

1974

## Teacher Collective Bargaining

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# COMMENTS

## TEACHER COLLECTIVE BARGAINING— WHO RUNS THE SCHOOLS?

### TABLE OF CONTENTS

- I. Introduction
- II. Statutory Limitations
  - A. California Approach
    - 1. Curriculum
    - 2. Textbook Selection
  - B. New York Approach
  - C. Summary and Hypothesis
- III. Negotiated Provisions
  - A. Introduction
  - B. Professional Judgment
    - 1. Curriculum Development
      - a. Degrees of Participation
      - b. Committee Structures
    - 2. Textbook Selection
    - 3. Innovation and Experimentation
    - 4. Faculty Meetings, New Teacher Orientation, and Required Instructional Techniques
    - 5. New Building Planning
    - 6. Summary
  - C. Professional Growth
    - 1. Conferences, Observation Visits
    - 2. Sabbatical Leaves
    - 3. Restriction to Area of Competence
    - 4. Summary
  - D. Professional Status
    - 1. Academic Freedom, Professional Ethics
    - 2. Student Discipline
    - 3. Class Size
    - 4. Teacher Aides, Extra-curricula Work
    - 5. Teacher Personnel Files
    - 6. Summary
- IV. Conclusion

## I. Introduction

In the 1950's the first state laws granting public employees the right to negotiate with their public employers were passed.<sup>1</sup> The proliferation of public employment statutes in recent years has accelerated so that now there are thirty-four states which provide for public employer-employee negotiations.<sup>2</sup> The greatest impediment to the development of these laws has been a concern for the effects bargaining will have on the ability of governmental entities to formulate public policy.<sup>3</sup> The result has been a variety of statutory approaches ranging from a liberal authorization to negotiate collectively a binding contract to a more restrictive power to meet and confer<sup>4</sup> on a non-binding agreement.<sup>5</sup>

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1. Act of July 14, 1955, ch. 255, § 1, [1955] N.H. Laws 386, *codified at* N.H. REV. STAT. ANN. § 31:3 (1970); Act of April 27, 1957, ch. 781, § 1, [1957] Minn. Laws 1073, *as amended*, MINN. STAT. ANN. §§ 179.61-.77 (Supp. 1974); Act of Sept. 22, 1959, ch. 509, § 1, [1959] Wis. Laws 623, *as amended*, WIS. STAT. ANN. § 111.70 (1974); Act of Aug. 1, 1960, ch. 561, [1960] Mass. Acts & Resolves 488, *as amended*, MASS. ANN. LAWS, ch. 149, §§ 178 G-N (Supp. 1972).

2. For a detailed list of current statutes, see, Blair, *State Legislative Control Over the Conditions of Public Employment: Defining the Scope of Collective Bargaining for State and Municipal Employees*, 26 VAND. L. REV. 1, 3-4 n.18 (1973).

3. See generally Wellington & Winter, *Structuring Collective Bargaining in Public Employment*, 79 YALE L.J. 805 (1970) [hereinafter referred to as Wellington & Winter]; Note, *Collective Bargaining and the California Public Teacher*, 21 STAN. L. REV. 340 (1969) [hereinafter referred to as Stanford Note]; *Norwalk Teachers' Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951).

4. "Meet and confer" is a term of art used to describe a method of negotiation wherein neither a formal agreement nor a binding contract is required. The parties generally are obligated to discuss only those issues they agree to discuss. Under collective bargaining systems, wherein a binding agreement is usually obligatory, certain issues are mandatory subjects for discussion.

5. E.g. ALASKA STAT. § 23.40.070 (1972) (collective bargaining required); CAL. GOVT. CODE § 3500 (West Supp. 1974) (required to meet and confer); HAWAII REV. STAT. § 89-1 (Supp. 1973) (collective bargaining required); MICH. STAT. ANN. § 423.209 (1967) (collective bargaining required); MINN. STAT. ANN. § 179.50 (1971) (required to meet and confer with formally recognized organizations and reach agreement); MO. ANN. STAT. § 105.520 (Supp. 1974) (required to meet and confer); N.H. REV.

All employees have, of course, been concerned with wages. Professional employees, however, have attempted to utilize public sector bargaining to achieve various professional goals.<sup>6</sup> As a result, some states specifically refer to professional employees in their statutory bargaining scheme,<sup>7</sup> and some jurisdictions have separate laws dealing with professional employees.<sup>8</sup> This comment will discuss the effect of collective bargaining by teachers on the formulation of public policy in education.

Many states vest control over schools in a local school board, and oblige these boards to formulate, within limits established by the state, educational policy for the local schools. To do this the board typically draws upon the expertise of the superintendent of schools. The teachers in the district's schools are an obvious source of ideas about educational policy—and, undoubtedly, local boards use teachers' ideas in formulating educational policy. In the bargaining situation, however, the potential role of teachers with respect to educational policy may be more than an advisory one. Bargaining,

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STAT. ANN. § 98-C:5 (Supp. 1973) (required to meet and bargain in good faith); N.Y. CIV. SERV. LAW art. 14 (McKinney 1973) (collective bargaining required); ORE. REV. STAT. § 243.740 (Supp. 1969) (collective bargaining required); R.I. GEN. LAWS ANN. § 36-11-1 (1969) (collective bargaining required); VT. STAT. ANN. tit. 3, § 901 (1969) (collective bargaining required); WASH. REV. CODE § 41.56.100 (1972) (collective bargaining required).

6. See generally Kirp, *Collective Bargaining in Education: Professionals as a Political Interest Group*, 21 J. PUB. LAW 323 (1972) [hereinafter referred to as Kirp].

7. In Minnesota, public employees generally may "meet and confer" with respect to terms and conditions of employment, [MINN. STAT. ANN. § 179.65(4) (Supp. 1974), while "professional employees" have the right to "meet and confer . . . over items not defined as terms and conditions of employment," *id.* §§ 179.65(3), 179.73. Nebraska and Oregon narrow the scope of bargaining for professionals. NEB. REV. STAT. §§ 70-1278 to 1295 (Supp. 1972); ORE. REV. STAT. §§ 342.440-.480 (1972).

8. ALASKA STAT. § 14.20.550 (1971); CAL. EDUC. CODE § 13080 *et seq.* (West 1972); CONN. GEN. STAT. ANN. § 10-153(d) (1967); DEL. CODE ANN. tit. 14, ch. 40 (1970); KAN. STAT. ANN. § 75-4328 (Supp. 1971); MARYLAND ANN. CODE art. 77, § 115 (1969); NEB. REV. STAT. ANN. § 79-1287 (1969); N.D. CENT. CODE ch. 15-38.1 (1971); ORE. REV. STAT. § 342.450 (1969); R.I. GEN. LAWS ANN. § 28-9.3-4 (1968); VT. STAT. ANN. tit. 16, § 1981 (1973); WASH. REV. CODE ANN. ch. 28A.72 (1970).

in any form, implies a give and take, the trading off of issues and demands. A higher salary may be accepted in lieu of curriculum changes. The hiring of additional teacher's aides may be conditioned on greater teacher participation in student extra-curricular activities. Even where educational matters are beyond the permissible scope of bargaining they may nevertheless be discussed. Should bargaining not be permitted, all of these questions could be resolved through board fiat.

Questions of public policy are clearly involved in teacher negotiations. The learning experience of children, and its effect upon their future ideas, philosophy, and attitudes is essentially a political concern, with control vested in the community, not in the hands of a small group of professionals.<sup>9</sup> Collective bargaining may diminish the community's ability to fashion a public policy in educational matters. One of the principal aims of this comment, therefore, is to measure the shift in control over educational policy that has resulted from collective bargaining or negotiations.

In order to make this inquiry manageable, two states, New York and California, were selected for examination and comparison. New York has adopted a mandatory collective bargaining arrangement and provides for binding contracts. The New York Education Law contains relatively few provisions significantly restricting the scope of bargaining for teachers under the Taylor Law.<sup>10</sup> California, in the Winton Act,<sup>11</sup> has adopted a meet and confer system providing for agreements in the form of school district rules, regulations and policies.<sup>12</sup> The California Education Code contains fairly detailed and

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9. Kirp 333.

10. N.Y. CIV. SERV. LAW art. 14 (McKinney 1967).

11. CAL. EDUC. CODE §§ 13080-90 (West 1969), *as amended*, (West Supp. 1974), [hereinafter referred to as CAL. EDUC. CODE].

12. There have recently been strong efforts in California to repeal the "meet and confer" system and replace it with a collective bargaining structure. In last year's legislative session, Senate Bill 400 was introduced by Senator Moscone in an attempt to selectively repeal the Winton Act, and to provide for collective bargaining for teachers only. The bill was passed by the Legislature, but was vetoed by Governor Reagan on September 28, 1973. A second bill, Assembly Bill 1243, was introduced by Assemblyman Moretti and is still pending at this writing. That bill was designed simply to provide for collective bargaining for *all* public employees, consolidating the pertinent acts. Part of the Moscone Bill was to have read as follows:

wide-ranging provisions that could limit the scope of negotiations with teachers. Both statutory schemes will be examined in detail.

After reviewing the statutory limitations on teacher negotiations, existing contract and agreement terms collected from school districts in New York and California will be analyzed. The New York contracts and the California agreements represent a cross-section ranging from large urban school districts to very small rural districts.<sup>13</sup> The focus of the analysis will not be statistical but will deal with the content of the contract and agreement clauses and the extent to which they reflect a shift of control over educational policy in specific subject areas.

## II. Statutory Limitations

### A. California Approach

The California approach to public employment relations may be characterized as a "meet and confer" system. Under the Winton Act, which applies to public school teachers, the public school employer<sup>14</sup> and representatives of an employee organization<sup>15</sup> "have a

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"Experience has shown that boards of education and their employees can best reach these objectives [highest possible education standards] if each utilizes the ability, experience and judgement of the other in formulating policies and making decisions that involve the terms and conditions of service and other matters which affect the working environment of employees." "Collective negotiations" was defined by the proposed § 13091 as "meeting, conferring, consulting, discussing and negotiating in a good faith effort to reach agreement with respect to the terms and conditions of service and other matters which affect the working environment of employees and the execution, if requested by either party, of a written comprehensive document incorporating any agreement reached." The debate over collective bargaining for teachers is expected to continue throughout 1974. On February 5, 1974, the Board of Education in Palo Alto unanimously passed a resolution petitioning the Legislature to conduct a referendum on the issue during the November elections. The Board further requested that the question in the referendum be "so worded as to indicate clearly the true nature of the collective bargaining issue." Palo Alto Unified School District Board of Education, Resolution Regarding Collective Bargaining, Feb. 5, 1974.

13. See Appendix I for a table of the school districts covered and their populations.

14. A public school employer is defined as "the governing board of a school district, a school district, a county board of education, a county

mutual obligation to exchange freely information, opinions, and proposals; and to make and consider recommendations under orderly procedures in a conscientious effort to reach agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations."<sup>16</sup> This definition of "meet and confer" appears more stringent than the definition applied to public employees generally. Under the Meyer-Milias-Brown Act, which applies to all other public employees,<sup>17</sup> the parties must endeavor to reach agreement prior to the adoption of the agency's annual budget;<sup>18</sup> if agreement is reached the parties must prepare a written memorandum of it.<sup>19</sup> However, under the Winton Act, the parties must go beyond "endeavor" and exercise "conscientious efforts" to reach agreement on rules, regulations, and policies to be used in the daily governing of the district.

The Winton Act allows the public school employer to make the final decision with respect to negotiable matters.<sup>20</sup> In 1970, a California Superior Court held that a school board does not have legal authority to enter a binding agreement on educational policy matters.<sup>21</sup> This decision was upheld in a related case in 1973,<sup>22</sup> where the appellate court decided that agreements made under the Winton Act must be implemented as rules, regulations, and policies of the school district and must be subject to change at the board's pleasure.<sup>23</sup> Together, these cases indicate that a school board is incapable of agreeing to bilateral decision-making on educational policy

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superintendent of schools, or a personnel commission of a school district which has a merit system as provided in Chapter 3 of this division." CAL. EDUC. CODE § 13081(b).

15. *Id.* § 13081(a) defines "employee organization."

16. *Id.* § 13081(d).

17. CAL. GOVT. CODE §§ 3500-11 (West 1972) [hereinafter cited as CAL. GOVT. CODE]. *Id.* § 3501(e) excludes school districts and thereby school district employees from coverage.

18. *Id.* § 3505.

19. *Id.* § 3505.1.

20. CAL. EDUC. CODE § 13088.

21. *Hayes v. Association of Classroom Teachers*, 76 L.R.R.M. 2140, 2144 (1970).

22. *Grasko v. Los Angeles*, 107 Cal. Rptr. 334, 31 Cal. App. 3d 290 (Ct. App. 2d Dist. 1973).

23. *Id.* at 342-43, 31 Cal. App. 3d at 299-300.

problems. Curiously, while a teachers' group cannot legally enforce any agreement it reaches with the school board, it does have standing to sue on behalf of one or more of its members with respect to any matter within its "scope of representation."<sup>24</sup> Since the term "scope of representation" is not used in any other section of the Winton Act, and has apparently not been defined by any court, the question of how a cause of action arises under this provision is unresolved.

As a practical matter, however, the scope of an employee organization's representation may be defined in section 13085 of the Winton Act, entitled "Negotiations."<sup>25</sup> The section requires a public

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24. CAL. EDUC. CODE § 13084.5.

