the expense of student interest, achievement, and well-being. For instance, *Education Week* reported that Marx D. Kenen, executive director of the Massachusetts Charter Public School Association, asserted that “union contracts are focused on putting teachers first instead of students, and that is the complete opposite to the philosophy of charter schools” (Robelen, 2006b, p. 26). Extending this critique, outspoken New York City charter leader, and former chair of the New York City Council’s Education Committee, Eva Moskowitz, wrote that union contracts constrain the kind of freedom that is the defining feature of the charter mechanism, and that this constraint runs against students’ interests: “one of the most striking phenomena I have observed is the education industry’s ability to preclude any dramatic improvement in the schools. It is a monopolistic structure in which management and labor have colluded for the better part of four decades to protect the interests of adults over those of children” (Moskowitz, 2006, p. 24; also see Fuller & Mitchell, 2006; Horowitz, 2009). In a recent piece in the *Wall Street Journal*, school choice supporter and researcher Jay P. Greene (2009) wrote, “Unions may say they support charter schools, but they only support charters after they have stripped them of everything that makes charters different from district schools” (p. A15).

In sum, the relationship between teachers unions and the charter school movement is strained, characterized by “lack of trust” (Rotherham 2008a, p. 4) and an unwillingness on both sides to acknowledge the legitimate interests and concerns of the other (Rainey, Rotherham, & Hill, 2006, p. 28). The initial impetus for the charter reform came from Shanker, a consummate symbol of staunch unionism. But charter school policies and practices quickly developed in a way that was neither driven by unions nor supported by them (Vergari, 2007). The past 19 years largely have been characterized by a polarized and contentious relationship between unions and charters.

Recently, though, there has been *some* movement, on both sides, towards a different kind of relationship. First, some union reformers have expressed interest in returning to Shanker’s initial vision of charter schooling: the active involvement of teachers in building small, alternative schools that would be effective for students and fulfilling, healthy workplaces for teachers. Second, charters have proven to be a reform with some staying power, and unions have begun to adjust to this. As charter scholar Sandra Vergari (2007) writes, there may be “a few hints of an ‘if you can’t beat ‘em, join ‘em’ approach to charter schools on the part of the unions” (p. 28). Conveners of a 2006 symposium that brought together charter and union leaders echoed this:

Even the most vociferous union foe of charter schools no longer thinks that charter schools are an ephemeral educational fad that will soon disappear. At the same time, the naïve hopes of some early charter advocates that the unions could be broken or placated to make way for charter schools have also faded. The two sides are no longer battling over either the charter school movement’s or the unions’ right to exist. Today, the battle is primarily waged over how best to co-exist—and with that fledgling recognition, the two longtime adversaries have begun to explore some small-scale efforts at accommodation. (Rainey, Rotherham, & Hill, 2006, pp. 25–26)

While they found that there was much work to be done to build trust and develop a sense of common purpose,³ symposium conveners believed there was both will and some common ground from which to build better union-charter relationships. There were a few initial signs of this early in the movement. For example, in 1996 the NEA started a four-year program to found five charter schools, which ended after the development of four schools (Keller, 2002; Vergari, 2007, pp. 28–29). These union efforts now appear to be growing and gaining traction. In a 2006 story in *Education Week*, AFT President Edward J. McElroy noted increased interest on the part of AFT locals to working with charter school staffs: “Charter schools are becoming an integral part of the K-12 landscape... I think it’s important for the union to be there” (quoted in Robelen, 2006b, p. 1).

There are also now a number of charter schools with unionized staffs throughout the country, and this number is increasing (Dillon, 2009a; Russo, 2010). State laws vary significantly with respect to charter school teacher unions and collective bargaining agreements (Malin & Kerchner, 2007; Malloy & Wohlstetter, 2003; Price, 2010). A January 2010 report found,

³ Symposium organizers found diversity of opinion among both charter and union leadership, but concluded that “participants on both sides generally adopted a hard line” (Rainey, Rotherham, & Hill, 2006, p. 29). They summarized the relationship as follows: “1. Charter school and teachers union leaders are deeply divided by the metaphors they use and by their institutional histories. 2. Each side assumes that the other is defined by the views of its most extreme members. 3. Leaders on both sides agree on many attributes of a good school. 4. Each side thinks the other insists on something that interferes with quality teaching. 5. The two sides’ disagreements are exacerbated by conflicting beliefs about questions of fact that could be resolved empirically. 6. A gap exists in beliefs and values between the most flexible members of both sides, but it is much smaller than the gap between the extremes and could be narrowed further by reasonable steps that both could take” (Hill, Rainey & Rotherham, 2006, pp. 2–3).

Nineteen states currently require some or all public charter schools to be bound by the district collective bargaining agreements or personnel policies. Eight states consider all charter schools to be bound by district collective bargaining agreements. Eleven states require that only certain types of charter schools—typically conversion schools or district-authorized schools—remain bound by the local district’s collective bargaining agreement. The vast majority of unionized charter schools are of these types. (Price, 2010, p. 41)

Many of the charter schools with organized teachers are “conversion” schools, existing public schools that became charters and either by choice or by law maintained their affiliation with local unions (Robelen, 2006b). Even when the law does not require a relationship between charters and teachers unions, teachers generally have the right to unionize (Price, 2010, p. 42), and locals are beginning to look more closely at whether the charter mechanism can provide a way for them to build their own schools, and teachers in some start-up charter schools have worked with unions to form their own collective bargaining units. In recent years, for example, unions in Illinois, Oregon, Pennsylvania, Florida, California, Massachusetts, and Colorado have reached out to or partnered with charter school teachers, leaders, and management organizations (Dillon, 2009a; Keller, 2002; Meyer, 2008; Rainey, Rotherham, & Hill, 2006; Robelen, 2006b). As of October 2009, according to Van Meter of the AFT, the national union “represents teachers and staff in 80 charter schools in 13 states” (N. Van Meter, personal communication, October 15, 2009), and the AFT now organizes an Alliance of Charter Teachers and Staff (ACTS).

Most recently, charter-union relations made national headlines when they involved the high-profile, largely-successful Knowledge is Power Program (KIPP). Teachers at KIPP AMP, a Brooklyn middle school, organized and sought to affiliate with the UFT. Virtually at the same time, teachers at two other New York KIPP schools explicitly sought to sever their nominal ties to the New York union.⁴ Teachers at these two schools, KIPP Academy and KIPP Infinity, wrote in a March 2009 statement: “It is our belief that the active presence of an external negotiating representative could compromise the strong environment of communication and collaboration that is integral to the success of our schools” (quoted in Green, 2009, para. 9). In April of 2009, the *New York Times* featured a teacher at KIPP AMP who had initially helped to organize her colleagues but who had grown quite critical of the UFT and the prospect of unionization at her school (Medina, 2009). Andrew J. Rotherham, the prolific writer of the popular blog Eduwonk, observed of these developments that “it looks like it’s now going to be total war around these schools and this issue for a while” (2009, para. 2).

While union-charter clashes make national headlines, there is almost no scholarship to help us understand or contextualize the relationship between teachers unions and charter schooling. There is virtually nothing in the academic literature on the politics of charters and unions. A 2007 piece by Martin H. Malin and Charles T. Kerchner explores the legal and policy possibilities for the development of collective bargaining agreements in charter schools, while a 2004 report by Robert Fox and Nina K. Buchanan examines collective bargaining law and politics and charter schooling in Hawai’i. Very useful reports by the University of Washington’s National Charter School Research Project also examine and analyze charter-union relations (Hill, Rainey, & Rotherham, 2006; Rainey, Rotherham, & Hill, 2006). Relatedly, a chapter in Amy Stuart Wells’ 2002 edited *Where Charter*

⁴ According to Elizabeth Green (2009), “KIPP Academy is represented by the union only because it was one of the city’s original charter schools, and it could only transition to charter status on the condition that it remained represented by the teachers union, and KIPP Infinity teachers are represented by the union only in order to get health benefits through the union’s services” (para. 2)

School Policy Fails examines teachers' attitudes towards their profession, including their view of unions. Through a study of teachers in 17 charter schools in California, Ash Vasudeva and Cynthia Grutzik (2002) found that teachers in start-up charter schools often did not see unions as necessary (or useful) to protecting their interests, while many teachers in conversion charter schools retained and valued their union memberships. Finding, therefore, a mixed reaction to unions among teachers, they concluded: "in many instances, charter schools and teachers unions were not necessarily incompatible. This finding cuts against the grain of much of the literature on charter schools, which typically portrays unions as steadfast and universal opponents of charter school reform" (Vasudeva & Grutzik, 2002, p. 170).

