

If You Can't Beat 'Em: Can the Teachers Unions Organize Charter Schools?

By RiShawn Biddle

Summary: For years the NEA and AFT have opposed the creation of charter schools. However, the publicly-funded but privately organized schools are growing in number and popularity, and teachers unions can no longer bully their supporters. So the unions have devised an alternate strategy: Strike a deal—oppose the schools but unionize their teachers. Will the teachers unions succeed in unionizing charter school teachers? Or will reform-minded charter school teachers, angry taxpayers, and internal union dissent force significant changes on the teacher unions? Education expert RiShawn Biddle investigates.

The National Education Association (NEA) and the American Federation of Teachers (AFT) frequently attack education reform ideas that call for higher school standards and more measurement of teacher performance. But few ideas have aroused their ire as much as the movement to expand “charter schools.” There are currently about 5,000 charter schools in the U.S. These schools, which are publicly-funded yet privately-operated, educate five percent of the nation’s student population. They are flourishing in large part because they are not subject to the stranglehold of union-approved teacher contracts, work rules, and salary schedules that burden traditional public school districts

Charter schools have become the schools of choice for many families looking to flee dysfunctional school districts in the nation’s largest cities. Charters educate at least 10 percent of the students in 38 of the nation’s largest school districts, according to the National Alliance for Public Charter Schools (NAPCS), the movement’s



chief lobbying group; they now enroll 29 percent of all students in Kansas City, Mo., 32 percent of students in Detroit and 36 percent of Washington, D.C.’s public school population. Charters have all but replaced traditional public schools in New Orleans since Hurricane Katrina five years ago; 55 percent of New Orleans students are now enrolled in charters. Many charters have achieved striking improvements in the academic performance of students – especially poor black, white, and Latino children who often lag behind their wealthier peers in traditional public school settings. A RAND Corporation study released last year showed that children attending charters in Chicago and Florida were 7–15 percent more likely to attend college than those attending traditional public schools. Says Elena Silva, a researcher at the Education Sector, the

leading think tank among centrist Democrat school reformers: “[Charters] are where innovation in education is happening.”

Since the 1990s, the nation’s two largest teachers’ unions have issued a steady stream of studies and polemics attempting to block the charter school movement, which has become a focal point in federal education policy. During the second Bush administration, the AFT tried to damage charter schools by releasing unofficial results from the 2003 National Assessment

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of Educational Progress (NAEP) that seemed to show students in charter schools lagging behind traditional schools. But last year President Obama and Education Secretary Arne Duncan invited the states to compete for \$4.3 billion in federal stimulus dollars if they agreed to make a series of education reforms, including lifting restrictions on the number and location of charters. NEA policy czar Kay Brilliant complained to the U.S. Department of Education that “it appears that the administration has decided that charter schools are the only answer to what ails America’s public schools ... and all must comply with that silver bullet.”

The Obama policy initiative, called Race to the Top, has caused the NEA and AFT to bolster their war chests and rally their 4.6 million rank-and-file workers against charter school expansion. In January, the AFT’s New York State affiliate, along with the union’s New York City local, successfully lobbied the state legislature to kill an effort by Gov. David Paterson and New York City Mayor Michael Bloomberg that would abolish a law capping at 200 the number of charter schools allowed to operate in the state. The state affiliate’s president, Richard Iannuzzi, accused the charter school advocates of “holding the state hostage.” His colleague, Michael Mulgrew, borrowed the language of civil rights-era activists when he accused charters of being “a separate and unequal branch of public education.”

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Organizing charter staffs

But even as the NEA and AFT actively oppose further expansion of charters, the two unions have begun to recruit rank-and-file members from them. Charter schools, long insulated from most collective bargaining agreements, are increasingly involved in the kind of labor negotiations – and the potential for strikes and walkouts – that forced traditional school districts to begin marching in lock-step with teachers unions five decades ago.

The two unions now represent teachers at 5.7 percent of the nation’s 4,912 charter schools. An AFT victory in New York City two years ago was particularly symbolic. The AFT local successfully organized teachers at a Brooklyn charter school run by the Knowledge is Power Program (KIPP), the nation’s most-prominent – and arguably, most-successful – charter school operator. That three-quarters of the school’s teaching staff signed AFT union cards – and declared that being unionized was critical to “student achievement” – stunned school reformers. It also propelled the local’s boss, Randi Weingarten, to her successful election as national AFT president. Declared Weingarten one year later to the New York Times: “You’re going to see far more union representation in charter schools.”

