Fact Finding Report for

Shelton School District No. 309

and

Shelton Education Association

Fact Finder Appointed	February 25, 1977
Hearing Held:	March 14, 15, 16, 1977
Spokesman for District:	Mr. Louis R. Grinnell Superintendent and Chief Negotiator Shelton Public Schools 8th and Pine Shelton, Washington 98584
Spokesman for Association:	Mr. Robert N. Graff Uniserv Director Chinook Council 319 7th Avenue Olympia, Washington 98501
Fact Finder:	Mr. R. A. Sutermeister Graduate School of Business Administration University of Washington DJ-10 Seattle, Washington 98195
Under Auspices of the:	Public Employment Relations Commission 603 Evergreen Plaza Building Olympia, Washington 98504 (Marvin L. Schurke, Executive Director)

INTRODUCTION

The fact finder was appointed on February 25, 1977 and is to make his findings of fact and to recommend terms of settlement by March 28, 1977. His recommendations are advisory only.

Prior to the hearing, each party submitted to the fact finder and to the other party a written list of the issues it intended to submit to fact finding.

An open hearing was held in the Evergreen Elementary School in Shelton, Washington from 4:30 p.m. to 6:30 p.m. and from 7:30 p.m. to 10:30 p.m. on March 14, 15, and 16, 1977. The Articles of the contract in dispute were the following or parts thereof:

Article	II	Agency Shop
Article	III	Association Rights
Article	IV	Employee Rights
Article	V	Instruction
Article	VI	Employment Responsibilities
Article	VII	Leaves
Article	VIII	Employee Support Facilities
Article	IX	Assignment and Transfer
Article	X	Evaluation
Article	XI	Calendar
Article	XII	Reduction in Force
Article	XIII	Just Cause
Article	XIV	Economic Provisions
Article	XV	Scope of Agreement
Article	XVI	Grievance Procedure
Article	XVII	Duration of Agreement

BASIC PHILOSOPHICAL DIFFERENCES

The parties have had an extremely difficult time trying to reach agreement on provisions of a collective bargaining contract. This difficulty results from some fundamental philosophical differences between the parties. If these differences can be resolved, detailed provisions of the agreement will, I believe, follow readily. These fundamental differences center on two major issues, which I will consider first: (1) union security and (2) management rights, just treatment of employees and the grievance process.

UNION SECURITY
(Article II - Agency Shop)

At the hearing it seemed as if some of the witnesses did not fully understand the meaning of "agency shop." I would expect some of the citizens of Shelton also do not fully understand the meaning of "agency shop" and various other forms of union security. Let me rank them in order from maximum to minimum union security.

Degree of Union Security	Type of Union Security	Features	Legality
Maximum	Closed Shop	Employee has to be a member of the union before he can obtain a job.	Illegal under Educational Employment Relations Act
	Union Shop	Employee has to join union, usually within 30 days	Illegal under Educational Employment Relations Act
	Agency Shop	Employee has choice of (1) becoming member of union, or (2) not becoming a member of the union but paying fees (representation or agency fees) to the union for its services in representing him/her in negotiations on wages, hours, and working conditions; handling of grievances, and other union collective bargaining responsibilities.	EER Act requires union to represent all employees whether they are members or not. Contract may include an agency shop if agreed to by the parties.
	Agency shop with a "grandfather clause"	Features of agency shop apply to all employees hired after a specified date. Those hired before the specified date do not have to join or pay fees.	EER Act requires union to represent all employees whether they are members or not.
	Maintenance of membership	No employee has to join the Union or pay fees, but once he/she makes the decision to do so, he/she must continue to be a member or pay agency fees for the duration of the agreement (usually from 1-3 years). Maintenance of membership may include a provision that all new employees come under an agency shop.	EER Act requires union to represent all employees whether they are members or not.
Minimum	Open Shop	No requirement for employees to join a union or pay fees.	

