

analysis

NRS 288

A Law against Student Learning

by Greg Moo

Executive Summary

Rare is the person who hasn't heard of a school district trying to fire a bad teacher and then being stopped by a teacher union. The battle can go on for months, even years. Worse, and perhaps more common, is the school district that — in the face of anticipated teacher-union opposition — has all but given up trying to fire a bad teacher, much less trying to fire a merely ineffective teacher.

Why is it so hard to remove a teacher who's not teaching and replace that teacher with one who is?

In Nevada, it's because Chapter 288 of the Nevada Revised Statutes compels school districts to negotiate long, difficult and costly step-by-step procedures that district administrators must follow to terminate a teacher. Moreover, NRS 288

requires that school districts must collectively bargain with teacher unions on a whole shopping list of "subjects" — making contract agreements between school districts and teacher unions into cumbersome obstacles to any school-district effort to improve students.

For example, NRS 288 mandates that school districts bargain "total hours of work required," "policies for assignment of teachers," "materials for the classroom," "procedures for reduction in workforce," and "discharge and disciplinary procedures," to mention but five of some 28 compulsory subjects.

What results are pages and pages of contract provisions that, over years of negotiation cycles, end up damaging student achievement.



Introduction

What is mandatory collective bargaining, and when and how did it find its way into Nevada's statutes? More to the point, how is it linked to Nevada's chronic sub-par student performance?

About 40 years ago, in an effort to pacify teacher unrest in Clark and Washoe Counties, and following a national trend, Nevada legislators gave employees of counties, municipalities and school districts — but not the state government — the power to demand mandatory collective bargaining. Thus, in 1969, Nevada Revised Statute 288 was born under the name Relations Between Governments and Public Employees.

Through the ensuing four decades, labor unions and their allies relentlessly expanded the original language and reach of NRS 288. What began as Nevada state government granting the power of mandatory collective bargaining to public-sector unions mutated, over time, into public-sector unions exercising power over local governments — including school boards.

That local and state governments are rethinking the merits of public-sector unions' use of collective bargaining is not news to anyone keeping up with current events. In 2007, the award-winning Baton Rouge Area Chamber published an issues brief stating that “collective bargaining agreements serve the membership interests of unions — and are not in the best interest of students; parents; hard-working, high-quality teachers; or the community at large.”¹ The Chamber's brief listed and elaborated on the specific dangers it sees in teacher-union collective bargaining. Four headings from the list are:

1. Collective bargaining puts union interests ahead of students
2. Collective bargaining offers no clear link to increased student achievement
3. Collective bargaining presents obstacles to key reforms
4. Collective bargaining minimizes important stakeholder input on policy decisions²

Collective bargaining and binding arbitration are what NRS 288 is all about. Although Nevada is a right-to-work state, NRS 288 mandates that locally elected school boards negotiate exclusively with teacher unions to determine teachers' pay, benefits and working conditions. Let's examine these core matters.

Mandatory collective bargaining is a defined process of negotiations between union representatives and management representatives. It determines wages, benefits and working conditions for certain categories of school district employees, classified employees (teachers, librarians, counselors, etc.) and non-classified employees (bus drivers, custodians, cooks, etc.). Some labor authorities describe mandatory collective bargaining as a voluntary process, which in Nevada's school districts it is not — NRS 288 mandates that school boards *shall* collectively bargain with teacher unions.

Binding arbitration is a process for resolving disputes between school boards and union members over interpretation and application of contracts negotiated under NRS 288. Binding arbitration involves submission of a dispute to a third-party arbitrator who — in Nevada — must choose the last best offer of either the teacher union or management. Once the arbitrator chooses one or the other, that decision becomes final and binding, and both union and management must comply.

In the United States, the National Labor Relations Act imposed collective bargaining on the private sector in 1935. Collective bargaining didn't come to the public sector until 1959 in Wisconsin, 1960 in New York,⁴ and then in 1962 to federal employees with President Kennedy's Executive Order 10988.⁵ Once collective bargaining got in the schoolhouse door, it developed more quickly and more aggressively than had its private-sector counterpart.⁶

I. Mandatory Collective Bargaining in the Public Sector

Why is a system that the private sector has used for so long not appropriate for the public sector? Understanding the different forces that drive collective bargaining in the private sector and mandatory collective bargaining in the public sector is central to understanding the consequences of NRS 288 for Nevada's students.

In the private sector, market forces add a controlling balance to collective bargaining. As Wellington and Winter pointed out in the *Yale Law Journal* in 1969:

[In the private sector] union power is frequently constrained by the fact that consumers react to a relative increase in the price of a product by purchasing less of it. As a result any significant real financial benefit...which accrues to workers though collective bargaining may well cause significant unemployment among union members. Because of this employment-benefit relationship, the economic costs imposed by collective bargaining as it presently exists in the private sector are inherently limited.⁷

No similar limiting forces exist in the public sector. There, teacher-union negotiators are likely to bargain for as much of the budget as they can get, even forcing tax increases to pay for gains negotiated beyond what current district budgets can support.⁸ Collective bargaining in public education is essentially about the allocation of public resources (tax money).⁹ And money spent to meet teacher-union demands cannot buy new computers, purchase teaching materials or hire additional or specialized staff.¹⁰

Terry Moe, professor of political science at Stanford University and co-author of the seminal book, *Politics, Markets and American Schools*, highlights another difference between private- and public-sector unions. "Local school districts," he notes "are governed by elected school boards, and the teacher unions — by taking action in school board elections — can play central

roles in choosing the very ‘management’ they will be negotiating with: a remarkable advantage that private-sector unions can only dream about.”¹¹

Moe’s research opened the door to a seldom-examined outcome of teacher-union use of collective bargaining: public-sector unions’ negative impact on private-sector unions. Leo Troy, professor of economics at Rutgers University, addressed this phenomenon:

Public-sector unions want a larger share of the economy and society. However, I believe that this goal puts them at odds with the goals of private-sector unions, especially in the long run. While public-sector unions focus on the distribution of economic resources between the public and private sectors of the economy, private-sector unions focus on the growth of the economy and can expect their members to prosper only if the gains to the private economy are retained by their members. . . . Although public-sector unions may claim they, too, favor economic growth (so as to enlarge their share of resources) their redistributive objectives can be expected to have a contrary effect.”¹²

Richard Epstein, law professor at the University of Chicago, noted in his examination of public-sector unions, “Even in states that prohibit compulsory unionism through right-to-work laws, compulsory bargaining for public employees gives public-sector unions disproportionate influence on public policy.”¹³ This clearly seems to be the case in right-to-work Nevada. The powers and protections of NRS 288 allow teacher unions to influence who is elected to boards of education and to stop district boards and superintendents from dismissing union members.

Moe offered research-supported findings that reflect on teacher-union aims and tactics: “The unions use their power — their basic work-denial power, enhanced by their political power — to get restrictive rules written into collective bargaining contracts. And these restrictions ensure that the public schools are literally *not organized* to promote academic achievement.”¹⁴ The near impossibility of dismissing a bad teacher is one example of such counterproductive rules.

