

Restoring School Board Options on Contracting Out

Will School Boards and State Legislatures Act to Reverse
the Erosion of Management Authority in
Public School Governance?

by

Dr. Myron Lieberman.*

ISBN #: 1-886306-21-4

* Dr. Lieberman is Senior Research Scholar, Social Philosophy and Policy Center, Bowling Green State University, Bowling Green, Ohio; and Chairman, Education Policy Institute, Washington, D.C. This paper is published jointly with Education Policy Institute. © 1995 Education Policy Institute and The Claremont Institute.

The views and ideas expressed herein are those of the author and do not necessarily reflect those of Nevada Policy Research Institute. Nothing in this document is intended to be construed as advocacy for a particular position or as an attempt to either aid or hinder the passage of any legislation.

Nevada Policy Research Institute is a nonpartisan, nonprofit, public policy research and education organization established in 1991 with the mission of "*putting the public back into public policy.*" Issue papers and other publications on various topics may be ordered from our offices.



Nevada Policy Research Institute
P.O. Box 20312
Reno, Nevada 89515-0312
(702) 786-9600 or (800) 786-9602

Executive Summary

While school boards are asking for more money to build schools, repair current structures and increase teachers' salaries, opportunities to save money are being overlooked. Contracting out, or the subcontracting of services that are needed to keep a school system running, are not usually considered in cost-reducing efforts. School boards are often faced with "make or buy" decisions, such as whether to hire school bus drivers or employ a private transportation company. In public education, the usefulness and importance of these decisions is often ignored by school boards and administrators.

Unfortunately, most school boards are not adequately informed about the underlying issues involved in "make or buy" decisions. Powerful forces have a vested interest in keeping school boards uninformed: the most zealous of which are public education labor unions like the National Education Association (NEA) and the Nevada State Education Association (NSEA), one of its numerous local affiliates. They are intensely opposed to contracting out and have waged an all-out war against any consideration of such proposals. By keeping the services run by the school district, money is kept within the public education system, allowing unions more bargaining leverage in regard to contract negotiations and strikes.

Further, the NEA is currently in the process of establishing a Center for Educational Support Personnel. This would allow all bus drivers, cafeteria workers, and other school supporting staff into the union and therefore expands the union's financial base and membership dues. Contracting out any of these services would take away from future union membership. The NEA, along with the American Federation of Teachers (AFT) and the AFL-CIO, are utilizing every dimension of union operations to campaign against contracting out.

The NEA has already published two manuals on how to prevent contracting out. They include warning signs that privatization might be imminent and how to use collective bargaining to prevent it, legal strategies useful in blocking contracting out attempts as well as some questionable, possibly illegal, methods to use should the first two options fail. Far from being a strictly American problem, their campaign against privatization of schools services is being played out internationally, as well.

Contracting out services is not necessarily the best answer to saving money under all circumstances, but it is an option worth considering. If the option is not available to school boards, then the taxpayer, and ultimately the children, will lose.

Introduction

School boards are often faced with “make or buy” (that is, contracting out) decisions. For example, should they hire school bus drivers and buy school buses—or should they employ a transportation company to transport pupils to and from schools? Should they employ maintenance and custodial employees, or employ a service company to perform maintenance and custodial functions? Make or buy decisions can arise in any service school boards need, hence boards should be fully informed about the underlying issues in these decisions. Yet school boards and school board organizations are woefully unprepared to deal with these issues, especially the massive union effort to eliminate or restrict board freedom to contract for services.

In the following discussion, I use “contracting out” or “competitive contracting” to refer to decisions to purchase services from a company. “Outsourcing” and “subcontracting” are other terms often used to denote this practice, but they are not commonly used in education. “Privatization” is frequently used, but it actually denotes much more than contracting out. For example, educational vouchers are a form of privatization but they raise a host of issues different from those involved in contracting out *per se*. At any rate, when used here, “privatization” will be synonymous with contracting out even though the terms are not really synonymous in other contexts.

At the outset, we should recognize the pervasive nature of contracting out. In deciding whether to eat in a restaurant or at home, we are deciding whether to contract out cooking and washing dishes or perform these tasks ourselves. The same issue arises when we decide whether to wash our clothes at home or take them to the laundry. Most of us would agree that the right to choose among all such options is extremely important to us; taking it away would be a devastating blow to effective management of our personal affairs. Similarly, contracting out issues arise for companies as well as individuals. Should the company hire full-time legal counsel or employ outside counsel? Should the company use its own staff to publish its annual report or should it contract with a commercial printer to perform this function? Carmakers must often decide whether to manufacture certain parts or purchase them from outside vendors. As

“...school boards and school board organizations are woefully unprepared to deal with these issues...”

“...union opposition is operative at both the statutory and the local level.”

this is written, Boeing is undergoing a strike rather than accepting union demands to restrict company purchases from manufacturers in other countries.