In many respects collective bargaining in the public sector is at a point now where collective bargaining in the private sector was 35-40 years ago. Most unionized firms today have a union shop.

The Shelton School District's position is that it wants employees to have a free choice to join or not join the Association; to pay representation fees or not to pay representation fees to the Association. Thus the District strongly opposes an agency shop.

The Shelton Education Association's position is that it has to be adequately financed to carry out its responsibilities under the law: to represent all employees, non-members as well as members, in negotiations with the District on wages, hours and working conditions; in processing of grievances; and in representing employees in hearings which may be time-consuming and expensive.

I believe the objectives of both the District and the Association will be met substantially by a "maintenance of membership" clause. This would mean that all present employees have the freedom of choice desired by the District. If they, of their own free will, had joined SEA or were paying representation fees to SEA by March 16, 1977, they would continue to do so for the life of the agreement. Employees who had not joined SEA or paid representation fees to SEA by March 16, 1977 have freedom of choice to continue in that position, or to become members of SEA, or to pay representation fees.

Recommendation:

That the parties agree to a "maintenance of membership" clause; and that new employees, hired after March 16, 1977 be required, as a condition of employment, to become members of SEA or to pay representation fees to SEA.

MANAGEMENT RIGHTS, JUST TREATMENT OF EMPLOYEES, AND THE GRIEVANCE PROCESS

In the hearing it was very clear that the School District feels a great responsibility to maintain as many management rights as possible in order to:

1. properly represent the citizens of Shelton
2. maintain an efficient, financially sound educational system
3. provide a high level of excellence in the education of students.

It was equally clear that the Association feels strongly that the District position has resulted in inadequate salaries and unfair treatment of teachers, although the teachers, as professionals, have the same goal as the District to provide a high level of excellence in the education of students.

In the private sector over the years a reasonable balance has developed in most organizations between the interests of "management" and the interests of "employees". Generally speaking, unions leave managing to management and raise objections only when they feel management is making decisions affecting employees which are unfair, arbitrary, discriminatory, or capricious. The unions feel it is vital that they be able to complain (grieve) and have their complaints heard (first) by the immediate supervisor, and if not resolved (second) by higher level supervisors, if not resolved (third) by the highest level of authority in the organization, and if not resolved, (fourth) by a neutral outsider who can view the situation more objectively than the parties and whose decision is binding on both parties ("binding arbitration"). Approximately 97% of labor agreements in the private sector contain binding arbitration clauses. Such a provision serves as a safety valve in the system and permits situations to be "defused" which might otherwise lead to strikes. Generally employers and unions can readily agree to include a "no-strike" clause in their contract when an alternative method (arbitration) is available as a means of settling any unresolved disputes.

The School District strongly opposes binding arbitration as a fourth step in the grievance procedure. It proposes a grievance procedure which ends at the third step, with the School Board making the final decision. The only additional recourse available to a teacher would be to appeal to the courts--usually a long and somewhat frightening prospect.

The Association proposes the fourth step in the grievance procedure to permit the final decision to be made by an arbitrator.

I have absolutely no reason to question the good judgment and good intentions of the School Board. I expect that they do their best to be objective and impartial in hearing complaints. However, there is almost inevitably a subtle bias built in for those on the management side as well as for those on the union side.

In hearing a dispute between a student and a teacher, a principal is more likely to side with the teacher. In a dispute between a teacher and a principal, the Superintendent is more likely to side with the principal. In a dispute between a teacher or principal and the Superintendent, the School Board is more likely to side with the Superintendent.

For the Association's part, in a dispute between an employee and a supervisor, a shop steward is more likely to side with the employee. In a dispute between a business agent and a shop steward, a higher union official is more likely to side with the business agent, etc. Again, there is almost inevitably a subtle bias built into the process.

