

“Last Hired, First Fired” Young Teachers Reject NEA/AFT Seniority Rules

By RiShawn Biddle

***Summary:** The National Education Association and the American Federation of Teachers have successfully used their collective bargaining muscle and lobbying influence to enact reverse seniority, or “last hired-first fired” policies that protect senior teachers from layoffs and performance management. But many school officials, education reformers and taxpayers are urging that these out-moded work rules be altered or abolished, and the two unions are struggling to defend their policies. Worse for the unions, their younger members – who benefit least from seniority – are demanding that the unions remove last hired-first fired provisions from union contracts.*



Public employee unions have done plenty to make civil service work more lucrative than private-sector employment. But few have had as much success as the National Education Association (NEA) and the American Federation of Teachers (AFT). Over the past five decades, the nation’s two-largest teachers unions have successfully used their campaign clout and collective bargaining power to make public school teaching the best compensated public sector profession and the one most insulated from performance management and layoffs. According to the U.S. Department of Education, the average teacher salary increased by 72 percent between the 1989-1990 school year and 2008-2009.

Baby Boomers make up at least 26 percent of all public school teachers; and thanks to the NEA and AFT, they are ready to coast into easy retirements. Under seniority-based pay scales – which tie raises to length of employment – teachers with more than 20 years of experience can earn a base salary of \$54,170—and more if they possess an advanced degree. Decades of defined-benefit pension deals between teachers unions, states and school districts have also assured baby boomers in the teaching ranks of generous early retirement packages with lifetime benefits of as much as \$2 million. A Missouri teacher, for example, can retire as early as age 52 – 13 years earlier than a

private-sector worker – then get rehired, allowing her to collect a pension and a regular salary at the same time.

The most lucrative seniority benefits come in teaching assignments and employment decisions – most notably from reverse seniority policies, also known as “last

August 2010

“Last Hired, First Fired”
Page 1

Labor Notes
Page 8

hired-first fired.” Under these quality-blind practices (long ago ditched by most of the private sector), newly-hired and less experienced teachers are the first to lose their jobs during economic recessions. More senior instructors retain their jobs, no matter whether they improve student academic achievement or the cost of their compensations packages to their districts.

But the current economic downturn, now in its third year, along with the end of \$100 billion in federal stimulus subsidies, is forcing cash-strapped school districts to lay off employees and attempt some modest forms of fiscal discipline. It is also a harbinger of tougher fiscal times to come: States and school districts have been forced to deal with at least \$367 billion in unfunded teacher retiree healthcare benefits and as much as a \$1 trillion in teacher pension deficits – all of which will be borne by taxpayers. Meanwhile, decades of research has shown that there is little connection between years of teaching experience and student academic achievement.

As a result, every aspect of traditional teacher compensation is now under scrutiny and reverse-seniority policies are

Editor: Matt Patterson

Publisher: Terrence Scanlon

Address: 1513 16th Street, NW
Washington, DC 20036-1480

Phone: (202) 483-6900

Email: mpatterson@capitalresearch.org

Website: www.capitalresearch.org

Labor Watch is published by Capital Research Center, a non-partisan education and research organization classified by the IRS as a 501(c)(3) public charity. Reprints are available for \$2.50 prepaid to Capital Research Center.

under fire. In California and Indiana less senior teachers who were named Teacher of the Year were laid off because of school workforce reductions. The resulting publicity has cast the last hired-first-fired practice in a harsh light, leaving the NEA and AFT scrambling to defend it against their foes in the school-reform movement.

This year the NEA and AFT have seen setbacks in their defense of last hired-first fired. In May 2010, Washington, D.C.’s public school system successfully forced the local AFT to ditch the last hired-first fired policy in future layoff decisions. This came seven months after D.C. Schools Chancellor Michelle Rhee successfully laid off 266 teachers – many of whom were long-tenured veterans – in order to deal with a \$21 million budgetary shortfall. (Rhee was profiled in the January 2009 edition of *Labor Watch*). That same month, the American Civil Liberties Union won a preliminary injunction against plans by the Los Angeles Unified School District to lay off newly-hired teachers at three of its schools. The ACLU argues that the last hired-first fired policy unfairly hurts students in the district’s poorest schools. Veteran teachers often try to avoid teaching at these schools, which means poor students are more likely to lose their teachers than students in more affluent neighborhoods.