25. *Id.* § 13085 reads as follows: "A public school employer, or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees as set forth in this code, shall meet and confer with representatives of certificated and classified employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to procedures relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law. In meeting and conferring, the scope of matters proposed by any certificated employee, certificated employee organization, or certificated employee council shall be limited to matters directly relating to certificated employees, unless such proposals have first been submitted to the appropriate classified employee organization or organizations, representing such employees in order to provide them with an opportunity to present their opinions with respect to such proposals to the public school employer. In the event that a disagreement arises as to whether or not any particular matter is directly related to certificated employees, the public school employer shall resolve the disagreement. In meeting and conferring, the scope of matters proposed by any classified employee or classified employee organization shall be limited to matters directly relating to classified employees, unless such proposals have first been submitted to the appropriate certificated employee organization or organizations or the certificated employee council, as the case may be, representing such employees in order to provide them with an opportunity to present their opinions with respect to such proposals to the public school employer. In the event that a disagreement arises as to



school employer, or his representative, to meet and confer, upon

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whether or not any particular matter is directly related to classified employees, the public school employer shall resolve the disagreement. The designation of representatives as provided herein shall not preclude an employee organization from meeting with, appearing before, or making proposals to the public school employer at a public meeting if the employee organization requests such a public meeting. Notwithstanding the provisions of Sections 13082 and 13083, in the event there is more than one employee organization representing certificated employees, the public school employer shall meet and confer with the representatives of such employee organizations through a certificated employee council with regard to the matters specified in this section, provided that nothing herein shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer. Notwithstanding the provisions of Sections 13082 and 13083, and of subdivision (b) of Section 13081, in the event that there is in a county more than one employee organization representing certificated employees of either the county superintendent of schools or the county board of education or of both the county superintendent of schools and the county board of education, all such employee organizations shall be represented by a single certificated employee council and the county board of education shall be deemed, for the purposes of meeting and conferring pursuant to this chapter, the public school employer of all such employees and shall meet and confer with the representatives of such employee organizations through the single certificated employee council with regard to all matters specified in this section, provided that nothing herein shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer. The certificated employee council shall have not more than nine nor less than five members and shall be composed of representatives of those employee organizations who are entitled to representation on the certificated employee council. An employee organization representing certificated employees shall be entitled to appoint such number of members of the certificated employee council as bears as nearly as practicable the same ratio to the total number of members of the certificated employee council as the number of members of the employee organization bears to the total number of certificated employees of the public school employer who are members of employee organizations representing certificated employees. Each employee organization shall adopt procedures for selecting its proportionate share of members of the certificated employee council, provided that such members shall be selected no later than October 31 of each school year. Within 10 days after October 31, the members of the certificated employee council shall meet and select a chairman, and thereafter such certificated employee council shall be legally constituted to meet and confer as provided for by the provisions of this article. Employee organizations shall exercise the rights given by Section 13083 through the certificated employee council provided for in this section."

request, with representatives of certificated<sup>26</sup> and classified<sup>27</sup> employees on "all matters relating to employment conditions and employer-employee relations." More significantly, employers must meet and confer with representatives of certificated employees concerning "procedures relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent that such matters are within the discretion of the public school employer or governing board under the law."<sup>28</sup> While this section appears to be the most liberal "meet and confer" system in the nation,<sup>29</sup> there are three limitations on teacher influence which require examination. First, negotiations must be initiated by the employee organization: public school employers are specifically required to meet and confer only "upon request." There is no duty to meet periodically, nor does the employee organization have an obligation to meet and confer upon the employer's request. In the case of other public employees, either party can request, and thereby compel, a meeting.<sup>30</sup>

A second limitation is implicit in the term "procedures." The public school employer is not obligated to meet and confer as to the substance of educational objectives, such as course content, curri-

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26. See *id.* §§ 13101-575.6, for all provisions relating to certification. *Id.* §§ 13101-86.6 refer specifically to licensing of certificated employees.

27. See *id.* §§ 13580-13777. *Id.* § 13581.1 deals with two positions which do not require certification.

28. *Id.* § 13085.

29. *Contra*, WASH. REV. CODE ANN. ch. 28A.72 (1970); LAWS OF FLORIDA ch. 69-665 (1969).

30. See note 17 *supra* and accompanying text. " 'Meet and confer in good faith' means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation or ordinance, or when such procedures are utilized by mutual consent." CAL. GOVT. CODE § 3505.

cula, or textbook selection policies. Only procedures relating to their definition need be discussed. Presumably, this confines negotiation to the structure of the decision-making process. But negotiations are further confined by a third limitation, which permits employers to negotiate with certificated employees on these matters only "to the extent such matters are within the discretion of the public school employer or governing board under the law." Laws restricting local discretion in educational policy decisions, therefore, restrict the scope of bargaining. The most significant areas, curriculum development and textbook selection, are discussed below. Other relevant statutes are covered within individual topic headings.

### 1. Curriculum

The California legislature has established a dualistic system of prescribing its educational programs.<sup>31</sup> Section 7502 of the Education Code specifies a legislative intent to set broad minimum standards and guidelines in the creation of a common state curriculum.<sup>32</sup> However, the legislature also encourages school districts to develop programs suited to the needs and interests of their pupils, pursuant to stated philosophy, goals,<sup>33</sup> and objectives.<sup>34</sup> The latter legislative policy requires the public school employer to construct a three-tiered statement, presumably in writing, for each of its educational programs, whether or not negotiated. Further, each district board is required to evaluate and revise its educational program in conformity with the state requirements,<sup>35</sup> and to keep on public file the courses of study prescribed for its school district.<sup>36</sup> Finally, the board is obliged to conduct state and locally prescribed courses of study in each of its schools.<sup>37</sup>

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31. CAL. EDUC. CODE § 7552.

32. *Id.* § 7502. "'Common state curriculum' means the basic curriculum which is prescribed by the proper authority for all elementary schools, or all secondary schools, or all elementary and secondary schools." *Id.* § 7553. "'Curriculum' means the courses of study, courses, subjects, classes and organized group activities provided by a school." *Id.* § 7554.

33. *Id.* § 7561-2.

34. *Id.* § 7563.

35. *Id.* § 8002.

36. *Id.* § 8001.

37. *Id.* § 8051.

In creating a structure for the common state curriculum, the legislature allows room for the addition of any courses that a school district deems appropriate,<sup>38</sup> but courses specified by state law may not be deleted from the local curriculum. Moreover, pupils at appropriate elementary and secondary levels must be taught personal safety and accident prevention, fire prevention, protection and conservation of the environment and resources, health,<sup>39</sup> the nature of alcohol, narcotics, and restricted dangerous drugs and their effects on the human body.<sup>40</sup> Students may not be required to attend classes in sex education, but such courses may be offered if parents have the opportunity to withdraw their child from the class.<sup>41</sup> Students may be required to attend venereal disease education classes, though parents have the right to request that their children not attend.<sup>42</sup>

Areas of study are prescribed for grades 1 through 6<sup>43</sup> and grades

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38. *Id.* § 8502.

39. *Id.* § 8503.

40. *Id.* § 8504.

41. *Id.* § 8506.

42. *Id.* § 8507.

43. *Id.* § 8551: "The adopted course of study for grades 1 through 6 shall include instruction, beginning in grade 1 and continuing through grade 6, in the following areas of study: (a) English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition. (b) Mathematics, including concepts, operational skills, and problem solving. (c) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; the development of the American economic system including the role of the entrepreneur and labor; man's relations to his human and natural environment; eastern and western cultures and civilizations; and contemporary issues. (d) Science, including the biological and physical aspects, with emphasis on the processes of experimental inquiry and on man's place in ecological systems. (e) Fine arts, including instruction in the subjects of art and music, aimed at the development of aesthetic appreciation and the skills of creative expression. (f) Health, including instruction in the principles and practices of individual, family, and community health. (g) Physical education, with emphasis upon such physical activities for the pupils as may be conducive to health and vigor of body and mind, for a total period of time not less

7 through 12.<sup>44</sup> Instruction "as early as possible" in foreign languages is encouraged.<sup>45</sup> Courses in social sciences must include a

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than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period. (h) Such other studies as may be prescribed by the governing board."

44. *Id.* § 8571: "The adopted course of study for grades 7 through 12 shall offer courses in the following areas of study: (a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking. (b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; the development of the American economic system including the role of the entrepreneur and labor; man's relations to his human and natural environment; eastern and western cultures and civilizations; and contemporary issues. (c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language. (d) Physical education, with emphasis given to such physical activities as may be conducive to health and to vigor of body and mind. (e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific investigation, and on man's place in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences. (f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures. (g) Fine arts, including art, music, or drama, with emphasis upon development of aesthetic appreciation and the skills of creative expression. (h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture. (i) Vocational-technical education designed and conducted for the purpose of preparing youth for gainful employment in such occupations and in such numbers as appropriate to the manpower needs of the state and the community served and relevant to the career desires and needs of the students. (j) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles. (k) Such other studies as may be prescribed by the governing board."

45. *Id.* § 8552.

study of the role and contribution of ethnic minorities in California and United States history.<sup>46</sup> If a public school employer constructs a planned experimental curriculum, it can request the State Board of Education to grant an exemption from one or more of the statutory course requirements for a renewable period of years.<sup>47</sup> In all events, certain instruction is prohibited, namely; that which reflects adversely upon persons because of race, color, creed, national origin, or ancestry;<sup>48</sup> that which teaches or advocates communism with an intent not simply to teach facts, but to indoctrinate or to inculcate a preference for communism.<sup>49</sup>

## 2. Textbook Selection

The legislative framework established for selecting textbooks, while similar to that used in establishing curriculum, preserves considerable power in the State Board of Education.<sup>50</sup> Again, the state sets minimum standards,<sup>51</sup> while specific decisions are reserved for

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46. *Id.* § 8553 (for grades 1 through 6); *id.* § 8576 (for grades 7 through 12).

47. *Id.* § 8058. "Upon request of the governing board of any school district, the State Board of Education may, for a number of years to be specified by the board, grant the district exemption from one or more of the course of study requirements set forth in this division. The exemption may be renewed. Such exemption may be granted only if the board deems that the request made is an essential part of a planned experimental curriculum project which the board determines will adequately fit the educational needs and interests of the pupils. The request for exemption shall include all of the following elements: (a) Rationale for the planned experimental curriculum project. (b) Objectives of the planned experimental curriculum project. (c) Plans for the administration and conduct of the planned experimental curriculum project, including the use of personnel, facilities, time, techniques, and activities. (d) Plans for testing and evaluation of the planned experimental curriculum project. (e) Plans for necessary revisions, if any, of the planned experimental curriculum project. (f) Plans for reporting to the State Board of Education on the planned experimental curriculum project." *Id.*

48. *Id.* § 9001.

49. *Id.* § 9031.

50. *Id.* § 9202.

51. Textbook is defined as a "book designed for use by pupils as a source of instructional material, or a teachers' edition of the same book." *Id.* § 9223.

the local level.<sup>52</sup> However, the state board may adopt one or more separate series of textbooks or instructional materials systems for any course, or combination of courses,<sup>53</sup> offered in elementary school.<sup>54</sup> For other grade levels the legislature has recognized the need for local school districts to select textbooks to fit their own courses of study.<sup>55</sup> In certain instances the content requirement of instructional materials<sup>56</sup> is spelled out. For example, materials must, in the judgment of the local board, accurately portray the cultural and racial diversity of society.<sup>57</sup> Materials must accurately portray—in whose judgment is unspecified—man's place in the ecological system, and the physiological effects of tobacco, alcohol, narcotics and restricted dangerous drugs.<sup>58</sup> Further, local boards must require materials they deem necessary and proper in encouraging thrift, fire prevention, and the humane treatment of people and animals.<sup>59</sup>

In every case, local boards must adopt only those textbooks suited to the needs and comprehension of students on their respective grade levels.<sup>60</sup> Certain instructional aids are prohibited, such as those reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex or occupation as well as sectarian or denominational doctrine contrary to law.<sup>61</sup> Further, teachers

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52. *Id.* § 9222.

53. *Id.* § 9201.

54. The term "elementary school" includes "all public schools in which instruction is given through grade 8 or in any one or more of such grades." *Id.* § 9231.

55. *Id.* § 9203.

56. "Instructional material" includes "all materials designed for use by pupils and their teachers as a learning resource and which help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks, educational materials and tests." *Id.* § 9221.

57. *Id.* § 9240.

58. *Id.* § 9240.5.

59. *Id.* § 9241.

60. *Id.* § 9244.

61. *Id.* § 9243. *See also id.* § 9012: "No publication of a sectarian, partisan, or denominational character, shall be distributed, displayed, or used for sectarian, partisan, or denominational purposes on school premises, but such publications may be used in school library collections and for legitimate instructional purposes;" and *id.* § 9014: "Nothing in this

may not use any supplementary materials<sup>62</sup> which have been disapproved by their local school districts.<sup>63</sup>

In the case of elementary schools,<sup>64</sup> the state board biennially adopts a list of textbooks and instructional materials.<sup>65</sup> These are recommended to the state board by a commission<sup>66</sup> after study and evaluation based upon established criteria.<sup>67</sup> Prior to adoption of the recommended texts, the state board places them on public display<sup>68</sup> and holds public hearings.<sup>69</sup> If, after adoption, a local district board convinces the state board that the materials are not suitable for the district, additional basic instructional materials<sup>70</sup> for use in that school district may be adopted by the state board.<sup>71</sup> Therefore, under no circumstances can a local elementary district adopt its own instructional material without state approval.

### B. New York Approach

In New York State, public employer-employee relations are governed by the Taylor Law.<sup>72</sup> Public school teachers are not covered by a separate statute but are included as "public employees"<sup>73</sup>

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code shall be construed to prevent, or exclude from the public schools, references to religion or references to or the use of religious literature, art, or music or other things having a religious significance when such references or uses do not constitute instruction in religious principles or aid to any religious sect, church, creed, or sectarian purpose and when such references or uses are incidental to or illustrative of matters properly included in the course of study."

62. *Id.* § 9221.5.

63. *Id.* § 9011.

64. *See* note 54 *supra* for definition of elementary school.

65. *Id.* § 9400.

66. *Id.* § 9227. The Commission's formal title is the Curriculum Development and Supplemental Materials Commission.

67. *Id.* § 9404.

68. *Id.* § 9402.

69. *Id.* § 9403.

70. *Id.* § 9221.3.

71. *Id.* § 9400(c).

72. N.Y. CIV. SERV. LAW, art. 14 (McKinney 1973), *as amended*, (McKinney Supp. 1973) [hereinafter cited as N.Y. CIV. SERV. LAW]. *See* note 10 *supra*, and accompanying text.

73. The term "public employee" is defined as "any person holding a position by appointment or employment in the service of a public em-



within the statute. Employee organizations<sup>74</sup> are granted the right to negotiate collectively<sup>75</sup> and reach binding agreements.<sup>76</sup> Local

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ployer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to section two hundred five or two hundred twelve of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of section two hundred eight of this chapter shall only become effective upon the termination of such period of unchallenged representation. Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii)." N.Y. CIV. SERV. LAW § 201(7)(a).

