The Encyclopedia of Education

The ENCYCLOPEDIA of EDUCATION

LEE C. DEIGHTON, *editor-in-chief*

VOLUME 9

THE MACMILLAN COMPANY & THE FREE PRESS

Library of Congress Catalogue Card Number 70–133143

Manufactured in the United States of America

THE ENCYCLOPEDIA OF EDUCATION

T

(continued)

TEACHER EMPLOYMENT, FINANCIAL ASPECTS

2. COLLECTIVE NEGOTIATIONS

Formal relationships between local teacher groups and boards of education—called either professional negotiations or collective bargaining—became increasingly commonplace in U.S. public education during the 1960's. By 1970 more than half of the nation's nearly 2 million public elementary and secondary school teachers were working under some form of written agreement between a board of education and a teacher organization. More significantly, over 400,000 teachers were covered by more than 900 comprehensive signed contracts with boards which contained salary schedules, grievance procedures, and clauses covering a wide variety of working conditions and professional matters (*Negotiation Research Digest* 1970, 3, no. 5:13–16).

The nation's two predominant teacher organizations—the American Federation of Teachers and the National Education Association—are flourishing. Despite the loss of some teaching and administrative members during the 1960's, the NEA still has great strength in all areas of the country outside the largest cities; more than 1.6 million (80 percent) of the nation's teachers are enrolled either in the NEA itself or in its important state and local affiliates (National Education Association 1969). In 1970 the AFT had over 200,000 members, largely in the major cities of the country—New York, Philadelphia, Detroit, Boston, Cleveland, Chicago, Baltimore, and Washington, D.C.—where the union holds exclusive representation rights (*American Teacher* 1970, no. 1:3).

Despite the nearly universal but frequently unenforceable strike ban for public employees, growing teacher militancy is evident in strike actions, which have increased precipitously as negotiating activities have spread across the country. During the 1967–1968 school year, for instance, there were 114 work stoppages by teachers, which accounted for one-third of the total number of teacher strikes and 80 percent of the man-days of instruction lost through strikes since 1940.

Legal background. In 1960, Wisconsin was the only state which had specific legislation mandating negotiations between local teacher groups and boards of education. By early 1970, 21 states had laws requiring—according to the dictates of the statute—that boards of education or their representatives discuss, negotiate, or "meet and confer," if a teacher organization so requested. In an additional four states, laws relating to interaction between teachers and boards were permissive in that they provided that a board might or might not, at its discretion, recognize and negotiate with an organization representing the district's teachers.

State laws allowing for formal bargaining in the schools differ widely on several crucial questions. One question concerns the composition of the bargaining unit; for instance, are principals and others who have supervisory responsibilities to be included in the same negotiating unit as rank-and-file teachers? Also, definitions of the scope of subjects to be dealt with in negotiations range from "salaries and related economic policies" to "any mutually agreed upon matters." The procedures to be followed in the event of a negotiating impasse also vary among the states. Although combinations of mediation and fact-finding are most common, some states provide for binding arbitration of negotiating disputes which do not involve the expenditure of money.

In 1970 those states with negotiating laws prohibited strikes by public employees, with three important exceptions: Hawaii, Pennsylvania, and Vermont.

Although a state's passage of a statute mandating negotiations tends to stimulate bargaining and the adoption of negotiation agreements, much collective bargaining with teachers occurs on a de facto basis in states which as yet have no relevant legislation.

Teacher militancy. During the 1960's teacher militancy became a new fact of life in public education and resulted in the adoption of increasingly formal bargaining relationships between school boards and teachers. There are, of course, many factors which are responsible for this development.

Most important has been the teachers' desire for more money and benefits. Teachers want more money for themselves and more money for public education generally; the latter cause is frequently shared by boards of education. Teachers have repeatedly seen that collective power exercised through negotiations and militancy generally pays off in the short run, at least, in terms of large salary increases and more community support for education.

The percentage of men in the teaching force, who are frequently committed to a lifetime career, is increasing, and teachers of both sexes are better trained and prepared than ever before. Also, the turnover among public school teachers is decreasing. As a result, the teaching ranks are in a sense becoming more professionalized, and teachers at least appear to desire a larger voice in determining exactly how and under what conditions they will teach.

Teachers in many school systems feel the need for a voice in restructuring what they view as the essentially paternalistic, anachronistic, and bureaucratic web of rules and policies which control their work. As do blue-collar employees in the private sector, many teachers also desire a way of protesting allegedly arbitrary or discriminatory applications of rules and policies.

Legislation granting organizing and bargaining rights to public school teachers is clearly both a cause and effect of teacher militancy. Quite important also has been the intense rivalry in many cities and states between the NEA and the AFT; this conflict was spurred on during the early 1960's by AFL-CIO support of the AFT, one manifestation of the desire of the larger labor movement to organize white-collar workers in general.

Significant, too, in the genesis of the teacher bargaining movement have been the monumental problems of large city school systems; dissatisfaction of teachers in the large cities seems greater than in small-town, rural, or suburban systems. Although there were numerous formal bargaining relationships between boards and teacher organizations scattered across the country prior to 1960, the negotiations movement in the schools clearly received its most profound impetus from the spectacular organizing and negotiating efforts, accompanied by effective displays of collective power, of the United Federation of Teachers in New York City (the largest local of the AFT, AFL-CIO) in the early 1960's. The federation's successes in New York spurred the NEA and its affiliates in many localities to become increasingly concerned with negotiations and "teacher power," and in many instances the association began behaving like a union. This process, once begun, was self-sustaining.

Finally, the mid-twentieth century seems to be "an age of political activism, in which collective action, demonstrations, and thrusts for power are both fashionable and effective (Wynn 1967, p. 4). The new teacher militancy has clearly derived considerable support and nourishment from this broad cultural context.

