

IN THE MATTER OF THE)
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 FACTFINDING)
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 BETWEEN)
)
 WEST VALLEY EDUCATION ASSOCIATION)
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 "THE ASSOCIATION")
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 AND)
)
 WEST VALLEY SCHOOL DISTRICT #363)
)
 "THE DISTRICT")

FINDINGS
 AND
 RECOMMENDATIONS

Date and Place of Hearing: September 30, 1977
 Spokane, Washington

Factfinder: John H. Abernathy

Representing the Association: Jime Keene

Representing the District: Randy Bohannon

Appearing for the Association:

- Les Francis
- Kenneth Bell
- Monty Wolfrum
- Ruth West
- Rod Shinn
- Bob Hickman

Appearing for the District:

- Orville Gardner
- Rennwick Taylor
- Edward Jenkins

FACT FINDERS REPORT

INTRODUCTION

West Valley School District No. 363 is a suburb district of Spokane, Washington. The District has one high school (grades 10-12); two junior high schools (7-9); three intermediate (4-6) schools and three primary (K-3) schools. The September 12, 1977 enrollment of the district stood at 3,265 students. During the past seven years enrollment in the District has declined by 772 students.

The parties negotiated with each other over Board policies for several years prior to the enactment of the Washington Educational Employment Relations Act. Full scale collective bargaining resulting in a comprehensive agreement occurred for the first time for the 1976-77 school year. Bargaining for the 1977-78 agreement commenced in May 24, 1977 with the presentation of a comprehensive proposal by the Association. This Association proposal included revisions to many sections of the previous agreement plus the addition of several new sections. The School District proposed that the previous year's contract be used as a basis for negotiations with the parties concentrating on problem areas and economic benefits. After numerous bargaining sessions throughout June, a number of tentative agreements were reached.

On July 12, 1977 the parties reached impasse and mediation was conducted during early August. During mediation the District presented the Association with a total package. This package was taken to the teachers for a vote. The teachers rejected the Board offer and later voted to return to school without a contract. Other bargaining sessions in September did not produce agreement.

The parties mutually agree that the following issues are to be submitted to the factfinder for analysis and recommendations:

1. Management Rights
2. Status of Agreement
3. Salary Checks and Deductions
4. Waiver (Zipper Clause)
5. Term of Agreement
6. Retirement
7. Association Release Time (Association Leave)
8. Other Leaves - Emergency, Bereavement, Family Illnes
9. Teacher Rights /Non Discrimination
10. Fringe Benefits/Insurance
11. Agency Shop
12. No Strike Clause
13. Work Schedules (Work Year, Work Day)
14. Assignments, Vacancies and Transfers
15. Reduction In Force
16. Preparation Time
17. Just Cause/Due Process
18. Grievance Procedure
19. Workload/Class Size
20. Certificated Transportation Reimbursement
21. Salaries

In the report that follows the factfinder will first present a summary of the issue by stating present contract language (if any); the Association's proposal and rationale; and then the District's proposal and rationale. The following section of the report will present the factfinder's analysis and recommendations on each issue.

ISSUES AND POSITIONS OF THE PARTIES

Issue #1. MANAGEMENT RIGHTS - The present contract between the parties contains the following language.

ARTICLE II

MANAGEMENT RIGHTS

Section 2.1. The Board consists of citizens who are elected by and are directly responsible to the West Valley community for the total educational program. The Board acts by and through its administrative and supervisory staff. The parties, therefore, jointly recognize that pursuant to the laws of Washington State the Board has the responsibility for formulation and implementation of policies, rules and regulations governing the educational program and services of the District. No delegation of such responsibility is intended or to be implied by an provisions of this Agreement.

Section 2.2. Recognizing the relationship noted in Section 2.1 of this Article, the parties agree that the District retains all the customary, usual, and exclusive rights, decision-making prerogatives, functions, and authority connected with or in any way incident to its responsibility to manage the affairs of the District or any part of it, consistent with the laws of Washington State and the terms of this Agreement.