“The bottom line,” observed Moe, “is that the interests of teachers (and unions) are *not aligned* with the interests of children, and the organizational arrangements pursued by unions will ultimately *diverge* from those that are best for students. We also need to recognize that any contract provisions that happen to be good for student achievement could be adopted — as policies — by school districts *on their own*.”¹⁵

Moe’s 2009 study “shows that, in large school districts, restrictive labor contracts have a very negative impact on academic achievement, particularly for minority students.”¹⁶ Caroline Minter Hoxby, when in Harvard University’s department of economics, “found that collective bargaining raised school budgets and other school inputs but lowered student achievement by decreasing the productivity of those inputs.”¹⁷

Of the early efforts to impose what unions called workplace democracy, Cornell University professor Robert Summers observed that public-sector collective bargaining:

redistributes government authority to one major participant — the union — which is not publically accountable at all for its actions. Under a bargaining statute, the voters of a school district, for example, do not elect a union, nor can they vote a union out of office after it successfully negotiates a collective bargaining agreement objectionable to voters. This particular law-making and budget-creating entity is neither elected by nor accountable to the public.¹⁸

As long ago as 1982, Kendrick Scott, then director of membership services for the Kentucky School Boards Association, found in his research on collective bargaining that: “(A) the public is opposed [to collective bargaining]; (B) it is expensive; (C) it diminishes local control of education; and (D) it is detrimental to the educational process.”¹⁹

In a 2006 paper, described by the Atlantic Legal Foundation as a discussion of “antiquated collective bargaining,”²⁰ Frederick M. Hess of the American Enterprise Institute and Martin R. West of The Brookings Institution found that “collective bargaining contracts are especially problematic on three fronts:

- They restrict efforts to use compensation as a tool to recruit, reward and retain the most essential and effective teachers.
- They impede attempts to assign or remove teachers on the basis of performance.
- They over-regulate school life with work rules that stifle creative problem solving without demonstrably improving teachers’ ability to serve students.”²¹

In the last paragraph of his book on representative government and compulsory private-sector collective bargaining, Edwin Vieira, Jr., Harvard Ph.D. and J.D., wrote:

The unconstitutionality of compulsory public-sector collective bargaining, then, is absolute, because compulsory bargaining through the exclusive representation device neither satisfies a compelling government interest nor constitutes the means least-restrictive of individual or public liberty to achieve such an interest. Instead, it promotes the uniquely private advantage of special-interest political parties, by the means most restrictive both of dissenting public employees’ first-amendment freedom and of the people’s claim to a republican government characterized by an equality of legal opportunity for all citizens to attempt to influence the political process. It is, in short, unconstitutional per se.²²

Even pro-labor President Franklin Roosevelt — under whose administration the Wagner Act and the National Labor Relations Board came into existence — strongly opposed application of collective bargaining to the public sector. In 1937 — 22 years before collective bargaining came to the public sector — President Roosevelt wrote a letter to the president of the National Federation of Federal Employees voicing his concerns.

Meticulous attention should be paid to the special relationships and obligations of public servants to the public itself and to the government. All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations ... The very nature and purposes of Government make it impossible for ... officials ... to bind the employer ... The employer is the whole people, who speak by means of laws enacted by their representatives ...²³

This research — old and foundational, recent and revealing — shows critical faults in the application of mandatory collective bargaining to the public sector. It also points to the undesirable outcomes that mandatory collective bargaining brings to public-sector public education and student learning. Research findings reveal an imbalance in power and a counterproductive force in the relationship between teacher unions and the governance of public education. The several studies cited here make clear that collective bargaining in public education works against the basic purposes of public education. Moreover, mandatory collective bargaining is a monopoly power governments selectively award to some groups and not to others; mandatory collective bargaining is no more a *right* than driving is a right.

With this discussion as background, it's appropriate now to look at the pieces and parts of NRS 288 that give teacher unions their power and privilege.

II. Unions' Takeover of School-Board Power

At the heart of NRS 288's dozen pages is section 150, which mandates that school boards negotiate some 28 subjects with teacher unions. A mere handful of matters are reserved to the sole discretion of school boards. Yet, of even those matters, several receive exceptions, modifying clauses and conditional language that weaken a school board's authority. Most glaring is subsection 6 that goes to some length to make clear that school boards *can negotiate* even those items described as "subject matters which are outside the scope of mandatory collective bargaining and which are reserved to the local government employer without negotiations."²⁴ Having boldly carved out some modicum of management rights for school boards, subsection 6 then mandates that school boards "shall discuss subject matters outside the scope of mandatory bargaining but are not required to negotiate those matters."²⁵ Subsection 6 serves as a wedge that teacher unions can, over time, use to force "matters outside the scope of mandatory bargaining" onto the bargaining table. Once part of the contract, those matters become permanent items on the teacher-union menu.

Let's look at NRS 288 and the specific consequences of its mandatory collective bargaining provisions for school district contracts and student achievement.

**Subsection 2, (a) Salary or wage rates or other forms
of direct monetary compensation.**

That unions negotiate salary and benefits for their members is not news. It's also not news that money spent on education does not positively correlate with increases in student learning. According to an April 2010 Las Vegas Chamber of Commerce report, in 2007 Nevadans spent \$10,084 per student,²⁶ ranking it 37th in the nation for input with an average education-outcome ranking of 42nd.²⁷ In early 2011, *Education Week* calculated Nevada's 2007 graduation rate at 41.8 percent, making it the worst in the nation.²⁸ Yet, according to the Chamber report, Nevada ranked 22nd for average teacher salary.²⁹

When looking at teacher compensation, arguments often begin and end with opinion-supported statements that teachers aren't paid enough or that teachers are paid too much. What receives little attention is the rigid, disconnected-from-student-learning row-and-column structure that determines how much school districts pay teachers. School districts across the country — Nevada included — use a salary schedule made up of horizontal rows (degrees and credits) and vertical columns (years of service) to determine the minimum salary, the maximum salary and when teachers will receive salary increases. Together, rows and columns determine all by themselves — independent of any measure of teacher effectiveness, student learning or any other value added — what a teacher is paid. The teacher-salary schedule of the Clark County School District (CCSD) is typical:

CLARK COUNTY SCHOOL DISTRICT
2010-2011 ANNUAL TEACHER SALARY SCHEDULE
with PERS Paid

STEP	CLASS A	CLASS B	CLASS C	CLASS D	CLASS E	CLASS F	CLASS G
1	35,083	36,964	38,850	40,738	42,628	45,018	48,201
2	36,548	38,430	40,321	42,205	44,100	46,738	49,920
3	38,014	39,905	41,786	43,676	45,564	48,459	51,641
4	39,485	41,370	43,255	45,142	47,026	50,173	53,355
5	40,947	42,836	44,722	46,611	48,495	51,895	55,077
6		44,307	46,202	48,076	49,964	53,614	56,796
7			47,658	49,546	51,433	55,333	58,516
8			49,125	51,012	52,898	57,053	60,236
9			50,594	52,485	54,366	58,770	61,953
10						60,599	63,781
11						62,207	65,389
12						64,280	67,463
13						65,566	68,748
14						66,877	70,060

Source: 2010-2011 CCSD-CCEA Negotiated agreement.³⁰

You get what you reward. And if time in service and credits earned — not value added — determine a teacher’s pay, expect teachers to focus on logging more years and racking up more credits.

Such rigid, results-hostile salary matrixes stifle individual initiative and innovation. Boxing teachers in, they convey, even if unintentionally, that a guaranteed paycheck will arrive every payday courtesy of a lockstep pay schedule, regardless of teacher performance and student learning. The message is: *Stay in formation and don’t step out of line.*

Fixed row-and-column salary matrixes and the restrictive, negotiated agreements behind them prevent school boards from rewarding individual teachers for improving student achievement. Nor can school districts offer scarce science, math or computer teachers more money to recruit and retain them against more lucrative offers.

