

Web Article:

Due & Forfeit: The Absorption of Charter Schools

*Charter schools are here to stay.
Now the danger lies in the embrace of traditional opponents.*

By Michael Antonucci
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*I have possess'd your grace of what I purpose;
And by our holy Sabbath have I sworn
To have the due and forfeit of my bond:
If you deny it, let the danger light
Upon your charter and your city's freedom.*

The Merchant of Venice,
Act IV, Scene I

With much fanfare, President Bush signed into law a series of education reforms that promise to revolutionize the federal role in public education.

Riiiiight.

In fact, as Krista Kafer of the Heritage Foundation recently pointed out, “revolutions” in public education have a long and storied history. Gerald Ford revolutionized public education in 1974. Jimmy Carter did so in 1978. As did Bill Clinton in 1994 before this latest federal foray.¹ The one thing that never changes in public education is “change.”

Every idea that comes down the pike--good, bad or indifferent--faces initial resistance from the people who earn their living through public education: teachers, support personnel, administrators and bureaucrats. The extent of their resistance depends on how much of a threat the proposed reform is to their desired way of doing business.

Education employees can place formidable obstacles in front of a change. They have a rare commodity: political clout at federal, state and local levels. Not only do they throw lobbying and campaign money around with the best of them, but they also provide dependable manpower for political action, which is something few special interests can muster. Extraordinarily few reforms manage to overcome these obstacles. Those that do must face the education establishment's second, and more insidious, line of defense.

When people fight for years to get a proposed reform noticed, passed, funded and implemented, their natural tendency is to declare victory and go home. This is the time when their reform can become co-opted, although “absorbed” is a better description. The same education employees who led the opposition to the reform are now in charge of its daily oversight. The results are predictable. The educational powers-that-be break down the reform, reshape it and ingest it. Yesterday's radical

reform becomes today's standard operating procedure becomes tomorrow's suffocating status quo in need of radical reform.

The charter school movement, yesterday's radical reform, is now entering that most dangerous of times, when it faces the inevitable recrafting and restructuring to make it acceptable to those who run American public education. How charter school operators and supporters respond now will determine their ultimate success or failure.

Strangely enough, the first advocate of charter schools was the late Al Shanker, the long-time president of the American Federation of Teachers. He outlined the concept in a 1988 article for the *Peabody Journal of Education*.² More to the point, however, is that neither he, his union, nor his erstwhile teacher union competitors, the National Education Association, ever did anything with the idea. And in 1991, when the first charter schools were proposed in Minnesota, union affiliates led the charge against them.

And so it has gone since then, from California in 1992 to Indiana in 2001, with state legislators introducing charter school bills, and teachers' unions, by and large, fighting them tooth-and-nail. But the early victories generated momentum the unions have been unable to stem. This school year, according to the Center for Education Reform, America has 2,431 charter schools in 34 states and the District of Columbia, serving 580,000 students. Another 77 schools have already been approved to open in the fall.³ It's only a matter of time before every state has charter schools.

The debate over whether charter schools are "better" than regular public schools will never dissipate. But going from zero schools and zero students to a size that rivals the enrollment in the mammoth Los Angeles Unified School District, in just 11 years, is something unheard of in public education. Graded on a curve of previous education reforms, charter schools are already an unqualified success.

In a system where real change is an occasional ripple in a quiet pond, charter schools must seem to be a roaring tidal wave to education employees. Faced with a new world, and the chagrin of seeing it created over their vehement objections, teachers' unions and their allies in the education bureaucracy needed to regroup. And over the past two years, they have.

Developing a strategy

For years the NEA, AFT and their affiliates have orchestrated various responses to charter schools in an effort to get out in front of the reform. They have ranged from utter opposition to joining in. In 1995, NEA began its Charter School Initiative, which was designed to help create six model charter schools for teachers, charter school operators and legislators to emulate. The initiative never really caught fire, and after seven years NEA still has only four charter schools operating, with (so far) unimpressive results.⁴

The Pennsylvania State Education Association (PSEA) was the first NEA affiliate to try to formulate a new strategy for dealing with charter schools. In December 1999,

the union created the Charter Schools Strategic Options Project, appointed top officials and staff to it, and set them to work to generate a plan of action. Project members called in the presidents of the Illinois Education Association and the Michigan Education Association to learn how they were handling their charter school problems, and brainstormed with other activists.