The money issue. Money has been the primary issue in negotiations with teachers, and salary disputes have been the major cause of strikes, sanctions, and other overt and dramatic manifestations of collective teacher power. In districts which are engaged in formal bargaining and where teachers have threatened to exercise collective power or have in fact gone on strike, teachers have received more money, at least over the short run, on both the salary schedule and in the form of fringe benefits than they would have without formal negotiations (Perry & Wildman 1970; Rehmus & Wilner 1968).

In the average district, the additional money for increased salaries and fringe benefits has come primarily from three sources. In the initial years of bargaining under strike or strike-threat conditions, local communities and, in the case of large cities, state legislatures have often pro-

vided the additional amounts necessary to satisfy demands made at the bargaining table and to keep teachers on the job. In some states, negotiations have forced school districts either to liquidate reserves and surpluses or to go into debt to meet the demands of teachers. And in some instances, more money for higher salaries and fringe benefits has simply been taken from other categories of the school budget and reallocated to teacher remuneration. During negotiations teachers may suggest that their salaries, for instance, should have priority over funds allocated for textbooks, building maintenance, adult education, and the hiring of additional teachers.

However, although bargaining in many school districts has been responsible for giving teachers monetary gains considerably in excess of those which would have been forthcoming without bargaining, several factors indicate that the rate of increase in teacher salaries in "hard bargaining" districts may well diminish in the foreseeable future. Other public employees are also organizing, negotiating, and demanding from their city halls or state legislatures their "fair share" of the tax dollar. As a result of this phenomenon and of taxpayer resistance, municipal officials and taxpayers in general may stiffen their opposition to the pressure of teachers and their organizations for ever larger school budgets, which make up a constantly increasing proportion of total state and local expenditures. Moreover, liquidating surpluses or establishing a debt position does not constitute a viable long-run source for continual increase of teacher salaries. And opportunities which may exist in the early years of bargaining for the reallocation of funds within the school budget to increase teacher salaries and fringe benefits tend to diminish rapidly in succeeding negotiations.

Working conditions. Collective negotiations in education have had a significant impact on many of the rules and regulations governing the teacher's daily work life. The length of the school year, although frequently controlled by law, has been reduced to the legal minimum through negotiations in numerous districts. Similarly, in some systems bargaining has resulted in a shortening of the school day; some contracts even specify the precise number of hours a teacher is expected to be in the school and on duty. Gains made in these areas by teacher organizations have been largely at the expense of slack time in the schedule in systems which are well above maximums set by law or above the average for districts in a given area.

In some schools, teachers have successfully bargained for reductions in both the number of classes teachers have per day or per week and the number of preparation periods for which each teacher may be responsible in a given semester or school year. In other instances, negotiations have gained for teachers duty-free lunch periods and additional preparation and planning periods in both elementary and high schools. In some systems in which teachers have gained additional nonteaching time, administrators and teachers have come into conflict over the use of unassigned time or preparation periods.

Teachers have effectively used the power generated by collective bargaining to control or curtail work required outside the regularly scheduled teaching day and have gained extra compensation for overtime and extracurricular activities. After-school meetings may be limited by contract in terms of both duration and frequency; in some contracts time for parent-teacher conferences has been provided within the regular teaching schedule.

The success of negotiating teachers either in gaining extra pay or compensatory free time for extra work loads and extracontractual duties or in ensuring the equalized rotation of such additional chores has forced a tightening of schedule-making procedures in some districts and has had a significant impact on the discretion and flexibility which can be exercised by the local school principal. In many systems, a major accomplishment, from the classroom teacher's point of view, has been the relief gained from not having to perform clerical and nonteaching chores such as milk and book distribution, money collection, scoring standardized tests, register-keeping, and supervision of playgrounds, cafeterias, sidewalks, corridors, or buses.

Assignment and programming, traditionally significant areas for the exercise of discretion by the local school administrator, have received much attention in school bargaining. Frequently, the thrust of teacher efforts has been to ensure administrator objectivity in making assignments by insisting on at least a modified use of the seniority concept or on the rotation of choice positions.

Many boards, however, have insisted on retaining a large degree of discretion and flexibility for those responsible for assignment and programming in recognition of the number of variables involved and the high degree of imprecision necessarily associated with the process.

Boards, increasingly acknowledging the inevitability of bargaining over class size, have, in many cases, found to be groundless their fears that negotiating on such a crucial basic policy issue might result in significant compromises. Many of the class-size clauses appearing in teacher collective agreements simply institutionalize existing practices. Outside the large city school systems, where the impact of class-size clauses can be considerable, the major effect of including class-size provisions in the contract and of making them subject to the grievance procedure has been to force school administrations to make shifts ensuring that district-wide averages become maximums for each teacher. Many teacher contracts now specify that summer school or night school assignments be made according to seniority, rotated among faculty members, or offered first to teachers who have not previously taught summer or night school; some contracts also guarantee that teachers within the system will be offered opportunities for extra teaching assignments before persons outside the system are hired.

The content of a teacher's official file has received much attention in school bargaining because of its implications for personnel decisions within the system and because of the impact it might have on a teacher's efforts to seek a job elsewhere. Many negotiated agreements provide teachers with the right to examine their files upon request and, in some instances, the right to make a formal written rebuttal to any derogatory material therein.

Also of considerable significance are the increasing demands, made by teachers and frequently stoutly resisted by boards, for so-called due-process protections through grievance procedures and arbitration for discipline, dismissal, demotion, or removal from extra-increment positions of both tenure and nontenure teachers. Teachers argue that "just cause," "objective evaluation," and other due-process standards enforceable through grievance and arbitration procedures are necessary to protect them from arbitrary and discriminatory actions by school authorities. Boards argue, however, that the protections already granted under tenure laws and court-enforceable standards of fairness are both considerable and quite sufficient.