To these contract-driven salary problems add the unique insight of Mary Lindquist, president of the Washington State statewide teacher union. Asked in late January 2010, “Why shouldn’t math and science teachers be paid more, if there is a shortage?”³¹ she responded: “We have traditionally not been supportive of singling out one group. ... It’s also a gender issue. It means you’re paying men, by and large, more than you’re paying women — because a higher proportion of math and science teachers are men.”³²

So what of talented women? Do they still choose teaching as a profession, or stay in teaching? Caroline Hoxby, when in Harvard’s Department of Economics, and Andrew Leigh, professor of research at Australian National University, found that in today’s world “greater pay parity with males in nonteaching occupations may have drawn able women out of teaching. Second, unionization may have compressed pay, benefits and nonmonetary returns to aptitude in teaching, and thereby pushed out high-aptitude people.”³³ Because lock-step teacher salary schedules do not directly reward talent, talented people — whether women or men — take their talents elsewhere.

Now add the research findings noted by Michael Van Beek, director of education policy for the Mackinac Center for Public Policy:

... the best predictor of a teacher’s ability to raise student achievement is the teacher’s own academic ability in the subjects they teach, not how many degrees they’ve earned or time they logged in professional development training. ... Of all the things within the schools’ control that impact student achievement, teacher quality is the most important. ... Schools would do better to attract and retain teachers who have proven to excel academically in the subjects they teach.³⁴

My personal experience as a teacher, high-school principal and administrator leads to the same conclusion. Salary schedules that are gained through collective bargaining and reward process (more degrees and credits for teachers) with no consideration for results (more learning for

students) tend to work *against* improved student learning. Assuming Nevada’s school boards want to improve their ability to attract, reward and retain effective teachers, something significant will have to change in NRS 288’s mandate that boards must negotiate “salary and wage rates or other forms of direct monetary compensation.” Under NRS 288 as it currently exists, teacher unions can veto any change to the salary structure.

**Subsection 2. (l), Deduction of dues for the
recognized employee organization**

Related to teacher salaries is a service CCSD performs for the Clark County Education Association. Under this subsection of NRS 288.150, it appears, the teacher union negotiated Article 8, Dues Deduction into its contract with the district. In brief, this article states that CCSD has agreed to deduct union dues from teachers’ paychecks and transfer these deductions “promptly to the Clark County Education Association.”³⁵ This is a curious practice for at least two reasons: First, it’s a longstanding union-management convention and practice that each party pays its own costs, and nowhere in the contract is it mentioned — nor did CCSD return calls to clarify this point — that the teacher union reimburses the school district for the expense of deducting dues from teacher paychecks and transferring them to the teacher union. Second, it’s the taxpayers who end up paying for this service that CCSD, a public-sector entity, provides to the union, a private-sector entity. It’s also obvious that Nevada lawmakers wrote subsection 2 (l) of NRS 288 to assist teacher unions to force school districts to provide unions this service.

**Subsection 2. (b) Sick Leave. (c) Vacation Leave.
(d) Holidays. (e) Other paid or unpaid leaves of absence.**

Although NRS 288 lists these four leave subjects separately, it makes sense to consider them together. Since school districts must negotiate these subjects during collective bargaining, it is instructive to look at a negotiated agreement as it exists in a Nevada school district. Clark County School District’s negotiated agreement with the Clark County Education Association (teacher union) again serves as a case in point.

What follows — notwithstanding the space devoted — is still a fairly quick look at leave provisions as they flow from NRS 288 and become district contract language. The sheer volume and variety of leave provisions demonstrate what happens when teacher unions have, through round after round of contract negotiations, the force of a many-faceted statute on their side.

Put yourself in the place of a school-board negotiator who has little statutory leverage to require anything of the teacher union but must negotiate a long list of mandated subjects whenever the district and the teacher union bargain. Moreover, the negotiator must “discuss” all topics, even those ostensibly reserved to the school board. NRS 288 creates a large advantage for the union,

which grows at each round of negotiations. But this advantage does not favor students and student learning.

Nevada labor law — whether governing the private or public sector — does not require employers to grant employees paid sick leave. It is similar for vacation leave.³⁶ The contract negotiated between CCSD and the teacher union, however, is a different matter. Even before getting to what one might consider normal leave categories, Article 5 of the negotiated contract states that the:

District shall grant the president and vice president of the Association [teacher union] a two (2) year leave of absence without pay during the president's and vice president's term of office for professional and educational development, participation in community projects, visitations of schools and other Association business.³⁷

Article 16, Extended Leaves of Absence, provides:

- A leave of absence without pay for up to two (2) years shall be granted to any teacher who joins the Peace Corps, VISTA, or National Teacher Corps,
- A teacher may be granted a leave of absence without pay for up to two (2) years to teach in an accredited college or university,
- Upon the recommendation of the personnel officer, employee necessity leaves of absence may be granted to eligible employees by the Board of School Trustees for a period not to exceed one (1) year, where employees have identified a personal or family situation which will require the release of the employee from his/her contractual responsibilities,
- Any teacher adopting a minor child shall receive, upon request and with proper documentation, either sick leave or an employee necessity leave which shall commence upon receiving de facto custody of said child, or earlier, if necessary to fulfill the requirements for the adoption,
- A leave of absence without pay for one (1) year (Administrative Regulation ‘Employee Necessity Leave of Absence — All Employees’) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the school trustees.³⁸

Within the *nine pages* of the negotiated agreement that deal with various kinds of leave, four other sections cover temporary leave of absence, sick leave (over four pages alone), bereavement leave and personal leave.

According to the negotiated agreement, sick leave accrues at a rate of 1.5 days per month and any “unused sick leave shall be accumulated from year to year without limit.”³⁹ Sick leave is applicable when an employee “is unavoidably absent because of personal illness or accident, or

because of serious illness or accident in the immediate family.”⁴⁰ The contract defines immediate family as it pertains to sick leave as:

mother, father, husband, wife, son, daughter, brother, sister, mother-in-law, father-in-law, foster child, step child, step parent, or any person living in the immediate household of the employee.⁴¹

Under sick leave, the subsection “Maternity/Paternity/Adoptive Leave” states:

- A teacher shall be granted maternity/paternity/adoption leave not to exceed six (6) calendar weeks immediately surrounding the birth or placement of the child. The teacher will have the option of charging any and all maternity/paternity/ adoption leave to accrued sick leave or, if accrued sick leave is not sufficient, leave may be taken without pay, and
- Where both parents of a newborn or newly adopted child are employees of the school district, the total combined sick leave available to both employees for purposes of Article 18-10-3 shall not exceed six (6) weeks.⁴²

Also under this heading is a “Sick Leave Pool” that teachers can join by contributing one day’s sick leave, after which, under certain conditions, they are eligible for additional leave benefits defined and delimited by a number of provisions that include:

- No participant shall be eligible for more than one hundred (100) days during any one school year,
- No participant shall be eligible to access the Pool until all accrued sick leave and personal leave has been exhausted.⁴³

Additional conditions and limits apply. Still, this is a potentially significant benefit for employees who work a 184-day contract.⁴⁴

Article 19, 19-1 defines bereavement leave:

Leave with full pay shall be allowed for three (3) days for each period of bereavement or absence due to death in the immediate family of the employee and must be used for that purpose. Two (2) additional days with full pay may be approved by the employee's supervisor. Time may be allowed for travel, with maximum bereavement leave not to exceed seven (7) days. Bereavement leave shall be deducted from sick leave. For purposes of Article 19, the term “Immediate Family” shall be defined as per Article 1-11.