74. N.Y. CIV. SERV. LAW § 201(5). The term "employee organization" is defined as "an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, or (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article." *Id.*

75. The public employee's right of representation is "the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder." *Id.* § 203.

76. An "agreement" is "the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee

governments retain the right to establish their own rules regarding public employees, as long as they are substantially equivalent to the Taylor Law.<sup>77</sup>

New York favors a very broad definition of the permissible scope of bargaining.<sup>78</sup> Bargaining is required on "salaries, wages, hours and other terms and conditions of employment."<sup>79</sup> The definition of the phrase "terms and conditions of employment" is itself left to negotiation by the parties.<sup>80</sup> In 1972, the New York Court of Appeals held that, absent a specific statutory prohibition, a local school board must negotiate all terms and conditions of employment.<sup>81</sup> It is the public policy of New York to include, not to exclude, questionable terms and conditions.<sup>82</sup>

During the late 1960s, the Select Joint Legislative Committee on Public Employee Relations reviewed the Taylor Law and proposed in its report<sup>83</sup> legislation enumerating governmental prerogatives and removing certain items from the scope of mandatory bargaining. The committee suggested that the standards for offering serv-

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organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislative body gives its approval." *Id.* § 201 (12).

77. *Id.* § 212.

78. The New York State Governor's Committee on Public Employee Relations, whose three reports established the Taylor Law's philosophy, did not deal at length with the problems of scope of bargaining. FINAL REPORT OF THE GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS (1965), INTERIM REPORT OF THE GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS (1968), REPORT OF THE GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS (1969). The committee's specific recommendation was for a very broad scope, but the committee did indicate the necessity of further study. See I. SABGHIR, THE SCOPE OF BARGAINING IN PUBLIC SECTOR COLLECTIVE BARGAINING 36 (1970). [hereinafter cited as SABGHIR].

79. N.Y. CIV. SERV. LAW § 201(4).

80. *Teamsters Local 456 v. Cortlandt*, 68 Misc. 2d 645, 327 N.Y.S.2d 143 (Sup. Ct. 1971).

81. *Board of Educ. v. Associated Teachers of Huntington*, 30 N.Y.2d 122, 282 N.E.2d 189, 331 N.Y.S.2d 17 (1972).

82. *Currie v. Bixby*, 40 App. Div. 2d 341, 340 N.Y.S.2d 73 (3d Dep't 1973).

83. THE REPORT OF THE SELECT JOINT LEGISLATIVE COMMITTEE ON PUBLIC EMPLOYEE RELATIONS (1969).

ices; selecting and directing employees; taking disciplinary action and relieving employees for lack of work or other legitimate reasons be removed from bargaining and denominated a management function. Also to be considered a management function were such items as maintaining the efficiency of governmental operations; determining the methods, means and personnel by which government operations are conducted; the content of job classification; the actions necessary to carry out the government's mission in emergencies; and exercising control over its organization and methods of determining facilities, limitations, means and number of its personnel. A bill which incorporated these suggestions was introduced in the Legislature in 1969, but was not enacted into law.<sup>84</sup> Similar provisions may be found in the statutes of other states<sup>85</sup> and in the Federal Execu-

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84. SABGHIR 38.

85. See, e.g., NEV. REV. STAT. § 288.150 (1973): "1. It is the duty of every local government employer, except as limited in subsection 2, to negotiate in good faith through a representative or representatives of its own choosing concerning wages, hours, and conditions of employment with the recognized employee organization, if any, for each appropriate unit among its employees. If either party requests it, agreements so reached shall be reduced in writing. Where any [elected officer directs employees] . . . such officer is the proper person to negotiate, directly or through a representative or representatives of his own choosing, in the first instance concerning any employee whose work is directed by him, but may refer to the governing body or its chosen representative or representatives any matter beyond the scope of his authority. 2. Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation: (a) To direct its employees; (b) To hire, promote, classify, transfer, assign, retain, suspend, demote, discharge or take disciplinary action against any employee; (c) To relieve any employee from duty because of lack of work or for any other legitimate reason; (d) To maintain the efficiency of its governmental operations; (e) To determine the methods, means and personnel by which its operations are to be conducted; and (f) To take whatever actions may be necessary to carry out its responsibilities in situations of emergency. Any action taken under the provisions of this subsection shall not be construed as a failure to negotiate in good faith." See also HAWAII REV. STAT. § 89-9(d) (1973): "Excluded from the subjects of negotiations are matters of classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The

tive Orders<sup>86</sup> regulating collective bargaining in the Federal government. New York City has, by executive order, implemented similar provisions in its collective bargaining laws.<sup>87</sup>

The Taylor Law contains no prohibitions affecting the scope of teacher bargaining. However, in 1971, the New York Public Employment Relations Board (PERB) in *City School District v. New Rochelle Federation of Teachers*,<sup>88</sup> held that a school board is not required to bargain on all issues raised by the teachers. The Board compared the Taylor Law's provision on the scope of bargaining to that in the National Labor Relations Act and decided that the familiar mandatory-permissive distinction applies to public sector bargaining in New York.<sup>89</sup> PERB ruled that policy matters are not mandatory subjects of bargaining,<sup>90</sup> but are permissive, that is, the local school board may agree to negotiate on them but is not required to do so. Amendments to the Taylor Law after this decision allow a local school board to appeal to PERB for a decision as to

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employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31 and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies."

86. Exec. Order No. 10988, 3 C.F.R. 521 (1962), *as amended*, Exec. Order No. 11491, 3 C.F.R. 622 (1970).

87. City of New York, Mayor John V. Lindsay, Exec. Order No. 52 (1967). This provision does not prohibit the city from discussing these subjects with public employee unions. As non-mandatory items, however, they need not be submitted to an impasse panel. So, except where management decisions have a substantial impact on the employees, the city can refuse to bargain on those subjects without fear of compulsion.

88. 4 P.E.R.B. 3060 (1971).

89. *Id.* at 3706.

90. *West Irondequoit Teachers Ass'n v. Helsby*, 6 P.E.R.B. 7014 (3d Dep't 1973).

whether a contested demand is mandatory or permissive.<sup>91</sup> If an issue is defined as being within educational policy, and therefore permissive, the school board can legally refuse even to discuss it. On the other hand, if the school board wishes to discuss an educational policy issue, the Taylor Law empowers the board to enter a binding agreement on it with the teachers.

When a school board decides to contract as to educational policy matters, its discretion is somewhat limited by provisions of the State Education Law.<sup>92</sup> Although a school board has explicit power to prescribe a course of study and textbooks to be used,<sup>93</sup> as in California, the state requires instruction in certain subjects.<sup>94</sup> Arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York State, and science are the basic minimums.<sup>95</sup> Beyond the first eight years, schools may provide a course in "communism and its methods and its destructive effects."<sup>96</sup> Certain other subjects, namely patriotism, citizenship, and historic documents;<sup>97</sup> treatment of the American flag;<sup>98</sup> nature of alcoholic drinks (3rd-9th grades);<sup>99</sup> nature and effects of narcotics;<sup>100</sup> physical education;<sup>101</sup> highway safety and traffic regulations;<sup>102</sup> fire prevention;<sup>103</sup> and the humane treatment of animals<sup>104</sup> are also required. In addition, the Commissioner of Education is empowered to establish regulations

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91. *Farrigan v. Helsby*, 42 App. Div. 2d 265, 346 N.Y.S.2d 39 (3d Dep't 1973).

92. *See generally In re Monroe-Woodbury Teachers Ass'n v. Board of Educ.*, 3 P.E.R.B. 3632 (1970).

93. N.Y. EDUC. LAW § 1709(3),(4) (McKinney 1973) [hereinafter cited as N.Y. EDUC. LAW].

94. *Id.* § 3204.

95. *Id.* § 3204(3).

96. *Id.* § 3204(3)(3).

97. *Id.* § 801.

98. *Id.* § 802.

99. *Id.* § 804.

100. *Id.* § 804-a.

101. *Id.* § 803.

102. *Id.* § 806.

103. *Id.* § 808.

104. *Id.* § 809. Willful refusal to teach these subjects can lead to the revocation of a teacher's license. *Id.* § 805.

governing the approved course of study.<sup>105</sup> These regulations contain details as to further courses, and as to the number of hours required of each.<sup>106</sup>

Unlike California, New York leaves the selection of textbooks entirely to the local board, although the state supplies funds in certain cases.<sup>107</sup> The law contains only one prohibition on textbooks—they cannot contain “any matter or statements of any kind which are seditious in character, disloyal to the United States or favorable to the cause of any foreign country with which the United States may be at war.”<sup>108</sup>

### C. Summary and Hypothesis

The ability to influence the education of children, and the allocation of educational resources are political concerns. Historically, the state, either by itself or through local school districts, has exercised control over all facets of education, from the design of the school house to the number of children in the class. The emergence of teachers associations and unions has created a new pressure group potentially capable of influencing traditional state prerogatives in educational policy. California and New York have responded to the existence of these new groups in different ways.

Although it is usually assumed that collective bargaining statutes grant teacher groups greater power than do “meet and confer” statutes, this apparently is not true as to educational policy issues. New York law permits binding contracts on educational policy issues, but they are not mandatory subjects of bargaining. Thus, if a school board in New York does not wish to negotiate on educational policy,

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105. Bd. of Regents R. 8.4, 8 N.Y.C.R.R. (1970).

106. COMM’R OF EDUC. REG. 100.1, 8 N.Y.C.R.R. (1970).

107. N.Y. EDUC. LAW § 701. This represents a very old policy in New York State, one that was articulated as early as 1919. *See* Op. Atty. Gen., 18 St. Dept. 456 (1919). A three-fourth vote of the local board is required to change a selected book within five years of selection. N.Y. EDUC. LAW § 702. It has been held that this section does not mean to say how long a text must be used nor how many times it can be changed. Op. Counsel Educ. Dept., 7 EDUC. DEP’T REP. 158 (1967).

108. N.Y. EDUC. LAW § 704. Under this section, the prohibition comes into effect only upon complaint. The decision to order discontinuance of an offending textbook is made by a panel of the Commissioner of Education and two persons selected by the Regents.

the teachers have no enforceable right to even raise the issue. In California, on the other hand, school boards are required to discuss at least procedures relating to educational policy if the teachers so request. The board cannot agree to bilateral decision-making in educational policy, as can a board in New York. However the board can agree to *involve* teachers in the decision-making process.

The implications of this are fairly clear. Confronted with a recalcitrant board, California teachers can compel discussion on some aspects of educational policy, but New York teachers cannot. If the board wishes to cooperate with the teachers, New York law gives any ensuing agreement legal enforceability, whereas California gives it none. Assuming that the parties act in good faith, legal enforceability would probably make little difference under normal conditions. However, if the political character or policies of the board should change, after an election or otherwise, power to enforce contract terms might become very important. Only in that situation does the collective bargaining scheme in New York effectively give the teachers more power in the decision-making process.

Analytically, it is reasonable to expect that these different statutory schemes would produce different results with respect to the negotiation of educational policy provisions. Since local boards need not bargain about educational policy, New York contracts should contain fewer provisions. And since the board may be legally bound to what it does agree, provisions should tend to be more restrictive. If collective bargaining does threaten the locality's ability to formulate educational policy some contract clauses should reflect teacher power over actual policy making, as opposed to the procedures of policy making. In California, since local boards must discuss educational policy procedures only, procedural clauses should be numerous, and since the board can rescind the clauses at will, the agreements should be slightly more liberal than in New York.

### III. Negotiated Provisions

#### A. Introduction

To aid in analyzing the contracts and agreements studied, the contractual provisions were separated into three subject matter categories: professional judgment, professional growth, and professional status. Professional judgment encompasses two related concepts; reliance by the school district on the teacher's professional judgment in curriculum, textbook selection, innovation and experi-

mentation and the planning of new school buildings; and attempts by the school board to influence the teachers' professional judgment in those areas. These attempts include the use of faculty meetings, the orientation of new teachers, and required instructional techniques. Professional growth comprises those items which recognize the necessity for teachers to expand their skills and professional awareness. Teacher conferences, observation visits, sabbatical leaves, and restriction to the certified area of competence are included in this category. Professional status covers areas highlighting the peculiar position of teachers as professionals within the larger group of public employees. Included within this category are academic freedom, professional ethics, student discipline, class size, teacher aides, required extra-curricular work, and personnel files.

## **B. Professional Judgment**

### 1. Curriculum Development

The content of school curriculum and how it is developed is potentially the most controversial issue facing local school districts.<sup>109</sup> The community manifests its interest in the intellectual growth of its children largely through political action. Local boards of education are usually elected, frequently after heated campaigns. In this area, perhaps more than in any other, members of the public seek to have a voice in the decision-making process. This has caused one commentator to suggest that traditional bilateral bargaining is not appropriate in this area and that institutional mechanisms protective of the public's interest are needed.<sup>110</sup>

Of the New York contracts studied approximately half deal explicitly with curriculum development. In every case, the final decision on any program is left to the local board. In no case is a specific educational program or educational policy required. The New York City contract contains no comparable provision relating to curriculum development. In general, professional participation in curriculum development is handled in one of two ways: including non-specific language guaranteeing teachers some degree of participation in curriculum development; or creating a committee structure

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109. See generally Wellington & Winter 855.

110. See Kirp 338.



to review, evaluate, discuss and make recommendations on proposed curriculum changes, outside of the bargaining framework.

a. Degrees of Participation

Although some form of participation is provided for in the agreements, the degree of participation varies greatly. While one contract may simply acknowledge the right of teachers to have a voice in curriculum development,<sup>111</sup> another calls the teaching staff a major source of ideas on the curriculum.<sup>112</sup> The contract from Onondaga contains the following provision:

A. The Association and Board recognize that the instructional staff and Board share a concern, and have respective responsibilities for developing, implementing and improving the curriculum and its various aspects in a cooperative manner in the best interests of the pupils.

B. Implementation and continual evaluation of educational programs as are, and/or may be, approved by the Board or its designated representatives, is expected of each member of the teaching staff.

C. To the end of improving educational programs and/or modifying same as may become necessary, channels for the communication of ideas from the teaching staff shall be developed and maintained at both the individual school and district-wide levels.<sup>113</sup>

Several contracts tend to impose an affirmative duty of teacher participation in curriculum development. These refer to curriculum development as being fundamental to a teacher's job, or a professional duty,<sup>114</sup> or among a teacher's basic responsibilities.<sup>115</sup> In the

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111. An Agreement between the Board of Education of the Cortland Enlarged City School District and the Cortland Public School Teachers Association, art. IV, § A(5) (1972) [hereinafter referred to as Cortland contract].