In November, they presented their report to the PSEA board of directors, which promptly adopted it. The PSEA report couldn't have come at a better time for its national affiliate. NEA President Bob Chase had himself created the NEA Special Committee on Charter Schools, whose charge it was to revamp the union's policies on charters so that they were more coherent and consistent. PSEA Treasurer Jim Testerman, a member of Charter Schools Strategic Options Project, was also appointed to the NEA special committee, and the two reports share similar themes.

Both NEA and its Pennsylvania affiliate recognized the limitations of their “no, no, no” approach. They realized that unalterable opposition to charter schools was having, as the PSEA report put it, “negative public relations consequences.”⁵ Besides, charter schools had supporters on both sides of the aisle, with Bill and Hillary Clinton often singling them out for praise.

Until 2001, NEA's policy on charter schools was to assign a laundry list of conditions that charter proposals had to meet in order to avoid union opposition. But the requirements were so onerous very few charter schools could meet them--not even, as it turned out, a couple of NEA's own charter schools.

The NEA committee admitted this in its report. “Certain of the criteria are cast in such broad and unqualified terms that they would, if literally applied, undermine the charter school concept, and have the effect of shoving charter schools back into a non-charter school box--such as the requirement in criterion #5 that “[t]he charter school must comply with all federal, state and local laws and policies applicable to other public schools,” the report reads.⁶

This remark should be remembered when evaluating the union's new policy on charter schools. NEA officials have never before admitted that its policies tended to “undermine the charter school concept.” As with public education employees in general, we should view with skepticism any claims by union officials to have found religion after so many years of opposition. So a new charter school policy was in order. Both the NEA and PSEA reports are perfectly clear about what the goals of this new policy should be. The first of the “outcome goals” listed by PSEA was “maintain and increase union membership.” The second was “increase quality of public education” The union's priorities will always be in that order, at best. Indeed, one of PSEA's listed methods of increasing the quality of public education is to “increase customer satisfaction in unionized public schools.”⁷

The NEA committee agreed, even if its language was less direct. “[I]f NEA is to continue to be the preeminent national voice for public education, it must be part of the dialogue about the future direction of charter schools. And, finally, experience indicates that charter schools implicate –and if imperfectly designed and operated could undermine –certain core organizational values of NEA,” the committee wrote.⁸

The PSEA report is remarkable in its candor about where the union's primary interests lie. Confident its report wouldn't fall into the wrong hands, PSEA felt free to use vocabulary normally only deployed by union critics: "Act 195 granted PSEA and the Federation a legal monopoly to represent public education employees for the purpose of collective bargaining. 'All' we have to do is to convince teachers and support personnel to join. Once we obtain majority representative status, PSEA becomes the exclusive bargaining agent. IN NO OTHER ENDEAVOR PSEA UNDERTAKES CAN IT ENJOY THIS EXCLUSIVE POSITION. The timeworn debate whether we are primarily a professional association or a union obscures a critical point. The main source of PSEA's influence is that almost all Pennsylvania teachers are unionized. If we want to maintain our influence, our ability to do ANYTHING, we must make sure that education remains a unionized industry."⁹ (emphasis in original)

The union is extremely fearful of following the path of decline previously trod by the private sector auto, steel, and telecommunications unions, whose memberships are at historic lows and still dropping. "If we lose our grip on the labor supply to the education industry, we will bargain from a position of weakness," says the report.¹⁰

I cannot overemphasize the importance of this admission by a teachers' union that its purpose is to maintain a grip on the labor supply. Once that realization is firmly set, it is a simple matter to understand why union officials do the things they do, and set the policies they set. It also makes it a fairly simple matter to predict what they will do when confronting a given set of circumstances .