School reformers are sparring with the NEA and AFT over language inserted into the most recent federal stimulus funding bill that proposes spending \$10 billion to prevent teacher layoffs. The reformers want to require fund recipients to use teacher performance and other metrics to determine future layoffs. So far, the teachers unions have gotten their way by playing hardball with Democrats worried about

keeping control of Congress. They won the support of congressional leaders such as Senator Tom Harkin (D-Iowa), chairman of the Senate Health Education, Labor and Pensions (HELP) Committee and his House counterpart, Appropriations Committee chairman David Obey (D-Wisconsin) to retain last-hired, first fired. But President Obama has threatened to veto the plan if money intended for school reform is used to fund the education bailout. Obama’s quarrel with the NEA and AFT extends to their reluctance to support his Race to the Top effort, which gives extra education funds to reform-minded states.

Dividing Lines

Within their own ranks, the NEA and AFT face divisions over reverse seniority. New teachers are joining with school reformers to demand an end to the practice. Rank-and-file members who entered teaching less than a decade ago now make up 42 percent of all public school instructors.

These younger teachers argue that reverse seniority layoffs hurt students, especially those in the big-city districts that are the epicenters of the dropout crisis. Taking to Twitter, Facebook and op-ed pages, younger teachers have been as militant in opposing last hired-first fired as their older colleagues were about securing tenure and pensions. In *Teacher* magazine, Heather Wolpert-Gawron said reverse seniority and tenure prevents “a school or a district from creating a staff that is made up of the best veterans it can retain and the best candidates it can recruit.”

Not surprisingly, NEA and AFT leaders aren’t too pleased with this dissent. They consider their younger members misguided

and blame school reformers and reform-minded school superintendents for using “divide and conquer” tactics to split union members. Ron Isaac, a columnist for the AFT’s house blog, *Edwize*, defends the seniority system: “As a firewall against patronage, nepotism, blackmail and other forms of exploitation, the rule of seniority has been a cornerstone of the civil service in most of the industrialized world for most of modern history. We all benefit from it sooner or later in one way or other.”

For the teachers unions, the challenge from younger teachers underscores a deep generational divide. As states began to require local school districts to engage in collective bargaining in the 1960s, the NEA and AFT won teachers’ trust by promising – and winning – generous benefits, comfortable working conditions and extensive job protections. This deal was especially appealing at a time when teacher employment was considered uncertain and there was no way to measure the effectiveness of teachers’ classroom performance but to assume that older teachers were better teachers. Over time the NEA and AFT focused their energies on protecting benefits for veteran teachers.

But this preoccupation with protecting benefits dismays younger teachers, whose starting salaries are often below their peers in other career sectors. They want merit pay that rewards them for improving student performance. Younger teachers are also annoyed by union work rules that govern nearly every aspect of school activity, limiting the kind of innovative teaching practices that regularly occur in public charter schools. Younger teachers are less interested in old-school union bargaining than in advancing teaching so that it attains the social status of other professions. The



D.C. Public Schools Chancellor Michelle Rhee

conflict between younger teachers and their Baby Boomer colleagues exposes the inherent contradictions within teacher unions that identify themselves as unions of professions.

“The newest generation of teachers comes to the profession with a very different set of expectations from their schools and their teachers unions, unlike older members, who are interested in maintaining their autonomy in classrooms and the benefits they have bargained for and are owed to them,” says Kevin Carey, who directs policy research at Education Sector, the centrist school-reform think tank. “These aren’t always complementary agendas.”