112. Professional Negotiation Agreement between the Lockport Education Association and the Superintendent of Schools of the City School District of Lockport, art. X (1970-71) [hereinafter referred to as Lockport contract].

113. Contractual Agreement between the Central School District No. 1 Towns of Onondaga, Marcellus, Lafayette and Otisco, Onondaga County, New York, and the Onondaga Central Schools Faculty Association, Nedrow, New York, art. XIII (1972-73) [hereinafter referred to as Onondaga contract].

114. Agreement between the Board of Education, Wantagh Union Free School District and Wantagh United Teachers, art. V (1973-76) [hereinafter referred to as Wantagh contract].

115. Working Agreement between the Lewiston-Porter Board of Edu-

Allegany district; a teacher's responsibility is described in this manner:

It shall be the teacher's responsibility to keep abreast of new developments in education, both in their field and generally, and to assist in bringing about changes that will keep the curriculum up to date and enhance the educational offerings and opportunities for the students of the district.<sup>116</sup>

Other clauses are more definitive in the promise of participation:

F. *DEVELOPMENT OF NEW PROGRAMS*—The Board agrees to involve the Association in the development of new programs. The Board shall have the right to involve such other staff members as it may deem fit in the development of such programs. The Association shall have the right to initiate discussions in connection with the development of any new programs which it desires to seek for the Ithaca School System.<sup>117</sup>

Some clauses, while promising participation, are less specific—usually binding the parties to “work together,”<sup>118</sup> “to study ways to develop the best curriculum,”<sup>119</sup> to discuss proposed curriculum changes,<sup>120</sup> or simply to consider seriously teacher suggestions.<sup>121</sup>

#### b. Committee Structures

Those clauses which establish a committee structure for handling

cation and the Lewiston-Porter Education Association, art. 2, § 2.15 (1973-76) [hereinafter referred to as Lewiston-Porter contract].

116. Agreement between the Allegany Central School District and the Allegany Central School Teachers Association, art. IV, § 18 (1973-76) [hereinafter referred to as Allegany contract].

117. Agreement between the Ithaca Teachers Association and the Superintendent of Schools of the Ithaca School District, art. IV, § F (1972) [hereinafter referred to as Ithaca contract].

118. Agreement between the Newburgh Teachers' Association and the Board of Education, City School District, City of Newburgh, art. XVIII (1969-71) [hereinafter referred to as Newburgh contract].

119. Contract between the Mattituck Teachers Association and the Union Free School District No. 9, Town of Southold, Mattituck, New York, art. XXIII, § B (1970-72) [hereinafter referred to as Mattituck I contract].

120. Agreement between the Auburn Enlarged City School District and the Auburn Teachers Association, art. XII, § A (1973-76) [hereinafter referred to as Auburn contract].

121. Teacher Contract Agreement between Central School District No. 3, Towns of Clay, Cicero, Salina, and Dewitt, Onondaga County, New York, and the North Syracuse Education Association § 77 (1971-72) [hereinafter referred to as North Syracuse contract].

curriculum changes are more interesting than those discussed above, since they represent a further accession of influence and power to teachers. Approximately half of the contracts dealing explicitly with curriculum adopt the committee-discussion approach. In every instance the final decision on any proposed curricular exchange is explicitly reserved for the board. In several cases the contracts detail exactly who may make proposals, though most often the list includes the entire teaching staff.<sup>122</sup> One contract creates a multi-tiered system to funnel proposals to the board.<sup>123</sup> The contract in Guilderland contains a detailed listing of who may originate curriculum proposals:

ARTICLE XXVII—CURRICULUM DEVELOPMENT

1. Proposals for curriculum change may originate from: one or more elementary teaching faculties; a secondary school teaching faculty or department; the Administrative Advisory Council; the Assistant Superintendent of Schools for Curriculum and Instruction; any intra-school committee or council; a principal or group of principals; a supervisor or group of supervisors; a teacher or group of teachers.<sup>124</sup>

The composition of curriculum committees varies from district to district. The committees may be selected in consultation with the personnel affected by the proposed changes<sup>125</sup> or a single committee may be established with equal teacher-administration representa-

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122. Contract between the Board of Education, Public Schools of the Tarrytowns and the Teachers' Association of the Tarrytowns, art. I, § G, 1 (1971-73) [hereinafter referred to as Tarrytown contract]; Agreement between the Superintendent of Schools of the City School District of the City of Batavia and the Batavia Teachers Association, art. XVI, § C (1972-73) [hereinafter referred to as Batavia contract]; Professional Agreement between the Superintendent of Schools, the Board of Education of the City School District, Saratoga Springs, and the Saratoga Springs Teachers Association, art. III (1973-75) [hereinafter referred to as Saratoga Springs contract].

123. Agreement between the Board of Education, U.S.F.D. No. 4, Town of Huntington and the Northport Teachers Association, art. 10 (1971-72) [hereinafter referred to as Northport contract].

124. Agreement between the Board of Education of Guilderland Central School District No. 2 and the Guilderland Central Teachers' Association, art. XXVII, § 1 (1972-74) [hereinafter referred to as Guilderland contract].

125. Batavia contract, Art. XVI, § A at 28.

tion.<sup>126</sup> In no case are the committees composed entirely of teachers and six contracts call for mixed representation with teacher membership predominating.<sup>127</sup> The function of these committees is limited. In no case studied does the committee have power to do more than make recommendations on proposed curricular changes and often its authority is even more circumscribed. Some contracts merely allow the committee to work with the superintendent or his equivalent to consider proposals.<sup>128</sup> A more limited provision allows the parties to agree upon an agenda of subjects in advance and to discuss and to study them<sup>129</sup> without making a decision. Other contracts grant greater powers to the committees. These either mandate that the committee act to bring about innovation, although limiting its power to meeting with the superintendent,<sup>130</sup> or empowering the committee to make recommendations to the superintendent for transmittal to the board.<sup>131</sup> Three districts go further, elimi-

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126. Agreement between the Mineola Board of Education and the Mineola Teachers Association, art. XXII, § 3 (1971-74) [hereinafter referred to as Mineola contract].

127. Professional Agreement between the Prattsburg Teachers' Association and the District Principal for Franklin Academy and Prattsburg Central School, art. XIII (1972-74) (3 teachers, 1 administrator) [hereinafter referred to as Prattsburg contract]; Agreement between the Board of Education, Great Neck Union Free School District and the Great Neck Teachers Association, art. 13 (1973-76) (6 teachers, 3 administrators, 1 student from each high school) [hereinafter referred to as Great Neck II contract]; Guilderland contract, art. XXVII, § 3 (8 teachers, 2 administrators); Negotiations Agreements between the Babylon Teachers' Association and the Board of Education of Union Free School District No. 1, Babylon, New York, art. XII (1972-73) (7 teachers, 3 administrators) [hereinafter referred to as Babylon contract]; Tarrytown contract, Art. I, § 9(6)(1)(d) (2 high school teachers, 1 teacher from each elementary school, administrators of unspecified number); Contract between the Chief Executive Officer of the Southern Cayuga Central School District and the Southern Cayuga Central School Teachers Association, art. VII, § B (1972-74) (1 teacher from each subject in primary, intermediate and junior high school, 2 teachers from each subject in high school, 1 administrator as chairman) [hereinafter referred to as Southern Cayuga contract].

128. Guilderland contract, art. XXVII; Batavia contract, art. XVI; Saratoga Springs contract, art. III.

129. Prattsburg contract, art. XIII.

130. Babylon contract, art. XII.

131. Great Neck II contract, art. 13; Mineola contract, art. XXII.

nating the superintendent as an intervening step and allowing the committee to make its recommendations directly to the board.<sup>132</sup> One district allows the committee to advise the board and make recommendations, but explicitly provides for contingencies if the board rejects the recommendations:

C. If the Board does not accept the recommendations of such councils and committees, regarding such areas as, but not limited to, the following:

1. Curriculum development, review and evaluation;
2. Selection of instructional materials;
3. Selection of textbooks;
4. Educational philosophy; and
5. Staffing policies;

the recommendations shall be referred to the Board-Teacher Relations Committee before a final determination is made. The Board-Teacher Relations Committee shall have the following alternatives:

1. resolve the differences
2. mutually agree that the items under discussion are not subject to negotiations under this Agreement . . . .<sup>133</sup>

This is the only contract studied which takes the committee function past the first recommendation. In no case observed is the board required to explain its final decision.

Despite more extensive state control, California school districts appear to handle the curriculum development issue in a manner parallel to that used in New York. As already noted, school boards are required to meet and confer concerning the procedures to be used in determining course content and curricula.<sup>134</sup> Additionally, the substantive curriculum requirements of the California Education Code must be met.<sup>135</sup> However, like New York, California school district agreements—in the form of rules, regulations, and policies—contain either general language acknowledging the propriety of teacher involvement in curriculum development, or language establishing a committee system to study proposals and make recommendations to the board. Approximately two thirds of the agreements studied contained one or the other of these approaches.

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132. Agreement between the Rochester Board of Education and the Rochester Teachers Association, 1969-1971, art. 10 (1969-71) [hereinafter referred to as Rochester contract]; Tarrytown contract, art. I, § G; Southern Cayuga contract, art. VII.

133. Northport contract, art. 10.

134. See note 25 *supra*.

135. See note 31 *supra*.

Some of the more general provisions studied refer to the teachers as the "primary voice"<sup>136</sup> in the formulation of educational policy, or evince a policy favoring the use of experienced teachers in determining, guiding, and evaluating the learning experiences of students.<sup>137</sup> Still others require teachers to recommend curriculum changes<sup>138</sup> or impose a responsibility on teachers to assist in the development of the curriculum.<sup>139</sup> Others view the teacher's responsibility in this area as "ultimate" and impose a duty on both the teachers and the board to formulate<sup>140</sup> and implement policy.<sup>141</sup>

Several of the agreements, using almost identical language,<sup>142</sup> con-

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136. Memorandum of Agreement between the Board of Trustees Jefferson School District, an Elementary School District, San Mateo County, California, and the Negotiating Council Representing the Certificated Employees of the District, art. XXX (1970-71) [hereinafter referred to as Jefferson Elementary agreement].

137. Teachers' Salary Schedule, Marysville Joint Unified School District (1973-74) [hereinafter referred to as Marysville agreement].

138. Memorandum of Agreement between the Board of Education and the Certificated Employee Council, Fremont Unified School District, Policy 416.1,j (1972-73) [hereinafter referred to as Fremont II agreement].

139. Rules, Regulations and Policies Regarding Employer-Employee Relationships with Certificated Personnel, Mountainview-Los Altos Union High School District, Principles § 4.14-2(B) (1974) [hereinafter referred to as Mountainview-Los Altos agreement].

140. Rules, Regulations and Policies of the Santa Clara Unified School District, Policy 4350, § II(2), at .1 (1974). [hereinafter referred to as Santa Clara agreement].

141. Santa Clara agreement, Policy 4350, § II(4) at 1.

142. See Statement of Agreement between the Governing Board and the Grossmont Education Association, Representing the Certificated Staff, Grossmont Union High School District, art. V, § 1 (1972) at 6 [hereinafter referred to as Grossmont agreement]; Rules and Regulations Governing Employer-Certificated Employee Relations, Rim of the World Unified School District § 1012 (1974) [hereinafter referred to as Rim of the World agreement]; Policies of the New Haven Unified School District, Policy 9401, § VI(I) (1973-74) [hereinafter referred to as New Haven agreement]; Rules, Regulations and Policies for Certificated Personnel Relations, Roseville Joint Union High School District, art. VI, § A(2) (1974) [hereinafter referred to as Roseville agreement]; Procedures Governing Employer-Certificated Employee Relations, Capistrano Unified School District, Policy 4160, VI(I) (1974) [hereinafter referred to as Capistrano agreement]; Rules and Regulations Governing Employer-Certificated

tain a provision for a "Joint Study Committee." The San Diego Clause is typical:

Joint study committees, composed of both School District and verified employee organization representatives, may be constituted by mutual agreement of the Negotiating Council and the Board's representative to engage in cooperative research, study and development of projects, programs, reports and recommendations in areas pertinent to the subject of employer-certificated employee relations. Each Joint Study Committee shall operate under procedures approved by the Negotiating Council and the Board's representative.<sup>143</sup>

In some cases, this committee provision is augmented by general "participation-type" language. Both Roseville<sup>144</sup> and Capistrano<sup>145</sup> state a fundamental intent to maintain open channels of communication in order to afford teachers a voice in the formulation of educational policy. The San Diego agreement pledges an opportunity for all teachers to participate in planning curriculum,<sup>146</sup> and while the board retains the right to innovate, it agrees to involve teachers in the innovative process.<sup>147</sup> In Berkeley teachers are simply encouraged to develop new methods and programs to fit the needs of their students.<sup>148</sup>

In five cases studied, school districts devised other committee arrangements. The policy of one district is to present proposed curricular changes to the teachers' negotiating council for evaluation and response before implementation.<sup>149</sup> Another district employs two committees—one reviews academic and curricular matters and

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Employee Relations, Oakland Unified School District, art. XXII (1971-73) [hereinafter referred to as Oakland agreement].

143. A Comprehensive Agreement between the Board of Education of the San Diego Unified School District and the San Diego Certificated Employee Negotiating Council, art. XXII (1973) [hereinafter referred to as San Diego agreement].

144. Roseville agreement, art. I, § C(2).

145. Capistrano agreement, Policy 4160, § I(C)(2).

146. San Diego agreement, art. XII, § 11.

147. *Id.* art. II, § I.

148. Policies Governing Certificated Employees, Berkeley Unified School District, art. X, § B (1973) [hereinafter referred to as Berkeley agreement].