There were inferences at the hearing that the School Board and the Shelton community are not willing to accept binding arbitration; that they prefer to have the local School Board make final decisions in grievances rather than call in an arbitrator, probably from outside the community. I have no direct knowledge of what the Board and the community will and will not accept. My role as fact finder is to make a recommendation based on facts presented at the hearing. My recommendations can be accepted or rejected by the School Board and/or by the Association. It is up to the School Board and ultimately the citizens of Shelton to decide whether they can or cannot accept binding arbitration as the final step in the grievance process.

If the District accepts binding arbitration, the Association should accept a no-strike clause (see recommendations in Article XVI). I also believe the agreement should have a just cause provision (see recommendation in Article XIII)

ARTICLE III - ASSOCIATION RIGHTS

Recommendation:

Section 1

1. Adopt the Association's proposal on posting notices.
2. Adopt the District's proposal on Association communication with its members.
3. Adopt proposals 3 and 4, which are identical for both parties.
4. Adopt proposals 3 and 4, which are identical for both parties.
5. Adopt the District's proposal that outside visitors cannot interfere with normal school operation. Provide that the principal should first be notified.
6. Adopt the Association's proposals.

Section 2

(Availability of Information): Delete the Association's proposal.

Section 3

(Release time for Association business): Adopt the provisions of the Tentative Agreement on this subject of 11/16/76.

Section 4

(Release time for professional meetings): Adopt the Association proposal (Association pays cost of substitute teachers).

District Proposal 8

(Suspension of District proposed items 1-6 in case of work stoppage or strike): Delete this proposal in view of no strike clause recommended in Article XVI.

District Proposal 9

(Availability of Information): Adopt this proposal, and the parties negotiate on any further information desired by the Association, its costs of preparation, and who will bear the cost.

Section 5

(Association): Delete this proposal.

Section 6

(Orientation programs): Adopt the Association's proposal but negotiate a specific maximum amount of time allowed for this purpose.

ARTICLE IV - EMPLOYEE RIGHTS

Recommendation

Section 1

(Non-Discrimination Clause): Adopt the District's proposal except for the Affirmative Action Plan. I see no objection to the Affirmative Action Plan, but if it is to become part of the agreement, I believe the parties should agree to do so through negotiations, and themselves determine the proper location of it in the agreement.

Section 2

(Non-Restriction of Rights): Adopt the District's proposal. (No conflict with State or Federal Law.)

Section 3

(Rights of Employees in Bargaining Unit): Modify the Association's proposal as follows:

> "The Employer shall not interfere with, restrain, coerce or prevent any employee from exercising his/her legal right to organize, join and support the Association.

> The employer agrees it will not discriminate against any employee because of membership in the Association, because of participation in any representative activity on behalf of the Association, because of any action taken within the established grievance procedure or otherwise with respect to any terms or conditions of employment."

Refer to Article XVI recommendations for no-strike clause.

Section 4

(Academic Freedom): Adopt District's proposal but add sentence from Association's proposal modified as follows:

> Intercom or electronic systems will not be used for placing certified employees under surveillance or observation unless such request is made by the employee.

Section 5

(Personnel Files): Adopt the District's proposal.

Section 6

(Insurance Coverage): Delete the Association's proposal since this is a matter of law and both District and Association have agreed to abide by all laws. (Article XV, Section 4)

Section 8

(Safe Working Conditions): Adopt District's proposal since both Association and District have agreed to abide by all laws. (See Article XV, Section 4)

ARTICLE V - INSTRUCTION

Recommendation

Section 1

(Work Load Levels): The parties have placed this matter before the Public Employment Relations Commission for a ruling whether work load is a permissive or mandatory subject for collective bargaining. Until this decision is forthcoming, I belive the Board should continue to exercise its responsibility for determining educational policy, including class size, because such a decision has effects on many other Board responsibilities. Thus I recommend that no provision for work load levels be included in this agreement.

Section 2

(Work Station Visitation): Adopt District proposal. I believe it can be assumed that the principal would check with the teacher before sending a parent into the classroom, where a test might be in progress or where the room might be empty because the class is visiting somewhere else.