As the pressure from the unions’ generational divide is combined with external pressures from taxpayers and school reformers, the NEA and AFT may be forced to abandon last hired-first fired. Increasing numbers of Baby Boomers are heading into retirement and even many of them agree that seniority rules are ineffective. It’s not inconceivable that over time these developments will

lead the nation’s public school teachers to abandon the union model of organizing and revive the professional association model they abandoned six decades ago.

Why Do Teachers Have Seniority Rights?

The current model of providing teacher pay and benefits is an outgrowth of the early 20th century movement for women’s suffrage, the rise of public universities and civil service reform. Salary schedules, for example, were developed in order to assure once-underpaid teachers that they would gain more pay as they gained additional degrees and teaching experience. By the 1920s, states extended university-style tenure – near-lifetime job protection – to public school teachers in order to protect women of child-bearing age from unfair dismissals. By the end of the decade, teachers joined other public employees in gaining old-age pension annuities.

Seniority rights and last hired-first fired initially didn't have much support from teachers. The NEA, which successfully ushered in salary schedules and tenure, considered seniority rights an affront to the profession. This isn't surprising. Formed in 1857 as a professional association—it retains that status under federal law—the NEA membership and leadership initially included school principals and other school supervisors. The early NEA preferred building cozy ties with other education officials to negotiating contracts and threatening labor strikes.

By contrast, the much-smaller AFT took the lead in transforming teaching from a career profession into a union of public employees. It emphasized seniority rights. Founded in 1916 with the blessing of what is now the AFL-CIO, the AFT brought industrial labor unionism into education in 1961, when its work stoppages successfully forced the New York City Board of Education to agree to collective bargaining. As part of the contract agreement, the union negotiated seniority rights for teachers and last hired-first fired provisions that it ruthlessly enforced. Seven years later, the AFT used reverse seniority to scuttle efforts by New York City schools to hand over teacher hiring and other school decisions to parents and administrators in the city's mostly-black Ocean Hill-Brownsville community. After another AFT-led strike, the district relented, ending the school reform initiative for good.

By the 1980s, last hired-first fired, along with other seniority rights, was standard educator policy. Although just 13 states explicitly require school districts to lay off teachers based on reverse seniority, the

NEA and AFT negotiated a last hired-first fired provision into most of its contracts with school districts. Today, 69 of the nation's 86 largest districts have explicit reverse seniority policies, according to the National Council on Teacher Quality, a Washington, D.C.-based school-reform think tank. These clauses and the exercise of brute political power in statehouses and on school boards all but assured the teacher unions that they would control how school districts managed their teaching staffs.

Baby Boomer teachers didn't mind last hired-first fired because of their flush employment prospects. A twenty-two fold increase in federal, state and local education spending between 1960 and 1999 led to the addition of 1.8 million teaching jobs. Even a rare layoff had little effect on newly-minted teachers because they could easily find jobs in other school districts. By the 1990s, efforts to improve student achievement by reducing class sizes led to another boom in teacher headcounts.

Teaching became a comfortable and well-paid job. The NEA and AFT secured teacher seniority rights and reverse seniority rules and only 2.1 percent of teachers were dismissed each year for poor performance. By 1999-2000, the average teacher with more than 30 years of experience earned 36 percent more than a colleague with similar time on the job eight years earlier. Seniority rights also gave veteran teachers the ability to choose teaching assignments to their liking, allowing them to avoid working in the worst-performing and often most dysfunctional schools. It also meant that a veteran teacher could "bump" or kick out a teacher with less seniority, even if the more senior teacher was asked to leave a

previous assignment because of poor work performance.

Why Are Seniority Rules Breaking Down?

Beginning in the 1970s, concern over deepening academic failure in the public schools led to the emergence of the school reform movement with its emphasis on curriculum standards, textbook requirements and testing regimes. *A Nation At Risk*, a groundbreaking 1983 report prepared at the request of the Reagan Administration, declared that "too many teachers are being drawn from the bottom quarter of graduating high school and college students."

