THE PROBLEM OF ACCOUNTABILITY IN PUBLIC SECTOR COLLECTIVE BARGAINING

by

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ABSTRACT

This thesis will look at accountability problems associated with public sector collective bargaining. The key issue is that decisions surrounding the allocation of the major portion of a community's budget is determined during, in most cases, closed negotiations between public sector employees and employers.

The field of public education will serve as the basis for a discussion of the development of unionization and collective bargaining and problems of accountability. Specific accountability issues will be illustrated through description and discussion of the negotiations and outcomes of the bargaining between the Boston School Committee and the Boston Teachers Union.

Based on a set of specified criteria, four alternative approaches to collective bargaining will be described. They will be viewed both in terms of whether or not they help to ensure better accountability for decision making in the negotiation process and the problems associated with implementation.

The final product will be the design of a new approach to collective bargaining in the public sector, again illustrated in the field of public education. The process allows all key stake holders affected by the outcomes of collective bargaining to hold the parties accountable for the negotiated decisions.
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CHAPTER I

THE PROBLEM OF ACCOUNTABILITY IN PUBLIC SECTOR BARGAINING

A. Introduction

On June 22, 1961, President Kennedy issued a memorandum establishing a Task Force on Employee-Management Cooperation. The memorandum stated that it was a right of all employees in the Federal Government to join and participate in the activities of employee organizations. Furthermore, it continued:

The participation of Federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business. ¹

This right to organize, further recognized in Executive Order 10899 in 1962, gave impetus to the enactment of state statutes governing public sector collective bargaining. The original intent, that is, for employees to participate in policy formulation as a means of contributing to the effective conduct of public business, has created a number of problems that raise questions about the efficacy of public sector employee labor negotiations as currently practiced.

The underlying concerns stem from the nature of government-provided services and the method of generating revenues to provide those services. H. L. Mencken, in his essay on government, argues that:

Whatever it is they (government employees) seek, whether security, greater ease, more money or more power, it has to come out of the common stock, and so it diminishes the shares of all other men. Giving a job holder more power takes something away from the liberty of us all: we are less free than we were in proportion as he has more authority.\textsuperscript{2}

To give public employees more power through the collective bargaining process affects not only the parties to the negotiation but all other men. All of us support public employment through our taxes. The majority of a municipal budget goes to salaries of public employees. Therefore, the majority of the budget of a municipality is allocated through public sector collective bargaining.

As collective bargaining in the public sector has evolved, little attention has been given to the impacts of the decisions made during labor negotiations on communities and the public who receives and pays for the services. Those decisions may have an impact on the level and quality of service. The question then is, because the collective bargaining process does not operate in a vacuum, how can others affected by those decisions participate in the bargaining process. More importantly, the key issue to which this thesis is addressed is how can the public affected by public sector labor relations hold the parties accountable for the outcome of those decisions?

The thesis, then, will be divided into five chapters. Chapter I will present an overview of the developments of the accountability

problem in the public sector labor negotiations. It will first discuss the emergence of the problem; second, describe the roots of the problem in their economic, legal and social contexts; third, illustrate the problems in the field of education, specifically as they relate to balance of power, representativeness of the parties of their respective constituencies, and fiscal stability. The final section will describe characteristics of a collective bargaining process that would better ensure accountability of the parties to the public.

Chapter II will provide a closer look at the development of unionization and collective bargaining in the field of public education. It will be viewed nationally and more specifically in Massachusetts. The union position on accountability to taxpayers, parents and students will be presented and the final section will critique that position.

Chapter III will offer a discussion of the key problem of accountability in the negotiations between the Boston Teachers Union and the Boston School Committee. The first section will provide an overview of the environment within which teacher collective bargaining emerged. The next section will present specific illustrations of how the bargaining process creates accountability problems. The final section will analyze the Boston case.

Chapter IV will look at four types of alternative bargaining approaches currently practiced in labor negotiations in the field of public education. A discussion of whether any of the alternatives better ensure accountability will be presented, followed by a discussion of implementation difficulties.
Chapter V, the conclusion, will, based on evidence drawn from the rest of the thesis, suggest a new approach to the collective bargaining process. A process that allows the public access to the bargaining demands of the parties, a process that requires justification for those demands, and a process that provides a means of connecting negotiated contract provisions to the level and quality of service in the field of public education.
B. The Emergence of the Accountability Problem in Public Sector Labor Negotiations

In 1962, an Executive Order was issued by President Kennedy that allowed government employees to form unions. The order was based on recommendations developed by the Task Force on Employee-Management Cooperation established June 22, 1961. Collective bargaining, as it has evolved in the private sector was thought by the Task Force to be inappropriate to the public sector. Thus, the Executive Order specified that:

Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization, or to refrain from any such activity.

The order further specified that (1) federal employees do not have the right to strike; (2) the public interest must be paramount in a public sector agreement; (3) arbitration is not appropriate in public sector labor disputes; (4) when Congress fixes salaries and other conditions of employment, these are not subject to negotiations; (5) all negotiations and agreements must conform to civil service regulations; and (6) professional and supervisory employees should be free to establish employee organizations of their own.

The Order reserved to management a number of important prerogatives. Management retained the right to direct employees, to take personal

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4 Ibid.
action, including disciplinary actions, to relieve employees from duty because of lack of work or other legitimate reasons, to maintain efficiency of Government operations, and to determine the means by which such operations are to be conducted.  

President Kennedy's Order stimulated the development of negotiation procedures at the local and state levels as well. A number of states passed laws stipulating the nature of bargaining relationships in the public sector. Some called for mandatory negotiations, in either the "meet and confer" or the collective bargaining form. Other statutes permitted bargaining or meeting or conferring, or merely the presentation of proposals to employers.  

The restrictions outlined in President Kennedy's Executive Order have been eroded as state statutes governing collective bargaining have been enacted. One government report concluded that the Executive Order was, in fact, more significant for its effects on the bargaining rights of state and local employees than for its rule concerning federal employees, which remain quite restrictive. 

6 U. S. Civil Service Commission, op. cit. p. 4.  
a ban on strikes is still in force in most states, the number of actual strikes initiated by public employees, as well as the number of threatened strikes, has increased markedly, creating hardships for many cities and towns across the country.\textsuperscript{9} While the broader public interest, ostensibly ignored every time there is a strike, is technically protected by elected officials who participate in the bargaining process, there are many questions about the extent of that protection.\textsuperscript{10} Arbitration is now considered the most appropriate technique for shutting off strikes in the public sector. Salaries are still set for many federal employees, but certainly not for all; and wage increases which consume the major portion of budgets of state and local governments\textsuperscript{11} are the cause of fiscal instability in many localities. "Professional employees" in the public sector continued to press for wage increases and the right, as "professionals," to participate in collective bargaining.


As the collective bargaining process has evolved in the public sector, so has the need to ensure that public employee unions, whose actions can jeopardize so many residents and consumers, are accountable. By accountability, I mean that all trade-offs and bargaining decisions be made public and ultimately justified to the taxpayer. Unfortunately, all too many negotiations are carried out behind closed doors. Moreover, the parties in public sector collective bargaining are rarely obliged to demonstrate to the public that particular outcomes or results have been achieved. Chickering has suggested that accountability in collective bargaining requires that an occupant of a role, as determined by a negotiated contract, answer for the specific results of the work expected of him in return for specified benefits.12

In order to ensure accountability in public sector labor negotiations, a number of conditions must be met. First, employers must clearly define employees' tasks. Second, employers must define measures of performance and standards for comparison. Finally, employers must have the power to impose incentives and sanctions on employee performance contrary to agreed-upon standards.13

Employers may have a hard time ensuring accountability given the nature of past agreements or state statutes governing the tenure rights of certain employees. Where some agreements specify that employers have the right to hire and fire, the language is often vague and performance

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13 Lipsky, op. cit., p. 16.
measures by which to gauge whether one is "incompetent" or not are rarely included. Under the circumstances, employers often find it difficult to fire employees. Tenure statutes produce further frustration. Most statutes guarantee tenure to employees after a specified period of service. Once tenure is granted, lay-offs can affect only non-tenured (i.e., less senior) employees. Once tenure is reached, seniority becomes the sole basis for firing. Firing a person found to be incompetent often requires a long process of documentation and hearings. It is often easier to transfer a person to a less harmful position than to go through the cumbersome process of removal.

Sanctions against public sector employees can take a number of forms: economic, legal or moral. Economic sanctions can be used by firing. Some of the constraints on this approach have been noted. Additionally, many such actions are contested in court where final resolution occurs. Often, employers are found to be in violation of one or another procedural steps in the firing process outlined in the contract. Not only does this negate the effort to fire, but employees judged to be incompetent must be reinstated with back pay if proper procedures have not been followed. The issue, then, is not whether the employee is in fact incompetent, but whether the legal process for dismissal outlined in the contract was followed.

Legally, both employers and employees in the public sector must comply with statutes at both the State and Federal level. They must

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comply with state statutes governing education, health and safety, and service delivery which may take the form of town by-laws as well. Second, they must comply with federal and state statutes governing civil service, retirement, tenure and other forms of employee protection. Third, they must comply with requirements of collective bargaining statutes governing public employees. Fourth, they must comply with the terms of local negotiated contracts. Finally, they must comply with the United States Constitution and the due process requirements of the 14th Amendment.  

Thus, legal sanctions can be drawn from a number of sources, and both parties have legal avenues for dealing with alleged violations.

The employee is given the guaranteed right of grievance in most labor relations contracts in the public sector. If an employee feels an employer has been unfair, the contract provides for an outlined grievance procedure. Often, however, a neutral third party is asked to hear the complaint. This third party may be more concerned with process or procedure compliance than with the content of the case. This may not be in the best interest of the efficient management of the organization or in the interest of the public.

The employer, given the illegality of public sector strikes, can file suit against employee organizations when strikes have been initiated. Again, the sanctions are brought by the court in the form of injunctions and fines. The unions can easily ignore the injunctions and the court

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is often compelled to increase the fines against the union. These fines, however, are often in part absorbed by the state and national affiliate of an employee union, thus negating the effectiveness of the sanction.

The employee organizations have an additional legal sanction that they can bring to bear. Public employees, through their participation in the electoral process, can impose economic and political pressure on elected officials, the employer. Public employee unions can lobby in support of or against the continued appointment of officials, sometimes those who sit on the opposite side of the bargaining table. Employers do not have the same participatory rights in the election of union leaders. It would appear that employee organizations have some advantage over employers in the types of legal sanctions they can impose for alleged contract violations.

Moral sanctions imply that there is a universally perceived correct method of behaving and that chastisement for contrary behavior will inspire a person to conform. Moral obligations are somehow lost in labor negotiations. The issues more often serve the self-interest of the parties, not the interests of all people affected. One party may publicly chastise the other for unrealistic demands, the other party may bring counter arguments in an effort to impose embarrassment. The charges are brought against one side or another, not individuals, thereby disbursing the effectiveness of the sanction. Employers can chastise employees for striking, arguing that they are hurting themselves and the public. The employees can chastise employers for low salaries, terrible working conditions in an effort to embarrass the employer into conceding to demands. The employers can then blame other officials who hold the
purse strings, never considering the fact that the budget of any given community is fairly rigid, and many strikes for higher pay come after budget allocations have been determined. The efforts at moral persuasion, then, have little effect on either party, each feeling its own position to be the correct one. The weakness, I believe, is a function of the organizational structure of government; the bureaucratization which creates an impersonal, isolated environment for the individual, leading to an attitude displayed as self-protection or self-interest. Too, there is great diversity in the interpretation of what is morally correct, but the public's interest should not be an afterthought.

Although sanctions then are available to both employers and employees in the public sector, none is completely effective in ensuring accountability of the parties to the negotiation to one another or to the public. We might ask where the public — the taxpayers who provide the financial resources — fits into the collective bargaining process. What are the various means by which those affected by the results of decisions that adversely affect the delivery of services can participate in the bargaining process? They obviously have a legitimate interest that ought to be heard before agreements are reached.

Collective bargaining in the public sector is an integral part of the political process, a procedure for reaching a political decision. Once agreement is reached at the bargaining table, many of the issues are largely foreclosed. The political officials can be held responsible at the polls, but without knowledge of the positions of the parties at the
bargaining table, the voter is handicapped in making a judgment.16

One key problem, therefore, and the problem to which this thesis is addressed is what right does the public have to be heard in the collective bargaining process in the public sector? Still more specifically, how can those affected by labor negotiations in the public sector hold all the negotiation parties accountable?

C. The Roots of the Accountability Problem

The inherent differences between the public and private sectors call into question, at least for some observers, the appropriateness of the traditional private sector bargaining model as it is often applied in the public sector.17 The economic, political and social contexts within which public sector bargaining is carried out are quite special.

ECONOMIC CONTEXT

Public services are paid for with government generated revenue. The revenue generating capacity of municipal government is constrained by (1) the size of the tax base in a community; (2) the willingness of the public to tax itself; and (3) constitutional and other legal limitations on the amount and types of taxes local governments can raise.18

When there are severe budgetary constraints at the

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local level, costs cannot be absorbed if revenues are non-existent. Furthermore, the increase in costs of public services cannot be automatically passed on to the consumer (as in the case of the private sector). Consumers do not participate voluntarily in the purchase of public services and, most often, there is no competing provider of services to whom to turn. The consumer of public services cannot withdraw and form a separate system that guarantees his health and safety. Without a majority of voters in agreement, it is difficult for a consumer to display his dissatisfaction with the services being provided.\textsuperscript{19}

Public managers sometimes achieve bargaining agreements and thus avoid service disruption by promising employees excessively generous pension and retirement benefits. Many elected officials are likely to grant in-kind salary increases as long as they do not take effect in the near future. It is politically easier to commit future rather than current resources. Such concessions may not require immediate tax increases but, in the long run, costs must be absorbed somehow.\textsuperscript{20}

Public managers have less incentive than private managers to resist union demands. If private managers make concessions that impair the long-term profitability of a business, that fact will be reflected in the value of the company. Thus, unlike their public sector counterparts, private sector managers cannot avoid being held accountable when excessive deferred benefits have been granted.\textsuperscript{21}

\textsuperscript{19} Lipsky, op. cit., p. 18.
\textsuperscript{21} Ibid.
Increases in the cost of one public service may, due to budgetary constraints, require that other services be limited in some way. The increased costs for salaries in a service may not be tied in any way to the quality of service or the importance of the service in terms of protecting the health and safety of a community.

The economic problems created by public sector collective bargaining depend on a community's fiscal stability. The problem of accountability in the negotiation process is raised most vociferously when resources are scarce.

POLITICAL CONTEXT

Public sector collective bargaining has given public employees a right to participate in the formulation of public policy. The scope of bargainable issues has steadily increased to include those that are non-economic in nature. Difficulty has arisen concerning just where to draw the line between those issues constituting public policies and those in a grey area which are policies that directly affect working conditions, the latter, in most cases, being issues that are negotiable. The "co-determination" of policy by employers and employees is seen by some to restrict management rights to direct employees in the delivery of service.\textsuperscript{22}

Public unions as they have evolved, with the help of national affiliations, have developed sophisticated negotiation techniques and strategies.

Local officials have turned to professional negotiators to assist them in the bargaining process. Within the time it took employers to understand the impact of employee organizations on their decision-making power, many rights had been removed and prior contract provisions had to be upheld. The issue, then, is the effect of negotiations on an employer's ability to manage its employees and the service it is responsible for providing.\textsuperscript{23}

Since some of the rights of employers have been removed during labor negotiations, it is also questionable whether or not they can be said to represent all segments of the community in the negotiation process. The electoral process allows the public to select and reject public officials in part, based on the extent to which they have been able or appear to respond to citizen concerns. The degree to which elected officials, particularly in urban areas, can represent the interests of a heterogenous population, however, has been seriously questioned.\textsuperscript{24}

Our system of representative democracy depends on the willingness of our representatives to "trade votes." This is how compromise is reached in our political system. One problem ... is that it ignores the depth and intensity of concern that certain groups or interests have about particular issues.\textsuperscript{25}

The elected officials, when making policy decisions, legally must consider the interests of all. They must decide which policies to support


\textsuperscript{24} Cheng, op. cit. p. 66.

\textsuperscript{25} Lawrence Susskind, "Resolving Environmental Disputes Through Ad Hocracy." \textit{Resolve: Center for Environmental Conflict Resolution}, Summer 1980, p. 3.
and which to reject. But if the unions have restricted the rights of management through gains made at the bargaining table, the rights to direct employees and services, then the unions to a degree have veto power over policy with no legal responsibility for their impact on other public interests. The union officials are not elected by the public and are accountable only to their membership.26

In sum, the political context in which public sector bargaining occurs allows for the "codetermination" of public policy decisions between employers and employees through a process of concession and trade-off. The ability of elected officials to represent the interests of all groups with a stake in the outcome is brought into question. Furthermore, it would appear that, although the broader public can hold public officials accountable to a degree through the electoral process, the union representatives who help determine policy are elected only by their membership. The public is provided no means of holding the union accountable for their share of the decision making that affects the provision of service.

