

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE BARGAINING IMPASSE
BETWEEN
SEATTLE TEACHERS ASSOCIATION
AND
SEATTLE SCHOOL DISTRICT NO. 1

REPORT AND RECOMMENDATIONS
OF THE
FACT FINDER

BEFORE PROFESSOR DANIEL G. COLLINS

APPEARANCES:

For Seattle Teachers Association

WARREN HENDERSON, Associate Executive Secretary

For Seattle School District No. 1

RUSSELL FOSMIRE, Interim Director of Staff Relations

START

REPORT OF THE FACT FINDER

This report, with recommendations, contains my conclusions based on the voluminous evidence presented in five days of hearings. My purpose is to recommend a reasonable basis for settlement by the parties to the dispute.

I have attempted in this Report to make recommendations as to all of those items as to which there is major disagreement and therefore, on whose resolution any contract settlement depends. There are, however, a large number of items on which the parties have made significant bargaining progress, even while this fact finding proceeding has been in progress. As to these items, I have chosen not to make recommendations, believing that their resolution will be achieved in normal course once the parties' major disagreements are resolved.

ECONOMIC ITEMS: GENERAL OBSERVATIONS

The present bargaining dispute cannot be understood without reference to certain events which took place in the District during the period of the predecessor contract. Pursuant to a salary reopener in that contract, the District and the Seattle Alliance of Educators agreed in September, 1974, to a 10.45% salary adjustment for 1974-75 and a further salary adjustment for 1975-76, equal to the percent of increase in the Consumer Price Index (the "C.P.I.") during the period from November 1973 to November 1974. The adjustment for 1974-75 was unconditional, but the further adjustment for 1975-76 was conditioned as follows:

Should the local special levy collectible in 1976 fail or should the state legislature fail to provide sufficient funding for salary increases, thus making the combined local levy funding for salary increases and specific state funding for salary increases insufficient for the agreed 1975-76 percent adjustment, the agreed percent adjustment shall be limited to the percent which can be financed from the available funding allocated for salaries from either or both sources.

In fact, the special levy to be collectible in 1976 failed twice of passage by the District's voters, with the result that the District was faced with a major fiscal crisis. As part of its effort to reduce expenditures the District in the spring of 1975 announced a layoff of 1699 certificated personnel. Then, on September 10, 1975, the District, the Alliance and the Association executed a Memorandum of Understanding in which the parties essentially agreed that for 1975-76, 350

certificated staff would be rehired in addition to those already rehired, that there would be an increase of \$12 per month in the District's health plan and dental plan contributions, that there would be no salary adjustment (other than lane changes and increments) and that stipended positions could be unfilled and activities unperformed. The parties also agreed that there would be in 1976-77 a "full restoration" of stipended positions and further, that

In establishing the local levy for 1976 (collectible in 1977) the SAE and STA affiliates and the District agree to give full consideration to the matter of including a cost-of-living compensation adjustment plus a catch-up increase in compensation to be included in the 1976-77 salary adjustments to compensate for no basic salary adjustments in the 1975-76 salary schedules and to maintain appropriate salary levels.

It is not disputed that the aforesaid cost of living adjustment, plus catch-up increase would have represented an increase of 20.66% in basic salaries if funded in the levy. The Association recommended to the District that it send to the voters a levy of \$104 million, which would have provided funding for such a salary adjustment. The District's Board of Directors determined, however, after wide-spread consultation with the public and administrative staff, and in view of its political appraisals, to propose a levy of \$53 million. Even then there apparently was considerable doubt as to whether the levy could receive the required 60% voter approval. Apparently to enhance the chance of passage, the Board established a budget limit of \$115 million and promised the voters a levy "rollback" if revenues exceeded that figure. The levy was approved and the Board recently implemented its "rollback" proposal in the amount of \$750,000.

It seems significant that the only obligations the District assumed in the Memorandum of Understanding with respect to 1976-77 were restoration of stipend positions, subject to bargaining, and the giving of "full consideration" to include funds in the levy to achieve a 20.66% salary adjustment. There is no mention in the Memorandum of rehiring in 1976-77, though the subject of rehiring for 1975-76 is dealt with. There is no reference to benefit plan increases in 1976-77, though the subject of benefit plan increases for 1975-76 is dealt with. I believe, in view of these facts, that it is fair to view the September 1975 Memorandum of Understanding as recognizing, in terms of the District economic obligation to the Association for 1976-77, a goal of an economic package consisting of a 20.66% basic salary adjustment, plus related fringe benefits, and the restoration of stipended positions.

