



The Leadership of Collective Bargaining Organizations and the *Brown* Decision

By Ed Dandalt and Marybeth Gasman

Abstract

In a scholarly context where most legal research on the implementation of the United States Supreme Court's 1954 *Brown* decision has evolved around the militancy of civil rights organizations for school desegregation, this article examines the leadership undertaken by federal teacher associations (American Federation of Teachers, National Education Association) at the national level to support the implementation of this hallmark decision during the modern civil rights movement. The analysis of this article is limited to the national desegregation services provided by these collective bargaining organizations to their locals. Findings from the primary materials that were reviewed suggest that the leadership provided by these organizations contributed to the desegregation of locals and was a catalyst for union mergers in public education.

Introduction

School desegregation has become a subject of debates among the 2020 Democratic presidential primary candidates. While these debates are going on, the role of national teacher associations in the fight against school segregation has been barely mentioned. In the legal field too, the role of teacher bargaining organizations in the civil rights movement has been barely examined by legal scholars. With that in mind, this article seeks to discuss the role of federal teacher associations undertaken at the national level to assist their locals in the implementation of *Brown v. Board of Education* during the peak of the modern civil rights movement (1954-1968). Our discussion is limited to the civil rights role of these organizations at the national level because of the quality of the primary sources that we had access to. The *Brown* decision was issued in 1954 by the United States (US) Supreme Court. The Supreme Court unanimously ruled that school segregation was unconstitutional because it violated the 14th Amendment¹. In doing so, our primary goal is to expand the understanding of legal scholars and students about the role of organized labor in school desegregation.

The method employed to address the above subject consists of examining the historical records of the American Federation of Teachers (AFT)² and the National

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Education Association (NEA)³. These collective bargaining organizations are the two main national teacher associations from which most state and local teacher associations are affiliated to. Today, around 1.7 million teachers are affiliated to the AFT and almost 3 million teachers are members of the NEA. The primary sources related to these two associations were collected with the help of their two archivists. They sent us materials related to the professional leadership services of the AFT and NEA in the civil rights movement. These materials consisted of national minutes, guidelines and integration policies issued to locals.

This article is organized in the following manners: the first part discusses *Brown* decision in relations with the civil rights movement and organized labor. The second part discusses the leadership services provided by the AFT and NEA for school and rank-file-membership desegregation. A conclusion is provided on the implications of the role of these two collective bargaining organizations in school desegregation.

Brown Decision and the Civil Rights Movement

1. *Brown* Decision in Legal Scholarship

Legal experts on the civil rights movement are divided into their interpretation of *Brown* decision. On one side, there are those who claim that the *Brown* decision ignited the modern civil rights movement. On the other side, there are those who believe that this hallmark decision did not trigger the intensification of this social justice movement.

Of the proponents of the first thesis, Mark Tushnet⁴, an expert on constitutional and legal history, ties the social implications of *Brown* decision to the development of the civil rights movement during the 1950s on the assumption that it has an energizing effect on the motivation of civil rights activists⁵ to militate against segregation. Commenting on the implications of *Brown* on civil rights activists, Tushnet wrote:

We can wonder whether the participants would have been so persistent had they not believed that ultimately their legal challenge would prevail (and had *Brown* not been available to them to support that belief), or, more modestly, whether they would have been so persistent had they not known that one of the nation's major governing institutions had endorsed the principle for which they were contending.

Furthermore, Tushnet argues that *Brown* outlawed school segregation and established a fundamental principle for constitutional law. By that he means that the enactment of *Brown* systematically made government decisions relying on race unconstitutional. Tushnet supports his argument on the fact that before the enactment of *Brown* decision, no government institution had publicly espoused and endorsed the progressive principle of this legislation. In the aftermath of *Brown* decision, a number of progressive laws (e.g. *Civil Rights Act of 1964*, *Voting Rights Act of 1965*, *Elementary and Secondary Education Act of 1965*, *Higher Education Act of 1965*, *Fair Housing Act of 1968*)⁶ were introduced by the government to improve race relations and the quality of black education. Statistical figures consolidate Tushnet's argument that the *Brown* decision was a catalyst for change in black educational attainments considering that in 1950, only 13% of black youths were completing high school but that figure rose to 58% in 1982 following the introduction of government regulations espousing the values of *Brown*. In 1950, only 2.2% of black youths were enrolled in postsecondary programs. But after *Brown*, their enrollment figure rose to 12.4% in 1982, leading some legal scholars to suggest that the introduction of *Brown*-like legislations by the government led to the equalization of school resources and helped to improve the income of African Americans after the end of the civil rights movement⁷.

Of the proponents of the second thesis, Michael Klarman⁸, a legal historian and constitutional law scholar, argues that *Brown* did not ignite the civil rights movement in the 1950s. He rationalizes his perspective on the fact that many acts of civil disobedience such as bus boycotts in Montgomery and around the country had occurred before 1954. This perspective is supported by most historians who agree that the modern civil rights movement did not begin with the Supreme Court's decision in *Brown v. Board of Education*. For example, according to Korstad and Lichtenstein⁹, the civil rights movement era began in the early 1940s "when the social structure of black America took an increasingly urban, and proletarian character... Northern black voters doubled their numbers... and half a million black workers joined CIO union organizations". Just between 1940 and 1946, the membership of the National Association for the Advancement of Colored People (NAACP) grew from 50,000 in 355 branches to around 450,000 in 1,073 branches. Some historians such as Jacquelyn Hall¹⁰ have even traced the roots of the civil rights movement to the end of the Civil War (1861-1865), preferring to use the term 'Long Civil Rights Movement'.