In public education, the critical make or buy decisions relate to services, not to products. Insofar as products are involved, most of the controversies are over local vs. out of district (or out of state) vendors. The issue here is not whether district employees should make the product, but what restrictions there should be on a school board's choice of vendors. Although this issue also arises with respect to services, the critical issue concerning services is whether they should be contracted out at all.

In view of the pervasive nature of contracting out, one might anticipate widespread acceptance of its legitimacy, but this is not the case. Both public and private employers face intense opposition to contracting out from labor unions representing employees allegedly affected adversely by the practice.

Generally speaking, union opposition is operative at both the statutory and the local level. From a union standpoint, the statutory level is the most critical since success at this level often precludes the necessity for union action at the local level. For example, in California, whose public schools enroll one of every eight pupils in the United States, the contracting out option is not available for most management/supervisory services that can be contracted out in the other 49 states. California statutes 45240 *et. seq.* require supervisors to be “classified employees,” that is, employees of the school district.¹

In effect, these statutes establish the state of California as a “dumb buyer”; they prohibit local school boards, which are legally units of state government, from buying the most efficient management services. I do not contend that private management is always preferable; this would be as absurd as the statutory conclusion, implicit in the California Education Code, that private management is never preferable. Instead, my contention is that school boards should be legally free to exercise their own judgment on the options. In prohibiting school boards from purchasing management services from private sector companies, California has severely limited

school board flexibility. Regrettably, in my nine years as a school board negotiator in California, I never heard of any opposition from school boards or school board organizations to this restriction.

The California situation illustrates a point of utmost importance. State legislation sets the legal framework for contracting out. State statutes govern what can be contracted out, bidding and/or negotiation procedures, duration of contracts, bonding, and a host of other issues that arise in contracts for services. Indisputably, this legal environment has a tremendous impact upon the prevalence and usefulness of contracting out by school boards. Ideally, in view of the differences among school districts, school boards should have broad autonomy to contract for services; micro-management by the state, as in California, is bound to result in major inefficiencies. Furthermore, the more vendors there are, the more likely it is that school boards will benefit from contracting for services. Unfortunately, the states often have established obstacles to contracting out which are contrary to the state's consumer interest in better service at a lower cost.

At the local level, much depends upon whether the state has enacted a bargaining statute applicable to unions of school district employees. Union opposition to contracting out is usually more effective under such statutes. The main reason is that contracting out is usually a mandatory subject of bargaining under the bargaining statutes. This means that school boards must bargain on union proposals that would prohibit or restrict boards from contracting for services. Even when the unions do not achieve a contractual prohibition against contracting out, they are frequently successful in negotiating restrictions that render it impractical. Indeed, this is the dominant union strategy at the state as well as the local level; the unions assert that they are not opposed to contracting out in principle—and then propose a list of conditions that no contractor could possibly accept.

In another scenario, the union proposes restrictions on contracting out when the school board has no interest in contracting for services. When the union appears willing to accept a board proposal on another issue in exchange for the restriction on contracting out, the board agrees, naively thinking that it has negotiated a union concession without

“...micro-management by the state, as in California, is bound to result in major inefficiencies.”

“The scope and intensity of NEA/AFT/AFL-CIO opposition to privatization are remarkable...”

conceding anything of importance to the union. Subsequently, however, when the board becomes interested in contracting for services, it cannot do so because of the contractual restrictions it accepted previously.

NEA Opposition to Contracting Out

The scope and intensity of NEA/AFT/AFL-CIO opposition to privatization are remarkable; every dimension of union operations is utilized in their campaign against contracting out. In the NEA, opposition to contracting out was an inevitable consequence of its transformation from an association dominated by school administrators to a public sector union. The NEA was founded by school administrators, and until the 1960s, administrators dominated association policies. Needless to say, school administrators had no interest in restricting management rights to contract for services. In conjunction with the widespread attitude that teachers were “professionals,” hence not to be combined organizationally with school bus drivers and cafeteria workers, the NEA simply ignored contracting out until its emergence as a union.

Today, however, the NEA is in the process of establishing a Center for Educational Support Personnel to wage all-out opposition to contracting out. The NEA already publishes two manuals on how to prevent contracting out. *The People’s Cause* is published by the NEA’s Center for the Preservation of Public Education; *Contracting Out: Strategies for Fighting Back*, by the Affiliate Services Division.² Let me cite from both to illustrate how the NEA conducts its campaign against contracting out.

The People’s Cause urges close attention to the “Warning Signs” that privatization may be imminent:

“1. If you have school board members, a superintendent or other administrator who . . .

- Is a member of a far right organization*
- Seems greatly enamored with the concept of applying competition or market forces to the public school system*
- Has been heavily supported by business*

- *Is coming under increasing fire for poorly run schools*
- *Is facing severe budget problems*

... then it's time to start explaining to your members and key communities what could be coming and why it is not a good idea. You may want to ask the NEA affiliate in a new administrator's previous district whether contracted management was an issue.

2. Discussion or official action may begin at the school board level, with the board entertaining the adoption of policies allowing privatization or the contracting of school services. Monitor board meetings closely for any talk of privatization, schools for profit, etc. Remember, decisions to request bids for goods and services must be made in public sessions.

