

## How Union Contracts Block School Reform: A Denver Case Study (IP-3-1990)

February 26, 1990

Issue Paper

By [Ed Lederman](#)

### Executive Summary

- Teacher contracts function virtually as the constitution for a district, yet their provisions are little known to the public.
- Unpleasant surprises emerge when the Denver Public Schools contract is read from the viewpoint of frustrated education consumers.
- Article 44 bars community accountability committees from monitoring classroom work (although required by state law).
- Article 7 caps the workday at 7-1/4 hours, restricting parent contact and yielding an average DPS teacher salary of \$22.50 per hour plus benefits.
- Article 9 calls grading English papers a non-teaching duty.
- Articles 8 and 13 preclude a principal from selecting his own team of teachers.
- Articles 10 and 11 give a bad teacher triple job security.
- Article 22 excludes student performance as a criterion for pay raises.
- Article 19 entrusts student discipline policies more to the union than to the school board.
- Article 31 burdens non-union teachers with annual, personal visits to the DCTA office to prevent a dues checkoff from their pay.
- School board authority must be reasserted if reforms are ever to occur. Renegotiation is underway, but Article 5 keeps the talks secret.

A first step to reform would be experimental lifting of the above restrictions in certain contract free zones. The situation is little better in other large Colorado districts, suggests a comparative table on page 12. Locking in the Status Quo

### Introduction by the Editors

"This is a jobs issue, not an education issue," was the cold response of teacher union leaders in Milwaukee when a black legislator recently proposed letting inner-city children take state funds with them to enroll at nonsectarian private schools instead of the mediocre public schools in their neighborhoods.

Colorado education, too, suffers from paycheck motivations crowding professionalism out of the classroom, though the issue here is seldom drawn as starkly as it was in that Wisconsin controversy.

More often in our state the problem is manifested in quiet frustration over the mysterious failure to meet school improvement goals despite the stated good intentions of everyone involved. There is little public awareness of the role played in that failure by labor agreements that lock in the educational status quo for years at a time.

Take the current enthusiasm for what can be achieved through parent and community participation in the new School Improvement and Accountability Councils (SIAC) that were established by House Bill 1341 two years ago. Hidden obstacles await those councils in many districts.

No less an expert than William Randall, Colorado Commissioner of Education, had to admit in public last fall that he was unaware of a Denver Public Schools contract provision (Article 44, Sections 3, 4 and 5) barring a SIAC from monitoring what goes on in any classroom in the district. The chagrined Randall acknowledged that such a prohibition will severely hinder the accountability councils in performing their stated mission as far as Denver is concerned.

While Commissioner Randall may have less of an excuse than the average parent or taxpayer, he is hardly alone in his unfamiliarity with what is in the contracts of Colorado's 176 school districts and how it may support or hinder the education of our children. Yet the teachers contract functions virtually as a constitution for any given district. It governs both everyday activity and critical decisions--who works where, who goes in times of cutbacks, who stays, who is hired, who is fired. Lederman: Denvers Contract from a Consumer Perspective

For the Denver Public Schools the constitution is a 126-page document (more than double the pages of the 1973 contract) that rules the district with great particularity. At this writing the Denver Board of Education is currently negotiating certain items with its union, the Denver Classroom Teachers Association. These negotiations are part of a longer evolutionary process which

has resulted over the past two decades in a document at once far more central in the running of the district and (like the district budget) far less accessible to those outside the system.

Part of the reason so little is known or discussed is the forbidding countenance of the document itself -- a mass of single-spaced legalese and educationalese. A more direct reason can be found in Articles 5-2-5,6 which mandate closed-session contract negotiations and prohibit news releases without joint agreement of the parties. The union almost always refuses permission.

So, the combination of a news blackout at precisely the time when public and media attention would be turned to the contract and the daunting prospect of the agreement itself has proved effective in keeping it among the dark imponderables of public life.

But as the SIAC example shows us, it is the contract where the rhetoric of lofty goals meets the reality of daily learning performance. The aspect the contract presents depends on one's perspective. From the vantage of someone within the system, this document may indeed have an intricate and warm charm -- if only because almost nobody, as it turns out, ever gets fired for incompetence.