Section 2.3. This Agreement shall not limit in any way the District's contracting or subcontracting of work or shall require the District to continue in existence any of its present programs in its present form and/or location or on any other basis except as expressly provided herein.

ASSOCIATION POSITION. The Association proposed the following as the complete management's rights article.

MANAGEMENT RIGHTS - (Article II)

The District shall have the exclusive right to manage the affairs of the district provided

that the wages, hours, terms and conditions of employment stipulated by the statutes of the State of Washington, statutes of the United States and the provisions stipulated within this agreement are adhered to. This agreement shall not limit the District's right to continue in existence any of its presently sub-contracted programs in their present form and/or location except as expressly provided herein."

The Association feels this proposal clearly recognizes the legal and operative rights and responsibilities of the Board of Directors. Futhermore, the Association feels their proposal is superior to present contract language in that it is shorter and more to the point; that it avoids the philosophical statements of the present 2.1; that it specifically excludes wages, hours and conditions of employment; and that the Association proposal specifically limits the carte blanche right to subcontract provided in the current section 2.3.

DISTRICT POSITION - The District proposed that the language from the previous year's contract be continued. The District argued that the Association presented no evidence to show that current language has created problems. Futhermore, the District argued that the concept of managerial prerogatives are recognized in the public sector and in the Education field in Oregon. Subjects of a school district's management rights are not a mandatory subject for bargaining.

ISSUE #2. STATUS OF THE AGREEMENT. The present contract does not contain an article or section on this subject.

ASSOCIATION POSITION - The Association has proposed the following:

STATUS OF THE AGREEMENT

- A. This Agreement shall supersede any rules, regulations, policies resolutions or practices of the District, which shall be contrary to or inconsistent with its term.

B. The Board and the Association acknowledge that this Agreement is a result of collective bargaining. Therefore, the Board for the life of this Agreement voluntarily and unqualifiedly waive the right to adopt policies pertaining to wages, hours and terms and conditions of employment. This Agreement may be reopened for amendment only by the mutual consent of the parties. Requests for such amendment by either party must be in writing and must include a summary of the proposed amendment.

The Association argued that paragraph A is required by RCW 41.59.910 but feels the best interests of the employees would be served by including this statement in the contract. Paragraph B places a limit on policy changes and prescribes the method of reopening the contract during its life.

DISTRICT POSITION. The District recognizes that status of agreement clause are commonly found in teacher agreements. Consequently, the District agrees to the inclusion of paragraph A in the negotiated agreement for 1977-78. The District objected to paragraph B on the grounds it goes beyond the normal language included in clauses of this type.

ISSUE #3. Salary Checks and Deductions.

The position of the parties is basically the same on this issue, with the exception of the District's insistence on a hold harmless clause and the Association's insistence on dental, medical and salary insurance benefits. During the hearing the District proposed adding both to the Association's proposal.

ISSUE #4. Waiver. The parties indicated during the hearing and in post hearing briefs they would accept the inclusion of a standard waiver clause in the agreement. A standard waiver clause is included in the Recommendations section below.

ISSUE #5. Term of Agreement. Each party expressed a willingness to enter into a two - year agreement with economic reopeners for the second year of the agreement provided that a satisfactory agreement could be reached on the language articles of the agreement.

ISSUE # 6. Retirement. The 1976-77 agreement contained the following language; "Retirement from full-time employment is automatic on June 30, of the fiscal year in which the employee reaches age sixty-five (65)".

The Association proposed to delete this provision while the District proposed that it be retained. The Association argued that the laws of the state of Washington are silent on this matter but that such a provision could possibly be discriminatory. The District argued that this is a condition of employment that should be in the contract. Without such a requirement the District may have to terminate employees who have become incompetent teachers.

ISSUE #7. Association Release Time (Association Leave).

ASSOCIATION POSITION. The Association proposed the following:

ASSOCIATION RELEASE TIME

The purpose of RCW 41.59 is to prescribe certain rights and obligations of the educational employees of the school districts of the State of Washington, and to establish procedures governing the relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education.