The definition of immediate family, in Article 1-11, is an important part of the bereavement leave benefit. The first sentence of the paragraph below also appears under sick leave, yet the list of “immediate family” members expands for bereavement.

The term “Immediate Family” pertaining to the use of sick leave shall mean mother, father, husband, wife, son, daughter, brother, sister, mother-in-law, father-in-law, foster

child, step child, step parent, or any person living in the immediate household of the employee. The term “Immediate Family” pertaining to the use of bereavement leave shall include those persons named above or any person living in the immediate household of the employee and also grandmother, grandfather, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, foster parent, aunt and uncle.⁴⁵

The list of “immediate family” adds up to some 25 categories of family members, and the number of brothers, sisters, uncles, aunts, etc. one has in his or her “immediate family” multiples the likelihood that a union member will draw “bereavement leave.”

Personal leave is a wholly different category of leave available to Clark County teachers, and Article 20 addresses these benefits under a full page of definitions and provisions. According to the negotiated contract, personal leave accrues to:

Employees who in the prior school year completed their contracts and who commenced their contracts by October 1 of the prior school year and who used five (5) days or less sick leave exclusive of universal and bereavement leave (in the prior school year) through July 31 of the current contract year shall be entitled to two (2) days earned personal leave with pay.⁴⁶

Moreover, under certain conditions, unused personal leave can accumulate to a total of four days which Clark County teachers can take with pay.⁴⁷

A curious term in the personal leave section is “universal leave.” Several calls to Clark County School District’s Human Resource Department yielded no explanation — only the response, “That’s in our contract?” Article 20-1 states, “All licensed employees will qualify for one day of universal leave. This universal day will be deducted from accrued sick leave but not counted against sick day usage for earned personal leave.”⁴⁸

Then there’s language defining “Work Year.” The first paragraph of this section states that CCSD may require new personnel to attend five days of orientation. So far so good, but the paragraph continues: “Two (2) of the five (5) abovementioned days shall be set aside for routine personnel functions and association business but may not compel association membership.”⁴⁹ Here again, without clarification from CCSD, it is difficult to know what this sentence means. If, however, it means that the union “association” can conduct its business on school district time, and, therefore at taxpayers’ expense, this part of the negotiated agreement would violate the previously discussed convention that each party, management and union, pays its own bills. Either the school district has five days work for teachers new to the district or it doesn’t. If it does not, why not orient new teachers for only three additional days and refrain from subsidizing the union?

The Consequences for Student Learning

Why look so closely at teacher leave provisions in the contract? Because all this leave stems from NRS 288 and its mandated collective bargaining, and it ignores the need for classroom teachers to have contact with their students on a daily basis.

In their 2007 study of teacher absences and student achievement, Charles Clotfelter, Helen Ladd and Jacob Vigdor, all of Duke University, found that “when regular teachers are not in the classroom, opportunities for students to learn are cut short. This common sense conclusion is bolstered by statistical evidence showing that students whose teachers miss more days for sickness score lower on state achievement tests.”⁵⁰ The researchers also found:

The incidence of teacher absences is regressive: schools in the poorest quartile averaged almost one extra sick day per teacher than schools in the highest income quartile, and schools with persistently high rates of teacher absence were much more likely to serve low-income than high-income students.⁵¹

When their teachers are gone, students learn less. NRS 288 mandates that school boards negotiate leave, and through numerous rounds of collective bargaining, teacher unions negotiate for more and more paid and unpaid leave and find more and more reasons for teachers to be away from their classrooms.

Here again, as addressed in Moe’s study of collective bargaining and public-school performance, labor contracts that attend to adult concerns more than student needs have a disparately negative impact on low-achieving minority students.

Such generous leave policies doubly cost taxpayers: When a teacher takes paid leave, they pay for the teacher’s leave time *and* the cost of a substitute teacher. But Nevadans may soon have opportunities to react to the negotiations that would add more leave opportunities to teacher contracts.

Nye County School District Superintendent William (Rob) Roberts noted increased discussions about making collective-bargaining sessions more open.⁵² And Assistant Superintendent Rod Pekarek said the Nye County School District board will this year, for the first time, present in public and discuss tentative agreements generated during collective bargaining.⁵³ With this change, he added, “the public has some type of hearing where they can listen to what has tentatively been agreed.”⁵⁴

Subsection 2. (g) Total hours of work required of an employee on each workday or workweek. and (h) Total number of day’s work required of an employee in a work year.

As mentioned earlier, teachers in CCSD work no more than 184 days in a school year. Librarians and counselors sometimes work more days and typically receive additional compensation on a per diem basis for those days.⁵⁵

Article 22, Hours Worked, in the Clark County School District’s negotiated agreement, states that “classroom teachers covered by this Agreement shall be required to work at the school premises a regular workday of seven (7) hours and eleven (11) minutes including the duty-free lunch period provided below.”⁵⁶ Subtracting 30 minutes for lunch, the contracted teacher workday is six hours and 41 minutes.

It’s my experience that effective teachers work longer hours and more days than negotiated agreements specify. Yet this subsection of NRS 288 mandates school boards negotiate with teacher unions the total hours a teacher will work, and teacher unions — even in the face of research showing the importance of teacher-student contact time to student learning — certainly won’t negotiate more hours of required work time for teachers. What this subsection of NRS 288 tends to do is frustrate or eliminate the possibility of school districts creating different business models for addressing children’s learning needs. The teacher union, not the teacher or school district, controls any efforts to creatively modify the school day or school year.

Keeping Bad Teachers in the Classroom

Three sections of NRS 288, working together, make it difficult to fire bad teachers:

Subsection 2. (i) Discharge and disciplinary procedures, (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements, and (v) Procedures for reduction in workforce.

These subjects of mandatory negotiation allow teacher unions to restrict school-board options and limit management’s authority. Effectively they frustrate, if not completely block, the school board’s ability to achieve public education’s end goal and only reason for being: *the education of children*. While teacher unions claim the contract language and cumbersome procedures that result from these three sections only protect union-members’ rights, it is this language that keeps bad teachers in the classroom.

Little better frames the current conflict between those who fight to protect the status quo and those who want to give school boards authority to fire and discipline teachers than these three subjects — which NRS 288.150 requires school boards to negotiate.

It's common knowledge that firing a tenured teacher is difficult and costly. Teacher unions want it this way, or it wouldn't be this way. Dismissal procedures are lengthy and cumbersome — Nye County School District's "Corrective Discipline and Termination" procedure is six pages in length.⁵⁷ Aside from normal and right requirements that the district make substantive arguments to support a teacher's dismissal, school districts must follow a myriad of time- and sequence-sensitive steps that, if not followed, can throw the whole case out and require returning a bad teacher to the classroom.

Bad teachers also benefit from rules governing a reduction in force — i.e., laying off teachers because of a decrease in funding or enrollment. While the school district may have some latitude to choose in which program area it will make a staffing reduction, the choice of *which teacher* within the designated area is strictly determined by seniority. Moreover, CCSD must make staffing decisions "on the basis of district-wide seniority."⁵⁸

Heath Morrison, superintendent of Washoe County School District, told of a local businessman who had to lay off 60 percent of his employees. To keep his business productive, he retained those who added most value to his company.⁵⁹ In contrast, Rob Roberts, Superintendent of Nye County School District, explained that because seniority rules dominate staffing reductions, he had no way to keep high-performing young teachers. With no concessions from the teacher union, he laid off 10 percent of staff.⁶⁰

Nevada law requiring districts to negotiate items that once were management prerogatives obstructs school boards' ability to fire or lay off teachers who add the least value to student learning — or even cause harm to students. NRS 288.150 subsection 2 mandates school districts negotiate:

- procedures for discharge and disciplinary action,
- procedures for grievance and arbitration and resolution of disputes relating to interpretation or application of collective bargaining agreements,
- policies for the transfer and reassignment of teachers, and
- procedures for reduction in workforce.