There is abundant evidence in the record that the District gave "full consideration" within the meaning of the Memorandum of Understanding, to including, but reasonably determined not to include, funds in the levy collectible in 1977 to cover such 20.66% salary adjustment. However, as I have stated above, I believe that reasonably read, the District's undertaking in the Memorandum has broader and continuing significance. Certainly the parties must have intended that if other unrestricted funds became available to the District, even if they had not been included in the levy, the District would apply those funds toward the goal of the economic package the parties hoped to achieve.

ECONOMIC ITEMS: RECOMMENDATION

My premise, as indicated above, is that the overall economic package for certificated staff for 1976-77 should be measured by a 20.66% increase in basic salary plus related fringe benefits. However, I believe that any such package must take into account the extent to which the Association achieves bargaining goals in areas other than basic salary adjustment.

The Association has as a major bargaining goal for 1976-77 the rehiring of all laid-off certificated staff. For its part, the District has already made plans to rehire a considerable number of such personnel and has budgeted funds for that purpose. I recommend that a total of 500 certificated personnel be rehired --- a figure, which when attritions are taken into account, represents essentially full implementation of the Association's goal. Such rehiring, of course, represents a very substantial cost to the District. I do not believe, however, that it would be proper or fair to charge this entire cost against the economic package to which I believe the Association is entitled. I do believe that the parties should share this cost in roughly equivalent amounts. Thus, in making my recommendations as to basic salary adjustment, I have deemed approximately half of such rehiring cost to be a charge against the economic package, or, stated differently, a credit to the District.

In addition to rehiring of personnel the Association seeks to have the District make full health and dental plan contributions. The District has offered to increase its contributions by \$12 per month per employee; an offer which I believe is reasonable on the basis of available evidence. Such added contributions also represent a substantial cost, which I believe should appropriately be considered a charge against the economic package.

The concept of an economic package measured by the cost of a 20.66% basic salary adjustment plus related fringes, and less a share of rehiring costs and additional health and dental plan costs, is not intended to represent a precise formula. Instead, it represents what I believe to be, under the unique bargaining circumstances here present, a fair, but rough equitable guideline.

While voluminous and detailed fiscal data were placed in evidence, there remains some disagreement between the parties as to cost projections. Nevertheless, and assuming that the District will rehire a total of 500 certificated personnel for 1976-77, and assuming the \$12 increase in the District's health and dental plan contributions, application of the aforesaid guideline, in my opinion, would justify a basic salary adjustment in the range of 14 to 15%. However, that guideline is at best a rough determinant of equity and other factors deserve consideration in formulating a specific salary recommendation. One such factor is the constructive role the Association and Staff have played during a difficult time in the District's history, at considerable cost to themselves. Another factor is the appalling erosion of the District's salary scale in comparison with scales in other large districts. A third such factor is the inability of the District, as discussed below to restore fully stipended positions.

Taking into account these considerations, I believe that a basic salary adjustment of 16% is in order. Such an adjustment would carry with it an increase in related fringe benefits that would represent an additional cost to the District in the vicinity of 2%. To these costs would be added approximately another 1% for increased health and dental plan contributions.

The District's and Association's financial experts presented detailed, but conflicting, analyses of the District's financial ability to make a substantial basic salary adjustment and pay for related fringe benefits. While I have considerable experience with such financial analysis, I find it difficult, in the present situation, to make a categorical judgment as to the exact extent of the District's ability to pay. However, my best judgment is that the District can, with presently anticipated revenues and existing surplus, fund the economic package I recommend.

In connection with that economic package, two additional points must be made. First, in the September, 1975, Memorandum of Understanding, the District, as noted above, also made a commitment to "fully restore" stipended positions subject to bargaining. I believe the reference to bargaining was not intended to undermine the basic commitment to fully restore such positions. However, considerable evidence was presented to me indicating that because of intervening changes in the federal and particularly, state laws applicable to sex discrimination, complete implementation of that undertaking is no longer feasible or reasonable. That evidence is persuasive. However, I earnestly urge the District, particularly in view of the testimony of Mr. Reese Lindquist, that special efforts be made to restore at least some assistant football coaching positions and the coaching positions for cross-country and golf. In addition, it seems only fair that to the extent that the full stipend program cannot be restored, any "cost savings" resulting therefrom should, as indicated above, be considered as a credit to the Association for purposes of the economic package.

