

June 9, 2007

xx xxxxxxxx xxxxxxxx  
Superintendent  
xxxxxxx School District  
xxxxxxxxxxxxxxxxxxxxx  
xxxxxxxxxxx, UT xxxxx

Dear Superintendent XXXXX:

I am writing you today to let you know, in case you aren't already aware, about the major impact that a recently-passed Utah law will have on employee-employer relations in many public schools across the state.

In early March, Gov. Jon Huntsman signed into law S.B. 56, sponsored by Sen. Mark Madsen and Rep. Merlynn Newbold. As was widely reported, the new law expressly requires school districts and charter schools to allow education employee associations equal access to school mailboxes and e-mail systems and school employee orientation programs.

Up to now, the most significant provision of Madsen-Newbold has received less media attention. As a consequence of this provision, Subsection (4) of Section 53A-3-426 of the Utah Code now reads:

It is unlawful for a school to:

(a) establish or maintain structures, procedures or policies that favor one education employee association over another or otherwise give preferential treatment to an employee association; or

(b) explicitly or implicitly endorse any education employee association.

According to Milton Chappell, a staff attorney for the National Right to Work Legal Defense Foundation who has decades of experience preparing and arguing public-employee labor-law cases in courts at all levels, the direct implications of this provision are very clear.

Under the new Subsection (4), it is no longer permissible for any public school district or charter school in Utah to recognize any teacher union as the "exclusive" (monopoly) bargaining agent of all teachers employed by the district or charter school.

School districts and charters retain the right, he explains, to bargain collectively with employees through representatives of the union they have chosen to join.

However, any school district or charter that agrees to negotiate with, or gives favors to, a particular teacher union must also agree to negotiate with, or give favors to, any nonunion teacher group, or any rival union, that asks to negotiate contracts for its members or receive favorable treatment in the district.

And the fact that one teacher association has at some point won an election with a majority of teachers voting to have it as their representative will not in any way exempt a school district or charter from liability for endorsing that teacher association or for refusal to grant other teacher associations equal representation rights.

Moreover, concludes Mr. Chappell, Subsection (4) prohibits union monopoly bargaining, including favoritism and endorsements, over all types of public education employees, not just teachers.

The upshot of this analysis is that, if your school district currently recognizes a single union as the monopoly-bargaining agent over all teachers, or over any other group of school employees, you have two options:

One is to cease bargaining altogether. This is clearly a legal option once the current union contract expires, since no Utah statute requires any school district to engage in any type of bargaining with any union.

The other option is to continue recognizing the union as the bargaining agent for its members only, while granting equivalent recognition to any other employee association that seeks it.

If your school district does not currently recognize any union as teachers' monopoly-bargaining agent, Subsection (4) simply precludes monopoly bargaining, favoritism, and/or endorsement of a union as a future option.

Regardless of what your school district's policy has been up to now, I would submit that the Madsen-Newbold law is a very

welcome development for public education in Utah. The fact is, union monopoly bargaining results in inequitable treatment of teachers and undermines education officials' ability to serve the interests of schoolchildren and taxpayers.

I'll cite just one example here.

Around the country, teachers in an array of subject areas, including, most notably, math and science, are in short supply. In states with widespread union monopoly bargaining over school employees, it is very difficult, if not impossible, for school officials to address this problem adequately.

For example, last November, as the *Boston Globe* reported at the time, 48 Massachusetts school superintendents from across the state publicly called "for cash incentives to attract math and science teachers, a new effort to compete with higher-paying private businesses that would change the way teachers are paid."

As the school superintendents issued their plea, the Massachusetts Department of Education was already forecasting that the Bay State would "need about 1000 new math teachers" in 2007, but "only 220 students in area colleges" were pursuing a license to teach math.

Despite the alarming facts, officials of the 100,000-member Massachusetts Teachers Association (MTA/NEA) union immediately made it clear that they would strongly oppose math-science incentives.

The MTA officials' proposed "solution" has been to raise all teachers' salaries high enough to fill shortages that exist in math and science, and perhaps a handful of other subject areas, only. This "solution" is of course too flagrantly hostile to taxpayers' interest and, one would guess, too unrealistic for Gov. Deval Patrick and other Massachusetts officials to consider.

Consequently, it seems inevitable that Massachusetts will go on hiring people who don't specialize in math and science for math and science positions in public schools, or leave those positions unfilled.

Fortunately, thanks largely to Madsen-Newbold, you and other Beehive State school officials have two more palatable options.

If you choose to negotiate with teachers individually, you may simply directly offer higher pay to teachers of math, science, and other subjects for which there are chronic teacher shortages.

If you choose to negotiate with teachers through their employee association, I suggest that you notify teachers that, if they are dissatisfied with their association's representation on salary or other issues, they may change their representative by resigning from the association and joining another. Without monopoly-bargaining privileges, union officials will, in practice, not be able to prevent your school district from paying math and science teachers the market rate.

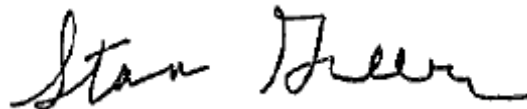
Decades of public-education experience have shown that the system of monopoly union bargaining is not in the best interest of schoolchildren, taxpayers, or most teachers. Monopoly bargaining especially hurts teachers with unusual talents and schoolchildren who hope to learn from them.

Schoolchildren, taxpayers, and dedicated professional educators all benefit when no single union has the power to speak for all teachers in negotiations over pay and promotions.

Today, officials in many Utah school districts have the opportunity to demonstrate to the rest of the country what can be accomplished by switching from an "exclusive"-union-bargaining system to a pluralistic system.

I hope that you and your colleagues will take advantage of this opportunity. If you are interested, or would like more information, please write to me or give me a call at 703-321-9606.

Sincerely,

A handwritten signature in cursive script that reads "Stan Greer".

Stan Greer,  
Senior Research Associate

CC: Other Utah school superintendents  
Utah media

P.S. Just in case you would like more information about how union monopoly bargaining over school employees harms the public interest, I have enclosed a copy for you of *Stranglehold*, a short book by veteran Right to Work leader Reed Larson that addresses this topic in detail.