However, Klarman does recognize that *Brown* contributed in the 1960s civil rights movement even though

that contribution was counterintuitive. According to him, *Brown* had both good and bad effects on the quality of race relations. On one side, it raised the urgency to address issues of racial injustice and convinced African Americans that achieving racial equality was feasible. On the other side, it heightened the opposition of Southern legislators¹¹ to racial integration. Klarman agrees with Tushnet that *Brown decision* helped to shift the perspective of whites, especially in the North, towards the acceptance of racial integration. Both scholars and other legal historians hold to the view that this landmark decision was the culmination of a legal strategy that was years in the making to overturn the *Plessy v. Ferguson decision* of 1896 that upheld the constitutionality of school segregation. The *Plessy decision* states that the doctrine of 'separate but equal' supported by Louisiana state laws did not violate the Fourteenth Amendment of the US Constitution.

But *Brown* did not end school segregation in the course of the civil rights movement considering that it took many years for this landmark decision to be implemented by all state legislatures. The first generation of desegregation plans of the late 1950s and early 1960s only moved a small number of black students to white schools¹². For example, in 1964, ten years after *Brown* was issued by the Supreme Court, only 82 of the more than 20,000 black students in Charlotte were enrolled in a school with white students. One reason that could explain this failure is that the Supreme Court did not fully clarify what desegregation means in the decade after *Brown*, leaving a loophole for certain district courts to challenge the constitutionality and implementation of this federal court decision. The process of school desegregation only intensified towards the end of the civil rights movement when the Civil Rights Act of 1964 was passed by the federal government. This legislation imposed mandatory desegregation to all school districts nationwide to integrate or face cuts in public funding.

Although *Brown* did outlaw school segregation, legal scholars such as Gary Orfield¹³ argue that its implementation did not completely uproot the legacy of pre-Brown educational segregation in the aftermath of the civil rights movement. Today, public schools have re-segregated by race, a situation that partly traces its roots to redlining, school session and the exodus of white students from racially integrated schools that occurred in the aftermath of *Brown*. Orfield and Frankenberg¹⁴ criticize the termination of court-ordered desegregation plans undertaken by local school districts in the early 1990s and afterwards. This termination was an outcome of a 1991 ruling issued by the Supreme Court in the *Board of Education v. Dowell*.

This court decision altered the legal basis for mandatory desegregation by inferring that desegregation plans were not meant to be permanent¹⁵. Anecdotal evidence to the pattern of re-segregation is the result of a 2016 study by the Government Accountability Office. That study shows that more than 20 million students of color now attend racially and socioeconomically isolated public schools. That number was up from about 14 million students in 2001 and will continue to increase in the foreseeable future if nothing is done to address the status quo.

By any accounting, sixty-five years after *Brown*, statistical data from the National Center on Education Statistics show that the number of students of color attending majority-minority schools has risen from 59% to 66% between 1996 and 2016. Between 1988 and 2011 alone, the number of black students in majority-white schools dropped from 44% to 23% after rising from the 1960s through the 1980s¹⁶. Because of these alarming figures, Tushnet, Klarman, Orfield and other contemporary legal scholars argue that much more need to be done today to address racial inequalities in public education. Some of them even suggest for the reinstatement of court-ordered desegregation plans to address the status quo.

2. Pre-Brown Educational Segregation

The *Brown decision* as discussed above and in the legal literature is mostly presented by legal scholars in relation to its implication on race relations and public education during and after the modern civil rights movement. Reflecting on such issue, Korstad and Lichtenstein¹⁷ argue that "too often the history of the civil rights movement has been written as if events before the mid-1950s constituted a kind of prehistory, important only insofar as they laid the legal and political foundation for the spectacular advances that came later". With that concern in mind, we felt that it is essential to discuss the conditions of black education in the pre-Brown era to argue why this hallmark decision was significant. To begin with, this court decision was a positive step towards addressing the educational inequalities under which of black youths suffered before and when it was issued by the Supreme Court.

Among the scholars that have covered the intersection of school desegregation and the pre-Brown era, Fairclough¹⁸, a civil rights historian, provides us with a sociological mapping of the dire state of black education in those years. According to his account and the narratives of other scholars¹⁹, the system of black education was in a dire state during the Reconstruction era (1865-1877) and the 1950s. African American students studied in poor conditions and in run-down classrooms with dilapidated school infrastructures. In that pre-Brown

era, just one of every eight black adults had completed secondary school, while four of ten whites had earned their diploma. The quality of the curriculum under which black students were instructed was mediocre. For example, black students enrolled at Detroit's high schools between the 1930s and 1960s were taught with lower-level mathematics courses. Across the country, these students were taught by teachers who were often uncertified, poorly trained and underpaid. The salaries of black teachers were far below those of white teachers, respectively 73 dollars for black teachers and 118 dollars for white teachers. Two factors were at the roots of this institutional injustice, namely the politics of 'separate but equal' and school funding inequities. On the politics of 'separate but equal,' the government provided black youths with mediocre education with the goal of preparing the members of this group with functional skills to participate in the labor market as future low wage earners. By all accounts, black education was meant to train black people to perform manual labor, to serve the needs of whites.