Negotiations on working conditions have to an extent substituted centralized, bargaining-table decision-making for decentralized decision-making previously exercised most often by the local school principal. Principals have lost discretion in the process and, in a number of districts, are actually undertaking organization themselves as a means of securing a stronger voice in decision-making if not of checking and reversing the centralizing trend itself. However, although the impact of the negotiated agreement on the local school principal and other administrators is often considerable, school administrations seem to have maintained and protected what they perceive to be a necessary minimum both of discretion and of flexibility.

Policy and professional questions. School boards entering into negotiations often express fear that formal bargaining will deprive the community of control over its schools and destroy opportunities for creative administrative leadership. Moreover, teacher organizations proudly assert that increased control over basic district policy and a strong voice in professional matters are primary goals of the negotiations movement in education.

It is difficult if not impossible to distinguish clearly between issues of educational policy and salaries and working conditions. For instance, the salary schedule and teacher benefits are generally accepted as bargainable, and negotiations in these areas do not intrude unduly on a board's policy prerogatives. However, if raising teachers' salaries as a result of bargaining forces a budget reallocation of sums set aside, for instance, for textbooks or for hiring additional professional personnel, a decision on school district policy is clearly involved. Examples of the difficulty of distinguishing between policy and working conditions can be cited endlessly. Similarly, no satisfactory distinction can be made between policy matters and many so-called professional issues. For instance, basic decisions concerning many aspects of curriculum, methodology, or textbook selection are clearly both policy questions for the board and professional concerns of the teachers.

Although teachers have traditionally, through one medium or another, exercised influence over numerous policy and professional questions and

continue to do so, in few cases have negotiations actually forced a significant shift in basic school district policy on an unwilling board, and few boards have been blocked from initiating action or change solely by teacher power. However, collective negotiations in education is a relatively new phenomenon. It must be recognized that the potential clearly exists for power generated by negotiations to bring about significant changes or shifts in the distribution of authority among boards, administrators, and teacher organizations with respect to policy and professional matters.

Although specific substantive issues which might be considered in the policy or professional realm have rarely become the focal point of conflict at the bargaining table, dramatic exceptions exist. In the fall of 1967, for instance, a key teacher demand in New York City (resisted by the board and partially the cause of New York's teacher strike in the fall of 1967) was for the extension to more inner-city schools of the expensive More Effective Schools program. Also, in the fall and early winter of 1968, teachers in New York struck three times in the struggle over decentralization and community control during an escalation of a basic conflict which far transcended the normal negotiating process.

Although bargaining and conflict between boards and teachers over specific clauses and tangible issues involving policy or professional matters may be relatively rare, bargaining is being used to establish procedures and structures for interaction and thus to assure teachers a voice in so-called policy and professional questions outside and independent of the process of negotiations over the collective agreement. For instance, a number of contracts have provided for committees to be established for a wide variety of research, deliberative, and decision-making purposes embracing such subjects as curriculum, methodology, textbook selection, promotion to the principalship, screening and recommendation of candidates for openings at any level in the system (including the superintendency), methods of achieving pupil and teacher integration in the system, and pupil discipline. Sometimes the establishment of committees for such purposes has constituted a dramatic departure from past practice. In other cases, the actual results of the innovative contract clause may be anything but impressive.

One author has predicted that a system of adversary, conflict-oriented bargaining over salaries and a narrowly defined range of working conditions may evolve in the public schools, coupled with a parallel structure modeled on university departmental committees and faculty senates to provide for teacher participation and involvement in professional and policy matters (Griffiths 1966).

The dynamics of school negotiations. Collective bargaining is, at least in some school districts, a power relationship and a process of accommodation essentially through compromise and concession-making on matters over which there is conflict between the teacher organization and the board.

With the advent of bargaining in the schools, teacher organizations have frequently become political institutions which, like unions in private industry, must have something to deliver to their membership. And school boards and administrations often "play the bargaining game," much as management does in private industry. The administration finds it necessary to at least make it appear that the teachers were successful in getting more in negotiations than they would have in the absence of bargaining and collective pressure. The school board allows the teacher organization to have a function at the bargaining table so that organizational leadership will not be threatened, so that teacher-group expectations will be reasonably fulfilled, and so that strikes or serious impasses will be avoided.

The high expectations developed by teachers during organizing campaigns, the desire of the teacher organization to gain everything at once, and the determination of the school board and the administration neither to relinquish their prerogatives too readily nor to create dangerous precedents for the future all seem to cause some hostility and conflict during initial contract bargaining in many school districts.

In the schools, as elsewhere, the realignment of power relationships and organizational structures which accompanies the advent of bargaining brings with it a preoccupation with procedure and a large measure of uncertainty on the part of the management about the roles to be played in the new bargaining process by top administrative personnel and board members. In a majority of bargaining relationships, the superintendent bears the responsibility for conducting the relationship on the board side; increasingly, the superintendent is finding that he must assume

responsibility for negotiations if he wishes to maintain the desired degree of control over the administration of his system, even though he may not actually conduct face-to-face bargaining sessions. Also, as bargaining relationships mature, board members seem to find negotiating too time-consuming and are glad to delegate the chore to the district superintendent or to the staff.

Future trends. Collective negotiations in the schools have been compatible with the educational enterprise. The single salary schedule was traditional long before negotiations became commonplace. Before the negotiations movement, there was also a lack of objective, widely acceptable standards by which to judge teacher performance and, thus, an absence of teacher accountability and merit pay differentials. Seniority and other objective standards for the movement and placement of teachers were widely used. All these factors virtually ensured the easy transfer of private-sector collective bargaining principles and practices to the field of public school teaching.

After less than a decade of bargaining in education, its accomplishments were already considerable and its potential to contribute positively to the public educational enterprise seemed great. However, many questions remain to be answered in the future.