Most of the existing relevant scholarship in the area does not focus directly on teachers unions. Rather, it focuses on the related issue of the working conditions of charter school teachers and some characteristics of teachers who choose to work in these schools. Little is known even in these broad areas (Malloy & Wohlstetter, 2003; Rainey, Rotherham, & Hill, 2006; Viadero, 2009). There is, however, a small literature that provides descriptive data on charter school teachers, comparing them to their colleagues in traditional public schools. This research generally finds that charter school teachers are younger than their district counterparts and have less teaching experience (e.g., Miron & Applegate, 2007). A study of Michigan teachers also found that charter teachers are less frequently certified, are graduates of less selective colleges, and are not as likely to have master's degrees as their district colleagues (Harris & Plank, 2003). Analyzing federal data, Stanford University economist and school choice proponent Caroline M. Hoxby found, in 2001, that charter teachers are less likely to be certified and to have master's degrees but are more likely to have graduated from top-ranked colleges than their district peers (Viadero, 2009).

As for the working conditions in charter schools, scholarship finds that charter teachers are generally paid less, work longer hours, are not covered by collective bargaining agreements, and have higher rates of attrition (Miron & Applegate, 2007; also see Harris & Plank, 2003; Malin & Kerchner, 2007; Malloy & Wohlstetter, 2003). One study of 40 teachers in four California charter schools found, however, that many charter school teachers did feel a greater sense of autonomy in their work, though this was not true across the board (Gawlik, 2007). Another study of 40 teachers in six Los Angeles-area charter schools found that charter teachers felt a relative sense of autonomy and were attracted to their work by their schools' mission and by the opportunity to work with "like-minded colleagues who were both qualified and dedicated" (Malloy & Wohlstetter, 2003, p. 234). Generally, charter teachers seem satisfied with their jobs, but "school autonomy has not been used to improve the classic bread-and-butter teacher issues such as wages, benefits, and workload" (Malloy & Wohlstetter, 2003, p. 236).

This research suggests, then, that teachers in charter schools may be committed to their schools and to their relationships with colleagues. But, they may still want or need the professional benefits that unions could provide. This is useful, in that it tells us something about who charter school teachers are and what their professional values and concerns might be. But, this literature and the few pieces of scholarship that directly address union-charter relations tell us next to nothing about the specific dynamics of union-charter politics nationally or locally. They provide no understanding of why or how, specifically, union and charter leaders and supporters clash over this choice reform.

Charter School Caps

Charter schools caps—the limit on the number of charter schools or charter school students allowed in any particular district, region, or state—is an issue of particular interest to both charter

leaders and labor supporters. This issue has gained considerable attention recently, especially in states where caps are being reached and charter growth is threatened or has stalled. Nationally, President Barack Obama, a strong charter supporter, has drawn increased attention to charter caps. He has urged cap lifts in states that have caps in place (Barrett, 2009; also see “Ending the ‘race to the bottom,’” 2009), and he has tied state support of charter school growth to the carrot of federal stimulus money through the Race to the Top program (Dillon, 2009b). Because some states face active charter caps battles now, the politics of caps is a current and rich place to examine the relationship between charter schooling and teachers unions.

Caps are one way in which states have sought to slow or limit the growth of charter schooling. They are not the only mechanism for this. Some states, like Rhode Island, have placed moratoria on charter schools. Other states have limited charter schools before they have even begun. In Washington state, for example, voters nullified a charter school bill passed by the legislature. Still other states have *de facto* caps, according to charter supporter and researcher Rotherham, who is the co-founder and former co-director of education think tank Education Sector.⁵ *De facto* caps are mechanisms to limit charter school growth without a formal statutory cap, such as the designation of only one kind of charter authorizer (e.g., local school boards) in a state.

Charter school caps have been widespread in state legislation. They initially served to check the growth of an untested reform. According to Todd Ziebarth, vice president for policy of the National Alliance for Public Charter Schools and the author of two reports on charter caps, “almost every state that passed a charter law initially had a cap. There was a decent policy reason for a cap. You could make a legitimate case in the mid- even the late-’90s that charters are a new, untested thing. Let’s allow some and see how they work.” In some states, as charter schools became an established feature of education reform and seemed to perform fairly well, legislators either removed caps or raised them significantly. In many other states, caps have remained. In 2007, 25 states and the District of Columbia still had charter school caps (Rotherham, 2007; Ziebarth, 2007). That number has shrunk slightly—to 23 states plus Washington, D.C. (The National Alliance for Public Charter Schools, n.d.)—since President Obama began urging the end to these charter limits (Dillon, 2010).

State cap laws vary significantly. A January 2006 National Alliance for Public Charter Schools report identifies five kinds of caps (Ziebarth, 2006). As of the writing of that 2006 report, 16 states (for example, New York) had a blunt cap that limits the absolute number of charters in the state or that specifies the total number that can operate in particular parts of the state (for example, Illinois). Seven states, such as New Mexico, employed a different kind of cap: a limit on the number of new charter schools that can open in any given year. Eleven states, including Michigan, had a third kind of cap, which limits the number of charter schools that specific authorizers (for example, universities) may approve. The fourth kind of cap was evident in four states (for example, Connecticut): it limits the percentage of students in charter schools per district or in the state as a whole, or the number of students who enroll in specific schools. There were also a number of “miscellaneous limits” placed on charter schools, including a cap on the percentage of district spending that can go to charter schools (Massachusetts) and a limit on where in the state charter schools can operate (Missouri and Oklahoma). To limit charter growth, many states combine the five strategies. According to the National Alliance for Public Charter Schools’ follow-up report in early 2007, there were nine states for which these various caps were “severely constraining growth” of charter schooling (Ziebarth, 2007, p. 1).

⁵ Unless otherwise noted, quotations come from interviews with the author.

New York Caps Policy and Politics

Charters Come to New York

New York state government created its initial charter school law in December 1998. The law was hard-won, depending on a political deal between the state's top lawmakers. Republican Governor Pataki, a charter supporter, had been looking in vain for years for a way to strike a deal on charters with the state legislature, made up of the Republican-controlled State Senate (which was, until his July 2008 resignation, under the leadership of upstate Senator Joseph L. Bruno) and the Democrat-controlled State Assembly (led by Sheldon Silver of Manhattan). To sway skeptical legislators, Pataki found his leverage in a legislative pay-raise provision supported in both houses and by members of both parties. Threatening to veto the pay raise unless given something in return, Pataki spent weeks wrangling with the state's lawmakers over the charter school bill. Finally, the governor agreed to the first legislative pay raise in ten years. In exchange, in the very early morning of December 18, 1998, legislators delivered a version of the governor's charter law (Dicker & Birnbaum, 1998).

Silver, the Democratic assembly speaker, and Bruno, the former Republican senate majority leader, have both been lukewarm, at best, on charters. While Bruno's Senate had an easier time supporting Pataki's charter agenda, many lawmakers from both political parties have worried about the financial and educational impact of charter schooling on smaller urban districts in the state, including Buffalo and Albany. There have been some exceptions to this charter opposition. African American and Latino Democrats from New York City generally have been more supportive of charter schools, often in a very outspoken way. Many charter supporters mentioned in interviews with me that they had long-standing allies in two high-profile African American legislators: David Paterson, a state senator from Harlem who became the senate minority leader in 2002, the first African American lieutenant governor of New York, then the state's first African American governor in the spring of 2008; and Malcolm Smith, a state senator from Queens, who replaced Paterson as the senate minority leader and then became the majority leader when the Democrats narrowly won a majority in the Senate in the 2008 elections (though this position was lost in a chaotic partisan power struggle in the Senate in the summer of 2009, and Smith became the Senate president) (also see McManus, 1999).

With a divided legislature, the 1998 charter law was a compromise. While it allowed for an unlimited number of conversion schools, it placed a cap on the number of new start-up charters in the state, allowing for only 100 of these schools statewide. It also limited the number of authorizers in the state to two: the gubernatorially-appointed Charter Schools Institute of the State University of New York (SUNY) and the New York Board of Regents, the body that oversees all education in the state.⁶ Whereas charter supporters typically prefer to launch charters without teachers unions, the charter bill signed by Pataki also provided that charter schools opening with more than 250 students in their first year would be required to have unionized teachers, with the exception of 10 exemptions from one of the charter authorizers.

Most of New York's charter schools are in the state's urban districts, like New York City, Albany, Buffalo, Syracuse, and Rochester. While some districts, like Albany, have had a very contentious relationship with their charters, the state's largest district, New York City, has embraced charter schooling as part of Republican Mayor Michael R. Bloomberg's broad school reform agenda. In fact, the Mayor has said that he would like New York City to be "the most charter-friendly city in

⁶ The New York City schools Chancellor can also approve charter applications, but these applications must be approved by the Board of Regents as well.

all of America” (quoted in Gootman, 2008, p. B2). During the 2008–2009 school year, New York City had approximately 24,000 students in 78 charter schools; approximately 20 additional schools were slated to open in the city in the fall of 2009 (New York City Charter School Center, n.d).

Chapter Caps in New York

The cap of 100 new charter schools was part of the political compromise between Governor Pataki and the state legislature. As New York neared its charter limit, the fight to raise or remove this initial cap became a dominant feature of the state’s charter school politics. By 2004, charter proponents turned their attention to lifting the cap. By the fall of 2005, there were approximately 15 charters left to be assigned, and cap discussions grew more urgent. By January 2006, New York had reached its cap and could no longer issue charters to new applicants. At this point, there were 79 functioning charter schools in the state, serving approximately 22,000 students (Gershman, 2006). (Of the remaining charters, most were authorized but not yet functioning. A few had opened and closed but still retained a charter that was counted against the cap of 100).

