

784-F-77-35

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

<hr/>		X
In the Matter of Fact Finding between	.	
CLOVER PARK EDUCATION ASSOCIATION	.	
-and-	.	
CLOVER PARK SCHOOL DISTRICT NO. 400	.	
Case Number -- 783-F-77-35	.	
<hr/>		X

REPORT AND
RECOMMENDATIONS

RECEIVED
APR 29 1977
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

Before DANIEL G. COLLINS, Fact Finder

Appearances:

For Clover Park Education Association

Judith Lonquist, General Counsel, Washington State Education Association
George Blood, Executive Director, Clover Park Education Association

For Clover Park School District No. 400

Bruce W. Cohoe, Esq., Attorney for the District
Kenneth A. Storaasli, Administrator for Personnel

A. Preliminary Statement

This is a Fact Finding proceeding pursuant to Section 13 of the Educational Employment Relations Act. The undersigned was designated as Fact Finder by the Public Employment Relations Commission and met jointly with the parties on March 2, 1977 and, on April 15, 1977 held a hearing at the District office in Lakewood Center. Each party

was represented by counsel and was afforded full opportunity to present oral and written evidence, cross examine witnesses and otherwise support its position. This Report and its Recommendations are based on the evidence adduced and the position and arguments set forth at the hearing.

B. The Bargaining Background

On December 11, 1975, the parties executed an Agreement establishing terms and conditions of employment for employees represented by the Association for the period from July 1, 1975 to June 30, 1977. The Agreement does not provide for reopening during its term of any covered items; on the contrary, Article I, Section B of the Agreement prohibits any contract modification except by mutual consent.

The Agreement contains both basic salary and coaches salary schedules. For 1975-76 those schedules are as set forth in Exhibits A-1 and A-5 to the Agreement. For 1976-77, the basic salary is to be increased at the option of the Association, by a percentage set forth in Article V, Section A or in accordance with one of two formulas set forth therein and in Exhibit A-3. The Agreement further provides that whatever increase is chosen to be applied to basic salaries for 1976-77, shall also be applied to coaches salaries. These provisions were implemented for 1976-77, with the result that the basic salary and coaches salary schedules were increased by 8.3%.

The coaches schedule, which is at issue here, has four vertical columns entitled "A", "B", "C", and "D" which reflect increasing experience levels and higher salary amounts. These columns are preceded by a vertical column which lists, first for Senior High School, and then for Junior High School, head coach, and where appropriate assistant coach position by sports, some of which

are grouped together. The salary for any particular coaching position is found by reading horizontally across from the position designation to the amount in the appropriate experience level column.

Kenneth H. Storaasli, the District's Administrator for Personnel, who also acts as the District's Affirmative Action Officer, testified that after the Agreement had been entered into, certain coaches of girls sports had communicated to him their belief that inequities based on sex existed in the respective coaching salaries for various boys and girls sports. After reviewing the coaches schedule, the District agreed. Superintendent Robert L. Chisholm then wrote to Association President Martha Hill on June 18, 1976 as follows:

A review of Title IX regulations and House Bill 418 relating to sex discrimination shows that the current Clover Park School District coaches' salary schedule is in non-compliance with those regulations.

Because that schedule is a part of the 1975-77 negotiated contract between the School Board and the Clover Park Education Association, we believe it is incumbent on both parties to meet as soon as possible to work out a schedule that would comply with the requirements as set forth in federal and state regulations.

With your concurrence, a committee should be appointed to develop proposals and recommend for adoption a new coaches' salary schedule that will comply with the law.

Mr. Kenneth Storaasli and Mr. Gerry Austin would represent the district.

Hill replied as follows by letter dated June 22, 1976:

In response to your letter of June 18, 1976 the Association agrees that coaches' salary should be reopened to provide equal pay. This was our contention in the last line of bargaining but we were unable to get concurrence from the Board at that time.

We will be willing to negotiate starting the week of July 19, 1976 and at that time we will be ready to exchange proposals.

Thereafter, on July 19 and July 29, 1976, the Association and the District exchanged proposals. The Association proposed to maintain the four experience levels, as well as the differential between head coach and assistant coach,

and, the substantial differential among various sport groupings. The Association proposed the following groupings for salary purposes:

High School

Highest salary level --- football (boys), wrestling (boys)
basketball (boys)

Second highest level --- tennis (boys), soccer (boys) baseball (boys),
basketball (girls), swimming (boys), gymnastics
(girls), gymnastics (boys), track (girls),
track (boys)

Third highest level ---- coed golf, swimming (girls), coed rifle,
volleyball (girls), tennis (girls), cross
country (boys) softball (girls)

Fourth highest level -- intramurals (boys), intramurals (girls)

Junior High School

Highest salary level --- basketball (girls), basketball (boys), volleyball
(girls), baseball (boys), softball (girls), gym-
nastics (girls), wrestling (boys), track (girls),
track (boys), football (boys)

Second highest level --- coed tennis, coed golf, intramurals (girls),
intramurals (boys)

Specific salary levels were described as a percentage of the first-step salary on the "CB" column of the teachers schedule. In dollar amounts, using the 8.3% schedule increase agreed upon for 1976-77, the pay for the head coach, at the lowest experience level would have been as follows for each of the groupings: High School, highest level, \$1,160; second highest, \$773; third highest, \$628; fourth highest, \$338, Junior High School highest level, \$628; second highest, \$338. The assistant coach in each case would have received 60% of the head coach's salary.