The problem of school funding inequities was underscored by the ubiquity of black schools operating without government sponsorship and funding. In contrast to black schools, white schools were better funded by the states with white students learning in good conditions. Charles Johnson²⁰, a civil rights advocate in the 1930s and 1940s, for example, notes in his seminal work that the available state funds supported the white schools much more liberally than the black schools. Only a small amount of the available state tax revenue was allocated to financing the education of black youths. A report conducted by the American Council on Education²¹ revealed that black schools in those pre-Brown years were not adequately cared for by legislators. Because of the lack or scarcity of government's financial support, African American communities set their own education board of trustees and relied on the small financial support provided by Northern white philanthropist foundations (e.g. General Education Board, the Julius Rosenwald Fund) and their own churches to fund their schools.

Decades of racial segregation also affected the system of black post-secondary education. Because of the discriminatory institutional conditions created by the socio-legal forces of segregation, historically black colleges and universities (referred to as HBCUs) struggled with the lack of operational resources in the same way black elementary and secondary schools did²². HBCUs were created just before the Civil War in the North in the mid-1800s and in greater numbers after the Civil War in the South. They were created haphazardly with support from the US

Federal government's Freedmen's Bureau, the American Missionary Association, and black churches, including the African Methodist Episcopal Church. Most early HBCUs started in make-shift facilities such as church basements or dilapidated schoolhouses and were not affiliated with the state or Federal government²³. The governance of HBCUs in the US under segregation was mixed, with private HBCUs enjoying more freedom from the state's segregationist mentalities but still enduring threats from local white communities that were threatened by the very idea that a black person was being educated²⁴. Although private HBCUs were not funded by the state, their institutional charters were issued by the state and thus they still felt substantial threats, although not entirely linked to funding²⁵. HBCUs that were part of state systems were most often governed by individual states and boards of trustees appointed by the governors. These trustees had little to no knowledge of HBCUs and often harbored a segregationist agenda that considered blacks as inferior to whites. HBCUs at the state level received funding, but it was little and not equitable. These inequities resulted in legal cases throughout the Southern states, brought forward by the National Association for the NAACP's Legal Defense Fund.

To address the above issues, the NAACP developed legal strategies such as the Margold Plan to seek judicial declarations against the inequities of the school funding system in the pre-Brown era. From the standpoint of those legal strategies, the NAACP argued that it was unconstitutional for Northern and Southern legislators at the state and county level for not providing schools in black communities with adequate funding and operational resources. The NAACP argued that "segregation coupled with discrimination resulting from administrative action permitted but not required by state statute, is just as much a denial of equal protection of the laws as is segregation coupled with discrimination required by express statutory enactment"²⁶. To address the status quo, in 1929, for example, the NAACP, filed a number of lawsuits in the South with the objective of equalizing the allocation of school funding in counties. Arguably, there is a relationship between defending the improvement of black education and the role of African American civil rights organizations in the pre-Brown era. The need to address the issues discussed above constitutes one of the socio-legal antecedents that led the NAACP to support a class suit against the Board of Education of the City of Topeka in 1951. It was for the sake to address such pre-Brown educational inequalities, that the Supreme Court ruled twice in 1954 and 1955 in favor of that class suit.

Organized Labor in the Civil Rights Movement

Our article is important because there is not much discussion in the legal literature on the role of organized labor in the implementation of *Brown decision* during the civil rights movement. Most of the discussion on that subject is covered by labor historians²⁷ rather than by legal historians. Judging by the language of the literature on civil rights unionism, it appears that the leaders of trade union organizations such as the American Federation of Labor and Congress for Industrial Organizations (AFL-CIO) were moderate in supporting *Brown* out of the fear of losing their membership in the South. They also feared that participating in civil rights rallies (e.g. 1963 March on Washington) may tarnish the image of labor. Because of this union complacency, most labor historians criticize these union organizations for not doing enough to support black civil rights. However, some reactionary unions affiliated to the AFL-CIO, especially those located in Northern urban cities with a large African American population, took part in the political actions initiated by civil rights organizations. These reactionary unions did so because they believed that black workers and their fate were intertwined with that of white workers and that segregation was a violation of the principles of human rights²⁸. The AFT and NEA were among those reactionary unions and their support for *Brown* and racial equality is discussed below.

In addition to union complacency, the labor movement was embedded with structural discrimination. For instance, in his Report of Five Years of the AFL-CIO, 1955-1960, Hebert Hill²⁹, the Labor Secretary of the National Association for the Advancement of Colored People (NAACP) in the 1950s, pointed out that discriminatory practices by trade unions across the US existed in those days and were a continuation of the institutionalized pattern of anti-Negro employment practices that were traditional with large sections of organized labor and industrial management. Marshall³⁰ argues that in the South, anti-black discrimination was prevalent among Southern trade unions. Especially in the South, the rank-file-membership of trade union organizations was segregated across racial lines.