3. You may hear talk among school administrators, business people, or board members about the virtues of private management. Check out rumors promptly. Keep in touch with discussions in the Chamber of Commerce, Rotary Club, or other business organizations in the community.

4. You may notice unknown visitors or representatives from private companies conducting tours on school grounds.

5. Administrators, board members, and eventually Association leaders and teachers may begin visiting privately run schools in other districts (at this point [Education Alternatives, Inc.]-run schools in Miami and Baltimore are likely sites).

6. You may notice administrators, supervisors, or board members invited to meetings with private company representatives.

7. Watch for the subcontracting of other school services. Don't get caught in the "it doesn't affect me" trap. Contracting out jobs of school bus drivers, food service workers, and custodians is a threat to all education employees.

8. Watch for the subcontracting of other public services in your community. Look for any evidence that politicians,

“You may hear talk among school administrators, business people, or board members about the virtues of private management.”

administrators, or businesses in your area look favorably at turning to the private sector to provide public services.”
(p. 3.)

After a similar list, *Contracting Out* points out that “Many locals approach the problem as they would an organizing, contract, or political campaign.” The guide then suggests an organization plan that includes a steering committee and two groups: one for strategy and internal communications, the other for community outreach.

Under “research,” *Contracting Out* recommends investigation of administrators encouraging contracting out and suggests that “The local may want to meet with these people immediately and bring to bear whatever political pressure it can.” Other suggestions include identifying local merchants who may lose contracts to provide equipment or supplies, efforts to tie a board member or administrator to a bidder, and careful scrutiny of the procedures for soliciting and reviewing bids. Locals are advised to make all requests for information in writing and to request assistance from the UniServ staff.³ The guide also includes several suggestions for investigating the companies that may be involved; for example, “The goal is to find information that casts doubt on the company’s . . . social responsibility. For instance, you might uncover investments in South Africa or poor environmental practices.” A list of references and resources to help locals find negative information about contractors is included under “Research Materials.”

The advice on tactics is not very pleasant reading for school boards and contractors. It includes:

- Making suggestions to contractors that “bidding may not be worthwhile”;
- Holding rallies, demonstrations, picketing, buttons, billboards, leaflets;
- Using signs with “a catchy slogan or a question such as ‘Why does (board of education member’s name) want to give our jobs away?’”;
- Refusing voluntary overtime or optional assignments;
- Following a supervisor’s instructions to the letter;
- Taking no responsibility for solving problems that arise;
- Following all administrative rules strictly;

“Many locals approach the problem as they would an organizing, contract, or political campaign.”

- Refusing to “make do” with inadequate or inappropriate equipment and supplies; and
- Referring all questions and complaints to whoever came up with the idea for contracting out or the main office of the contractor being considered.

No mention is made of the fact that union sponsorship of these activities would normally constitute violation of a no-strike clause in a collective bargaining contract or of a statutory prohibition of strikes. Notwithstanding, extensive attention is paid to media relations; the teacher unions are well aware of the fact that controversies over contracting out are struggles for favorable public opinion.

An entire chapter is devoted to how to use collective bargaining to prevent contracting out. The guide includes model contract language to ensure that no employee loses a job or overtime or any other benefit of any kind. The following model language is proposed as the most desirable protection:

“The duties of any bargaining unit member or the responsibilities of any position in the bargaining unit shall not be altered, increased, or transferred to persons not covered by this agreement.”

To say the least, *Contracting Out* is thorough. It suggests six possible legal strategies to block contracting out:

1. Filing unfair labor practice charges over school district failure to bargain on contracting out issues.
2. Challenges to school board authority to contract out.
3. Finding and trumpeting violations of civil service laws, state constitutions, and city and county charters.
4. Finding and trumpeting violations of prevailing wage requirements.
5. Finding and trumpeting violations or neglect of affirmative action/minority set-asides. The guide suggests that “the association may need to file the suit jointly with a minority contractor or group of contractors.”
6. Finding and trumpeting violations of residency requirements.

“No mention is made of the fact that union sponsorship of these activities would normally constitute violation of a no-strike clause in a collective bargaining contract...”

Contracting Out also suggests that school district employees who become employees of a private contractor may have bargaining rights under the National Labor Relations Act (NLRA). This possibility has deterred some school districts from contracting out; faced with a choice between dealing with a union of school district employees which does not have bargaining rights, and a private sector union which does have bargaining rights, or might obtain them, some school districts prefer the first option. Notwithstanding the fact that the contracting company, not the school district, would have to bargain with the union, school management sometimes fears that the presence of a private sector union would be an undesirable precedent in district affairs. Significantly, UniServ directors are trained to help the newly privatized employees exercise NLRA rights, thereby increasing the pressures on school districts not to contract out in the first place.

“School boards and companies that negotiate service contracts despite NEA opposition may discover that their troubles have just begun.”