The District proposed that the Agreement's 1976-77 coaches schedule be modified only to equate the boys and girls team coaching salaries, at whichever had the then higher contract rate (in all instances except intramurals it was the

boys sport rate) for the following sports: track, gymnastics and intramurals at the high school level; basketball, track and intramurals and the junior high level; and baseball (boys) and softball (girls) at the junior high school level. The District's proposal would have had the effect of retaining the existing differential between head coach and assistant coach.

In August, 1976, the parties exchanged letters in which the Association made an "official request" to reopen the Agreement for "the purpose of re-negotiating the Coaches Salary Schedule," and the District replied that its position was the "negotiations should be reopened only for the resolution of sex discrimination." In a letter dated September 7, 1976, to the District, the Association stated "We understand your letter to confirm that the Board agrees to reopen negotiations...only for the resolution of sex discrimination." Thereafter, further proposals were exchanged by the parties. On October 25, 1976 the Association gave specific dollar figures for its proposed salary groupings, which appear to be somewhat higher than its earlier "percentage" formula would have achieved. At the same time the Association dropped certain of its earlier ancilliary proposals. On October 28, 1976, the District proposed to create three groupings for girls sports, two on the high school and one on the junior high school level, with coaching salaries that would have had no specific correlation to those for any boys sports. Since these new proposed salaries covered broader groupings than the District's initial proposal, they were both lower and higher than various of the salaries earlier proposed.

On January 21, 1977, the Association drastically revised its position by proposing a single hourly rate for all coaching positions, beginning at \$4.45 at the lowest experience level, with the District having the right to establish the maximum number of hours which would be paid for each sport. The Association

added the proviso that "no coach will receive less than previously offered for 1976-77 extra duty pay." The District rejected that proposal in a letter dated February 22, 1977, on the grounds that its retroactive application was impossible, that it went beyond the problem of sex discrimination, and that it did not differentiate between head coaches and assistant coaches. The District urged the Association to reconsider the District's earlier proposals for salary adjustments for those positions "obviously in noncompliance" and for the establishment a joint committee to consider and make recommendations concerning coaches salaries to the parties in conjunction with their current negotiations for a successor contract.

C. Discussion

The scope of this fact finding proceeding can be no broader than that of the negotiations out of which it arose. On that point, the parties negotiations involve a relatively narrow issue: the extent to which the coaches' salary schedule of the Agreement, for the year 1976-77, is in violation of Federal Title IX of the Education Amendments of 1972 (20 U.S.C. & 1682) and the regulations thereunder (45 C.F.R. 86.41, 86.54), and Washington House Bill 418 (Wash. Law C 226, 1975 1st Ex. Sess.), and what contract modifications for 1976-77 are necessary to obviate such violations.

The federal regulations, in particular, provide as follows:

§ 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

- (a) Makes distinctions in rates of pay or other compensation;
- (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

The issue for the Fact Finder here, then, is not what would constitute an

appropriate coaches salary schedule, taking into account criteria normally utilized in collective bargaining and fact finding, e.g., the size of the overall settlement, compability data, changes in the cost of living and the public welfare. Here the only question is what changes are required in the coaches schedule to bring it into conformity with applicable law.

The Association's most recent proposals for a single hourly rate (with gradations only for experience), would certainly provide a sex-blind pay criterion that could not possibly violate the equal-pay-for-equal work requirement of Title IX. At the same time, the District would have the means, through its control of coaching hours, to insure that its athletic program was in compliance with the other requirements of Title IX. However, the question here is not whether a single hourly rate is the most foolproof way of achieving compliance, nor is it whether, as Darlene Cartwright testified, the single hourly rate is the fairest gauge of actual coaching work. The question as to the Association's single rate proposal is whether it is necessary to adopt what is obviously both a very costly schedule, since by its terms it would bring all coaching rates up to the highest "rate" paid for 1976-77, and a very difficult proposal to implement, since much of the coaching work has already been performed on a flat fee basis.