THE SOCIAL CONTEXT

The development of professional associations (based on the model of industrial collectives) serves to negate the original intention of public services. Employees no longer see themselves as "public servants" but rather as professionals. The definition of professional implies autonomy or self-government without control by others. The blue collar

26 Lieberman, op. cit., p. 85.
industrial model of bargaining would seem antithetical to that definition.

The increase in the size of government agencies produced a need for additional layers of administrative staffs. With the increase in the size of organizational structures came a feeling of isolation on the part of those at the bottom, the providers of the actual service. Public employee unionism, then, grew in part due to what employees considered a reduction in control over their own destinies.

In order for any large system to work effectively, there is a need for performance based on obedience, respect for authority, and adherence to rules and regulations.\(^{27}\) Central control, by necessity, demands conformity and uniformity.\(^{28}\) The employees, lost in the shuffle of centralization, united in order to have their concerns addressed by those with authority; those at the top of the structure. Unionism provided a mechanism for sidestepping the cumbersome process by which individual employees could raise concerns.

An outgrowth of demands for a voice in the determination of wages and working conditions was a call for job security. The civil service system under which some government employees are regulated was intended to ensure job security based on "merit" rather than patronage and nepotism.\(^{29}\)

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system requires an examination, once hired and on the job for six months, the possibility of even being fired is limited. 30

Seniority – number of years in service – is the sole basis for promotion. Similar protective personnel provisions have been won by public employees at the bargaining table.

In times of economic expansion, the personnel practices had less impact on the broader social goals of equal employment opportunities for those who had been excluded from the job market. What occurs in times of economic contraction, however, is the necessity of decreasing the number of employees. Those dismissed are the less senior employees and, most likely, those hired to provide a remedy for past discriminatory hiring practices.

Why employers did not initiate attempts to modify personnel practices could have a number of causes. Employers may not have considered the possibility of economic decline during their term of office. Additionally, the development of performance measures for public sector service providers is still thought to be difficult given the degree of discretion employees can exhibit in their work. 31

It is not unreasonable for public employees who have spent their service careers conforming and obeying to be skeptical and defensive towards the public as it cries out for some method of measuring the quality of service. It would seem no less unreasonable to provide the public with evidence to support the fact that the money paid to public employees is

30 Ibid., p. 71.

31 Lipsky, op. cit., p. 16.
being spent legitimately in an effort to provide the highest quality of service.

The roots of the accountability problem then, stem from a number of developments that have economic, political and social implications. It is not fair, in times of fiscal constraint, to hold public employees hostage to the limited resources available. It seems equally unfair to expect the public to continue helping to generate more revenues to pay for services for which the rate of pay is in no way related to the quality of service.

The "codetermination" of policy by the parties to the labor negotiations does affect the quality of service. If people are dissatisfied with the quality of service, one would think that both employers and employees would want to jointly determine how to improve that service. Having to justify the decisions and results of negotiations would seem to be one way of allowing the public some insight into the constraints placed on both parties. The balance of power now is on the side of the union who can decide policy, but, at present, offers the public no mechanism for understanding nor holding the union accountable for the results of the decisions.

D. The Accountability Problem in the Field of Education

In the field of education, a number of issues are raised with respect to accountability in teacher and school board negotiations. First, whether through the collective bargaining process, an imbalance of power has been created. Second, whether or not, given the diversity of the student population and complexity of the educational system,
elected school boards can represent the interests of all students in the negotiation process. Additionally, there is a question as to whether teacher unions can adequately represent the diversity of their membership. Finally, there is the issue of fiscal stability and the problems created through the negotiation process. The critical factor here is that the allocation of resources for education do not seem to be tied either to a community's ability to pay or the quality of educational services.

The legal responsibility for education is vested in the state. The state, in turn, delegates a large measure of authority to local school boards to ensure effective educational service. The creation of many new programs administrated at a central level caused the gap between the school board and the classroom teachers to widen. In order to have some control over the teaching environment, teacher collective bargaining contracts have more and more secured provisions relating to educational policy once deemed to be clearly within the managerial and legal jurisdiction of the local school boards. Rights are spelled out concerning class size, curriculum planning, teacher hours and discipline.\(^{32}\)

The teachers closest to students should have some say in what and how they teach. Unfortunately, the effort to jointly work toward a better system of providing education was lost in the push for higher wages on the part of the teachers, and management, in the process, became preoccupied with its right to set policy.

\(^{32}\) Spero and Capozzola, op. cit., p. 174.
(Unionism) increases an institution's vulnerability. It replaces the sense of community and common purpose with an adversarial posture: labor is made to appear the opponent of management.\textsuperscript{33}

Although strikes are illegal in almost all states, the school boards have no means to prevent such disruptions without making some quick concessions. Whether or not the school board holds fast to its position, there are children who are directly affected by the strikes: the students' education is disrupted, the continuity of instruction is lost. Parents, too, must find alternative placement for their younger children while they are at work.

Teacher unions wield an additional power which is political in nature. Public employee unions are involved in a variety of political activities. They lobby in support of educational legislation, in support of political candidates, offering campaign contributions and employee time for actual political campaigning.\textsuperscript{34} They may even help to elect the officials with whom they bargain.\textsuperscript{35}

The balance of power, then, would appear to be on the side of teacher unions. They can affect educational policy, help to elect local school board members and create pressure to have demands met by strikes or even the threat of a strike.


\textsuperscript{35}Roger Dahl, speaking at meeting of Industrial Relations Research Association, Denver, Colorado, September 1980, as reported in 879, \textit{Government Employee Relations Report}, p. 24. (Hereafter cited as GERR.)
The second issue is that of the ability of the parties to represent their respective constituencies at the bargaining table. With limited resources, the increase in teacher salaries may prohibit the addition of programs to support students requiring special help in the form of remedial reading, bilingual education, to name only two. Many special education programs are currently funded through state and federal assistance. With cutbacks in aid to education and limited local resources, school systems may not be financially capable of absorbing costs incurred by cuts. Union demands may aid in prohibiting the absorption of those costs. If services cannot be provided to all students, then the school board cannot be said to protect and represent the interests of all students under the board's jurisdiction.

The interests of union membership have increased, too, in order to provide special services to all students. Those teachers hired with more skills and specialized training, in times of economic instability and declining enrollments, will be the first to be layed off. The protective ness of public personnel systems, gained in part through labor negotiations, will require the retention of more senior teachers with less expertise in specific fields. Additionally, school systems which have adopted affirmative action policies may find that teachers hired under these policies will also be among those dismissed.

Finally, the issue of representation is raised in conjunction with the development of sophisticated negotiation techniques on the part of unions, with the aid of national affiliations. School boards, lacking the same degree of national instruction, have turned to labor relations experts to participate in the actual negotiation process. As one study
has pointed out, most local school boards avoid active participation in negotiations with teachers. Their participation is limited to general instructions and approval of the final contract. The study noted that the delegation of responsibility for bargaining to professionals fosters routinization and perhaps harmony at the expense of real participation by elected representatives of the public.\textsuperscript{36}

The representativeness of the parties to the negotiation of their constituencies has been called into question because of the changes in the recognized needs of public school students and the changes in the teaching force. The use of labor relations experts on the part of both parties causes an emphasis to be placed on negotiating techniques, perhaps with the substantive educational issues being considered only as an afterthought.

The ability of a community to pay for education continues to create problems for local school boards. Seldom are the dollar amounts spent per child on education tied to the quality of service. In times of fiscal constraint, the public becomes more aware of the amount of money being spent for education and might wonder how and for whom. Attempts to institute some form of performance measures for teachers have been effectively displaced. There are many difficulties in determining the methods of measurement and who administers the evaluation. It must be argued, though, that it is in the best interests of both parties to have their decisions and performance results assessed. Only then can the

\textsuperscript{36}Lorraine McDonnell and Anthony Pascal, Organized Teachers in American Schools, Santa Monica, California: The Rand Corp., 1978, p. 75-82.
public be assured that monies are being spent in an efficient manner. The constraints under which collective bargaining operates, if unknown, will allow the public to assume that inadequate service is due either to mismanagement or ineffective teaching practices, while the problems may be far more complex. The lack of performance measures allows teachers to make demands for wage increases as entitlements rather than as rewards for their efforts at improving the quality of educational instruction.

Fiscal problems arise also when contract allocations are not coordinated with a community's budgetary process. This sometimes happens when negotiations reach impasse which may place the final decision in the hands of a third party. Most state statutes provide for fact finding, mediation and arbitration. These procedures may delay the final resolution of conflicts and agreement beyond the deadlines for budget submission.

The fiscal problems associated with public sector bargaining do have implications for the delivery of educational services. There is a need to provide a mechanism for tying the quality of educational services to budget allocations and the need to better coordinate collective bargaining with the budgetary process of communities.

The problem of accountability in the field of public educational labor negotiation has political, economic and social implications. Collective bargaining does not occur in a vacuum. The decisions made in the negotiations between teachers and school boards do affect the service provided. A mechanism must be established whereby parties can hold one another accountable for the implementation of the decisions but, more importantly, that the public must be afforded the right to
the justifications for the demands and outcomes of the bargaining process.

The next section, then, will outline characteristics of a collective bargaining process that will better ensure accountability of the parties to one another and to the public.

E. Characteristics of a Bargaining Process That Would Better Ensure Accountability

Thus far, the emphasis of this thesis has been placed on describing the problems associated with accountability in the public sector collective bargaining process. This section will describe elements of a bargaining process that might help to remedy some of those problems. The first feature would be the establishment of mechanisms to enhance public awareness of the collective bargaining process. A second feature would provide some measure for reassessing goals of the service with an eye towards a method of tying costs to client needs and satisfaction. Once goals had been set, a third feature would entail specification of explicit rights and responsibilities of both parties, which would include setting standards for both employers and employees. The final characteristic would call for better coordination of public sector service negotiations, based on the economic constraints of communities and the consideration of impacts one service decision must have on remaining services.

A bargaining process that ensures accountability would provide a mechanism for educating the public about conflicts, constraints and alternatives considered during the bargaining process. As long as the key stakeholders, especially those affected directly by service delivery decisions, are kept in ignorance, accountability cannot be ensured.
A process of this type might include a mechanism for public access to the parties' original demands with justifications for their being pursued. Workshops could be held in which the public could be given information on how the process works, who participates, how the process is coordinated with the budget-making process, and perhaps the criteria upon which decisions are made.

The nature of public service has changed with technological innovations, updated methods of service provisions, but the structure of the bargaining process has remained the same. The goals of public service provision seem to have been lost. These goals must be modified if necessary, but must be given more emphasis during the negotiation process. Both parties have a stake in the outcomes but neither seems willing to take the responsibility for the decisions. As long as public officials do not clearly define what it is they want or how they would like services to be provided, then employees can only do what they feel to be right, which may not be in the best interests of all concerned.

Once goals have been established, the parties then must begin to look at the collective bargaining process in terms of who gets what and why. The parties must jointly determine how service provision can be improved. This would necessitate the institution of standards of performance somehow linked to performance incentives. Unions, for some reason, feel any type of accolade destroys the collective efforts of their membership. It would seem that if some employees can provide more adequate service, their knowledge and ability to perform should be viewed as instructive. That is, as an instrument for the improvement of other employee performance, not as a measure of collective inefficiency.
The job security clauses gained through bargaining with no concomitant incentives to update skills and knowledge have provided only a disincentive to enhance the quality of service. The shift must come through a willingness of the parties to modify their adversarial posture; to reassert and commit themselves to the original intentions of public sector collective bargaining, which was to jointly work towards a more efficient system of service provision.

There is a need to require that the parties to public sector negotiations consider the impact of their demands on other services, calling for more coordination between the various contract negotiation processes. Rather than fighting over scarce resources, there is a need to work together to establish priorities for each service and to determine how the provisions of one contract might enhance and help the decision-making process of negotiation for another. One service organization working jointly with employees may find some way of cutting costs that does not affect the quality of service nor require lay-offs. These types of decisions could very well be modified and effectively used by other public sector services.

These characteristics then would better ensure that the decisions made were based on some criteria that was in some way prioritized. It would allow those affected by the decision to know why the decision was made and by whom. Additionally, a basis for performance would be established that allowed the successful efforts of some employees to be used constructively to improve the work of others. It should be in the joint self-interest of the parties to improve the services because if the costs can be justified and are linked to the quality, then the public will be more willing to help in the process of providing more revenues.
At the present time, there is no real incentive for the public to continue paying more taxes without an appreciable increase in the level of service.
CHAPTER II
ACCOUNTABILITY AND UNIONIZATION IN PUBLIC EDUCATION

A. Introduction

Unionization and collective bargaining in the teaching profession emerged from the confluence of social forces. Most state statutes were enacted in the 1960's, a decade characterized by protest, dissent and radicalism.37 Students and faculty at campuses across the nation held demonstrations demanding more control over educational policy decisions. In February 1962, 4,000 students traveled to Washington, D. C., to emphasize the degree of dissatisfaction with national policy at home as well as abroad. While the war was escalating in Vietnam, the United States was fraught with violence. In September 1963, the bombing of a Baptist Church in Alabama left two black children dead. In March 1964, racial strife erupted in Jacksonville, Florida, when attempts were made to integrate bars and restaurants. The disappearance of three civil rights workers in Mississippi in June of that same year caused riots to break out across the country, culminating with the riot in Watts, California, in August 1965.38

The Civil Rights Act of 1964 outlawed discrimination in public facilities and public education. The act denied employers license to discriminate in their hiring practices and denied labor unions the power to keep blacks from their membership roster.39


The Act also applied to all existing federal aid programs, including those supporting education. In 1965, the Elementary and Secondary Education Act was passed providing financial assistance to school systems with concentrations of children from low income families to expand and improve programs to meet the educationally deprived children's special needs. The Department of Health, Education and Welfare was authorized to cut off federal funding to school systems not in compliance with Title IV Section 401 of the Civil Rights Act governing the desegregation of public schools.

Unionization grew concomittantly with the struggles for recognition of the rights of equality. Unionization of teachers was also supported by the larger labor movement due to the increase in the white collar workforce. The Federal Executive Order extending bargaining rights to government employees in 1962 gave rise to state statutes extending bargaining rights to municipal employees. These movements grew from the public's cries in the 1960's for economic, political and social reform. The following section will look at the development of teacher collective bargaining, nationally and in Massachusetts.

B. The Development of Unionization and Teacher Collective Bargaining: Nationally and Specifically in Massachusetts

Educational associations have been in existence for over a hundred years and for over half of that period, relied on informal methods of requesting changes in wages and working conditions. The American Federal
of Labor (AF of L) found its membership decreasing in the 1960's. Where the work force was once blue collar, it was predominantly white collar in 1962 and only 7 percent of the white collar working force was organized.\(^{40}\)

The desire of the American Federal of Labor to increase its membership found the changing nature of the teaching work force ripe for active organizing.

Teachers were becoming far more militant than in the past. A profession once dominated by women found many more men entering the field of public education. More teachers were acquiring advanced degrees and with their higher level of professional status, they began demanding a higher level of compensation.\(^{41}\)

The social unrest in the country at that time could not have been ignored by anyone, thus its impact must be noted as well. Finally, the rivalry between the two educational associations, The National Teachers Association and the American Federation of Teachers, gave the struggles for recognition a national forum for vocalizing dissatisfaction.

The National Education Association was founded in 1857 "to elevate the character and advance the interests in the teaching profession and to promote the cause of popular education in the U. S."\(^{42}\)

Membership drives were directed toward all educational personnel at all educational levels (teachers as well as administrators). The original mechanism for "professional negotiations" was the reliance on the use of regular educational channels to improve working conditions.