The Association has also proposed that physical education and music specialists be utilized to provide professional conference planning time. This item, if adopted, would have very significant cost implications. For that and other reasons of educational policy, I am not prepared to recommend adoption of this proposal. Presumably, however, some certificated personnel in these categories will be re-employed under existing projections.

and

OTHER ITEMS *

1. Contract Effect on District Policies, etc.

I believe that inherent in the concept of the supremacy of the contract within its sphere, is the necessity for bringing all District policies, rules, regulations, procedures and practices into conformity therewith. Thus, I recommend that the Association language on these points in Article I, Section A, items 6 and 7, be adopted.

Similarly, if any provision of the agreement is found to conflict with law, I believe that it would be appropriate for the parties to bargain as to possible alternative provisions. Therefore, I recommend acceptance of the Association's proposal as to Article I, Section A, item 8.

* *These items are numbered according to the parties' listing of Issues and Items not in Agreement*

In addition, the predecessor agreement contains a clause requiring continuation of "existing policies, rules, regulations and procedures or practices" not in conflict with that agreement. I believe this clause, as set forth in the Association's proposal with regard to Article I, Section A, item 9, should be included in the new contract. However, since the State Educational Employment Relations Act, unlike the predecessor statute, provides for bargaining as to "wages, hours and terms and conditions of employment", I believe this clause should be qualified after the word "practices" by the words "dealing with matters covered by Section 3(2), Chapter 288, Laws of 1975, 1st Ex. Sess."

While all policies, rules, regulations, procedures and practices must be in conformity with the contract, and protected as indicated above, there is no basis for requiring a freeze on the District's ability to maintain and modify other policies, rules, regulations, procedures and practices. I therefore recommend adoption of the District's proposal on Article I, Section A, item 9.

2. Payment for Cost of Contracting

The prior agreement requires the District to bear the entire cost of printing and distributing the contract. This would seem to be a benefit to the District and its employees and therefore an appropriate charge to the District. I recommend adoption of the Association's proposal on Article I, Section A, 11.

3. Zipper Clause

The concept of collective bargaining leading to an agreement for a definite term is best served by the inclusion of a zipper clause of the kind the District proposes with respect to Article I, Section A, 13. However, I believe the clause should be prefaced by the words "except as otherwise provided in this agreement", since the agreement provides for the maintenance of certain "policies, rules, regulations, procedures or practices."

4. Payroll Deductions

I perceive no persuasive reason for refileing of all payroll deduction forms. Therefore, I recommend that the Association's proposal with respect to Article I, Section B, item 2, be adopted. However, I recommend that the District and the Association cooperate to determine the appropriate authorization and obtain new authorization in those cases where it is unclear. In addition, the Association should be responsible in the case of disagreements over the deduction authorization.

5. Agency Shop

Agency shop has recently been declared to be lawful by the Legislature. Of course, the Legislature has merely authorized such clauses and has referred to bargaining the question of whether or not an agency shop clause will be included in a particular agreement. I am sympathetic to the Association's position that since it must fairly represent all employees in the unit in terms of collective bargaining and contract administration, all employees should contribute to the work of the Association. Furthermore, in the context of the Seattle District, the Association (and its predecessor) has long been an effective representative for the employees it serves, and at considerable cost to itself, has played a most constructive role during a difficult period for the District. Therefore I recommend adoption of the Association's proposal with respect to Article I, Section C, item 2. However, because I also recommend that, for this year, a grace period of sixty days be provided, other than for present Association members, to determine which option to choose under that clause.

6. Leave Provisions for STA Offices

The Association is a large organization which under law has a duty to bargain collectively for all the District's certificated employees it represents, and to administer the complex agreement covering terms and conditions of employment of such employees. The District as well as the Association will benefit by providing released time for the President and Vice President of the Association. However, because certain questions have been raised concerning the legality of providing leave under the conditions the Association proposes, the Association should agree to indemnify and defend the District, and make reimbursement for all costs to the District on a monthly rather than on an annual basis. I therefore recommend, with those qualifications, adoption of the Association's proposal with respect to Article I, Section D, item 2.

Items Nos. 7-12 (Salary Basis and Funding, Supplemental Assignment Basis, Salary Schedule Placement Rules, Length of School Workday and Substitute Teacher Pay Basis

I understand that the parties have made progress in bargaining as to these items and I therefore will not make any recommendations at this time.

Item No. 13 - Layoff and Recall Leave

The concept of a Layoff and Recall Leave is attractive in terms of providing employment opportunities while safeguarding the rights of senior employees. However, I am persuaded that the granting of such leaves in the terms of the Association proposals would cause administrative and planning difficulties for the District which have not yet been fully considered. Therefore, while I believe this matter should be a subject of bargaining for future contracts, I can not now recommend the acceptance of the Association's proposal with respect to Article IV, Section H.