The modern school reform movement was embraced first by President Bill Clinton and then George W. Bush, who signed into law the No Child Left Behind Act (NCLB). With its emphasis on using test scores and graduation rates to measure school, student and teacher performance, NCLB forced school districts to embrace statistical measurement as a tool for performance management. The development of Value-Added Assessment, a statistical technique used to measure student test-score growth against other students at the same grade level, also gave schools and districts the ability to measure teacher performance over time.

By 2008, research revealed what some had long-suspected: There was no connection between teacher seniority and student achievement. On average, teachers improve their classroom skills during the first ten years of their career, and then their performance hits a plateau. A typical teacher is no more successful in improving

student achievement after 25 years of teaching than an instructor working for four years, according to a 2009 study by Dan Goldhaber and Michael Hansen of the Center for Reinventing Public Education. More importantly, the more-effective teacher may not be a 20-year veteran, but a rookie teacher who will get better still over time.

The success of charter school programs -- many staffed by teachers with less than a decade of experience -- in improving student achievement among poor and minority students also revealed the ineffectiveness of seniority-based labor policies. Charter school operators such as the Knowledge Is Power Program (KIPP) eschew seniority rights, hire and fire based on performance, and require their teachers to work longer hours. This embarrasses the NEA and AFT. It also makes traditional school districts envy charter schools' freedom from union restrictions. Many are eager to replicate charter school conditions in their own schools. (The antagonism between teachers unions and the charter school movement was profiled in *Labor Watch*'s March 2010 edition.)

Lastly, fiscal pressures are forcing school districts and states to reconsider last hired-first fired policies and other seniority preferences. The estimated 100,000 or more teachers and school employees that may be laid off this year is a paltry number compared to staffing contractions that the recession has imposed on the private sector—and it is just a sliver of the 6.2 million-person teaching workforce. But school districts worry that last hired-first fired will require them to pink-slip their younger and increasingly better-trained and more-talented teachers.

In Milwaukee, nearly all of the more than 400 teachers likely to be laid off by the school district before the start of the 2010-2011 school year are recent hires -- including Wisconsin's outstanding first-year English teacher. In sunny Manhattan Beach, California, the school district laid off 19 teachers -- including Chris Miko, a fourth-year teacher who just received a prestigious fellowship with the National Aeronautics and Space Administration. Because young teachers are often assigned to work in schools that

efficient because it requires districts to lay off more teachers to wring out cost savings. This means letting go more young teachers who may be paid half as much in salary as veteran colleagues. A district that must cut 10 percent of its salary expense must lay off at least 14 percent of its staff, according to a report by Marguerite Roza, a school finance professor at the University of Washington. The New Teacher Project, a Brooklyn-based teacher quality reform group, estimates a school district would have to lay off 100 veteran teachers to close a \$10 million deficit. It would have to lay off 200 younger teachers to reach the same goal.



serve the poorest students, layoffs tend to hit those schools hardest. The L.A. teachers layoff would have pink-slipped 72 percent of teachers at John H. Liechty Middle School in the city's largely Latino Pico-Union section, and half the teachers -- including the entire English staff -- at Edwin Markham Middle School in largely African-American south-central Los Angeles would be laid-off. Only the ACLU lawsuit, still working its way through the courts, staved off the layoffs.

Last hired-first fired also makes layoffs less

Success Stories of a Reform-Minded Generation

States and school districts are now moving against teachers unions in an effort to end last hired-first fired. In June 2010, Chicago Public Schools, looking to close a \$600 million deficit, followed D.C.'s footsteps by laying-off 226 teachers (many of them veterans) on the basis of performance and need. In California, concern over last hired-first fired is prompting state legislators and outgoing Governor Arnold Schwarzenegger to consider a measure to end seniority-based hires. A bill recently passed the California state senate despite NEA and AFT opposition.