The problem of making collective bargaining effective and meaningful in the absence of the compulsions for settlement engendered by the right to strike is wholly unresolved both in the schools and in other areas of public employee bargaining. If teachers and other groups of public employees continue to strike successfully, the states may find it desirable and necessary to centralize decision-making on salaries and other important aspects of the employment relationship. The purposes of such centralization would be, first, to achieve a parity within education among all districts of all sizes within a given state and, second, to achieve a parity among teachers and other employees within the government service. The result would be statewide and perhaps, ultimately, nationwide salary schedules. Such centralization would considerably diminish the role and significance of the present local board of education and local teacher group. More important, however, relatively uniform nationwide or statewide salary schedules could make it difficult or impossible to experiment with innovations which many claim are badly needed in the present pay and employment practices of the schools.

Aside from the question of the inevitability of statewide salary bargaining, it may be asked whether collective bargaining, far from revolutionizing education, may in fact result in an affirmation or freezing of the status quo. There are good reasons to believe that collective bargaining, which tends to look with suspicion on individual advantage because of the internal political dynamics of employee organizations, may make it difficult to depart from or modify significantly the uniform single salary schedule concept—which dictates, for example, that mathematics or science teachers in relatively short supply must be paid the same as, say, social studies teachers in relatively plentiful supply. Similarly, school districts may well discover that a well-entrenched system of collective negotiations makes it difficult to experiment with the systems analysis approach to differentiated staffing, input-output measurement of teacher performance, and differential pay plans based on merit.

The impact of collective bargaining on the decentralization of some of the larger educational bureaucracies in the nation's major cities remains uncertain. It is clear, however, that in many cities decentralization plans that grant significant autonomy to local school districts or to individual schools on subjects previously covered uniformly in citywide contracts will undoubtedly meet powerful resistance from teacher organizations at the bargaining table. It is also possible that, with growing surpluses in the teacher labor market, teacher organizations will resist, through collective negotiations, the adoption of any new automated instructional methodology which may potentially reduce the demand for classroom teachers.

With significant tangible accomplishments already effected as a result of collective negotiations in education, boards, administrators, teachers, and the public all must ensure that bargaining in the schools continues to play a dynamic and adaptable role in helping meet the future public education needs of the United States.

BIBLIOGRAPHY

American Teacher. Published ten times a year by the American Federation of Teachers.

BLUM, ALBERT A., ed. 1969 *Teacher Unions and Associations: A Comparative Study.* Urbana, University of Illinois Press.

CARLTON, PATRICK W., AND HAROLD I. GOODWIN, eds. 1969 *The Collective Dilemma: Negotiations in Education.* Worthington, Ohio, Charles A. Jones.

CORWIN, RONALD G. 1965 "Militant Professionalism, Initiative, and Compliance in Public Education." *Sociology of Education*, 38, no. 4:310–330.

DOHERTY, ROBERT E., AND WALTER E. OBERER 1967 *Teachers, School Boards, and Collective Bargaining: A Changing of the Guard.* Ithaca, New York State School of Industrial and Labor Relations.

Educators Negotiating Service. Published semimonthly by the Educational Service Bureau, Inc.

ELAM, STANLEY M., MYRON LIEBERMAN, AND MICHAEL H. MOSKOW, eds. 1967 *Readings on Collective Negotiations in Public Education.* Chicago, Rand McNally.

Government Employee Relations Report. Published weekly by the Bureau of National Affairs, Inc.

GRIFFITHS, DANIEL E. 1966 "Board-Superintendent-Teacher Relations: Viable Alternatives to the Status Quo." Frank W. Lutz and Joseph J. Azzarelli, eds., *Struggle for Power in Education.* New York, Center for Applied Research in Education. Pages 96–110.

HANSLOWE, KURT L. 1967 *The Emerging Law of Labor Relations in Public Employment.* Ithaca, New York State School of Industrial and Labor Relations.

ISR Journal. Published periodically by the Institute for Staff Relations and Governance at New York University.

LIEBERMAN, MYRON, AND MICHAEL H. MOSKOW 1966 *Collective Negotiations for Teachers: An Approach to School Administration.* Chicago, Rand McNally.

NATIONAL EDUCATION ASSOCIATION 1969 *NEA Handbook for Local, State and National Associations, 1969–1970.* Washington, D.C., The Association.

Negotiation Research Digest. Published ten times a year by the National Education Association, Research Division.

PERRY, CHARLES R., AND WESLEY A. WILDMAN 1970 *The Impact of Negotiations in Public Education: The Evidence From the Schools.* Worthington, Ohio, Charles A. Jones.

REHMUS, CHARLES M., AND EVAN WILNER 1968 *The Economic Results of Teacher Bargaining: Michigan's First Two Years.* Research papers in industrial relations and human resources, no. 6. Detroit, Michigan Institute of Labor and Industrial Relations.

SHILS, EDWARD B., AND C. TAYLOR WHITTIER 1968 *Teachers, Administrators, and Collective Bargaining.* New York, Thomas Y. Crowell.

SOMERS, GERALD G., ed. 1969 "Impasse Resolution, the Community, and Bargaining in the Public Sector." *Proceedings of the Twenty-first Annual Meeting.* Madison, Wis., Industrial Relations Research Association. Pages 31–69.

STINNETT, T. M., JACK H. KLEINMANN, AND MARTHA L. WARE 1968 *Professional Negotiation in Public Education.* New York, Macmillan.

"Symposium: Labor Relations in the Public Sector" 1969 *Michigan Law Review*, 67, no. 5:entire issue.

TAYLOR, GEORGE W. 1966 "The Public Interest in Collective Negotiations in Education." *Phi Delta Kappan*, 48, no. 1:16–32.

WILDMAN, WESLEY A. 1971 "Teachers and Collective Negotiations." Albert A. Blum, ed., *White Collar Workers.* New York, Random House.