But from an education consumers perspective -- the parent whose child's future is at stake, the taxpayer perplexed by rising costs and falling scores, the employer struggling with ill-prepared applicants -- the DPS-DCTA union contract when examined in daylight holds some unpleasant surprises, even shocks. This paper gives a plain-language reading of the contract from such a consumer perspective. Obviously not every article in the document will be discussed. We will focus on those provisions which most directly affect the quality of education the system delivers. Where relevant, those items currently under negotiation will be highlighted.

Article 7, Teaching Hours and Teaching Load, is a very significant section both in what it says and that it has only quite recently come to say it in such detail.

Article 7-1 mandates a seven-hour, fifteen-minute workday. The school year for teachers is 190 days. Given an average teaching salary of \$31,000, the hourly wage of a teacher translates to \$22.50, not including benefits. (This would become \$20.39 if the eight-hour day currently under negotiation is adopted). These hourly rates compare favorably with many professionals within the Denver-Boulder area. For example a systems analyst, level three (Bureau of Labor Statistics) makes between \$19.00 and \$21.00 per hour, depending on vacation time and paid holidays.

True, a teacher, because of the summer vacation, does not have as large an annual income as a fully employed level three systems analyst. Whether it is more appropriate to compare teacher income on an annual or hourly basis probably varies with individual circumstances. Given the dual-income status of many families, an hourly comparison is becoming increasingly relevant.

Article 7 sets detailed limits on the number of parent contacts to be required of teachers. Aside from back-to-school night, a principal cannot mandate additional parent contacts without the approval of the School Building Committee, a body comprised of teachers approximately one-third of whom have to be union representatives. Faced with these limitations at the same time when the state has recently required increased parent contact, the district has simply set aside regular school days as either early dismissal days or no-school days on which (among other activities) teachers may meet with parents during the day -- avoiding any conflict with Article 7.

The overall feel of Article 7 is that the teachers should not be required to work more than the 7-hours, fifteen-minutes (an eight-hour requirement is currently under negotiation) set out in 7-1. There is one period a day set aside for planning (7-6). Nowhere does the contract actually come out and say "The principal shall not require of the teacher any other effort than 7-hours and fifteen-minutes worth." The nuances, however, are there, especially when one reads the precatory language within another article of the contract, 9-8, suggesting principals make every effort in providing "assistance for initial review of student compositions" to high school English teachers.

The implication is that if something has to be brought home by a teacher perhaps it should be done by a paraprofessional. Of related interest is the fact that, under the contract, the reading of English compositions is considered a "Non Teaching Duty." No doubt many teachers work hours at home without a thought to what the contract actually requires of them. Still the implications of Article 7 are disturbing when one contemplates the almost undisputed need for more academic rigor and greater flexibility within our public schools. Article 7, as currently drafted, stands foursquare against both.

We turn now to Article 13, Transfer, and Article 8, Teacher Schedules. The sixteen pages in the contract comprising Article 13 govern the principals ability to determine who, among the pool of teachers within the district will teach in his or her school. It is complicated and close to indecipherable -- familiar in detail to no more than a handful of district and union personnel who daily engage in its mysteries.

Read together with Article 8, which determines staffing priorities within a building, Article 13 determines who is hired, and just as importantly, who goes and who stays in times of cutbacks.

Priority is determined on a point basis, assigned to seniority (up to four points for each semester in the district); highest degree held (Masters is 30 points, specialist degree is 60, Ph.D. is 90); continuing education courses taken (up to two points for each semester hour taken); and, an interview with the principal (up to 50 or 100 points, depending on the posting date of vacancy). The principal interviews and assigns points to the three top (on a point basis) qualifiers for any given position. At first glance it would seem the principal has substantial impact, especially on May 1 postings (when he may assign up to 100 points to an interviewee) as to who fills a given position. But this discretion is very circumscribed and largely illusory. First the points assigned by a principal in a transfer interview are "grievable" under 13-4-2-7 and therefore a teacher can

challenge the interview points awarded. Further 13-5-3-f sets out specific criteria by which the principal is to assign interview points. Read together, these two provisions serve to dissuade a principal from awarding points solely on the basis of whom he or she wants to fill a position.

