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Freedom, Not Union, Key to Teachers' Case

BY LANCE IZUMI

Almost everybody agrees that an employee – public or private – should be judged on his or her individual qualifications and performance. Yet, for many of the nation's teachers, their freedom to be treated as individuals is barred by a collective bargaining process that treats them as a group. This is why several brave individual teachers are challenging that process in a lawsuit now before the U.S. Supreme Court.

Friedrichs v. California Teachers Association is being painted as a battle against unions, but that characterization misses the more fundamental point of the case. While the unions are, indeed, politically powerful and derive much of their power from dues and fees collected from teachers, the unions are just instruments in the collective bargaining process, and it's the process itself that's really at issue.

The plaintiffs are 10 nonunion teachers who argue that they should not be forced to pay so-called "agency shop" fees to the teachers union, as a condition of employment in many states, to help finance collective bargaining that results in a single contract with a school district that covers all teachers. The big rub for them is that the contract is an inherently political document that often contains policies detrimental to individual teachers and students.

Take, for example, teacher tenure and discipline policies that are part of these contracts. Rebecca Friedrichs, lead plaintiff and a longtime Orange County public school teacher, recounted for the Pacific Research Institute how, as a young teacher, she saw an abusive teacher in her school.

"I would witness every day as she would yell at the children, grab them by the arms and yank them into line," and it was, to Ms. Friedrichs, "obvious that they were terrified of her." When Ms. Friedrichs asked her mentor teacher about what could be done about the situation, her mentor "informed me that it was very difficult for districts to rid themselves of tenured teachers who were no longer effective in the classroom."

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Thus, instead of such teachers being held accountable, collectively bargained tenure and discipline policies shield them from individual responsibility. This process forces teachers like Ms. Friedrichs to pay for policies that they oppose, which violates their constitutional rights to free speech and free association.

Collectively bargained contracts also usually impose a single salary schedule that requires teachers of the same seniority and education levels to be compensated exactly the same as one another regardless of their performance.

The single salary schedule, like other products of collective bargaining, treats teachers as a collective group, not as individuals. “This lock-step compensation model,” according to an amicus brief submitted to the Supreme Court by the Pacific Research Institute and a number of education leaders and researchers, “penalizes teachers in disadvantaged schools and hard-to-staff teaching fields, as well as the most effective teachers, all of whom would be better off under a compensation system designed to reward teacher quality and improve student outcomes.”

Friedrichs said that only the Supreme Court “can vindicate our rights to free speech and free association.” If the court rules for her and invalidates agency shop fees, some form of collective bargaining may still remain in some districts, but, as education labor expert Mike Antonucci notes, in other districts “all teachers might be free agents, able to negotiate for themselves – as more than 93 percent of private-sector workers already do.”

In the end, Ms. Friedrichs says, “Teachers across America should be free to serve America’s children and their families,” and not “an organization that claims to speak for us.”

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