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IN THE MATTER OF FACT FINDING

Between

SEATTLE TEACHERS ASSOCIATION

-and-

SEATTLE SCHOOL DISTRICT #1

RE: 1977 Contract Issues

REPRESENTATIVES:
For Association: Warren Henderson
For District : C. Carey Donworth

FINDINGS OF FACT
AND
RECOMMENDATIONS

by

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Seattle, Washington

September 1, 1977

INTRODUCTION

The Seattle Teachers Association (Association, or STA), pursuant to Chapter 41.59.120 RCW, requested that a fact-finder be appointed by the Public Employment Relations Commission (PERC) on July 22, 1977. The Seattle School District (District, or SSD) concurred in this request by letter on July 28, 1977 to PERC. Subsequent thereto, Kenneth M. McCaffree was selected and appointed as Fact Finder on August 10, 1977 with thirty days to ascertain the facts on the 1977 Contract issues in dispute between the District and the Association, and to submit written recommendations to the parties and PERC.

An initial meeting of the parties with the Fact Finder took place in Seattle, Washington on August 12, 1977. Formal presentations by the parties were begun on August 16, and continued for six full days of hearings through August 23. A final meeting was held to

receive closing statements on August 25. All sessions of the hearing were open to the public, except for a short period when the Fact Finder received information on a personnel matter.

During the proceedings, sixty-three witnesses were examined, three of whom appeared following subpoena by the Fact Finder at the request of STA, and two others were subpoenaed by the District under authority allowed to School Districts. Opportunity was afforded for cross-examination of witnesses by the parties, and for questioning by the Fact Finder. All witnesses testified under oath administered by the Fact Finder. The list of witnesses appears as Attachment 1 hereto.

Both opening and closing written statements were submitted by the District. Oral statements were made by the Association. Both parties presented extensive written material setting forth the rationale for their respective positions. Over 100 exhibits were offered by the District. The Association presented 54 exhibits. In addition, a number of documents, such as the current collective bargaining contract, prior collective bargaining contracts, prior District budgets, and similar materials, were provided at the request of the Fact Finder. In all, representatives of both the Association and the District were allowed full opportunity to present evidence, to examine and cross-examine witnesses, to offer argument in support of positions, and otherwise to discuss the issues in dispute. The entire proceedings were recorded by the Fact Finder,

and the tapes have been used as reference throughout this report.

Some issues were resolved during the hearings, and a number were clarified in such fashion that the parties indicated a willingness to pursue their resolution independent of the Fact Finder and the fact-finding proceedings. In spite of these changes, the Fact Finder was presented with a list of 67 issues at the conclusion of the hearings on August 25. The parties acknowledged, however, that many of these issues would be resolved by the parties after certain key provisions were initially agreed to by the District and the Association. The list of issues before the Fact Finder is found in Attachment 2 with the applicable provisions in the current collective bargaining Contract, if any, set forth. It is to these issues that this FINDINGS OF FACT AND RECOMMENDATIONS are directed.

GENERAL COMMENTS

In order that the parties may appreciate the perspective with which the Fact Finder regards the issues in dispute, it should first be recognized that the finding of facts cannot alone decide the issues. The facts must be wrapped in and around principles that can be interpreted in light of particular sets of circumstances. Thus the facts, as understood by the Fact Finder, are integrated with acknowledged principles of sound and mature employer-employee organization relationships. These generally accepted principles, which cover the relationships of an employee organization and an employer, as well as the relationships of the employee to both the employee organization and the employer can be applied to most of the issues between the STA and the SSD. The recommendations, which result, however, must also be set in the framework of goals and objectives of the STA-SSD relationship.

In the first place, the bargaining relationship of the Association and the District must be viewed as both an end and a means to an end. On the one hand, this relationship serves the employees of the school system and is designed to provide teachers both satisfying and professional careers. But these careers and the conditions under which they take place must, at the same time, enhance the educational objectives of students and parents. The employment relationship and the professionalism of the teacher are not the only determinates of student development and educational

achievement. Decisions on the use of space, equipment, materials, programs, range of services, and alternative allocations of limited resources affect the priorities between employee and student welfare. In the crunch, the public trust placed on teachers and administrators surely requires that first attention be given to the student, and, in the best of circumstances, that the desires and goals of teachers must be viewed over and against the potential gains and educational opportunity for students.

The acievement of a stable and effective working relationship between the Association and the District will be based only on a mutual understanding of, respect for, and trust in the decisions and performance of the other. A clear sense of security on the part of the STA and flexibility in decision making on the part of District administrators, are strong principles underlying such a relationship. These principles represent rights and responsibilities for both the Association and District that must be exercised with care, reason and accountability to the constituencies each represents and to each other. Recognition must be granted that neither principle, nor set of rights and responsibilities, is absolute, and must be balanced in a delicate and careful manner to preserve a workable relationship.

Need exists to assure employees fair and reasonable income and fringe benefits, a security of job, and protection from inequitable, capricious or arbitrary treatment by either District

administrators or the Association. Employees are entitled to know what are their duties and responsibilities, in the same manner as the Association must be assured its security or the administrator the freedom to make the decisions for which accountability to employees, parents and taxpayers exist.

Obviously these principles must be articulated in carefully prepared, clear, concise and explicit language in the Contract, to the greatest extent possible. Unambiguous language can materially aid the parties in setting forth the "meeting of minds" and conditions under which trust and good faith in the bargaining relationship are strengthened.

In the second place, these principles, when combined with the facts in the present dispute, must be applied with due regard to the history of the relationship between the parties and to the public environment of which this relationship is a part. Several new laws, as yet largely untried and not fully understood, overshadow the situation. Furthermore, unique characteristics of and circumstances in the Seattle community must likewise be given consideration.

The following recommendations are an attempt to apply these principles of the bargaining relationship within the Seattle School District, and to balance the rights and welfare of all parties to this situation. These recommendations should be taken as a whole, and not necessarily on an issue by issue basis, for clearly, in some instances, the weight of evidence and the circumstance of

the case must inevitably support the position of one party *vis a vis* the other. To put the matter another way, due regard must be given to the reasonableness of the full distribution of rights and authority between the parties, and to the balancing of all equities and benefits among all parties concerned in support of both a stable and effective working relationship between the Association and the District, and in the maintenance and improvement of a high quality educational program for students in the Seattle Community.

ISSUES

The issues are divided into six general groups as follows:

1. Rights, privileges, and responsibilities of the employee organization - the STA.
2. Rights, duties, responsibilities, and accountability of the employer - the Seattle School Board and the management of the SSD.
3. Salaries, fringe benefits, and the bases by which to distribute these among employees.
4. The work to be done and the conditions under which it is performed.
5. The grievance and arbitration process.
6. Miscellaneous conditions, scattered among various aspects of the employment relationship.

I. STA Rights and Responsibilities.

The following issues relate directly to the rights and responsibilities of the Association per se, although there are others which may relate indirectly, and are considered elsewhere.

Agency Shop, Issue 6. This issue was an item of critical importance in the 1976-77 bargaining and strike. The "grandfather" clause exempting employees hired before July 1, 1976 and not members of STA from the agency shop provisions was adopted. The issue now is the elimination or maintenance of the "grandfather" clause.

I recommend the adoption of the full agency shop, and the elimination of the "grandfather" clause. There is merit in the Association's position that it must fairly represent all employees in the unit in terms of collective bargaining and contract administration, and accordingly all employees should contribute to the costs of these activities. The Association has been a constructive force in the community and has cooperated with the School Board and District Administrators in presenting school needs and interests to the Legislature and other public and community groups, from which all employees have benefited. Furthermore, given the context of the 1976-77 bargaining and emotions attached thereto over this issue, I believe the sooner the full agency shop is established, the better will the public interest be served by a more secure and stable bargaining agent for employees. Finally, the number of persons covered by the grandfather clause is not large,

estimated at between 20 percent and 25 percent of the employees in the unit, and declining in number each year. This percentage of employees in a bargaining unit was generally considered as too small to preclude the adoption of a union shop provision in the private sector under the Taft-Hartley Act, whereby employees would be required to join the union or give up their employment. As a less stringent contract provision, I believe the agency shop and the payment of agency fees are not burdensome in dollars or in principle within the context of the STA-SSD bargaining relationship.