\(^{40}\text{Stinnert, op. cit., p. 23.}\)

\(^{41}\text{Myers, op. cit., p. 65.}\)

\(^{42}\text{Walsh, op. cit., p. 116.}\)
The domination of the NEA by administrators arose due to its emphasis on education on a national scale; that is, its emphasis on the overall provision of services by all levels of teachers and administrators. Association energies were almost entirely devoted to such issues as standards and ethics, tasks of lobbying for federal funds, the conduct and dissemination of research, and the support of state affiliates.43

The domination of the NEA by administrators was largely responsible for the development of a rival organization: The American Federation of Teachers, chartered by the AF of L in 1916. The American Federation of Teachers was searching for a mechanism through which teachers, not administrators, could pursue "conditions essential to the best professional service."44

The rivalry between the NEA and AFT grew out of differences in educational philosophies. An NEA official stated: "The two organizations are made up of people who have different preferences on some basic structural, ideological issues and relationship questions. Thus the two organizations fight because they are competing for the loyalty of the same group of people - American teachers."45

The AFT took no fixed policy position on the subject of collective bargaining until well after the second world war. Although both the

45 41 GERR 105, November 21, 1977.
AFT and NEA had long supported teacher participation in determining school policy, neither organization supported the establishment of formal collective negotiations at the local level as a matter of national policy. By 1947, both organizations had shifted ground, both calling for group participation in policy formulation and endeavoring to educate the mass of teachers in the use of political power to enhance their influence. 46

The rivalry became most vocal in the 1960's as the AFL-CIO began a campaign to increase its membership. James Carey, then Vice President of the AFL-CIO, spoke at the NEA Conference in Denver in 1962. He was critical of the NEA's use of the word "professionalism" as a substitute for economic dignity.47 "They are glad to accept a title, a pat on the head, or a Christmas bonus in lieu of decent wages and working conditions."48

The NEA resolved at the convention to push for collective negotiations legislation for teachers but vowed that under no circumstances would the resolution of differences between school boards and teacher associations be sought through channels set up for handling industrial disputes.49

Both organizations maintained a no-strike policy until the mid 1960's. Strikes prior to this time were locally initiated. By 1966, the AFT, while preserving its former no-strike policy, did grant support for strikes under "certain circumstances," particularly when affiliated internationals offered them a vote of confidence for the

46 Spero and Capazzola, op. cit., p. 97.
47 Stinnert, op. cit., p. 7.
48 Ibid.
49 Myers, op. cit., p. 98.
actions. By 1972, the NEA also had shifted its position on the use of strikes as one means of increasing its membership.

The membership of the NEA and the AFT has grown over the years. In 1966, the AFT represented 110,000 teachers. The NEA membership during the same year included 940,000 teachers, mostly from rural areas. The NEA, due to its representation of all educational personnel, has then consistently drawn a larger membership. By 1977, the memberships of both declined. For the NEA, the membership had dropped from 1.9 million in 1976 to 1.7 million. The AFT lost approximately 30,000 members during that year—with a decrease in membership from 471,000 to 441,000.

Both actively campaigned for representation of unorganized teachers.

The NEA, although changing some of its policies, still maintained a professional stance. By 1980, the President of the AFT, Albert Shanker, noted that the union was set up essentially as a traditional labor organization interested in wages and working conditions. In recent years, he stated that "our members felt a bit ashamed—they wanted something they could be proud of. In other words, they want an organization that could help them advance professionally; therefore, the union is becoming more concerned with teaching methods, curriculum and standards."

The representational elections for union affiliation grew as states began enacting collective bargaining statutes. The legal basis for

50 Ibid., p. 124.
52 41 GERR 105, November 21, 1977.
unionization and collective bargaining, as noted earlier, was an outgrowth of a presidential executive order issued in 1962. Prior to 1960, the courts, with few exceptions, held that public employees had no constitutional right to join or form unions and, too, that legislative bodies could affirmatively forbid their employees from joining or forming some or all unions.54

The court, then, also played a role in stimulating the unionization of public sector employees. In 1968, the U. S. Court of Appeals for the 7th Circuit held for the first time, in McLaughlin v. Tilendis, that "An individual's right to form and join a union is protected by the First Amendment." The case involved two teachers who instituted suit against a local school district alleging that their teaching contract had not been renewed because of their activities on behalf of the American Federation of Teachers. The court noted: "The Civil Rights Act of 1871 gives them a remedy if their contracts were not renewed because of their exercise of constitutional rights." While public employees have a constitutional right to join and form unions, there is no constitutional right to force a public employer to bargain collectively in the absence of legislation. The 7th Circuit, in a decision subsequent to McLaughlin, stated that "there is no constitutional duty to bargain collectively with an exclusive bargaining agent. Such duty when imposed is imposed by statute." (Indianapolis Education Association v. Lewallin, 1969).55 Affirming a constitutional right to collectively bargain would

55Ibid.
have first removed an individual's right to due process. The states, however, could enact, through legislation, statutes governing the rights of public employees to bargain collectively.

Although several states had informal bargaining relationships prior to enabling legislation, the push towards a legal basis for collective action grew rapidly. There are currently 42 states with laws or policies covering collective bargaining by public employees. In 33 states plus the District of Columbia, the right of state and local employees to organize has been sanctioned by statutes, court decisions, attorney general opinions or executive order. Eighteen of these states have laws specifically granting rights to public school teachers. Comprehensive laws in 16 jurisdictions also extend bargaining rights to educational employees.56 (See Appendix II)

There is no consistent pattern to the laws concerning the scope of bargaining. For example, the Washington State statute includes as negotiable items: curriculum, textbook selection, in-service training, student teaching programs, personnel hiring and assignment practices, leaves of absence, salaries and salary schedules, and non-instructional duties. The Hawaii statute, on the other hand, is quite restrictive. Under this law, it is illegal to include in collective bargaining provisions issues which "interfere with the rights of public employers to direct its employees to set qualifications, standards of work, the nature and content of examinations, to hire, to promote, transfer, 

5641 GERR 152, November 21, 1977.
assign and retain employees in positions." But public employees in
Hawaii, after exhausting state machinery, have been legally given the
right to strike.57 (Cheng qualifying paper, cites William and Mary
Law Review, Vol. 12, No. 4.)

The Washington State and Hawaii statutes serve to illustrate the
variation in content of the state statutes governing public sector
collective bargaining. The Washington Statute clearly defines many
issues as bargainable, thereby recognizing that cooperative joint decision
making may be conducive to organizational efficiency and stability, by
providing a forum in which teachers can have a say in what and how they
are to teach. Restricting participation in decision making recognizes
that there are rights that school boards must retain in order to effec-
tively direct and manage employees. The Hawaii statute excludes personnel
decisions from the bargaining table but balances the power held by each
in allowing employees the right to strike.

Other statutes fall somewhere between these two extreme cases.
Many states exclude educational policy decisions from the bargaining
table, as in Maine, Minnesota and Oregon. Others, such as Connecticut,
may leave what is bargainable in educational policy to the discretion of
school boards. Many of the ultimate decisions concerning what is bargain-
able is left up to the courts.

Often the parties can pass the responsibility for resolving their
conflicts on to others: courts, labor relations boards, and arbitrators.

57 Charles W. Cheng, "The Scope of Teacher Negotiations in the Evolutionary
Development of the Collective Bargaining Process", mimeographed,
Harvard Graduate School of Education, 1974, p. 22.
Some statutes allow for labor relations boards to determine when an impasse is reached and, once determined, the process for resolution may be through fact finding, mediation or arbitration. This does not mean that there is not a legitimate need for a process that allows resolution after the parties have come to a standstill in the negotiations. The process of using third parties, and particularly the courts, has been perhaps relied upon too much.

The 1970's brought attempts on the part of education associations to have national legislation enacted to extend collective bargaining rights to teachers unprotected at that time. The Congressional Hearings on proposed bills also cited the difficulties inherent in the diversity of state statutes and the numerous other regulations (town by-laws, attorney general opinions) affecting collective bargaining which often made it impossible to determine teacher rights.\footnote{Congressionman, Max Baucus, in Congressional Record, Vol. 121, Part 27, October 30, 1975, p. 34515.}

One bill would remove the National Labor Relations Act's exclusion of public employees, to treat public and private sector employees equally. The second bill would establish an independent National Public Employment Relations Commission and provide bargaining rights to employees and employers in states and their political subdivisions. The Commission would be responsible for interpreting, applying and enforcing the provisions of the Alternative Passage. Passage of national legislation has not occurred, however, in part because public employee labor organizations
disagree about the form the legislation should take.\textsuperscript{59}

In summary, the national development of unionization and teacher collective bargaining emerged at a time of civil discontent among many segments of the population. The federal government responded not only to the need to establish equal rights for all but also to the desire of the labor force to participate in decisions affecting the work place. These developments gave rise to state collective bargaining statutes, varying in the scope and level of employee participation in decision making.

Massachusetts was not exempt from the racial confrontations of the 1960's. In 1964, the legislature enacted the Racial Imbalance Act which was to encourage school committees to adopt as educational objectives the promotion of racial balance and to correct existing imbalances in the school. This Act, coupled with the rights to bargain collectively, provided teachers with a mechanism for aiding school committees in the determination of policies that would allow more equal education for all students.

Teachers, as well as other municipal employees, were first given the right to join organizations and bargain collectively in 1965. (Chapter 763 of the Massachusetts General Laws) The Law gave employees the right through representation of their own choosing to bargain on questions of wages, hours and other working conditions of employment and "to engage in other concerted activities for the purpose of collective

bargaining or other mutual aid or protection, free from actual interference, restraint or coercion; provided representative in the unit shall be the exclusive bargaining agent ... bargaining collectively for all employees, and be responsible for representing the interests of all such employees."60

The State Labor Relations Commission is authorized to conduct representative elections to select exclusive bargaining agents, to determine appropriate units of representation and to enforce the prohibited practices section of the statute. The Commission is further given the power to issue orders requiring the parties to cease and desist from the practices prohibited by statute. The Commission is also authorized to impose penalties such as withdrawing certification of an employee organization, ordering reinstatement with or without back pay or of a discharged employee, or directing either party to pay the entire cost of fact finding.61

A subsequent statute, Chapter 1078 of the Acts of 1973, further amended by the addition of Chapter 150E in 1975, defined the procedures for bargaining more carefully. What is bargainable is modified to include wages, hours, standards of productivity and performance, and any other terms and conditions of employment.62 The parties must still bargain in advance of the budget making process. An elaborate grievance procedure is outlined, culminating in final and binding

60 Acts and Resolves of the General Court of Massachusetts, 1965, Chapter 763, p. 556.


arbitration. This provision is to be invoked in the event of any dispute concerning the interpretation or application of such written agreement.

The statutes raise several questions about municipal budgets and the scope of bargaining. The Massachusetts State Department of Education, in its guide to collective bargaining, stated that there were several factors that had to be considered in formulating economic requests. These factors include: (1) general attitude of the community toward spending money for education; (2) the current tax rate and whether it had risen appreciably in the recent past; (3) the tax base available to the community and its relative stability; (4) per pupil expenditures; and (5) the amount of reimbursement received from the Commonwealth. 63

Although the ability to pay question is to be considered in formulating economic requests and prior to the budget making process, this does not always occur and may present hardships on communities.

The scope of bargaining in Massachusetts is quite broad. The State Department's guide suggested that if both parties agree to an issue as bargainable, then all is well; if one party refuses, the other may file a charge of unfair practice with the Labor Relations Commission whose decision, if not respected by a party, can be taken to the State Court for final determination.

The courts in Massachusetts have generally decided that there are

subjects which are beyond the scope of collective bargaining: specific appointments, tenure determinations as well as the school committee's decisions to abolish positions. These have been found to be within the zone of management prerogative over educational policy.

"However, even where certain ultimate decisions may or have been deemed to be so laced with educational policy as to go beyond the reach of bargaining and arbitration, we have upheld arbitral awards which have merely involved questions of adherence by the school committee to procedures set forth in collective bargaining agreement for resolving such determinations." (389 N.E. 2nd 974) 64

Chapter 71 of the General Laws of Massachusetts governs the provision of public education in the state. The Chapter at Section 37 gives school committees the general charge of all public schools. School committees retain the right to dismiss tenured teachers (at Section 41, tenure is given to teachers who have served three consecutive years in the system) for "inefficiency, incapacity, conduct unbecoming a teacher, insubordination or other good cause." No teacher can be dismissed unless by a two-thirds vote of the whole school committee; a tenured teacher must be given 30 days notice of intent prior to vote. If he requests, he must be furnished with written charges of the cause, given a hearing at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf; charges must be substantiated; and the superintendent must give his recommendations. Non-tenured teachers

are given the same rights as those who are tenured, the only difference being the number of days notice prior to the committee's vote.

Tenure legislation was enacted to give some stability to the teaching staff. By attracting and retaining able teachers who served long enough to become familiar with the pupils and the community, schools derived increased professional benefits. From the teacher's point of view, service solely at the pleasure of a school board placed jobs in annual jeopardy. Critics note the protectiveness of tenure statutes and the inability of boards to dismiss incompetent teachers. 65

Others note that these statutes do not negate a board's opportunity and responsibility to select, screen, supervise and evaluate teachers prior to and during tenured employment. 66

Where school boards have instituted evaluations, dismissed non-tenured teachers have often filed suits for unfair practices. The courts have generally found that school boards have violated evaluation procedures. In a number of cases decided in 1977, the court found that the decision not to renew a contract of a non-tenured teacher was not arbitratable; however, the failure of the school committee to adhere to teacher evaluation procedures before making the decision was an arbitratable issue. 67

"If a school committee wishes to deny application of evaluation procedures to non-tenured teachers or to deny such teachers the right to arbitration, the school committee can say so explicitly


66 Ibid.

in the collective bargaining agreement." 68

The decisions offer school committees a suggested course of action, which implies the need to consider or anticipate the effects of contract language. Specificity can ensure retention of the school board's authority for making personal decisions. School committees or their representatives must then carefully weigh the implications of negotiated contract language, or at least become more familiar with the procedures in order to take the burden off the courts.

The issue of dismissal becomes more critical in view of the necessity to lay off employees due to declining enrollments. The concluding portion of Section 42 maintains the rights of committees to dismiss a tenured teacher whenever an actual decrease in the number of pupils in the school of the town renders such an action advisable.

The declining enrollments in schools across the country caused teachers to press for seniority clauses in their contracts. A dilemma is created because not only must school committees uphold negotiated contracts, but also state requirements governing educational programs and affirmative action commitments.

Teacher lay-offs in Massachusetts have not, as yet, caused the possibility of conflict in statutory compliance. However, the current fiscal situation may find the courts filled with public employee discrimination cases. 69

69 Massachusetts Bar Association Conference, MCAD speaker, March 25, 1981.
In summary, collective bargaining in Massachusetts has developed under the same constraints placed on the public education nationally. The demands for educational accountability emerged from the social movements of the 1960's along with the bargaining rights of teachers.

The following section will review the union's position on its obligation to be held accountable for negotiated decisions affecting the quality of educational services.

C. The Union View of Accountability to Parents, Students and Taxpayers

The quest for accountability in education arose out of public dissatisfaction with school systems'abilities to demonstrate that the funds provided were achieving the desired results: a public education which provides basic skills enabling graduates to find employment or seek higher levels of education.

Traditionally, children have been held accountable for what they learn. Success or failure was largely a matter of how hard the child tried. But if education is to accomplish more, it seems reasonable to look to the teacher as a key factor in the development and improvement of learning ability. Furthermore, as noted by the President's Commission on School Finances in 1972, the bargaining rights of teachers have created an additional requirement of accountability. If they are able to negotiate their pay and workloads, then they should be obligated to submit to outcome measures.

The union position on accountability towards taxpayers, students and parents in all cases calls for the accountability of other participants.

in decision making to share responsibility for the educational results. This position is similar for both the National Education Association and the American Federation of Teachers.

The NEA states that teachers can only be accountable when the public supports education commensurately with its expectations of education.\(^{71}\)

The AFT argues: "Teachers resent having to teach in overcrowded classrooms, handling emotional problems of disturbed children and working without proper supplied and instructional materials. These matters fall within the province of administrators, school boards and taxpayers. If teachers are to be accountable to the public, the public must be accountable to the teachers."\(^{72}\)

Both organizations hold the public responsible for the amount of revenue they are willing to generate through taxation. But the public who continues to pour more and more money into education must, in turn, be accorded the right to know that the money is somehow being tied to student achievement. Wages have never been related to client need,\(^{73}\) but rather to the need to increase wages in relation to inflation rates.

The 1980-81 National Education Association Handbook states in its Resolutions concerning Accountability and Assessment that:

"NEA maintains that educational excellence for each child is the objective of the educational system."\(^{74}\)


\(^{73}\)Lieberman, op. cit., p. 85.

The statement is followed by an accountability provision which holds classroom teachers accountable only to the degree that they share responsibility in educational decision making, and to the degree that other parties who share this responsibility - legislators, other government officials, school boards, administrators, parents, students and taxpayers - are also held accountable.

Historically, as noted, students have been held accountable for their successes and failures. Unions continue to decry the adequacy of student achievement tests, particularly if attempts are made to tie them to teacher performance. The union argues that there are numerous variables affecting achievement: socio-economic family background, emotional stability to name but two. These variables prevent adequate measures from being developed. Unions additionally oppose the use of pupil progress and student assessment tests for purposes of teacher evaluation, advancement on salary schedules, continuation of employment, granting tenure, certification or promotion. Some argue that the rating of teachers creates disharmony among members of a school staff. To give accolades to some might constitute a negative factor in terms of union strength and growth.