149. Rules, Regulations and Policies, Governing Employer-Employee Relations, Vallejo City Unified School District, Policy 4161(a), § 2.5 (1974) [hereinafter referred to as Vallejo City agreement].

one makes recommendations.<sup>150</sup> The most detailed committee structure observed was contained in the Oxnard agreement.<sup>151</sup> Most interesting, however, are three districts which attempt to develop curricular changes on the school building level. Two of these have a policy that strongly favors teachers' participation in and responsibility for local school decisions.<sup>152</sup> Each principal, assisted by an elected faculty committee,<sup>153</sup> is allowed to develop implementing techniques.<sup>154</sup> One of these reserves for the principal the responsibility of making the final decision at the building level.<sup>155</sup> The third district which develops curriculum changes on the building level presumes that the more intimately teachers are involved in curriculum development, the more effective it will be.<sup>156</sup> Consequently, that district structures its committee organization in the following manner:

Committee Organization and Function at the School Level. The District operates on the premise that the subject department within each school, under the leadership of the department head, is the most effective organizational unit for curriculum development and instruction. Experimentation with new techniques, new materials, organizational patterns, articulation and coordination of activities between subjects should take place through department meetings in each school.

1. A LONG RANGE PLANNING COMMITTEE AT EACH SCHOOL WILL FORMULATE IDEAS BROUGHT TO IT BY THE DEPARTMENTS, TEACHERS, TEACHER ORGANIZATIONS, STUDENT BODY, AND/OR PUBLIC.
2. THE PLANS DEVELOPED BY THE ABOVE COMMITTEE WILL BE

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150. Certificated Personnel Handbook Containing Rules, Regulations and Policies of the Newport-Mesa Unified School District, Memo. of Agreement §§ 5.4.2, 5.4.5 (1973) [hereinafter referred to as Newport-Mesa agreement].

151. See Appendix II.

152. Rules, Regulations and Policies, El Rancho Unified School District, art. VIII (1973-74) [hereinafter referred to as El Rancho agreement].

153. *Id.*

154. *Id.* art. XI.

155. Agreement, Compton Education Association, Compton Unified School District 1 (1973) [hereinafter referred to as Compton agreement].

156. Agreement between the Board of Education and the Certificated Employees Negotiating Council, Jefferson Union High School District, art. XIV, § B(2) (1970-71) [hereinafter referred to as Jefferson H.S. agreement].



BROUGHT BACK TO THE FACULTY FOR ITS APPROVAL OR DEPOSITION; AND IMPLEMENTED BY FACULTY ACTION UNITS, TEACHER, STUDENT, OR PUBLIC ORGANIZATIONS; OR SENT TO THE DISTRICT PLANNING COUNCIL FOR BOARD ACTION OR CONSIDERATION.<sup>157</sup>

## 2. Textbook Selection

Once a school's course of study is determined, textbooks must be chosen. Therefore, the selection of textbooks to implement the curriculum content is an integral part of the curriculum issue. As already noted, New York leaves textbook selection entirely to the local board.<sup>158</sup> Yet only one-seventh of the New York contracts studied have clauses explicitly dealing with textbook selection. The New York City agreement contains no specific reference to the textbook selection process.

California has a more detailed textbook selection system that divides power between the state and local authorities.<sup>159</sup> Yet, one-fifth of the California agreements deal explicitly with textbook selection, and an additional one-fourth create "joint study committees" which could do so. In both states, where textbook selection is part of the agreement, it is handled by either a committee system or a guaranteed right of participation in the selection process.

The range of contract provisions in New York varies greatly. Some provide simply for consultation,<sup>160</sup> while others guarantee the teacher who will use the book "a voice" in its selection,<sup>161</sup> and still others will give "most serious consideration" to the views of the majority of teachers using the books.<sup>162</sup> Another approach is to make approval of a text contingent upon consultation with the teacher whose pupils will be affected by it.<sup>163</sup> These require the subject

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157. *Id.* § C (emphasis in original).

158. *See* note 50 *supra*.

159. *See* note 107 *supra*.

160. Ithaca contract, art. XIV, § B.

161. Agreement between the West Hempstead Chapter Branch II of the New York Teachers Association and the Board of Education of the Union Free School District No. 27, West Hempstead, New York, art. XV (1970-72) [hereinafter referred to as West Hempstead contract].

162. An Agreement between the Bethpage Board of Education, District No. 21, and the Bethpage Congress of Teachers, Local 1379, art. XII (1972-74) [hereinafter referred to as Bethpage contract].

163. Agreement between the Board of Education of the New Hyde Park

teacher to meet formally with an administrator to make a recommendation to the board<sup>164</sup> or to work in concert with their grade level and department associates to make recommendations to the board.<sup>165</sup>

Textbook selection committees have been established in Guilderland and in Rome,<sup>166</sup> but the Guilderland contract contains the highest degree of board responsiveness observed:

2. The Assistant Superintendent for Curriculum and Instruction shall set up a long-range calendar for periodic evaluation of all textbooks presently in use, by grade and/or subject. He shall also develop evaluation instruments for use by staff in comparing the merits of alternate books available on the market in light of local GCS instructional objectives, curricula, pupil needs, and horizontal and vertical program articulation. No textbook shall be purchased which has not been screened through this process of materials evaluation.

3. He shall appoint separate committees consisting primarily of classroom teachers involved in the use of a particular book to be evaluated, who will engage in this professional study under the leadership of supervisors and/or principals . . . .

5. When committee studies have been completed, and the titles and quantities of books desired are known, the Assistant Superintendent shall formulate his recommendations, and the Superintendent shall bring to the Board textbook adoption decisions to be made and appropriations needed.

6. If at any time during the textbook selection review process a book is not recommended for approval, the reasons for the rejection shall be submitted in writing to the members of the appropriate committee.<sup>167</sup>

In California, although there is extensive state regulation of the textbook selection process, many agreements provide for teacher involvement either by noting that text selection remains primarily a teacher function<sup>168</sup> or establishing committees of one kind or an-

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Public Schools U.F.S.D. No. 5 and the New Hyde Park Teachers Association, art. VI, § E (1971) [hereinafter referred to as New Hyde Park contract].

164. Mattituck I contract, art. XXIII.

165. Agreement between the Board of Education and the Mamaroneck Teachers Association Union Free School District No. 1, Mamaroneck, New York, art. VIII, § A (1972-74) [hereinafter referred to as Mamaroneck contract].

166. Rome City School District Contract, art. XVI (1972-74) [hereinafter cited as Rome Contract].

167. Guilderland contract, art. XXVI.

168. Agreement between the Board of Trustees of the Santa Maria Joint Union High School District and the Negotiating Council of the Santa

other. The agreements of several districts<sup>169</sup> provide for a "Joint Study Committee," which could study textbook proposals. Some combine the Joint Study Committee concept with general language guaranteeing all teachers an opportunity to participate in selecting instructional materials.<sup>170</sup> In one district teachers work with their department chairmen to review texts and make recommendations to the Superintendent.<sup>171</sup> Another has established a selection committee, of equal teacher-administration representation, to review state adopted books,<sup>172</sup> though the committee is not limited to only this class of books.<sup>173</sup> In Compton, each school building has a committee to advise the principal on needed instructional supplies, and the principal has the final decision.<sup>174</sup>

### 3. Innovation and Experimentation

Only a few agreements take up the question of innovation and experimentation. The contracts in Mamaroneck and New York City obligate the teacher's association to facilitate its members' participation in new ventures.<sup>175</sup> The Mamaroneck contract requires the teacher's association to have a standing committee to make innovative recommendations to the Superintendent who is not obligated to approve them, but is required to acknowledge and discuss the proposals.<sup>176</sup> Mineola provides for supervised involvement of all teachers in planning for experimentation<sup>177</sup> and for the adjustment

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Maria High School District Faculty Association, § 8 (1970) [hereinafter referred to as Santa Maria Agreement].

169. Grossmont agreement, art. V; Rim of the World agreement, § 1012; Roseville agreement, art. VI, (I); San Diego agreement, art. XXII, § 1.

170. San Diego agreement, art. III, § 4, at 5; Oakland agreement, art. VII, § B(4), at 5. The Berkeley agreement, art. IV, § C, at 2, provides a similar opportunity but does not include a Joint Study Committee.

171. Jefferson H.S. agreement, art. 13, § E(f).

172. See note 54 *supra* and accompanying text.

173. Jefferson Elementary agreement, art. XVI.

174. Compton agreement 4-5.

175. Mamaroneck contract, art. IX; Agreement between the Board of Education of the City School District of the City of New York and the United Federation of Teachers, Local 2, art. XIV (1972-75) [hereinafter referred to as New York City contract].

176. Mamaroneck contract, § C.

177. Mineola contract, art. XXIII, § 7.

of salaries where warranted by the experiment.<sup>178</sup> In California, the Jefferson High School district has a policy encouraging experimental programs, as a cooperative effort,<sup>179</sup> and provides for implementation through department meetings.<sup>180</sup>

#### 4. Faculty Meetings, New Teacher Orientation, and Required Instructional Techniques

In three areas—faculty meetings, new teacher orientation, and designated instructional techniques—the administration and the board attempt to influence the teacher's professional judgment. With the exception of faculty meetings, provisions on these items are rarely included in formal agreements. California allows administrators to discuss items subject to the "meet and confer" obligation at faculty meetings,<sup>181</sup> thereby permitting administrators to bypass the employee's official representatives and consult directly with the teachers. In the Jefferson Elementary district, California teachers must attend faculty meetings, but only when agreed to by the teachers and building principal.<sup>182</sup> The teachers in San Diego and Berkeley may be required to attend a reasonable number of meetings,<sup>183</sup> while in Oakland teachers have a "responsibility to attend."<sup>184</sup> In New York, many contracts make passing reference to faculty meeting obligations, but the most emphatic clause found is contained in the Allegany contract. Here the meetings are considered "an individual professional obligation of the same rank as the conduct of regular assigned classes,"<sup>185</sup> and all teachers are expected to attend.

Occasionally, a clause providing for orientation of new teachers is included in these agreements. In Allegany, such a provision was written into the contract because the parties recognized "the need for proper orientation to district philosophy, objectives, goals and

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178. *Id.*

179. Jefferson H.S. agreement, art. 14, § B(4).

180. *Id.* § C(1).

181. Torrance Educ. Ass'n v. Board of Educ., 98 Cal. Rptr. 639, 640, 21 Cal. App. 3d 589, 591-92 (Ct. App. 2d Dep't 1971).

182. Jefferson Elementary agreement, art. VI.

183. San Diego agreement, art. XIV, § 9, at 33; Berkeley agreement, art. VI, § G, at 6.

184. Oakland agreement, art. XXXIV, § D, at 40.

185. Allegany contract, art. IX, § C(2), at 13.

purposes . . . .<sup>186</sup> In California, both the Newark<sup>187</sup> and El Rancho schools<sup>188</sup> have similar provisions designed to make the new teacher aware of district policies. The Jefferson High School district agreed to such a provision in order to assist the adjustment of new teachers.<sup>189</sup> In a few instances, teachers are required to comply with pre-determined instructional technique plans. Typical of these clauses is the one found in the Allegany contract:

6. Teachers shall adapt their instruction to fit the needs of the individuals in the group.

7. Teachers shall prepare weekly plans that implement the goals of the year that shall consider the ability and status of the individual student in their respective classes and subject fields. These shall be reviewed from time to time by the immediate supervisor.

8. Teachers shall prepare and give formal and informal tests to insure that they know the status of their individual students and their expected progress in their individual growth and development patterns.<sup>190</sup>

### 5. New Building Planning

A teacher's professional judgment is also used by the administration in the planning of new school buildings. This issue has strong political overtones because it is closely connected to local taxation. In New York, the Commissioner of Education is required by law to keep on file several master plans and specifications which a school district may adopt.<sup>191</sup> For buildings costing over \$100,000, the Commissioner's approval is required, and for all other buildings the Commissioner may review the plans and specifications.<sup>192</sup> However, the final decision on all building plans is made by the local board. Despite these statutory controls, New York teachers are involved in building planning in a variety of ways. They may be included in the group advising the board and have the right to meet with the archi-

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186. *Id.* art. IV, § 15.

187. Agreement between the Certificated Employees Council and the Administration of the Newark Unified School District § I, (F),(2)(d) (1973).

188. El Rancho agreement, art. X.

189. Jefferson H.S. agreement, art. XVIII, G.

190. Allegany contract, art. IV, §§ 6-8.

191. N.Y. EDUC. LAW § 408-a.

192. *Id.* § 408. For cities over one million in population the Commissioner receives the plans and specifications for his information only, and his approval is not required.

tect and develop their own recommendations.<sup>193</sup> Two contracts require the board to give reasons for rejecting teacher recommendations.<sup>194</sup> They also require the recommendations to be developed by a teachers committee<sup>195</sup> or by the teachers and administration officials.<sup>196</sup> In the latter case the administration officials are required by contract to meet with the teachers to discuss building plans.<sup>197</sup>

Although approximately one-eighth of the California agreements studied have a building plan provision, they are not as responsive to teacher proposals as New York. The California agreements provide that the professional staff will be appropriately utilized,<sup>198</sup> consulted,<sup>199</sup> or given the opportunity for involvement in planning new facilities.<sup>200</sup> No agreement studied provides for a board explanation of rejected proposals.

## 6. Summary

The constant similarity of the professional judgment provisions in California and New York is striking. Politically charged issues such as curriculum, textbook selection and new building design are handled in the same fashion in both states, despite a fairly wide disparity of statutory approaches. The formalized committee structure used in both jurisdictions for curriculum and textbooks represents the deepest penetration of the local decision-making process by teachers as a professional group. But even these committees function only to make policy recommendations to the local board, and have no decision-making power themselves. Consequently, the community retains actual control over basic educational policy decisions. Local communities set their own desired level of teacher influence, and in every case in both states that influence remains advi-

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193. Contract between the City of Binghamton and Binghamton Teachers Association, art. XIX (1970) [hereinafter cited as Binghamton Contract].

194. Terms and Conditions of Employment between Board of Education and Peekskill Faculty Association, City School District of Peekskill, New York, art. VII (1972) at 10 [hereinafter referred to as Peekskill III contract]; Ithaca contract, art. V, § D.

195. Ithaca contract, art. V, § D, at 6.

196. Peekskill III contract, art. VII, at 10.

197. *Id.*

198. Grossmont agreement, art. XVI, § 2.

199. Santa Maria agreement § 9.

200. San Diego agreement, art. III, § 4; Berkeley agreement, art. IV, § C, at 2; Oakland agreement, art. VII, § B(4), at 5.

sory. Although the community seeks to affect its teachers' judgment and perspective through faculty meetings, district orientation and required instructional techniques, the value it places on professional expertise is clearly exposed in provisions affecting the community's future, namely the designing of new school buildings and the planning of educational innovations. Moreover, it is clear that the local response to educational policy issues is the same regardless of what statutory scheme exists on the state level.