In the implementation of this recommendation, I propose that an appropriate grace period be allowed to provide grandfathered employees the opportunity to choose to join STA or to pay only agency fees. In addition, I would recommend the adoption of the District's proposal, Article I, Section C, items 4, 5, 6, and 7, at page I-7 of its proposal.

Leave and other provisions for STA officers and committee personnel, Issues 7 and 35. The continuation of leave provisions for the president and vice-president of the Association is based on consideration of three points: (1) the desirability and reasonableness of the proposal, in light of past practices, the interests of the District and the stability of District-Association relationship; (2) the legality of such arrangements; and (3) the conditions under which the employee returns to prior regular duties in the bargaining unit.

The presentations of the parties convinced the Fact Finder that both were amenable to and believe the arrangements in the present Contract were beneficial to the District. The real point at issue was the legality of the arrangement, over which there are conflicting legal opinions. Rulings of PERC, the State Auditor and the Attorney General, which are germane but not specific to the issue confronted here also exist. None of the latter consider specifically whether reimbursed funds from the employer organization to the District are "ear-marked funds", and thus are those used specifically to pay the salaries and other benefit costs of the STA officers on approved leave. Until this issue is resolved, the legality of current contract provisions is moot. Finally, if there are benefits to the District by providing released time for the President and Vice-president of the Association, as I believe there are, then these benefits would appear to justify the accumulation of sick leave, salary increments, retirement credits, and seniority, as if the employee had remained in the prior regularly assigned position in the bargaining unit.

Thus I recommend that the present arrangements for leave of STA officers be continued, and that benefits accrue as proposed above, including, however, an appropriate hold harmless clause as now appears in Article I, Section D, item 1 of the Contract. Furthermore, the employee at the conclusion of the STA term of office should be returned to a position equivalent to the position that would have been attained had the leave not been taken.

Other provisions, pertaining to the number of substitute days and the payment arrangements thereto were in disagreement over the legality of the arrangements as well as the number of such days allowable. With respect to the legality issue, the matter hinges on the Enumclaw decision of PERC. Although differing interpretations of this decision are offered by the Association and the District, the legality appears to rest on the purpose for which the substitute days are taken. So long as the released time is spent in "meeting or conferring with the employer or its representatives", (Page 4, PERC Enumclaw Ruling), the subsidization by the District through payment of the difference between the regular rate of pay of the released employee and the compensation of a substitute, is appropriate under RCW 41.59.140. Accordingly, I propose the continuation of the provision at Article IV - Section C, item 2c in the 1976-77 Contract and accompanying provisions in Article I - Section D, items 3, and 4. Furthermore, the Fact Finder was not persuaded that additional substitute days were, in fact, required by the Association, and accordingly proposes that the number of available substitute days remain unchanged.

The cost of printing and distributing the Contract, Issue 5; the use of the District mail service by STA, Issue 13; Visitation rights of STA representatives to employees in the unit, Issue 15; and the availibility of information to STA, Issue 16; are matters supporting the role of the Association, and providing better opportunities for STA to serve employees and the District. The

relevant aspects of most of these issues have been contained in the contract between the District and the STA or its predecessor association, for some time, and should appropriately be continued. I note particularly Article I, Section A, item 11; Article II, Section F, item 2; Article II, Section F, item 5; and Article II, Section I, items 2 and 3.

Visitation rights by STA representatives to members of the bargaining unit at any time is an unnecessary invasion of the chief function of schools -- the teaching of students. Although there were evidences of some misunderstandings, and conflicts between STA representatives and District personnel, these were nominal, subsequently worked out, and with a result that the present arrangements serve the interests of STA, the employees, and students in a reasonably equitable manner. I propose no change in the Contract on this issue.

The acceptance and implementation of a full agency shop will change the needs of the STA for data regarding personnel. Although the detailed description of what data and how data should be provided, as offered by the Association, provide useful guidelines, these matters are left to resolution by the parties. One issue, however, concerns delivery of the list of teachers with "unsatisfactory evaluations and/or those placed on probation to the STA. This poses an issue of individual rights vis a vis both the District and the STA. The right of privacy or disclosure of an "unsatisfactory evaluation", in my judgment, lies with the individual. The teacher

should choose who knows and who does not know of the evaluation and/or probation status, and I recommend that the agreement reflect this principle.

Inclusion or exclusion of the Non-Reprisal Agreement, Issue 8. This provision applied specifically to the 1976-77 settlement, and should be deleted. No evidence was offered that reprisals of any kind took place, litigation was terminated, and the parties fulfilled their obligations under the provision. The Fact Finder, however, recognizes the concern of many STA members over District-STA relationships. I therefore recommend, as evidence of continued good faith, that a clause be included in the new Contract asserting that the District will not discriminate against any employee for reason of their membership in, or activities associated with STA, or lack of either, and that the Association will likewise not discriminate among the employees it represents on the basis of membership or non-membership in STA. Note Article II, Section C.

Participation of STA representatives in sabbatical leave selection, Issue 37. Both the District and the Association concur that some measure of STA consultation on sabbatical leave recommendation be held. I recommend, accordingly that an STA representative sit with the Leave Committee of the District, for the consideration of sabbatical leave applications. The discussion of numbers of such leaves is considered below.

Super seniority to members of STA Executive Committee, Board Officers, and Bargaining Team, Issue 64. There is need to assure the security and integrity of the employee bargaining agent, and to avoid possible discriminatory behavior on the part of either the employer or the employee organization, because of or lack of activities in the employee organization. Although super seniority protects the few employees who are most active in the employee organization, it does so at the loss of equal security to other employees in the bargaining unit. Therefore I recommend, the inclusion of the non-discrimination clause (on account of Association activities or lack thereof) in the Contract, as proposed in Issue 8 above, rather than the super seniority provisions.

Identification of the bargaining unit, Issue 2. The identification of members of the bargaining unit has caused no identifiable problems for this unit between the STA and the District. Accordingly, I recommend that Article I, Section A, item 1 of the Contract remain unchanged.

II. Management Rights, Responsibilities and Accountability.

The following issues relate directly to management rights and responsibilities, and the delineation of decision making pregoratives of the District and those subject to the bargaining relationship. As noted above regarding STA rights, the rights of the District management also indirectly relate to other issues considered below.

Management rights and resonsibility, Issue 10. The issue is primarily on the form, rather than substance of the contents of this provision. A clearcut statement of management rights is advantageous, as both STA and the District have stated. The need for many supervisors, administrators and others responsible for the administration of this Contract to know the aspects of management's prerogatives suggest that a more detailed rather than a short form of the provision is a preferred one. The general form of the District's "detailed" proposal, is not longer than that currently contained in the Contract. I, therefore, recommend the District's proposal for Article II, Section A.

Sub-contracting, Issue 9. The employee organization must be assured the protection of its bargaining work jurisdiction, as well as maintenance of its own security through appropriate Contract provisions. Most of the work to be performed under this Contract is also regulated by law, at least in terms of the qualification of personnel who perform the work. At the same time, a provision

which precludes opportunity to sub-contract work is a rigid one, and could substantially reduce the efficiency and effectiveness of managerial decision making and use of public funds. Thus recognizing on one hand the rights for protecting the integrity of the bargaining unit, and on the other hand the necessity of the District to perform in an efficient and effective manner on behalf of students and the public, I recommend the sub-contracting provision offered by the District, with the added proviso that the objective and intended effect of the sub-contracting is not to undermine the employee organization, and; for any contract above a substantial size, that the District so advise the Association in advance of its intent to enter into such a sub-contract with advice to the STA on the extent and scope of the sub-contract.