With the chartering of new schools at a standstill, in his final State of the State address in January 2006, Governor Pataki called for “dramatically expanding charter schools throughout the entire state” (para. 138). In the winter of 2006, as part of his budget package, the governor proposed to raise the cap to 250 schools. His proposal included special provisions for New York City, which, under the leadership of Mayor Bloomberg and his School Chancellor Joel I. Klein, strongly supported charter schooling. Under Pataki’s plan, New York City charter schools would not have counted against the cap, and the city’s Department of Education would have become its own charter authorizer, with 50 schools of its own to approve (Medina, 2006a).

The legislature rejected the governor’s plan. But, in the spring of 2006, Pataki and lawmakers indicated their willingness to bargain on the cap. Again, the issue on the table was a pay hike for state legislators, who had not had a raise since the 1998 deal that created the initial charter school law. Some close to the legislative process believed that a pay raise was the only trade that Pataki could offer that might move the legislature to lift the cap, though legislators had little to say about whether this was, in fact, the case.

Once begun, cap lift negotiations during the spring were feverish, and the politics were, at times, rough. For instance, in May 2006, a group called Parents for Public Charter Schools aired hard-hitting ads aimed at charter opponents in the New York State Assembly. Radio listeners in cities around the state heard a mother of two charter school students criticize Assemblyman Ron Canestrari, a Democrat from Albany. “Not everyone can afford to send their children to private schools like the one he attended,” she said. “That’s why options like public charter schools are so important to moms like me. Which public school my child attends is my decision, not some politician’s.” The ad ended with the woman urging other parents to call Assemblyman Canestrari and tell him “We don’t need him to place a cap on our children’s future.” Television viewers saw a series of similar ads, all featuring women of color. One ad urged viewers to appeal to Assemblywoman Susan John, an anti-charter Democrat from Rochester. It ended with an adorable African American girl with a forlorn look, pleading: “Don’t cap my future.”⁷ The ads gained notoriety across the state, earning significant press attention, infuriating charter opponents, and dividing New York’s charter advocates. The *New York Times* reported that Speaker Silver “told several members that they would not talk about the issue until the ads went off the air.” A charter supporter in the Assembly, Brooklyn Democrat Darryl C. Towns, said of the ads: “There are so many ill feelings around the issue that it makes it impossible to have a conversation around the

⁷ Ads are available at Parents for Public Charter Schools’ website, <http://www.parentsforpubliccharterschools.org>.

merits.... We were really feeling good about convincing other members, but that seems a long way off for now” (quoted in Medina, 2006b, p. B5).

In the wake of these controversial ads, before its summer recess in June 2006, the legislature failed to pass Pataki’s charter provision. By the end of the term, in a special session in December, lawmakers again considered the cap lift but rejected it. Pataki, ultimately, failed to lift the cap before he left office.

When Pataki’s successor, Democrat Eliot Spitzer, was elected in November 2006, charter school supporters believed he wanted to work with them to raise the cap and that he was sincere in his support for charter schools. Elected by a wide margin, Spitzer used his mandate to introduce a series of bold reforms within the first month of his term. Education was a top priority. In his State of the State address on January 3, 2007, Spitzer called for “a vibrant education system that demands accountability and rewards excellence.” This system, he urged, should include raising the charter school cap, to allow New York to “continuously experiment with new approaches” (Spitzer, 2007a, pp. 19, 11). By the end of his first month in office, Governor Spitzer had proposed a list of sweeping education reforms. As part of these reforms, Spitzer unequivocally stated his support for more charter schools: “I will strongly push for raising the current cap on charter schools” (Spitzer, 2007b, para. 40). This position elicited, according to the *New York Times*, “an audible gasp and some boos from an audience of professional educators and Education Department staff members” (Herszenhorn & Hakim, 2007, p. B7).

Some national experts believed that Spitzer had a better chance at lifting the cap than his predecessor, given New York’s partisan divisions on charters. Ziebarth, of the National Alliance for Public Charter Schools, said in an interview, “People have had different reactions to Democratic control now. I think it creates an opportunity. Someone like Spitzer... might be able to break the political logjam.” That assessment proved accurate. Just three months after he took office, on the morning of Sunday, April 1, 2007, Spitzer accomplished a cap lift. Following lengthy closed-door negotiations between the governor and the legislative leadership, lawmakers approved a version of the state budget that included a charter cap lift—this time, without much discussion of a legislative pay hike as *quid pro quo*. The compromise measure doubled the number of start-up charter schools allowed in the state, to 200. Fifty of these new schools would be in New York City. The new law also required that new schools with more than 250 students in their first *two* years of operation must unionize all staff. The law did not, however, contain some items considered much more problematic by charter proponents in the state, such as cuts to charter school funding and the elimination of SUNY as one of the state’s authorizers (see Gershman, 2007b; New York Charter Schools Association, 2007; New York City Center for Charter School Excellence, 2007).

New York Teachers Unions and the Charter Cap

New York Unions’ Positions on Charters

The local teachers unions across New York vary in their approach to charter schooling. Some locals such as the Albany Public School Teachers Association have been indisputably opposed to charter schooling and have believed strongly in maintaining the cap. On the other hand, some union leaders have supported the charter mechanism when they believe it works well for both teachers and students. For instance, the Rochester Teachers Association under the leadership of Adam Urbanski historically has been more open to charters. The state’s largest local union, New York City’s UFT, sponsors two charter schools of its own and partners with Green Dot, a charter management organization discussed below, on a third. There are also, according to the state teachers union, “about a dozen” start-up charter school staffs in the state that have organized as their own

autonomous locals and have affiliated with the state union (Saunders, 2007, para. 1). By law, as well, conversion charter schools—of which there are very few in the state—are members of their districts' unions.⁸

The state union, New York State United Teachers (NYSUT), an AFT affiliate that autonomous locals across the state can choose to join, opposed Pataki's 1998 charter law (Riede, 1998). It then developed a policy on charter schools in 1999 that does not explicitly oppose charter schools. The policy, however, does express "reservations" and "concerns" about the New York charter law and its impact on public schooling in the state (NYSUT, 1999). In 2003, NYSUT supported a moratorium on the approval of new charter schools in New York state, arguing that their fiscal impact on struggling districts was too great. Calling charter schools "an education experiment with disappointing results," NYSUT's then-President, Thomas Y. Hobart, Jr. claimed, "Charter schools are a luxury we can no longer afford" (NYSUT, 2003, para. 2).

In the past couple of years, particularly since Spitzer's election, NYSUT has taken an even stronger and more aggressive stance against charter schools and the cap lift. In December 2006, when Pataki was actively working to lift the cap before he left office, NYSUT published a report on charter performance to coincide with the state legislature's last special session before the end of the governor's administration. This report, entitled *Broken Promise: How the Charter School Experiment Is Falling Short*, compared charter school performance with performance of similar district schools and found that charter schools did not measure up. The president of NYSUT, Richard C. Iannuzzi, concluded: "This mediocrity has exacted a high price. Charter schools are draining precious resources from school districts, triggering tax increases and devastating program cuts that disproportionately hurt poor students and children of color" (Iannuzzi, 2006, p. 1). Stepping up its efforts even further, during state budget negotiations in March 2007, NYSUT launched an Albany-based advertising campaign against Spitzer's cap lift proposal (Gershman, 2007a). A March 7, 2007, editorial by Iannuzzi criticized Spitzer for his charter school plan, calling charter schooling "a failed experiment." Iannuzzi (2007) wrote: "Charter enrollment and district expenses should be capped to protect taxpayers from having to fund two parallel school systems—one accountable and one not" (para. 6).

The UFT

While the state union has been vocally anti-charter, its largest affiliate, the UFT in New York City, has a more complicated relationship to charter schooling. Under (now former) UFT president Randi Weingarten's leadership, the union began seriously to explore the possibility of founding its own charter schools in 2004. In September of 2005, it opened the UFT Elementary Charter School, with 150 kindergarteners and first graders. The UFT Secondary Charter School opened a year later, with 125 sixth graders (Gyrko, 2008). The Brooklyn schools will expand to serve more than one thousand students in kindergarten through twelfth grade.