Given the results of such long-standing teacher union power over staffing decisions, voices are emerging in opposition. Summarizing a study⁶¹ on seniority-based staffing decisions by Dan Goldhaber from The Center for Education Data and Research at the University of Washington, the American Enterprise Institute noted:

36 percent of the teachers in Goldhaber's sample who actually received layoff notices were estimated to be more effective than the average teacher whose job was not at risk, implying that there is a lot of room for making informed effectiveness-based decisions.

Under the current seniority-based system, students lose about 2 to 4 months' worth of learning in the year following layoffs; retaining highly effective teachers would preserve that learning.

Seniority-driven systems have a disproportionate effect on various student sub-groups, with African-American students far more likely to be in a classroom with a teacher who receives a layoff notice than white students.

A system relying on teacher effectiveness would result in 10 percent fewer jobs lost. Because senior teachers collect higher salaries than their junior counterparts, a seniority-based system necessitates that more teachers will need to be laid off to meet the district's budget targets. In Goldhaber's sample, teachers who were cut earned roughly \$14,000 less per year than the teachers who were retained.

Goldhaber observed that “while the study notes that seniority is not the only factor considered in layoff decisions, it clearly indicates that **experience is weighted too heavily relative to effectiveness. Goldhaber concluded, ‘It’s hard to argue that a seniority-driven system is best if student achievement is your bottom line.’**”⁶²

Teacher tenure (post-probation status⁶³) is a related issue. Nevada’s NRS 288 allows teachers to gain tenure — a near absolute guarantee of lifelong employment. I wrote on this issue in 1999, and nothing has changed:

Tenure, touted as a form of academic freedom, is a product of another time and another place. If it is applicable at all, it is applicable only to higher education.

At the K-12 level, tenure is just another teacher-union strategy to gain life-long salaries for its members — and, therefore, cash flow for NEA — regardless of a teacher’s effectiveness. Coupled with state department of education regulations and negotiated agreements, state tenure laws restrict how principals assign teachers and make it all but impossible to change the structure of schools. Tenure unnecessarily complicates staffing decisions and works against the flexibility needed to meet new demands and circumstances.⁶⁴

Tenure, augmented by reduction-in-force agreements, creates yet another bureaucratic barrier against a district’s ability to terminate teachers who don’t add value to the teacher-learner equation.

Prospects for Reform

Nevada State Senator Don Gustavson has proposed SB 162, a bill for the 2011 legislative session that would eliminate the requirement that school districts negotiate policies for the transfer and reassignment of teachers and procedures for reduction of the workforce. The bill would also reclassify these subjects as “subject matters which are not within the scope of mandatory

bargaining and which are reserved to the local government without negotiations.”⁶⁵ If enacted, the bill would be a game changer in favor of students and taxpayers.

Similarly, Washoe County School District has submitted proposed legislation (SB 39) that would give school boards more flexibility to act in the best interest of students and learning.

Superintendent Heath Morrison believes that in this legislative session, “We have a great opportunity to do some things differently.”⁶⁶ Committed to sitting down and talking with teachers even without statutory mandates, he believes it time to reset the clock, because under NRS 288 the playing field is not level.⁶⁷ For example, binding arbitration goes to a third-party arbitrator who almost always rules in favor of the teacher and returns the teacher to the classroom. In this circumstance, where the teacher-union-friendly outcome is all but certain, the teacher union has little incentive to settle. Unions win by stringing out the step-by-step process and going to final and binding arbitration. Why not change NRS 288 so that elected and accountable school boards would be the final decision-makers?⁶⁸

Dale Erquiaga, senior advisor to Governor Brian Sandoval, notes that the governor wants an open conversation with all players. He has not put forward the previous administration’s education bills but has drafted his own to fit better his goals and methods.⁶⁹

According to Erquiaga, the Governor wants to:

- eliminate teacher tenure,
- extend the new-hire probationary period, and
- have teachers:
 - take a 5 percent salary reduction and
 - pay a 25 percent contribution to their retirement.

This last change, Erquiaga said, would put teachers more on par with state workers, who pay almost 50 percent of the contribution toward their retirement.

He also noted the three most common recommendations the Governor’s office receives:

- eliminate binding arbitration,
- allow declaration of economic exigency to permit opening renegotiations of teacher contracts, and
- eliminate evergreen provisions, i.e., do not continue contracts when a teacher union and a school district do not agree before a contract lapses.

Erquiaga pointed out that teacher tenure is another result of NRS 288 that slows the disciplinary process and makes it nearly impossible to eliminate ineffective teachers — who, if they cannot be dismissed, stay in the classroom year after year.⁷⁰

Under current new-hire probationary-teacher timelines, some 80 to 95 percent of teachers gain tenure, stay in the system and thereby put the district into the teacher-tenure stalemate, he said.

Moreover, Sandoval has been informed that it can take up to 14 hearings to remove a teacher for disciplinary reasons — never mind the more difficult case of removing a teacher for ineffectiveness. Teacher evaluation in Nevada also has to change, insisted Erquiaga. Both the Clark and Washoe districts are working on adding student-growth data to teacher evaluation.⁷¹

The issues are several and significant. Teacher unions and their friends in the legislature will not easily yield the power and protections they've built into the system. Discussions will be difficult and politically risky for those who want the legislature to change NRS 288. Erquiaga said it's important for local governments that want changes to step up and "be part of the conversation." It's not going to work, he said, if those who want change merely offer to hold his boss's coat while the Governor goes into the ring.⁷²

Binding Arbitration and Other Accepted Practices

Student achievement should be an important topic in collective bargaining, argues educational researcher Jacob Adams of Claremont Graduate University. While teacher unions routinely contend that using the public's money to lower class size will improve student learning, the collective bargaining process doesn't require union-management discussions of this and other assumptions. Nor does it link the allocation of money used to reduce class size to student achievement. So why not make student achievement a mandated subject? Even more, as Charles Taylor Kerchner of Claremont argues, make it that "without student achievement goals that both labor and management sign on to, no one gets a raise, no one gets a contract at all."⁷³

As noted earlier, binding arbitration is a virtually no-risk option for teacher unions. They know they win arbitration considerably more often than they lose, no matter what they "grieve" or otherwise force school boards to argue before out-of-town, labor-friendly arbitrators. Thom Reilly, former Clark County manager, suggests it might make sense to use a body of locals — who live in the area and pay taxes — to serve as arbitrators. He noted too that arbitrators are unlikely to approve take-aways — thus leaving the union always free to ask for more and more.⁷⁴

And why not, if a union knows from years of winning binding-arbitration disputes that binding arbitration is a safe way for it to open what amounts to one-way contract negotiation on a specific item. Binding arbitration, as it now exists under NRS 288.217, is a blunt weapon the union can use at will against school boards' authority to direct education.

In Nevada's current economy, the economic exigency issue is especially pertinent. Under NRS 288 in its current form, however, teacher unions can refuse to renegotiate contracts despite economic hardships taxpayers may suffer.

Moreover, if the contract has an "evergreen clause" — as does the teacher union contract with Nye County School District — the union can also refuse to open a current contract to renegotiations, or it can tactically prolong negotiations to not give up anything.