School boards and companies that negotiate service contracts despite NEA opposition may discover that their troubles have just begun. At least, that is precisely the message that *Contracting Out* delivers, loud and clear. *Contracting Out* includes several suggestions on how newly privatized school district employees can sabotage company operations. In fact, even where a district contracts only for management services, *Contracting Out* advises various actions intended to weaken the contractor's viability.

To facilitate local campaigns against contracting out, *Contracting Out* provides model language for billboards, newspaper advertisements, radio/television spots, collective bargaining contracts, letters to the editor, etc. These messages are drafted on the basis of extensive polling and experience in opposing contracting out. Some are even available in foreign languages to insure complete penetration of target audiences.

AFT Opposition to Contracting Out +

The AFT's anti-privatization program does not differ materially from the NEA's. The AFT maintains a hotline on privatization and publishes a variety of brochures and pamphlets denigrating it in every way imaginable. AFT training programs and publications on how to block contracting out are virtually interchangeable with the NEA's; a 1995

AFT five day "Privatization Workshop" was designed to provide participants with:

- *a detailed campaign calendar;*
- *models for developing alternative plans;*
- *strategies to identify and mobilize allies in the community;*
- *volunteer recruitment plans; effective media strategies; and*
- *campaign literature plans, with one flyer or newsletter in the works.*

Locals were urged to send two representatives who would participate with AFT staff "to develop a strategic campaign plan" based on previous campaigns.

Historically, the AFT's anti-privatization efforts preceded the NEA's and illustrate the basic similarities between them. One such similarity is their willingness to cite false or misleading statements of fact. According to *AFT Online*:

"Although touted as a new education reform, privatization has a long history. Twenty years ago, for example, a strategy called 'performance contracting' was sponsored by the Federal Office of Economic Opportunity [OEO]. In this scheme (sic), private firms were hired to raise student achievement in public schools, with their payment dependent on higher student test scores. The effort was a disaster. Classrooms were in chaos, and student achievement did not improve. One contractor admitted to trying to raise student test scores by teaching the students answers to specific test questions."

Interestingly enough, AFT President Albert Shanker was president of the AFT's New York City affiliate when the OEO project was in progress. For this reason, it is interesting to compare the AFT's version of the project with an analysis of it by the Brookings Institution:

"There were also a few sites where extraordinary difficulties occurred, much beyond anything that might have been anticipated beforehand and sometimes so serious as to make the test results next to meaningless. The worst was the Bronx. In the late sixties the New York

"Historically, the AFT's anti-privatization efforts preceded the NEA's and illustrate the basic similarities between them."

“Whether or not the AFT sabotaged the experiment in New York City ... the AFT under Shanker’s leadership undoubtedly did everything it could to block the experiment...”

City school system had moved toward a decentralized, community-controlled system that had antagonized its strong local teachers’ union, the United Federation of Teachers. This union, a chapter of the American Federation of Teachers, was as opposed as its parent to performance contracting, and its president, Albert Shanker, announced on the radio that he believed the OEO Bronx program to be illegal and threatened action to prevent its continuation. The teachers in the experimental schools took this cue and were continually at loggerheads with the contractor, Learning Foundations. There were reports that they threw some of the Learning Foundations equipment out of second-story windows and told students to throw away their parent questionnaires. Discipline in the junior high schools involved in the experiment became so bad at one point early in the fall that all testing and instruction were halted and a full-time policeman had to be stationed in one of them. Instruction could only be resumed when the president of Learning Foundations, Fran Tarkenton, at that time also quarterback of the New York Giants football team, was able to rally community support around the project. Even so, records from the project are very incomplete. The tests at the end of the school year were given in a ballroom a few blocks from the school and a new form of attrition was introduced as students walked from the school to the testing room. Moreover, some of the ninth grade control students were not post-tested because the school principal assigned Battelle a testing date that was after the school year was over, the parent questionnaires and student information cards were never filled out, and the project director kept very poor records of who was and who was not in the program. Fortunately, this experience was out of the ordinary. The situation in Hartford and Philadelphia was almost as disorganized.”⁵

Parenthetically, it might be noted that the AFT represented teachers in Hartford and Philadelphia at the time. Whether or not the AFT sabotaged the experiment in New York City (and I believe the evidence is overwhelming that it did), the AFT under Shanker’s leadership undoubtedly did everything it could to block the experiment and then to ensure its failure. Not surprisingly, the report by the General Accounting Office (GAO) concluded that:

"Because of a number of shortcomings in both the design and implementation of the experiment, it is our opinion that the questions as to the merits of performance contracting versus traditional educational methods remains unanswered."⁶

Another independent evaluation by the Battelle Institution reached essentially the same conclusion.⁷ Nevertheless, the NEA and AFT have cited the OEO project as proof that contracting out instruction has been tried and found to be unsuccessful.

On economic issues, the AFT's anti-privatization guides are more sophisticated than the NEA's. Although both unions use any strategy or tactic that will discourage privatization, AFT guidelines on the costs of contracting out raise more legitimate issues that might be overlooked. To cite a simple example, the AFT guidelines emphasize the importance of costs to the district that do not show up on its budget. One such cost might be students having to walk farther to school than they did under district administered transportation. Of course, this issue would actually redound to the superior performance of the contractor if students walked shorter distances under contracting out.