Weingarten, who is now president of the national AFT, and others at the UFT envisioned that their schools would mark a return to Shanker's initial vision of charter schooling: schools in which teachers as professionals are centrally involved in governance and decision-making (Gyrko, 2008; Kahlenberg, 2008). Weingarten noted in a speech in March 2008 that the UFT "opened our own charter schools to demonstrate that charter schools could be used to improve teaching and

⁸ According to Peter Murphy of the New York Charter Schools Association, there have been only a very small number of conversion charter schools in the state, though the law allows for an unlimited number of these schools. In an e-mail to me in April 2007, Murphy said that there were then six conversion charter schools in operation, two others that had been granted charters but had returned their charters, and one that had opened but was closed after just a year or two of operation.

learning by valuing teachers' professionalism, and not to union-bust as so many charters are" (para. 6). In the UFT's schools, the teachers are organized, but not as part of an autonomous local. Rather, the schools work "within the terms of the collective bargaining agreement between the UFT and the City of New York" (Gyurko, 2008, p. 22). This unusual marriage between charter schooling and the teachers union is being watched very closely by both charter and union leaders and supporters (Gyurko, 2008; Robelen, 2006a; Vergari, 2007).

New York City's UFT has played an important role in complicating the state union's position on charters, helping to soften NYSUT's initial anti-charter stance. In an interview with me, special project coordinator for NYSUT Robert A. Carillo described his organization's current policy as an attempt to balance the very anti-charter view of many suburban districts in the state with the UFT's involvement in charter schooling and the initial openness to charters of some other cities in the state, like Rochester and Syracuse.

Yet while Weingarten has supported the charter concept as potentially empowering to both teachers and communities, she took an agnostic public position on the cap. During the active caps fight in 2006 and 2007, she indicated that she was willing to support a cap lift for New York City alone, in exchange for additional labor and organizing protections in the charter law (for a more recent reaction to caps, see Weingarten quoted in Barrett, 2009, para. 43). UFT staff members stressed to me that the New York City union would not take a position on caps for the rest of the state. They believed that the city—unlike other districts around the state—has not been negatively impacted by charter school competition. Said Leo Casey, a UFT vice president with responsibility for the union's charter school work:

Randi [Weingarten] offered a bargain around New York City because... we represent New York City educators.... In addition to not presuming to speak for others, we recognize that our position in New York City is quite different from teachers in the upstate communities. As a result of our extraordinary economies of scale in New York City, a truly unique situation in the U.S., let alone New York state, the establishment of charter schools has not had a negative economic effect on the district public schools. That is not the case upstate.

Caps and the New York Unions

While some New York teachers union leaders have been supportive of charter schooling as a reform option, no union official that I spoke with expressed enthusiasm, or even unequivocal support, for lifting the charter cap. During the caps fight in 2006 and 2007, in the media and in interviews with me, union leaders—along with other cap supporters—made a number of arguments for maintaining the cap. These arguments reveal many of the long-standing concerns that teachers unions in general have expressed about charter schooling.

First, New York teachers union leaders argued that charter schools are either an unproven or a failed experiment. Some made the argument that charter schools' academic track record was still largely unknown, and that a cap curbs the pace of change, allowing slow growth of an unproven reform. Others argued that we *do* know enough about charter school performance, and that charter schools have failed to live up to their promise. For instance, the state union's December 2006 report on charter performance included a letter to legislators from Executive Vice President Alan B. Lubin. He urged: "When all the evidence of the report is carefully considered, it's clear that raising the cap on the number of charter schools is unjustified." He concluded: "I ask you to reject an unwarranted expansion of the state's deeply troubled charter school experiment" (NYSUT, 2006, p. 1). Similarly, Bill Ritchie, President of the Albany Public School Teachers Association, claimed in an interview with me, "Charters were supposed to be innovative laboratories for educational change. This

promise has failed to materialize.... The vast majority of them are using instructional approaches which already exist throughout the state.”

Second, in favor of retaining the cap, New York union leaders argued that charter schools harm traditional public schools and that unchecked growth of a “parallel system” of schools will further destabilize embattled districts, leading to a general decline of the already-precarious system of public education. This has been one of the most emphatic arguments in favor of slowing charter growth. Just after the passage of the 1998 charter law, Weingarten said, “The biggest criticism I have is that it diverts funds from our already underfunded public-school system” (quoted in Dicker & Birnbaum, 1998, p. 14). While recently, NYSUT’s president Iannuzzi said in an interview that he conducted with Governor Spitzer: “Our major concern is districts that are saturated with charters that drain the resources of our neediest districts” (“Conversation,” 2007, p. 4).

In New York, this is particularly a concern of upstate locals. For instance, as of 2007, Albany had 18 district schools and eight operating charter schools (with one more slated to open in the fall of 2008). In this debate, the capital city often serves as the prime example of a district that has been ostensibly ravaged by charter schools. For instance, Ritchie, of the Albany teachers union, said in an interview with me that he believes that charters have “financially debilitated the Albany public school system.” He noted,

With the opening of more charter schools, the situation is deteriorating rapidly.... The fundamentally flawed charter legislation is forcing the district and Albany voters, who have no say whatsoever in the expansion of charter schools, to fund two school systems and in effect privatize the already existing public school system. The largest charter school in Albany has been teetering on the edge of closure for several years and more than 600 children have been returned from it and other charter schools to the Albany public school system. This has a sabotaging impact on long-term planning for cities like Albany.

Ritchie continued, “Robbing Peter to pay Paul is a despicable tactic to use in the education of children.” Similarly, Van Meter of the national office of the AFT said in an interview with me, “Albany is a district that’s been extraordinarily hard hit by the growth of a parallel system. What happens is that the district becomes crippled. So, is there room in the debate about lifting caps for a conversation about what you do for a district like Albany, where parents who have *chosen* district schools are being hurt now by charters?”⁹

Relatedly, union leaders who opposed the cap lift argued that charter school backers are, at base, opposed to public education. They, along with other New York charter skeptics and opponents, particularly from the political left, believe that charter school supporters are ideologically opposed to public schooling and smuggle a politically conservative agenda into public schooling through charters (and vouchers). These skeptics believe that lifting the cap encourages the growth of conservative political views and spurs the destruction of public education. As AFT’s Van Meter noted, “You look very closely when funding comes from people who would like to destroy you.” Mentioning the group that supports many of the charters in Albany, Ritchie of the local teachers union said: “Brighter Choice is not interested in coexisting with the Albany public schools. With the assistance of their deep-pocket, neoconservative friends and the Bush regime, they are attempting relentlessly to dismantle the Albany public schools.”

⁹ According to the 2006 New York Board of Regents annual report, Albany was the New York district with the largest fiscal impact of charter schools on local public schools in 2004–2005. That year, Albany spent 10% of its budget on its charter schools. By contrast, the fiscal payment to charter schools in New York City represented just 0.3% of the district’s budget in 2004–2005 (State Education Department, 2006, pp. 6, 22–23).

A fourth argument offered by union supporters in favor of retaining the New York cap was that charter schools undermine systemic change. Urbanski, a nationally recognized labor activist in Rochester who is now the executive director of the AFT's new Innovation Fund, offered a critique along these lines in an interview with me. He believes that people on both sides of charter politics have dug in their heels, taking absolute positions to the detriment of real debate on the issue. He also said that he believes in giving new ideas a chance, and he recognizes that there is significant need for new ideas in urban public schooling. So, when the charter concept first emerged in New York, he strongly supported it. He has changed his mind, though, for two reasons. First, Urbanski believes that charter school performance has not lived up to the promise, and that charter schools are not really outperforming their district counterparts. Second, he worries that charter schools create exceptions, leaving problem systems in place. He argues that charters allow a kind of exit option from traditional public schooling and that "by opting out, we undermine prospects for systemic change." And, he said, "Those that opt out are those that are most likely to be agents of change." In Urbanski's view, "by simply raising the cap on charter schools, you undermine—unwittingly or not—the ability to create systemic change." Charter schools allow a way out for dissatisfied parents, teachers, and administrators, "robbing us of precisely the kind of change agents we need." The creation of more charter schools creates more *exceptions* to the system, more safety valves for dissatisfied parents and educators. It does not spur much-needed systemic change.

Finally, some unionists argued that a cap should be maintained because charter schools are antidemocratic. Charter skeptics and opponents worry that charter schooling is a form of school privatization that takes decision-making out of the hands of citizens and places it in the hands of private boards, individuals, even for-profit companies. Why, in this view, should the state support an expansion of an antidemocratic reform? Another organization that actively opposed the cap lift, the New York State School Boards Association (NYSSBA), represents more than 700 school boards around the state. It has argued that charter schools run without public accountability, calling them an example of "taxation without representation" (NYSSBA, 2006). This concern was echoed by the state teachers union's Carillo, in an interview with me: "When you deal with a charter school, you deal with a public entity where there's no public accountability. The taxpayers, the public is paying for the schools, yet the public has no oversight or approval."

Charter backers responded in a number of ways to these union concerns. Primarily, they argued that charter schools in New York are successful and that maintaining the cap prevents the expansion of an effective public school option, a high-quality alternative for traditionally underserved students. In arguing for the cap lift, the New York Charter Schools Association (2006), the state's primary charter school support organization, claimed,

Charter schools are working for students, with a majority of schools academically outperforming the school district in which they reside on state elementary and middle school exams in English language arts and mathematics. Simply put: there should be more of them. (p. 1)

Many charter proponents believe that charter schools provide a way out of failing district schools. Caps, therefore, deprive students of much-needed public school alternatives.