For example, if the principal -- in an effort to overcome a credentials disadvantage of his preferred applicant -- were to award 100 points to that less senior, less degreed applicant and zero points to the others, a losing teacher could effectively challenge the outcome by alleging he was not assigned sufficient interview points for, say, "effective use of instructional practices." A host of other rules -- one, for example, giving priority to teachers previously involuntarily transferred from a continuing assignment to fill second semester vacancies (13-2-2-1) -- further circumscribe principals discretion in determining who teaches in a given school. Finally it is the involved and complex nature of the transfer rules themselves which take the authority away from principals. Many do not know or are uncomfortable with the system and therefore refrain from exercising what little discretion they have in filling vacancies.

As a result, under this contract the principals desire as to who should fill a given position is at best a minor factor in the selection process. Major factors are seniority, advanced degrees held, and the amount of continuing education courses taken. This method of determining staffing in the Denver Public Schools is mechanistic, blind to actual classroom performance, and gives barely a nod to principals discretion. Clearly any discussion of "site-based management" without talking about excising or radically revising Articles 8 and 13 is empty rhetoric.

### **A Triple Shield for Poor Performance**

When Albert Shanker, president of the American Federation of Teachers, told an audience of leading Coloradans last year that this country has a "Soviet system of education" because bad work is not penalized, he might have been referring directly to the DPS contract -- Article 10 on Teacher Appraisal, Article 11 on Teacher Discipline, and the states tenure law.

Read together, the contract and state law make the dismissal of a tenured teacher, on grounds of incompetence, all but impossible. In the three-year period ending spring of 1988, only 21 of the districts 3,800 teachers had been placed in a formal evaluation program. Only two of the 21 were dismissed.

Is Shankers "Soviet" jibe an exaggeration? Consider that privately employed professionals in metro Denver are 100 to 200 times more likely to get fired in any one year than a tenured teacher is.

The situation of probationary or non-tenured teachers is different. Of the 3,800 teachers in the district, approximately 800 are non-tenured. In any given year about 300 of the probationary teachers are "non-renewed." The reasons for the vast majority of non-renewals involve the return of the tenured teacher to the position, elimination of the position, etc. However an estimate is that 10% of the non-renewals are linked to performance. This roughly equates to the experience of professionals in the general economy.

If you are a principal in the DPS and you have in your school an incompetent teacher who is tenured, here is what you have to do to get rid of him or her:

First you must have several conferences with the teacher, pointing out deficiencies and making specific suggestions for improvements. During these conferences you must have provided sample lessons and have discussed appropriate instructional technique with the teacher. You must keep a written record of these "informal" conferences (10-15-3).

Next you must request in writing, authorization for a formal appraisal from the Director of Personnel Services. The teacher will be notified you are requesting the authorization. So too will the teacher be notified when the the district; discovery of each sides witnesses, exhibits, and other evidence to be presented at the hearing, and the hearing itself.

A transcript is made of the hearing, the administrative law judge prepares findings of fact and recommendations, and he sends them to the Board and the teacher. The Board then reviews the findings of fact and recommendations and orders either the teacher be retained or fired. If the Board decides the teacher should be fired, the teacher may file an action for review in the Court of Appeals. The teacher may then be fired.

Currently it takes about \$40,000 to fire a teacher in the DPS. That dollar figure, combined with the budgetary crises facing the District, translates into the fact that tenured teachers are not fired for inadequacy.

Now under negotiation is a procedure which would require two rather than three appraisal cycles before the matter goes to an administrative law judge.

The current system of appraisal and discipline raises two issues. First, the procedural structure which has obviously been designed to prevent any teacher from being fired for incompetence, and works well to that end, must be extensively streamlined. The minor adjustments currently under negotiation fall far short of the changes which are necessary.