Some within the union organization have taken a more positive approach to the issue of performance. One former Director of Research

75 Selden, op. cit., p. 52.
for the AFT suggested a contract clause that provided for combined in-service training with performance evaluation, with an emphasis on improving instruction rather than pointing a finger at failure. 79

By 1978, the emphasis on performance was overshadowed by resolutions to protect tenured teachers. The AFT stated that tenure legislation provides school boards with a mechanism for dismissal and establishes a probationary period during which a candidate may be evaluated thoroughly. 80

In collective bargaining, the union maintains that the public is represented by the elected school board:

"The public is at the bargaining table in the form of their board and staff representatives. To increase the number of people present will inevitably fragment the bargaining process to such an extent that real honest interchanges, proposals and counter proposals may be very difficult."81

The illegitimacy of this argument has been questioned in previous chapters. The issue will be addressed further in Chapter IV where alternative processes will be described.

D. Critique of the Union Position on Accountability

The union's position on accountability raises several critical

80 AFT Convention Report, 1978, Section 3, p. 64.
issues: (1) whether the public can be expected to support education with no mechanism for ensuring results; (2) whether the collective interests of teachers overshadows the necessity for providing individual teachers with incentives to improve instruction; and (3) whether the request for accountability can be pursued with the mutual interests of the negotiating parties more directed towards improvement in the overall educational system.

The AFT President, David Selden, in 1977, maintained that the taxpayer's revolt arose out of the circumstances of success. That in 1945, only 50 percent of the population attained 12 years of education; in 1975, the figure rose to 83 percent. He argues that in the 19th century, our democratic society decided that education was the responsibility of all citizens, not just those of parents of children in school.

"The education system now includes groups who were not admitted before - those we used to reject - those who weren't white and middle class. We expanded the opportunity for education of other people's children and that is what the budget protest is about ..." 82

Selden's argument is compelling. Indeed, we all support education through taxes. Accountability in the form of according the public some link between resources and outcomes would seem reasonable. The reactive stance of teacher organizations detracts from the problems teachers are experiencing in classrooms. The multiplicity of children's needs, physical, emotional and intellectual, are all exhibited in the classroom. If the proper programs are not available, teachers are expected to cope

with these features of a child's development as well as to provide them with instruction in basic skills.

With social reforms, desegregation, rights for the handicapped and those who speak limited English, school systems were required to provide instruction in these areas. However, the regulations governing programs require an enormous amount of administrative time. Programs overlap which create additional accounting problems for school systems. Educational systems, because of the variation in deadlines for proposal submission, often find coordinating such efforts impossible and, therefore, do not seek the available resources.

School systems could not stop operating in order to plan implementation strategies; therefore, little generic teacher training was offered to accommodate the teachers' need to comprehend the cultural and social differences among children. Teachers were rarely included in planning efforts, but they were expected somehow to provide adequate instruction.

With a barrage of programs to implement, crisis management became the standard method of operation to ensure that all regulations, monitoring, progress reports were written and forwarded to the proper authorities. The actual content of programs was often left to teachers who became frustrated with the lack of support from the administration.

"Teachers come into the field of education with high hopes, but the system kills them. The process of psychic self-protection sets, creating internal defenses necessary to service in the face of continued failure." 83

83 David Selden, "From the President."  American Teacher, Vol. 49, May 1972, 2A.
The necessary psychic self-protection became collective self-protection. The development of which is understandable. Rather than for the school system to accept overall responsibility for the quality of education, the burden was placed on the teacher to perform. Fear of reprisal of individuals led unions to persist in their demands for excluding evaluations, on any basis, from negotiated contracts, and, as enrollments decline, protection for those who have given the most years of service.

The prevalent attitude among school boards is that teachers are employees, and the teacher's insistence on participating in educational policy making through collective bargaining, inhibits management capabilities. School boards, when autonomous, were held accountable only for their effectiveness in allocating resources. Teacher collective bargaining came at a time when demands were made for results-oriented accountability, and the teachers bore the brunt for the dissatisfaction of the public.

What has emerged is public school systems with no mechanism for holding any party accountable for the quality of education. The union is correct in demanding accountability from others, including taxpayers, state legislators and school boards. The critical problem is where to begin the obligatory process. How to encourage responsiveness and cooperation among the parties in the joint formulation of policy changes directed at improvement. In summary, the union's position on accountability has not changed substantially over the past ten years. The development of the position evolved as a defense against having failure in education placed squarely in the laps of teachers. The quest for educational excellence is shortchanged in negotiating for limited resources.
The public's lack of knowledge concerning what occurs at the bargaining table implies a need for a change in the process. The union's argument that the interests of the public are represented by school boards is correct in theory. Contracts emerge but the costs overshadow the content.

The energies of all parties must look toward the mutual interests of providing the public with a mechanism for understanding the difficulties associated with current public educational practices and collective bargaining. The AFT's recognition of the need for standards and individual incentives for performance in education (p. 5, Chapter II, Section A) is the first step in accommodating accountability requests. The union membership, however, cannot be expected to singlehandedly change the current state of public education.
CHAPTER III

COLLECTIVE BARGAINING IN BOSTON: THE CASE IN THE PUBLIC SCHOOLS

A. Setting the Stage for Bargaining

1965 was a year of change for the Boston School System. Not only did the State Legislature pass an act requiring collective bargaining between municipal employers and employees, it also passed the emergency Racial Imbalance Act. The Federal Government in the same year enacted the Elementary and Secondary Education Act (ESEA) providing over $1 billion annually to schools with high concentrations of students from low income families. In the midst of a fiscal crisis in Massachusetts, in Boston it was also the year to elect a new School Committee.

"While Massachusetts citizens have been preoccupied with local election campaigns, a fiscal crisis of unprecedented seriousness has been building on Beacon Hill ... The state operates on a fiscal year starting July 1. Yet today, four months later, there is no budget for the current fiscal year ... Nor has one cent of new taxes been voted to provide urgently needed property tax relief ... to finance the quality education promised to every Massachusetts school child by the legislature itself ..." 84

That same day, the contest between candidates running for the School Committee was highlighted.

"Today Boston gives its answer on how it wants to handle the most explosive issue of the 60's, the racial question ... The School Committee majority

84 Boston Globe, November 2, 1965, Editorial, p. 34.
which has consistently resisted efforts to end racial imbalance through busing and has held firm to the neighborhood school idea, is running against a slate of five candidates sponsored by the citizens for Boston Schools." 85

The Racial Imbalance Act was enacted in response to the "Kiernan Report" released in April. An advisory committee appointed by the Commissioner of Education, Owen B. Kiernan, and the State Department of Education, concluded that racial imbalance was educationally harmful and should be eliminated. 86 The report noted that Boston contained 45 "imbalanced schools," schools with more than 50 percent non-white enrollment. 87 The School Committee response to this allegation was a refusal to acknowledge racial imbalance as a problem that ought to be eliminated. 88

The committee additionally responded by filing a suit with the State Court to have the act declared unconstitutional. The Court, in its findings, stated:

"The Committee seems bent on stifling the Act before it has a fair chance to become fully operative. The objections it makes are numerous and expressed with slight deference. They are 'bluntly' proclaimed as if the Committee could by force of its own words make the burden fall upon the Commonwealth to 'establish a compelling justification' for the legislation." 89

85 Ibid., p. 39.
87 Ibid.
89 227 N.E. 2nd 729 at 733.
Following the School Committee election in November, the Chairwoman, Louise Day Hicks, spoke of her success.

"This victory is yours. It belongs to excellence and good quality of education. I thank you on behalf of the children ... This tonight is a vote of confidence. The people are speaking. We hear just a vocal minority, but tonight through the democratic process we are hearing the majority." 90

The vocal minority Mrs. Hicks referred to had at least produced a 65 percent voter turnout of eligible voters in the black community.

The Executive Secretary of the NAACP, Thomas Atkins, said of the turnout:

"When 64 percent of those eligible to vote in the Negro community get out and vote, this means that the Boston power structure will have to look at the Negro and his demands." 91

Both the Boston Teachers Union (BTU), affiliated with the American Federation of Labor, and the Boston Teachers Alliance, an independent organization, avoided taking a position on the issue of integration. 92

"The Teachers Alliance would not declare itself, primarily because of a sharp split in members attitudes. A small faction in BTU endeavored to fashion a pro-civil rights policy. But the Union as a whole ignored racial imbalance, arguing that the real problem was economic, not racial, and the real need was money from the Mayor, not integration." 93

91 Ibid.
92 Rosenthal, op. cit., p. 166.
93 Ibid.
Those teachers who did voice an opinion in favor of integration were reprimanded for their efforts. Twenty teachers did sign a statement in support of the Kiernan Report.

"Those teachers reported that shortly after the statement was published each was visited and reprimanded by a member of the school administration ... The Boston Teachers Handbook states: 'So long as an official relationship exists ... teachers are not justified in publicly expressing an adverse opinion of school officials'." 94

The dissatisfaction of black parents with the quality of education that black children were receiving had been expressed for some years. In September 1963, the School Committee, in response to black community leaders' charges that less money was being spent on the education of black children, instituted two programs providing $115 extra per pupil for teachers and materials devoted to providing remedial reading and math. In 1965, with funds provided under Title I of the ESEA legislation, the School Department began two additional programs, one giving individualized instruction to students and the other designed to teach English to non-English speaking children.

"Although the general goal of the Title I program is stated in the project proposal, the goal is in turn modified by all subsequent decisions which teachers, supervisors and principals make. It is even difficult to discern what criteria are used by teachers to determine the type of reading program in use. Students rarely are given real diagnostic tests to determine the nature of their reading problems." 95


ESEA funds also stimulated an increase in the number of school and university contacts. However, a subsequent report found that the School Department felt the universities to be ivory towers with no real commitment to the city's problems and the university personnel felt the School Department was too bureaucratic, rigid and defensive.96

In order to understand the special problems of the Boston school system, it is necessary to explain the authority of the School Committee and its relationship to the Mayor, the City Council and the State Legislature with respect to funding.

Unlike the School Committee in New York, for instance, which is appointed by the Mayor, the five member School Committee in Boston is elected at-large biannually. Studies of Boston School Committee election voting patterns have shown that members have been drawn from particular wards with the largest voter turnout. Twelve wards have never had any representatives, many being predominantly black and other minorities.97

Although the School Committee delegated responsibility for the direction of employees to administrators at the central and district levels, the School Committee had retained the right to affirm every personnel decision in the system: promotions, transfers, retirement and leaves of absence.98 After the fashion of most large school systems, teachers in Boston moved up the career ladder to assume positions of principals, assistant superintendent and superintendent. Those who

96 Ibid., p. 148.
98 Cronin, op. cit., p. 165.
moved up in the system tended to emphasize the maintenance of existing priorities and the status quo.

"Everyone knows that it helps to appear at School Committee meetings if one wants a promotion, that it is a good idea to 'go around and get known.'"99

The organization of the Boston school system at the time consisted first of the elected School Committee. There was a Board of Superintendents, consisting of a Superintendent (the chief school administrator), a Deputy Superintendent and Associate Superintendents and a Business Manager. Each member of the Board of Superintendents was in charge of a department. These departments included School Operation, Educational Planning, Personnel, Staff Training and Development. There were Assistant Superintendents in charge at the district level of principals and teachers.

Funding for educational staff and programs in Boston is provided through a complicated statutory process based on the property tax. The tax rate can be increased in order to support additional school appropriations. Any appropriation above that of the preceding year must be recommended to the City Council by the Mayor.100

The Mayor can increase the property tax rate, but the State Legislature is responsible for generating revenue from the imposition of other types of taxes (sales tax, excise tax, etc.). As noted on the first page of this chapter, the State Legislature enacted legislation in support of equal education in 1965 but had failed to pass any new form of tax to enable local school districts to absorb the costs.

99 Schrag, op. cit., p. 70.

100 Acts and Resolves of the General Court of Massachusetts for 1936. Chapter 244, at page 230.
This complicated method of school finance, then, will plague the city and the school system through the historical discussion of teacher collective bargaining.

Collective bargaining for Boston teachers came at a time of civil unrest, and mandates at both State and Federal levels to work towards a more adequate educational system. Additionally, the continuation of past practices were seriously questioned by community groups and the teachers alike. As bargaining has occurred over the past fifteen years, the system has become more complex in order to accommodate more State and Federal requirements governing educational programs. This has necessitated an increase in the central administration, as well as teachers with special training. The Teachers Union and the School Committee have attempted to deal with these problems during negotiations. The complexity and diversity of needs have, I think, led the parties to deal with or emphasize the most resolvable issues, leaving the goals of education behind.

B. Boston Teacher Negotiations: 1965-1980

The following section will trace the collective bargaining process over the past 15 years. The chronology for some years is sparse – what occurred in collective bargaining was given little attention.

Although two teacher organizations had existed for some 20 years, neither organization was overtly enthusiastic about gaining collective bargaining or equivalent negotiating procedures. 101

101 Rosenthal, op. cit., p. 84.
"The President of the Union and the Executive Secretary of the Alliance were accustomed to operating informally and by means of personal negotiations when group interests were at stake. Each year, when the school budget was formulated, the leadership followed formal channels of appeal through testimony before a Salary Adjustment Board and the School Committee. There were those who often contacted the Superintendent and members of the School Committee to make a case through private persuasion." 102

But by 1963, other Massachusetts public employees were pushing for the Mayor and City Council to grant collective bargaining rights. Teachers and their organizations could not ignore the climate for change. Although the School Committee, prior to the passage of legislation, was in the majority opposed to such procedures, in October, 1965, in anticipation of the passage of State legislation, the Committee voted to grant such rights. 103

The representational election was scheduled for November 9, 1965. With the AFT (AF of L) winning elections as bargaining agents in other major cities (New York, Detroit, Cleveland and Philadelphia), the National Education Association stepped in in an attempt to win the affiliation of the Boston Teachers Alliance, then independent of national affiliation. 104

The BTA, however, chose to "win" on its own. The election outcome with two-thirds of eligible teachers voting: BTU, 1,602 votes; BTA, 1,116 votes. 105

102 Ibid., p. 85.
103 Schrag, op cit., p. 84.
104 Rosenthal, op. cit., p. 87.
105 Ibid.
Bargaining began shortly thereafter and the sessions secured slight salary increases for the entering salaries of $5,460.00 and $5,940.00. The maximum for people with a Masters Degree was raised from $8,820.00 to $9,800.00, and for a Bachelors Degree, from $8,340.00 to $9,300.00.\textsuperscript{106}

The union also won agreement in one-third of the schools on a pilot program of duty free lunch periods for teachers and the hiring of teacher aides. The original list of union demands, over 150 in number, included limitations on class size, assignment of guidance counselors to all junior high schools, relief of teachers from clerical duties, the provision of adequate library facilities in all schools, the replacement of antiquated furniture, and the installation of adequate rest room facilities. The major issue, however, was salaries and the other demands were not seriously pressed.\textsuperscript{107}

The year 1966 found the schools in no better shape. The State Department of Education voted to withhold $4 million in state funds due to Boston's refusal to comply with the Racial Imbalance Act. The Mayor regretted this action as he stated it because it would necessitate the imposition of a higher tax rate on the citizens of Boston or a reduction in educational programs.\textsuperscript{108}

The \textit{Boston Herald Advertiser} ran a month-long series of articles about the Boston school system and comparisons with other cities. (See Appendix III) The Boston "Report Card," as the series was called, \textsuperscript{106} Schrag, op. cit., p. 69.\textsuperscript{107} Rosenthal, op. cit., p. 166.\textsuperscript{108} Herald Advertiser, April 13, 1966, p. 1.
reported that the starting salaries for Boston teachers were the highest in the State.¹⁰⁹ (See Appendix IV.)

The inbreeding of teachers was noted because of the running of the Teachers College of the City of Boston by the Public School System. Most graduates of the Secondary Schools in Boston went on to the Teachers College.¹¹⁰ Teachers, off the record, discussed the use of "social" promotions of students:

"If there's a nice looking girl at the back of the room and she doesn't cause any trouble, she'll probably get promoted - even if she isn't quite up to par ... Or if a boy takes care of blackboards and doesn't cause any trouble, he'll probably get by too."¹¹¹

In 1967, teacher negotiations were finalized in March. Again, the teachers gain in salary was reported to put them at the top not only in Massachusetts but in all of New England. Starting salaries for both teachers with Bachelors Degrees and Masters Degrees jumped $500.00 to $6,000.00 and $10,000.00, respectively. The increases would cost $8 million above the preceding years' of $56.8 million - exceeding the statutory limit of $5.2 million (based on tax assessment) and required the approval of the City Council.¹¹² The contract also entitled teachers in the 18 largest elementary schools duty free lunches.¹¹³

¹¹⁰ Herald Advertiser, March 6, 1966, Section 4, p. 1.
¹¹¹ Herald Advertiser, April 13, 1966, p. 21.
¹¹³ Herald Advertiser, March 28, 1967, p. 3.
In 1968, negotiations reached an impasse in February. The major issue was salaries but the union had 150 items to be negotiated. As one School Committee member, Tom Eisenstadt, reported, salary matters take up most of the bargaining time. 114

The School Committee was offering starting salaries of $6,400.00 and $10,500.00. The union had dropped its original demand of $8,300.00 and $11,500.00 to $7,100.00 and $11,300.00. A union official was reported to say:

"I doubt if we'll settle for less than the best in the state ... There is a trend toward raising the minimums because most large urban centers are having trouble" 115

He pointed out that teacher strikes in large centers had helped to win gains of this type 116 (Los Angeles, $6,800.00; New York, $6,750.00; Milwaukee, $6,800.00; Chicago, $7,350.00).