Under an evergreen provision, if the parties don't come to agreement before the contract lapses, all benefits and gains of the last contract automatically continue as binding and enforceable. The previous contract becomes a guaranteed and untouchable floor and the beginning point for all new negotiations. Nye County School District's evergreen clause reads, "In the event a successor agreement is not agreed upon before termination date of this agreement, all provisions of this agreement will remain in force and effect until agreement is reached."⁷⁵ Such clauses take pressure off teacher unions to negotiate. Worse, they reward unions for *not* negotiating issues during bad times that could result in rollbacks the school board needs to keep the focus on student learning.

Often, accepted practices that are part and parcel of teaching contracts and teacher compensation don't contribute to learning. People are beginning to take notice and speak out. Recently Bill Gates, a principle in the Bill & Melinda Gates Foundation that has given millions to inside-the-system school reform efforts, has come to see one long-accepted practice for what it is. Said Gates, speaking in Kentucky last November, "My own state of Washington has an average salary bump of nearly \$11,000 for a master's degree — and more than half of our teachers get it. That's more than \$300 million every year that doesn't help kids."⁷⁶ Washington State is but one of 50 states and has only about 2 percent of the total US population. Think of the tax money that school districts could redirect toward recruiting, retaining and rewarding teachers who add value to student learning if teacher-salary schedules rewarded improvements in student achievement instead of college credits and years of service.

In the Silver State, accepted practices regularly produce unacceptable results. "Nevada," said Erquiaga, "has the lowest graduation rate in the United States. We have an unacceptable achievement gap between children of color and Caucasian children. None of those statistics are appreciably better. We add money to the system — we have for the last 15 years — and no number is appreciably better."⁷⁷ Clearly, for many students the present NRS 288-driven system is not working.

For decades, the focus in public education has been on inputs and process rather than on results. If one subscribes to the input-and-process worldview, then the only route to making things better is to increase inputs and tinker with process. Yet there's been a game within this game: To lobby for laws and regulations that protect the adults in the system. And this is what NRS 288 is about.

Go to <http://www.leg.state.nv.us/NRS/NRS-288.html#NRS288Sec150>, read section 150 of NRS 288, and see the breadth of "subjects" school boards must negotiate. Since NRS 288 mandates school boards bargain such a wide range of subjects each time they negotiate with the teachers union, and since teacher-union negotiators — as faithful *protégés* of union pioneer Samuel Gompers — always ask for more, it is a foregone conclusion that the teacher unions, little-by-little, will force school boards to give more and more to the union.

A story told by a Nevada education executive is on point. A school district in times of lean budgets couldn't afford to agree to teacher-union demands to raise teachers' salaries or increase their benefits package. Because mandatory collective bargaining under NRS 288 required the district to bargain in good faith, the district's negotiator felt compelled to agree to at least something. In this case, the solution was to add more minutes to teachers' daily preparation time. While this bargain didn't cost the cash-strapped school district money, it did lessen teachers' time with students. If teachers teaching students has a positive effect on student learning — and it does — then the district ended up trading student learning for dollars saved.

And so it goes. In times of feast, teacher-union negotiators take more, and in times of lean they take less — but they always take something. It's this constant taking that has gotten Nevada's school boards and students where they are. In truth, teacher-union negotiators don't come to the bargaining table to do what's right for students. When asked why his union didn't put more emphasis on students, Al Shanker, former president of the American Federation of Teachers, said, "When students start paying union dues, I'll start representing students."⁷⁸ If one statement summarizes all that is written here, Shanker's honest and unadorned statement may be it. Teacher unions, enabled by NRS 288, are about what's best for teachers. Teacher unions are not about what's best for students.

III. Workable Alternatives to Current Nevada Law

But what alternatives to these longstanding tools of teacher unionism exist for the Silver State? How will teachers and school districts decide what a teacher is paid? What will protect teachers from arbitrary and capricious school boards and administrators? One need look no further than Texas, a sister right-to-work state, where mandatory collective bargaining is prohibited.

In the Lone Star State, the state legislature sets minimum pay, which local districts can exceed. While no system is perfect, Texas has procedures to direct how districts handle grievances, procedures that include administrative channels and judicial channels, where legal counsel can represent teachers. Teachers in Texas lobby the local school board and the state legislature for changes to salary and rules governing working conditions.

According to the National Center for Education Statistics, 327,905 elementary and secondary teachers lived and worked in Texas in 2009, while 21,993 was the comparable number for Nevada. Evidently, teachers like living in Texas, too.

While Nevada's average teacher salary was \$49,378 and Texas's was \$45,453,⁷⁹ Texas ranked seventh and Nevada 45th on the "salary comfort index," as determined by Teacher Portal, which calculates a range of factors affecting teaching and living in each state.⁸⁰ Other states that outlaw collective bargaining are Virginia, North Carolina, South Carolina and Georgia, where many teachers also live and work. These state all rank higher on the "salary comfort index" than does Nevada, with Georgia third.

As for protections from heavy-handed bosses and capricious boards, private-sector employees have state and federal labor laws to protect them. Why should public-sector workers require an additional layer of protection? The private sector seems to work well enough: it produces the wealth that supports the public sector, including school districts.

In fact, in the private sector, union membership is on the decline. Whereas in the 1950s unions represented 35 percent of the total workforce, they now represent only 11.9 percent of the total workforce, the lowest in 70 years. In the private sector, union membership was only 6.9 percent in 2010. The center of union power today is the public sector, where unions like the National Education Association represent upwards of 36 percent of public employees.⁸¹

IV. Conclusion

Public-sector unions came into existence against the advice and wishes of many learned Americans. The political Progressive Fiorello LaGuardia, former mayor of New York City and strong supporter of unionism in the private sector, said public-sector unions were “an infringement on democratic freedoms that threatened the ability of government to represent the broad needs of citizens.”⁸² Public-sector unions were born of the state, and they are creatures of the state. Now after five decades of experiment, there is strong evidence that public-sector unionism propelled by mandatory collective bargaining and binding arbitration is the wrong model.

The consequences of such a faulty model are illustrated in the “Tragedy of the Commons,” a classic 1968 *Science* journal article by Garret Hardin, professor of human ecology at the University of California, Santa Barbara. Hardin told of a group of farmers who raised sheep and grazed their animals on a common green they shared. Some of the group put too many sheep on the green, and thereby took too much of the common resource for their own enrichment. Soon the green was overgrazed and the resource was lost to all, including the farmers who took too much. “The Tragedy of the Commons” is model that well describes what happens when a resource held in common can be exploited by one group at the expense of others. Isn’t this what NRS 288 enables — indeed, rewards? Too much focus, in this case, on teacher-union demands — demands that divert community resources away from student needs?

Governance of Nevada’s K-12 schools is an undecided question, on the cusp. Counting out the teacher unions would be foolish. Under NRS 288 they are strong, unafraid and well-financed. And they have powerful friends in high places.

If you must play a game with the rules stacked against you, but you don’t know it, you lose. Every time. Worse still, the more you play, the more you lose. For 40 years under the stacked rules of NRS 288, Nevada taxpayers, parents and K-12 students have been forced to play this losing game.

But what if you *know* it's a rigged deal? If you're smart, you change the rules. Changing the rules so that Nevada's K-12 students can win is what this paper proposes.