Although the above literature and the documentation on segregation suggests that the labor movement was entangled by racial issues, the civil rights movement has been barely discussed by legal scholars in relation to organized labor. For that reason, our article is important considering that the literature on labor history shows that the rise of the civil rights movement was partly tied to the structure of industrial relations. As stated by Korstad and Lichtenstein³¹:

In like manner, the rise of industrial unions and the evolution of late New Deal labor legislation offered working-class blacks an economic and political standard by which they could legitimate their demands and stimulate a popular struggle. The 'one man, one vote' policy implemented in thousands of National Labor Relations Board (NLRB) elections, the industrial "citizenship" that union contracts offered once marginal elements of the working class, and the patriotic egalitarianism of the government's wartime propaganda, all generated a rights consciousness that gave working-class black militancy a moral justification in some ways as powerful as that evoked by the Baptist spirituality of Martin Luther King, Jr., a generation later.

However, there is no need to discuss the civil rights movement in detail herein considering that there is a dense body of literature on that subject. If there is any summary to draw on the civil rights movement, it is that the civil rights movement is one of the largest social justice movements of the 20th century with a far outreaching impact in American society today.

The Support of National Teacher Associations for *Brown*

1. The American Federation of Teachers

The historical materials that we analyzed suggest that the AFT opposed school segregation before and after *Brown decision*. Before 1954, the AFT moderately supported equality for African Americans to a greater degree than any other historically white teacher associations. For example, during its 1929 annual convention, the AFT proposed two resolutions in support of the abolition of segregated schools. These resolutions called for equal pay for black and white teachers, and the integration of black teachers in its rank-file-membership. But these resolutions were not passed because the delegates from Southern affiliated locals voted against their enactment. The AFT was the first larger teacher association to file an amicus brief in 1952 to support school desegregation, two years before the issuing of *Brown decision* by the Supreme Court.

Our review of AFT integration policies such as the *Guidelines for AFT Involvement in Big City Integration* suggests that the AFT supported *Brown* through the following three measures: integration of locals, school staff integration and student integration. These integration policies were underlined in the AFT 1953, 1955,

1956³² and other conventions. For example, at the 1955 annual convention, the AFT Executive Council passed a resolution mandating all locals to integrate their rank-file-membership or face suspension. This resolution was passed in a climate of disagreement between delegates from Northern and Southern locals. A similar resolution was passed at the AFT 1956 annual convention to compel locals to desegregate. Due to such resolutions, most Northern white locals decided to merge with black locals or accept black teachers as rank-file-members.

But some locals, mainly in the South, refused to do so and opted for expulsion³³. One of the reasons that led these locals to prefer expulsion over desegregation was that white teachers in those locals wanted to protect their jobs and special interests. They feared that merging with black locals will lead to competition for teaching jobs. Adding to the use of expulsion as a measure of pressure, the AFT issued statements demanding all teachers and principals who remained members of these dissenting Southern locals to resign from such organizations. But for black teachers, these resolutions were not enough as they continued to face collective bargaining discrimination (e.g. low pay, demotion, arbitrary reassignment) in the 1950s and 1960s. They accused the AFT of failing to improve their employment situation and wanted more radical decisions to be taken to address the status quo.

The AFT led the way in developing diversity staffing programs and procedures that espoused the values of *Brown decision*. The language of these staffing programs promoted the end of the practice that white teachers should only teach white students, and black teachers should only teach black students. It supported the abolition of legal barriers to fair teacher hiring and transfer. It advocated for the creation of more teaching slots by school districts to recruit black and other minority teachers and paraprofessionals. To help locals bargain for those equity policies with their school boards and lawmakers, the AFT established the Committee on Equal Employment Opportunity to serve as a coordinating organ for workforce integration. This committee helped locals to develop equity and diversity procedures at the district level. The leadership of the AFT argued that these plans should promote and support the hiring of black and other minority-group teachers and paraprofessionals in districts. It urged its locals to align their collective bargaining aspiration with government-sponsored integration policies such as the administrative efforts initiated by the Office for the Civil Rights of the US Department of Health, Education and Welfare during the 1960s and 1970s to integrate the education workforce. For that reason, AFT locals in collaboration with civil rights chapters bargained with their school board for equitable

teacher and paraprofessional reassignments within each school to achieve racial balance in a district as a whole. They bargained for the creation of more teaching jobs and the training of more black teachers to fill those positions.

Training more black teachers was necessary for the following two sociological reasons. The first reason is that in many black schools, students were taught by teachers without proper pedagogical training. Secondly, teacher education at that time was eschewed against black teachers, especially in the South where segregation was harsher³⁴. The lack of proper teacher education created a situation whereby members of African American communities were unable to obtain the college education required for teaching. Consequently, black students in segregated schools were taught by many teachers who were not licensed, a contributing factor to racial inequality in educational outcomes. To provide these students with quality education, the leadership of the AFT argued that improving the instructional leadership of black teachers was fundamental.

Measures to integrate the school workforce were met with opposition by some white locals, particularly in the South³⁵. Not only locals, Southern legislators and school boards also opposed the transfer of black teachers to white schools. The Georgia Board of Education³⁶, for example, initiated one of the first attacks against black teachers and the NAACP in July 1955, one year after *Brown*. The Board in complicity with the Georgia Education Association unanimously passed a resolution to revoke forever the license of any teacher who condones and agrees to teach mixed classes.