In order to accomplish the purpose of RCW 41.59, up to thirty (30) days leave with pay per school year shall be provided to the Association upon Association request. Employees representing the Association shall be able to utilize the thirty (30) days for the purpose of improving the relations between the district and the Association or to serve as an officer or representative of the Association.

The Association will pay substitutes for all such leave.

The Association argued that this leave is necessary to meet the needs of teachers in the bargaining unit. The Association argued that this language is neither uncommon nor illegal but that such leave is necessary to properly represent employees in collective bargaining, grievance adjudication and other labor-management meetings.

DISTRICT POSITION - The District specifically noted the PERC ruling in the ENUMCLAW Case and pointed out that none of the released time requested by the Association need be spent meeting or conferring with the employer or its representatives over matters arising from the collective bargaining relationship.

ISSUE #8. Other Leaves - Emergency, Bereavement and Family Illness.

The parties are in agreement in the use of emergency leave for family illness. No recommendation will be made on family illness leave.

ASSOCIATION POSITION. The Association made the following counter proposals on Emergency and Bereavement leave:

EMERGENCY LEAVE, (Article XXI)

Emergency leave of five (5) days shall be granted with pay. Such leave is non-accumulative. Emergency leave may be taken at the teacher's discretion, due to a problem that has been suddenly precipitated or is unplanned; or where pre-planning could not relieve the necessity for the teacher's absence. The Superintendent may grant additional days with or without pay if in his judgment such leave is in the best interest of the school district.

BEREAVEMENT LEAVE (Article XX)

Section 20.2

Employees shall be granted leave of absence with pay for up to five (5) days for each occasion, when such absence is for a death of a member of the immediate family. The immediate family includes father, mother, husband, wife, children, sister, brother, parents-in-law, sons-in-law, daughters-in-law, foster parents and any other person who is a member of the immediate household.

Up to three (3) days on each occasion shall be allowed for the death of the employee's grandparents or grandchildren.

One (1) day of leave shall be allowed for the death of the employee's uncle, aunt, cousin, niece, nephew and in-laws.

The Superintendent is also authorized to allow one (1) day of absence for bereavement whenever an unusual situation arises concerning other persons who have been household members.

Bereavement leave is non-accumulative.

The Association argued that emergencies occur to teachers that are often private and personal and ought not to be discussed except in very general terms. The Association proposal is that such leaves shall be granted rather than of the type that requires the Superintendent's discretion. Emergencies cannot be pre-planned.

On Bereavement leave, the Association's proposal is the same as that of the District except for one word. The Association proposes that bereavement leave shall be granted.

DISTRICT POSITION. The District insists on the wording that bereavement leave may be granted. Otherwise the parties are in agreement on this form of leave. The District proposed the following on Emergency Leave:

Requests for absence for emergencies shall include unusual and abnormal circumstances, and may be authorized by the Superintendent of Schools, if, in his judgment, such absence is in the best interest of the school district. In cases of possible denial the Superintendent will confer with the building principal before making the final decision. If the Superintendent will confer with the building principal before making the final decision. If the Superintendent approves the request he may:

- (1) Grant leave with full pay; or
- (2) Grant leave with automatic deduction of substitute pay; or
- (3) Grant leave without pay.

The District argues that it has had a liberal leave policy in the past. The Association presented no facts to indicate that anyone had been denied leave. Furthermore, alleged violations or arbitrary or capricious decisions could be appealed through the grievance procedure.

ISSUE #9. Non Discrimination.

ASSOCIATION POSITION. The Association proposed the following language:

TEACHER RIGHTS (Article XIII)

Neither the Board nor the Association shall discriminate against any employee by reason of race, creed, color, marital status, sex, age, domicile, national origin, or because of their membership or non-membership in employee organizations.

The District has proposed almost the same language; the difference being the addition of the word unlawful before discriminate in line one and the omission of the term domicile in line three.

The Association does not feel that the term unlawful is necessary. There is no sound educational reason to require teachers to live in the District, but housing availability and costs may force teachers to live outside the district.

DISTRICT POSITION. The District submits that it is fallacious to say that it will not discriminate at all - having separate rest rooms for men and women is a form of discrimination. The term unlawful is necessary to set standards.