### C. Professional Growth

#### 1. Conferences, Observation Visits

Among the means available for teachers to expand their professional knowledge and keep abreast of developments in their field are professional conferences, usually concerned with specific topics, and visits to other schools to observe different techniques. Explicit provisions regarding observational visits are rare. In New York, the Allegany district allows the building principal in his discretion to grant visit requests, or assign a teacher a specific visiting task.<sup>201</sup> In California, the Freemont district gives its Superintendent the power of approval.<sup>202</sup>

Clauses dealing with attendance at teacher conferences are slightly more common. New York districts appear to structure this area in most cases, while California districts rely on general clauses. Of the New York contracts studied, approximately one-tenth contained conference clauses. In Ballston Spa<sup>203</sup> and in Rome,<sup>204</sup> teachers may make their requests directly to the Superintendent. In Ithaca, a teacher must obtain the advance approval of his principal, or district-wide supervisor, before submitting his request for the Superintendent's approval.<sup>205</sup> And under the Great Neck contract a conference attendance committee is appointed by the Superintendent, with equal teacher-administration representation. Conference requests must go through the building principal to this committee

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201. Allegany contract, art. V.

202. Freemont I agreement, reg. 415,18 *infra* note 244.

203. Central School District No. 1 Agreement, art. 6, § B(1)(a) (1971-73) [hereinafter cited as Ballston Spa contract].

204. Rome contract, art. XXXVI, § B.

205. Ithaca contract, art. VI, § A.

which then makes its recommendations to the board.<sup>206</sup> In Ballston Spa a committee structure is used to handle attendance at special conferences, beyond the normal requests.<sup>207</sup> In most cases, the Superintendent's approval or disapproval of a request is based upon his judgment as to the conference's value with respect to the professional development of the faculty.<sup>208</sup> In most instances of request approval the school district pays the teacher's expenses, but even if a teacher is willing to pay his own way he still must get the same type of approval.<sup>209</sup> Agreements in California are not as specific as those in New York. The Oakland agreement recognizes the need for professional conferences.<sup>210</sup> In Grossmont, it is a policy to make every effort to sponsor and facilitate activities for professional growth.<sup>211</sup> The board in Fremont encourages teachers to attend conferences, though only "pertinent" conferences will draw reimbursement.<sup>212</sup> And the agreement in Newport-Mesa states that requests are granted in specific instances where the conference is deemed to be of value.<sup>213</sup>

## 2. Sabbatical Leaves

The second area where provision is made for teachers' professional growth is sabbatical leaves. These are a deeply ingrained tradition in American education and both New York and California handle the question similarly. In most New York districts the board has final approval of sabbatical applications. In one, a committee of teachers and administrators has been established which screens applications for recommendation by the Superintendent to the board for final approval.<sup>214</sup> Another district allows a teacher to apply

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206. Great Neck II contract 13-14.

207. Ballston Spa contract, art. 6, § B.

208. *E.g.*, Great Neck II contract 13-14.

209. See Ballston Spa contract, art. 6, § B(2)(d); Ithaca contract, art. VI, § A; Rome contract, art. XXXVI, §§ A, D.

210. Oakland agreement, art. XIV, at 11.

211. Grossmont agreement, art. XV, § 1.

212. Fremont II agreement, policy 416.1, h.

213. Newport-Mesa agreement, § 3200(2).

214. Agreement between the Negotiating Teams for the 1972-74 + 1974-75 school years of the Gates Chili Central School District Superintendent and the Gates Chili Teachers Association for Central School District No. 1, Town of Gates and Chili, Monroe County, New York, art. 17



directly to the board.<sup>215</sup> Final approval is usually dependent upon the board's perception of the sabbatical's value to the district.<sup>216</sup> The Great Neck contract prohibits study for another trade or profession while on sabbatical.<sup>217</sup> One contract liberally provides for planned travel, study, formal education, research, writing, or other experience of professional value.<sup>218</sup> Most New York contracts require a minimum of seven years of service before a sabbatical can be taken. In New York City, however, the minimum is fourteen years.<sup>219</sup> Several contracts in New York require a teacher to return to the district for a specified period of time after completion of his sabbatical.<sup>220</sup>

The sabbatical provisions in California are subject to the statutory limitations contained in the Education Code. A leave must not be for more than one year, and must be designed to benefit the schools and pupils of the district.<sup>221</sup> Seven years is the minimum service required for eligibility.<sup>222</sup> The level of compensation allowed is in the board's discretion.<sup>223</sup>

Approval of sabbatical leaves is assigned to different sources in the California agreements. Several require approval by the Superintendent or a deputy,<sup>224</sup> or by the board upon recommendation of the Superintendent.<sup>225</sup> An approach, adopted by three districts, calls for establishment of a screening committee of mixed representation.<sup>226</sup>

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(1972-75) [hereinafter referred to as Gates-Chili contract].

215. Mattituck I contract, art. XXI, at 34.

216. Rome labels the value "professional," while Mattituck requires it to be "significant." Rome contract, art. XXXV, § B, at 59; Mattituck I contract, art. XXI, at 34.

217. Great Neck II contract, art. 26, § A(5).

218. Cortland contract, art. XX, § B, at 28.

219. New York City contract, art. IV, § E(1), at 38.

220. Rome contract, art. XXXV, § C, at 59 (2 years); Cortland contract, art. XX, § D, at 28 (2 years); Gates-Chili contract, art. 17, § 8, at 18 (1 year).

221. CAL. EDUC. CODE § 13457.

222. *Id.* § 13458.

223. *Id.* § 13459.

224. San Diego agreement, art. XXII, § 1; Rules and Regulations for Certificated Personnel, San Jose Unified School District, art. III, § C (1972) [hereinafter referred to as San Jose agreement]; Jefferson H.S. agreement, art. X, § I(1)(b), at 16.

225. Marysville agreement, art. IX.

226. Memorandum of agreement between the Board of Education and

One of these districts includes the Superintendent on the committee and empowers it to make recommendations directly to the board.<sup>227</sup> The other two require recommendations to be made to the Superintendent for transmittal to the board.<sup>228</sup> Although the purposes for which a sabbatical may be taken are defined by statute, several agreements impose further limitations such as requiring that the leave relate to the area taught and make an outstanding contribution to the district.<sup>229</sup> Other agreements limit the leave to professional study, travel or research,<sup>230</sup> and in one district, observation.<sup>231</sup> Several agreements specify a period for which the teacher must return to the district,<sup>232</sup> although two districts make that period contingent upon the length of the sabbatical.<sup>233</sup>

### 3. Restriction to Area of Competence

A third aspect of professional growth concerns the desire of a school district to restrict teachers to their area of competence. The New York contracts dealing with this appear to impose this limitation as a means of protecting the pupil's educational experience. The two districts which make specific provisions in this area, Harpursville<sup>234</sup> and Plattsburg,<sup>235</sup> insert the clause "[i]n order to assure

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the Certificated Employee Council, Fremont Unified School District, Policy 415.19(a) (1973) [hereinafter referred to as Fremont III agreement]; Newport-Mesa agreement § 3250.7; Jefferson Elementary agreement, art. XIII, § VII(2).

227. Jefferson Elementary agreement, art. XIII, § VII(2).

228. Fremont III agreement, policy 415.19(a); Newport-Mesa agreement § 3250.7, at 32-33.

229. *E.g.*, Agreement between the Board of Trustees the Certificated Personnel of the Oxnard Union High School District, Policies and Procedures, § 3, 2.451 (1973) [hereinafter referred to as Oxnard agreement].

230. Santa Maria agreement, art. VIII, § B; Newport-Mesa agreement § 3250.7.

231. Newport-Mesa agreement § 3250.7.

232. Grossmont agreement, art. XII, § 3(c) (2 years); Jefferson H.S. agreement, art. X, § I(3)(c) (2 years); Marysville agreement, art. IX (2 years).

233. Santa Maria agreement, art. VIII, § K (length of sabbatical); Newport-Mesa agreement § 3250.7(5.6) (twice length of sabbatical).

234. Agreement between Board of Education, Harpursville Central Schools and Harpursville Teachers Association § 17 (1971-73) [hereinafter referred to as Harpursville I contract].

235. Contractual agreement between the Board of Education of the

that pupils are taught by teachers working within their areas of competence." An area of competence is defined by a teacher's major or minor in college, or the subject named in his certification.

California does not follow the same approach as New York. If a teacher consents or agrees to undergo eighteen hours of preparation, then one district will allow assignment into an area other than the major or minor of the particular teacher.<sup>236</sup> If the teacher refuses to take an assignment to a new area, no adverse consequences are suffered.

#### 4. Summary

Adherence to state statutory standards appears to be most uniform in the professional growth provisions. New York and California handle the issues in this category in almost identical fashion. While teachers' professional growth is a recognized necessity, it is not as politically controversial as issues such as curriculum and textbook selection, which are fundamental to educational policy. Since the benefits of conferences, observation visits and sabbaticals are usually prospective and not of immediate impact, the involvement of local citizens in related decisions is minimal. The local board has discretion to allow sabbatical leaves, which directly affect available manpower, and indirectly affect educational quality. The superintendent typically has the power to approve teacher conference and visiting requests, since both represent short-term absences. The local community's interests are expressed, though not often, in requirements that each subject teacher be certified in his field.

### D. Professional Status

#### 1. Academic Freedom, Professional Ethics

Provisions dealing with academic freedom are found in over half of the contracts studied from New York. In the Mineola contract an extremely detailed article sets forth the rights of students and teachers, the appropriateness of discussion of controversial issues, procedures for teachers, and the responsibilities of the board and

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Plattsburg City School District, Plattsburg, New York and the Plattsburg Teachers Association, art. VIII (1970-71) [hereinafter referred to as Plattsburg III contract].

236. Fremont II agreement, policy 416.1(c).

administrators with respect to academic freedom.<sup>237</sup> In the majority of contracts, however, the language used is relatively brief and general:

The Association and Board seek to educate young people in the democratic tradition, to foster a recognition of individual freedom and social responsibility, to inspire meaningful awareness of and respect for the Constitution and the Bill of Rights, and to instill appreciation of the values of individual personality. It is recognized that these democratic values can best be transmitted in an atmosphere in which academic freedom for teacher and student is encouraged.

Freedom of individual conscience, association and expression will be encouraged and fairness and procedures will be observed both to safeguard the legitimate interest of the schools and to exhibit by appropriate examples the basic objectives of a democratic society.

When a controversial issue is studied, conflicting points of view should be explored. The teacher has the right to identify and express his own point of view in the classroom as long as he indicates clearly that it is his own.

The teacher is entitled to responsible liberty in the presentation of the subject he teaches. However, it is improper for the teacher deliberately to intrude material designed to politicize his students, particularly where that material has no direct relation to the subject he is teaching.

Since the same facts may mean different things to different individuals, there will be times when questions will be raised challenging the teacher's academic freedom. The teachers and the board must accept the occasional risk of being the object of criticism for having exercised a right of judgment as part of their job.<sup>238</sup>

Other districts<sup>239</sup> take a different approach and provide for a committee structure to review matters relative to academic freedom, including the investigation of complaints against teachers. In a few instances, the contract language contains implied limitations on academic freedom. These recognize the right "as understood by the profession,"<sup>240</sup> "within the bounds of" the Education Law,<sup>241</sup> or "consistent with the prescribed curriculum."<sup>242</sup> Another type of im-

237. Mineola contract 24-26.

238. Allegany contract, art. XIX.

239. Ballston Spa Contract, art. 6, § A; Babylon contract, art. IV, § 4.

240. Cortland contract, art. XII, § 1.

241. Mattituck I contract, art. XXIV.

242. New Hyde Park contract, art. II, § A.

plied limitation allows the board to adopt standards of professional educational responsibility, which can act as a limitation on academic freedom.<sup>243</sup>

In California, clauses relating to academic freedom were considerably less numerous than in New York. General "democratic tradition" language, seen in New York, is also found in several California agreements.<sup>244</sup> Other districts take a different approach and either require the teacher to present a balanced view of the subjects taught,<sup>245</sup> or guarantee no curtailment of the teaching of controversial issues.<sup>246</sup> In one instance, academic freedom is guaranteed "as long as expected results are being accomplished with . . . given students."<sup>247</sup> Guidelines<sup>248</sup> and committees<sup>249</sup> are also used to protect this freedom.

Contract terms dealing with professional ethics are found more frequently in New York than in California. Indeed, the Grossmont, California, agreement is the only one of those collected which obligates teachers to acknowledge their rights and responsibilities within the code of ethics of the education profession.<sup>250</sup>

Several districts in New York explicitly adopt the Joint Code of Ethics, a series of statements accepted by the New York State Teachers Association in 1950.<sup>251</sup> Several other districts include fac-

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243. Rochester contract, Preamble § E.

244. San Diego agreement, art. V; Memorandum of Agreement between the Board of Education and the Certificated Employee Council, Fremont Unified School District, policy 411.63 (1971) [hereinafter referred to as Fremont I agreement]; Oakland agreement, art. XVI.

245. Jefferson H.S. agreement, art. XX.

246. Jefferson Elementary agreement, art. XXIV.

247. Oxnard agreement, art. IV, § 4.

248. Agreement between the Certificated employee Council and the Administration of the Newark Unified School District § I, D (1973) [hereinafter referred to as Newark agreement].