WILDMAN, WESLEY A., AND CHARLES R. PERRY 1966 "Group Conflict and School Organization." *Phi Delta Kappan*, 47, no. 1:244–251.

WILDMAN, WESLEY A., ROBERT K. BURNS, AND CHARLES R. PERRY 1969 *Collective Action by Public School Teachers: Final Report.* 4 vols. Washington, D.C., ERIC Clearinghouse on Teacher Education.

WYNN, D. RICHARD 1967 *Policies of Educational Negotiation: Problems and Issues.* Tri-State Area School Study Council Research Monograph. University of Pittsburgh.

WESLEY A. WILDMAN

3. RETIREMENT PLANS

Retirement systems for teachers are established to attract and retain teachers of high ability, to enhance teacher morale, and to retire with dignity and financial security those teachers whose usefulness has diminished because of age or disability. All 50 states, Puerto Rico, the District of Columbia, and several cities have retirement systems for teachers. However, teachers who belong to a city system usually are not members of a state system, although provisions exist for intrastate reciprocity. Teachers are required to belong to the appropriate system in their state.

In 36 states and Puerto Rico, the state retirement system includes such certified personnel as teachers, principals, administrators, and, in some instances, other school employees such as clerks. In the remaining 14 states, the state retirement system includes other public employees in addition to school employees. City retirement systems are usually limited to certified school personnel.

Financing methods. Retirement benefits are financed from three sources: contributions by the members, contributions by the state or city, and return on investments.

Member contributions. All retirement systems except Delaware's are jointly contributory; that is, teachers and the state contribute to the system. Teachers' contributions are usually a flat percentage of their gross salary, although in a few systems contributions are made on only part of the gross salary. In a few other systems, teachers' contribution rates may vary with age, sex, and date of entry into the retirement plan.

Government contributions. Public financing is of three types: pay-as-you-go (or cash disbursement) plans, partial reserve plans, and fully funded plans. In a pay-as-you-go system, the public's share of the cost is appropriated each year in the amount needed for those living on retirement benefits. In a partial reserve system, public funds are appropriated when a member retires and are sufficient to finance the future benefits due that member. In a fully funded (or reserve) system, public money is appropriated each year

in an amount actuarially determined to be sufficient (when added to past and future appropriations and teacher contributions with interest) to accumulate the funds necessary to pay the future benefits due each member.

Investments. Over $15 billion is invested by retirement systems for teachers; this makes retirement big business. Since the late 1950's, particularly, there has been a trend toward liberalizing investment provisions in retirement laws. Formerly, many systems were limited to investment in government bonds and prohibited from investing in equities. Today, some systems are limited to investments specifically set out in the law; others are permitted to invest a certain percentage of funds in common stock.

Investments and the return on investments are extremely important for retirement systems. Thus, fully funded plans are recommended because they have more funds available for investment. The more funds there are to invest during the teacher's active career, the greater the returns. Obviously, a substantial investment return can be used to increase benefits and keep down costs financed from the other sources. A high return on investments, however, cannot be the primary goal of investment policy of a retirement system. Since the purpose of a system is to provide benefits for its members far into the future, retirement systems must make prudent, long-term, low-risk investments. Most systems employ investment counselors to advise boards of trustees on investments. However, with few exceptions, it is the responsibility of the boards to set investment policy and to approve investments within the requirements set out in the retirement law.

Benefits. There are three types of benefits usually paid by retirement systems: service retirement allowances, disability retirement allowances, and death and survivor benefits. Most systems permit a retiring member to select one of several options for the payment of his retirement allowance; for example, he may wish to provide survivor benefits for his dependents.

Service retirement allowances. Service retirement allowance provisions state that when a member has reached a specified age or has served a specified number of years, or has met whatever qualifications for retirement are set out in the law, he shall be eligible for an allowance based on both his own accumulated contributions and on state or city appropriations. Most systems have provisions for early retirement with the benefit actuarially reduced. In a fully funded system, the funds in the system are sufficient to pay his benefit when he meets retirement qualifications.

The allowance may be of the money-purchase type or the fixed-benefit type. A money-purchase benefit is calculated to be that allowance equal to the actuarial equivalent of the member's accumulated contributions plus the appropriations on his behalf from public funds. Under a money-doubled plan the accumulated contributions of the member are matched by an equal amount from public funds.

The fixed-benefit type is an allowance calculated by a formula involving a percentage of the final average salary multiplied by the number of years of service. Final average salary is usually defined as the average salary paid in the last five or ten years before retirement or the average of the highest salaries paid in any five years while the teacher was a member of the system.

Most systems now use some type of fixed-benefit formula because an adequate fixed-benefit formula tends to provide greater benefits for teachers than a money-purchase formula. Since the fixed benefit is based on final average salary, the allowance will likely be related to the highest salary paid during a teacher's career. The benefits under a money-purchase plan, however, are based on contributions made over the span of the teacher's career; obviously, the earlier contributions will be less since the salary was lower. Nevertheless, since both formulas are tied to salary, low salaries for teachers will result in correspondingly low benefits. Adequate salaries are required in order to produce adequate retirement benefits.

Disability retirement allowances. Disability retirement allowances usually apply to permanent disability only, since other plans provide coverage for temporary disability. Disability retirement is available to those people who have been members of retirement systems for a specified period of time, usually five or ten years.

Usually a medical board must certify that the member is no longer physically or mentally capable of continuing in public school teaching; after retirement on disability, periodic physical examinations are generally required. Frequently the law provides that a person retired on disability

may not earn more in future employment than the difference between the retirement allowance and the salary earned prior to retirement.