The District argued that it had no intention of requiring employees to live in the District.

ISSUE #10. Fringe Benefits/Insurance. The parties are in agreement that the District will provide full family medical and dental benefits for all employees in the bargaining unit for the first year of the agreement.

ASSOCIATION POSITION. The Association wants to name the specific carriers of the insurance policies. The Association argued that this is not a typical and provided a list of Districts listing carriers in their collective agreements.

DISTRICT POSITION. The District will not negotiate the choice of insurance plans. The District has agreed to provide full family medical and dental coverage but reserves the right to shop for this coverage at the least cost.

ISSUE #11. Agency Shop/Open Shop.

ASSOCIATION POSITION. The Association proposed the substitution of an Agency Shop provision for the present open shop provision. The Association argues that an Agency shop is legal, is necessary to eliminate "free riders", is necessary to bear the costs of negotiations and the processing of grievances, and is needed to provide a balance of power with the school district.

DISTRICT POSITION. The District believes that a maintenance of membership clause provides all the union security appropriate and necessary under the circumstances. The District argued that the Association cannot demonstrate a pressing need in that 153 out of the 157 person bargaining unit are Association members. The District believes the Agency Shop is inconsistent with the concept

of freedom of choice, expression, association, and the merit principal. The District points out that not all of Association dues goes to the local Association, nor are these dues used entirely for collective bargaining or grievance adjustment.

ISSUE #12. No Strike Clause.

ASSOCIATION POSITION. The Association has no serious problem in arguing to a no-strike clause providing such a clause recognizes the reopening provisions of this agreement. The Association objects to the lengthy no-strike proposal put forth by the District and its proposed assessment of monetary penalties to teachers for violations of the provision.

DISTRICT POSITION. Teacher strikes violate common law in Washington and the courts have granted, injunctions against them. Nevertheless teacher strikes have occurred.

ISSUE #13. Work Schedules - Work Day.

ASSOCIATION POSITION. The Association wants a firm eight hour day including a continuous thirty minute duty free lunch period. Meetings should be called to occur within this light hour period. The Association considers their position to be legal. Section 8.1 retained, 8.2 eliminated and 8.3 changed from "consent" to "notification".

DISTRICT POSITION. The District proposed that current language be retained, especially 8.2 which is in conformance with WAC.

ISSUE #14. Assignments, Transfers and Vacancies.

ASSOCIATION POSITION. The Association proposed a major revision in this Article but seeks two major items; notification of assignments by May 15 with allowances for changes if emergencies arise and first consideration of present staff to fill vacancies.

DISTRICT POSITION. Continue last year's language.

ISSUE #15. Reduction in Force.

This issue is complex by its very nature. It is made even more complex in this instance because the parties are working off of two completely different proposals, each several pages long.

ASSOCIATION POSITION. The Association proposed a major overhaul of this Article. The proposal defines layoff to preclude the possibility of mid-year layoff and to insure notification no later than May 15. The Association's proposal limits the reasons for layoff to economic factors only and sets out specific qualifications for retention as well as a clear definition of seniority. Finally, recall is based on seniority.

The Association objects to the District's proposal because it gives administrators the right to bump into the bargaining unit as a teacher; provides super-seniority for teachers able to handle extra -curricular activities; applies all of the qualifications used in layoff for each teacher when recalled; and provides protection on the basis of the ability to teach more than one subject (rather than for as many different categories as their qualifications allow.

The Association's present proposal on this Article is as follows:

CERTIFICATION STAFF REDUCTION POLICY/RIF (Article XXX)

Section 30.1 Layoff and Recall

The term "layoff" as used herein refers to action by the Board reducing the number of teachers in the district due to economic reasons only; it does not refer to decisions to discharge or nonrenew an individual teacher for cause.

Teachers with valid contracts will not be laid off during any school year. All layoffs will be affectuated at the start of the following school year. In the event of layoff, the Board shall provide written notice to all affected teachers on or

before May 15 of the school year proceeding the year in which layoff would occur.