Section 3

(Employee Development and Training): Adopt District proposal granting leave with pay for approved conferences, etc., for professional growth and/or curriculum development. The Association is free to make recommendations to the employee (Item A in the Association proposal); and I believe it is the District's prerogative to determine any training teachers may need for developing new curricular programs (Item B in the Association's proposal.)

Section 4

(Student Discipline): Adopt the District's proposal.

ARTICLE VI - EMPLOYEE RESPONSIBILITIES

Recommendation

Section 1

(Work Day): Adopt the District's proposals including a work day of 7 hours 15 minutes. This provides for planning time, so I see no need for the second paragraph of the Association's proposal.

Section 2

(Faculty Meetings): Delete the Association's proposal that faculty meetings not extend beyond the end of the regular work day. This seems to me too restrictive, and faculty themselves might prefer to stay longer than the regular work day, when and if necessary, rather than to have a second meeting to complete their discussions.

Section 3

(Student teachers): Delete Association's proposal.

Section 4

(Substitute teachers): Delete the first sentence and adopt the second sentence of the Association's proposal.

Section 5

(Extracurricular duties): Negotiate. I believe the Association's proposal would be too restrictive and might prevent the District from carrying out its responsibilities. I believe the District proposal precludes any discussion of supplementary contracts.

Section 6

(Assignment of regular employees as substitutes): Delete Association's proposal for same reason as given in Section 5 above, (second sentence).

Section 7

(Individual Employee Contracts): Delete. Covered by law.

Section 9

(Length of contract): Adopt District's proposal of 183 days.

Section 10

(Extended Contracts): Recommend the parties negotiate this item.

Section 11

(Supplemental Contracts): Recommend the parties negotiate this item.

Section 12

(Supplemental Contract Positions): Recommend the parties negotiate this item.

Travel (no section Number): See recommendation in Article XIV.

ARTICLE VII - LEAVES

Recommendation

Section 1

(Personal Leave): One day of personal leave. Through negotiations determine how "personal" is defined. Adopt the Association's proposal, second sentence, requiring pre-arrangement and approval for the use of that day.

Section 2

(How emergency leave is deducted): Adopt Association's proposal.

Section 3

(Subpoena leave): Adopt provision of Tentative Agreement of November 16, 1976 for Jury Duty leave. Negotiate on subpoena leave.

Association items A and B presented at hearing: Adopt. Parties are in agreement.

Association item C: negotiate.

Association items F and G: delete.

Adopt provisions of tentative agreement of 11/16/76 on various other types of leave.

ARTICLE VII - FACILITIES

The Board feels this is not a mandatory subject for collective bargaining and this has been presented to the Public Employment Relations Commission as an unfair labor practice. As I see it, the objectives of the District and the Association in providing adequate facilities for the employees are identical, and the Association's requests seem reasonable. If the vagueness of the language can be remedied, the parties should be able to work out a satisfactory clause.

Recommendation

Negotiate.

ARTICLE IX - ASSIGNMENT AND TRANSFER

Recommendation

Adopt the District's basic proposal. I belive the District has to have the right to best meet the needs of the District and this might occasionally necessitate an involuntary transfer.

Adopt the Association's proposal that lists of vacancies be "posted in" the school buildings.

Adopt the Association's proposal that currently employed teachers be considered first. (This does not mean that they have priority, merely that consideration is given to them first. If they are equally as well qualified or better qualified than outsiders, they would get the appointment.)

Adopt the Association's proposal that "No vacancy shall be filled by an involuntary transfer or reassignment if there is a qualified volunteer available to fill such position" and the needs of the District do not suffer.

Refine the language of this article to reflect the above recommendations.

ARTICLE X - EVALUATION

The Superintendent of Public Instruction issued an Evaluation Plan in January 1977. The School Board has six months in which to prepare an evaluative system for the District.

Recommendation

Negotiate on the items in dispute, namely section 3f and II Policy, Purpose and General Process for teacher evaluation.