It is difficult to discern any basis for concluding that only a single hourly rate, in contrast to a multiple rate system, can avoid illegal sex discrimination. For many years the District and the Association have negotiated a multiple rate system for male and female coaching systems. While there apparently are inequities, in terms of coaching salaries, between male and female sports, the fact that different rates have long been applied as among male sports, as well as female sports, is important evidence supporting the proposition that differences in skill, effort, and perhaps other responsibilities

required of coaches justify different rates of pay. Moreover, in the Fact Finder's experience, it is very common in American educational employment to find that coaches in different sports, whether they be coaches of male or female teams, are paid at different rates which reflect what is perceived to be relatively different demands of particular assignments. Thus, absent considerably more evidence than there is in the present record, the Fact Finder cannot conclude that a multiple rate coaches schedule of necessity discriminates on the basis of sex or, stated differently, that only a single rate system can serve the requirements of Title IX. Moreover, since a single rate system in the context proposed by the Association, i.e., retroactively, without loss of expected earnings under the Agreement as presently written, would involve both maximum cost and maximum practical difficulty of implementation, the Fact Finder must search for a more reasonable means of correcting the inequities at issue. In the connection the Fact Finder notes that the Association itself, throughout most of the reopened negotiation, proposed a multiple rate system.

The basis for the Association's earlier proposed sports groupings was a study by a special committee of coaches appointed last year by the District Administration. While that study is not available to the Fact Finder, the evidence indicates that the committee's recommendations were based on their point score evaluation of each coaching assignment taking into account number of weeks in season, number of students participating per coach, "pressure," and equipment. The District indicates some concern as to the validity of the scoring criteria, particularly "pressure." Without some further definition of that term, and more information as to the committee's methodology than is presently available, the Fact Finder is reluctant to base his recommendations solely on those of the committee. That is not to say, of course, that the committee's recommendations, particularly if amplified, might not be persuasive to the parties in their

negotiations for a successor contract. Here, however, the basis for those recommendations is not adequately apparent.

Considerable information as to coaching assignments on the junior high school level was supplied by Darlene Cartwright in her testimony and was not essentially disputed. She explained that the junior high program is on a four season basis, with football (boys), volleyball (girls), and coed tennis offered in the first season; basketball (girls) and wrestling (boys) in the second; basketball (boys) and gymnastics (girls) in the third; and track (boys), track (girls), baseball (boys), softball (girls) and coed golf in the fourth. Cartwright testified as to the essential similarity in terms of length of season, number of games, and amount of equipment of, respectively, basketball (girls) and basketball (boys), volleyball (girls) and football (boys), baseball (boys) and softball (girls), track (girls) and track (boys), intramurals (girls) and intramurals (boys), and gymnastics (girls) and wrestling (boys), except that as to the last, she testified that gymnastics involves more equipment than wrestling.

On the basis of Cartwright's testimony, the recommendations of the coaches committee, and the Fact Finders own knowledge and observations of the sports involved, he will recommend that the salary levels for coaches of junior high school basketball (girls), and track (girls), be the same as those for the basketball (boys) and track (boys), respectively; that the salary levels for softball (girls) and gymnastics (girls) be the same as those for baseball (boys) and wrestling (boys), respectively, and that the salary level for intramurals (boys) be the same as that for intramurals (girls).

The Fact Finder will not recommend that there be any salary equation at this time for volleyball (girls) with football (boys) since there are apparent differences in those sports, particularly in terms of body contact and risk of injury, that may constitute a basis for salary differentiation. However, for 1976-

77 the Fact Finder will recommend that volleyball (girls) be placed on the same salary level as basketball, in order that it retain its present contractual equation for salary purposes with basketball (girls).

The high school level presents special problems since there is no direct evidence in the record as to high school sports, and because the coaches committee's recommendations as to this level suggest that they may heavily reflect the criterion of "pressure," the validity of which has been questioned. However, both the District and Association initially proposed to equate track (girls) with track (boys), gymnastics (girls) with gymnastics (boys) and intramurals(boys) with intramurals (girls). The Fact Finder will recommend that such changes be made in the Agreement's salary schedule for 1976-77.

The Fact Finder is reluctant to recommend any further changes in the senior high school schedule because the Association's initial proposal, which reflected the coaches committee recommendations, did not equate tennis (girls) with basketball (boys) swimming (girls) with swimming (boys) or softball (girls) with baseball (boys). There is simply no evidence, then, to justify modification of the present Agreements salary levels for these positions.

The Fact Finder wishes it to be understood that his recommendations are not intended to prejudice in any way the parties current negotiations for a successor contract. For this reason, too, he neither accepts nor rejects the District's proposal for a joint committee to study the entire coaching salary schedule.

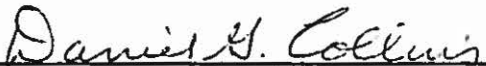
Recommendations

For the foregoing reasons the Fact Finder recommends that the only changes in the Coaches Salary Schedule of the parties Agreement be, retroactive to the beginning of school year 1976-77, adjustment of the salary levels of the following girls team coaches and assistant coaches, if any, to conform to the salary

levels of the corresponding boys team coaches: junior high school basketball, junior high school track, high school track, and high school gymnastics.

The Fact Finder further recommends that the salary level of the coach of junior high school softball conform to that of the coach of junior high school baseball, that the salary level of the coach of junior high school volleyball conform to that of the coach of junior high school basketball, and that the salary levels of the coaches of junior high school and high school boys intramurals conform to the salary levels of the respective coaches of girls intramurals.

Dated: April 27, 1977



DANIEL G. COLLINS