



The Impact of Collective Bargaining Legislation on Charter Schools in Hawaii:

One State's Story

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Issue: The state of Hawaii, with the only single-district public school system (and one of the lowest student performance levels) in the country, has been experimenting with school choice for almost two decades. Efforts have included school/community based management, student-centered schools, Hawaiian language immersion schools, charter schools and, most recently, so-called New Century conversion charter school public/private partnerships. In each case, such educational innovation as was possible took place deeply within the context of traditional public education in Hawaii. The legislative imposition of charter schools arguably broke this mold by establishing what appeared to be a blanket exemption from all state lawsⁱ. The extent to which the reality in Hawaii has matched theory can provide important guidance for legislative policymakers seeking careful wording to assure that legislative intent is actually carried out.ⁱⁱ

A key measure of the extent to which state charter school enabling legislation truly represents a departure is the extent to which charter schools are required to use collective bargaining as the vehicle for its relationship with its teachers.ⁱⁱⁱ This paper reports the results of interviews with various members of Hawaii's charter school community commenting upon the extent to which they have, in practice, been affected by collective bargaining and their views as to its propriety in the charter school setting. Respondents were also asked to evaluate the role played by the state Department of Education in the charter school collective bargaining experience. After reporting on the results of their questions, the authors undertake a detailed analysis of both the charter school enabling legislation and the state public sector collective bargaining law to which it refers.

Findings: Although seven different stakeholder groups were interviewed, responses were, in most cases, dramatically similar. First, it is clear that, except for professional union agents, few people have ever read Hawaii's collective bargaining law and rely on others to tell them what it says. Second, there were very few positive statements about the consequences of collective bargaining (as it is currently conducted) in Hawaii charter schools. Third, there was universal dissatisfaction with the role played by the Department of Education in inserting itself into the charter school collective bargaining environment. Forth, the two key legislators who wrote the

charter school legislation have distinctly different understandings of the intended role of collective bargaining in Hawaii charter schools.

Following the report on the results of the interviews, the authors present a detailed analysis of the two laws involved and conclude that practice significantly departs from the legislative language due, in large measure, to the interpretation placed on matters by the Department of Education. The authors find that most of the criticism of the role of collective bargaining in Hawaii charter schools is the result of misinterpretation of, rather than inherent weakness in, the legislation.

The way in which other states address this matter varies all the way from those which *require* that all charter school teachers in a district be covered by the district's existing collective bargaining agreement to those which empower charter schools to bargain or not bargain as they see fit.^{iv}

Policy Recommendations: Provision for review of the educational effectiveness of charter schools exists in the current legislation in both implicit and explicit form. However, the legislature should request that the Legislative Auditor conduct an *operational* evaluation of charter schools, including collective bargaining along with such other matters as the effectiveness of volunteers boards, school facilities, relationship with the DOE, etc.

ⁱ New century charter schools; exemptions, Hawaii Revised Statutes § 302a-1184 provides that charter schools are exempt from 'all applicable state laws except those regarding,' (1) collective bargaining under chapter 89....., (2) discriminatory practices under section 378-2, and (3) health and safety requirements.

ⁱⁱ For instance, current parsing of the phrase, 'exempt from all applicable state laws except those regarding *health and safety requirements*, has led to extensive litigation over whether charter schools are, thereby, exempt from local zoning laws; a particularly contentious issue in a state which provides no facilities support, whatsoever, to charter schools. One could argue that all sides would have been better off if the legislation provided more guidance on this subject.

ⁱⁱⁱ *Charter School Laws Across the States, Ranking Scorecard and Legislative Profiles*, Center for Education Reform, Washington, DC, annually, rates states on a 0-5 basis according to the extent to which charter schools are required to engage in collective bargaining and/or conform to district work rules.

^{iv} Iowa is a good example of the former, while Delaware is a good example of the latter.