My assumption is that in presenting their case, both the unions and the service providers will tend to omit data that weaken it. Nevertheless, a truly comprehensive comparison of costs and benefits is more likely to strengthen the case for contracting out; government estimates of the costs typically omit several substantial costs, such as construction, interest, and huge taxpayer liabilities for unfunded public employee pensions. In any case, the mere existence of cost and quality comparisons actually confirms the value of contracting out as a school board option. In its absence, there is little or no school board or union or employee incentive to examine costs or quality carefully. With contracting out, especially under competitive conditions, costs and quality are subject to careful scrutiny. This is a major benefit to school management, all the more so if the union and the companies bear the costs of such scrutiny. Even if each party cites only the data that promotes its interests, school boards are much better informed than they are if district operations are not subjected to intensive cost/benefit analysis.

"...both the unions and the service providers will tend to omit data that weaken it."

AFL-CIO Opposition to Contracting Out

In addition to its own anti-privatization program, the AFT draws upon the AFL-CIO's Public Employee Department (PED) for assistance. PED membership consists of the 34 out of 86 AFL-CIO unions that enroll some public employees. AFT President Albert Shanker has served as PED president and is currently one of its eight executive vice presidents: a position he has held for several years.

Understandably, PED is a major center of anti-privatization activity. For instance, PED published the *Human Costs of Contracting Out: A Survival Guide for Public Employees*, a highly sophisticated anti-privatization manual.⁸ The manual includes a comprehensive list of union publications opposed to privatization. Strategies for intimidating potential contractors are commonplace; for example, the AFL-CIO's Food and Allied Service Trades Department publishes *The Manual of Corporate Investigation*, a detailed procedure for investigating companies providing services to public employers.

Perhaps needless to say, NEA/AFT/AFL-CIO efforts to restrict contracting out emphasize public policy reasons, not employer or union benefits, as the rationale for the restrictions. The hypocrisy in this stance is evident from the fact that AFL-CIO unions not only supported but insisted upon contracting out in the 1950s when the federal highway program was under consideration. At that time, the unions feared that the federal government would employ federal employees instead of private contractors to build the interstate highway system; to preclude any such eventuality, the building and construction unions, which dominated the AFL-CIO, insisted upon contracting out highway construction. For that matter, the NEA, AFT, and AFL-CIO all supported federal aid to private schools in the late 1940s. This situation came about because the AFL-CIO was committed to federal aid to Catholic schools; the way to achieve this was to support federal legislation in which the issue of federal aid to private schools was left to each state to decide. Undoubtedly, states in which there was a strong Catholic constituency would have resolved the issue in favor of a private school allocation. The NEA concluded that the only way to enact federal aid to education was to allow private schools a share of the federal aid, hence, the NEA

“Strategies for intimidating potential contractors are commonplace...”

supported leaving the issue to each state to decide. The AFT initially opposed aid to denominational schools, but pressure by the AFL-CIO led the AFT to change its position. Current NEA/AFT opposition to government assistance for private schooling is allegedly based upon constitutional principles and public policy rationales, but the historical record indicates that union interests underlie the union positions on the issue.⁹

Finally, it should be noted that both the NEA and AFT and their affiliates frequently utilize service companies, including non-union ones,¹⁰ instead of their own employees to provide various services. NEA and AFT contracts with unions representing their own employees allow the NEA and AFT to contract out—perhaps an important reason why the NEA/AFT do not publicize the contracts they negotiate as employers.¹¹

Union Membership and Contracting Out

Opposition to contracting out characterizes both public and private unions. When the unions do not oppose it, the reason is usually that they have negotiated satisfactory agreements with the employer and/or the contractor. For example, the union may not object to contracting out if the subcontractor's employees are represented by the same union that represents the prime contractor's employees. Nevertheless, although NEA/AFT opposition to contracting out is normal union practice, the scope and intensity of their opposition are recent developments. Let us see how and why these developments have emerged.

The NEA and AFT can be viewed as producers of representational services. In this context, teachers are consumers of such services. Since the advent of the collective bargaining era, the NEA and AFT have greatly increased their customer base; in recent years, however, the teacher market for union services has been stagnant. And like producers generally, the NEA and AFT are trying to find other markets for their services.

What might these other markets be? The AFT has always been receptive to organizing school support personnel, but its opportunities to do so are severely limited by the fact that AFT affiliates are not the bargaining agent in most districts. However, because the AFT is primarily a large city union, and large cities tend to employ large numbers of support personnel, the latter are a very important constituency in the AFT.

“...AFT leaders feared that if any other union organized support personnel, AFT ability to shut down school districts during a strike would be severely impaired.”

“Whether such protection is needed is not as important as whether the NEA/AFT can convince support personnel that it is.”