The second issue is substantive. The underlying premise of the current system is that it is impossible/impracticable/unfair to assess the performance of a teacher based on results in the classroom. Therefore, other, often vague and indeterminate criteria are used. The reason most often given for this approach is that it is unfair to hold a teacher responsible for the extra-school environment over which he or she has no control and which greatly affects academic progress.

Such a rationale presumes an answer to a question that is never raised in public education policy, much less resolved. The question: Is it possible to take into consideration the childrens home/community environment in assessing classroom (and therefore the teachers) performance? The answer assumed by the contract is a resounding "No -- such a thing is impossible." Common sense suggests otherwise. Since such things as home environment, nature of the neighborhood, and any students

past academic performance are either readily available or easily ascertained by the district/principal/teacher, it would follow that any appraisal of the academic progress of the children could easily take these outside factors into consideration. Merit Pay or Length of Stay?

Article 22 deals with Salaries and Retirement Benefits. Teachers are paid in the DPS on the basis of what is called the "Step" system. A base salary is established for a first-year teacher with a BA and no continuing education credits.

That base is increased with each year the teacher is employed in the system. It is also increased "horizontally" by the accumulation of course credits (10% for 45 units and 18% for 90 units); advanced degrees (MA 18% and Ph.D. 45%) and combinations thereof.

A first year teacher with a BA in 1988 received \$18,044. One with an MA \$21,274. A thirteen-year veteran with a BA received \$30,905. If the veteran had an MA, add about \$6,000.

No increases are granted on the basis of merit -- actual performance in the classroom, either subjectively or objectively determined.

Theoretically a principal would have the negative power to deny a step increase to a teacher he deemed below average and in need of appraisal 22-6-(2-7). But this authority, again, is largely illusory because to so deny a teacher would involve invoking the prohibitively time-consuming dismissal appraisal process discussed above.

### **Tough Discipline or Contractual Fog?**

Perhaps the greatest significance of Article 19, Student Conduct and Discipline, is that it exists at all as a provision in the teachers contract. Detailed and extensive, weighing in at nine pages, the provisions alternate between common sense: "A principal must be able to withdraw a student who threatens the physical and educational welfare of others" (19-1-5-1) and patently unenforceable requirements such as 19-5-3(a), which requires all absences to be made up in actual time or additional homework -- fat chance.

The contract indirectly requires the continuation of alternative education programs -- the value and efficacy of which have increasingly been called into question -- by its admonition in 19-1-5-1 to always present participation in such a program as an alternative to student suspension.

While paying lip service to the need for individual schools to formulate their own absence and discipline policies, the contract then proceeds to hamstring attendance policies throughout the district by effectively eliminating the distinction between an excused and unexcused absence 9-5-3-a (1-2).

Throughout this article the contract requires consultation with the union in the formulation of discipline policies. A monument to the near total capitulation to union demands in this area is 19-3-2, which reiterates the consultation requirement but "recognizes that the Board of Education has the final responsibility for adopting a code of student conduct." This language was the result of a 1982 task force study which discovered the Board, in allowing a provision which mandated union "approval" of any change in discipline policy, had given away authority it did not have the power to give away.

The presence and detail of provisions touching discipline policy in the teachers contract substantially muddies the water as to who is responsible for setting and enforcing discipline in our schools.

### **Board Leadership or Committee Paralysis?**

Probably not one Denverite in a hundred has ever heard of the DPS Professional Council, established by Article 27, or the School Building Committees, covered under Article 28. Yet together these bodies have quietly become a sort of phantom government for our city schools.

District policy is increasingly determined by the Professional Council. The Council is comprised of eleven people: four chosen by the union, six selected by the superintendent, and one chosen by the school board and approved by the union. Its job is to "cooperatively study," in general, how best to run the district (27-4).

In addition to the general mandate we find in 27-5, "Specific Agreement Assignments" set out as Professional Council duties throughout the contract and reiterated in that section. They include such things as use of teacher aides and instructional materials.

The Professional Council meets once a month. For the "privilege" of getting to assign one of the members (with union approval) the board pays for its clerical expenses (27-2-2).