Maintenance of Standards, Issue 3. The issue, or sentence in dispute is - "Existing policies, rules, regulations, procedures or practices of the District dealing with matters covered by Chapter 41.59 RCW shall remain in full force." This sentence in essentially its present form has appeared in the Contract for a number of years, although changed in 1976-77 by substituting "of the District dealing with matters covered by Chapter 41.59 RCW." for the phrase "not in conflict with these Agreements."

Several questions have been raised regarding this clause, both in the briefs of the parties as well as in the presentations at the hearings. The STA claims that no major problems have arisen under the clause and that precedent supports its continuation. Furthermore, to eliminate the clause would force negotiations on

regulations, rules, procedures, and practices, such as those contained in the Handbook for Certificated Personnel, and their inclusion in the Contract. The District argues that the clause is so ambigious as to leave management unclear on what can and cannot be done, and thus seriously inhibiting essential and effective managerial decision making. In addition, the District is seriously concerned that the clause, if literally interpreted, inhibits needed change, and allows STA a veto on District decision making without being held accountable thereto, and thus, is an unreasonable intrusion in management's rights in a changing political and economic environment.

The clause is ambiguous. STA representatives acknowledged uncertainty about "policies"; the District is concerned with "practices", the meaning of "existing", and some lack of specificity in "matters covered by RCW 41:59." Both employees and administrators are entitled to know what is and what is not covered by the Contract, and what can be changed, if change is deemed appropriate in the maintenance and further development of a quality educational program.

Bearing these considerations in mind, I recommend continuation of the maintenance of standards clause with the following changes and additions: (a) Substitute "published" for "existing;" (b) substitute "wages, hours, and terms and conditions of employment" for "matters covered by Chapter 41.59 RCW."; (c) denote a date of publication; (d) add "during the term of this Contract, unless modified by mutual agreement."; and (e) indicate by reference "such documents as the Handbook for Certificated Personnel". I recommend

Further that the phrase previously used "not in conflict with the provisions of this Contract" be included so as to give supremacy to the Contract and assure that the policies, rules, etc. are supplemental to and details supporting the Contract.

The sentence, then, might read as follows:

> "On the effective date of this Contract, policies, rules, regulations, procedures and practices of the District dealing with matters of wages, hours, and terms and conditions of employment, published by the District in the form such as the Handbook for Certificated Personnel, and not in conflict with the provisions of this Contract shall remain in full force during the term of this Contract, unless modified by mutual agreement of the District and the Association."

The remainder of Article I, Section A, item 9 would remain as in the current Contract.

Transfer procedures, Issue 45. The proposals of the parties indicate that transfer procedures will vary according to the type of transfer, and each proposes different procedures and criteria for transfer depending upon the type.

On the basis of data and explanations provided the Fact Finder, there are basicly two types of transfer: (1) employee initiated (voluntary) and (2) District initiated (involuntary). Furthermore, transfer procedures consist of two steps: first, the selection of an employee to be removed from a present building assignment; and second, the selection of an employee to be assigned to a vacant position.

Employee initiated transfers may be either the result of a request by the employee to be transferred to a specific vacancy or to be reassigned to another position, with or without conditions imposed, such as area or grade designation. The former is a "specific" and the latter a "general" transfer. In these cases the employee is asking to be placed on a list of persons who want to be considered for and assigned to (or employed in) a vacant position, while retaining his/her present position.

District initiated transfers may be the result of District decisions regarding a reduction in staff because (1) a school is closed; (2) total enrollment has declined in a particular school; (3) a program has been eliminated or reduced in size; (4) because state or federal regulations, such as HEW regulations on desegregation require a change in the composition of the staff; and (5) the

performance of a teacher in that situation is questionable but a teacher which would perform much more productively and quite satisfactorily in another assignment and building. In each of these five categories, the employee must go either (1) to a vacant position or (2) to a reassignment pool of surplused employees who await an opportunity for assignment.

The Association proposes to use seniority, as determined by the appropriate categories set out in Article IX, to declare an employee surplus in District initiated transfers because of reductions in force in categories (1) through (4) above. Of course, a school closure causes all employees to be surplused. The Association, furthermore, proposes that employees who have been declared surplus, be reassigned to vacant positions in the order of seniority (with some exceptions as described below). In effect, the proposal provides for four lists of employees seeking reassignment: (1) a list from HEW surplusing; (2) a list from school closures, (3) a list from all other District initiated reductions in force, and (4) a list of voluntary transferees. Assignment to a vacant position will then be made on a seniority basis, (providing the employee is in the appropriate category according to qualifications, such as music teacher, K-3, and so forth), by proceeding through the lists of transferees (or surplused employees) in the order of the lists enumerated above.

Two exceptions to the rigid seniority rule are proposed. First for teachers in what I have described as District initiated category (5

the teacher so selected would have priority over all other surplused employees, and would be reassigned on an exceptional and special problem basis. The second exception applies to filling vacancies established for special programs or positions which require specialized skills or expertise. These specialized position vacancies would be filled by seniority on the basis of those evaluated as minimally (acceptably) qualified. A detailed procedure is provided for determining qualifications of the surplused employees and others in relation to the specifications of the specialized position.

The District proposes to use seniority as the basis for reductions in staff in categories (1), (2) and (3), but proposes that HEW type transfers should be selected by administrative decision on the basis of criteria related to HEW rules and regulations, and the maintenance of staff balance in skills and expertise in the school where staff are being shifted. The District concurs with the Association regarding the special problem in category (5).

With respect to assignment to vacant positions, the District proposes, in effect, three categories of vacancies: (1) those to be filled in accordance with HEW Rules [which were or may have been created by the surplusing discussed in layoff category (4)]; (2) those vacancies created by specialized or special programs, such as Magnet schools, and other specialized programs or positions smaller in size; and (3) all other vacancies. (Vacancies for the transfer of the special teacher problem cases mentioned in category (5) of District initiated transfers will also be used). Individuals in

the reassignment pool would then be drawn out first for assignment to "HEW vacancies" (some of whom would have been marked for specific placement by reason of their selection in the HEW reduction in force at a school). Employees required for special programs would also be selected on the basis of special qualities and/or qualifications without regard to seniority. All other vacancies would be filled on the basis of seniority by giving preference first to surplused individuals from school closure, second to those forced out by a decline in enrollment or a program change, and third, to voluntary transferees.

The present proposals should be examined in light of the 1976-77 negotiations. Seniority was the key bargained criterion for transfer and placement. The proposal of the Association is an extension in the application of the seniority principle to nearly all cases whereas the District is proposing to use seniority less extensively than currently in effect. The issue, therefore, is determination of the extent to which a less than universal or rigid application of the seniority principle should be applied. The inclusion in the Contract of a section of a special 1976 memorandum on HEW transfers in an inappropriate location muddled the language in such a way that the intent of the parties as apparently agreed to last year became unclear and difficult to apply. There is also other evidence that the District and the Association differ on what is in the current Contract.

Substantial time was used to discuss the above issues and proposal differences. The transfer procedures are extremely complex, and because of this, the simplicity of seniority as a basis for regulating surplusing of teachers and for their reassignment is appealing. It is an easy administrative tool, requiring little skill, and is readily understood by everyone.

There are, however, circumstances in education which justify some variation from a rigid seniority rule for force-outs and for filling vacancies from the transfer reassignment lists. The first is the professionalism of the employee in relation to the nature of the product to be produced. The learning by students - the product of the educational system - is an entirely different product than a shoe or a shovel. The special qualities and qualifications of the professional must be matched to the teaching situation to produce the maximum effect on the education of students. Special factors of this kind are largely inconsequential in producing material objects. Transfer and assignment by seniority can be rigid in the latter case because of the uniformity in both the product and in the process of production. But such is not the case in the teaching and learning situation, if the optimum learning level for students is to be obtained. Some flexibility in transfer and placement of teachers beyond the application of a simple seniority principle is required.