Charter proponents typically put this choice rationale in equity terms, arguing that placing a cap on charter schools is a thinly-veiled form of elitist policymaking that does a disservice to students in underserved areas, particularly low-income students and students of color. The pro-charter television and radio ads referenced above made an implicit argument of this kind. This kind of argument also was prevalent in public debate in New York. For example, in a *Daily News* piece in support of lifting the cap, columnist Stanley Crouch (2006) wrote,

We should all know by now that the public school system needs to be overhauled, and the changes will not come about as quickly as necessary.... Mayor Bloomberg and Schools Chancellor Joel Klein are serious about bringing New York's public schools out of the darkness. That is why they want the cap removed. It is but one way to address a crisis in which many kids suffer from poor preparation or the intellectual suicide symbolized by dropping out. (p. 37)

In similar language about the life-or-death stakes of schooling, Geoffrey Canada, president and CEO of the well-known community-based organization Harlem Children's Zone (HCZ), which now runs its own charter schools, said of the charter cap, "If the city water system were failing and children were dying of thirst... [w]ould the State limit the number of private relief organizations allowed to save our children? Of course not—and getting a good education can literally save a poor child's life" (Harlem Children Zone, 2006, para. 7).

Relatedly, in an interview with me, education analyst Rotherham made a broader equity argument about charter school caps. He claimed that the existence of charter schools in a district raised parents' expectations about public schooling in general. Drawing an analogy to coffee, he said, "If we capped Starbucks, would we see such a rapid shift in coffee consumption and quality over the last 20 years? Starbucks has changed consumer taste and expectations and quality of coffee. Everyone expects better coffee now." He believes that charter caps "limit people's exposure to charter schools" and keep expectations about public schooling lower than they could be. Therefore, a cap impacts not only the charters in a district or a state and access to these schools, but the potential quality of all public schooling. For those concerned that removing caps allows for the proliferation of untested or unsuccessful school models, Rotherham (2007) argues that caps policies can be created—"smart charter caps" or "quality sensitive caps"—to address quality concerns. For instance, state laws could allow for unlimited charters only for those operators and authorizers that have proven that they can run and oversee high-quality schools (pp. 4–5).

Charter supporters in New York also responded to union concerns with another kind of equity argument, that the existence of the cap limited both human and financial capital resources, dissuading charter operators from seeking out New York as a place to open high-quality charter schools and discouraging funders from supporting the New York charter movement. Garth Harries, who was until recently the chief executive officer of the Office of New Schools and the chief executive for portfolio development in the New York City Department of Education, said with respect to human capital, "There's a lot of educators and educational entrepreneurs out there that would have an interest in coming to New York that are getting frozen out" (quoted in Einhorn, 2006, p. 13). Similarly, Meryll H. Tisch, then a member of the New York State Board of Regents and now the Regents' Chancellor, said, "If getting the cap lifted becomes such a complicated endeavor, I'm worried that a lot of potential donors to the charter school movement might be frightened away, and that would be tragic" (quoted in Gootman, 2006, p. B4).¹⁰

Finally, New York charter supporters responded to union leaders' concern about charter accountability and democratic decision-making with the argument that charters are held to a high standard of accountability that renders caps irrelevant. In their view, this accountability is accomplished by both public policy and the market. Charter school operators have short-term contracts that must be renewed after a certain number of years, and this renewal is contingent upon demonstrated quality. Charter schools can be closed if they are failing to adequately serve their students. Similarly, if charter schools are not serving students well, parents will not send their children to these schools and so there will be no market for them. Dave Levin, cofounder of

¹⁰ The state Board of Regents oversees all public education in New York.

KIPP—a highly successful and high-profile national network of 82 public schools, most of which are charters (KIPP, n.d.)—said in an interview with me, “If the parents don’t want charter schools, then they wouldn’t send their kids to charter schools.” He spoke of “natural caps” tied to limits in the “supply” side of chartering: limits to charter funding, as well as limits to high-quality charter staff, school leadership, and charter leadership. Rotherham, too, noted, “Politically imposed limits that are not tied to any goal except restricting charter growth are arbitrary and counterproductive. There are limits in terms of the number of people who will start or convert schools to charter status and the parental demand for them and these serve as natural checks on growth.”

Dynamics of the Union-Charter Clash in New York

While New York ultimately lifted its charter cap, that end result was the culmination of several years of contentious politicking on the part of charter supporters and opponents. During the active caps fight of 2006 and 2007, both teachers union and charter leaders used increasingly polarized public language and their rhetoric generally left little room for nuance. This stand-off was characterized by several key dynamics that reflect broader teachers union-charter relations at this particular moment in the history of the charter reform.

Charters and the Politics of Achievement Data

In New York the union-charter impasse on the cap lift was strongly connected to the politics of achievement data. This mirrors the national debate on charter school performance. Claims about charter school quality play a central role in the politics and policymaking of charter schooling. The data—particularly that which get the most public attention—provide a mixed portrait of the relative academic value of charter schooling. For example, see the AFT (2004) study described above and the June 2009 study by Stanford University’s Center for Research on Education Outcomes.¹¹ Often actors with a stake in particular findings produce or analyze data that they can then use in ways that are immediately politically expedient to them, to argue either for or against the existence and expansion of charter schooling (Hess, 2006). Because the picture is mixed, there is so much state-by-state variation, and the issue is so politically-charged, there seems to be little agreement (or at least public agreement) on whether charter schools have effectively raised student achievement and how to accurately and responsibly measure and compare charter and district school performance (for a discussion of these issues, see Betts & Hill, 2006; Carnoy et al., 2005; Henig, 2008; Hill, 2005).¹²

¹¹ The CREDO (2009) study examines the impact of a state charter caps on charter school achievement. It finds that “in general, the presence of caps puts significant downward pressure on student results” on state math and reading tests (p. 40).

¹² Jeffrey R. Henig (2008) argues that there may be some hope of “convergence” by school choice researchers. Although, he writes that “[t]he public face of charter school research is not a pretty one” (p. 90), he finds that, particularly out of the public eye, “many school choice researchers are converging on a set of findings that suggest collective learning is going on. These findings... are tentative, conditional, and contingent... However, though they hold little prospect for erasing the sharp disagreements that divide the committed and reflexive liberal from the reflexive and committed conservative, these emerging findings suggest that research is doing what it is supposed to do. It is narrowing points of disagreement, discrediting clear falsities, and bringing us at least a little closer to an understanding of the world in its messy complexities” (p. 91). He continues: “Despite the image of a highly polarized research community, researchers identified as firmly entrenched in one camp or the other reveal, in interviews, considerable convergence in their emerging understanding of what is and is not known” (p. 92).

When states revisit the caps that they placed on charter schools in their initial legislation, this process provides an opportunity for charter opponents and proponents to re-argue the merit of charter schooling in general. When a state initially considers implementing charters, it has no evidence of local charter performance on which to draw. However, when a state nears its cap, it has some data on how charter schools have fared in the state. Because this is the case, in caps conversations charter school quality has become a central sticking point. Establishing quality is crucial to charter advocates, who need to be able to establish that the existing charters are working well and therefore are worth expanding upon. On the other hand, demonstrating that charter schools are failing or, at least, are not serving students better than their district counterparts is important for pro-cap forces, who need to be able to argue that it is not worth investing more resources in the charter reform.

In my interviews, charter school experts pointed to this debate about quality as critical to the caps conversations in New York and elsewhere. During the caps fight, James Merriman, former executive director of the SUNY Charter Schools Institute and current chief executive officer of the New York City Charter School Center, said to me that the relatively high quality of charter schools in New York made the cap lift a possibility:

If we didn't have the data, though it is not as robust as ideally we would want, that showed that charters are outperforming the districts, we wouldn't be talking about lifting the cap. We'd be talking about a moratorium. We'd be talking about other bad things happening to charters.... It's only because of [this record of achievement] that we are talking about raising the cap and why, in my opinion, Governor Spitzer has proven to be such a stalwart supporter of raising the cap while making sure that charters deliver on their promise and their obligation.

Ziebarth, of the National Alliance for Public Charter Schools, agreed: "It's hard to have a conversation about lifting the cap if charter performance isn't good." In an interview with me, Mike Petrilli, Vice President for National Programs and Policy at the pro-charter Thomas B. Fordham Foundation, gave Ohio as a negative example, noting that "even Republicans who support charters don't feel comfortable supporting a raise of the cap, because the charter schools have not proven to be of a high quality yet."

In caps debates, there is a lot at stake in the data on charter school performance and, therefore, the quality and meaning of these data are vigorously contested. In New York, interpretations of charter performance data have varied widely. For instance, the state's evaluations have been cautiously optimistic. In accordance with the charter school law, each year the Board of Regents submits an annual report on the state's charter schools. The Board also submitted a mandated five-year report in December 2003. This report indicated that charter school students still were failing to meet state standards on fourth and eighth grade English Language Arts (ELA) and eighth grade math tests. But, in general, charter school students' test scores improved more rapidly than their district counterparts (State Education Department, 2003). An Annual Report on the Status of Charter Schools in New York, for the 2004–2005 school year, indicated that charters in the state fared fairly well on these tests when compared with their host districts. According to a synopsis of this report on the U.S. Charter Schools website: "76 percent of charter schools outperformed their district on the 2005 4th grade math exam and 67 percent of charter schools outperformed their district on the 2005 8th grade math exam and 8th grade English Language Arts test" (U.S. Charter Schools, n.d., para. 1).