This constituency emerged partly as a result of the increase in paraprofessionals funded by federal programs; when the author was a candidate for AFT president in 1962, support personnel were virtually invisible in both the AFT and NEA, and there was no program, actual or proposed, to address their problems. Indeed, there was considerable opposition in both unions to recruiting support personnel even though it was permissible under the AFT constitution. This attitude changed in the late 1960s on account of defensive reasons; AFT leaders feared that if any other union organized support personnel, AFT ability to shut down school districts during a strike would be severely impaired.

Up to the present time, the NEA has not tried to organize employees outside of educational institutions and school districts. There has been some internal discussion of organizing health care workers, but school support personnel constitute the major growth area for the NEA in the near future. First, U.S. school districts employ about 1.5 million classified personnel. Second, the NEA is advantageously situated to organize these employees. Since the NEA already has a presence in the overwhelmingly majority of school districts, its existing organizational structure needs only minor changes, if any, to accommodate classified employees. Of course, the NEA cannot take on the responsibility for representing classified employees without some adjustments, but its organizing problems in this respect are not formidable.

Although some of its state and local affiliates are not enthusiastic about the inclusion of support personnel, the NEA is clearly making an all-out effort to recruit them. NEA governance documents now require or facilitate representation from support personnel; NEA publications feature their problems and the services they receive.

Clearly, classified personnel can shore up the revenue base required to support the huge NEA/AFT bureaucracy. The question is: What can the NEA and AFT do for the classified employees? According to NEA/AFT publications and programs, the unions can protect the employees from privatization. Whether such protection is needed is not as important as whether the NEA/AFT can convince support personnel that it is. And, as we have seen, the unions are well prepared on this issue; to put it bluntly, they do very well in the fear business.

Strategic Considerations

The NEA/AFT conduct anti-privatization campaigns that are skillfully coordinated with their state and local operations. For example, AFT and NEA On-line provide instant communication and assistance on contracting issues. The following is typical:

*"Subj: Driver's Ed Sub-contracting
Date: 94-02-10 2139:45 EST
From PWFA Wren*

Our local of 2000, is facing RIFs due to the sub-contracting of our driver's ed program. If you have experience (preferably bad!) with your district's privatization of driver's ed, please contact:

*Cindy Swocker, President
Prince William Education Association
8510 Bucyrus Ct.
Manassas, VA 22110 or call 703-361-2736.
THANKS!!!!!"¹²*

If necessary, the unions will spend huge amounts to thwart contracting out in specific situations. In Hartford, Connecticut, the AFT has conducted an intensive campaign to terminate the school board's contract with Education Alternatives, Inc. (EAI). The school board's interest in contracting was based upon several factors, such as the fact that the average 1994-95 teacher salary in Hartford was \$58,800, not including an additional 28 to 33 percent of salary for fringe benefits. Meanwhile, academic achievement in the district was dismal indeed; just prior to the primary election in October 1995, the state revealed that only four of 771 Hartford students "fulfilled grade level expectations" in all four subject areas of the Connecticut Academic Performance Test. These data simply confirmed the prior evidence that had led the Hartford school board, a non-ideological board that was predominantly Democratic, to consider contracting out.

Notwithstanding these considerations, the AFT went ballistic in its efforts to terminate the EAI contract. The AFT:

- Assigned union staff to foster community opposition to the contractor;
- Repeatedly criticized the school board and EAI in expensive advertisements in the *New York Times*;

"...the AFT went ballistic in its efforts to terminate the EAI contract."

“...the Hartford Courant revealed that several district employees living outside the city had illegally voted in the election.”

- Published and disseminated flyers opposed to contracting out generally and to EAI specifically;
- Used union leave benefits to campaign against supporters of contracting out;
- Subsidized travel to Hartford by parents allegedly dissatisfied with EAI’s performance in Baltimore;
- Sponsored and supported anti-privatization candidates in the Hartford school board elections; and,
- Contributed to the purchase of a \$50,000 bus used by the Hartford Federation of Teachers for “community outreach.” The bus was used to help register sympathetic voters with 50 Hartford teachers serving as election registrars. In addition, it was used to transport union supporters to school and school board meetings where they can support Hartford Federation of Teachers positions.

The foregoing by no means includes all the AFT efforts to oppose contracting out in Hartford. Neither does it include several activities in which the AFT may or may not have been involved, albeit behind the scenes. For example, Hartford held a primary election (October 17, 1995), to elect 10 of 20 school board candidates to run in the general election on November 7, 1995. A few days after the primary, the *Hartford Courant* revealed that several district employees living outside the city had illegally voted in the election. Since one candidate supporting school board freedom to contract out lost by only one vote, it is likely that the illegal voting affected the results, whether or not the AFT was involved. According to the *Courant*, some of the district employees “acknowledged living outside the city but saw no problem in returning to vote....”¹³

To what source can school boards turn for help to maintain their freedom to contract out? Regrettably, there is none. A few policy organizations, such as the Reason Foundation, provide helpful information and strategic/tactical assistance on privatization issues generally, or on various non-educational services such as private operation of airports, but no organization provides political assistance on contracting out to school districts. As a matter of fact, even school board organizations demonstrate little or no interest in defending school board rights to contract out. The National School Boards Association (NSBA) policy merely states that:

“NSBA urges local school boards to retain decision making power when they use private companies in the operation of public schools.” (NSBA Resolution 3.4 Public/Private Partnerships.)