On the basis of these observations, I recommend, first, that a specific section be included in the Contract to allow for

the transfer of employees to specific vacancies to accommodate the situation in which a teacher's performance can be greatly improved by the move to another situation and/or building. (Category (5) of District Initiated Transfers).

Second, I recommend that all District initiated transfers be placed on a seniority basis, except that in the case of HEW type surplusing, that the second transfer from a building be selected by the District, and reassigned without regard to seniority. All other surplus staff would be selected on the basis of seniority. For example, when the number of HEW transfers is known, the present method of selecting the least senior member will be followed, after which the District will make a selection for the second transfer, provided, however, that any volunteer acceptable to the District shall be considered as the selection of the "second transferee". Furthermore, I recommend that an employee required in a specialized program area, such as in a bilingual program be exempt from the HEW seniority transfer procedure, if a junior employee and would otherwise be selected and transferred.

In reassignment, I recommend that all vacancies be filled by application of straight seniority, except (a) for the HEW transfers noted above and (b) for a category of specialized positions. In this category, available employees in the transfer pool or on the transfer lists, including employees with voluntary transfer requests, will be evaluated to determine if three or more candidates have the qualifications acceptable for the specialized position.

If so, the District will offer the position to the employee with the most seniority, and on down the list of three until one accepts. If there are not three acceptable qualified candidates in the transfer pool or the three with the highest seniority among those qualified are unwilling to take the position, then the District may select, transfer, and assign any employee from within the District to the specialized position. I recommend further that, in the case of specialized positions, a written job description of the position, and the qualifications to fill the position be developed, and that a systematic process for determining the qualifications of the employee be followed. I note especially that part of the association proposal which pertains to this procedure.

Conditions for layoff, Issue 62. This issue is joined on the basis of "over-riffing" in 1975 and 1976 and the right of management to adjust staff numbers in accordance with changing conditions and uncertainities surrounding revenues. The current Contract provisions, which the Association proposes to continue, were the result of bargaining after two years in which large numbers of employees were laid off. Many employees were rehired in both 1975 and 1976, when revenue uncertainities were eliminated. Errors of judgment, at least in retrospect, were clearly made in the number of nonrenewals issued, only to be rescinded subsequently. This situation leaves a legacy in which the employees fear similar errors may occur in the future.

The language of Section A in Article IX was and is directed at the issue of controlling unnecessary reductions in force, as a consequence of revenue uncertainities and/or actual loss of revenues, and I believe should be retained for that purpose. In other words, large layoffs which might result from a levy failure, or an unanticipated reduction in state funding, or termination and/or large reduction of categorically funded projects should be avoided, in the first instance, by a reduction in cash reserves, deferring capital outlays, and reducing allocations of monies to other non-direct instructional uses. I would propose further however, that the well-established "prudent man" rule be applied to the extent to which cash reserves are reduced, capital outlays deferred, and so forth in order to meet the obligations of protecting the legitimate rights of employees. The prudent man rule is by no means a precise mathematical formula for financial management, but it does bring into focus the need for management to examine its assets and revenues in light of what a prudent man would do in that situation, i.e., the rule forces the manager to examine the circumstances carefully and fully, and to proceed in a reasonable and responsible manner to minimize possible losses to its constituency.

I would propose also that a separate section be developed that refers specifically to the relevance of reducing staff in relation to declining total student enrollment, to the reduction in force because of changes in programs and priorities within

and among programs, and to the adoption of a different manner for providing the same services. These are changes clearly required in the present social and economic environment in the interests of improved student education, and on the basis of efficient utilization of school resources. Although other wording might be preferable, the idea intended here appears in the District proposal at Article IX, Section A, item 2, a, d and e. I would recommend further that any proposed layoffs under this new section be determined and announced at least 30 days in advance of the decision date regarding contract renewals under the continuing contract law. In this manner the number expected to be given non-renewals because of revenue uncertainities can be examined in light of the prudent man rule for reallocation of District assets and expected revenues.

Recall and re-employment procedures, Issue 63. I have no recommendation regarding this issue and believe the parties can readily resolve differences in their proposals.

Issues 44, 47, 48, 49 a, b, c, and 52 b, c, d. These issues are variations on essentially the same theme and relate to specification of program needs for the communication disorder specialist and other itinerant personnel, increased expenditures for science, supplies and material, kindergarten materials, programs and staff, and similar aspects of the special education program and school libraries. In each case, the responsibilities for the decisions involved lie with the District rather than in the

bargaining contract. These items concern program choices, budgetary decisions on allocation of funds, and lie within the legally acknowledged obligations of the District. Accordingly, I recommend that the provisions in the Contract pertaining to these matters be retained, as set forth in Article VI - Section I, K, M, P, and D, item 3.

Assignment and removal of employees in stipended positions. Issues 23 and 22. These issues concern when a stipended position must be filled, and under what circumstances can an employee in a stipended position be removed.

Both state law and the current contract require annual reappointment of employees to stipended positions. Furthermore no employee can be required to accept appointment to a stipended position, if the employee chooses not to do so, which is in contrast to the requirements for accepting regular, non supplemental assignments.

The determination of whether to fill or to leave a listed stipended position vacant in a particular school is a program decision, and within the range of managerial decision making. A decision not to fill a stipended position places no obligation or responsibility upon any employee in the building, and any such duties or responsibiliites ordinarily carried out by an employee in such a position need in no way be done by any employee without compensation. The responsibility for the program, or absence of it, rests with the District. I therefore recommend that the Contract include

the conditions of employment and compensation under which an employee works in a stipended position, but that the decision to fill positions is reserved to the District.

There has been a long practice under which an employee once appointed to a stipended position usually remained in that position. This practice appears to have added stability and strength in most cases to the supplemental activities and curricular programs. The fact that annual reappointments were required, however, retains the right of the District to change the employee in a stipended position because of program changes, both by adding or eliminating programs, and by changes in emphasis or redirection of a given program among other reasons. These understandings are clearl set forth in the current Contract. However, the burden of the issue at this time, is the criteria for failure to reappoint an employee once appointed to a stipended position.

The addition of the phrase in the 1976-77 Contract that written explanation for non-reappointment shall include "just and sufficient cause" was unfortunate. These words are universally applied, to my knowledge, only to reprimand, disciplinary actions and discharge. No place in the discussions during the hearing, or in the briefs of either party, or in reviewing the context in which that phrase appears in the current Contract was there indication that non-reappointment is a disciplinary action or reprimand. However, I concur with the observations and conclusions of Arbitrator Gillingham in both the McGee and the Kourkemelis cases

that non-reappointment must be carried out in terms of "reasonable grounds" and on a "reasoned and reasonable basis." The protection inherent for the employee in this provision is the avoidance of capricious and arbitrary procedure or choice, and the opportunity to grieve the matter to binding arbitration, if necessary, to determine the reasonableness of that procedure and decision for non-reappointment. There is no requirement that the employee perform "unsatisfactory"; rather the decision to change or non-renew must be based on an established procedure, including appropriate notice to the employee of non-reappointment, and on an identifiable basis or reason for the change, which is neither capricious nor arbitrary.

I recommend that the words "sufficient cause" be replaced by "reasonable basis", in order to avoid any connotation of a disciplinary action, or that work has been evaluated "unsatisfactory". The last sentence of Article III-Section B, item 4 b (3) might read "Such written explanations shall include a just and reasonable basis". I also recommend that language changes be incorporated to provide more explicitly for proper procedures and due process in the reappointment of employees to stipended positions.

Staff levels for nurses and communication disorder specialists, Issue 56. This issue, again, relates to the decision making regarding program priorities and the system by which services are delivered to students. The School Board is clearly accountable for these matters, and program content as such is a non-mandatory

item of bargaining. Although the experience and understanding of program needs on the part of the teachers and Association are rich resources from which the District administrators should appropriately draw, the final decision on what to provide to students and to what extent is a District matter. I therefore recommend that the Contract remain as is currently the case and make no reference to specific staff levels for nurses, or communication disorder specialists.