Item No. 15 - Staff Development Fees

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item No. 16 - Travel Allowance Adjustment

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item No. 17 - Split Grade Class Load

There was considerable evidence presented at the hearing indicating that a teacher with a split grade does incur some additional work responsibilities. I believe that such a teacher is entitled to some relief, and I recommend that the Association's proposal as to Article VI, Section A, item 2, be adopted.

Items No. 18-22 - (Transfer Procedure Guidelines, Transfer Types, Transfer Due to Reduction in Staff, Transfer by Administrative Decision, and Exchange Transfer-Administrative Transfer Caused by School Closure

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item No. 23 - Preparation-Conference-Planning Time

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item No. 25 - Student-Counselor Ratio

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item Nos. 26-27 - Librarian Meetings, Library Catalog Unit Staffing

I understand that the parties have made progress in bargaining as to this item and I will therefore not make any recommendations at this time.

Item No. 28 - Librarian Extra Days

The evidence presented to me indicates what appears to be a need for per diem days for librarians. I therefore, recommend adoption of the Association's proposal as to Article VI, Section Q, item 9.

Item No. 29 - Pupil-Teacher Ratio (Teacher Work Load)

The Association's proposal follows the approach of the predecessor contract. I see positive merit for both parties in that approach. I recommend adoption of the Association's proposal as to Article VI, Section T. However, I do not recommend adoption of that proposal insofar as it deals with Special Education.

Item No. 31 - School Nurses

Nurses now have a salary schedule that is similar in many respects to that of certificated personnel. As recognized professionals performing an important service, I believe that they should be paid on the full Certificated Non-Supervisory Salary Schedule. I recommend adoption of the Association's proposal as to Article VI, Section U, item 2.

Item No. 32 - Occupational and Physical Therapists

The salary schedule for therapists is now quite different from that for certificated personnel. I believe the parties should in bargaining for a successor contract give consideration to the salary placement of such employees. On the basis of the present evidence, however, I do not recommend adoption of the Association's proposal as to Article VI, Section V.

Item No. 34 - Grievance Provisions

The grievance procedure modifications proposed by the Association are not atypical in my experience. Moreover, I see no special problems for the District posed by them. In particular, it seems reasonable to permit the Association to grieve group grievance. I recommend adoption of the Association's proposal as to Article VII.

Item No. 35 - Due Process for Employees

I believe that employees should have a contractual just-cause for discipline provision. However, the definition of discipline proposed by the Association would include matters that are covered by new, detailed state legislation. In such connection, not only would a just-cause clause, with the possibility of arbitration thereunder, raise serious questions of legality, but the adequacy of the legislated procedures has yet to be tested. Thus, I recommend that the clause proposed for Article VIII, Section B, by the Association be adopted, but only insofar as it relates to discipline defined as "warning, reprimand, suspension or discharge."

Item No. 36 - Layoff and Recall Procedures

The parties have done considerable bargaining as to this clause, but two salient matters remain in dispute... a "trigger" for implementation of layoff and recall procedures and criteria for recall. I believe the trigger proposed by the Association for Article IX, Section A, item 1, is unrealistic and therefore will recommend that it not be adopted. As to criteria, I believe that a clear definition of "qualifications" in the context of recall is essential. At the same time, I believe the Association's proposed "strict seniority" approach is far too rigid to serve the program needs of the District under present circumstances. Moreover, that approach represents a marked departure from the mutually agreed upon "qualifications" approach adopted in the Memorandum of Understanding. I therefore recommend continued utilization of the "qualifications" criterion with attention to adequate definition of that term.

Item No. 37 - No Strike Clause

A no-strike clause is typical in collective bargaining agreements, and is an appropriate quid pro quo for an employer's undertakings. Thus, I recommend adoption of the District's proposal as to Article X. However, I also recommend deleting the material in the last three lines following the words "violation of this section".

Items No. 38-41 - Certificated Non-Supervisory Employee Salary - Substitute Teacher Salary Schedule - Compensation Schedule for Supplemental Assignments - Health Services Salary Schedule

These schedules relate to the economic package. At this time, I will not make any recommendations with respect to these items.

Item No. 42 - School Calendar (Employee Work Year)

I recommend that no days be added to the prior calendar. I therefore recommend that the District's proposal as to Appendix E be rejected.

Dated: August 27, 1976



Daniel G. Collins, Fact Finder