So how do charter schools threaten the union's grip on the labor supply to the education industry? Well, for starters, very few charter schools have unionized employees. A study by Michael Podgursky and Dale Ballou of charter schools in seven states found teachers engaged in collective bargaining in only 8 percent of the schools, even though collective bargaining was permitted in all seven states. Only 4 percent of the schools they surveyed had multi-year contracts. In a third of the schools, teachers had no contract at all.¹¹

It's not hard to fathom why this should be so. The primary purpose of charter schools is to create their own rules, with as much freedom and flexibility as possible. The detailed minutiae of the typical union contract are an example of exactly the kind of thing charter schools are trying to avoid. The contract spells out who does what, where, when and for how long. Besides, in charter schools the line between labor and management is often blurred, if not completely irrelevant.

When a union does organize charter school employees, it can have real difficulties keeping them in line. When the Michigan Education Association took a confrontational stance with the administration of Island City Academy, a charter school in Eaton Rapids, the teachers voted the union out. They were able to do this because their school is small, with only 13 teachers. The tiny size of most charter schools puts unions at a severe disadvantage. They are simply no longer used to the nuts and bolts of traditional organizing. Sending high-priced staffers into remote areas to spend months organizing a dozen or so teachers is simply not cost-effective. The

unions recognize this.

“It seems that as long as charter schools remain relatively small operations, any serious attempt to organize them will require a reconsideration of PSEA staffing and service patterns,” reads the PSEA charter school report.¹² (emphasis in original)

Bryan K. McCarty, a Tennessee Education Association attorney, examined a proposed charter school law and came to a similar conclusion. “Every single school would require organizing and assistance,” he wrote. “Collective bargaining will be rare in such small settings, as it will be difficult to get people to train and accept the confrontation with management.”¹³

Even worse for the unions is the knowledge that charter schools will continue to expand even if they fail to exceed the academic performance of the regular public schools, simply because they allow parents a wider choice to fulfill the needs of their own children. “Finally, even if charters never produce the educational innovations promised by their early proponents, they will continue to extend their reach because they provide an expanded range of consumer choices and also provide options for students who are not fitting well into their regular public schools,” the PSEA report concluded.¹⁴

Improving the performance and range of choices in regular public schools would reduce the relative advantage of charters, but it is probably easier to make charter schools less palatable to parents instead. There are four basic tactics the union and its allies will use to accomplish their goal: regulate, steer, rank and organize.

No student in the entire country can be assigned to a charter school. Therefore charter schools must attract students through its curriculum, performance and/or unique operating philosophy. Parents have to make some form of sacrifice to send their kids to one, usually in the form of a longer trip to school. Students may have to agree to perform to higher levels, or submit to stricter standards of discipline. Teachers may have to work longer hours. Administrators have to be jacks-of-all-trades.

The idea that charter schools are unregulated is a myth.¹⁵ The amount of paperwork, requirements and hoops to jump through are daunting. They are required to abide by all sorts of safety, civil rights and workplace codes. Their advantage is that they are not subject to the *same* set of regulations as regular public schools. But as the movement grows and the number of schools increase, the number of problems and complaints will inevitably rise as well. Even if bad charter schools are only a tiny percentage of the total, they will still generate calls for increased oversight and regulation.

The NEA said it was “embracing higher standards, more accountability and increased local control” when it announced its new charter school policy last July. “At a time when politicians, parents and policymakers are clamoring for more accountability in the classroom, it’s beyond comprehension that taxpayer-funded charter schools aren’t being held to the same basic standards of other mainstream public schools,” said NEA President Bob Chase.¹⁶

Unions are limited in their ability to directly affect regulation of charter schools, but they have a host of allies in state legislatures, on school boards and in school district headquarters. At the state level, the unions can pick up legislative support for bills that promote “safety” or “accountability” regulation for charter schools. At the local level, school district officials already dislike charter schools because of their limited jurisdiction over them.

We are beginning to see the first signs of government agencies tightening the reins on charters. In Hawaii, several charter schools are in danger of folding because of a change in the state funding formula last year. Some schools saw their operating budgets reduced by as much as 30 percent.¹⁷

New Hampshire has had a charter school law for years, but no charter schools. The reason is the local school district retains the authority to approve or reject charters. A bill recently passed the New Hampshire House of Representatives to give that authority to the state.¹⁸

In New Mexico, the Albuquerque Board of Education recently presented its charter schools with a list of new regulations that would commit them to follow the exact same guidelines as the regular public schools follow. The state law makes charter schools responsible for their own operation, budget, contracting and personnel matters. But the Albuquerque board mandates required charter schools to follow district budget and financial policies and procedures, and hire and fire according to the district “human relations guidelines.”