Visitation rights of parents, Issue 18; and removal of students from the classroom, Issue 17. Neither of these issues are currently in the Contract. Both relate to sensitive matters, involving students and parent rights.

The Fact Finder was not persuaded that teacher rights were in any way adversely affected by parent concerns, and in fact, on the basis of the evidence and testimony at the hearing were strengthened by the behavior of the administration. Furthermore, in the case of removal of students, and the establishment of special programs, the evidence presented was insufficient to demonstrate the need to include such matters in the Contract. Again teacher and employee expertise, and concern should be made known to the District. I recommend, that the current Contract provisions, on these matters, if any, be continued, but no other provisions on these issues added.

III. Compensation and Fringe Benefits.

Basic salary and increment changes, Issue 20. Voluminous materials and data were supplied the Fact Finder on this issue, in addition to extensive testimony by public officials, legislators, parents, teachers, and financial experts for both the District and the Association. In the condensation of these data and testimony, the Fact Finder arrives at the following:

1. The maximum teacher salary in Seattle is fifth highest among 75 Washington First Class Districts (STA Ex. 43) and second among the ten largest school districts in the state (SSD Ex. III-B-15).

2. The beginning teacher salary in Seattle is the highest among 75 Washington First Class Districts (STA Ex. 47) and highest among the ten largest school districts in the state (SSD Ex. III-B-13).

3. The maximum salary for teachers without a PhD in Seattle was second highest among six major cities on the West Coast (STA Ex. 46, SSD Ex. III-B-18), and nine percent over San Francisco, 12% over Portland, and 15% over Oakland.

4. The minimum salary with BA degree for teachers in Seattle is higher than any major city on the West Coast, and substantially so for San Francisco, Portland and Oakland (STA Ex. 45, SSD Ex. III-B-17).

5. Salaries of beginning teachers in Seattle, when increased by 22 percent to account for a 12-month employment schedule, were equal in 1976-77 to the anticipated average starting salaries in 1977-78 of college graduates with BA degree in several selected fields as engineering, accounting, business administration, chemistry, economics and other (STA Ex. 41).

6. The average of teacher salaries in Seattle rose between the 1967-68 school year to 1976-77 by 98.7% (SSD Ex. III-B-11a.). The minimum salary at the BA level over the same period rose 74%. A teacher employed at BA plus zero in 1967 would have received a 145% increase by 1976. A teacher at a maximum salary for BA+90 in 1967 would have received an increase of only 52% by 1977 (STA Ex.52, by computation).

7. The average percentage increase in salaries between 1970 and '77 for other Washington State public employees were as follows, statewide:

Higher education personnel	45%
Community college personnel	44%
Fulltime DOP, classified	45%
K-12 Certificated	60%
Seattle teachers	70%

(SSD Ex. III-B-19, and III-B-11a, by computation).

8. The percentage increases in the Seattle consumer price index and in average Seattle teacher salaries are as follows:

Year	August C.P.I.	Cumulative Salaries Index
1967	100.6	-
1970	114.6	135.95
1971	117.7	140.35
1972	119.9	147.95
1973	128.8	155.97
1974	143.0	168.97
1975	157.3	170.20
1976	165.7	198.36
1977	179.0*	-

(STA Ex. 53, SSD Ex.'s III-B11, and 11a). *Estimated.

9. The May, 1976 to May 1977, CPI for Seattle rose by 8.4%. The U.S. CPI May, 1977 to July, 1977 rose at annual rate of 6.6%; July 1976 to July 1977 of 6.7%. (STA Ex. 53, and BLS information office).

10. The percentage increases in salaries and wages for employees generally this year have ranged between six and twelve percent, in the Seattle area, and estimates of salaries for new-hires with BA degrees in other fields indicate an average increase over last year of only five percent (STA Ex. 41).

11. Both parties acknowledged there was no exodus of teachers from the Seattle area for reasons of inadequate compensation, nor was there any evidence that there was a shortage of teachers available for employment. On the contrary, the turnover of teachers in the Seattle school system is amazingly low. Further, applicants are "lined up" for employment in the District.

12. Other environmental factors, as introduced in the hearing, are considered below.

From the above facts, it is unequivocal that teachers are as well or better paid in the District than their counterparts in other school systems in the state and on the West Coast and that Seattle teachers have benefited salary-wise better than state employees, community college or higher education personnel, and, in fact, among this group have been the only ones to recieve salary adjustments over the last ten years sufficient to increase their real income. Furthermore, as presented at the hearing, Seattle teachers have no larger work load, as short a school year, and receive extra compensation for supplemental days of work as favorable to them, if not in all cases, more favorable, than teachers in other school districts. As briefly described below,

fringe benefits, in any respect, are as favorable, and in most cases more advantageous to the Seattle teacher than to teachers in other school districts in the state.

On the basis of these facts, any claim for a "catch-up" in salary seems unjustified. Thus attention need be focused only on the competitive market aspects of salary changes, and on the equity involved in salary increases because of rising costs of living.

From a competitive market point of view, it is difficult to be concerned with shortages of teachers or the inability to hire new staff, given a declining need for teachers in the Seattle School District. The need does not exist to increase teacher salaries to be sure that teachers equal to the high quality of those now employed, are available. They are available, and would be so even if no salary adjustment were made in the current schedules. This situation does not imply, however, that some increase should not be made. It does indicate that the increase should be less than were the District expanding the number in its teaching corps.

The attempt by the Legislature through the Levy Lid bill to control monies for salaries, and especially in high salary districts as Seattle, is a warning signal to all. Whether the law places a ceiling on salary increases is not yet decided, nor is it the intent of the Fact Finder to determine if that is the case. The attempt, whether successful or not, is a circumstance the bargaining

parties cannot ignore in agreeing to salary changes. The special levy at least will no longer be an allowed source for extra revenues, even if the parents and taxpayers in the Seattle District did approve.

The above discussion leads then to the consideration of the equities involved in decreasing real income because of a rise in consumer prices and a consideration of current percentage changes in salaries in other areas. How to strike a balance here is a judgmental matter on what is fair and reasonable, in accordance with market standards and the circumstances of the situation. Accordingly, given the above facts, and the discussion of the current situation, I recommend a 5.6% across the board increase, plus the annual increments and lane changes. This is expected to be a total salary increase in excess of 7.1% and may exceed 7.6% This allows between 1.5% to 2.0% for increments and lane changes per the estimates of SSD Ex. III B-28 and 29. The 5.6% would be applicable to schedules in Appendices A and B only.

The above increases are well within the competitive range, and at the same time allow proper attention to the equities involved in terms of rising consumer prices. Furthermore, the increase proposed in excess of the offer of the District, I believe to be within the reasonable range of financial capabilities of the District although the complexities of the budget prevented a thorough and careful analysis during the time in which this report has been prepared. To go higher on wage changes, would I believe seriously cut into funds tentatively allocated for the reexpansion

of needed student programs and the extension of the shcool day which were cut back in 1975 by reason of insufficient funds.

One matter remains. The District claims that 5.1% is the maximum increase in salaries that is allowed under the law. There clearly is some doubt here, as expressed succinctly by the Attorney General. Accordingly, I recommend that all salary funds in excess of those required to pay a 3.6% across the board salary increase, increments and lane changes, be placed in escrow by the District, that the parties seek immediately a declaratory judgment from a King County Superior Court judge, selected at random, and accept as binding the decision rendered regarding the legality of the District to pay in excess of 5.1%, and that in the event the Court rules that the payment of the funds in escrow for salary purpose is legal, the monies will be paid to the employees in accordance with the above recommendation.