Since then, AFT and NEA locals have organized successful, high-profile union campaigns at charters in Illinois, California and Oregon. In particular, unions are targeting big-name players in the charter school movement such as KIPP and Chicago International Public Schools, which have long fought union organizing at their schools. This is worrying school choice activists and other education reformers. Declares Marcus Winters, a scholar at the conservative Manhattan Institute: “We should also encourage charters facing a newly unionized workforce to stand firm and not negotiate away their most important asset: their ability to control who teaches in their schools.”

Until recently, recruiting charter school teachers was a low priority for teachers unions. However, the reshaping of

American public education is making unions look anew at charter schools as an area for future growth. Charter schools currently operate in 42 states and in eighteen of them state law requires some form of collective bargaining. New York State, for example, requires union representation in charters enrolling more than 250 students; in California, a third of all charter school teachers are represented by either NEA or AFT locals.

Obama and his Secretary of Education, Arne Duncan, have used the bully pulpit to tout the role of charters in federal education policy. More importantly, the Obama administration’s \$4.3 billion Race to the Top initiative (which may add another \$1.5 billion in the 2010-2011 fiscal year) has caught the attention of many revenue-hungry liberal legislators. In states such as California and Tennessee they have pushed aside objections from their allies in the NEA and AFT and are supporting efforts to remove barriers to charter schools, even in suburbs once considered off-limits to them. President Obama also wants traditional public school districts to embrace innovations pioneered by charters. Last month, Obama proposed to spend \$250 million in the 2010-2011 fiscal year on Promise Neighborhoods, a pilot program based on one of the nation’s most-successful charters, New York City’s Harlem Children’s Zone.

The upshot: the NEA and AFT can no longer bully charters out of existence. But they still hope to blunt the most-radical education reform measures while at the same time unionizing charter school teachers. The unions think that as charter school teacher grow older they will start to envy the higher wages, lucrative pensions and less demanding working conditions enjoyed by teachers in traditional public schools.

There is one possible downside. In unionizing charters, the teachers unions may find that they are acquiring members who don’t support what the unions have always guaranteed: traditional systems of tenure, defined-benefit pensions and lax performance appraisal requirements.

These perks have made teaching a lucrative public-sector career choice and protected incompetent teachers from rigorous managerial oversight. However, Education Sector's Silva points out that charter school teachers share a common culture with their charter school employers: They are intolerant of laggard teachers and disdain the hostility toward innovation that pervades traditional public school districts. Charter school teachers embrace performance pay plans and endorse strong performance management systems, views that are strongly supported by other elements of the school reform movement. These views also resonate with taxpayers whose sympathies toward teachers evaporate when they compare their own economic situation to unionized teachers who have near-lifetime job protection, generous low-cost health insurance, and pensions whose lifetime pay-out can exceed \$2 million per teacher.

The NEA and AFT, long-adept at protecting their members' privileges, must now placate younger teachers who are less-interested in tenure. That the two unions want to become charter school operators themselves is a tacit admission that the status quo isn't working. Says Silva: "The unions are going to have to have positions that don't alienate them from the rest of the educational community and from their membership."

Charters and Unions at Odds

Teachers unions and the charter school movement weren't always rivals. Indeed, longtime AFT president Albert Shanker, leaning on the school restructuring theories of education scholar Ray Budde, advocated some of the concepts underlying charters — that schools should be small, independent, free from bureaucracy, and geared toward innovative instruction providing high-quality learning to every child. Shanker said he was inspired by the way General Motors proposed to out-compete its Japanese rivals by developing the Saturn division, which broke away from traditional models of auto manufacturing. In part, Shanker's ideas were a defensive reaction to the push for publicly-funded vouchers for use in private schools, a reform that directly threatened the union stranglehold on education

decision-making. But Shanker's ideas also reflected an interest in improving the quality of teaching.

Even now, teachers' union leaders and charter school advocates can be ideological fellow —travelers. Steve Barr, founder of the successful Green Dot Public Schools, cofounded Rock-the-Vote, a left-leaning voter registration and organizing group. And charter school leaders such as KIPP founders Michael Feinberg and David Levin (and their financial supporter the late Donald Fisher, founder of the Gap retail chain) are loyal Democrats.

But since the founding of the first charter schools in Minnesota in 1991, charter advocates have not hesitated to reject precepts that teachers unions hold dear. Despairing over the academic performance of traditional schools, charter advocates demand more-rigorous curricula, standardized testing and swift consequences for performance failure, steps that teachers unions oppose. Charter advocates also eagerly create odd-fellow political alliances with conservative school reformers, big-city mayors and urban and minority parents, all of whom are put off by the cumbersome procedures and lengthy timetables for settling disputes that teacher unions have learned to love.