The board then went after the charter schools’ money. Charters receive funding from the State Equalization Unit and are required to send no more than 2 percent of those funds to the Albuquerque school district. The board’s new rules called for a payment of 14 percent. Charters would also have to use the district’s insurance and retirement plans. “These are our children, and they are part of our system,” said Albuquerque Superintendent Brad Allison.¹⁹

The charter schools banded together and appealed the board’s ruling to the state. The state found the board’s new regulations contradicted state law and voided them.

Steer

If you can’t force charter schools into the regular school box, perhaps you can lead them to it. The NEA Charter School Initiative was the first effort to do just that. If the union could create charter schools that were firmly on the collective bargaining plantation, they could franchise the model (coupled with start-up funding) to local affiliates all across the country. Union officials could then truthfully claim that they greatly supported charter schools, and were even providing them with money. Politicians, teachers and even charter school operators would be drawn to them because they would be the only charter schools that weren’t facing union opposition and hostility.

Unfortunately for NEA, its charter school model has not taken off. A proposed union

charter school in Arizona failed to open last year due to insufficient enrollment, even though Arizona is home to the largest number of charter schools in the country.

The idea of direct union involvement in charter school management isn't dead yet, however. In Florida, the United Teachers of Dade have partnerships with both Edison Schools, Inc. and Chancellor Academies to manage a dozen or so charter schools.

Both the PSEA and NEA committees made it clear they were not willing to let charter schools go their own way. "We think it's imperative that teachers and their professional association have a voice in the focus and the direction of charter schools in the future," said PSEA spokesman Wythe Keever after BIA published the report of the Charter Schools Strategic Options Project last June.²⁰

The NEA committee agreed. "By tapping into the more progressive and teacher-friendly themes and ideologies within the heterogeneous charter school movement, NEA hoped to help define the nature of charter schools and contribute to the dialogue about their future direction, the committee concluded about NEA's Charter School Initiative."²¹

Rank

If you can't beat 'em or join 'em, divide 'em. The bulk of the NEA committee's report is to set down specific criteria for the union to use in order to decide the most appropriate response to a particular charter school in a particular place. "The criteria are designed rather to provide a framework that can be used to evaluate particular charter schools, and rank them on a continuum ranging from outright support to reluctant acquiescence to categorical opposition," reads the report.²²

The criteria are mostly a smokescreen – even the most categorical of them: "A private for-profit entity should not be eligible to receive a charter."²³ But, as mentioned above, a large NEA affiliate is already working with a private for-profit entity. Only one criterion really matters: does the charter school bargain collectively with the local union in place in the district? If so, the union will put up with it. If not, the union will oppose using whatever argument is likely to work.

Organize

The Pennsylvania State Education Association spelled out precisely what the union problem is with charter schools and what, ultimately, is to be done about them. "Recognizing that small charter schools represent a form of outsourcing that has led to a decline in union membership in other previously highly organized industries, PSEA should establish the objective of organizing all charter school employees and eventually bringing them under the umbrella of collective bargaining."²⁴

It's all well and good for the unions to set this as a goal, but they have had very little success organizing charter school employees so far. How would they go about doing it? The PSEA model shows one way. The first step is to decide which charter schools

to target. The PSEA committee suggested that the for-profit managed charters and the larger non-profits should be organized first. This would avoid the problem of getting union people into tiny schools in order to prime the pump.

That still leaves the vast majority of charter schools non-union. The PSEA committee ingeniously saw an opportunity to use the for-profit managers of charter schools to help them organize the employees. If Edison Schools Inc., for example, manages 30 small charter schools and they are geographically dispersed across the state, the union would attempt to organize all the Edison teachers into a single bargaining unit and negotiate a single contract for them. This would make organizing charter school employees cost-effective for the union and keep the governance of the new members manageable. If implemented, we could see an NEA “local” affiliate called the Edison Schools Education Association.