The union was demanding duty free lunches for all teachers and to have 25 Assistant Principals freed from teaching duties and the hiring of 50 teachers to staff special classes, the School Committee held out for 20. A union official estimated that there were between 800--1,000 students in regular classrooms who required special help. The state set the maximum class size at 18, so teachers would cover 800 students. 117

The final agreement which was to cover two years offered an increase for 1968-69 school year of $6,500.00 to $10,700.00, and for 1969-70 school

114Christian Science Monitor, April 5, 1968, p. 5.
116Ibid.
117Christian Science Monitor, April 4, 1968, p. 3.
school year, a range of $7,000.00 to $11,000.00. The 25 Principals were to be released from teaching duties. Duty free lunches for 1968-69 were agreed to by two-thirds of teachers, and all teachers in the following year. A compromise on special teachers was reached at 35. It was reported that agreement on some non-monetary issues had not been reached, in particular a demand for change in the promotional rating system which graded teachers on an elaborate rating scale.118

The tax rate for Boston, due to school costs, would require an increase of $6.86 per $1,000.00 valuation.

"Unlike other cities in Massachusetts, School Committee additions need approval from the Mayor -- the man who bears onus for resulting increases in the city's tax rate." 119

In July 1969, the union was threatening to strike if demands were not met. Louis Vangel, BTU's business agent, said negotiations were bogged down over union demands for increased severence pay, additional staff in elementary grades and more guidance and testing personnel.120

By mid-August, the parties were reported close to agreement on salaries but, as the BTU President John F. Reilly contended, there was a conflict arising because the School Committee refused to consider "innovative educational programs for the children of Boston."121

A strike was averted when agreement

119 Christian Science Monitor, April 4, 1968, p. 3.
120 306 GERR B-10, July 21, 1969.
121 310 GERR B-11, August 18, 1969.
was reached just before Labor Day weekend. The package would cost $1.5 million with salary increases of $500.00 to $1,200.00 and new fringe benefits and severence pay. 122

1970 brought Boston its first teachers strike; a "Professional Day Boycott" was staged on March 24 "to dramatize their demands for higher wages as well as their concern over the deterioration of the schools" as one union official reported. 123

The union demands included a reduction in class size, more full-time nurses, more full-time substitutes to maintain discipline, remedial reading teachers and school psychologists. 124

1970) The School Committee contended that the money was limited. They had received word from the Mayor that he would give $10 million less than the 93.6 million asked for to run the schools. 125

They contended too that what goes to higher salaries cannot be available for educational improvements. 126 One teacher reported:

"It's not fair to ask the teachers to subsidize good education (that's the responsibility of the taxpayers) with low salaries, but it is not unfair to ask them to provide some concrete evidence that they are 'On Strike For Kids'." 127

122 313 GERR B-12, September 8, 1969.
123 342 GERR B-17, March 30, 1970.
124 Ibid.
126 Ibid.
127 Ibid.
A strike was called by a vote of union membership on April 29. The union was reported to be holding out for a salary range of between $8,000.00 and $12,000.00. One hundred and six of the cities and two hundred and one schools were "inoperative." Soon after the work stoppage, the Suffolk Superior Court at the urging of the Labor Relations Commission enjoined the union from striking and imposed fines of $1,000.00 per day against the union, $500.00 per day against the Executive Secretary and the seven officials of the BTU negotiation team. Union President John P. Reilly stated:

"The School Committee has forced us to this position by not making a salary offer or changing its position on any of the union's proposals for educational improvements."  

Suffolk Superior Court Judge Harry Kalne:

"As to the teachers, I say that, however fair and reasonable and just your demands may be, you must consider the plight of the city and its ability to pay."  

The Mayor sent the City Council a school budget for the next year of $81.2 million rather than $93.6 million as the School Committee had requested. According to the School Committee, $81.2 million would cover eight percent raises but none of the demands for educational improvements.

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128 GERR B-5, May 18, 1970.
129 Ibid.
131 Ibid.
which were estimated to cost from $3 to $20 million per year.\textsuperscript{132}

The strike ended on May 20 when the union accepted the School Committee's offer to submit disputed educational and salary issues to binding arbitration. The issues besides salary included permanent appointments for all substitutes, provisional teachers and remedial reading specialists.\textsuperscript{133}

The Arbitration Panel proposed a new contract in August that would cost $3.2 million for the rest of the year and $9.2 million for a full year: salary ranges between $7,000.00 and $12,000.00; 120 reading teacher were to be paid from Title I (ESEA) funds; teachers with 25 years of service would receive a $500.00 Career Award for each subsequent year of service. Substitutes and provisional teachers would receive either permanent appointments or a $500.00 lump sum payment.\textsuperscript{134} The Mayor said there was no money.\textsuperscript{135} The School Committee approved the arbitration pact but Chairman Joseph Lee called the pact's approval "rewarding law-breakers."\textsuperscript{136} BTU officials called the compromise "fair and equitable."\textsuperscript{137}

\textsuperscript{132} Ibid.

\textsuperscript{133} Ibid.

\textsuperscript{134} Ibid.

\textsuperscript{135} GERR B-2, May 25, 1970.

\textsuperscript{136} GERR B-10, August 31, 1970.

\textsuperscript{137} GERR B-10, August 31, 1970, p. 1.

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In 1971, negotiation stalemates led to the appointment of a fact finder to resolve the salary dispute. The fact finder recommended a 6.5 percent increase, to a range of $8,200.00 to $13,800.00. The BTU had wanted a range of $9,500.00 to $15,500.00. The fact finder stated:

"I have not come close to recommending the unions proposed schedule, because I believe the union asked too much for one year, and because I have considered the State's limitation on the city's power to tax." 138

Headlines changes in the November School Committee elections of 1971 - the Teachers Union was the biggest winner. The three committee members given union backing were all elected. The union had revealed it had made available $10,000.00 to buttress equally the three members elected. One winning member had been a Boston teacher and a member of the BTU.139

Little publicity surrounded the contract negotiations in 1972 and 1973. The union in November of 1972 pressed for the right to strike which is outlawed under state statute.140

1973 negotiations were overshadowed by Finance Commission investigations of fund raising activities of School Committee members. At the June hearings, teachers from Boston High School testified that their school supervisor had tried to pressure them to buy and sell testimonial

138 Herald Advertiser, August 5, 1971, p. 4.
140 Herald Advertiser, November 30, 1972, p. 4.
tickets the year before for School Committee member Paul Ellison. The five teachers who testified said the pressure had "destroyed" morale among teachers.\textsuperscript{141} It was reported, too, that their advisor had indicated that if the purchase of tickets was less than generous, Mr. Ellison would use his influence and take an unfavorable stand toward the school. However, when confronted by one of the teachers, Ellison denied that statement.\textsuperscript{142}

The union did receive a 5.5 percent pay increase in November of 1973. It was reported that the School Committee, in approving the increase, defied the Mayor's warning on spending. The School Committee action approved a $4.8 million increase in addition to the $173 million 18-month budget. It also provided an additional $1.4 million for special education teachers - which would still find Boston far short of the requirement governing State Chapter 766 (Special Education) which were to go into effect in September 1974.\textsuperscript{143}

1974 brought special problems to the Boston school system. The School Committee was charged by the Federal District Court in a June Opinion of unconstitutionally fostering and maintaining a segregated public school system.\textsuperscript{144}

\textsuperscript{141}Boston Globe, June 20, 1973, p. 1.
\textsuperscript{142}Ibid.
\textsuperscript{143}527 GERR B-22, October 29, 1973.
\textsuperscript{144}379 Fed. Supp. 410.
The first phase of the plan, given the short time between June and the opening of school, was to involve the "re-districting" plan developed earlier by the State to bring Boston in compliance with the Racial Imbalance Act.

The BTU argued that the reorganization of the school system would be too educationally disruptive.\(^{145}\)

The BTU was particularly concerned about the transfers and reassignment of teachers called for in an effort to desegregate the teaching staff.\(^{146}\) The Court had found that in the school year of 1972-73, of the total 356 black permanent and provisional teachers, 244 were assigned to 59 schools, all of which had a majority of black student majority.\(^{147}\) The Court further argued that the complex provisions in the union contract covering teacher transfers added to the problem.\(^{148}\) The process for filling vacancies in the system were filled first by transfers from within the system based on seniority, black teachers - many as provisionals - had no right to transfer or promotion under the union contract.\(^{149}\)

The Court issued its "Memorandum and Orders on Faculty Recruiting and Hiring" on July 31, 1974, which specified the hiring of one black to one white teacher in the future until a goal of 20 percent had been reached. (At that date, the percentage of black students was 35 percent.)

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146 Ibid., p. 4.  
148 Ibid., p. 456.  
149 Ibid.
The BTU appealed this provision to the 1st Circuit Court on the grounds that that percentage was unrealistic (20 percent based on approximate black population of the city). The BTU suggested a 12 percent quota incorporating the percentage of black college graduates and black college students in Boston. The Appeals Court, however, remained unconvinced that the school system would be unable to find a pool of 20 percent qualified black teachers.

In the midst of implementing the desegregation plan, the union in September accepted a 5.5 percent salary increase. The union additionally reported that it would soon proclaim a procedure for individual teachers to deal with reassignment and discrimination problems. The union accepted that pay increase but submitted the final decision to arbitration. In January 1975, the arbitrator awarded the teachers an additional four percent increase retroactive to September 1, 1974, bringing the total increase to nine percent. The BTU President, John Doherty, reported his "disappointment" with the award as the union had wanted a 20 percent increase with a cost of living clause.

In 1975, the second phase of the desegregation plan came to fruition. On September 22, however, a teacher's strike was called. The issues unresolved at the time negotiations broke down were over pay, extra hours, job security and health and welfare fund payments. The Superior Court issued injunctions and fines against the union as it had

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150 GERR B-18, September 9, 1974.
151 GERR B-16, January 20, 1975.
in 1970. The Federal District Court issued the "Memorandum and Further Order on Plaintiff's Motion in Reduction to Labor Dispute" filed September 23, 1975, the second day of the teachers' strike.

"The BTU strike has caused parent and student confusion and uncertainty as to the safety of attending public schools and doubt as to whether any education will take place during the duration of the strike ... The constitutional rights of the plaintiff case and the public interest of the community in having its schools open are the overriding concerns of this court." 153

The strike lasted one week. The chief of the union negotiating team said there were 1,642 pickets at high schools, 1,131 at middle schools, and 1,430 at the elementary schools. 154 Black teachers, even though in sympathy with union demands, voted to cross the picket lines. The vote, a spokesman reported, was in the interests of black children who would be in school. 155 A member of the union executive board indicated that most black teachers were members of the union and understood the issues. "The vote to cross the picket line only creates confusion." 156

The strike, ending September 29, was to cost the city $13 million. The agreement included a six percent raise for teachers and aides, raising the minimum starting salary from $9,772 to $10,358 a year, and career awards of $200.00 for teachers who had taught more than three years in the system. 157 The teachers agreed to spend two-and-one-half

155 Ibid.
156 Ibid.
157 656 GERR B-15, October 6, 1975.
unpaid working days per month for tutoring, parent conferences and meetings. All permanent and tenured teachers were granted job security. The BTU worked without a contract from August 1976 through August 1977 and had received no pay increase during that time. During July 1977, members of the parent advisory councils, established as a component of the desegregation plan, staged a rally in support of the union's demand to have class size reduced. Teachers distributed leaflets and helped to organize the parent support. When an agreement was finally reached in September 1977, the package provided no provision for class size reduction. Salary increases were accepted in lump sums rather than the usual percentage pay increases and a job security clause protected all permanent and tenured teachers for one year only. The BTU President, Henry Robinson, was quoted as saying:

"No other big city teachers union has that clause (job security) and looking at declining enrollments in this city, the possibility exists that some teachers could be left hanging here if they don't have a contract ... One of the primary complaints is class size ... but this was the best deal we could get at this time without going on strike."

A teacher, however, at the Taft Middle School was reported to say:

"I think it was a big mistake to ratify the contract because the big issue was class size and not money."

The following year in September of 1978, the Boston teachers defied union leadership and voted to accept the offer of a five percent increase

158 Ibid.
159 Interview, Community District Advisory Council staff and past member, April 27, 1981.
161 Ibid.
in salary in each of the next two years. The 17 member executive board of the union voted not to accept the offer. The teacher membership did.

"The President said the vote weakens the union's bargaining position because it undercuts union leadership. He said too few of the union's rank and file are involved in union activities throughout the year, and that these 'once-a-year' people had turned the vote against the leadership."162

The 1980 negotiations brought the ratification of a three-year contract in September 1980. The contract provides a 7.5 percent salary increase for the first and second years and an 8.5 percent increase for the subsequent third year. The contract specifies that when layoffs of teachers occur, and not until 1982, they will be made by seniority. Job security for all tenured teachers is continued until 1982.163

1980 brought the passage of Proposition 2 1/2. The voters in Massachusetts wanted relief from the property tax increases. The provision limits local property taxes to 2.5 percent of the full value of the community's taxable property. Communities where the total tax assessment exceeds 2.5 percent must cut taxes by 15 percent a year until they get down to the 2.5 percent limit. For the education of students in Boston, it may mean almost certainly a reduction in teachers.

The Mayor has told the School Committee that he will limit next year's school budget to $210 million, the same as this year's appropriation. The School Department has already overspent its budget by $30 million.

162778 GERR 18, September 25, 1978.
163884 GERR 24, October 20, 1980.
A mediator has been appointed by the Superior Court to moderate the debates between the City Council, Mayor and the School Committee to find money to keep the schools open in compliance with state attendance requirements. It is reported that holding the budget at $210 million would require the dismissal of 2,200 teachers.164

The expected layoffs have already caused the courts to be called into the battle. The School Committee filed a suit to have the three-year teachers' contract dissolved or require the city to pay for it. The cost would require $15 million to provide the 7.5 percent raises specified in the contract. The BTU filed a counter suit asking the courts to force the School Committee to live up to its contract.165

The State Legislature is embroiled in a battle to come up with a tax package to relieve the fiscal problems created by Proposition 2½. All the while, on one knows from one day to the next if schools will be open. Negotiations are carried out almost daily by city officials, the teachers' union and the School Committee.

The current fiscal crisis in Boston now has plagued the city through each year of the collective bargaining process between the School Committee and the teachers. The public was aware of conflicts only when publicized. Throughout, the salary demands of teachers, no matter how reasonable, were reported and highlighted as one of the direct causes of Boston's financial situation. Because the negotiations

165 Ibid.
by state law are exempt from open meeting, the outcome can only be ascertained from reviews of the final contracts. However, copies of the reviews are not readily accessible. For instance, although by law the State Labor Relations Commission is to have copies of all contracts on file, the Commission has only two: for 1973-74 and 1974-75.166

One major accountability problem, then, is created by the limited access to the final contracts for the public. Other problems will be illustrated in the following section: the Analysis of the Bargaining Process in Boston.

C. The Analysis of the Bargaining Process in Boston

The analysis of the Boston case will be viewed within the context of three key problems created by collective bargaining between the teachers and the School Committee. These problems are: (1) how that process has affected the balance of power; (2) the ability of the negotiating parties to represent their entire constituency; and (3) the community's ability to absorb the costs of the contracts.

BALANCE OF POWER

AFT President Albert Shanker has stated that "Power is taken from someone. Teachers, as one of society's powerless groups, are now starting to take power from supervisors and school boards. This is causing and will continue to cause a realignment of power relationships."167

166 Labor Relations Commission staff, March 15, 1981.

A power imbalance is created through the teacher collective bargaining process in several ways: the personnel practices, the ability of the school committee to hire, fire and evaluate has been limited by teacher contracts and the tenure clause in the statute governing schools; the ability of management and administrators to direct employees during their supervision; and the effect of third-party awards.