In the North too, there were some white locals (e.g. Boston Teachers Union) and school boards who did not want black teachers teaching white students. For some of these Northern locals, it was acceptable to transfer white teachers to majority-black schools. But the transfer of black teachers to white schools and districts was perceived as inappropriate. Simply put, some AFT locals harbored a progressive view of school staffing integration as long it was unilateral and not holistic. To counter this anti-integration resistance, the AFT asked all of its locals to offer legal assistance (e.g. filing court cases) to black teachers facing arbitrary dismissal. The Civil Rights Department of the AFT was the bureaucratic unit that was responsible for coordinating those legal efforts. It also worked closely with the chapters of civil rights groups to initiate legal actions against districts that refused to create an equitable collective bargaining environment for black teachers.

On student integration, the AFT mandated its locals to advocate for the integration of black students and white students, including other minorities (e.g. Puerto Rican kids) into multiracial schools. As stated in its *Equal*

Educational Opportunity plan, the “active support...to integrate the educational program be requested and sought from all locals from the American Federation of Teachers.” For the AFT leadership, pushing for student integration was essential to provide equal access to better educational opportunities for all students. To achieve this humanist goal, they lobbied the federal government to set aside public funds to open up integrated schools.

But in some counties, such as Prince Edward County of Virginia, the local Board Supervisors voted not to fund integrated schools and instead used government funds as vouchers to open segregated academies for white students. In such counties, integrated schools were often shut down by local authorities to perpetuate segregation. To address the status quo, the AFT in collaboration with the NAACP helped to launch educational programs such as Freedom Schools³⁷ as an alternative to temporarily offer free schools for black students. These Freedom Schools programs were held in 1964 in places such as Mississippi and other Southern state counties to also drive voter registration among African Americans. The AFT called white teachers affiliated to its locals to volunteer in the running of those schools. Many white teachers, especially those from Northern locals, accepted this call and taught in those schools along with black teachers. Northern locals (e.g. Detroit Federation for Teachers, United Federation of Teachers) took part in these social justice education programs by running training academies for young white and black activists on how to effectively teach in those summer schools.

The professional development program developed by these locals focused on providing academic (e.g. reading, writing), citizenship (e.g. black history) and recreational instruction to black students. The efforts of the AFT for student integration did not stop at the end of the civil rights movement. It continued to advise its locals to pressure their school districts to promote multiracial schooling considering that the 1966 Coleman report³⁸ found that school desegregation significantly benefited socially disadvantaged black students from learning in mixed-race classrooms. All in all, our consideration of the above historical discourse suggests that the AFT fought for quality-integrated education. This engagement in the civil rights movement was mostly undertaken through its Northern locals where most of its constituency was based.

2. The National Education Association

Our review of primary sources suggests that the NEA did not support *Brown* to the same degree as the AFT. It espoused a conservative perspective of race relations and was less progressive than the AFT. This militancy differential

was underscored by the fact that in the early years of the modern civil rights movement, the NEA did not officially call for the end of school segregation. However, the NEA had on a few occasions addressed issues of racial injustice in the 1950s³⁹. But as underlined in the materials (e.g. minutes of meetings, mergers notes) of the Joint Committee of the NEA and American Teachers Association (ATA) of 1950-1960, the efforts of NEA at that time were limited to supporting the improvement of educational opportunities for African Americans without necessarily advocating for integrated schools. The NEA did not support *Brown* in the beginning of the civil rights movement because its leaders feared that supporting this legislation may cause their Southern members to leave the association. It was also assumed that desegregating the public-school system will do more harm to race relations in the South. The above rationale is further credited by the statement made by the NEA archivist that we contacted to collect the historical materials. He stated that:

I can mention that the NEA has very little information, especially editorial opinions, on school desegregation during the 1950s at least according to what I have seen. It is a very big collection (over 5000 boxes) so it is also very possible that I have missed something...There is a lot more material starting in the mid to late 1960s. There are a number of reasons why they didn't take a position on this issue, not least of which is that the NEA had many members working in segregated school districts, but suffice to say that I have had previous researchers looking for similar documents and they found almost nothing of relevance (on either side) in the 1950s.

The NEA only endorsed *Brown* in 1961 and started publicly advocating for school desegregation from the mid to the late 1960s. Even during those years, its support for *Brown* was moderate but more progressive than in the beginning of the civil rights movement. Anecdotal to this late support for *Brown* was the passing of Resolution 12 in 1964 during the merger negotiation process with the ATA. The ATA was a professional association representing black teachers in schools in the South. During the merger negotiation process, the ATA representatives stated that they could only merge if the NEA leadership supports *Brown* and other civil rights laws. As a result, Resolution 12 was passed by the NEA delegates at their 1964 annual convention⁴⁰, mandating all white locals to racially merge by July 1966. Other similar resolutions were issued by the NEA leadership to help white locals amend their constitutions

and to expedite their merger process with black locals. It could be, therefore, argued that the position of the NEA on *Brown* officially shifted only when it merged with the ATA in 1966⁴¹. This union merger set a precedent for black teachers to integrate white locals but not without any controversies. The merger process of locals was controversial because the constituency of the NEA was mostly based in Southern districts where white locals opposed *Brown* and came into conflict with their national leaders.

One of these controversies was the refusal of the Virginia Education Association and Louisiana Association of Educators to integrate black teachers within their rank-file-membership. To address the status quo, the Executive Committee of NEA suspended such locals when they refused to desegregate. Despite these controversies, the mass exodus of white Southern locals as feared by the NEA leaders did not materialize. Only a handful of dissent members left the association as most Southern locals and affiliates took steps to desegregate their rank-file-membership.