NEA and AFT officials are especially vexed that charters school advocates have won legislative waivers allowing charters to sidestep a wide array of state labor laws. These laws typically require traditional public school districts to bargain collectively with teachers; they fix the rules for teacher tenure and seniority, and they set teacher pay scales according to the academic degree levels. The teacher unions have used their lobbying heft to impose these rules on school districts. The rules are far more important to the unions than the actual contracts they negotiate because they are what guarantee that school districts are forced to acquiesce to union demands. The result is that school districts have little influence over the hiring, firing and evaluation of their own teachers. In fact, only a third of the nation's 100-largest districts have detailed

policies for dismissing poorly performing teachers. Instead, according to *Invisible Ink in Collective Bargaining Agreements*, a 2008 study by the National Council on Teacher Quality, these policies are dictated by state laws over which the unions have exercised great influence. (Full disclosure: the author is a co-author of this report.)

Because charter schools have been free of these controls they can use the kinds of results-based performance management systems often found in the private-sector. Unlike traditional schools, when charter schools measure a teacher's performance they are generally not required [by union rules and state law to rely only on the personal observation of school principals who must prepare formal reports. Charter schools also can evaluate how well a student's test scores improve in the teacher's class. Teachers in charters often work long hours because their students need intensive remediation. The average KIPP teacher works 45 hours a week (and sometimes works on Saturdays) compared to the average public school teacher whose work week averages 38 hours. Says Silva: "Teaching in a traditional school, it's not an easy job, but it's a comfortable career. In a charter school, the teachers aren't going to be as comfortable."

Even when charter school teachers do embrace collective bargaining, it's usually not in the way unions intend. Green Dot Public Schools, which operates 18 schools in Los Angeles and New York City, has contracts with NEA and AFT affiliates; it even operates one school in partnership with the AFT's New York City local. But unlike traditional teacher contracts, which often specify the content of an instructional workday down to the minute, Green Dot's contract simply specifies that teachers will work a full workday. Green Dot teachers don't have seniority rights or even procedures for gaining tenure (although they do have a strong role in day-to-day operations and earn wages according to a traditional degree-based scale). Union locals at traditional public schools turn up their

noses at the “house union” representing Green Dot teachers because it has made these concessions.

Unions Re-Think their Tactics

The national NEA and AFT leadership despises this mixed-up state of affairs but has done little about it because it remains focused on preventing the creation of more charter schools. Working in an alliance with suburban and urban public school districts, and with the support of most academic schools of education, the teachers unions have lobbied for rules and laws erecting barriers to charter school growth in 26 states. In Missouri, for example, charter schools can only be opened in St. Louis and Kansas City and nowhere else. Despite these obstacles, the number of charter schools nationwide has increased three-fold in the decade from the school years 1999-2000 to 2009-2010, according to NAPCS, the charter school lobbying group. Student enrollment in charter schools has increased 448% during the decade.

It’s also significant that the charter school movement has gained more bipartisan support. Al Sharpton – the former street rabble rouser-turned-talking head – lent his support for charters last year in an op-ed he co-wrote with New York City Department of Education Chancellor Joel Klein, who has overseen the opening of 99 charters within the past decade. Other traditional school districts, including the Los Angeles Unified School District and the public schools of Chicago, which are controlled by Mayor Richard Daley, have also embraced and encouraged the expansion of charters.

This growth is slowly forcing the unions to re-think their rhetoric and tactics. Five years ago an AFT Massachusetts local began organizing charters with a campaign targeting 2,000 teachers as potential members, and three years ago NEA locals in Florida began successful union organizing among the state’s charter school teachers. Charter schools are especially wary of the AFT, which is most active in the nation’s largest cities, hotbeds for charter school growth. The union, drawing on its idiosyncratic history and Shanker legacy, has been particularly aggressive

in recruiting charter school teachers. AFT president Randi Weingarten, who opened three AFT-run charter schools during her time in New York City, admits that her union sees charters as potential “incubators of good labor practice.” Charter school advocates can’t be blamed for thinking those are code words for adopting the work rules that dominate traditional school classrooms.

The unions have found eager potential members. Until recently, charter school teachers accepted long hours and less pay as the price of pursuing an idealistic mission. Some graduated from the same university schools of education as their traditional public school peers, but others were trained by alternative programs such as Teach for America, which emphasizes a tireless work ethic and dedication to improving the lives of poor children. However, many young charter school teachers don’t plan for lifetime careers, which may explain why one in four charter school teachers leaves a school within a year (vs. 14 percent of traditional public school teachers). Another reason may be that charter schools are motivated—and contractually free—to terminate underperforming teachers.