The ability of school department management and school administrators to direct employees has been restrained by school committee and teacher union negotiations. The 1980-82 contract provides a no lay-off clause protecting all tenured teachers until 1982. Additionally, the union thwarted efforts to institute a staff performance evaluation procedure.

Teachers in the early days, prior to collective bargaining, were elaborately ranked and tested. The practice was, at some point, modified (the union raised the issue in 1968) and teachers were informally given ratings of satisfactory or unsatisfactory. It is reported that some teachers were displeased because the new system lumped everyone into categories that offered no rewards or incentives to work more successfully.168

A new evaluation was developed during 1980 by the Senior Staff at the School Department. It is both diagnostic and prescriptive in nature, and provides an opportunity for mutual boss/subordinate performance assessment and for the creation of strategies designed to improve performance.169

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168 Interview, past Deputy Superintendent, March 31, 1981.
It is reported that the union chose not to participate in the development of the testing instrument. They chose rather to retain their right to bargain about the test once it was developed. Although the test was to be administered this year to teachers whose last mark was unsatisfactory, the union has filed a grievance which forced the parties to negotiate further.\textsuperscript{170} The union feels the instrument to be too cumbersome and legalistic, and the time required to administer the test properly is unrealistic and might lead to a cursory implementation.\textsuperscript{171} Another source, however, indicates the real issue is that the evaluation allows a teacher to receive a mark of excellence as well as satisfactory or unsatisfactory.\textsuperscript{172}

The attempts to institute state mandated student performance testing has been fraught with similar conflicts. This test, some argue, would definitely detect insufficient instruction on the part of teachers.\textsuperscript{173} The union has again filed a grievance to demand negotiations concerning the implementation of the test. The union's position is that the chosen test is to include a curriculum package for instruction. Pre and post testing is required to ascertain the performance improvements of students. The tests are to be administered by reading teachers and coordinators. The union states that many students had not been instructed with the curriculum required by the instrument. The test was to be administered

\textsuperscript{170} Interview, School Committee negotiator, May 6, 1981.
\textsuperscript{171} Telephone interview, BTU official, May 8, 1981.
\textsuperscript{172} Interview, past Deputy Superintendent, March 31, 1981.
\textsuperscript{173} Ibid.
by regular classroom teachers. Other minimum competency tests have been administered in compliance with the State Mandate.

The current BTU contract includes clauses allowing teacher participation on committees dealing with, to name only a few: curriculum, in-service training, evaluation procedures, teacher transfers, minority recruitment. It is reported that many of the committees exist only on paper. This is reported true at the local school level. The problem, as one principal pointed out, is that many times the provisions are not enforced by the School Committee. Some teachers will not participate or are called upon by the central office in their office of specialization to perform other duties, although the contract specifies that teachers are required to spend 90 minutes per month in tutoring and meeting with parents and students.

Since teachers must be paid time-and-a-half for any meetings held after school, efforts on the part of parents seeking consultation are difficult. One principal holds an open house one day a year which requires allowing the students to be dismissed early. In an attempt to give parents more time to communicate with teachers during the open house last year, the principal decided to allow students to be dismissed at an even earlier time. The teachers filed a grievance based on the fact that past practices had been changed without their sharing in the decision process.

175 Interview, School Committee negotiator, May 6, 1981.
176 Interview, past Deputy Superintendent, March 31, 1981.
177 Ibid.
A final problem is treated by the use of third parties to resolve conflicts. The collective bargaining statute allows for the entrance of a third party when it has been established by the Labor Relations Commission that an impasse has been reached. These methods act to absolve the parties of their responsibility to resolve conflicts. The legal battles that have ensued may take years until final outcomes are decided. The parties cannot be held to account but arbitrators at the present time cannot be held accountable either. The costs incurred as a result of arbitration awards are not as critical as the ability of the parties to pass on responsibility. The 1970 strike was ended by the union's agreeing to submit salaries and other issues to binding arbitration. But when the outcomes of the Arbitration Award were accepted and approved by the School Committee, the Chairman stated the pact was "rewarding lawbreakers." Additionally, City Corporation Councilman, Herb Gleason, was reported to assert that the arbitration effort, which ranged over 38 issues, was not binding on the School Committee.

The School Committee has fought arbitration awards on a number of occasions. In May of 1977, the MLRC ruled that the School Committee had acted unlawfully when it unilaterally adopted residency requirements for employees without first discussing the matter with the union. The Commission stated:

"A decision by the School Committee does not fall outside the scope of bargaining merely because the decision is made with

178364 GERR B-10, August 31, 1970.
179Ibid.
an eye toward the interest of the public in a sound educational system." 180

Later in that year, the Court upheld an arbitrator's award which had found the School Committee in violation of the 1976-78 Contract, Article X, "Handling New Subjects." The School Department in May announced that final examinations would be given to elementary school students. There had been no policy on this subject prior to this time. The issue, as the Court pointed out:

"... was not whether the Committee, in the absence of consultation clause, could unilaterally institute the final exam, a question heavily laden with policy considerations, but merely whether there had been a violation of an agreed to procedure." 181

The Court added that the award did not prohibit the School Committee from eventually instituting the examination.

"While we do not foreclose the possibility that a clause of this nature might in some instances improperly obstruct the freedom of a school committee to promulgate and administer educational policy, nothing in this record suggests that adherence to its minimal bargaining obligation poses any threat to the committee's ability to freely develop policy here." 182

It does not seem unreasonable for the union to have some say in decisions in both these cases, which do affect working conditions. It is argued, though, that obtaining union approval on every policy decision prohibits effectual functions. 183

181389 N.E. 2nd 970 at 975.
182Ibid., at 977.
183Interview, past Deputy Superintendent, March 31, 1981.
The power of decision making is then directly affected by the collective bargaining process. The ability of the School Committee and its administrators to direct and manage employees has been limited by contract clauses. The major issue in bargaining is salaries. The union over the years has demanded improvements in school programs, but during the negotiations, demands for improvements somehow became lost. The parties are not held to account for the manner in which they prioritize demands for improvements.

REPRESENTATION OF INTERESTS AT THE BARGAINING TABLE

The democratic electoral process allows the public to select members of the School Committee at large. Union leaders are elected by a vote of the bargaining unit membership. Each party's ability to represent the interests of all its constituents is sometimes called into question given the outcome of negotiations. These difficulties stem from: the relationship between the elected school committee and the teachers' union as part of the electorate; the school committee's ability to place the interests and needs of parents and students above the demands of the union; and the union's ability to comply with all provisions of the contract if clauses are contradictory: Affirmative Action versus Seniority.

Personnel practices within the school system have allowed a curious situation to arise. Union members are included in the "public" who elect them as officials. The publicity given the successful election of union-supported candidates in the 1971 election and support in the
form of campaign contributions is not a one-time occurrence. The Finance Commission's report of 1975 provided evidence of the amount of money school department personnel had given in ticket purchases to testimonials.

Campaigns are still supported in large amounts from the school personnel. We all have the right to form coalitions in support of those candidates we feel can best represent our interests. We do not have the added advantage, however, of being rewarded for our efforts and support.

The union, after successfully helping to elect favored candidates, then sit at the bargaining table with those same officials in an effort to gain higher salaries and improved working conditions. The possibility of guaranteed votes on particular issues can only be surmised. But, as in 1977 when the union leadership admitted conflicts but would not disclose their nature, this type of secrecy breeds skepticism in the minds of others who have supported the candidates as well.

Perhaps the respective parties take on different roles at the bargaining table. It was reported that Boston negotiations are not exempt from the conflicts that arise. The conflict is reported to ensue because the School Committee maintains that teachers are employees; the union, on the other hand, sees teachers as professionals. Some parents see the School Committee as giving in to the demands of the union.

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\(^{185}\) Wood, 1981, op. cit., p. 34.


\(^{187}\) Interview, school committee negotiator, May 6, 1981.
because of the relationship that exists through the School Committee's retention and preoccupation with personnel decisions.\textsuperscript{188} Whatever the case, maybe the relationship might present a conflict of interest in the bargaining process.

The School Committee is elected to represent the interests of all its constituents, not only those who offer their pledges of support. The School Committee, from 1965 until 1974, refused to accept any comprehensive plan for integration of the public school system.\textsuperscript{189} The committee tried to have the Racial Imbalance Act of 1965 declared unconstitutional.\textsuperscript{190} Their efforts were denied.

The School Committee, as currently elected, raises questions of representation. As noted earlier (p.), the at-large elections have consistently drawn members from certain districts.\textsuperscript{191} Additionally, few members have had a background in educational administration.\textsuperscript{192}

The School Committee members do not participate in the actual negotiations. Prior to the enactment of Chapter 333 of the Acts of 1978, which was to give the Superintendent more decision-making power, the School Committee, through its legal representative to the negotiations, would review demands and give instructions. More as a "ritual," members would show up at the final bargaining meeting.\textsuperscript{193} They stayed out of the process so as to maintain good personal relationships with their

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\textsuperscript{188} Finance Commission Report, 1975; and interview Community District Advisory Council staff, April 28, 1981.
\textsuperscript{189} U. S. Commission on Civil Rights, Washington, D. C., 1975, p. XVI.
\textsuperscript{190} 227 N.E. 2nd 729.
\textsuperscript{191} Wood, 1981, op. cit.
\textsuperscript{192} Ibid.
\textsuperscript{193} Interview, School Committee negotiator, May 6, 1981.
\end{flushleft}
employees.

Chapter 333 provided that the Superintendent would be the Executive Officer of the School Committee:

"No person shall be elected or appointed by the School Committee unless such person shall have been nominated for such ... by the Superintendent."\textsuperscript{195}

The Superintendent, then, became the agent of the School Committee during the subsequent negotiations, though the Committee retained authority for the final decisions.

One incident, not reported in the text thus far, arose concerning past practice issues. Boston's new Skills Training Center, after 18 years of planning, was to open in 1979. The old Boston Trade School was to be closed and, as with the closing of old schools and opening of new schools, staff was transferred on the basis of seniority.\textsuperscript{196} Additionally, lateral transfer rights are outlined in the teacher contract.\textsuperscript{197} The Superintendent and staff argued that the Occupational Resource Center was a unique facility requiring a staff with specialized and the most current skills. The positions were posted and outside candidates were recruited in compliance with the orders of the Federal Court. The screening of candidates provides a mechanism for the community to participate in the process. The process in no way prohibited teachers at the

\textsuperscript{194} Ibid.

\textsuperscript{195} Acts and Resolves of the General Court of Massachusetts, 1978, Chapter 333, p. 230.

\textsuperscript{196} Telephone interview, Deputy Director, Operations Management, BSD, May 7, 1981.

\textsuperscript{197} Contract, Boston School Committee and Boston Teachers Union, Local 66 (AFL-CIO), September 1980–August 1982.
Trade School from presenting their credentials and going through the rating process for positions. The union first argued for past practices of lateral transfer rights under the contract for trade school teachers. The School Department argued that the job descriptions were new and candidates were expected to have added experience in such areas as staff development. The union then argued that the job descriptions merely outlined expanded teaching positions. The Deputy Superintendent for Management Operations was asked to review the qualifications of the teachers in question and found six that appeared not to have necessary credentials. In the meantime, the rating process took place. Only one of the six deemed unqualified chose to be rated. The grievance filed by the union required further negotiations between the School Committee and union officials.¹⁹⁹

The authority for the final decision was ultimately left by law to the School Committee. The Committee "did not bite the bullet" but knuckled under to the union pressure. The School Committee vowed to uphold the contractual obligations outlined in the collective bargaining agreement. Those persons newly hired were replaced by the old Trade School teachers.²⁰⁰ As several parents have reported, "Some students won't enroll in the ORC because they know they won't learn anything."²⁰¹

¹⁹⁸ Phone interview, BTU official, May 8, 1981.
¹⁹⁹ Interview, School Committee negotiator, May 6, 1981, and phone interview, Deputy Director, Operations Management, May 7, 1981.
²⁰⁰ Phone interview, Deputy Director, Operations Management, May 7, 1981.
²⁰¹ Interview, Community District Advisory Council Staff, April 28, 1981.
A dilemma was created by the legal procedural requirements of the collective bargaining agreement and the legal charge vested in the School Committee to provide quality education. The Committee in this case chose to be accountable by holding the contractual agreements.

The issue of class size has been debated during many negotiation sessions. The union encouraged parents in 1977 to support them in their efforts to have the maximum number of students allowed in a classroom reduced. The final agreement excluded changes in class size. Parents were surprised and neither the School Committee nor the union bothered to explain the issue's exclusion. Neither party felt any obligation to parents to justify their actions.

The Teachers' Union, by law, must represent the interests of all those in its bargaining unit. The ability to do this is raised indirectly by the demands for job security in particular, not for all teachers. In order to understand the problems, it is necessary to first discuss the teacher position structure in the school system. Teachers receive tenure after three years of consecutive teaching in the school system. There are permanent teachers, certification from the State Department of Education. Provisional teachers are hired for one year, receive tenure after three years of teaching but they do not automatically become appointed as permanent. Provisional teachers are, then, not accorded the same rights as permanent teachers.

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202 Interview, former staff member, Citywide Parents Advisory Council, April 28, 1981.

203 Acts and Resolves of the General Court of Massachusetts, 1965, Chapter 763, p. 556.
The quest for job security with enrollment declining during the 1970's led the BTU to demand and receive that clause in its 1975 contract settlement for all permanent and tenured teachers. This protected the rights of many of the black teachers hired at the direction of the Federal District Court.

By the 1978 negotiations, teachers on provisional status were excluded from protection of the "excess" procedure regulating seniority and bumping rights. Some argue that this protects the interests of the "traditional and politically dominant components of the union membership."205

"The existence of a separate class of teachers with provisional status provided some assurance to permanent teachers that any lay offs that did occur would not spread into their own ranks."206

The provision in the 1980-82 contract provides job security for all tenured teachers until 1982 and then lay offs only by strict seniority. The current fiscal crunch in Boston may require lay offs of over 2,000 teachers. Lay offs by strict seniority may widen the gap and bring the dilemma of seniority versus affirmative action to a head. The issue then is, can the union leadership protect the rights of all its members.

There are rumblings among BTU members of slates of candidates for Executive Board elections, those members dissatisfied by the policies and procedures established by union leaders and dominated by the predominantly white, permanent teachers.207

204Katz, op. cit., p. 12.
205Ibid.
206Ibid., p. 11.
207Ibid., p. 13.
Precedents have already been set for resolving the dilemma of protecting rights by seniority and affirmative action specified in contract clauses. The decision of the U. S. Court of Appeals for the 6th Circuit which was decided March 3, 1981, upheld an affirmative action consent decree over state law concerning lay offs by seniority and the collective bargaining agreement. A consent decree was signed by the parties and approved by the court in November 1974. The city Fire Division in the decree made a commitment to affirmative action and a minority recruitment program so that within five years "the ratio of minority employees within the Fire Division reasonably reflects the ratio of each minority group to the total population of the City of Toledo."

In 1973, the percentage of blacks and minorities was 16 percent. By 1980, the Fire Division included 7.34 percent black and 1.33 percent minority employees. In 1980, a fiscal crisis struck Toledo. The City Manager ordered a seven percent budget reduction in firefighters with lay offs by seniority which would decrease the percentage of black employees to 5.48 percent and hispanics to .78 percent. Plaintiffs filed a motion in the district court to enjoin the lay off of minority firefighters. The defendants appealed. The Appeals Court felt the consent decree to be a commitment of the city to promote integration.

The union as intervenors and the city argued that the district court's order contravened Ohio law (governing lay offs) and the terms of the collective bargaining with the city.

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"A Federal Court's power under the Supremacy Clause to override conflicting state laws and/or private agreements is well established...

The record reveals the long, tortuous path which minorities have had to tread to achieve equality in Toledo...

In 1974 when the consent decree was entered in this case, it looked like final justice had been achieved. Unfortunately, the appeal demonstrates that there is still a long way to go."208

Representational issues arise on both sides of the bargaining table. The difficulties associates with School Committee representation will require resolution by statutory change. The Courts will have the final say concerning the dilemmas assessed and presented by conflicting statutory and contract provisions.

FISCAL STABILITY

The budgetary decision making process in Boston is complicated by the State Legislature, and the continuing reliance on the property tax to fund the major portion of public services.

The 1936 statute governing spending for schools in Boston separates costs for construction and furnishing of new schools, alterations and repairs, fixtures and all other costs. Nothing prevents the Mayor, on request of the School Committee, from recommending, and the City Council from passing, additional appropriations for school purposes. Section 3 states:

"The votes of the School Committee of said city making appropriations as aforesaid shall have the same force and effects as

orders or votes of the City Council thereof appropriating, ... subject to the same provisions of law in respect to approval by the Mayor, except that a vote of four-fifths of all the members of the School Committee, ... shall be necessary to pass such appropriations over the veto of the Mayor." 209

The School Committee, then, has veto power over the Mayor's objection to increases in appropriations, subject to City Council approval. The power to tax and raise revenues in support of increased educational costs, other than the property tax, rests with the State Legislature. The State Board of Education acts as the legislative arm for educational mandates. 210

The School Committee is delegated the "charge" of its local school district by the State Board of Education. The elected School Committee is not paid for its service in the form of a salary. Each member has paid assistants.