Disability benefits may be of the money-purchase type or the fixed-benefit type. Under a money-doubled benefit, the contributions accumulated up to the time the member becomes disabled are matched by the state or city, and the allowance calculated on this total will be the actuarial equivalent of that amount, payable in equal sums for the life of the retiring member. In plans providing a fixed benefit for service retirement, disability benefits are usually a specified percentage of the allowance which would have been payable had the member continued in service until he met the qualifications for service retirement. For many years, an adequate retirement benefit for a career teacher was considered to be about 50 percent of the final average salary. Although most knowledgeable persons in the field would now recommend 75 to 80 percent as an adequate retirement benefit, few retirement systems presently provide this amount, and a few do not even provide 50 percent.

Death and survivor benefits. If a member dies before retirement, his contributions, usually including interest, are paid to his estate or to a named beneficiary. No part of the public appropriation on his behalf is paid to his estate or his beneficiary. However, death benefits are paid by many systems. These benefits are in addition to or in lieu of the refund of the member's own contributions with interest and may be paid in a lump sum or in monthly disbursements to named beneficiaries or to unnamed dependent children and his widow.

Postretirement increases. Like all people living on a fixed income during periods of inflation, retired teachers find that their allowances do not purchase today what they once did. As a result, several legislatures each year have found it necessary to increase the benefits of those already retired. These increases take several forms, including across-the-board payments of a flat amount, percentage increases, increases in minimum benefits, and increases to those who retired prior to a certain date. Often these increases are related to increases in the cost of living.

Such increases are stopgaps at best and force groups of active and retired teachers to request legislative increases every few years. In addition, if the legislation is not properly drawn, it may face challenges as an unconstitutional payment of public funds for past services. Several methods have been used to avoid this kind of challenge; for example, retired teachers in one state agreed to be available for substitute-teaching duty in return for increases in retirement benefits. In another state, retired teachers contributed additional amounts to the system, thus creating a new contract on which to base increases.

To avoid these problems, a few systems have provided a program for automatic increases. A variable annuity plan was begun in 1958 by the Wisconsin Teachers Retirement System, one of the first teacher systems to establish such a plan. Most variable annuity plans provide that a member may elect to have part of his funds invested in common stock; thus, at retirement he will have accumulations in both the fixed and variable portions of the system. The fixed portion provides a set annuity based on the formula. The variable portion is evaluated annually and the annuity is increased or decreased for the succeeding fiscal year. Three factors determine the amount of increase or decrease: interest and dividend income, capital gain or loss based on the market value of securities, and mortality experience among annuitants. Usually, common stocks increase in value during periods when the cost of living increases. Therefore, the purpose of a variable annuity plan based upon common stock investments is to provide increases in retirement benefits during such periods, thus lessening the need to seek increases in retirement benefits from the legislature. And the retirant will know he can rely on the fixed portion of his benefit, although the variable portion may fluctuate.

In addition to Wisconsin, the retirement systems of Minnesota, Oregon, New York City, and Milwaukee have variable annuity plans. In the past few years, more systems have adopted automatic increase plans related to the Consumer Price Index than have adopted variable plans.

The Public School Teachers' Pension and Retirement Fund of Chicago attacked the problem in another way. Members contribute 0.5 percent of their salary annually in addition to their regular contribution rates. The retirement allowance is then automatically increased 1.5 percent each year beginning at either the anniversary date of the allowance or at age 60, whichever is earlier.

Also, the Maine State Retirement System provides cost-of-living increases in allowances for retired people at the same percentage received by active employees in general salary adjustments. Teacher retirement systems with automatic increase plans are still a small minority. Therefore, providing retirement benefits that remain adequate after a few years is still a major problem.

Teacher mobility. Perhaps teachers face no problem so great (except for inadequate benefits) as that of loss of benefits when they move from one state to another during the course of their careers. It was once thought that the problem could be solved by reciprocity; that is, either the teacher's present retirement system would transfer funds accumulated on his behalf to his new system, or the new system would assume the liabilities for services rendered in another state. Reciprocity was to be accomplished by having all systems agree to use one of these methods and to adopt similar provisions. However, experience has shown that neither of these methods has worked. In addition to the expense involved (which would be great in those states to which migration of teachers is large), many states view the retirement system as a device to attract and retain good teachers and therefore are reluctant to adopt a system of reciprocity, which enables teachers to move from state to state.

As a result, two other methods have been used to solve the problem. One method provides some kind of credit for out-of-state teaching service. Of course, those states which must recruit a large number of out-of-state teachers are most likely to provide such credit. Even these states, however, place limits on the amount of out-of-state credit available, primarily because of the cost factor.

At the present time, vested and deferred benefits present the most feasible solution. Under this method, benefits vest after a certain number of years of service, although payment is deferred until normal retirement age. A teacher who moves from the system in which his benefits have vested to teach in another state does not withdraw his contributions; instead, at retirement, he receives a benefit not only from the system of which he is a member at retirement but also from any system in which his benefits have vested for earlier years of service. This method will work only if all systems provide early vesting and if teachers do not withdraw their contributions when they move. Despite the fact that the National Education Association and its National Council on Teacher Retirement have long urged vesting after five years of service or less, few states have complied. The most common period for vesting is after ten or 15 years of service, with some systems making no provision at all. The pressure to solve this problem increases as the mobility of teachers increases. In response to this pressure, legislation has been introduced in Congress. If such legislation is enacted, both federal and state funds would be available to provide retirement benefits for mobile teachers.

Social Security coverage. Until 1950 teachers were not eligible for coverage by the federal Social Security Act of 1935. Today about two-thirds of the teachers in the United States are covered by Social Security as well as by a retirement system. The Social Security Act provided that teachers and other public employees who were members of retirement systems could vote to determine whether they would be covered by Social Security. If a majority of members of a public retirement system voted for coverage, all present and future members of the system would then be covered. In certain states named in the federal law, those voting for coverage were covered, those against were not; all future members would be covered, regardless of how the majority voted.