Yet NEA and AFT leaders are fighting tooth and nail to retain last hired-first fired policies. The AFT's D.C. local unsuccessfully sued to bar the district from abandoning last hired-first fired. In Chicago, Karen Lewis, the newly-elected president of the AFT local, is already battling the district over layoffs.

In May, New York City Chancellor Joel

Klein froze raises in order to avoid a series of layoffs as part of the district's high-profile campaign to abolish the state's last hired-first fired law; the city's AFT local is opposed to the freeze. But the local faces ire among its ranks over its defense of last hired-first fired – especially among the 30,000 teachers hired by New York City within the past decade who now make up 34 percent of instructors represented by the AFT local. Because of last hired-first fired, 28 percent of those teachers would lose their jobs under a proposed city layoff, while older teachers would be spared. Klein rallied younger teachers to urge AFT local officials to revise the cuts. And third-year teachers Evan Stone and Sydney Morris, who started Educators For Excellence, rallied their colleagues to lobby for the end of New York State's last hired-first fired law.

What's happening in New York City highlights one of the problems facing the NEA and AFT: Their defense of last hired-first fired has energized rank-and-file members, but not in the way leaders hoped. Younger teachers, who now make up significant minorities of membership within both unions, are rebelling against a

system that provides them little benefit and hurts their career prospects.

Although young teachers continue to graduate from the same educational institutions as their older colleagues, many others are products of the school reform movement and are graduates of alternative teacher training programs such as Teach For America (which spawned Michelle Rhee and the founders of the KIPP chain of charter schools). Some new teachers have even spent time in Corporate America. More concerned with stemming dropouts than with tenure, these teachers share with school reformers an intolerance of laggard teachers. They oppose tenure and are offended by the hostility to innovation pervading traditional public school districts. They are more entrepreneurial and less willing to put up with stifling union work rules supported by their older colleagues.

For them, last hired-first fired means that they are the first to lose their jobs – even when performance evaluations show that they are doing better work than protected

veterans. These rules violate their own beliefs that great teaching should be rewarded and their sense of social justice for the poorest children. Nicholas Melvoin, a Los Angeles teacher pink-slipped by the district the previous year, told *The Los Angeles Times*: “The system has failed both the students in the classroom and the teachers who are trying to educate them.”

Eighty-six percent of teachers with nine or fewer years of teaching support using factors other than seniority in deciding layoffs, according to a March 2010 survey by The New Teacher Project. Younger teachers – especially those teaching math and science who can make more money in the tech sector – want to be rewarded for their performance. They know that the virtual insolvency of nearly all teacher pension funds means they will not be assured comfortable retirements. Nor do they see tenure as a benefit to themselves or to students. Sixty percent of newly-hired teachers would give up tenure if they received higher pay and raises, according to 2008 survey by the Education Sector.

Understanding the Nonprofit World

Capital Research Center's *Guide to Nonprofit Advocacy* surveys more than 100 key nonprofit public interest and advocacy organizations shaping U.S. politics and society today. Although the law prohibits 501(c)(3) nonprofits from lobbying and political spending, nonprofits are working aggressively through 501(c)(4) and 527 affiliates and umbrella groups to pass laws and elect candidates.

\$15.00, to order call 202-483-6900

or visit http://www.amazon.com/shops/capital_research

or mail your check and book order to:

Capital Research Center, 1513 16th Street, NW, Washington, DC 20036

Back to the Future?

Merit pay and other performance-based compensation is anathema to the NEA and AFT leadership, as is teacher evaluation based on student test score data. Proclaimed AFT President Randi Weingarten in *The New York Times* in April: “To be opportunistic and try to rush something through without knowing if there’s some degree of objectivity and a comprehensive and valid evaluation system is appalling.”

But what’s truly appalling is the teachers union defense of last hired-first fired and of seniority rights. It lays bare some of the most-glorious flaws in union thinking: How can unions demand equal pay and treatment for all workers while advocating work rules and compensation that favor one group of rank-and-file members over another? How can the NEA and AFT call themselves unions of modern professionals – and demand that teaching be considered on an equal footing with lawyers and doctors – when they defend labor practices best-suited for early 20th-century factory workers?