This variety of factors in the budgetary process, holding varying roles, authorities and responsibilities, disburses the issue of accountability. With the statutory addition of collective bargaining, a new power base was established which further disbursed the public's ability to hold persons accountable. It seems unfair to ask only the parties to the collective bargaining process to look at their impact on fiscal stability. It should rest with all elected local and state officials first. Almost every year since bargaining began, there are cries that the city has no money, but each year additional appropriations are

209 Acts and Resolves of the General Court of Massachusetts, 1936, Chapter 224, p. 206.

210 Myers, op. cit., p. 75.
approved. Collective bargaining agreements were reached prior to budget decisions only through 1968. Each year since that time, although the statute suggests bargaining prior to the budget process, agreements are not reached until the school year has begun. It is reported that the threat of strikes are more useful to the union either just before school opens or while school is in session.211

A willingness of a community to pay for public services without some process of accounting is, in Boston, illustrated by the vote of the electorate on Proposition 2½. The cities' response was to cut direct services while the State Legislature developed an alternative tax package to help absorb expenditures historically paid for by property tax increases.

The key issue is not whether providers of public services deserve annual wage increases, but whether the salaries can, in some way, be tied to client need and service quality. The difficulties surrounding the development of such measures has been noted. The burden of costs cannot be seen totally as the result of public employee union's collective bargaining. Others in the process have the authority to pursue alternative methods of generating revenues. If those with authority under current statutes are unable to effectively be held to account for their part in solving fiscal problems, perhaps the only answer is statutory change; however, attempts to limit the power of the various actors has been met with political displeasure. Conflicts between the Mayor and

211 Interview, School Committee negotiator, May 6, 1981.
the School Committee continue to make efforts at mutual problem resolution most difficult.212 Conflicts between the Mayor and the City Council only add fuel to the fire. The burden of conflict most directly affects the public. Administrators, parents and students do not know from one day to the next whether schools will be open.

The fiscal implications point to the fact that no party is currently held accountable for their actions. The public is kept abreast of the progress of negotiations through the sensationalized reports presented by the media. The issue of accountability is sheltered by the complexities of statutes governing the degree of authority held by various actors. The problem may be resolved only through legislative change, enabling the public to at least be capable of determining where the authority for decisions lies.

212 Phone conversation, Mayor's Office, Public Relations Staff, May 6, 1981.
CHAPTER IV
ALTERNATIVES TO THE CURRENT COLLECTIVE BARGAINING
APPROACH IN THE FIELD OF EDUCATION

A. Introduction

Thus far, I have discussed the difficulties associated with unionization and collective bargaining generally in the public sector, and particularly in the field of public education. The general public clearly has a stake in the outcome of the negotiated decisions yet there is a lack of agreement on just what role the public can play in the collective bargaining process.

In the field of education, parents deserve to participate in all aspects of collective bargaining that affect the quality of their children's education.

"If special interest groups (parents) have no persuasive legal or moral claim to participate directly in the bargaining process, they nevertheless may have a strong and legitimate interest in outcomes of bargaining. Their children will be educated under a system of employment relations established by collective bargaining agreements."214

Four alternative approaches are currently used to ensure participation of parents in the bargaining affecting the quality of public education: open public practices; multi-level bargaining; the use of ombudsman; and multi-party bargaining. These vary, first, by the degree of participation


214 Tim Bornstein as cited in 879 GERR 21, September 15, 1980.

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extended to persons other than the parties directly involved; second, by the phase of bargaining (pre, during, post) which during participation or access is allowed; and third, according to the extent of accountability to the public at large.

B. Description of the Four Approaches

Although union and school board representatives may meet and confer about specific issues throughout the school year, there are three critical phases in negotiations leading to the ratification of a written contract. The first is the pre-bargaining phase during which the parties present their proposals or demands. The union may present demands to which the school board reacts or the board may present counter proposals. (The number of demands depends in part on the limits placed on the scope of bargainable issues by the relevant state statutes.) The second phase encompasses actual negotiations. The party representatives begin by conceding certain issues and narrowing the agenda to critical demands. The final phase entails proposed contract ratification and approval by the school committee and union membership. Each phase involves the consideration of a great deal of information. Not all the alternative approaches allow full disclosure of this information.

Although none of the four alternative approaches would seem, by itself, to help ensure better accountability of the parties, they do provide components that, with modification, could alleviate some of the problems associated with the current collective bargaining approach.
1. OPEN PUBLIC PRACTICES

Public scrutiny of the bargaining process is allowed during different phases of the process in different states. In Wisconsin, the District of Columbia and California, the unions and school boards are required to present their initial proposals to the public but the negotiations are closed. The Florida statute requires the actual bargaining sessions to be open to the public. Kansas also mandates that every meeting, conference and discussion during negotiations (except those involving mediation and fact finding) is subject to the open meeting laws. The Idaho statute does not provide for actual open sessions but requires that an accurate record of the negotiation proceedings be kept and made available for public inspection. Both Idaho and Alaska require that joint ratification of the final settlement be made in open session.215

These open meeting practices fall under the heading of "Sunshine Laws" which began to emerge in the 1970's in response to the public's demands for inclusion in the bargaining process.

The strengths and weaknesses of the public approach are most clearly illustrated by the process in Florida where its application of an existing sunshine law to the collective bargaining process has been the subject of controversy since enactment in 1974. Both the school board and the union have noted a number of drawbacks, but each feels that the open process possesses strengths that can be used to their advantage. The

union sees it as a way of "forcing recalcitrant employers into the embarrassing position of defending management policies and philosophies which have not changed since 1900."[216]

The Executive Director of the Florida school board states that open meeting requirements aid management because union proposals including "typical boiler plate demands written in their national offices," show the public that "few if any demands refer to children or education." (GERR 685:B-27) The media in early years was reported to highlight the differences of the parties. Negotiators were reported to act more like politicians, engaging in rhetoric for its effect on the observer.[217]

Additionally, constituents might mistake accommodations for weaknesses.[218]

By 1978, these weaknesses in the process in Florida were reported to have been overcome. The "showy aspects of earlier years are a thing of the past."[219]

In summary, open negotiations allow the public to view the actual negotiation process, and forces the parties to justify their demands and concessions. However, the public is merely an observer and has no means


[218]Ibid., p. 344.

of presenting their positions on the issues.

2. MULTILEVEL BARGAINING

Multilevel bargaining is often used in industrial labor relations. Business and union leaders negotiate a master contract centrally that covers only those issues that are "national" in scope. Normally this covers basic economic issues, that is, wages and fringe benefits. Issues that are either company or plant specific are left to decentralized bargaining. Such an approach might be applied to urban school districts which are large enough to decentralize by district or individual school. Issues affecting specific areas of the city or individual schools would be negotiated at the decentralized level.

A limited experiment of this sort occurred in Newark, NJ. In the Spring of 1974, the teachers' union and a small group of parents from one school successfully negotiated a formal supplementary agreement regarding the implementation of a federal program. When first presented to the Board of Education, the agreement was opposed on the grounds that the independent agreement was an attack on the board's authority. It was later ratified.

The strength of this approach would rely on the ability of the school board to delegate authority to district and local school personnel. One strength would be the requirement of local contracts tailored to

\[\text{220}^{220}\text{Kochan, op. cit., p. 105.}\]

fit local needs. This approach would allow the community to help determine the best method of allocating resources for educational instruction.

The weaknesses are inherent in the organizational structure of both centralized school operations and collective union objectives. A disbursement of decision-making authority to local districts would make administration of the overall management of the system more difficult, particularly with respect to federal and state-assisted programs which require coordination at the central level.

From the union perspective, this approach weakens the power of the union as it encourages fragmentation and an identification with the local community rather than with the central union leadership. \(^{222}\)

On the other hand, it would give recognition to the fact that there are differences in school needs, particularly where a variety of different programs are conducted.

In short, the multilevel approach requires modifications in the overall structure of a school system. This may create management difficulties at the central level. It would, however, allow the community to participate in the determination of local school needs.

3. THE OMBUDSMAN APPROACH

Ombudsmen are usually appointed to let the "little guy" cut through the "red tape" of large organizations. Usually, Ombudsmen spend their time finding out how to get something done, or working to get satisfaction

\(^{222}\) Yeakey & Johnston, op. cit., p. 354-355.
An Ombudsman can also increase the representation of the consuming public in the administrative process.

"Too often, standards developed to guide public servants if they exist are often unpublicized or even unavailable to the citizen. Greater clarification, disclosure and dissemination of information concerning substantive and procedural policies and internal organization in a manner digestible by the public should be accomplished."224

In the field of education, it has been suggested by Cheng that an Ombudsman might serve as "the protector of the Public Interest" - the independent protector of students and those groups now largely unrepresented in policy making and collective bargaining.225

An Ombudsman approach is in use in a modified form in Rochester, NY. Parent leaders suggested six names to the Superintendent of Schools who then chose one parent to serve on the School Board's negotiating team. The chosen representative is responsible for informing the public about the positions taken by the board and the union. Other parent representatives also participate; they work with the School Board as it prepares its bargaining position. Workshops are held by the School Board prior to the selection of parent representatives to acquaint them with the bargaining process.


225 Cheng (1974), op. cit., p. 34.
The strength in this approach is that it allows a parent to actually be a party to the negotiations and ensures that the school board takes into consideration the interests of parents. It increases the dialogue between parent and district administrators as well.

The weakness in this approach is that it is reported to create more tension between the union and school board negotiation teams. The parent representative to the school board team reported the union was in opposition to the submission of parent proposals for review. The reaction was exacerbated by the content of the proposals which called for a commitment on the part of teachers to parent participation and the establishment of a joint committee to study the feasibility of parent input into teacher evaluations. This caused a defensive stance to be taken by the union.226 With a parent as a member of the school board negotiating team, the parents are immediately viewed as being at odds with the union.

In summary, the Ombudsman approach in theory would allow the concerns of parents to be raised during the negotiations. As practiced, it creates a wider gap between mutual interests of the school board and union.

4. MULTI-PARTY BARGAINING

Multi-party bargaining involves the participation of a third party in the typical union management negotiation process. Although multi-party bargaining has not yet been tried at the primary or secondary school level, Oregon and Montana have passed statutes calling for student

participation in bargaining at the college level. In addition, students have been included in formal negotiations at three Massachusetts State Colleges. In both instances, student representatives were involved only on issues of immediate concern to students.

The strength of the multi-party approach lies in its acceptance of the legitimacy of public involvement in educational policy making. It would provide a mechanism for ensuring local concerns were being at least considered in negotiations.

The weakness of limiting access to a representative of parents will not ensure the interests of students whose parents are not directly involved in the participatory process and may not be heard. Critics of this approach note the delays that might occur given an increase in the number of positions that must be negotiated and resolved. Briefly, then, the multi-level approach is most controversial. It changes the power structure of the negotiating parties, recognizes the legitimacy of public participation but requires a commitment on the part of the union and the school board to judge parents as having an equal share in the decisions that affect their children's education.

C. Do The Alternative Approaches Improve Accountability?

In order to ensure accountability in public sector negotiations, the public must be informed about the negotiation process. The public must also be kept abreast of specific proposals put forward by labor and management and their justifications; the rights of all parties must be clear along with the availability of methods of holding each party to its agreement; an accountable system of negotiation will take into
consideration a city's ability to pay when demands are formulated. Any
reference to a performance-based approach to service evaluation should be made explicit.

These are the criteria that ought to be used in evaluating the prospect of ensuring accountability under any system of public sector bargaining.

1. OPEN PUBLIC PRACTICE

Open pre-bargaining practices allow the public to scrutinize the positions of each party and may allow the public to assess the justifications put forward by both parties. To ensure accountability, the public must be able to review past contracts, given access to the needs assessments for the schools, and must be accorded a reasonable period of time to review the proposals and justifications prior to the public session. It would also be desirable if workshops for interested persons were held to explain the bargaining procedures in use. Union representatives might meet with parents on a district basis to provide further clarification of the union's position.

At the pre-bargaining stage, accountability can be ensured only if the public is "educated" about the complexity of the process, allowed to ask for justification of demands and be given the right to respond. Also, at the pre-bargaining stage, the public would be able to determine the agreed-upon rights and responsibilities of the parties. This would give parents an indication of who in the system was managing the implementation of the system. Not unless responsibilities for the implementation
of contract provisions were specified in the final agreement could the public hold the assigned parties accountable.

One Florida negotiator suggested that, while an open process might ensure public accountability, it certainly did not ensure better bargaining. However, open negotiations provide no true mechanism for public participation. Parents are given only observer status. Assurance can be given that any concessions made by either party are understood. The delegation of authority for implementation may be surmised through the discourse between parties. Access at this stage provides no mechanism for educating the public in understanding the basis for concessions.

The post-bargaining phase is probably the least open to accountability since agreements have already been made by the parties.

2. MULTILEVEL BARGAINING

Allowing for the different needs of local school districts, and allowing bargaining at a decentralized level could give the public, as parents, a sense of having some control over the programs and schools their children attend. However, the main portion of the budget allocation decisions, and whether they are in some way related to outcomes, would still be made behind closed doors without the knowledge of how those decisions were made. Besides fragmenting the union membership, as noted previously, it would also perhaps fractionalize the public, thus raising a plethora of competing proposals to meet the needs of particular schools within each district.

227685 GERR B-27.
Clearly, the parties should be required to establish district priorities based on assessed needs. The parties would mutually agree upon the allocation each school would receive. This would also necessitate the school board delegating authority to the parties for the final allocation decisions.

3. THE OMBUDSMAN APPROACH

The Ombudsman approach provides a mechanism for having public concerns brought to the attention of the negotiating parties. The Ombudsman, however, might be accorded no more than advisory status. This approach, in terms of holding parties accountable, seems rather ineffective. Until parents were organized, the Ombudsman might receive an enormous number of specific complaints from individual parents. Presenting these to the negotiating parties in a summary fashion might overlook critical issues.

4. MULTI-PARTY BARGAINING

The multi-party approach, in theory, would grant the public the greatest capacity for ensuring accountability. A requirement for participation by all whose decisions affect the provision of service. It would call for participation by representatives of the state, officials authorized to generate resources, other public officials whose decision making authority affects the budget of services, the traditional parties to the negotiations and the interested public.

This approach would allow the rights and responsibility to be explicitly established. It would offer a forum for clarification of positions where misunderstandings alone might be the cause of conflict.
To summarize, then, no approach discussed individually ensures that the criteria for better accountability are met. Additionally, each approach presents implementation problems which will be discussed in the following section.

D. Implementation Problems

As noted, no one of the four alternatives discussed is sufficient to ensure accountability. Public participation can either be extended voluntarily or by state statute. Unfortunately, attempts on the part of school boards to voluntarily allow third party participation does not afford the additional party the power to enforce its recommendations.

In Philadelphia, for instance, the school board allowed parent representatives to sit on its negotiating team. After the first bargaining session, the parents requested third party status because the positions held by board negotiators were in conflict with those of the parents. The board refused to grant independent status and did not extend invitations to subsequent sessions. 228

In Detroit in 1974, the community was offered only indirect involvement in an effort to prevent a conflict similar to that in Philadelphia. 229

The plan provided for two representatives in each of the eight districts to meet periodically with a representative of the superintendent's office to discuss issues and the process of negotiations. There was no direct access to the bargaining table, and the chance to understand the union's position was limited. 230

228 Cheng (1976), op. cit., p. 115.
229 Ibid.
The Ombudsman, multilevel and multi-party approach imply a voluntary joint commitment on the part of the school board and the union to consider the interests of those affected by the negotiated agreements. The parties, too, might recognize that it is in their joint self-interest to educate the public about the process.

The first consideration for implementation is the process for determining who will represent the public and whether the third party will be independent of the school board's negotiating team. Some argue that since the public is represented by the school board, inclusion on the board's negotiating team is appropriate since school board members rarely participate in the actual process. Others argue that this practice widens the gap between the two groups that most directly affect the learning experience of children – the teachers and parents.

The modified Ombudsman approach used in Rochester, as noted earlier, documents the latter argument and difficulties encountered between the union and parent representatives.

The Rochester case serves to illustrate a necessary positive factor for success. That is, the character of the school board chief negotiator. In this case, the person met with parent leaders to present both the board and union position and willingly explained further any points that the parents found to be unclear. Attitudes, then, on the part of all participants are critical to the success of any approach.