Data released since the cap lift have been interpreted quite optimistically by charter supporters. In December 2007, the New York City Department of Education (DOE) released data on the "report cards" that it produced for its schools. Among the schools receiving grades were 14

of the city's charters. The two highest-scoring schools in the city were charter schools, prompting the DOE's executive director of charter schools, Michael Thomas Duffy to say, "They clearly just knocked it out of the park.... It shows what is possible. I think that's one of the best things that a charter can do, is say, 'We can take these same students, and we can do amazing things with them'" (quoted in Green, 2007, para. 5; also see Medina, 2007b).

In the summer of 2008, when state standardized test results for third through eighth grade students were released, charter school proponents again claimed victory. The New York City Center for Charter School Excellence (which has been since renamed the New York City Charter School Center) reported of the New York City data that on the math test 84.9% of charter school students scored "proficient" or above, compared with 74.3% of students in the city and 80.7% of students in the state. On the English Language Arts (ELA) tests, those who received a score of proficient or above were 67.1% of the city's charter school students, 57.6% of students in the city, and 68.5% of students in the state (New York City Center for Charter School Excellence, 2008). An editorial in the *New York Daily News*, which historically has been pro-charter, called this performance of students in New York City's charter schools "stunning," "astonishing," and "extraordinary," using these data to call for the growth of charter schooling: "All those lawmakers who have blocked the growth of charter schools in the city must, in all decency, reconsider their opposition based on how well the schools did on this year's standardized English and math tests" (Charter schools make the grade, 2008, para. 2).

Hoxby and her collaborators at the New York City Charter Schools Evaluation Project are currently studying charter schools in New York City and attempting to isolate the effect of charter schooling on student achievement. So far, their work lends empirical support to the claims of charter enthusiasts (Hoxby & Murarka, 2007; Hoxby, Murarka, & Kang, 2009). Hoxby and her colleagues use "lottery-based analysis" that compares students who applied to charter schools and were selected by random lottery with those who applied to charter schools but were not selected in admissions lotteries. In their examination of data from the 2000–2001 through the 2007–2008 school years, Hoxby and her colleagues have found that charter schools in New York City generally have a positive impact on state test scores in math and ELA for third through eighth graders and a positive impact on Regents exam scores and the earning of Regents diplomas for high school students. They write, "[C]harter school students' gains are meaningful in real world terms. Even through [*sic*] their extra gain in each grade may not seem large, the gains can add up to a substantial closing of the achievement gap over the span of kindergarten through grade eight" (Hoxby, Murarka, & Kang, 2009, p. IV-9).

Of course, there have been much more skeptical readings of achievement data. The December 2006 state teachers union report, *Broken Promise*, compared each charter school with a district school the report's authors claim is comparable, a school in the charter's district with the same or higher percentage of students who qualified for free lunch. The study examined only those charter schools whose students took the state test during the 2004–2005 school year, or charter schools with fourth and eighth grade students at the time.¹³ Of these 44 charter schools in the state, NYSUT claimed that only 13.6% had a higher percentage of students scoring at proficient levels on the state tests than their comparison district schools. In other words, NYSUT concluded that "*fully 86.4 percent of the comparable public [district] schools equal or best the charter school in a side-by-side comparison*" (2006, p. 1; emphasis in original). On the basis of this finding, as noted above, NYSUT argued forcefully against expanding the number of charter schools in the state,

¹³ This policy has since been changed to comply with No Child Left Behind. As of 2005–2006, all students in the state in third through eighth grades take the state math and English Language Arts tests.

disseminating its report while the state legislature had a final opportunity to consider Governor Pataki's cap lift bill.

It is notable that, in making a final push to prevent the cap lift, NYSUT chose to focus its claims on the academic effectiveness of charter schools rather than on the many other arguments it could have made against charter schooling, including its impact on embattled districts and its anti-democratic nature. This example demonstrates the extent to which the politics of achievement data have been central to cap lift politics and, more broadly, to the clash between teachers unions and charter leaders.

The Partisan Nature of New York Charter Politics

School choice reforms always have attracted people with a wide range of political views and interests, making strange bedfellows in many of the state-level policy debates about charter schools and school vouchers. Many of the country's charter laws were passed with bipartisan support, however shaky. This has not changed; the charter school movement is still a big political tent.

However, in New York, many charter skeptics and opponents have viewed charters as a right-wing and Republican reform. This is the case even given the involvement of some high-profile Democrats, particularly Democrats of color. Many in New York have identified charter schooling with Republican Governor Pataki and many have taken note of the active involvement of right-wing organizations, like the Brighter Choice Foundation, which supports eight charter schools in Albany (Brighter Choice, n.d.). This perception has been a significant barrier to any kind of reconciliation or cooperation between charter and union leaders.

Some New York charter school supporters on both sides of the aisle understand the political divide on the issue to be more generational than strictly partisan. For instance, Whitney Tilson—Democrat, investment manager, New York charter activist, and cofounder of a Political Action Committee called Democrats for Education Reform—said of Governor Spitzer when he was first elected, “To the extent that he has national political ambitions, supporting charters allows him to frame himself as a new kind of Democrat.” Spitzer's willingness to break with the Democratic “old guard” on issues like school choice signaled to some a new kind of partisan charter politics in Albany. Tom Carroll—a former Pataki staffer and founder and chair of Brighter Choice Charter Schools in Albany—noted of Spitzer's win, “The under-50 crowd in the Democratic party is pro-charter. The old guard is anti-charter. The young Turks are now in power. Eventually, the old guard will probably fade away.”

Yet, despite the actual complexity of the partisan politics of charters, the political perceptions in New York have made it particularly difficult for union supporters and others on the political left to trust charter backers and their agenda. Even charter supporters on the union side share a mistrust of many in the charter movement. For instance, Casey, the UFT staffer who is on the board of the UFT charter schools, believes it is important for people on the political left, from unions and otherwise, to reclaim charter schools from the right: “We have... allowed the right wing to get this incredible foothold in charter schools. And I think it was a... big strategic mistake.” He feels that the UFT schools also are working against pro-charter forces in their city, including Chancellor Klein and Mayor Bloomberg, who, in his view, “have an agenda, which is to use charter schools to create basically non-union public schools.” For him, union-run or -organized schools are important counters to anti-unionism and, more broadly, to right-wing dominance within the charter movement.

With an already-polarized charter school debate, during the caps fight charter proponents had to convince skeptics that it was important to expand the reform in New York. There was, however, disagreement within the charter movement about how best to achieve the cap lift in 2006–

2007. Some of the more aggressive tactics during this period alienated many within the movement and many who were needed to achieve the growth of charter schooling in the state. The spring 2006 television and radio ads blasting Democratic charter opponents in the legislature exemplified this dynamic. They polarized the debate and deepened mistrust among ideologically-diverse charter supporters and between supporters and skeptics. While the ads were not explicitly anti-union, they further brightened the line between supporters and opponents and highlighted the extent to which nuance has been largely absent from charter politics in the state.

The ads themselves, which aired in the midst of intense caps negotiations between Pataki and the state legislature, were aggressive. Phillips—of the New York Charter Schools Association and the group sponsoring the ads, Parents for Public Charter Schools—noted that, with the ads, he wanted to “change the operating dynamic” of Albany charter politics. “At that point,” he said, “the Assembly was perfectly comfortable with doing nothing on charters. We tried to make that environment less comfortable. Obviously, the best targets for that type of effort were folks who would never be charter supporters.” So, he pushed a more aggressive approach: “What we were attempting to do was to basically combine positive leverage, horse trading, with a not-so-subtle reminder that if you’re going to be gratuitously anti-charter, which is what every single person that got hit with an ad was, that it was going to be—you’re going to get called out on it.”

Some in the national charter community appreciated the boldness of this tactic. Ziebarth said that the ads were an example of evolving charter politics: “The political tack that Bill Phillips and company took is very interesting. They said, for the first time I can remember in the charter movement, ‘We’re going to bloody some noses. We’re tired of being shot at by these [anti-charter] guys.’” Ziebarth said that he supported this tactic, because charter supporters need to ask: “How can we get more political, in the way our opponents have?” The ad campaign, he said, “was one of the boldest moves in any charter fight in the country. It was the right thing because it sent the message that there would be a political price to pay for legislators who *don’t* support charters. Whereas, previously, there was only a political price to pay for *supporting* charters.” Some charter supporters, however, felt that the attack ads were a mistake. The ads, as Phillips himself acknowledged, “drove people berserk.”