ARTICLE XI - CALENDAR

In Article VI, Section 9, I recommended that the parties agree on the District's proposal for a length of contract of 183 days. However, I believe the District must have some flexibility in working with the community as well as with the teachers to determine starting day; and there must be some flexibility to determine closing day because of the vagaries of the weather.

Recommendation

Adopt 183 days as the work year for the duration of this agreement. The School Board, representing the Community, makes other decisions regarding the calendar after consultation with teachers and principals, and the Association.

ARTICLE XII - REDUCTION IN FORCE

The parties' proposals seem to me to be very close. The parties agree on seniority by program. I see no objection to the Association's proposal to first rank all certificated staff in order of seniority.

Then the School Board determines what programs will be offered after a staff reduction, and what qualifications (education, experience, and flexibility) are needed in teachers to carry out those programs. Teachers without the necessary qualifications are eliminated from consideration. Those with qualifications are retained in order of seniority.

Recommendation

Change the wording of their proposals to reflect the above comments.

Negotiate whether and how to incorporate in their reduction in force clause the District's Affirmative Action Program, section on Reduction in Staff; and the Superintendent of Public Instruction's Declaratory Ruling No. 14 dated May 10, 1976.

ARTICLE XIII - JUST CAUSE

In its proposals for Article IV, the District included a no-strike clause and also a statement that "No employee shall be non-renewed or discharged without just cause. Any such action by the District shall be subject to the grievance procedure or other legal action an employee and the Association wish to take. All charges forming the basis for non-renewal or discharge action shall be made available to the employee at the time the action is taken."

Elsewhere (Article XVI) I am recommending that the parties agree to adopt a no strike clause, and binding arbitration as the final step in the grievance procedure. Thus, I believe a just cause article is appropriate but perhaps should not include actions covered by HB 1364; and should not include verbal warnings. If an employee persists in doing something wrong and it is necessary to issue a written warning, the employee if he/she wishes may have a representative of the Association with him/her at the time.

Recommendation

Include a "just cause" provision in the agreement, not covering oral warnings.

Negotiate whether you wish employees to have redress for District actions resulting in discharge, non-renewal of contract or other action adversely affecting individual contract status both through HB 1364 and through the grievance machinery, or wish to limit redress for these actions to procedures specified in HB 1364.

ARTICLE XIV - ECONOMIC PROVISIONS

The School District unilaterally issued contracts to teachers about May 24, 1976 because the Association and the District had not been able to agree on this matter and the district had to get on with the budget making process. The District cites Section 24 of 41.59 in justification of its unilateral action:

> Nothing in this act shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer's responsibilities to students, the public, and other constituent elements of the institution.

The individual teaching contracts issued were declared to be firm contracts, with no rider allowing for changes at a later date through bargaining. The District cites Article 2, Section 25 of the Washington State Constitution as now prohibiting any change in the salaries in the firm contracts:

> Extra Compensation, Prohibited. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term in office.

On the other hand, the Association believes that it was illegal for the District to issue contracts unilaterally and that the District does have the authority to increase salaries now retroactively to the start of the school year. The Association cites in support of its position the Educational Employees Relations Act, section 41.59.170:

> Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same employees, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with such effective date as established by this subsection, and may also accrue beginning with the effective date of any individual employee contracts affected thereby. (Underlines added)

It seems to me that the School District and the Association have become so engulfed in legalities that no genuine effort has been made, at least since May 1976, to resolve their differences on economic provisions of the contract. Negotiations have not taken place since that date. Efforts to mediate differences were fruitless. Not until the fact finding hearing did the parties seem to reveal to each other the rationale for their positions.

Each party introduced many exhibits to support its position in economic matters. There was not enough time at the hearing for each party to study the other's position and arguments and make a response.

The District's position is that it does not have the money to pay higher increases than the 7.2% (including increments) it has already granted for 1976-1977 because of the necessity to keep a cash balance, an emergency fund, money for purchases already committed but not paid, funds to carry the District over during July and August until the new year starts, and probable repair costs of a heating system of $100,000.