All voluntary contributions shall be placed in the general fund for operational expenditures and shall not be earmarked for any specific program(s) of the District. All other cash reserves and contingency funds will be depleted by the Board and placed in the general fund for operational expenditures.

Section 30.2 Qualifications for retention

1. The teacher must possess a valid Washington State Certificate as required by the Superintendent of Public Instruction.
2. The teacher shall have at least one year of teaching experience in an employment category listed herein to qualify for that category, or
3. The teacher shall have a major or minor in the employment category listed herein to qualify for that category.
4. There shall be no limitations placed on the number of categories for which a teacher can qualify.

Section 30.3 Employment categories

Employees shall be placed in all categories for which they qualify as defined herein.

1. Elementary teachers
 - a. Grades K through 6
 - b. Specialty teachers such as music, reading and special education.
2. Secondary teachers (grades 7 through 12) subject areas such as
 - a. Science and math
 - b. Social studies and Language arts
 - c. Industrial arts
 - d. Home economics
 - e. Business education
 - f. Driver education
 - g. Music and art
 - h. Physical education and health
 - i. Special education
3. Supportive personal such as psychologists, counselors, speech therapists and other specialists.

Section 30.4 Seniority

When more than one person qualifies for a category listed herein layoff shall be by seniority.

Seniority is defined as length of service within the district as of the teacher's first working day; provided, that any teacher employed or to be employed by the Board shall be granted full seniority credit for each year or portion thereof for teaching experience from any district(s) in the state of Washington.

If layoff under seniority provisions results in lowering the percentage representation of minorities, the number of persons within the under-represented group shall be reduced only to the degree percentage-wise so as to be not less than the percentage existing before the layoff.

By November 1 of each school year the Board will publish and distribute to all teachers and the Association a seniority list ranking each teacher from greatest to least seniority.

In the event of more than one individual teacher having the same seniority ranking, all teachers so affected will be ranked in accordance with the number of education credits beyond the BA degree from greatest to least.

In the event of more than one individual teacher having the same number of credits after applying the above provisions, all teachers so affected shall participate in a drawing by lot, to determine position on the seniority list. The Association and all teachers so affected shall be notified in writing of the date, place and time of the drawing. The drawing shall be conducted openly and at a time and place which will allow affected teachers and the Association to be in attendance.

Layoff Procedure and Definitions

In the event it becomes necessary to layoff teachers, the following procedure will be implemented:

1. "Indeterminate Leave" means leave because of economic reasons resulting in a reduction of teachers. Any teacher placed on indeterminate leave shall retain all accrued benefits, and such other benefits as are regularly extended to any teacher on a year leave of absence.

Teachers that are to be laid off shall be placed on indeterminate leave. Teachers to be placed on indeterminate leave shall be those with the least service time in the state which has been determined by the final seniority list ranking. The Board shall begin with those teachers who have one year of service or less, then two years, etc., until the necessary quota has been met. Any request for indeterminate leave shall be granted. Teachers shall not be "bumped" or reduced in seniority ranking by school employees that are not represented by the teacher group.

All retained teachers face possible reassignment to fill essential teaching vacancies.

The annual evaluations of teachers so affected shall bear the notation that the assignment upon which they are being evaluated is an emergency assignment outside of their major area.

Recall Procedure

After program cuts have determined how many positions would be eliminated, the people retained, that were not assigned to a position, would go into a teacher pool. Reassignment from this pool to existing vacancies shall be made on the basis of seniority. Where seniority is the same, then qualifications shall be the deciding factor in reassignment as determined by the seniority ranking list. No new teachers shall be hired to fill existing or new teaching

assignments until the pool has been exhausted.

The Board shall give written notice of recall from layoff by sending a registered or certified letter to said teacher, at his/her last known address. A copy shall be sent to the Association. It shall be the responsibility of each teacher to notify the Board of any change in address.

The Teacher's address as it appears on the Board's records shall be conclusive when used in connection with layoffs, recall or other notices to the teacher.