Stipends, Appendix C. Issue 20, and other issues pertaining to stipends; 21, 48b, 51, and 67. These issues all represent proposals to extend stipend positions, for kindergarten teachers in two buildings, head librarians and others, responsibility factor for psychologists and social workers, and the payment of a stipend for one year following an involuntary transfer.

The relationship among stipended positions and the size of the stipends attached are complex matters. The Fact Finder was impressed with the extent to which employees seek these positions, even though in a few cases positions have gone begging for applicants.

From a competitive and market relationship, this condition suggests that the stipends as a whole are higher than they need to be to attract highly qualified personnel to the stipended positions. In addition, there is need to appraise the line of demarcation between curricular and extracurricular (stipended) positions, as well as those where extra duties or responsibilities of a quasi-administrative character are undertaken in conjunction with normal or regular assignments. Although I found the evidence generally insufficient to provide special stipends for head librarians, faculty council representatives, psychologists and social workers, or the kindergarten teacher split between two schools, these proposals and the discussions at the hearing raise questions on how equitable is the alignment of stipends among the presently stipended positions and perhaps among others in the music, drama, and certain athletic areas. What was not available was any clear-cut base or reference from which to appraise fully the relative relationship of these positions, their duties and responsibilities and appropriate reimbursement.

I recommend that the Association and the District arrange for an outside organization or person to conduct a wage and salary survey to determine the appropriate alignment of current and proposed stipend positions giving regard to extra duties involved, responsibilities assumed beyond regular assignments, additional time commitments, status of the stipended position, and similar matters. I recommend that change in the current stipends, and

any deletions or additions to stipended positions be made following the completion of that study.

Contribution to group insurance, Issue 39. The District proposes to increase the monthly contribution to group insurance from $62 to $70, whereas the Association requests approximately $125 per month per employee.

Current practices in the area among private employers is to pay all of the group insurance premium, but generally at a much lower monthly rate than that provided to the Seattle teachers. The proposed increase of the District will equal packages available among public employees such as state, university and community college personnel. Furthermore, on the basis of the evidence presented, the District's contribution to group insurance is among the highest in the Seattle area (STA Ex. 29).

The proposed increase is sufficient to cover the inflationary increase in health care costs and other insurance. What is proposed by the District is not likely to allow any increase in benefits. Therefore I recommend an additional $2 per month per employee, or a $72 per month per employee insurance contribution.

Holiday pay, Issue 42. This proposal contemplates neither increasing the annual salaries nor reducing the number of contract days. The effect is to reduce the per diem rate, if holidays are counted. Practice has long existed to pay on the basis of contracted days and to spread the salary payments over twelve

equal installments. This pay practice thus appears to cover holidays. The impact of the proposal is rather fundamental to present payment arrangements and, I, therefore recommend that this issue be deferred for further exploration at future negotiations.

Additional professional leave days, Issue 36. Employees currently have extensive leave privileges, as well as the opportunity for professional training and development during the summer months. The granting of two additional leave days to attend meetings and conferences seems excessive for the benefits likely to accrue to the District and students for such an expenditure of funds. I recommend that this provision be left out of the Contract.

Sabbatical leaves, Issue 38. The concept of sabbatical leave is a complex one. Fundamentally the issue is whether a sabbatical is a right or a privilege, whether it is a fringe benefit or a reassignment of an individual to a different position. The specification of a minimum number of sabbaticals is a costly undertaking, even if only at the level of one percent of the staff. Allocations of funds between sabbaticals and the layoff of employees would surely come down on the side of avoiding layoff and eliminating sabbaticals in order to provide a few additional jobs.

The Association acknowledges there has been no problem, except some concern that current year funding for sabbaticals may be less

than desirable, and that the failure to specify minimums will allow too much discretion on the part of the District administration. Final decisions have been made by administrators in institutions of higher learning on sabbaticals for years, and seldom has there been evidence of abuse of administrative authority.

I recommend that the current provisions in the Contract concerning the number of sabbatical leaves be retained.

Issues 24, 25, 30b,c, 31b, 34, 43, 49d, 52a, and 66 can readily be resolved by the parties, and therefore, I have no recommendation on these issues.

Issues 55, 26, and 27 are concerned with the educational credit basis for salary. The first, Issue 55, is the use of BoBathe credits, whenever taken, as educational credits for advancement on the salary schedule. These credits are an accepted in-service training, and on some occasions accepted for academic credit, post BA degree. I recommend that these credits be counted for salary, when received prior to employment in the District, if the credits, as taken, would have been accepted for degree credit at the University of Washington, and further recommend that the employee be required to provide the appropriate verification from the Division of Physical Therapy, University of Washington, on how many credits should be allowed for the training received.

The second, Issue 26, deals with a limit on in-service training credits allowable for advancement on the salary schedule.

The number who had exceeded the proposed limit did not seem excessive; further, the quality of the program depends essentially on the District. Extensive use of the program by an employee for advancement is also a function of the range and extent of offerings. Accordingly, I recommend that the Association's position prevail and the current provisions in the Contract be retained.

The third, Issue 27, relates to acreditation of schools from which college credits would be accepted for a salary basis. The proposed NCATE accreditation seems unnecessarily restrictive, in addition to which the actual course of study and level of accomplishment may be as important as where the work was taken. Accordingly, I recommend the continuation of the current provisions in the Contract, Article III, Section B, item 6d.

Salary level for on-the-job injury and the accumulation of retirement credit, Issue 33. The practice of the District, prior to the application of worker compensation to teachers, was full salary in the event of disability by reason of an on-the-job injury. Since the introduction of worker compensation, which is self-insured by the District, employees injured on-the-job and disabled were paid full salary. The salary was composed of the maximum worker compensation payment according to the law, and supplemented by the District. The employee, under the later arrangement, was allowed retirement credit only on the supplementation portion of the salary. The employee could elect to take sick leave and accordingly retain full retirement credit.

The District proposal reduces disability payments to 90 percent of full salary but, in addition, adds continued coverage under the group insurance package. The 90 percent, taking into account the absence of income tax payments on worker compensation payments is alleged to be equivalent to the take-home pay under a fully taxed, full salary. In addition, the insurance coverage adds to the employee's financial security at a time when it is likely to be needed.

Current practice in other school districts does not equal the District's proposal for disability income payments. Furthermore, numerous studies do show that unemployment compensation, which is paid at a level much reduced from prior full-time salary, deters some persons from returning to work. Other studies have shown similar behavior patterns in the industrial insurance field. Teachers, given their professional backgrounds, are most likely to return to work as quickly as possible. The issue rests primarily on equity grounds. It seems inappropriate for an individual to receive more spendable income when not working than when working. On the basis of all these considerations, I recommend a disability payment arrangement whereby the individual receives as much real and/or take-home salary, including insurance coverage, than if regularly employed and compensated on the regular salary schedule.

As for the matter of retirement credits while disabled, I see no reasonable solution given the present regulations of the state teacher retirement system and the worker compensation laws.

In part, the ability to accumulate 180 days of sick leave pay is designed for the precise purpose of accommodating extended illnesses and disabilities, and should be so used. The employee should obviously have the option of using sick leave credits or take the worker compensation-salary supplementation arrangement equivalent to prior take-home pay.

Placement of OT and PT on same salary schedule as teachers, Issue 55. I have examined the level and extent of training, and especially the specialized aspects of that training for OT and PT at the University of Washington. So far as I can determine, a PT with a BA degree has the equivalent if not more training than nurses. Secondly, because of the numerous special problems which do appear among school children, additional work beyond the BA is generally required. Frequent in-service, extension, and graduate credits are required to retain and improve the needed skills. Nurses are currently on the same schedule as teachers, but OT and PT are not paid beyond the BA+90, a level available to other employees in the District. I believe this is an inequity that should be corrected, and I, therefore, recommend that OT and PT be placed on the same salary schedule as other District employees in this bargaining unit.

IV. Hours, Duties of the Work Day, and Working Conditions.

These issues concern the length of, and duties during the work day, planning-conference-preparation time, and related matters.