Charter school employees could be enticed to join through reduced dues and offers of liability insurance, professional development programs, legal protections, and member benefit services. The NEA committee praised the PSEA ideas, saying they “illustrate the approach that any state affiliate might take in order to facilitate the organization and representation of charter school employees,”²⁵ adding that “NEA should move in this direction.”²⁶

Why the unions can't be trusted

Let's not delude ourselves. Some charter schools provide fertile ground for union recruitment. The hours may be longer, the demands greater, the job protections smaller, and the guarantees fewer. Teachers who are dedicated to the charter's program could conceivably be *more* apt to call in a union if they are unhappy, rather than simply leave the school at the end of the year.

Do the unions have a future role in the charter school movement? The NEA committee called on the union to “function as a clearinghouse for information about charter schools” and disseminate “research regarding positive and negative experiences of charter schools.”²⁷ Can charter school operators trust NEA to be impartial, even helpful?

No.

Barring a complete reversal of philosophy by the union, the NEA will continue to be the primary cheerleader for charter school failure. At the very least, union involvement will lead charter schools down the path of watered-down irrelevancy, to take its place alongside so many promising education reforms of the past.

The difference between the union's public statements on charter schools and its private communications is stark. It's clear that for all the moderation in recent years, the union still considers charters as something to be dealt with, rather than something to help along. The Tennessee Education Association analysis patronizingly refers to them as “toy schools.”

The PSEA report provides its locals with a questionnaire and a grid to determine their relative strength when compared to competing local charter schools. When conditions are favorable, the union will still stonewall charter schools. “Noting that PSEA has finite resources, PSEA will adopt the most aggressive response in those situations in which the local union is strong and there is a high likelihood of preventing or delaying the opening of the charter,” the committee recommended.²⁸

The very make-up of the NEA committee ensured that the needs of charter schools and their students would not be the primary concern. Of the 13 members of the committee only one, Linda Page of Colorado, had any experience in a charter school. The committee chairman, Eddie Davis of North Carolina, stated: “We do not believe that charter schools ought to exist just as a choice,” when he delivered the committee report to the NEA Representative Assembly in July 2001. Another committee member, Jack MeLeod of Massachusetts, once made his feelings about charter schools quite clear. “I guess you could make an analogy to a parasite,” he said. “They just latch onto your school system and drain it.”²⁹

The presence on the committee of a representative from Tennessee (which has no charter school law) was also telling. The Tennessee Education Association charter school analysis is bitter, nasty ... and a wonderful insight into the union’s true thinking about charter schools.

Suppose the parents in your district really want a charter school? The TEA analysis noted the proposed bill allowed parents to convert a regular public school to a charter school even if the teachers were opposed to it. “Any conversion of an existing public school should require the approval of the teaching staff,” concluded TEA attorney Bryan K. McCarty. He was incensed that the parents’ desire for a conversion is demonstrated by their signature on a petition, “not some level of understanding by the person signing the petition.”³⁰ Evidently, a standardized test should be required before parents are allowed to vote.

Well, if the teachers and support staff want a charter school, it must be okay then, right? Not in Buffalo, New York. When the staff of School 18 voted 58-8 to convert to a charter school, the NEA-affiliated Buffalo Teachers Federation descended upon them, informed them they would lose all tenure and seniority protections--maybe even their pensions--and then held what was termed an “informed secret ballot vote,” which (surprise!) reversed the decision. No matter that testimony from other conversion schools in the state revealed that no one lost tenure, seniority or pension.

The *Buffalo News* asked local union president Phil Rumore about the controversy. “I don’t really think (charter schools) serve any purpose but to undermine the Buffalo Public Schools,” he said.³¹

Don’t charter schools provide school employees the flexible approach they have always been looking for? Not according to the Tennessee analysis. “What ‘flexibility’ means is the right to mistreat employees,” it reads. “These people do not want to be burdened with tenure, pay schedules, fringe benefits, retirement, dismissal hearings or employee rights. They want employees that work at the will of the employer and can be fired at any time, for no reason or any reason. The bottom line is money.”³²

Teachers' unions as protectors of the taxpayer's wallet? If the charter school bill was passed, "[t]he mugging of Tennessee's taxpayers will be complete," wrote McCarty.³³ "Should we accept throwing money at ventures that remain unproved for their value to the education of the nation's children?"³⁴ This is especially rich coming from the Tennessee Education Association, the primary advocates to introduce an income tax to the state.