Some in the charter community in New York felt that they had worked assiduously to overcome the perception that charter schools in New York were a Republican effort, and the attack ads set back their effort here. Paula Gavin, former chief executive officer of the New York City Center for Charter School Excellence, noted that she believes that the ads shaped the cap lift movement in a number of ways. First, legislators expressed distrust of pro-charter forces after the ads appeared. Second, pro-charter legislators, too, expressed concerns that they could not be as outspoken on charters for fear that they would be associated with negative attacks on their colleagues in the Assembly. Third, the ads “gave Assembly members a rationale to remain opposed to lifting the cap rather than focus on the quality of charter schools being the reason to increase the cap.” The aggressive ads had the potential to alienate sympathetic Democrats. As Gavin noted, charter schools “have bipartisan support, and we need to make it easy for Democrats to support the cap lift, rather than give them reasons to oppose [that are] not associated with the quality of the education charter schools offer.”

Enduring Mistrust of “The Union”

Finally, the caps stand-off between teachers unions and charter backers in New York was fueled by the fact that many in the New York charter movement have been very mistrustful of unions. Since the earliest days of charter schooling in New York, charter leaders in the state tend to view “the union” as a monolithic, incredibly influential backroom operator that has tied the hands of

elected Democrats in Albany and will do almost anything in its power to undermine the charter movement.

In New York, during the 2006–2007 caps fight, many charter leaders believed that the UFT worked to undermine the cap lift and the growth of charter schooling, despite the fact that it runs its own charter schools. Some of the most outspoken charter advocates in the state believe that the teachers union is a politically-savvy, looming force that pulled most of the strings in the fight to maintain the charter school cap during the Pataki administration. For example, Peter Murphy, Director of Policy and Communications of the New York Charter Schools Association, said that when it comes to charter schools, “The teacher unions—both UFT in New York City and the statewide umbrella organization, NYSUT—are the proverbial schoolyard bullies in Albany, wielding tremendous influence over state legislators.” He said of the cap negotiations in the spring of 2006, “The union was working overtime in the legislature, twisting arms and warning members not to allow for more charter schools by raising the statutory cap.”

This view of the teachers unions has been echoed in the public debate on charters and charter caps in New York. For example, *Education Week* reported on a New York law firm called the Atlantic Legal Foundation, which “has begun publishing guides to help charter schools that encounter union organizing understand their legal rights and what they may do to resist such efforts.” Briscoe R. Smith, senior vice president of the firm, painted the union as a powerful, stealthy operator working against charter school interests. He said that charter schools “don’t have to stand mute and be paralyzed, but they also should know that the union doesn’t like this kind of dialogue and, by and large, the union comes in and moves secretly” (Robelen, 2006b, p. 26).

In 1998, during the initial charter law negotiations in New York, the *New York Daily News* wrote of the passage of the law that “[o]nly teachers unions stand in the way” (Put schools on the charts, 1998, p. 30). Education writer, Manhattan Institute senior fellow, and school choice supporter Sol Stern (1998), also painted the teachers union as an excessively powerful force in Albany. He wrote of the passage of the initial charter law by New York’s state Senate, “For the first time in modern history, one of the Legislature’s two houses—the state Senate—passed education reforms that were not pre-approved by the teachers union bosses” (p. 71). A *New York Post* reporter in 1999 wrote that Speaker Silver and his Democratic colleagues in the state Assembly, were “effectively, a wholly owned subsidiary of NYSUT,” the state teachers union (McManus, 1999, p. 29). This long-held view of the role of the teachers unions reveals a deep mistrust on the part of charter supporters and leaders. This view, combined with the partisan nature of the charter debate in New York, has worked against a resolution of the union-charter impasse in New York.

Moving Forward from New York

Some local teachers unions and union leaders are not as vehemently and categorically opposed to charters as they might have been fifteen years ago, just as the reform was veering from Shanker’s initial vision. Some charter school leaders, too, have become more open to teachers unions and have partnered with them. But most observers of the New York charter caps debate would not see this. In New York, many charter proponents continue to view “the union” as a monolith that is overwhelmingly anti-charter. This is the view that many charter supporters continue to hold of the UFT, which is now part of the charter movement. Pro-charter leaders in New York have been fairly emphatic about maximizing charter school freedom, and they often see collective bargaining as a threat to this. Union affiliates and supporters, for their part, generally still view charter advocates skeptically, often as right-wingers who are anti-public schooling, anti-democratic, and anti-labor. Describing these politics, Urbanski of the Rochester Teachers Association said

disapprovingly, “Unfortunately, people generally have predictable party lines” on charters. They either have a “social Darwinist” survival-of-the-fittest rationale for supporting charters or they have a “lock-step just-say-no opposition mentality.”

This polarized debate is problematic for a number of reasons. Primarily, it means that the charter reform is not as strong as it could be, nor is teacher unionism. Teachers should be protected in charter schools, *and* unions should become more flexible with respect to contract rules. This could happen through the charter reform. Charter schooling could become a laboratory of innovation, not just for curriculum and instruction, but for management-labor relations and for more flexible forms of collective bargaining (Malin & Kerchner, 2007). These innovations could be exported, then, to districts. When unions and charter schools fail to work together, both sides miss a crucial opportunity for improvement and growth.

A few education reformers have begun to talk and write about this opportunity. The UFT’s Casey said to me, citing the UFT’s partnership with Green Dot in New York, that charter schools could become an “incubator” of “much more progressive types of [labor] arrangements and contacts” (also see Weingarten, quoted in Dillon, 2009a, p. A12). Others, too, acknowledge that charter schools could become places to try out new forms of collective bargaining in schools (Hill, Rainey, & Rotherham, 2006; Rainey, Rotherham, & Hill, 2006; Rotherham, 2008a). Gyurko (2008), Casey’s colleague at the UFT, believes that unions could develop a form of collective bargaining that would honor the autonomy and innovation that is valued by charter leaders. “The UFT,” he writes, “advocates school-based collective bargaining for individual charter schools” that “preserves teacher unions’ core beliefs about power and professionalism and is premised on a conception of charter schools as vehicles for accountable teacher-led innovation” (pp. 29, 30). This kind of arrangement is generally much more flexible, in that it takes into account the specific needs and interests of particular charter school educational models and leaves room for teachers to agree to working conditions that would not be part of a district contract, like a longer school day or school year and more flexibility around hiring and firing (Rotherham, 2008a, p. 5). Gyurko (2008) asserts that “school-based collective bargaining may provide an essential ‘third-way’ mechanism to bridge teacher unions’ philosophy about power, professionalism, and teacher-led innovation with charter advocates’ firm belief in site-based autonomy and accountability” (pp. 37–38).

Given their contentious history, for charters and unions to move forward with this kind of joint innovation, at least two things will be necessary: more data and an appeal to self-interest. First, as the convenors of the symposium on union-charter relations astutely note: “Charter and union leaders disagreed strongly on questions that would be possible to answer through empirical research” (Hill, Rainey, & Rotherham, 2006, p. 15). Paul T. Hill and his colleagues find that lack of evidence about the comparative experience of teachers in charters and district schools and relative lack of simple descriptive data about teachers and leaders in charter schools means that rhetoric fills in for facts and further divides union and charter leaders. As we have seen in the New York case, charter school research often is politically charged and vigorously contested, because it plays a central role in the debate over the future of charter schooling. But if there is any chance of changing the nature of the relationship between teachers unions and charters, more responsible, nonpartisan research is needed to help “curb some of the poisonous claims made in lobbying by both sides” (Rainey, Rotherham, & Hill, 2006, p. 32).

Second, to change the relationship between teachers unions and charters and to build the possibility of collaboration, an appeal to self-interest is critical (see Rotherham, 2008a, p. 5). Both charter and union supporters must recognize that they share a material, political, and educational interest in ending their stand-off. An argument about the importance of reconciliation—or at least cooperation—for both sides is not difficult to develop. On the charter side, union opposition clearly

constrains charter school growth. Conveners of the 2006 union-charter symposium wrote that charter school leaders recognized that their clashes with unions consumed resources and detracted from their efforts to build and run strong schools. They wrote,

[C]harter school leaders would like to stop battling teachers unions in state legislatures and courts. Many charter advocates believe that these conflicts amount to a war of attrition that has stunted the charter movement's growth, both by limiting the number of charter schools allowed, and by draining time, financial resources, and political capital. (Rainey, Rotherham, & Hill, 2006, p. 27)

This is particularly true at the state policy level, where strong teachers unions are regularly active and effective lobbyists against charter schooling and charter expansion. While a more collaborative relationship between charters and unions would remove barriers to charter growth, it also could strengthen charter schooling. For example, Gyurko (2008) noted that teachers unions often are quite powerful city and state actors, bringing with them substantial human, political, and financial capital. If unions have members in charter schools, they are more likely to use their often-ample resources to "advocate for charter-specific concerns" (p. 33).