In some states, Social Security coverage was adopted in addition to the existing retirement plan—this is called full supplementation. In other states the existing retirement plan was amended at the time Social Security coverage was adopted; however, both plans are operated separately. There are many variations in the ways Social Security coverage is coordinated with retirement systems.

BIBLIOGRAPHY

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS 1963 *Transferability of Public Employee Retirement Credits Among Units of Government.* Washington, D.C., Government Printing Office.

KLEINMANN, JACK H. 1962 "Retirement." *Fringe Benefits for Public School Personnel: A Comparative Study of Principles and Practices in Education, Government, and Private Employment.* New York, Teachers College Press. Pages 87–120.

KRAFT, LEONARD E. 1966 "Teachers Must Leave Retirement Benefits Behind." National Education Association, *Journal,* 55, no. 2:50.

LILLYWHITE, RAY L., AND MARTHA L. WARE 1966 "Retirement Benefits and Teacher Mobility." National Education Association, *Journal,* 55, no. 4:15–16.

NATIONAL EDUCATION ASSOCIATION. OFFICE OF TEACHER RETIREMENT 1969 *Teacher Retirement System Summaries.*

Washington, D.C., National Council on Teacher Retirement.

NOLTE, M. CHESTER, AND JOHN P. LINN 1963 "Tenure and Retirement of Teachers." *School Law for Teachers.* Danville, Ill., Interstate. Pages 111–136.

Proceedings of the National Education Association, National Council on Teacher Retirement. Washington, D.C., The Association. Published annually.

REMMLEIN, MADALINE K., AND MARTHA L. WARE, eds. 1970 "Retirement and Social Security Benefits." *School Law.* 3rd ed. Danville, Ill., Interstate. Pages 177–201.

The Yearbook of School Law. Danville, Ill., Interstate. Published annually.

MARTHA L. WARE

TEACHER EMPLOYMENT, LEGAL ASPECTS

1. NEGOTIATIONS

Since the passage in 1935 of the Wagner Act, which created the National Labor Relations Board (NLRB), millions of workers in the private sector of employment have been given the right to organize and to bargain or negotiate collectively with their employers regarding wages, hours, and other terms and conditions of employment. Today this right is widely exercised in the field of private employment. The opportunity for public employees to negotiate with their employers was not frequently demanded until after World War II, when public employees, including teachers, began to press for the right. Year by year the pressure has been increasing greatly for the right to join organizations, including unions, and through such organizations to negotiate on wages, hours, and other conditions of employment.

Realistically, the hurdle erected at one time by some courts and legislative bodies to prevent public employees from joining employee organizations no longer exists. Today it seems certain that the First Amendment, through its protection of freedom to assemble, ensures the right to join an employee organization.

A logical approach to a discussion of the legal aspects of teacher negotiations requires an understanding of the term "negotiations." If the term carried only a connotation that teachers, through their representatives, could present certain requests to a school board or its representatives and both sets of representatives could discuss these requests as completely and for as long a time as the school board permitted, then there would be no need for this article. The law cannot prohibit any individual or group from making a request of an employer, even if the employer is a public employer. The law cannot keep the public employer from discussing the matter presented if he elects to do so. There is nothing new about representatives of teachers and school boards carrying on talks prompted by requests from teachers. Indeed, in certain school districts this has been going on ever since the formation of the district.

However, if the term "negotiations" signifies a procedure which takes away from a school board the sole discretion as to whether to discuss with teachers their requests and how much time to make available for such talks and imposes upon the board certain responsibilities by way of responses, it is necessary to determine the legality of such imposition. Certainly, if the imposed procedure deprives the school board of the ultimate authority to fix conditions of work, it can validly be argued that there is an illegal infringement upon the legislative power of the school board.

Good faith bargaining. Negotiations are imposed upon school boards by statutes. A number of state statutes of this type have appeared since the late 1950's. Instead of using the word "negotiations," these statutes have used such expressions as "collective bargaining," "professional negotiations," and "professional bargaining." However, if a statute clearly intends to require that a certain fundamental technique be used by the parties at any negotiating session, the phrase "good faith" will usually precede the phrase "negotiation," "professional bargaining," "collective bargaining," or "professional negotiations." The statute will require the parties to negotiate in good faith, and it is this phrase which carries the legal connotation of the actual negotiating technique required. If the phrase "good faith" is omitted, there is no sure enunciation of rules of procedure. If the good faith directive is included, the legislature has shown an intent that negotiating procedure conform to the dictates of many NLRB, federal court, and U.S. Supreme Court decisions which define good faith in collective bargaining or negotiations.

Although the decisions interpret the National Labor Relations Act as it applies in industry, there is no logical reason why the concept of the technique of good faith negotiations in the public employee field should be interpreted any differently. At least it seems certain that no state court will require any more by way of negotiations than do the NLRB and the federal courts.

The concept of what is dictated by the requirement of good faith is not changed because the phrase, instead of being followed by the mere word "negotiations," is followed by such terms as "collective bargaining," "professional negotiations," or "professional bargaining." All the terms are synonymous as far as suggesting a procedure; it is the expression "good faith" which dictates the technique to be used.

In order to evaluate the position that courts have taken in respect to the allegation that a statute requiring good faith negotiations is invalid since it constitutes an infringement on the legislative power of the school board, it is important to appreciate the techniques which the courts have said are dictated by the concept of negotiations in good faith (Seitz 1969; 1966*a*; 1966*b*; 1964).

It was decided early that good faith negotiating does not permit the employer to come to the bargaining table and assume the position that he will listen attentively to all proposals and if he hears anything to which he can agree, he will so indicate. A party cannot enter negotiations with the announcement, "We don't want to waste time, so we will tell you in advance that we will never sign any contract which does not contain the terms which we will now name." For example, a school board could not open with such a proposal attached to a condition that the contract must contain a clause giving sole control over class load and size to the board. The technique is not good faith bargaining, since it constitutes a take-it-or-leave-it approach. Such an approach indicates to the other party that it cannot have any agreement unless it consents to the inclusion of a significant term in the contract about which the proposer will not bargain.