Timely issuance of teacher contracts, Issue 19. The question at issue is the conditions under which the contract issuance takes place.

Recognizing both the necessary planning incident to staffing and assigning teachers to schools and the legitimate rights of the employees and the STA to be concerned with freedom to act during negotiations, I recommend that a rider be attached to the teacher contract which allows for revision of wages, hours and conditions of employment as may be subsequently determined through collective bargaining, and that permits the employee to engage in any lawful activity related to the collective bargaining process, without violation of the teacher contract.

Length of work day, Issue 29; "Fair share" of duties beyond student day, Issue 11; Preparation-conference-planning time, Issue 46.

These three issues relate to the duties of the teaching staff and the allocation of those duties to particular time and place configurations. The Association proposes to continue the present arrangements, except for two changes: (1) reduce scheduled hours from 8 to 7 per day for psychologists and others, and (2) apply a time limit for duties and responsibilities that "support the operation of the school, the guidance and counseling of students,

and the sponsorship and support of the student activity program." The District, alternatively, proposes to increase the scheduled time commitment of elementary teachers on the school site to 7 hours per day, instead of the current 6 1/2 hours, and to increase the PCP time in elementary schools to 250 from 150 minutes per week. Duties beyond the school day are still defined as "fair share" per employee.

I found no observable difference between the Association and the District with respect to what constitutes the work load of teachers. This work load was described in three parts as (1) work on-site with students in the classroom, i.e., "teaching", (2) preparation and planning of class work, conferences with students and other teachers, grading of papers, and similar tasks, and (3) other duties related to the functioning of the total school such as faculty meetings, organizational meetings, student counseling, parent contacts, and duties associated with school activities not covered by stipended positions. Nor do I understand from the presentations, briefs and proposals that either the District or the Association is attempting to increase or to decrease the "work load" of teachers. Rather, the issues concern when and where duties are performed, and a clearer definition of what the tasks are that have ordinarily and traditionally made up the "work load".

Witnesses for both the Association and the District were unequivocal in their statements that teachers ordinarily work

beyond a 40 hour week; that the sense of professional responsibility and satisfaction in the teaching process led many to work substantially beyond such standard time measures of effort, and that the hours scheduled for "on-site" were only a part of the work time of teachers in the performance of their duties. Furthermore, the discussions and testimony at the hearing confirmed that there is uncertainty on what is a "fair share" of part (3) duties, described above.

On the basis of the above, I recommend the incorporation of a statement on what constitutes the work load, as described above in parts (1), (2), and (3), at Article VI, Section A. I recommend further that Article III, Section D, item 1 remain unchanged except that the last sentence be amended to improve the clarity of its meaning by substituting the words "These standard working day schedules" in lieu of the word "This". Furthermore, I recommend that Article VI, Section H be retained as now written. I also recommend that Article II, Section B, item 2, be revised to read as follows: "As professional staff members, all teachers are expected to perform duties and accept responsibilities that contribute to the activity program, to the guidance program, and to the good climate and efficient operation of the school to which assigned."

II, B

I recommend, finally, that a new paragraph be added in Article III, Section D, item 1, to provide (1) that teachers will be expected in addition to performing duties during the regularly scheduled on-site hours, to participate in activities and to perform

duties related to the functioning of the total school, such as faculty meetings, organizational meetings, the guidance and counseling of students, parent contacts and meetings, and those duties associated with school activities not covered by currently stipended positions, (2) that these duties shall be performed at irregularly scheduled times, and be divided equally among all employees in a building, and (3) that such duties will not extend the work time at the school site, beyond an average of 38 hours per week. I would further suggest that specific attention be given to editing the entire Contract to distinguish clearly among "student" school day, the regularly scheduled "teacher" day, and the teachers' duties and work load.

On the basis of the evidence and testimony regarding the hours of special personnel such as psychologists and social workers, I found no basis for altering their scheduled work day, and accordingly propose that the present schedule continue.

Pupil-teacher ratio, Issue 54; Counselor-student ratio, Issue 50a.

A common goal exists among teachers, District administrators and parents for the improvement of the learning opportunity of students through smaller class sizes. It is the welfare and educational development of students that is related to class size. As such, there has been close cooperation between the District, teachers and the Association among others, over a long period of time to achieve an average class size that optimizes the pupil's achievements in relation to funds available, and all, including parents and

taxpayers, are to be commended for this effort.

The presentations at the hearing, the materials in and attached to the briefs, concentrate on the concern for pupils and not specifically on working conditions. There is some question on whether pupil-teacher ratios are in fact a mandatory item for bargaining. PERC is yet to rule on the matter. Furthermore, no persuasive argument was presented to suggest that the present class sizes are either too low or too high so far as working conditions are concerned. There is some flexibility in the current arrangements, and in the absence of any evidence that unequal class sizes persist for specific teachers, I recommend no change in the current provisions with respect to pupil-teacher ratios and with respect to counselor-student ratios.

V. Grievances, the Grievance Procedure and Arbitration.

Several issues exist over what is a grievance, who may bring a grievance, the procedure for processing a grievance, and arbitration.

Use of arbitration for contract non-renewal, Issue 12. The statutory provision for the hearing and determination of issues regarding "adverse effect, discharge, and non-renewal of contracts" provides a well-established process, not unlike the arbitration process. Clearly an employee should be prevented from using both processes, and would be required to select one or another. At this time it is uncertain whether legally the District could allow an employee to proceed through the arbitration process and then lawfully prevent that same employee from using the statutory processes. Since the law clearly allows due process and full review of the merits of a non renewal as arbitration may do, provides for qualified hearing officers knowledgeable with law, and does so at minimal expense to the employee, all employee rights appear to be fully protected. Accordingly, I recommend that Article VIII, Section B, item 1 be retained.

Initiation of grievances by STA, Issue 58; Exclusive rights of STA to process grievances, subject to the choice of the individual, Issue 61; and Arbitrability of superintendent's action to remove STA mail privilege, Issue 14. I recommend that the Association be permitted to bring a grievance for a group of employees or on behalf of the Association, itself. I recommend, further, that the

rights of the Association should include the privilege for a representative to be present at all grievance proceedings, even if the grievance is being processed by the individual employee, and that representatives of any rival labor organization be prohibited from representing an employee in the grievance and abritration process. These recommendations follow from the importance of the role of an exclusive bargaining agent and yet allow that individual employees have the right to process grievances without the help of the Association.

The legal aspects of use of the U.S. mails and the privilege extended by the Post Office Department to government agencies to have internal mail services creates a nominal problem for an unlimited right of the STA to use these services. However, neither the Superintendent nor the Board, by granting the privilege of use of the mail service as the result of good faith bargaining, should be able to withdraw such a privilege in a capricious and arbitrary manner. Accordingly, I recommend that the Superintendent's withdrawal of the privilege of the use of the District mail service by the Association is subject to the grievance process and arbitration to determine if such decision is neither capricious nor arbitrary and has been based on identifiable and reasonable grounds.

Definition of a grievance, and the basis for filing a grievance, Issue 57. The clause in dispute currently reads:

> "Grievance" means a claim based upon an event or condition which affects the conditions or circumstances under which an employee works, allegedly caused by misinterpretation or inequitable application of written District regulations, rules, and procedures, or District practices and/or the provisions of this Contract.

This clause has undergone at least two changes since 1969-70. In that Agreement, the clause ended "application of existing School District regulations, rules, or resolutions." In the 1973-76 Agreement, a further change was made by altering the end of the clause to read "existing District regulations, rules or resolutions, and the provisions of these Agreements." The clause as above was entered in the 1976-77 Contract, and replaced "or resolutions" with "and procedures," and further added "or District practices." "Contract" was also used in place of "Agreements", and "existing" was replaced by "written".