249. Berkeley agreement, art. IX, at 10.

250. Grossmont agreement, art. III, §§ 2, 4, at 3.

251. *E.g.*, Auburn contract, art. XVI; Agreement between the Clymer Central School Education Association and the Clymer Central School District No. 1, art. VI (1972-74) [hereinafter referred to as Clymer III contract]. As appears in the Clymer III contract the Joint Code reads as follows: "Joint Code of Ethics: The New York State School Boards Asso-

ultly-drafted codes of ethics. These may require teachers to act in a "non-partisan manner, without prejudice or bias as to social standing, income, race, religion, creed or national heritage."<sup>252</sup> Others

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ciation and the New York Teachers Association have jointly issued the following statements as common beliefs. 1. The teacher and the school board recognize that while the teacher participated in the formulation of school policy under the leadership of the school administrator, it is the duty of the administrator to recommend, and the prerogative of the Board to determine final policy. 2. The teacher is obligated to adhere to the School Board policy; the School Board is obligated to establish policy that is consistent with federal and state laws and regulations and to adhere to such policy. 3. The teacher and the school board transact all official business through proper channels and hold inviolate all confidential information. 4. The teacher and the school board recognize their obligations to develop growing appreciation and understanding of the principles of democracy; they refrain from using the school to promote personal views on religion, race or partisan politics. 5. The teacher and the school board agree that due notice in fair time be given in all cases of appointment, resignation or termination of service. 6. The teacher and the school board avoid disparagement of fellow workers and predecessors. 7. The teacher and the school board are impartial in all relationships with the pupil. 8. The teacher and the school board encourage able and promising students to enter the teaching profession. 9. The teacher receives from the administrator candid appraisal of his work, and help with his problems; the school board requires such supervisory assistance. 10. The teacher actively participates in the work of local, state and national professional educational associations; the school board actively participates in the work of township, county, district, state and national school boards associations. 11. The teacher uses ethical procedures in securing positions and in maintaining salary schedules; the school board uses ethical procedures in filling positions and in maintaining salary schedules. 12. The teacher accepts no compensation from firms commercially interested in the school; no member of the school board accepts such compensation. 13. The teacher assumes responsibility for the welfare of the pupil and shows sympathetic understanding of pupil problems; the school board provides conditions under which this can be accomplished. 14. The teacher endeavors to maintain good mental and physical health and to maintain a wholesome attitude toward the pupil; the school board provides a healthful teaching environment. 15. The teacher develops through continued study, travel, participation in professional and community life, and through wholesome human relationships; the school board stimulates and encourages professional growth of the teacher. 16. The teacher is proud of his profession; the school board is proud of its teacher."

252. Allegany contract, art. IV, § 5.

make the teachers association responsible for encouraging and promoting ethical practices.<sup>253</sup> Some,<sup>254</sup> however, adopt detailed and interesting professional employment practice provisions:

The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect. The educator discourages the practice of his profession by unqualified persons.

[I]n fulfilling his obligations to professional employment practices, the educator—

1. Shall apply for, accept, offer, or assign a position or responsibility on the basis of professional preparation and legal qualifications.
2. Shall apply for a specific position only when it is known to be vacant, and shall refrain from underbidding or commenting adversely about other candidates.
3. Shall not knowingly withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.
4. Shall give prompt notice to the employing agency of any change in availability or nature of a position.
5. Shall adhere to the terms of a contract or appointment unless these terms have been legally terminated, falsely represented, or substantially altered by unilateral action of the employing agency.
6. Shall conduct professional business through channels, when available, that have been jointly approved by the professional organization and the employing agency.
7. Shall not delegate assigned tasks to unqualified personnel.
8. Shall permit no commercial exploitation of his professional position.
9. Shall use time granted for the purpose for which it is intended.<sup>255</sup>

## 2. Student Discipline

The right to discipline students is considered one of the most important indexes of a teacher's professional status.<sup>256</sup> It is a fairly

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253. Wantagh contract, art. VI.

254. Agreement between the Port Chester Board of Education Union Free School District No. 4, Town of Rye and the Port Chester Teachers Association, art. III (1971-73) [hereinafter referred to as Port Chester contract]; Ticonderoga Central School District No. 1, Ticonderoga, New York, Contract with the Ticonderoga Teachers' Association, art. VI (1972-75) [hereinafter referred to as Ticonderoga contract].

255. Port Chester contract, art. III, Principle IV.

256. See Wellington & Winter 854.

singular right, unparalleled in other occupations. The use of corporal punishment by teachers, and board restrictions thereon, are the most controversial issues in this area.

In New York, the use of corporal punishment is controlled by the Penal Law,<sup>257</sup> which allows a teacher to use physical force to the extent he reasonably believes it necessary to maintain discipline. The reasonable belief standard, with its broad reliance on the teacher's discretion, has been adopted by several districts.<sup>258</sup> One district which adheres to the standard requires any corporal punishment to be administered in private.<sup>259</sup> Others impose a higher standard and allow this kind of discipline only when it "would be exercised by a kind, judicious parent," with the advice of the principal where practicable,<sup>260</sup> or as a last resort.<sup>261</sup> An example of the latter approach is found in the Guilderland contract which lists the actions for which corporal punishment is an optional method of discipline.<sup>262</sup> In most cases, the teacher's action, especially if corporal punishment is used, is closely reviewed. Records of corporal punishment, in one form or another, are required in a number of districts.

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257. N.Y. PENAL LAW § 35.10 (McKinney 1967). The section reads in pertinent part as follows: "The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances: 1. A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor for a special purpose, may use physical force, but not deadly physical force, upon such minor or incompetent person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such minor or incompetent person."

258. Binghamton contract, art. XIII; Harpursville I contract § 20; Lewiston-Porter contract, art. 9.

259. Elmira contract, *infra* note 279, at art. XVIII.

260. Teachers Agreement, West Genesee Central Schools, art. XII (1972-74). However, certain methods are prohibited: slapping the child's face, pulling hair or ears, and cruel and unusual actions.

261. Rome contract, art. XII.

262. Guilderland contract, art. XXVIII. The conduct specified is "acts of disobedience, defiance, trespass upon the rights of other pupils, or for the use of profane or obscene language, or acts of intentional damage to school property wherever and whenever such acts occur on school property or within school jurisdiction."



Elmira<sup>263</sup> and West Genesee<sup>264</sup> provide for detailed records and form sheets. Guilderland<sup>265</sup> and Binghamton<sup>266</sup> require same-day reports to the principal. And in Rome, a committee of mixed representation sets district-wide standards for discipline and reviews the propriety of actions taken.<sup>267</sup>

The use of corporal punishment is more restricted in California. Yet, several agreements describe discipline in general terms, impliedly allowing wide use of a teacher's discretion. Those districts which permit the use of corporal punishment establish high standards for its use. Generally, a teacher may use physical force to protect his person,<sup>268</sup> or where absolutely necessary.<sup>269</sup> The Oakland agreement uniquely provides that parents must request the use of corporal punishment prior to its infliction in any case.<sup>270</sup> Other districts take a different view of discipline and advance a general policy that good discipline is maintained through teacher leadership<sup>271</sup> or that discipline problems are considered a joint responsibility.<sup>272</sup> Two districts, however, developed discipline standards through committees, either on the district<sup>273</sup> or building level,<sup>274</sup> at the Superintendent's direction.

### 3. Class Size

Class size is often raised in bargaining by teacher's associations. The issue is mercurial and difficult to characterize. Wide variations in class size clearly affect work load, while minor variations

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263. Elmira contract, *supra* note 260, art. XVIII.

264. West Genesee contract, art. XII.

265. Guilderland contract, art. XXVIII.

266. Binghamton contract, art. XIII.

267. Rome contract, art. XXI.

268. San Diego agreement, art. XIX.

269. Compton agreement 14.

270. Oakland agreement, art. XV, and Admin. Bull. 25A, Oct. 1971, at 4.

271. *E.g.*, Fremont I agreement, Policy 416.6.

272. Jefferson H.S. agreement, art. XVIII.

273. Jefferson Elementary agreement, art. XXV.

274. Summary of Agreements and Actions of the Certificated Employees Council and the Board of Trustees' Representative, Fullerton Union High School District, art. II, § (c) (1974) [hereinafter referred to as Fullerton agreement].

may not.<sup>275</sup> One study has concluded that while class size is not necessarily a political issue, distortions of the political process may result in determining class size through collective bargaining.<sup>276</sup> In *West Irondequoit Board of Education v. West Irondequoit Teachers Association*,<sup>277</sup> the New York Public Employment Relations Board decided that class size is not a mandatory subject of bargaining, though the impact of class size change is. The practical effect of this decision in New York is unclear. Over half of the New York contracts studied contained a class size provision. Seven of these<sup>278</sup> established either raw number or pre-set ratio maximums which can be disrupted only in extraordinary circumstances. Nine established specified optimum levels in either raw numbers or ratios, and pledge every effort or reasonable efforts to adhere to those levels.<sup>279</sup> Three,

275. See Kirp 336.

276. Wellington & Winter 853.

277. 4 P.E.R.B. 3725 (1971). The decision was affirmed in *West Irondequoit Teachers Ass'n v. Helsby*, 42 App. Div. 2d 808, 346 N.Y.S.2d 418 (3d Dep't 1973). The general issue of mandatory bargaining topics was raised in the *Huntington* case, note 81 *supra*, one year later. Some have argued that the *Huntington* case leaves the validity of *West Irondequoit* in doubt.

278. Great Neck II contract, art. 7; Ithaca contract, art. XIII; Peekskill III contract, art. XIX; Instructional Personnel Policy Handbook, Union Free School District No. 9, Town of Mount Pleasant, Pleasantville, New York, art. V, § B (1970-72) [hereinafter referred to as Pleasantville contract]; Agreement between the Board of Education Union Free School District No. 21 Town of Hempstead, Nassau County, New York and Rockville Center Teachers Association, art. XII (1971-73) [hereinafter referred to as Hempstead I contract]; Rome contract, art. XXXIII; New York City Contract, art. IV, § A(6).

279. Amended Agreement between Peru Association of Teachers and the Peru Central School Board of Education, art. VIII (1969-71); Plattsburg III contract, art. V; Negotiated Contract 1969-1970, A supplement in the form of amendment to the 1968-69 Negotiated Contract Plattsburg Board of Education Plattsburg Teachers Association, art. V [hereinafter referred to as Plattsburg II contract]; North Syracuse contract § 71, Lockport contract, art. VI; An Agreement Regarding the Terms and Conditions of Employment between City School District of the City of Elmira and the Elmira Teacher's Association, art. IV (1972) [hereinafter referred to as Elmira contract]; Teacher Agreement, West Genesee Central Schools, Art. VI, B (1972-74) [hereinafter referred to as West Genesee contract]; Agreement between the Board of Education of Union Free School District

on the other hand, describe their limits as guidelines,<sup>280</sup> while six districts agreed to make efforts to attain class size levels generally conducive to good education.<sup>281</sup> And lastly, four districts agreed to follow, in one form or another, the limits recommended by the State Department of Education.<sup>282</sup>

The class size issue appears more frequently in the California agreements studied. Approximately three-fourths of the agreements contain a class size clause. Of these, however, a greater proportion establish fixed maximums, expressed in terms of teacher-pupil ratios which can be varied only in unusual circumstances.<sup>283</sup> Those that do not establish fixed ratios have general language to the effect that the district's policy is to achieve "balance,"<sup>284</sup> or establishing committees to review ratios.<sup>285</sup>

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No. 25 Town of Hempstead, New York and the Merrick Faculty Association, art. VI (1972-74) [hereinafter referred to as Hempstead II contract]; Mattituck I contract, art. IX.

280. Agreement between the Board of Education Savona Central School and the Faculty Association Savona Central School, art. V, § E (1972) [hereinafter referred to as Savona contract]; Onandaga contract; Gates-Chili contract, art. 9.

281. Auburn contract, art. XIV; Port Chester contract, art. XVIII; Union Free School District No. 2 Contractual Agreement By and Between Board of Education of the Solvay Schools, Union Free School District No. 2, Village of Solvay and Solvay Teachers Association, art. X (1972) [hereinafter referred to as Solvay contract]; Saratoga Springs contract, art. II, § E; Wantagh contract, art. XVI; Bethpage contract, art. VIII.

282. Binghamton contract, art. XV, § 1503 (followed for retarded, handicapped, disturbed children); Negotiated Contract, Plattsburg Board of Education, Plattsburg Teachers Association, art. V (1968) ("will endeavor to meet") [hereinafter referred to as Plattsburg I contract]; Batavia contract, art. VI, § D (simple adherence); Allegany contract, art. X ("attempt to keep within").

283. San Diego agreement, art. XII, § 1; Fremont II agreement, policy 416.3(a); Jefferson Elementary agreement, art. VII; Jefferson H.S. agreement, art. 5, § B; Santa Maria agreement 6; Berkeley agreement, art. X, § A.

284. Memorandum of Understanding between the Board of Trustees and the Certificated Employees Council Tracy School District and Tracy Joint Union High School §§ I, K (1973) [hereinafter referred to as Tracy agreement].

285. Fullerton agreement, art. IV, § C; Compton agreement 3.

#### 4. Teacher Aides, Extracurricular Work

The issue of assigning work outside the classroom highlights the ambivalence in the collective bargaining of teachers. On the one hand teachers insist that their professional status entitles them to concentrate on academic pursuits, free from the tedious supervision of pupils outside the classroom. On the other hand, teachers admit that the educational experience they help to shape is not confined to classroom learning, but includes school-oriented extracurricular activities. In most cases, this dilemma is resolved by an agreement requiring the school district to hire teacher aides to handle supervision, balanced by the teacher's pledge to participate in a limited number of school activities. Numerically, however, clauses requiring extracurricular work appear less frequently in the New York contracts than do clauses promising teacher aides.<sup>286</sup>

Two districts<sup>287</sup> specify the functions teachers do not have to perform, including supervision of cafeterias, corridors, and playgrounds, clerical work, collection of solicited money and driving pupils to outside activities. In one of these districts the teachers agreed with the principle that there are reasons to stay after hours for student activities.<sup>288</sup> Of course, there are other approaches, including the delineation of activities and the required time contribution by the teacher,<sup>289</sup> and explicitly providing that teachers are not relieved of any supervisory and extracurricular work assigned by the principal.<sup>290</sup> Several districts simply agree that teacher aides will be provided for "supervisory work."<sup>291</sup> And several allow teachers to

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286. Of the New York contracts studied, slightly less than one-fourth contain clauses referring to teacher aides, while less than one-tenth refer to required extracurricular work.

287. Auburn contract, art. X; Harpursville I contract § 22.

288. Auburn contract, art. VII, § A(1).

289. Agreement between Clymer Central School Education Association and Clymer Central School District No. 1, art. XI, at 16 (1970-72) (up to 15 hours per semester for assemblies, parties, dinners, and bake sales) [hereinafter referred to as Clymer II contract]; Great Neck II contract, art. 5 (not more than one per year of dances, proms, parties, picnics, dinners, concerts, art exhibits, plays, and athletic events).