Change the facts somewhat. Assume that a teacher representative has demanded a binding arbitration clause in connection with grievance settlement procedure. Assume the representative of the school board agrees but replies, "We will tell you now that we will reserve sole control over class load and size." This, unlike the previous example, does not violate good faith negotiations, since it does not constitute a take-it-or-leave-it approach. It is simply a counterproposal, a response to an employee demand for an arbitration clause. Firmness on one or more issues when the whole record reveals no intent to dodge the obligation to bargain in good faith is no violation of the requirement—the employer does not have to make concessions to every demand. This is specifically stated in some statutes, but logic leads to the same conclusion.

Although a proposal in the form of some concession is not required as an answer to every demand, the other party must declare what it is or is not willing to do and offer supporting reasons. There may be danger, however, if a party makes all of its counterproposals final too early in negotiations. This may be the import of the General Electric case decided by the NLRB in 1964 (150 NLRB No. 36) and reviewed by the second circuit in 1969 (418 F. 2d 736).

There is no doubt at all that an employer can in due course, after good faith bargaining, put forth his final offer.

An important question is whether a board or a court can find absence of good faith if the agreement which the employer is willing to sign reveals that the employer has failed to concede anything substantial. When such facts exist, the board has found bad faith, in spite of the National Labor Relations Act, which specifically states, in Section 8(c), that the "obligation (to bargain collectively) does not compel either party to agree to a proposal or require the making of a concession." The board could not believe that good faith bargaining would not by its very nature produce some concession of substance. The Federal Court of Appeals for the Fifth Circuit overruled the board (*White* v. *NLRB*, 225 F. 2d 564). It stressed that the employer had not refused to bargain, that it had explained its position and given reasons therefor. The court felt that it could not undertake to determine good faith under a standard as to whether it thought the terms of a labor agreement were wise. However, the court did not hold that under no possible circumstances could the mere content of various proposals and counterproposals be sufficient evidence of a want of good faith. The court stressed: "We can conceive of one party to such bargaining procedure suggesting proposals of such a nature

or type or couched in such objectionable language that they would be calculated to disrupt any serious negotiations."

Since the board and the courts are not bound by the decision in areas other than the fifth circuit, the way is open in some jurisdictions for a determination that since the employer failed to concede anything substantial, there is evidence of bad faith. However, it is certain that the board and the courts are not going to find lack of good faith just because they feel that the terms of a contract were not wise.

Good faith bargaining does not require fruitless marathon sessions—it recognizes that there will come a point when the parties arrive at an impasse. If an impasse does develop, certain acts, such as unilateral action on the part of an employer, can violate the dictate of good faith negotiation. If an employer grants benefits that have never been discussed at the bargaining table, he violates the good faith requirement. However, the Court of Appeals for the Fifth Circuit differed with the NLRB and found no violation if after an impasse the employer granted something which had been discussed during negotiations and which the employer had indicated he would grant (*NLRB* v. *Intracoastal Terminal, Inc.*, 286 F. 2d 954).

The unilateral granting of a benefit before an impasse in respect to a topic being discussed at the negotiating table is a circumvention of the duty to bargain and is held to be as bad as a flat refusal (*NLRB* v. *Katz*, 369 U.S. 736).

Problems can arise as to what bargaining is required during the term of a contract if one is negotiated. Industry has solved this by introducing a zipper clause into the contract. This type of clause states that the parties have bargained with respect to every aspect of rates of pay, hours of employment, and other conditions of employment; that the total results of their bargaining are embodied in the contract; and that omission of any reference to any aspect of these subjects is intended to be a waiver of the right to bargain with respect to it during the term of the contract.

Good faith bargaining demands a realistic interchange of reasons, information, and data. Parties are not expected to bargain in the dark.

Subject matter. No discussion of the philosophy of good faith collective negotiations can avoid dealing with the matter of what subjects must be bargained about. The U.S. Supreme Court has handed down a decision in this matter (*NLRB* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342). The Court divided the subjects into those which are illegal and cannot be bargained about, those which are mandatory and must be bargained about, and those which are voluntary and can be bargained about. The Court was construing the phrase in the National Labor Relations Act which requires bargaining on wages, hours, and other terms and conditions of employment.

The concept that some subject matter is illegal is very important in the area of public employment. This idea recognizes that bargaining often collides with existing statutes and cannot disregard such statutes.

In industry the trend of court decisions has been to constantly expand the area of mandatory negotiations. However, it is still recognized that there are some fundamental management rights which need not be negotiated. Justice Potter Stewart, in his concurring opinion in the decision in which the Supreme Court best explained why it supports the legality of collective bargaining (*Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203), took special pains to set forth some examples. One illustration is the right to determine the scope of the enterprise. Stewart admitted that decisions in this field would have some relationship to conditions of employment, but he asserted that they lie at the "core of entrepreneurial control" and, therefore, the employer does not have to bargain about them.

Similar decisions will be made in the field of public employer-employee bargaining. Many state courts will probably follow the trend of the federal courts in working with fact situations in the industrial field and bringing more and more subjects within the area of mandatory negotiations. The struggle will be in the area of the right of teachers to bargain for a role in the employment, promotion, and transfer process. Another field for debate will be the right to bargain about choice of textbooks, curriculum, and other aspects of the instructional program. Since teachers are trained professionals, it is entirely probable that administrative boards and courts can be influenced to feel that decisions relative to the instructional program should be treated as falling within a concept such as conditions of employment. Indeed, a similar argument may succeed in respect to permitting teachers to bargain for a role in connection with hiring and promotion.