Layoff Benefits

1. The Board shall allow the teacher to pay the full cost of the current health and life insurance benefit program of all teachers on layoff for six (6) months beginning the month in which layoff is effectuated or the month of September, whichever is later.
2. All positions of substitute teacher shall be offered to teachers on recall, in rotating alphabetical order, before any other person is offered such a position.
3. All benefits to which a teacher was entitled at the time of his/her layoff, including unused accumulated sick leave and credit toward sabbatical eligibility, will be restored to the teacher upon his or her return to active employment and the teacher will be placed on the proper step of the salary schedule for the teacher's current position according to the teacher's experience and education.

DISTRICT'S POSITION. The District contends that the Association's position would require bargaining about the educational program, and the allocation of funds and unanticipated revenues. These three subjects were declared as non-mandatory subjects for bargaining in the Federal Way decision. The District's proposal protects the managerial prerogatives of the District in the areas of budget allocation and educational programs. The language proposed by the

District is as follows:

~~Decision + Notice~~

Certificated Staff. If an educational program or service in the district is to be reduced, modified, or eliminated, the Superintendent and his administrative staff shall develop a list of certificated employees to be recommended to the Board of Directors for retention by the District to fill the positions needed to operate that educational program or serve. ^{CRITERIA} The following criteria will be applied in the order in which it is listed in developing the list of certificated employees.

1. Certification. Possession of an appropriate valid Washington State Certificate for the particular position being filled.

2. Experience.

a. Classroom teaching position.

(I) Classroom Teachers - To be considered for a teaching position in the K through Grade 6 category, a specific subject area or a special program, a classroom teacher must have spent a majority of his or her teaching time during the current year teaching in that specific area. In addition the teacher shall be considered to fill a teaching position in any area if within a period of six years immediately preceding the year in which this plan is implemented the teacher has spent a majority of his or her teaching time during any one school year in the K through 6 category, a specific subject area or a special program.

(II) Principals, vice principals or assistant principals - ancillary support personnel - central office administrative personnel. A person filling any of the above positions at the time of the implementation of this plan, and who is chosen to return to the classroom, shall be considered for positions as follows:

(III) If the person has been a classroom teacher within the six years immediately preceding the implementation of Article XXVI he/she will be considered for retention in the teaching positions for which he/she is qualified as set forth in a (I) above.

(IV) If the person has not been a classroom teacher during the six years immediately preceding the year in which this plan is implemented he/she will be considered for a teaching position in the area or program in which a majority of his or her teaching time was spent during the last year in which said person was classroom teacher.

The positions to remain and be filled will be classified as follows:

For elementary teachers kindergarten through Grade 6; for secondary school teachers and other employees their teaching specialties, such as, but not limited to, science, math, social studies, language arts, industrial arts, home economics, music, art, etc.

3. Flexibility

Consideration will be given to the ability of employees,

(1) to handle extra-curricular activities in addition to their teaching assignment,

(2) to handle classes in several program or departments where the need for this flexibility exists, and

(3) to handle both teaching and administrative duties where the need for this flexibility exists.

4. Length of Service. When more than one person qualifies for a particular position under the criteria listed above, the person who has the greatest length of service as a teacher and/or administrator will be given the position.

In determining the length of service for a classroom teaching position, principals, vice principals, assistant principals, ancillary support personnel, and central office administrative personnel who are reduced to such a position shall be given credit for the total years of service both as a teacher and an administrator.

5. Additional Preparation. When more than one person qualifies for a particular position under the criteria listed above, the position shall be given to the person who has the greater number of hours toward horizontal advancement on the district salary schedule.

(Beyond that, the flip of a coin shall be used).

Board Review and Action.