The School Building Committee -- not to be confused with the open-door, mixed-membership accountability councils discussed in the introduction to this paper -- is comprised entirely of faculty. The size of the committee depends on the size of the school. The union appoints roughly one-third of the committee. The rest are elected by the faculty. The School Building Committee concerns itself with the operation of the building, including discipline policy and teachers daily schedules.

Over the years the union, through the Professional Council and the Building Committees, has increasingly insinuated itself into the governance of the district. Lines of authority (and therefore accountability) have grown increasingly attenuated and problematic. Critical decisions have had to percolate through additional layers of contract-created and union-influenced bureaucracy.

The net result has been either decisions compatible with the status quo or no decisions at all. The role of the school board in all of this, aside from being a unilateral abdicator of authority, is unclear and increasingly superfluous.

The most recent example of Professional Council influence is the proposed (largely token) revisions to the teacher appraisal process which are currently under negotiation. Of the seven people who worked on those revisions, one is the current president of the union and one is the immediate past president.

### **Making It Hard for the Non-Joiner**

Article 31 of the contract deals a joker to those independent-minded teachers who prefer not to belong to the Denver Classroom Teachers Association.

Technically the DPS is not a "closed shop." A teacher is free to decide to join or refrain from joining the union. However, dues are automatically deducted from a teachers salary.

Any teacher may decline to pay dues but must do so in person at union headquarters. The teacher must again show up at headquarters next year and every year thereafter if he does not want union dues deducted (31-3-1).

### **Accountability Obliterated**

Certain themes, certain underlying assumptions, permeate the contract. Whether the issue is who fills what position (transfer policy); who gets a raise and how much, or who is fired (essentially no one), the contract wrenches the gaze away from results and toward a set of secondary, irrelevant, and counterproductive criteria. Critical decisions are made mechanically, either indifferent or hostile to what in fact is happening in the classroom.

It is alarming to confront the overall extent to which the voters tribune, the school board, has taken itself out of the game, and to realize how aggressively the union and other "experts," through the Professional Council and Building Committees, have stepped into the void.

The contract does not merely blur accountability, it obliterates it. While the difficulty (impossibility) of firing an incompetent teacher is common knowledge, a lesser known but just as significant fact is that no DPS principal in memory has ever been fired on the grounds of performance either.

This is only logical. How can you hold a principal accountable if he or she has no power to make critical decisions affecting the building? Clearly there is no motivation on the administrative side of the bargaining table to push for a functioning accountability system.

No human organization exists without some system of sticks and carrots. The "carrots" created by the contract are clear. They reward staying around; they reward taking continuing education courses; and they reward obtaining advanced degrees. But where are the sticks? Though not as obvious, they exist. In looking for disincentives we may first search the incentives. For example, if getting a masters degree is a sure way to improve ones pay and status within the district, then anything which detracts from that endeavor is a type of punishment. A teacher who lavishes time and energy on the children is taking the same time and energy away from her advancement. Commitment to the children thus becomes its own punishment.

### **Recommendations and Conclusion**

Any serious effort to improve the DPS teachers contract must begin with the establishment of curricular and grade-level goals. Once such goals are established, both objective and subjective methods of evaluation based on academic progress within the classroom present themselves. The more amorphous the goals (and the curriculum) the less likely a fair and consistent evaluation process becomes.

The contract must be made to focus on the academic progress of the children. Yet any wholesale conversion to such a system in the short term is unlikely.

The board could begin, however, by setting aside a grade school, middle school, and high school as "contract free zones." In these schools academic progress, as measured by both objective criteria (including test scores) and subjective criteria (including parental evaluations), would be the touchstone in evaluating both teachers and principals.

In the past the district has not hesitated to test trendy educational theories-- dedicating numerous dropout programs, and recently a whole school, Cheltenham, to that pursuit. Why not experiment with accountability and evaluate the results after three years?