In addition to calling for the desegregation of locals, the NEA provided professional development services to black teachers who joined these locals. These professional development services consisted of providing these new members with leadership training. Black teachers and other minorities were trained to serve as leaders in the newly formed multi-racial association. In the same vein, the NEA implemented a diversity promotion strategy by appointing these racialized members in positions of leadership within the association. For example, in 1968, Elizabeth Duncan Koontz was appointed as its first African American president. Arguably, the *Brown* decision did not only set a precedent for the racial integration of locals but also improved the social positioning⁴² of black teachers in organized labor.

The provision of professional development services was not only limited to equipping black teachers with leadership skills considering that the NEA provided technical assistance to locals dealing with school desegregation. This technical assistance involved providing workshops and programs to all teachers to help them grasp their role and that of the association in fighting segregation in their school districts. The NEA also advised its affiliated state teacher associations to train the representatives of locals on how to coordinate civil rights legal actions. Such training was essential to have a grassroots leadership that was equipped to defend the rights of black teachers against districts that were opposed to school staff integration. As pointed out in the NEA School Desegregation Guidelines for Local and State Education Associations⁴³:

Where a segregation suit has been filed against the school board, the association should consider mov-

ing to intervene with the concomitant rights to present evidence and to appeal any adverse decision in order to protect members' rights in transfer, reassignment, dismissal and exercise of contract rights and to prevent unnecessary disruption of the educational environment...If the association is unable to enter as an intervening party, it should consider filing a friend of the court brief to assure protection of its members' rights.

In addition to the above measures, the NEA provided locals with a strategy on how they could protect the collective bargaining rights of black teachers and other racialized teachers. This strategy consisted of initiating the following individual and collective actions: personal appeal, grievance, community pressure, litigation, complaints to official agencies, political action and coalition development activity.

On building a coalition and leading political actions, for instance, the NEA encouraged the representatives of locals to work with civil rights and legal defense organizations (e.g. American Civil Liberties Union, NAACP Legal Defense Fund, Lawyers' Committee for Civil Rights) at the grassroots level. Encouraging locals to work with civil rights organizations was necessary considering that black teachers were victims of unfair dismissal and arbitrary reassignment. Many veteran black teachers lost their jobs in the South following *Brown* because some Southern districts refused to have them in their payrolls. Around 30,000-50,000 black teachers were laid off in favor of white teachers. Or if they kept their jobs, they were demoted or were relegated to be bus supervisors. Black principals were appointed to manage schools that had no students, just so the school board could say they had integrated their workforce.

Simply said, the process of school desegregation led to the deskilling of many veteran black educators. To prevent the perpetuation of this workforce discrimination, the NEA through the representatives of its locals bargained with school boards to set an equitable human resource management system (e.g. fair hiring and transfer) in their districts, free of racial prejudice. Yet some white locals even those who voted to merge with black locals were hostile toward taking on the responsibilities of litigation and often tried to distance themselves from, if not completely sever ties with civil rights lawsuits. All things considered; the above integration measures suggest that Southern locals received a technical assistance from the NEA to fight for collective bargaining equity in their respective district.

Furthermore, the NEA took some initiatives to foster student integration in the South where districts were

strongly segregated across racial lines. To address the status quo, it recommended its locals to establish committees to review how desegregation plans undertaken at the state or county level affect curriculum development, student rights and community involvement. The representatives of locals were mandated by the national leadership of the association to track and fight any district policy (e.g. intelligence test, National Teacher Examination) that could unconstitutionally perpetuate racism in schools undergoing desegregation. Simply put, the NEA encouraged its locals to hold their school districts accountable on the implementation of *Brown* decision.

Conclusion

Reflecting on the above historical narrative, it is fair to argue that the NEA and AFT differed in their civil rights involvement pace. The AFT supported *Brown* earlier than the NEA did. Two factors could help us understand why this differential commitment existed. The first factor is that most locals affiliated to the AFT were located in Northern states and districts where opposition to desegregation was less tense than in the South. This moderation was underscored by a legal system characterized by de facto segregation. Segregation in the North was not imposed by laws but existed in customs and zoning.

The second factor involves the scale of opposition among their locals. The NEA had a hard time enforcing *Brown* decision because the opposition of white Southern locals to racial integration was much larger and supported by a political system promoting de jure segregation. These locals had right-to-work legislation at their disposal to justify their refusal to merge with black locals or to support integrated schools. Right-to-work legislation enacted after the Taft-Hartley Act in 1947 made certain that the closed shop and secondary boycotts remained forbidden and

precluded widespread unionization⁴⁴. School boards too had access to state-sponsored Jim Crow laws to challenge the legality of *Brown* decision. It was, thus, more challenging for the NEA to enforce *Brown* in its constituency to join the civil rights movement. Adding to that, the NEA was more conservative than the AFT in its approach racial issues. It had a harder time to mobilize white Southern teachers because the push for school desegregation was mostly advocated by its national leadership than by the representatives of its state and local associations.