Still, charter school teachers are ageing. Charter schools are no longer new ventures for pioneers – 23 percent of charters have been open for longer than 10 years (versus just 7 percent four years ago). Older teachers see the higher pay scale and greater job security of their school district peers. The average charter school teacher earned \$37,000 in the 2003-2004 school year (the last available), \$7,500 less than a comparable teacher at a public school, according to the U.S. Department of Education’s Schools and Staffing Survey. Longer hours have lost their charm. In April 2009, when teachers at the Chicago charter Northtown Academy learned their class load would increase by 20 percent, they organized an AFT affiliate that forced the school’s charter management organization, Chicago International, into collective bargaining.

Give In, Compromise, or Fight Back?

Teachers such as those at Northtown

Academy see no contradiction between school innovation, job protections, and higher pay, and a few charter advocates believe some form of unionization is inevitable. They are backed up by two of the most-prominent grantmaking foundations supporting education reform, the Eli and Edythe Broad Foundation in Los Angeles and the Chicago-based Joyce Foundation. The foundations are funding a project to create a model “thin contract” that they say would be applicable to charter schools. Says the centrist Silva: “[Unions and charters] are learning that they have to play in the same sandbox. There has to be some sort of relationship and it might as well be a good one.”

Most charter school operators, however, remain as opposed to unionization as the unions are opposed to charter schools. They fear small-minded NEA and AFT nit-picking and interference will stifle innovative teaching, a focus on student achievement and the camaraderie between teachers and charter operators that has long-typified the charter school movement. Since the 1960s, when the AFT led a series of strikes that crippled the New York City school system, teachers unions have battled to maintain their clout over public education decision-making, and they are unlikely to give ground. In Baltimore, a KIPP charter school unsuccessfully tussled with the AFT local over the union’s mandated 7-hour workday for unionized staff. KIPP eventually laid off teachers to comply with the rule.

Education Week reporter Stephen Sawchuck has observed that battles like the one in Baltimore will become more prominent as teachers unions organize charter school staffs. That’s why charter school advocates are so opposed to unionization. Most charter schools have small student populations and depend on far less state and local government funding than what traditional public schools receive. Charters don’t have the capacity to stay solvent while defending themselves against union siege warfare. It’s conceivable that some charters could merge their operations to increase their resources, but then they would start to take on the worst aspects of

the traditional school district bureaucracy – including bloated central office staffs and command-and-control management systems. Many teachers in unionized charters won't be happy either. Teachers in two New York City charters, for example, petitioned to ditch the AFT after its local attempted to force charter operators to the bargaining table against their will. Said teacher Matthew Hureau to the New York Post: "It was the union acting and notifying the teachers afterward."

Teacher Unions on the Defensive

As they battle against charter schools, the teachers unions have discovered new opponents among their allies, the public school districts. Many public school districts are embracing new approaches to increase their flexibility and manage teacher performance. For two years D.C. Public Schools Chancellor Michelle Rhee has fought the district's AFT local over her plans to replace teacher tenure with a new system that combines increased pay for performance with stricter performance evaluations. Rhee's plan has found support from younger teachers, creating divisions within the AFT rank-and-file and even in some of the leadership. Last year, Rhee unilaterally imposed a teacher evaluation system based largely on measuring improvements in student test scores. She also responded to a \$21 million cut in the school budget by laying off 266 teachers, including many longtime instructors; the AFT has since lost a lawsuit aimed at rescinding the move. (Michelle Rhee was profiled in the January 2009 edition of *Labor Watch*.)

At the national level, teacher quality advocates – many of them backed by the Bill and Melinda Gates Foundation – are also battling the unions. They have persuaded federal policymakers to require states to allow the use of student test scores in teacher performance evaluations. The AFT local in Houston is reeling after the school district implemented this policy change this past February (400 laggard teachers may be dismissed as a result); its sister local in New York City is fighting a similar proposal. As these and other locals fight the policy changes, AFT President

Weingarten announced in January that the union would support the move, at least in principle. The NEA is weighing its options. It has fiercely opposed using test score data in teacher performance management.

Teachers are also on the defensive over the high cost of public school teacher pay and the cost of unfunded benefits (e.g., an estimated \$367 billion for teacher retiree healthcare)—and the evidence that they don't improve the quality of teaching. Taxpayers must pay the long-term cost of generous deals worked out between unions and state and local governments, and they are demanding changes to teacher compensation formulas. In Vermont, for example, the state increased the retirement age from 62 to 65 – and staved off a 43-percent increase in pension payments; the NEA's state affiliate, which objected to the effort, acquiesced after it was clear that the state would proceed with the move. In New Jersey, Gov. Chris Christie and the Democrat-controlled legislature are unified in requiring teachers to contribute 1.5 percent of their salaries to healthcare benefits (districts currently cover those contributions) in spite of opposition from that state's NEA affiliate.