Unfortunately, experimentation (which is specifically provided for and encouraged by state statute), let alone the restructuring of the whole contract, is unlikely given the passivity and abdication the Denver School Board has demonstrated over the years. The most apparent explanation for this weak hand at the helm is the powerful political influence the union has on school board elections. Perhaps a more profound cause lies in the "experts are always right" mentality not only of board members but of the public at large. In no other area of public policy is the confidence-eroding tyranny of credentialism so evident, and so unchallenged.

Having said all this -- what the author still finds amazing about the contract and its impact on the quality of education delivered to our children is the significant number of teachers who, despite all the disincentives, continue to give unstintingly of themselves and to achieve good things with many of their pupils. One can only attribute such commitment to their good graces and the vision they brought to the system. But in the final analysis, it is not enough.

The educational establishment, union and administrative, is the last place to look for direction in renovating the house in which it dwells, perhaps with great existential angst, but also in unparalleled security.

Such restructuring of the contract awaits the confident assertion of the interest of those being served, public education consumers, by their elected representatives, the Denver Board of Education.

Some Aspects Of Teacher Contracts  
In Colorados Ten Largest Districts 1 (Note 1)

Source: Legislative Council, Nov. 1989

<b>District</b>	<b>Agency Shop Agreement? (Note 2)</b>	<b>Direct collection of dues by district?</b>	<b>Restrictions on contributions to Political Action Committees?</b>	<b>Agreement to conduct closed or open bargaining sessions?</b>
Jeffco (72,374.5)	No (Note 3)	Yes	No	Open unless parties agree otherwise, Article 5-3-5 (page 6)
Denver (54, 973)	No*	Yes. Article 31 (Page 100)	No	Closed, unless parties agree otherwise, Article 5-2-5 (page 6)
Colorado Springs (28,922.0)	No	Yes Article 3.3.7 (Page 6)	No	Closed; respective proposals are shared publicly. Article 6.2.2 (Page 13)
Cherry Creek (26,114,0)	No	Yes 4135-3-1 (Page 75)	No	Closed to the press unless otherwise agreed. 4135-5-D (Page 77)
Aurora (24,666.5)	No	Yes Article 49 (Page 11)	Yes	Open

Boulder Valley	No	Yes	No	Open joint meetings; closed separate meetings. Section 8-5 (Page 4)
Pueblo City (17,854.5)	No*	Yes Article 4-1-1 (Page 9)	No Article 4-1-5 (Page 9)	Closed, unless parties agree otherwise. Article 5-2-9 (Page 15)
Poudre (16,842.0)	No	Yes	No	Closed, unless parties agree otherwise.
Mesa Valley (15,481.0)	No	Yes Section 24.1 (Page 30)	No	Closed, unless parties agree otherwise. Section 4.7.5 (Page 5)
Littleton (14,880.0)	No	Yes Article 4 (Page 4)	No	Open

Note1: Districts ranked from high to low according to enrollment (in parentheses). Northglenn did not submit an agreement

Note 2: None of the districts require a nonunion employee to pay an initial service fee and monthly service fees to the union; however, districts for which a no~ has been recorded require that a teacher not interested in joining the union sign a form to that effect during a specified period of time. If the form is not signed by the deadline, union dues are automatically deducted until the teacher indicates otherwise. This process is referred to as a reverse dues structure.

Note 3: Answers without a reference were obtained by contacting the school district.

EDWARD LEDERMAN, a DPS parent and nine-year resident of Denver, is an attorney and insurance broker. He earned his law degree from the University of Santa Clara after graduating from Stanford. One of the founders of a community organization called the Parents Union, he was a Denver school board candidate in 1989.

EDITOR of the Issue Paper Series at the time of publishing was John K. Andrews, then president of the Independence Institute.

Dr. Rob S. Rice converted this document into electronic format.

*Nothing written here is to be construed as necessarily representing the views of the Independence Institute or as an attempt to influence any election or legislative action.*

*Please send comments to Independence Institute, 14142 Denver West Pkwy., suite 185, Golden, CO 80401 Phone 303-279-6536 (fax) 303-279-4176 (email) [webmgr@i2i.org](mailto:webmgr@i2i.org)*