231 Ibid., p. 358.
232 Ibid., p. 354.
Mandated open public practices exhibit additional implementation difficulties for the pre-bargaining phase. The experience in California suggests necessary safeguards. The California Teachers Association felt only initial proposals, not counter proposals, had to be made available to the public. Thus, the definition of "disclosable information" must be made clear.

In Berkeley, a Citizens Advisory Committee established by the Board of Education found that without professional staff or consultants, the committee had difficulty interpreting budgetary information and developing alternative cost proposals. Thus, if a school board allows even advisory participation, the board must be willing to provide initial staff support until the committee becomes familiar with various aspects of proposal costs.

The open negotiation process in Florida points up more information problems. Parents, acting as observers, were given no training or information concerning the process prior to negotiation sessions. The sessions were often long and carried out for many days in succession. Parents lost interest in viewing a procedure they did not understand. Over the past several years, parent organizations have felt workshops across the state would help parents comprehend the process. \(^{233}\)

Implementation problems are inherent in all approaches described. Both voluntary and mandated techniques display problems with selecting

\(^{233}\)Doherty (1979), op. cit., p. 42.
representatives, acquiring necessary information, receiving professional assistance to better understand the process and having the rights of the representatives afforded respect by the traditional parties to the negotiations.
A. Introduction

The current collective bargaining practices in public education offer little opportunity for the public to hold the parties accountable for the decisions made during negotiations. Public concern for education takes a variety of forms. There are constituencies within a community whose primary concern is cost effectiveness; taxpayers without children attending public schools. The business interests within a community would be concerned with the salable skills provided through public education. There are other constituencies who regard specific types of educational programs as the major goal of education: programs for students with special needs, bilingual instruction, and vocational skills.

Within the school system the interests to be represented are equally as diverse. Central management is interested in maintaining an ability to direct employees in the delivery of service. Local and district administrators view their interests in light of the daily operations of schools. Teachers' interests include improving the instruction environment for students as well as for themselves, job protection, and increasing their share in educational policy decision making.

Thus, the multiplicity of interests of constituencies must be considered when developing a more accountable system of collective bargaining. There are four themes that can be extracted from the problems
illustrated in the preceding chapters. The questions in point concern: (1) management rights and responsibilities; (2) an appropriate definition of need; (3) performance measures and standards; and (4) budget/cost constraints. A more accountable system must address each point in terms of whose interests are to be taken into account, who establishes definitions, and how to incorporate and protect constituency interests in the bargaining practices. The following section will describe how this might be achieved.

B. A More Accountable System For Negotiation

1. Management Rights and Responsibilities

The present system of negotiation places the major authority for decisions affecting management rights in the hands of a lay school board. The school board concern is primarily directed toward keeping the costs of education at a reasonable level. In order to lower or maintain costs, non-economic issues, including management rights have been negotiated for and often traded away.

A more accountable system would demand that those who manage participate in actual negotiations. The authority for negotiated decisions concerning management rights - to hire and fire - and responsibilities - to ensure efficiency - must be placed in the hands of the top system administrator. Other system management personnel interests - department heads, district superintendents and local school administrators - must be represented at the table by the chief administrator.

Currently, administrators take little, if any, part in negotiations. They are sidestepped by both union representatives and the school board.
A more accountable system would allow local administrators to negotiate with teachers over issues that affect the daily school functions since each school may possess different program emphasis. Or it might be best to perform negotiations at a district level among staff and teachers at the elementary, middle and high school levels.

A most accountable system would then allow managers to participate in the determination of teacher negotiations that currently hinder administrators' ability to direct employees.

Personnel decisions, for instance, might best be negotiated at a central level. The chief administrator present at the bargaining table would need to demonstrate that all levels of management were in agreement concerning procedures to be followed in personnel matters. This would require a series of sessions among intraorganizational management components.

2. An Appropriate Definition Of Need

The current system of bargaining defines needs most noticeably in terms of costs on the part of the school board and job protection on the part of teachers. A more accountable system would expand bargaining to include those constituencies currently excluded from the bargaining process.

There are four distinct categories under which identified constituencies might fall, (1) management, (2) teachers, (3) parents, and (4) non-parents. As noted earlier, management would be represented at the table by the top system administrator; teachers by their elected leadership;
parents by a representative chosen by organized parent groups by category of concern. Non-parent groups - taxpayers - should technically be represented by a member of a city council or the mayor. However a public official definition of educational need may be limited. A more accountable system might provide for ad-hoc committees selected by community groups to represent the interests of business, municipal finance and perhaps others concerned with specific types of educational programs: bilingual, special needs and vocational education.

A more accountable system would allow negotiations to be carried out at various levels within the system. The "down-up" approach would provide a mechanism for bargaining at the local level about specific issues. The difficulties associated with a multi-level approach will be discussed in the following sections. Nonetheless, students' needs should be more easily recognized at a local level. Issues left to the central level would still require that the selected representative at the table demonstrate that all interests of a particular constituency were considered. This guarantee might come in the form of a signed agreement of objectives by all persons included in the secondary bargaining structure.

A more accountable system would require the use of third party neutrals to facilitate conflict resolution and ensure that the bargaining focus is centered on specified objectives. A selected mediator would be required to possess skills in dispute resolutions, a knowledge of education and a stature and community respect that promotes trust.

Needs, then, are various and cannot be singularly defined. Accountability would require that the needs be defined by each group with specific
interests and then guaranteed representation at the bargaining table.

3. Performance Measures And Standards

Current bargaining practices allow the issue of performance to be considered secondarily. The establishment of standards and measures for all system personnel would imply a joint understanding of system objectives. The exclusion of standards offers no mechanism for comparing performance or offering incentives for improvement.

A most accountable system would demand the development of performance measures for teachers by service providers in conjunction with department heads responsible for specific programs, with the intent being diagnostic and prescriptive rather than preserved as castigatory. Management standards can only be developed along with an explicit delegation of authority to administrators for carrying out their specified responsibilities. These standards, as well, should be jointly determined.

Student performance standards should also be established. A more accountable system would be required to somehow tie costs to performance with overtime salary increases based on improvement of teaching skills and student achievement. Performance measures must be multiple and chosen for their ability to compliment one another and present a comprehensive picture of student and teacher needs.

Measures might be best developed at a central level, however, the interests of those who must administer the evaluations must be given consideration. Again, multi-level discussions would facilitate the process of determining the feasibility and practicality of suggested measures.
4. Budget/Cost Constraints

The concerns of the public over cost efficiency are most vocal during times of economic contractions. Once performance standards and measures are in place, the costs of education can be monitored to ensure cost efficiency.

As noted earlier, one party to the bargaining would be a representative of a non-parent ad-hoc committee on municipal finance. This party to the negotiation would assess educational costs additionally in light of the impact on other services.

A more accountable bargaining system would require parties to offer justifications for costs in light of expected benefits in the improvement of educational quality. This would be possible through the use of technical assistance during the negotiation process by educational cost experts and department of education personnel who might provide comparative information by which to gauge cost demand reasonability.

Finally, a more accountable system would require that negotiated agreements be ratified prior to a community's annual budgetary determination. This would require that parties prior to any negotiating be provided with some idea of how much of an increase in costs the community is willing to absorb. These interests would be protected at the bargaining table by the non-parent public representative.

A most accountable system then would allow representation at the bargaining table of interests directly affected by negotiations by quality of service along with those parties concerned with cost efficiency.
The system would demand that management accept responsibility for protecting administrative rights. It would require the joint establishment of standards and performance measures that would tie costs to improved achievement. The most accountable system would require definitions of need to evolve from the bottom-up in terms of educational priorities, but additionally the needs of those indirectly affected would be represented at the bargaining table. The use of knowledgeable third-party neutrals at all levels would serve to insure a proper weighing of priorities and to sharpen party objectives.

C. Issues For Further Consideration

Any new approach to bargaining that ensures better accountability for decisions requires consideration of a number of issues that present recognized dilemmas for implementation. These dilemmas which must be reconciled include: the definition of the public interest; (2) the determination of issues appropriate for centralized vs. decentralized decision-making; and (3) handling the multiplicity of performance objectives.

1. The Public Interest

The representation of all interests affected by negotiations is no easy task. Even with the expansion of bargainers at the table, the possibility of ignoring some constituency is likely. A more open bargaining process would provide information to the community and perhaps would allow interests not represented to be recognized. Community agencies could be designated to disseminate information to the public as well as to provide channels of communication for voicing concerns over
particular programs.

The selection of representatives to protect constituent interests is complicated by an approach that allows multi-level bargaining. Choosing a person respected and trusted by all members of a bargaining unit whether at the local or central level would require safeguards and guarantees that all interests are recognized. A signed statement between parties could be secured on issues of agreement, while the use of third-party neutrals would help ensure a balance of power among parties in the resolution of issues more in conflict.

2. Centralization v. Decentralization

The major concern to be addressed is how to determine in multi-level bargaining what issues are best left to central level negotiations. Totally decentralized bargaining could provide a specified percentage of a school budget to each district dependent on the number of schools. The problem with this approach is one of ensuring equity. Some districts and local schools may be in need of more improvements than others. Teachers may possess more power in having demands met. If the power relationships among parties are unequal, mutually acceptable agreement is unlikely to emerge.

The decision to include bargainable issues at specific levels should then consider the effect it will have on the ability of administrators to efficiently manage the system, whether the process at the specified level will enhance or erode the relationship of the parties, and whether decentralization will allow equitable decision making. Again the use of third-party neutrals would help to ensure equality in the balance of power.
exercised by the parties.

3. Performance Objectives

The nature of public education has changed over the past few decades. The emphasis while once on socialization and developing basic skills, has been modified with advancement in diagnostic testing of learning disabilities and other technological techniques for the improvement of learning skills. There is little agreement over what an overall public education system should provide. The variety of programs required by state and federal mandates causes fractionization among educational personnel.

A most accountable system of bargaining allows public concerns beyond basic skills to be addressed. Performance objectives should include leadership skills, enhancing student self-perceptions and the perceptions of the efficacy of education. Modifying objectives can only be achieved through providing mechanisms for reviewing objectives and coordinating decision making in light of the re-evaluation, by multi-level discussions. As mentioned earlier, ad hoc committees could be established to represent interests by type of educational program - this would provide a forum for discussion by parents, department heads, advocacy agency representatives and specialized staff that could then be taken to the bargaining table. If interests are categorized in terms of content and requirements for specific program areas - the needs and objectives associated with each can be addressed more explicitly.

D. Conclusions

A new approach to bargaining in public education will entail time, patience and a community commitment to enhancing the current perceptions
about public educational systems. A most accountable system for negotiated decisions may necessitate changes in legislation concerning funding for education, the role the state plays in providing assistance to local educational agencies for state mandated programs and modifications to bargaining statutes to modify authority structures.

Any new approach that provides a mechanism for ensuring accountability must allow the interests of all constituencies to be recognized and must establish procedures for equitably allocating resources.

The determination of whether the process should be open to public session should be contingent on the degree to which a new approach represents the interests of all concerned with the quality and costs of public education.
APPENDIX I

Myers: p. 45

<table>
<thead>
<tr>
<th></th>
<th>1965-66</th>
<th>1971-72</th>
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<tr>
<td>Beginning Teachers</td>
<td>$4,928</td>
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<tr>
<td>Engineering</td>
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<td>Accounting</td>
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<td>$10,080</td>
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<td>$9,216</td>
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Source: NEA Research Bulletin XLIX (October 1971), Research Division, NEA, p. 75.
## State Collective Bargaining Laws

### Coverage

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<tr>
<td>(2)</td>
<td>&quot;All&quot; employees, separate laws</td>
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<tr>
<td>(3)</td>
<td>Some employees covered:</td>
</tr>
<tr>
<td></td>
<td>Teachers</td>
</tr>
<tr>
<td></td>
<td>Police and Fire</td>
</tr>
<tr>
<td></td>
<td>Fire</td>
</tr>
<tr>
<td></td>
<td>All but state civil service</td>
</tr>
<tr>
<td></td>
<td>Local employees &amp; teachers</td>
</tr>
<tr>
<td></td>
<td>Fire and teachers</td>
</tr>
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<tr>
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<tr>
<td>(5)</td>
<td>Employees covered by separate laws (even if other employees covered by other laws):</td>
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<tr>
<td></td>
<td>Teachers</td>
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<tr>
<td></td>
<td>Police and Fire</td>
</tr>
<tr>
<td></td>
<td>Fire</td>
</tr>
<tr>
<td></td>
<td>State Service</td>
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### States

- **(2) "All" employees, separate laws**: Alaska, California, Connecticut, Delaware, Kansas, Maine, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin.
- **(3) Some employees covered:**
  - Teachers |
  - Police and Fire |
  - Fire |
  - All but state civil service |
  - Local employees & teachers |
  - Fire and teachers |
  - Local employees & police |
  - Indiana and Maryland. |
  - Kentucky, Oklahoma and Texas. |
  - Alabama#, Georgia#, and Wyoming. |
  - Nevada |
  - Idaho |
  - Missouri |
- **(5) Employees covered by separate laws (even if other employees covered by other laws):**
  - Teachers |
  - Police and Fire |
  - Fire |
  - State Service |
  - Alaska, California, Connecticut, Delaware, Indiana, Idaho, Kansas, Maryland, Nebraska, North Dakota, Oklahoma, Rhode Island, Vermont, and Washington. |
  - Kentucky, Oklahoma, Pennsylvania, Rhode Island, South Dakota and Texas. |
  - Alabama, Georgia, Idaho, Wyoming. |
  - California, Connecticut, Maine, Rhode Island, Vermont and Wisconsin.
*Allow local governments to have own systems if in conformity with state laws.

+Except separate laws for nurses.

#Law operative only upon enactment of local ordinances.

@State service under non-statutory system.

APPENDIX III


FIGURES FOR 1965

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<tr>
<th></th>
<th>BOSTON</th>
<th>PITTSBURGH</th>
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<tr>
<td>Population</td>
<td>616,326</td>
<td>620,000</td>
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<tr>
<td>Proportion Black</td>
<td>11%</td>
<td>15%</td>
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<tr>
<td>Median Income</td>
<td>$5,747</td>
<td>$5,605</td>
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<tr>
<td>Proportion Earning &lt; $3,000</td>
<td>17%</td>
<td>18%</td>
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<tr>
<td>Proportion Earning &gt; $10,000</td>
<td>14%</td>
<td>14%</td>
</tr>
<tr>
<td>Proportion In-Migrants</td>
<td>25.5%</td>
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SCHOOL

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<tr>
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<th>BOSTON</th>
<th>PITTSBURGH</th>
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<tr>
<td>Enrollment</td>
<td>93,055</td>
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<tr>
<td>Percent Black</td>
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<td>29%</td>
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<td>Annual Budget</td>
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<tr>
<td>Per Pupil Expenditure</td>
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<td>$425</td>
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<td>Starting Salary: B.A.</td>
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<tr>
<td>M.A.</td>
<td>$5,940</td>
<td>$5,600</td>
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<tr>
<td>Teacher Pupil Ratio</td>
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<tr>
<td>Guidance Counselors/Students</td>
<td>800:1</td>
<td>480:1</td>
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<tr>
<td>(Secondary Level)</td>
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<tr>
<td>Operation &amp; Maintenance Costs/Pupil</td>
<td>$65</td>
<td>$66</td>
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APPENDIX IV

STATE BOARD OF EDUCATION: SURVEY OF STARTING SALARIES FOR TEACHERS IN MASSACHUSETTS: 1965-66

(Representative sample as reported in the Herald Advertiser, March 2, 1966, p. 9)

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<thead>
<tr>
<th>City</th>
<th>Minimum</th>
<th>Maximum</th>
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<tr>
<td>Belmont</td>
<td>5,300</td>
<td>5,700</td>
</tr>
<tr>
<td>Beverly</td>
<td>5,000</td>
<td>5,400</td>
</tr>
<tr>
<td>Boston</td>
<td>5,460</td>
<td>5,940</td>
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<tr>
<td>Brookline</td>
<td>5,000</td>
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<tr>
<td>Cambridge</td>
<td>5,300</td>
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<td>Concord</td>
<td>5,100</td>
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<tr>
<td>Lexington</td>
<td>5,300</td>
<td>5,800</td>
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<tr>
<td>Newton</td>
<td>5,250</td>
<td>5,650</td>
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<td>Somerville</td>
<td>5,000</td>
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</tr>
<tr>
<td>Springfield</td>
<td>5,100</td>
<td>5,600</td>
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<tr>
<td>Waltham</td>
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<td>5,300</td>
</tr>
<tr>
<td>Watertown</td>
<td>5,000</td>
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<tr>
<td>Wellesley</td>
<td>5,200</td>
<td>5,600</td>
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BIBLIOGRAPHY


Selden, David: "From the President". American Teacher, Vol. 49, May 1972, p. 2A.