The Board of Directors shall review the recommendation of the Superintendent. If a member of the certificated staff is not selected for a position after the application of the above procedures and the review of the Board of Directors, notice of probable cause for non-renewal of his/her teaching contract for the following year shall be given to him/her in the manner provided by law. If a member of the certificated staff now has a supplemental contract for the following school year, notice shall be given to him/her by the Superintendent as soon as it can be conveniently done. All certificated employees who receive notice of probable non-renewal of their teaching contracts will be placed in a district employment pool and will be considered for any vacancy in the District which thereafter occurs unless qualified certificated employees are not available in the employment pool for a particular position. In filling any vacancy, the same criteria specified above shall be used. The term "vacancy" shall be liberally construed and shall include all positions that may become available for any reasons. All certificated employees will be retained in the district employment pool until September 15th of the third school year following notice of non-renewal and will be placed on the preferred substitute teachers' list for two school years following notice of non-renewal. If acceptance is not received by the District within fourteen days of the mailing of the offer, the certificated employee shall be deemed to have rejected the offer.

Employees whose names are in the Employment Pool shall be given, upon request, preferred consideration in the District's day to day employment of substitutes in their area of specialty.

Affirmative Action.

A. If the reduction in staff can be accomplished under the normal procedures set out in Section

26.1 above would result in causing or aggravating an under-representation of minorities within any of the categories or groups of specialties set out, then as to each category or group of specialties where under-representation would occur or be aggravated by reason of the implementation of the normal procedures, the number of persons within the under-represented group shall be reduced only to the same degree percentage-wise (as close as practicable) as the number of persons within the category or group of specialties as a whole is reduced. The reduction in staff within the members of the under-represented group itself the normal selection rules set forth in Section 26.1 above. Within those categories or groups of specialties where under-representation would not occur or be aggravated, the normal rules of Section 26.1 above shall pertain.

For the purpose of this paragraph, minorities shall be "under-represented" within a category or group of specialties when they are not employed in sufficient numbers to reflect approximately their availability within the appropriate labor market.

ISSUE #16. Preparation Time.

ASSOCIATION POSITION. The Association proposed a new article on preparation time that would guarantee each secondary teacher one prep period per day (present practice) and each elementary teacher 150 minutes weekly in at least 30 minute segments.

The Association argued that prep time proposals are lawful, are contained in many other teacher contracts, and are necessary to provide adequate preparation for classes.

DISTRICT POSITION. Preparation time is now provided during the eight hour day. Therefore, no guaranteed preparation period during the instructional day should be in the Agreement. The District pointed out that Substitute House Bill No. 960 requires that teachers have at least twenty-five hours per week in direct classroom contact or five hours per day. Current classroom contact time ranges from

3 hours and 47 minutes to 5 hours; this leaves more than adequate time during the eight hour day for preparation.

ISSUE #17. Just Cause/Due Process

ASSOCIATION POSITION. The Association proposed to include the following in the contract:

JUST CAUSE/DUE PROCESS

Section 12.1

- A. No teacher shall be disciplined (including warnings, reprimands, suspensions, reduction in rank or professional advantage, discharges, nonrenewals, terminations or other actions that would adversely affect the teacher) without just and sufficient cause. The specific grounds forming the basis for disciplinary action will be made available to the teacher and the Association in writing. *upon request*
- B. A teacher shall be entitled to have present a representative of the Association during any disciplinary action. When a request for such representation is made, no action shall be taken with respect to the teacher until such representative of the Association is present. Further, in the event of a disciplinary action is to be taken, the teacher shall be advised of the right to representation under this provision of the Agreement prior to the action being taken.
- C. *For minor offenses* The Board agrees to follow a policy of progressive discipline which minimally includes verbal warning, reprimand, suspension with pay, with non-renewal of discharge as a final and last resort. *For major offenses, more penalties may be applied* Any disciplinary action taken against a teacher shall be appropriate to the behavior which precipitates said action.
- D. Any complaint made against a teacher or person for whom the teacher is administratively responsible, by any parent, student, or other

person will be promptly called to the attention of the teacher, may not be used as the basis for any disciplinary action against the teacher.

*Any Complaint
not called to the
attention of the
teacher*

E. No employee shall be reprimanded, disciplined, reduced in rank or compensation or deprived of any professional advantage without just cause.

The Association argues that it represents all teachers and that such rights are necessary to assure the integrity of the educational process. Such clauses are common in other teacher contracts.