Moreover, the push of these federal teacher associations for rank-file-membership integration suggests that *Brown* was a catalyst for change in the labor movement, causing one of the larger union merger movements in the US. Arguably, school desegregation during the civil rights movement should not only be understood in terms of student and faculty integration in multiracial schools. It should also be understood in relation to the racial integration of the rank-file-members of the organizations representing teachers' special interests. What implications for civil rights education and research then? We suggest that law students in civil rights programs should be taught about the contribution of organized labor in the implementation of *Brown* decision.

In a legal scholarly context where most literature on school desegregation during the modern civil rights movement has centered on the militancy of black civil rights organizations, legal rulings, cases of opposition to desegregation (e.g. Little Rock Nine, Boston desegregation busing crisis) and government desegregation policies (e.g. Freedom of Choice Plans, busing, magnet school programs), legal scholars need also to consider the scope of teacher unionism in their analysis of the institutional forces that support *Brown* decision. Doing so is important considering the literature on the intersection of organized labor and the civil rights movement is dominated by the role of industrial unions.

ENDNOTES

- ¹ The 14th Amendment of the US Constitution was adopted on July 9, 1868 as one of the Reconstruction Amendments to address issues of slavery and other citizenship rights issues. It offers equal protection of laws and serves as a legal model for court decisions and government legislation.
- ² The AFT was founded in 1916 to defend the collective bargaining interests of educators and educational paraprofessionals. It was one of the first trade unions to allow African-Americans and minorities to become full rank-file-members of a trade union organization.
- ³ The NEA was founded in 1857 to bargain for the employment rights of educators and paraprofessionals working in the education sector. It is

currently the largest trade union and professional interest group in the US.

- ⁴ Mark Tushnet, The Significance of *Brown v. Board of Education*, 80 *Virginia Law Review* 173, 173-179 (1994).
- ⁵ While the majority of civil rights activists were African Americans, some of them were progressive white activists. For example, half of the young people who participated in the Mississippi Freedom Summers of 1963.
- ⁶ The Civil Rights Act of 1964 was passed ten years after *Brown* decision to outlaw discrimination based on race, religion, sex and national origin in employment, education, voting and in other institutions. See, e.g., Daniel Rodriguez & Barry Weingast, *The Positive Political Theory of Legislative*

History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation, 151 *University of Pennsylvania Law Review* 1417 (2003). The Voting Acts of 1965 was introduced by Lyndon Johnson and passed by Congress to provide racial minorities with voting rights. The Elementary and Secondary Education Act of 1965 was passed by Congress to democratize education, provide state funding to all schools and to provide all elementary and secondary learners with an equal access to quality education. The Higher Education Act of 1965 was also enacted by Lyndon Johnson as part of his policy on war on poverty to strengthen the educational resources of colleges and universities and to provide financial assistance for students in those institutions. The Pell Grant is one of the

most successful government incentive programs deriving from the Higher Education Act that has helped low-income students attend post-secondary education. The Fair Housing Act of 1968 was also passed under Lyndon Johnson to prohibit discrimination in housing. However, this legislation is criticized in the legal scholarship for not banning discrimination in mortgage lending, thus contributing to the stagnation of residential integration in the US. See, e.g., Massey Douglas. *The Legacy of the 1968 Fair Housing Act*, 30 Sociological Forum 571 (2015).

⁷ Orley Ashenfelter et al., *Evaluating the Role of Brown v. Board of Education in School Equalization, Desegregation and the Income of African Americans*, 8 American Law and Economics Review 213 (2006).

⁸ Michael Klarman, *Brown V. Board of Education and the Civil Rights Movement: The Supreme Court and the Struggle for Racial Equality* (2007).

⁹ Robert Korstad & Nelson Lichtenstein *Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement*, 75 *Journal of American History* 786, 786-787 (1988).

¹⁰ Jacquelyn Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 *Journal of American History* 1233 (2005).

¹¹ e.g., In 1956, a coalition of 100 Southern politicians signed the Southern Manifesto to forestall and prevent school desegregation in the South. In support of this manifesto, a collection of laws was passed by Southern legislatures to punish any public school that integrated by eliminating its state funds and eventually closing the school. See, e.g., Alexander Bickel & Harry Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills*, 71 *Harvard Law Review* 1 (1957); John Kyle Day. *The Southern Manifesto: Massive Resistance and the Fight to Preserve Segregation* (2014).

¹² Sarah Reber, *Court-Ordered Desegregation: Successes and Failures Integrating American Schools since Brown versus Board of Education*, 40 *Journal of Human Resources* 559 (2005).

¹³ Gary Orfield. *Public School Desegregation in the United States, 1968-1980* (1988)

¹⁴ Gary Orfield & Erica Frankenberg, *Increasingly Segregated and Unequal Schools as Courts Reverse Policy*, 50 *Educational Administration Quarterly* 718 (2014).

¹⁵ Sean Reardon et al., *Brown Fades: The End of Court-Ordered School Desegregation and the Re-segregation of American Public Schools*, 31 *Journal of Policy Analysis and Management* 876 (2012).

¹⁶ Orfield & Frankenberg. (2014)

¹⁷ Korstad and Lichtenstein, 786 (1988)

¹⁸ Adam Fairclough. *A Class of Their Own: Black Teachers in the Segregated South* (2007).

¹⁹ See, e.g., Charles Johnson. *Growing up in the Black Belt: Negro Youth in the Rural South* (1941).

²⁰ Johnson, 102 (1941)

²¹ The American Council on Education is a non-profit higher education association. It was created in 1918 and is involved in the advocacy and development of educational policies and programs to improve the system of higher education in the US.