Obviously, NSBA policy avoids the basic issues completely. The policy does not address the importance and desirability of school board freedom to contract out. It does not say anything about the massive union efforts at the legislative and bargaining levels to weaken or eliminate contracting out as a board option. Even the NSBA policy adopted is questionable; if school boards retain the authority to overturn every contractor decision, we can expect political pressure on the boards to change a host of contractor decisions. In this situation, school boards are likely to lose the benefit of having the board relieved of responsibility for time-consuming details that do not involve policy issues. Whatever the interpretation of the NSBA policy, however, it does not commit the association to school board freedom to contract out; it merely says that school boards should retain control if they do contract for services.

In view of NSBA silence on the basic issues, it is not surprising that its programs also ignore them. For example, NSBA’s five day 1996 national convention program does not include a single session on contracting out or address the massive union efforts to restrict board authority on the subject. The program does include a clinic session on how an Oregon district achieved peace and harmony with its union by conducting an annual retreat; unfortunately, we are not told whether contracting out was discussed at the retreats. None of the other 76 clinic sessions (according to the NSBA program, “the heart of the NSBA Conference”) is devoted to contracting out issues. Granted, this neglect of contracting out might indicate that I have exaggerated its importance; I believe a more realistic explanation is that NEA/AFT efforts to intimidate school boards on the subject have been extraordinarily successful.

If school boards want to preserve or expand their freedom to purchase services from the private sector, several legislative options should be considered. One is to eliminate contracting out and its effects as a mandatory subject of bargaining; other options include statutory changes that would strengthen school board flexibility on bidding procedures, duration of contracts, and other contracting issues. Another high-priority

“...school board ability to contract out is unlikely to be secure unless and until school boards are better equipped to discipline unions and district employees who sabotage it.”

objective should be to replace the current system of financial reporting with systems that include all the costs of public education. In many, perhaps all, states, reporting the full costs of public education would suffice to encourage widespread privatization.¹⁴

Finally, school board ability to contract out is unlikely to be secure unless and until school boards are better equipped to discipline unions and district employees who sabotage it. Most state tenure laws envisaged a school board considering disciplinary action against a single teacher. Extensive due process protections were built into the tenure laws for this reason. Large-scale insubordination or union disruption of district operations was never envisaged as a school district environment. Clearly, the NEA/AFT are prepared to encourage illegal, concerted action and espionage by school district employees to ensure that contractors are not successful in providing better service at a lower cost; this is what the unions fear far more than company failure to demonstrate superiority over conventional operations.

At all levels, it will be interesting to observe how board members elected with union support react to such proposals. Conceptually, they might oppose contracting out in their own districts for valid reasons while supporting the principle of board freedom to contract for services. Obviously, board members who refuse to support board freedom to contract for services are placing union ahead of board interests in a highly visible way. Of course, NSBA resolutions supporting board freedom to contract out should be followed up by programs to achieve this purpose, but the first task is to establish policies that justify the program.

The failure of service companies to defend their interests more effectively is also difficult to understand. To be sure, some companies hope to reach an accommodation with the unions of school district employees; their reluctance to counter union opposition may be mistaken, but it is understandable. What is puzzling is why large companies that have been explicitly and repeatedly identified as NEA/AFT targets have not acted collectively to protect or expand their ability to function in the school district market. In recent months, several companies have expressed interest in cooperative efforts to expand school district markets for their services, but it is too early to say whether such efforts will materialize or how successful they will be. Ironically, while some

“Clearly, the NEA/AFT are prepared to encourage illegal, concerted action and espionage by school district employees to ensure that contractors are not successful...”

companies are afraid that cooperative efforts to introduce more competition in the education industry would be perceived as an antitrust violation, their refusal to participate in such efforts is strengthening the union monopoly over services to school districts.

Observations and Conclusions

Perhaps the most disturbing aspect of NEA/AFT opposition to contracting out is what it tells us about teacher understanding of and support for a market economy. The NEA and AFT cannot say, "We're opposed to contracting out because it's not good for the union" or "not good for the employees." Politically, they must cite public policy, not special interest reasons to justify their opposition. Since the most common feature of contracting out is its reliance on for-profit companies, the union attacks on contracting out inevitably degenerate into an attack upon for-profit enterprise.

The following comment from *The People's Cause* is typical:

"Those who believe the corporate sales pitch that deregulation and skilled private industry management techniques will solve the problems of public education should contemplate the savings and loan debacle, the airline company bankruptcies over the past decade, and the difficulties of airline travel today—all products of deregulation and private industry management techniques.