On the union side, there also are significant benefits to ending the stand-off with the charter movement, and some in the teachers union (Simon & Bader, 2008) and civil rights community (Taylor & Rosario, 2009) have recently urged teachers unions to join reform efforts, for their own benefit as well as the benefit of teachers and students. Some union leaders that participated in the 2006 symposium agreed that charter schooling offered a desirable opportunity for innovation. As conveners noted of union participants,

[A] few agreed with charter supporters that the unions could benefit from exposing their members to the relaxed work rules, autonomy, and accountability for results intrinsic to charter schooling. Charter schools, the union reps argued, could help unions develop the professional working conditions that their members crave. (Rainey, Rotherham, & Hill, 2006, p. 27)

There also is a potential material benefit to this relationship. While union leaders may worry about losing members from district schools who move to new positions in non-unionized charter schools, they could retain these teachers and gain new members if they were open to creating charter school locals (see, e.g., Robelen, 2006a). There also are potential educational and professional benefits. Unions could embrace charter schools that would allow them to innovate as teachers, have more flexibility and control in their classrooms and schools, and be part of building new and vibrant educational communities.

There also is a symbolic or public-relations reason for unions to shift their position on charters. There has been some significant negative public attention on teachers unions lately. For instance, Steven Brill (2009) recently published a scathing piece in the *New Yorker* on teacher incompetence (and worse) in New York City, which implicated the UFT in protecting these teachers and preserving the policies that keep them employed and paid. This piece became the subject of an editorial in the *New York Times* this past fall (Kristof, 2009). Unions could stand to gain by appearing to be innovators and creative school reformers rather than roadblocks to change or, worse, active contributors to educational inequality and injustice.

There are a few examples now of this kind of mutually-beneficial cooperation between charters and unions. Best known is the example of Green Dot Public Schools. Green Dot is a successful non-profit charter management organization that began in Los Angeles and now runs 18 college-preparatory schools in the L.A. area (Green Dot New York, n.d.; also see Samuels, 2007). Green Dot was founded by Steve Barr, a Democratic fundraiser in California and a co-founder of Rock the Vote (see McGray, 2009), and who has said of the role of his organization, "We want

systemic change, not to create oases in a desert” (quoted in Dillon, 2007, p. A1). Green Dot always has supported teachers unions at its charter schools. Barr sees this support as critical to broader school reform. He has said, “I don’t see how you tip a system with a hundred per cent unionized labor without unionized labor” (quoted in McGray, 2009, p. 67). Teachers in Green Dot’s Los Angeles schools belong to their own union, Asociacion de Maestros Unidos, which is affiliated with the statewide California Teachers Association, and Green Dot’s teachers have their own relatively flexible contract (Dillon, 2007; Gyurko, 2008; McGray, 2009; Rainey, Rotherham, & Hill, 2006).

Green Dot recently has partnered with New York City’s UFT at the UFT’s initiative (Spielberg, 2008). The two organizations now collaborate on a charter high school in the South Bronx, Green Dot New York Charter School. The school opened in the fall of 2008. Teachers in the high school work with a union contract, but not the same contract under which teachers operate at the two existing UFT charter schools or in New York City’s district schools (Dillon, 2007; Medina, 2007a; Samuels, 2007; Saunders, 2007)¹⁴. The contract contains, according to the UFT’s Casey, “a professional teacher evaluation process built around the standards of the National Board of Professional Teaching Standards,” a “professional hours day... rather than a strict time clock day” with a “pay premium for the additional time,” a class size maximum of 30 and a teacher load maximum of 130 students per day, and a “‘just cause’ standard for discipline and dismissal” (L. Casey, personal communication, August 7, 2009). Of the partnership, then-UFT President Weingarten said, “Many charter-school operators have been aggressively anti-union... Green Dot, on the other hand, encourages its teachers to unionize, which shows its commitment to fair treatment, fair pay and a teacher voice in the workplace”(quoted in Samuels, 2007, para. 13). A 2009 profile on Barr in the *New Yorker* indicated that he and Weingarten were in talks to develop a nationwide collaboration between Green Dot and the AFT, which would be called Green Dot America (McGray, 2009, p. 74).

While this partnership between a charter management organization and a teachers union has been thus far quite successful, it is still highly unusual. For this kind of collaboration to occur on a larger scale, charters and unions must begin to build trust (Rainey, Rotherham, & Hill, 2006). This might only happen through “small careful steps” (Hill, Rainey, & Rotherham, 2006, p. 19). But, it could happen if union and charter leaders and supporters begin to see that a positive relationship is mutually beneficial. Given union supporters’ concerns about the threats that charter schooling poses to public education and to democratic decision-making in schools, this may take shifting the frame, so that charter schooling is seen by both unions and charter professionals as “complementing” rather than “competing” with public schooling (Medler, 2004). With a shift in perspective, unions and charters could see that their futures as thriving participants in public school reform depend on each other. Teachers unions already are viewed as outdated by some. A recent piece in *Newsweek* by commentator Jonathan Alter called teachers unions “Paleolithic” and “retrograde” (Alter, 2008, para. 1, para 7; also see Rotherham, 2008b). At the same time, as the New York case demonstrates, charter proponents face obstruction from teachers unions when they seek to enter new markets or increase charter numbers. So, there may be only so much growth that charter proponents can achieve without making amends with unions; and, with judgment clouded by mistrust, charter proponents often do not accept unions’ legitimate concerns about charter quality. No matter how difficult it may be, creating strong, relevant teachers unions and effective, high-quality charter

¹⁴ Wayne Barrett (2009), in a recent *New Yorker* piece that is highly critical of the UFT, writes of the fact that Green Dot did not use the citywide contract: “Even a charter school that the UFT is running in partnership with a California-based sponsor of charters, Green Dot, is negotiating a school-based contract, having opted out of the citywide agreement, a striking admission of what a work-rule straitjacket it is” (para. 17).

schooling depends on these two sides finding common ground. So, too, as the case with Race to the Top funding demonstrates, may education reform.¹⁵

Postscript

The first cap lift in New York was the result of an extended political battle that often involved direct and sometimes bitter clashes between charter advocates and teachers unions in the state. Now President Obama's Race to the Top program promises to provide more than four billion dollars of federal stimulus grants to states to support education and has prompted another wave of charter caps debates in New York and around the country. As the first Race to the Top applications were due in January 2010, and the second wave June 1, 2010, a number of states considered education policy shifts that would make them eligible or more competitive for this federal program (see Dillon, 2010). Charter caps were a central issue here.

In New York, in the fall of 2009, as states dug in to the substantial work of preparing their Race to the Top applications, Albany did consider a cap lift to increase the likelihood that it would be competitive for federal stimulus funds. Charter advocates noted that the limit of 200 schools was in plain sight and that the cap needed to be eliminated immediately. In a November 2009 policy brief, the New York City Charter School Center wrote: "a cap that began as a sensible precaution is now an arbitrary obstacle. New schools are being planned, families are clamoring for more seats, and millions of federal grant dollars may be in the balance. It's time to lift the cap" (p. 7). The UFT, on the other hand, just as lawmakers considered increasing the number of charters in the state, issued a report that was highly critical of New York City's charter schools (United Federation of Teachers, 2010).

As the first deadline for submitting the application for as much as \$700 million in federal funds approached on January 19, 2010, lawmakers in Albany again considered raising the charter cap (Medina, 2010a). One proposal, supported by many leaders of the State Assembly and Senate, doubled the number of charter schools (to 400) but placed a number of new, substantial restrictions on them, many of which came from proposals made by the UFT (see United Federation of Teachers, 2010). Another proposal by charter advocates Governor Paterson and Mayor Bloomberg would have raised the cap to 460 schools and did not include these restrictions. In the end, neither of these proposals came to a vote in Albany, and the state turned in its first Race to the Top application without a new charter policy (Otterman & Peters, 2010; Peters & Otterman, 2010). This likely weakened its chances of receiving first-round funding (see New York could use the \$700 million, 2010). In fact, New York did not receive funding in the first round of Race to the Top awards.¹⁶

Just in time for the state to submit its Race to the Top application in the second phase, New York legislators passed a cap lift on May 28, 2010. After active and heated negotiations, the legislature raised the statewide cap to 460 schools. The bill also placed some substantive new restrictions on charter school operators, charter authorizers, and school districts, and it drew both praise and criticism from both sides of the charter debate (Medina, 2010b).

The charter caps debate will continue across the country, particularly now driven by federal education policy and funding possibilities (see, e.g., Bain & Monahan, 2010). The relationship

¹⁵ In an *American Prospect* article on the relationship between teachers unions and education "reformers," including charter school leaders and supporters, Dana Goldstein (2009) wrote, "the evidence suggests both teachers' unions and entrepreneurial education reform are here to stay. The give and take between them will shape the future of education policy" (para. 32).

¹⁶ Just two states were awarded Race to the Top grants in the first round, Delaware and Tennessee.

between teachers unions and charters has the potential to move policy forward or, as we have seen in New York, to block change and prevent additional and much-needed funding to state school systems.

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education policy analysis archives

Volume 18 Number 24

October 10th, 2010

ISSN 1068-2341



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