The dispute centers on two matters. First, the meaning of "District practices", and second, the question of to what are "written District regulations, rules, and procedures, or District practices" confined. In both cases, there are ambiguities which require clarification. Furthermore, the issue is closely aligned with the maintenance of standards clause on what precisely is meant by regulations, rules, procedures or practices, Issue 3.

This is a crucial area for the effective administration of the Contract, and the meaning of this clause should be clearly expressed. Although the parties may wish to consult again what

was recommended regarding Issue 3, two recommendations are provided here. First, I recommend that the clause be amended to state that the rules, regulations and so forth are only those pertaining to "wages, hours and the terms and conditions of employment" as is specified in RCW 41.59. Although the Contract now appears to provide precisely that, as set forth in the Purpose and other items in Article I, Section A, employees and others should recognize from this clause above exactly what is a grievance and what is not.

Second, I recommend a specific definition of "District practices". Statements by both parties at the hearings indicated a concern for its meaning. Although I find the inclusion of "practices" as a basis for a grievance unusual, that fact is of nominal concern. Any arbitrator, in evaluating a grievance, will first determine if the Contract language is ambiguous, and if so, will include in his deliberation the "practices" which have occurred between the parties in the interpretation and application of the written agreements. In this case, it is likely that only District-wide practices applicable to all employees would be seriously considered. Since I believe this to be intent of the parties, I recommend specifically if the word"practices"is retained, that the clause contain "District-wide practices applicable to all employees."

I further recommend, the Association's rewording of Article VII, Section B, item 1, with addition of the two changes proposed above. An effective date for what is "written" could also be appropriately added.

Grievance procedure on time lines and the use of Step 2, Issue 59; Definition of the powers of the arbitrator, Issue 60. I believe the parties can resolve these issues and therefore no recommendations are made.

VI. Miscellaneous Employment Conditions.

No recommendations are made regarding a number of miscellaneous issues. The parties have already accepted the use of the word "Contract" in place of "Agreement", (Issue 1), and the remaining issues can be resolved by the parties. These are Issues 4, 28, 32, 30a, d, 31a, c, 40, 41, 53 and 65.

Issue 4 concerns the duration of the Contract. At this point, I recommend a minimum two year agreement if for no other reason than to have the parties avoid the stresses and tensions evpked by contract bargaining. In addition, however, a longer term contract will allow the District and the Association to stabilize relationships and accommodate to a new economic and legal climate. A great many uncertainities exist in the application of the Levy Lid bill, the Basic Education Act, and the Educational Employment Relations Act which time will unravel. Finally, the Contract could be reopened for salary adjustments only to allow salaries to move upward with the changes in economic conditions in 1978.

CONCLUSION

In a number of issues, there were subsidiary parts and sub-points. These have been ignored in order to reduce the length of this reprot.

These recommendations have been based on facts, materials, arguments, briefs, and discussions at the hearings, and have been related to generally accepted principles of collective bargaining in the public and private sectors. A balance has been sought in these recommendations whereby an effective and working bargaining relationship can exist and the primary objectives of improving the opportunities for and actual learning by students can be efficiently achieved in the Seattle School District.

Respectfully submitted,

Kenneth M. McCaffree

Attachment No. 1

Witnesses
(In order of first appearance)

August 16

David L. Moberly
William Haroldson
Michele Anders
James N. Creighton
Ruth Dawson
Marjorie Shifflette

August 17

Roscoe Bass
George W. Scott
A. Shinpoh
Robert Downing
Patt. Sutton
Ann Carlson
Alvin Fitzgerald
Richard Andrews
Annie Jones
Anita Laudeberger
H. Lee

August 18

Pat Moyer
Robert Patterson
Frank Brouillet
Charles McNurlin
Cheryl Blakney

August 19

M. Kirkland
Clyde McGee
D. Pinkerton
K. Hazel Calhoun
Lucile Tibbetts
Virginia King
Ray Cohrs
Cleo Fast
Olaf Kvamme
Perry Wilkins
Flloyd Davis
Edna Rutherford
Robert T. Weltzien
Frank Fidler

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Witnesses, continued
(In order of first appearance)

August 22

George Long
Frank Mace
Ruth Mickens
Pete Neuschwander
Arlene Vanderklomp
Eleanor Haggeman
Theodore Beckmeyer
Julian "Jay" Mattern
Susan Schille
Nancy Nesbitt
Suzanne Bosch

August 23

Gail Martini
Gerald Reynolds
Slade Gorton
David Moberly
Alice D. Van Zandt
Julie Gustufson
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Issues Submitted to Fact Finding

Issue No.	Issue	1976-77 Contract Section
1.	Use of the word "Contract" or "Agreement".	Preface
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3.	Maintenance of standards clause.	I-A-9
4.	Duration of the Contract: one versus three years.	I-A-10
5.	Who pays cost of printing and distribution of the Contract?	I-A-11
6.	Agency shop provisions.	I-C-
7.	Leave provisions for STA officers and activities.	I-D
8.	Non-reprisal agreement: inclusion or exclusion.	I-E
9.	Sub-contracting clause (Proposed: STA in I-F; SSD in II-A)	- - -
10.	Management rights clause: Administrative Responsibility	II-A
11.	"Fair assigned share": Duties, responsibilities and time beyond classroom assignment.	II-B
12.	Use of arbitration for non-renewal or discharge.	II-D
13.	Use of District's mail delivery system by STA.	II-F-2
14.	Arbitrability of School Board's removal of mail privilege.	II-F-3
15.	Visitation rights of STA officers and representatives during school hours.	II-F-5
16.	Availability of information to STA.	II-I-2,3 (and new sections)

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18.	Visitation of parents to classrooms. (Proposed: STA in II-L)	- - -
19.	Timely issuance and acceptance of individual teacher contracts and appropriate riders.	III-A-1
20.	Basic salary change.	III-B-2
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31.	Traffic Education	
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32.	School Calendar	App. E
33.	Salary level for on-th-job injury; method to accumulate retirement credit.	IV-A-1-d
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45.	Transfer procedures. a. Guidelines for transfers. b. Definition of voluntary transfer c. Criteria for voluntary transfer. d. Definition of administrative (District initiated) transfers. (1) Reduction in staff at a building. (2) School closure. (3) H.E.W. (4) Specialized assignments. e. Criteria for administrative transfer. f. Reassignment of transferees from employment pool. (1) from schools being closed. (2) to previous assignment (school) if opening is available and move consistent with HEW compliance. (3) general reassignment.	V-E
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49.	Special Education. a. Support services for the "mainstreaming" of special education students. b. Assignment of special education students to regular classroom on recommendation of special education teacher or therapist. c. $100 discretionary fund for special education teachers under certain circumstances. d. Five days released time for CDS employees to attend meetings and conferences.	VI-M
50.	School Counselors. a. Size of the ratio of students to counselors. b. Preparation-conference-planning time for counselors.	VI-N
51.	Student Services: Responsibility factor of 1.075 times annual salary for psychologists and social workers.	VI-O
52.	School Libraries. a. Leave for librarians to attend state library meetings. b. Increased expenditure for library materials. c. Addition of librarian consultant to staff. d. Prompt delivery of new materials through catalog department.	VI-P
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58.	Can the STA initiate grievances?	VII-B
59.	Grievance procedures: maintaining current time lines for grievance filing; elimination of intermediate level step 2.	VII-C
60.	Definition of the powers of the arbitrator.	VII-E
61.	Exclusive rights of STA to process grievances, subject to individual's choice; STA representatives at all grievances conference.	VII-G
62.	The conditions for layoff.	
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63.	Recall and reemployment procedures.	IX-E
64.	Super seniority to members of STA's Executive Board, Officers, and Bargaining Team.	IX-B
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Issue No.	Issue	1976-77 Contract Section
67.	Changes in compensation schedule for special and supplemental assignments. Assistant coach-trach, cheerleader-song-leader, Head Librarian, Special Education Department Head, building registrar, Instructional Council Representatives, stageband and music ensemble, and divide drama, band, and orchestra stipends.	App. C.