Lastly, changing demographics could force teacher unions to accept more flexible work rules, more innovation and a focus on improving student performance—the very ideas charter school advocates and other school reformers hold dear. Baby boomers, who make up 36 percent of the nation's teachers, are heading into retirement, and a younger generation of teachers wants its compensation to be set by its performance. This is especially true for charter school teachers, who are less interested in tenure than in challenging work. According to a 2008 Education Sector survey, 69 percent of newly hired teachers are ready to give up tenure in exchange for higher pay. The survey also found that 72 percent of teachers thought too many burnt-out teachers were allowed to hold their jobs, and half of those surveyed supported the use of student test scores in teacher evaluation and performance management.

Education reformers ask: Are teacher unions

and high-professional work compatible? Charter school advocates don't want to find out. And if they fight as hard as they have against NEA and AFT organizing efforts as they have against the restrictions for which the unions have lobbied, they may never have to.

RiShawn Biddle, the editor of education blog Dropout Nation, is the co-author of A Byte At the Apple: Rethinking Education Data for the Post NCLB Era.



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LaborNotes

“Department of Labor may fine businesses for not having e-mail,” warned a headline in the **Kitsap Peninsula Business Journal** in February. The story explained that since a) all businesses that have pension plans or 401Ks must file papers with the Department of Labor and b) Labor is going “paper-less” this year, those businesses that do have retirement plans but not e-mail may have a problem: “[T]he DOL has announced no exceptions to this requirement, forcing businesses without email or who are unfamiliar with the Internet to get online or face a **\$15,000 penalty.**”

On February 9, Democrats in the Senate could only muster 52 votes against the Republican filibuster of **National Labor Relations Board** nominee **Craig Becker**. (Sixty votes were needed to cut off debate.) Becker, a lawyer for both the **Service Employees International Union** and the **AFL-CIO**, had advocated sweeping changes in labor law and argued that such changes could be passed by NLRB if Congress failed to act. Labor leaders are pressing President **Barack Obama** to give Becker a recess appointment.

In late January, **Erroll Southers**, President Obama’s pick to head the **Transportation Security Administration**, withdrew his nomination from consideration by the Senate. Southers complained in a statement that he had become “a lightning rod for those who have chosen to push a political agenda at the risk of the safety and security of the American people.” Senate Republicans initially balked because they suspected Southers would allow the security agency to be unionized.

The American unemployment rate fell from 10 to 9.7 percent in January, according to the **Bureau of Labor Statistics**. Was that good news? According to **Heritage Foundation** analysts **James Sherk** and **Rea Hederman**, the report could have been worse but didn’t contain much to cheer up American workers. The difference came not from new jobs created but from more people dropping out of the labor market and technical changes. From December to January, the economy shed a net 20,000 jobs and the figures for yearly job losses were revised upwards, so that “**A total of 8.4 million net jobs have disappeared in this recession.**”

Also from the Bureau of Labor Statistics came news in January that a majority of unionized workers in America now work for the local, state, or federal government. **Alliance for Worker Freedom** executive director **Brian Johnson** explained in the **Washington Times**, “Unions once represented more than 35 percent of the American work force in the mid-1950s. By 2008, that had plummeted to 12.4 percent, and last year it ticked downward again to 12.3 percent.” In fact, the only growth in union membership came in government jobs, which now means that “**52 percent of all union members work for the government.**”

Speaking of public employee unions, the Forum Press has published **Plunder: How Public Employee Unions are Raiding Treasuries, Controlling Our Lives, and Bankrupting the Nation** by **Steven Greenhut**, the former **Orange County Register** columnist who now runs the **Pacific Research Institute’s** journalism center.

File under: make up your mind. When the Supreme Court ruled in favor of the conservative documentary company **Citizens United** on January 21, effectively eviscerating many campaign finance laws that restrict free speech, AFL-CIO president **Richard Trumka** was outraged. He complained in a statement that the court had “further tilted the playing field in favor of business corporations in public elections. By allowing unlimited corporate treasury expenditures that explicitly support or oppose particular candidates, the court increased the already excessive influence corporations exert in our electoral system.” One problem: The AFL-CIO had filed a friend-of-the-court brief **supporting** Citizens United. Oops.