NRS 288 may have begotten a system that's almost too perfect — too perfect for teacher unions. Thom Reilly, former Clark County manager, once counseled his union employees that if they wanted a good system, they should quit asking for more. But this is not what union leaders have done. Like the farmers in “The Tragedy of the Commons,” they've asked for more and more to the point where now people are paying attention and saying there's no more to give. Union leaders have always asked for more, and union members seem to expect more, even in the current economic downturn. Can't they see the problem?

Winston Churchill observed that Americans can always be counted on to do the right thing, after they've eliminated all other options. Forty years ago, some Nevada lawmakers eliminated the no-teacher-union option by creating NRS 288 and giving remarkable power to public-sector unions. What now exists is the *too-much-teacher-union* option — which needs to be eliminated.

Would Nevada's legislature be the lone, renegade among the states if it were to curb statutes mandating public-sector collective bargaining? No. Print and electronic media are full of stories about governors working to reset the clock. Just look at Wisconsin. In several other states, including Alabama, Arizona, Indiana, Maine, Missouri and Ohio, governors are working to limit the excessive power of public-sector labor unions.⁸³

The charge of union busting will be hurled at any governor or legislature that openly discusses changing the relationship between teacher unions and governments, be they state governments or school boards. But what of *budget* busting? And *school-board authority* busting? And *student-learning* busting? Unlike corporations, a school district can't relocate to a new county and a better business climate if a union gets too powerful. A school district is fixed in one place. What *can* change is NRS 288 — to return control, and thus accountability for student performance, to school boards.

Yet, if the legislature does change NRS 288 and return control to Nevada's 17 countywide school boards, it may be the last chance for the traditional school-board model of governance to prove its efficacy. School boards presided during the forty years teacher unions incrementally took effective control of K-12 public education. For this, school boards must be held accountable. If newly empowered school boards don't make right things happen this time, there can be no choice but to replace the centralized-school-board-governance model with a parent-driven market-force model.

And what if Nevada's teacher unions and their legislative allies were to win their fight to keep or expand all that is now NRS 288? Some of the problem could still be alleviated if a tax-supported voucher law were enacted, making educational vouchers available to all Nevada parents. If parents could choose which schools their children attend, schools would compete for students,

and teacher unions would become more like their private-sector union counterparts, since their success or failure would depend on the success or failure of the enterprise from which they draw their income. Anything less makes these competition-shielded teacher unions — with their privileged access to power and public treasure — free riders who don't pay their fair share.

Public-sector unions exist in a government bubble. Because government is a monopoly, unions that operate under its shield are protected from the balancing and limiting effects of market forces. In this sheltered environment, public-sector unions can pursue any business model they want, because no significant external forces compel them otherwise.

There are rhythms to history, forces swinging one way, then the other. Where once labor unions were driven by compelling social and economic reasons, today's gentled working conditions — increased salaries, generous benefits packages and abundant vacation and personal days — have made union arguments much less compelling.

In the end, Nevadans must ask, "What's the message to school board members, superintendents and principals if the same legislature that demands improved student learning allows NRS 288 to continue stacking the deck against student learning?" Losing *slowly* becomes the best option available to school leaders. That's a poor proxy for success.

Given today's realities, mandatory collective bargaining of the current stripe is mandatory collective suicide for Nevada's students and taxpayers. It's time for the makers of the rules to change the rules — so the game can be played as much to the benefit of student learners as to the benefit of teacher unions. As Michelle Rhee, former chancellor of the beleaguered public schools of the District of Columbia, put it, the problem isn't students, "It's the adults."⁸⁴

We adults would do well to tell our legislators that we support their doing the hard political work necessary to change NRS 288 so that students — and Nevada — can play the game to win.

Greg Moo, a former teacher, high school principal and educational administrator of 20 years, holds a Ph.D. in Educational Policy and Management from the University of Oregon. Before joining public education, Moo worked in the private sector for several manufacturing companies. He has owned and operated two businesses, a commercial salmon fishing operation based on a small island north of Kodiak, Alaska and an organization development consulting business in Washington State. He is the author of *Power Grab: How the National Education Association Is Betraying Our Children* and several articles on public education. Moo and his wife live half the year in Sequim, Washington, and half the year in Las Vegas, Nevada.

Endnotes

- ¹ “Collective Bargaining: A Dangerous Threat to Public School Reform,” Issue Brief, Baton Rouge Area Chamber (1 November 2007): 1.
- ² *Ibid.*, 2-3.
- ⁴ G. Gregory Moo, *Power Grab: How the National Education Association is Betraying Our Children* (Regnery Publishing, Inc., 1999), 126.
- ⁵ <http://www.presidency.ucsb.edu/ws/index.php?pid=58926>. John Woolley and Gerhard Peters, The American President Project.
- ⁶ *Ibid.*
- ⁷ Harry H. Wellington and Ralph K. Winter, Jr., “The Limits of Collective Bargaining in Public Employment,” *Yale Law Journal*, Vol. 78, No. 7, June 1969, 1114-1115.
- ⁸ *Ibid.*, 1120.
- ⁹ *Ibid.*, 1122.
- ¹⁰ Marc Gaswirth and Garry M. Whalen, *Collective Negotiations*. Renton, New Jersey: New Jersey School Boards Association, 1983, x.
- ¹¹ Terry M. Moe, “Collective Bargaining and the Performance of Public Schools,” *American Journal of Political Science*, Vol. 53, No. 1, January 2009, 156.
- ¹² Leo Troy, “The Impact of Public Employee Unionism on the Philosophy and Policies of Organized Labor,” *Government Union Review* (Spring 1982), 9.
- ¹³ Don Bellante, David Denholm, and Ivan Osorio, “Why Public-Sector Unionism Is a Bad Deal for Taxpayers and Representative Government,” Policy Analysis No. 645 (28 September 2009): 9.
- ¹⁴ *Op. cit.*, note 10, 158.
- ¹⁵ *Ibid.*
- ¹⁶ *Op. cit.*, note 10, 156.
- ¹⁷ “Collective Bargaining: A Dangerous Threat to Public School Reform,” *Issue Brief*, Baton Rouge Area Chamber, 1 November 2007, 2.
- ¹⁸ Charlene K. Haar, *PTA: It’s Not “Parents taking Action”* (Washington, D.C., Capital research Center, 1994), 5.
- ¹⁹ Kendrick Scott, “The Case Against Collective Bargaining in Public Education,” *Government Union Review* (Spring 1982), 19.
- ²⁰ <http://www.defendcharterschools.org/articles.html>.
- ²¹ Frederick M. Hess and Martin R. West, “A Better Bargain: Overhauling Teacher Collective Bargaining for the 21st Century,” April 2006, 2.
- ²² Edwin Vieira, Jr., *To Break and Control the Violence of Faction: The Challenge to Representative Government from Compulsory Public-Sector Collective Bargaining* (Arlington, Va: Foundation for the Advancement of the Public Trust and Public Service Research Foundation, 1980), 93-94.
- ²³ <http://www.laborunionreport.com/portal/2010/10/unions-patron-saint-fdr-rejected-public-sector-unions/>. LaborUnionReport.com, 17 October 2010.
- ²⁴ Nev. Rev. Stat. § 288.150.3 (1969).
- ²⁵ Nev. Rev. Stat. § 288.150.6 (1969).
- ²⁶ <http://www.lvchamber.com/files/pdf/lvcc-edbrief-series-1-2.pdf>, “Factors Correlated with Education Attainment,” Las Vegas Chamber of Commerce, April 2010.
- ²⁷ *Ibid.*, 3.
- ²⁸ www.edweek.org/go/dc10. 24.
- ²⁹ *Op. cit.*, note 25, 23.
- ³⁰ http://ccsd.net/jobs/pdf-HRD/CCEA_Agreement.pdf. p. 35.
- ³¹ http://seattletimes.nwsources.com/html/edcetera/2010921831_why_not_pay_math_and_science_t.html, Bruce Ramsey, “Why not pay math and science teachers more?,” 28 January 2010.
- ³² *Ibid.*
- ³³ Caroline M. Hoxby and Andrew Leigh, “Pulled Away or Pushed Out? Explaining the Decline of Teacher Aptitude in the United States,” *American Economic Review*, Vol. 93, No. 2, May 2003.