*Other notable examples of the genius of the marketplace are the soaring costs of health care in America and the millions of poor people whose primary medical care is in understaffed, overused hospital emergency rooms."*¹⁵

The foregoing comments could not be persuasive among citizens with a rudimentary grasp of economics. Parenthetically, it should be noted that corporate attitudes toward government regulation closely resemble teacher union attitudes—government regulation is good when it weakens your competition; bad when it exposes you to it. Most economists would be astonished to learn that the savings and loan debacle resulted from "deregulation and private industry management techniques"; some at least were under the impression that ill-advised federal loan guarantees, regardless of risk, plus Congressional protection for savings and loan officials who flouted prudent market processes, were the causal factors.

"Politically, they must cite public policy, not special interest reasons to justify their opposition."

Be that as it may, the NEA/AFT war on privatization extends far beyond our borders. Former NEA President Mary Hatwood Futrell is the president of Education International (EI), an international confederation of teacher unions which is now the world's largest trade union organization. According to *AFT Online*, at EI's 1994 meeting in Zimbabwe:

*"Futrell also criticized the International Monetary Fund, the OECD (Organization for Economic Cooperation and Development) and the World Bank, whose policies have encouraged privatization of schools around the world. ... Privatization is a cover-up for poor fiscal and management policies in these countries."*¹⁶

Apparently, Futrell was not aware of the fact that 15 of the 20 poorest economies in the world are one party African states which replaced their market economies with state controlled ones. Whatever its merits, her comment is not the only case in which NEA/AFT have tried to export their economic gospel to teachers in other countries. The AFT has received several grants from the federally funded National Endowment for Democracy to spread the AFT's economic and political gospel to teachers in Eastern European countries. Judging from the trends toward privatization in these countries, these AFT teachers are not very persuasive.

Finally, let me emphasize a point that has been mentioned but perhaps not sufficiently emphasized. Options are worth something. Individuals and companies and government agencies pay for options or pay to forego options. School boards which agree to give up their options to contract for services are giving something away of great value. Even if a school board never opts to contract out a service, its waiver of the right to do so will result in higher costs and less quality services. This is why school boards should make every effort to retain or to expand their authority to utilize contracting out. To do otherwise is to jeopardize their ability to meet their responsibilities.

"Apparently, Futrell was not aware of the fact that 15 of the 20 poorest economies in the world are one party African states which replaced their market economies with state controlled ones."

¹ In Nevada, there are no statutes either encouraging or prohibiting the contracting out of public school services, although there is nothing preventing its use as a bargaining point in teachers' contract negotiations. Specific policies differ by district. (Nevada Legislative Counsel Bureau)

² National Education Association. *The People's Cause: Mobilizing for Public Education*, "NEA Action Plan for Stopping Schools for Profit," Action Section (Washington, D.C.: Center for the Preservation of Public Education, National Education Association, 1994); *Contracting Out: Strategies for Fighting Back* (Washington, D.C.: Affiliate Services Division, National Education Association, undated).

³ UniServ officials are NEA political operatives who exist to direct political and lobbying activities in each congressional district.

⁴ While not officially active in Nevada, the AFT may become a greater influence in that state if the possibility of its merger with the NEA is ever realized.

⁵ Edward M. Gramlich and Patricia P. Koshel, *Educational Performance Contracting* (Washington, D.C.: Brookings Institution, 1975), pp. 29-30.

⁶ U.S. Office of Economic Opportunity Office of Planning, Research and Evaluation, *A Demonstration of Incentives in Education* (Washington, D.C.: Government Printing Office, 1972).

⁷ Battelle Columbus Laboratories, *Final Report on the Office of Economic Opportunity Experiment in Educational Performance Contracting* (Columbus: Battelle Memorial Institute, 1972), p. 142.

⁸ Public Employee Department, AFL-CIO, *The Human Costs of Contracting Out: A Survival Guide for Public Employees* (Washington, D.C.: Public Employee Department, AFL-CIO, 1993).

⁹ For a detailed account of NEA and AFT positions on federal aid in the late 1940s, see Marjorie Murphy, *Blackboard Unions* (Ithaca, NY: Cornell University Press, 1990), pp. 180-182.

¹⁰ On January 19, 1994, the Mackinac Center for Public Policy praised the Michigan Education Association for contracting out cafeteria service, custodial work, security, and mailing services, sometimes to non-union firms. *Mackinac Center Praises MEA for Management Excellence. Questions Double Standard* (Midland, MI: Mackinac Center for Public Policy, January 19, 1994).

¹¹ The author has attended meetings in the NEA building, sponsored by the NEA, in which the food service was catered by outside companies.

¹² *NEA Online*, 1995.

¹³ "Losing candidate files for new election in Hartford," *Hartford Courant*, Oct. 28, 1995, pp. A3, A7.

¹⁴ For an analysis of the understatement of the real costs of public education, see Myron Lieberman, *Public Education: An Autopsy* (Cambridge, MA: Harvard University Press, 1994), pp. 114-142.

¹⁵ National Education Association, *The People's Cause: Mobilizing for Public Education* (Washington, D.C.: National Education Association, 1994).

¹⁶ *AFT Online*, 1995.