The Association points out that Shelton teachers are the lowest paid of any District in their classification; that salaries have increased 31.4% since 1971 while the cost of living has increased 40.8%; and that the District does have the ability to pay higher salaries in 1976-1977.

Both parties agree that Shelton teachers are above average. Both parties agree that salaries for Shelton teachers are low.

Two principal options are open to the parties. One is to continue to fight out their disagreements in court and before the Public Employment Relations Commission, on the basis of legal technicalities. The other is to sit down now and negotiate on economic provisions. Should the parties, at this late date in the school year, forget about economic changes in the 1976-1977 agreement and negotiate for the 1977-1978 year? Or should they negotiate on salaries and fringes retroactive for the 1976-1977 year? Does the District really not have the ability to pay more than the 7.2% it is already paying this year? Does the District have the ability to pay more for 1977-1978 and what kind of an offer will it make? I believe all these kinds of questions can be answered much better in direct negotiation than through outside recommendations.

Recommendation

The parties themselves now make a sincere effort to negotiate their differences on economic provisions for the 1976-1978 period.

Recommendation

Adopt the tentative agreement reached on November 16, 1976 which shows agreement on items 2, 3, 4, 5, 9, and 10.

Negotiate items referring to "A. Placement."

Delete the Association's Proposal "B. Extended Contracts."

Negotiate the Association's Proposal "C. Vocational Contracts."

Delete the Association's Proposal "Section 2. Unemployment Compensation."

Delete the Association's Proposal "Section 3. Insurance Benefits."

Delete the Association's Proposal "Section 4. Salary Payment Method" because that is already covered in the tentative agreement of November 16, 1976.

Change the Association's Proposal "Length of Contract" to 183 days; negotiate any extended time for librarians and counsellors.

Negotiate on a cost-of-living clause.

Negotiate on the Association's Proposal "7 Summer School."

Adopt a mileage allowance of 13 cents per mile instead of .12 proposed by the District and .15 proposed by the Association (Section 9. Travel).

Negotiate on Association's Proposal "9 Payroll Deductions."

ARTICLE XV - SCOPE OF AGREEMENT

Recommendation

Section 1 (Past practices) and Section 2 (Maintenance of Standards)

Delete as being too broad.

Section 3

(Contract compliance): Adopt first sentence of Association's proposal and delete second sentence. Adopt Tentative Agreement of 11/16/76 regarding Copies of the Contract.

Section 4

(Conformity to law): Adopt first sentence of Association's proposal and delete second sentence.

Section 5

(Distribution of Agreement): Adopt Association's position but delete last sentence of first paragraph and delete the second paragraph.

Section 6

(Subcontracting clause): Delete

Section 7

(Agreement Administration): Delete.

ARTICLE XVI - GRIEVANCE PROCEDURE

A discussion of binding arbitration appears earlier in this report under the heading "Management Rights, Just Treatment of Employees, and the Grievance Process."

Recommendation

Adopt binding arbitration as a final step in the grievance procedure.

Define a "grievance" as any dispute or controversy which may arise regarding the interpretation or application of this agreement.

Define a "grievant" as an employee, a group of employees, or the Association.

Provide that the fees and expenses of an arbitrator be shared equally between the District and the Association.

Negotiate the time limits for each step set forth in the two proposals.

Include a no-strike clause (One was proposed by the District under "Article IV, Rights and Responsibilities of Employees in the Bargaining Unit.)

ARTICLE XVII - DURATION CLAUSE

Negotiations this first year under the Educational Employment Relations Act has been inordinately time consuming. It is now within three months of the end of the school year. I believe both parties would be better off if they did not have to prepare for 1977-1978 negotiations but would sign this contract for two years.

Recommendation

That this agreement, when ratified, continue until June 30, 1978.

March 24, 1977