Can't Tennessee teachers look out for themselves? No, because their union thinks they are sheep. "The up side for the charter school is that 'scared' at-will employees will be loyal and unlikely to question rules and procedures," McCarty wrote.³⁵ Besides, he believes that if a charter school doesn't provide tenure to its employees, then "[t]here is no clear motivation for any teacher to run off to work in these toy schools."³⁶ That some teachers may have motivations other than tenure evidently comes as a surprise to the union.

Not only are the teachers sheep, but so are legislators and the public. "The initial schools will receive tons of money, reap pages of praise in press releases, and be well stocked with technology," reads the Tennessee analysis. "The same private sector interests pushing this bill will make sure that the eighteen (18) schools are well funded and given every advantage possible. Based on the trial period, everyone will want to do it!"³⁷

And if the students and parents are happy, well that's bad, too. "As media darlings they will grab headlines, be tracked for the 'happiness' factor of students and parents, and public schools, the real ones, will suffer," McCarty concluded.³⁸

What charter schools should do

Though their strength varies from state to state, teachers' unions are a fact of life no matter where a charter school opens. What can charter school operators and supporters do to minimize the negative impact of unions on their day-to-day work?

1) **Keep your own counsel.** In the beginning, everything had to be created from scratch. After 11 years, there are enough people with experience in starting charters, finding or building schools, putting together a staff, choosing curriculum, recruiting students, and running a school's daily operations that all the major mistakes have already been made and all the major obstacles overcome. In fact, if NEA hadn't been out to prove a point, union officials might have been better served by seeking the help of charter school backers with their own experiment. If they had, perhaps the NEA Charter School Initiative would be a legitimate alternative to Edison Schools, Inc. The Center for Education Reform and dozens of regional organizations exist to help charter school operators over the bumps. Lateral communication with other charter schools can also help. Solving problems outside the traditional public school structure will not only improve the status of charter schools, but open the way for further education reforms.

2) **Keep it flexible.** School districts and teachers' unions are self-sustaining

bureaucratic entities. They can bring a lot of weight to bear on an obstacle but are utterly unable to go around one. The appeal of charter schools is reduced bureaucracy, reduced regulation, and reduced “standard procedure.” Charter school administrators and teachers who remember that are more apt to apply the common sense so lacking in regular public schools. Parents and taxpayers will especially appreciate it, and they will be less likely to support the introduction of bureaucratic organizations and procedures into the situation.

3) Keep it small. Believe the union officials on this one: they are at a serious disadvantage in organizing small schools. It’s harder to find disgruntled employees willing to front for them. It’s harder to create an “us vs. them” atmosphere. It’s harder to meet the standards to force a representation election. And it costs more to service a small school--particularly in contract negotiations--than the teachers produce in dues money. The bigger your school, the bigger a union target you are.

4) Keep your employees happy. Charter school operators often ask, “How do I keep the union out?” The answer is: you don’t. The law restricts what you *can* do to keep unions out. Your employees are the ones who keep the union out. Treat them fairly and with respect, pay them as well as you can, and give them a stake in the success of your school. Happy employees do not start or sustain union organizing drives.

5) Keep doing it your way. In the 1990s politicians and the public education system gave us Goals 2000. It is now 2002, most of those goals were not met, and now we have another initiative that promises to fundamentally reform public education. Compare that record with the record of charter schools. There’s no reason to allow unions or their allies in the public education establishment to dictate the future direction of charter schools.

Remember: If words were important, the charter school movement would have belonged solely to the unions since 1988. It was those devoted to action, rather than words, who made the charter school movement what it is today. Unions should be welcome to hop aboard the train, but not commandeer the engine and sidetrack it. If they don’t climb aboard, they should get out of the way because, otherwise, they will surely be run over.

Endnotes

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