-
- ³⁴ <http://www.mackinac.org/article.aspx?ID=12556>. Michael Van Beek, "Can We Build Better Teachers? Studies Suggest That We Can't," Mackinac Center for Public Policy, 20 April 2010.
- ³⁵ http://ccsd.net/jobs/pdf-HRD/CCEA_Agreement.pdf, Negotiated Agreement between the Clark County School District and the Clark County Education Association, 13.
- ³⁶ Phillip Andrews, Investigator, Nevada Office of the Labor Commissioner (Carson City, Nev.), telephone conversation with author, 17 February 2011.
- ³⁷ http://ccsd.net/jobs/pdf-HRD/CCEA_Agreement_09_10.pdf. Negotiated Agreement between the Clark County School District and the Clark County Education Association, 11.
- ³⁸ *Ibid.*, 21.
- ³⁹ *Ibid.*, 24.
- ⁴⁰ *Ibid.*, 24.
- ⁴¹ *Ibid.*, 5.
- ⁴² *Ibid.*, 27.
- ⁴³ *Ibid.*, 28.
- ⁴⁴ *Ibid.*, 30. As of the 2010-11 school year, all CCSD schools reverted to nine-month schedules.
- ⁴⁵ *Ibid.*, 5.
- ⁴⁶ *Ibid.*, 29.
- ⁴⁷ *Ibid.*
- ⁴⁸ *Ibid.*
- ⁴⁹ *Ibid.*, 30.
- ⁵⁰ <http://www.nber.org/papers/w13648>. Charles Clotfelter, Helen Ladd, and Jacob Vigdor, "Are Teacher Absences Worth Worrying about in the U.S.?" (a working paper), November 2007.
- ⁵¹ *Ibid.*, ii.
- ⁵² Dr. William Roberts, superintendent, Nye County School District, interview with author, 7 February 2011.
- ⁵³ Mr. Rod Pekarek, assistant superintendent, Nye County School District, interview with author 7 February 2011.
- ⁵⁴ *Ibid.*
- ⁵⁵ *Op. cit.*, note 37, 30-31.
- ⁵⁶ *Ibid.*, 31.
- ⁵⁷ <http://www.nye.k12.nv.us/Download.asp?L=2&LMID=36312&PN=DocumentUploads&DivisionID=995&DepartmentID=1008&SubDepartmentID=&SubP=&Act=Download&T=1&I=74045>. "Nye County School District, Nye County Classroom Teachers Association Master Contract 2009-2010, July 1, 2009 to June 30, 2010," 13.
- ⁵⁸ *Op. cit.*, note 37, 45.
- ⁵⁹ Dr. Heath Morrison, superintendent, Washoe County School District, interview with author, 8 February, 2011.
- ⁶⁰ *Op. cit.*, note 52.
- ⁶¹ <http://www.cedr.us/papers/working/CEDR%20WP%202010-7%20Teacher%20Layoffs%2012-22-10.pdf>.
- ⁶² <http://www.aei.org/press/100166>. "'Quality-Blind' Teacher Layoffs Leave Students Behind," 3 February 2011.
- ⁶³ <http://www.leg.state.nv.us/NRS/NRS-391.html#NRS391Sec3196>. (see 391.3125; 391.3196; 391.31965; and 391.3197).
- ⁶⁴ *Op. cit.*, note 3, 268-69.
- ⁶⁵ <http://www.leg.state.nv.us/Session/76th2011/Bills/SB/SB162.pdf>. Sen. Don Gustavson, "Senate Bill No. 162," pgs. 2-3.
- ⁶⁶ *Op. cit.*, note 59.
- ⁶⁷ *Ibid.*
- ⁶⁸ *Ibid.*
- ⁶⁹ Dale Erquiaga, interview with the author, 9 February 2001.
- ⁷⁰ *Ibid.*
- ⁷¹ *Ibid.*
- ⁷² *Ibid.*

-
- ⁷³ <http://toped.svefoundation.org/2010/10/29/negotiate-student-achievement-goals-into-teachers-contracts/>. Charles Taylor Kerchner, "Negotiate student achievement goals into teachers' contracts," Silicon Valley Education Foundation, 29 October 2010.
- ⁷⁴ Thom Reilly, interview with author, 8 February 2011.
- ⁷⁵ *Op. cit.*, note 57, 31.
- ⁷⁶ <http://www.dailykos.com/story/2010/11/29/923867/-Bill-Gates-on-Education-Reform>. "Bill Gates on Education Reform," Daily Kos, 29 November 2010.
- ⁷⁷ *Op. cit.*, note 68.
- ⁷⁸ http://www.pittsburghlive.com/x/pittsburghtrib/opinion/print_585387.html. Mark Mix, "Praise the teacher, not the union," *Pittsburgh Tribune-Review*, 29 August 2008.
- ⁷⁹ http://nces.ed.gov/programs/digest/d09/tables/dt09_079.asp.
- ⁸⁰ <http://teacherportal.com/teacher-salaries-by-state>.
- ⁸¹ http://www.nytimes.com/2011/01/22/business/22union.html?_r=1&pagewanted=print. Steven Greenhouse, "Union Membership in U.S. Fell to a 70-Year Low Last Year," *The New York Times*, 21 January 2011.
- ⁸² <http://www.allamericanblogger.com/13691/it%E2%80%99s-time-to-dismantle-the-public-sector-unions/>. Bill O'Connell, "It's Time to Dismantle the Public-sector unions," All American Blogger, 25 January 2011.
- ⁸³ http://www.nytimes.com/2011/01/04/business/04labor.html?_r=2&pagewanted=print. Steven Greenhouse, "Strained States Turning to Laws to Curb Labor Unions," *The New York Times*, 3 January 2011.
- ⁸⁴ <http://www.csmonitor.com/layout/set/print/content/view/print/205679>. Sean J. Miller, "Is Michelle Rhee the new face of education reform?" *The Christian Science Monitor* – CSMonitor.com, 27 January 2009.

The Nevada Policy Research Institute

is an independent research and educational organization dedicated to improving the quality of life for all residents of the Silver State through sound, free-market solutions to state and local policy questions. The Institute assists policy makers, scholars, business people, the media and the public by providing non-partisan analysis of Nevada issues and by broadening the debate on questions that for many years have been dominated by the belief that government intervention should be the default solution.

We Welcome Your Support

The Nevada Policy Research Institute, committed to its independence, neither seeks nor accepts any government funding. A nonprofit, tax-exempt organization established under Section 501(c)(3) of the Internal Revenue Code, the Institute relies solely on the generous support of individuals, foundations and businesses who share a concern for Nevada's future.

For more information, or to make a tax-deductible contribution, please contact:

*The Nevada Policy Research Institute
3155 E. Patrick Lane
Suite 10
Las Vegas, Nevada 89120-3481*

*(702) 222-0642 ♦ Fax (702) 227-0927
www.npri.org ♦ office@npri.org*



March 2011