As more talented young teachers lose their jobs, the defense of reverse seniority becomes even more untenable. Even Baby Boomers among the rank-and-file are slowly realizing the problem; 55 percent of veteran teachers surveyed by The New Teacher Project agreed that factors other than seniority should be used in layoff decisions. The NEA and AFT defense of seniority rights undermines its support from younger members and compromises its credibility with the American public. It’s hard to argue that the status quo is better for

taxpayers and students when the result is an education system in which few acquire the skills necessary to compete in a global economy.

It may only be a matter of time before last hired-first fired becomes as rare in education as it is in the corporate workplace. Says Education Sector’s Carey: “It no longer makes sense to continue inflexible work rules that no longer work for teachers or anyone else.”

RiShawn Biddle, editor of the education reform website Dropout Nation (www.dropoutnation.net), is a co-author of the book *A Byte at the Apple: Rethinking Education Data for the Post-NCLB Era*.

Please consider contributing now to the Capital Research Center.

We need your help in the current difficult economic climate to continue our important research.

Your contributions to advance our watchdog work is deeply appreciated.

Many thanks,

**Terrence Scanlon
President**

LaborNotes

July brought another grim report from the **Labor Department**: Jobs fell by 125,000 in June - the steepest drop since last October – as the “recovery” continues to waver. The private sector added 83,000 new employees, but 225,000 workers lost their temporary census jobs. The official unemployment rate fell from 9.7 percent to 9.5 percent, largely because 652,000 people left the labor force altogether (that’s right; they still don’t have jobs but are no longer counted as “unemployed” for government accounting purposes). The total number of unemployed persons in June topped 14.6 million, 6.8 million of whom have been looking for work for 27 weeks or longer.

The **National Labor Relations Board** received a long overdue wrap on the knuckles last month. The Board was instituted in 1935 to help administer the National Labor Relations Act, which guarantees the “right” to collective bargaining. On June 17, the Supreme Court ruled in a 5-4 decision that the Board had no statutory authority to make decisions during the period from 2008-2010 when it operated with only two members, Chairman **Wilma Liebman** and **Peter Schaumber**, instead of the requisite five. As a result, the more than 600 decisions made by the Board during the disputed time are now called into question and may be subject to rehearing.

More labor lobbying shadiness. A recent inquiry by the **Center for Public Integrity** revealed that, for the last five years, the **National Association of Letter Carriers** (NALC) failed to adequately document its lobbying activities in disclosure forms as required by law. This follows close on the heels of revelations in May that the **American Maritime Officers** union had also violated disclosure laws - for almost a decade. Oops.

For another example of how union leaders hurt the workers they’re paid to represent, look no further than Wisconsin. The Milwaukee School Board recently unveiled a new health plan that would reduce per family insurance costs from \$26,844 to \$17,172 by, among other things, requiring teachers to contribute co-pays. This would have saved the cash-strapped school system over \$47 million, reports the Wall Street Journal, allowing the school board to forgo painful employee lay-offs. Unfortunately, union officials rejected the compromise, and in June the school board announced that 428 teachers would soon be out of work – including teacher-of-the-year **Megan Sampson**. Way to go, teachers union!

Another legal triumph for unions which equals a setback for productivity and economic liberty. On July 7, the 2nd U.S. Circuit Court of Appeals in New York upheld a federal court ruling preventing jet-engine producer **Pratt & Whitney** from exporting 1,000 Connecticut jobs to Georgia, Singapore and Japan. The court found Pratt & Whitney in breach of its contract with the **International Association of Machinists**, by failing to make every reasonable effort to preserve the jobs in Connecticut. The East Hartford-based company claims it had indeed made good faith attempts to turn its two flailing Connecticut plants around, but was unable to make them sufficiently productive. The company argues that it has “no obligation to invest additional funds in those operations or to accept lower profits.” Where do these guys think they live, America or something?