²² Marybeth Gasman & Adriell Hilton, *Mixed Motivations, Mixed Results: A History of Law, Legislation, Historically Black Colleges and Universities, and Interest Convergence*, 114 *Teachers College Record* 1 (2012).

²³ *Id.*

²⁴ *Id.*

²⁵ Joy Ann Williamson. *Radicalizing the Ebony Tower: Black Colleges and the Black Freedom Struggle in Mississippi* (2008).

²⁶ Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950*. 28 (1987).

²⁷ See, e.g., Korstad and Lichtenstein. (1988); Ray Marshall, *Union Racial Problems in the South*, 1 *Industrial Relations* 117 (1962); Herbert Hill, *Racism within Organized Labor: A Report of Five Years of the AFL-CIO 1955-1960*, 30 *Journal of Negro Education* 109 (1961); Alan Draper. *Conflict of interests: Organized Labor and the Civil Rights Movement in the South 1954-1968* (1993).

²⁸ Draper. (1994)

²⁹ Hill, 109 (1961)

³⁰ Marshall. (1962)

³¹ Korstad and Lichtenstein, 787 (1988)

³² During the AFT annual convention of 1953, one year before Brown, the delegates had already resolved that the Federation should give legal and financial support to locals working towards racial integration, and that similar institutional assistance be given to locals seeking to establish equitable collective bargaining provisions and staffing regulations for tenure and the hiring of teachers. At the 1955 convention, Northern delegates passed a resolution to condemn the ant-integration actions of the Georgia Board of Education. These delegates recommended the Executive Council to provide moral, legal and financial support for progressive Georgia's teachers who lost their teaching licenses due to Georgia Board of Education's decision to revoke forever the license of any teacher who condones and agrees to teach mixed classes. See, e.g., AFT Convention Proceedings (1953), 45-46; AFT Proceedings (1954); AFT Proceedings (1955); AFT Executive Council Proceedings (1956), 138.

³³ Segregated locals were instructed by the national office of the AFT to provide integration reports on their efforts to desegregate. Letter from Luny J. Smith to Carl Megel, June 10, 1955. Fairclough. (2007)

³⁵ e.g., Local of 777 of Mobile, Atlanta Local 89, and Chattanooga Local 246,

³⁶ AFT Proceedings (1955)

³⁷ e.g., In the 1964-1964 school year, the AFT sent 50 teachers to Prince Edward County to teach over 600 African American students following the decisions of the county board of supervisors to close their public schools.

³⁸ The Coleman report, also called the Equality for Educational Opportunity, was a national survey requested by the Civil Rights Act of 1964 to evaluate the achievement and the education quality of minority students, and the progress of school desegregation.

³⁹ Despite recognizing the necessity to address issues of racial inequalities in education, the NEA

did not support any legal actions undertaken by civil rights organizations before *Brown*. Plus, it did nothing to support the legal cases through its Defense Commission that advocated for equal pay and tenure for African American teachers in 1954. Even after *Brown* was issued, the NEA's annual proceedings of 1955 through 1958 reveal that the Executive Secretary's annual reports of the Association did not provide any practical suggestions to locals to integrate. Between 1955 and 1959, the NEA's yearbooks, magazines and bulletins, did not make any publication or reference condemning school segregation. The NEA, instead, opposed federal legislations (e.g., The Powell Amendments that tied the provision of school construction aid to districts' integration acceptance and efforts) that pressured and compelled school districts to desegregate. See, e.g., NEA Proceedings (1955); NEA Proceedings (1956); NEA Proceedings (1957); NEA Proceedings (1958).

⁴⁰ *Id.*

⁴¹ The merger of NEA and ATA was a historical moment in the healing of race relations in labor movement in education leading union leaders such as Elliot Brown Palmer (an African-American civil rights leader and former executive director of North Carolina Teachers Association) to state that: "The merger between ATA and NEA was a monumental step. It came at a time when many whites and blacks were uneasy about the consequences of integration. ATA members were afraid we would lose everything—our schools, our principals, and our teachers, who were helping our kids through the process of desegregation. No one knew whether the new melting pot would be successful, but one America meant one America. By merging, NEA and ATA were way ahead of the rest of the country—paving the way for businesses and government to follow their example. By merging with ATA, NEA set the tone for the social fabric of America. Every government agency started holding human relations workshops." Sabrina Holcomb, *Answering the Call: The History of NEA Part 4*, NEA (January 23, 2020), <http://www.nea.org/archive/12372.htm>.

⁴² By social positioning improvement, we mean that *Brown* creates an institutional context within the labor movement that allows a black person to lead an integrated trade union organization for the first time. Until the end of the modern civil rights movement era, it was very seldom to see a black person appointed at the top of an organization comprised of white people.

⁴³ The School Desegregation Guidelines for Local and State Education Associations were adopted in February 1980 by the National Education Association (NEA) Board of Directors and were an updated version of guidelines adopted in 1974. This is another indicator that consolidates the view that the NEA was late to support *Brown* and to call for the integration of its affiliates and locals.

⁴⁴ Jon Hale. *We are not Merging on an Equal Basis: The Desegregation of Southern Teacher Associations and the Right to Work 1945-1977*. 60 *Labor History* 463 (2019).

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