290. West Genesee contract, art. VI.

291. Savona contract, art. V; Peekskill III contract, art. XV; West Hempstead contract, art. XVIII; Rome contract, art. XXVI; Cortland contract, art. XVI; Mattituck I contract, art. XIII.

confer with administrators on either the selection of aides, or their most effective use in the district.<sup>292</sup>

Although relatively few California agreements<sup>293</sup> make specific reference either to aides or extracurricular work, California school districts handle this issue in similar fashion. The question of aides is dealt with either by specifying the number to be hired,<sup>294</sup> or agreeing to use them wherever possible.<sup>295</sup> One agreement accedes to the "concept" of aides, if the budget permits.<sup>296</sup>

The California approach to extracurricular work by teachers is similar to that of New York. One agreement acknowledges the necessity of extracurricular work, saying that teachers have a responsibility for the mental, physical, and emotional growth of students during the school day, and its natural extensions.<sup>297</sup> The agreement states that the "success or failure of other instruction-related activities, professional activities and social and/or recreational activities is dependent upon the willingness of teachers to acknowledge the significance of such activities in the total educational program and to share responsibility for participation in and supervision of these activities."<sup>298</sup> Another agreement specifies that extracurricular work can be assigned once without additional pay and thereafter at a special hourly rate of pay.<sup>299</sup>

#### 5. Teacher Personnel Files

Access to their personnel files is a right often bargained for by teachers. The content of the file plays an important role in determining a teacher's standing within his profession and future job placement. Generally teachers seek to protect themselves against the inclusion in their files of unanswered or unexplained derogatory material. The agreements in both New York<sup>300</sup> and California<sup>301</sup> ac-

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292. Northport contract, art. 25; Hempstead II contract, art. VI; Wantagh contract, art. VII.

293. Approximately one-ninth of the agreements studied refer to teacher aides and another one-ninth refer to required extracurricular work.

294. Fremont III agreement, policy 416.20.

295. Jefferson Elementary agreement, art. VIII.

296. Santa Maria agreement § 5.

297. San Diego agreement, art. XIV.

298. *Id.*

299. Jefferson H.S. agreement, art. V, § D.

300. Harpursville Central School and Harpursville Teachers Associa-

comply with this result in a remarkably uniform manner. In every clause studied in both states a teacher is allowed the right to review the contents of his file, usually in the presence of an administrator. Each clause permits a teacher to inspect derogatory material before it is entered into his file, and attach a reply. There are few limitations on this right, the most significant being that "confidential" material in the file is not subject to review. In New York, one contract defines confidential material as including pre-employment inquiries to former employers, and their responses, transcripts, placement folders, or confidential information from government agencies.<sup>302</sup> The New York City contract states that if a complaint has not been reduced to writing within three months of its occurrence it may not later be added to the teacher's file.<sup>303</sup>

The California Education Code contains similar restrictions.<sup>304</sup> Some California districts<sup>305</sup> impose a thirty-day limit for complaints against the teacher, measured from the time of the infraction. Other districts<sup>306</sup> specifically require that positive, laudatory material be included in all files.

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tion, Contract for 1973-1974 § 25 [hereinafter referred to as Harpursville II contract]; Savona contract, art. V (D)(5-6); Peekskill III contract, art. XVII; Gates-Chili contract, art. 5.

301. Fullerton agreement, art. V, (B, 2); San Diego agreement, art. VI; Grossmont agreement, art. III, § 7; Compton agreement, at 13-14; San Jose agreement, art. VII; Fremont I agreement, policy 411.65; Jefferson H.S. agreement, art. XVI; Santa Maria agreement, art. VII; Jefferson Elementary agreement, art. X; Newport-Mesa agreement § 3170; Newark agreement § I, (J), at 11; Berkeley agreement, art. VI, § D, at 5-6; Oakland agreement, art. XXXII, at 26; Oxnard agreement, art. V, § 2(C)(2), at 5.

302. Bethpage contract, art. XII.

303. New York City contract, art. IV, § F(20), at 51-52.

304. CAL. EDUC. CODE § 13001.5 reads in pertinent part as follows: "Such material is not to include ratings, reports, or records which (1) were obtained prior to the employment of the person involved, (2) were prepared by identifiable examination committee members, or (3) were obtained in connection with a promotional examination."

305. Santa Maria agreement, art. II; Newport-Mesa agreement § 3170; Oxnard agreement, art. V, § 1(c)(2).

306. Fullerton agreement, art. V, (B)(2); Berkeley agreement, art. VI, § D; Newport-Mesa agreement § 3170.

## 6. Summary

There are a few issues of professional status that have significant political overtones, notably discipline and class size. Local recognition of teachers' discretion in disciplining students is fairly uniform in both New York and California. It appears, however, that the use of corporal punishment is slightly more restricted in California than in New York. This fact may represent a limitation on professionalism under the "meet and confer" system. It is, perhaps, offset by the fact that a higher proportion of California districts agree to establish class size maximums. However, since class size often means different things to different teachers, it is risky to attempt any conclusive analysis of class size provisions. It is enough to say that class size is an issue often negotiated, and that attempted solutions of class size problems follow similar patterns in both New York and California.

The issues of academic freedom and teacher aides both involve potential political controversy. It is unusual to see a school district agreement that does not, at least in vague terms, guarantee academic freedom. However, the degree of academic freedom which actually exists in a district may not be known until someone complains that a teacher is biased. Several districts in both California and New York structure the complainant process, and that fact is clearly a product of professional influence. The hiring of teacher aides, with increased salary costs to the district, also represents the assertion of professional strength. Yet, even in California where the local board has unrestrained discretion to refuse the use of teacher aides, the teacher's need to concentrate on professional concerns is acknowledged, and aides are hired for supervisory work.

## IV. Conclusion

California and New York, as has been seen, adopt different methods of dealing with the collective negotiations of public school teachers. In California, although the parties cannot produce a binding agreement, they are required to discuss procedures relating to educational policy. The New York collective bargaining law does not require negotiation on such policy, but does allow the parties to enter binding agreements on educational policy if they wish. It appears from the evidence studied that these different statutory schemes produce substantially similar results in issues related to

the professionalism of public school teachers.<sup>307</sup>

This study demonstrates that the restrictiveness of state regulation does not control the impact of professionalism on teacher negotiations. Rather, professionalism reaches the same level under a restrictive or a liberal statute. Almost identically, school districts in California and New York use their teachers' professional skills as a resource to be tapped. In both states teachers have obtained participation in the making of educational policy, not power over the decision-making process. In short, professionalism has the same impact on the local decision-making process regardless of the state statute in force.

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307. For a point of comparison, the contracts covering the parochial schools of New York City were studied. The first contract, Contract between Federation of Catholic Teachers, Local 2092, AFT, AFL-CIO, and the Association of Catholic Schools (1971-73), applies to the grade school levels. At this writing, the parties are operating without a current contract. Under the terms of the contract, only four issues paralleling those studied in the comment appear. In the preamble, the curriculum issue is covered by general language recognizing the value of teachers' contribution to educational policies and programs. *Id.* at 1. Sabbatical leaves are granted to further a teacher's "academic and professional competency" for those with five years service, who agree to return for three years. *Id.* art. XVIII, § A(3). Provisions as to personnel files are similar to those studied, except that if a teacher declines to sign an acknowledgement of his viewing of derogatory material within ten days, the principal may enter it into the file anyway, if he has a witness attesting that the teacher was presented the material for his signature. *Id.* art. IX, § F. Teachers are required to participate in faculty meetings and extracurricular work. *Id.* art. XVI. No correlative provision is made for teacher aides. Also not provided for are textbook selection, building planning, academic freedom, class size, discipline, or any other major issue. The second contract, Collective Bargaining Agreement between the Catholic High School Association of the Archdiocese of New York and the Lay Faculty Association (1972-74) deals primarily with high school grades. It has even fewer clauses on professional issues. Sabbatical leaves are granted for "professional advancement" after seven years service, upon agreement to return for three years. *Id.* art. XI. Teachers are required to participate in extracurricular activities. *Id.* art. XV. There are no other parallel provisions. The teachers of the Archdiocese of New York are not covered by the Taylor Law, but are covered by the Labor Law of New York, whose structure on the scope of bargaining is similar to the National Labor Relations Act. It appears clear that New York's parochial school teachers have not made advancements on professional issues comparable to those made in the public sector.



Finally, no significant diminution of the local school boards' control over the formulation of educational policy was observed in this study. The most significant intrusions of teachers in this area were agreements and contracts establishing a system of formal advice and consultation. While one might argue that the board's control over educational policy is diminished when it is compelled to agree to an advisory committee structure, the fact remains that the ultimate power of decision is retained by the school board in both states.

## APPENDIX I

## SCHOOL DISTRICTS STUDIED AND COMMUNITY POPULATION FIGURES\*

*New York*

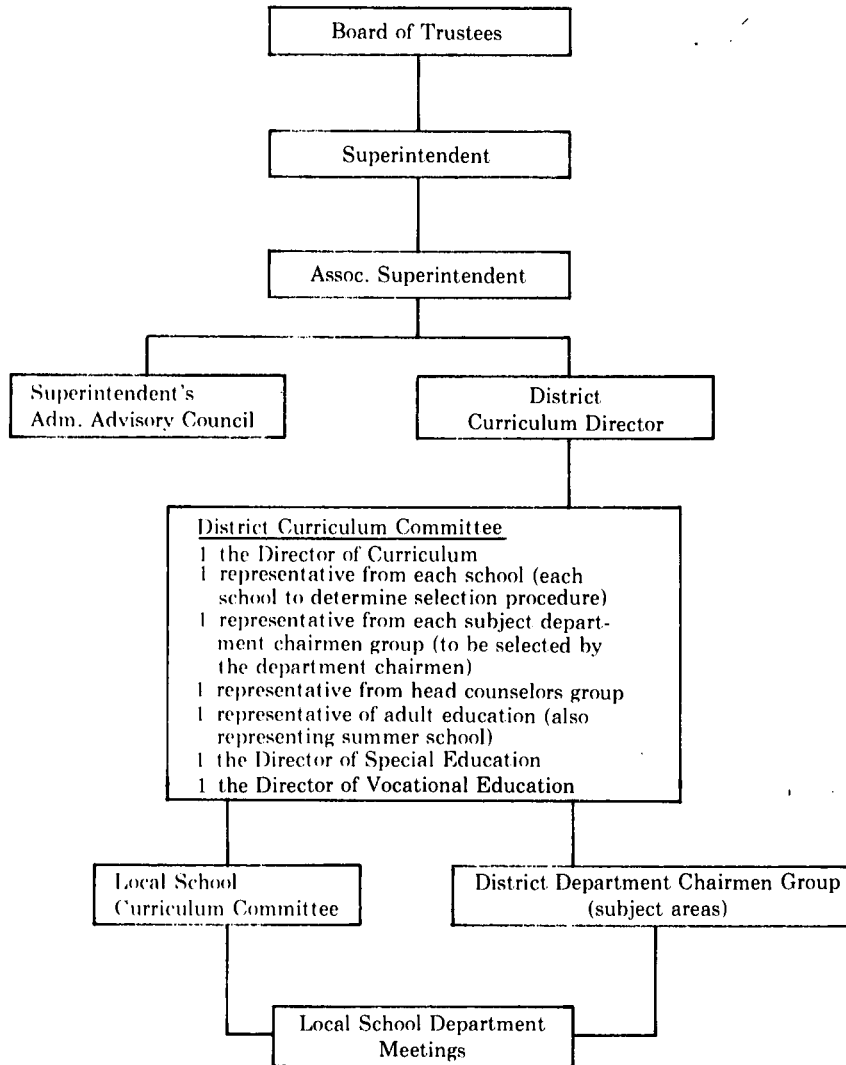
Allegany	2,050	Newburgh	26,219
Auburn	34,599	New Hyde Park	10,116
Babylon	12,588	New York City	7,867,760
Ballston Spa	4,968	Northport	7,440
Batavia	17,338	No. Syracuse	8,687
Bethpage	18,555	Onandaga	2,000
Binghamton	64,123	Peekskill	18,881
Clymer	500	Peru	1,261
Cortland	19,621	Plattsburgh	18,715
Elmira	39,945	Pleasantville	7,110
Gates-Chili	none given	Port Chester	25,807
Glen Cove	25,770	Prattsburg	765
Great Neck	10,724	Rochester	296,233
Guilderland	none given	Rome	50,148
Harpursville	none given	Saratoga Springs	18,845
Hempstead	39,411	Savona	933
Ithaca	26,226	Solvay	8,280
Lewiston-Porter	2,169	So. Cayuga	none given
Lockport	25,399	Tarrytown	11,115
Mamaroneck	18,909	Ticonderoga	3,268
Mattituck	1,995	Wantagh	21,873
Mineola	21,845	W. Genesee	1,534
Mt. Pleasant	none given	W. Hempstead	20,375

*California*

Berkeley	116,746	Newark	27,153
Calexico	10,625	New Haven	14,709
Capistrano	4,149	Newport-Mesa	72,660
Chaffey	32,551	Oakland	361,561
Compton	78,611	Oxnard	71,225
El Rancho	54,170	Rim of The World	2,682
Freemont	99,665	Roseville	17,806
Fullerton	85,826	San Diego	693,931
Grossmont	21,107	San Jose	443,950
Jefferson Elementary	66,932	Santa Clara	87,717
Jefferson High School	66,932	Santa Maria	32,749
Marysville	9,353	Temple City	29,673
Mountain View—	24,956	Tracy	14,724
Los Altos		Vallejo City	66,733

\*PATTERSON'S AMERICAN EDUCATION (1972).

## APPENDIX II

ONNARD UNION HIGH SCHOOL DISTRICT  
DISTRICT CURRICULUM ORGANIZATION

Only those courses approved by the district department chairmen groups or those approved by the local schools department chairmen groups (or by the local school curriculum committee) are presented to the District Curriculum Committee for consideration. The order of priority in the steps to be taken is (1) the district department chairmen and (2) the local school department chairmen group. Every presentation of a new course must be accompanied by a list of behavioral objectives and a detailed estimate of the approximate cost of instituting that course, including supplies, texts, and capital outlay expenditures. This cost estimation must have verification by district office personnel.