DISTRICT POSITION. Certificated employees generally are better protected, through the "continuing contract law" and other statutes, than other employees either in the public or private sector. In regard to just cause, the District's position is that the statutes such as RCW 28A.58.450 and RCW 28A.67.070 provide ample protection. It is the position of the District that the proposal is amply covered by existing statutes. Thus, to a great extent, it is redundant and superimposes on the statutory scheme of disciplinary action procedural steps that impose a hardship on the employer that is unjustified because the statutory procedures are ample protection to any employee. Basically, Washington State statutes provide that a teacher cannot be (1) discharged or (2) adversely affected in his/her contract status, or (3) non-renewed except for "sufficient cause" and then only after an initial determination of "probable cause" and an opportunity for a hearing before the board of directors of the school district at which "sufficient cause" must be established by the administration. In addition, the same statutes cited above provide for an appeal to the Superior Court to review the action of the board. The statutes referred to above were adopted at the last session of the state legislature and are a reflection of public dissatisfaction with the rules that previously existed under Washington statute for discharge, adverse action affecting contract status, and non-renewal of teacher

contracts. The new rules, as adopted by the recent session of the legislature, amply protect the rights of the employees and are a reflection of the demands of the public that the school board be allowed an opportunity, after notice of probable cause and a hearing, to control to some extent the actions of its employees. In summary, the District contends that an employee has full guarantees to due process. Further, that the implementation and consequences of the Association's proposal go far beyond reasonable safeguards for an employee.

ISSUE #18. Grievance Procedure

ASSOCIATION POSITION. The Association proposed to substitute the following for the present grievance procedure.

GRIEVANCE PROCEDURE (Article XVII)

Section 17.1 - Definitions

1. A "grievant" shall mean a teacher or group of teacher or the Association filing a grievance.
2. A "Grievance" shall mean a claim by a grievant that a dispute or disagreement of any kind exists involving interpretation or application of the terms of this Agreement or of an existing Board rule, policy or practice, or that an employee has been treated inequitable, or that here exists a condition which jeopardizes employee health or safety.
3. A "party in interest" is the person or persons making the claim and any person who might be required to take action or against whom action might be taken on order to resolve the claim.
4. "Days" shall mean teacher employment days, except as otherwise indicated. If the stipulated time limits are not met, the grievant shall have the right to appeal the grievance to the next level of the procedure.

Section 17.2 - Right to Representation

1. The Board shall recognize grievance representatives upon their identification by the Association. At least one Association representative shall be present for any meetings, hearings, appeals or other proceeding relat-

ing to a grievance which has been formally presented.

2. If, in the judgment of the Association, a grievance affects a group of teachers or the Association, the Association may initiate and submit such grievance in writing to the superintendent directly, and the processing of such grievance shall be commenced at Level 11. The Association may process such a grievance through all levels of the procedure, even though there is no individual aggrieved person who wishes to do so. Class grievances involving more than one supervisor and grievances involving the administrator above the building level may be filed by the Association at Step 11.

3. In matters dealing with alleged violations of Association rights, the grievance shall be initiated at Step 11.

4. The Association on its own may continue and submit to arbitration any grievances filed and later dropped by a grievant, provided that the grievance involves the application or interpretation of the contract.

Section 17.3 - Individual Rights

1. Nothing contained herein shall be construed as limiting the right of any teacher having a complaint to discuss the matter via administrative channels and to have the problem adjusted without the intervention of the Association, as long as the Association is in attendance at these discussions and is notified in writing as to the disposition of the matter and such disposition is not inconsistent with the terms of this agreement.

2. A grievant may be represented at all stages of the grievance procedure by himself or, at this option, by an Association representative selected by the Association. If an aggrieved party is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

Section 17.4 - Procedure

STEP 1. The parties in interest acknowledge that it is usually most desirable for an employee and his immediately involved supervisor to resolve problems through free and informal communications, within a reasonable amount of time following knowledge of the act or condition which is the basis of the complaint, the grievant may present the grievance in writing to the immediately involved supervisor, who will arrange for a meeting to take place within four (4) days after receipt of the grievance. The grievant and/or the Association and the supervisor shall be present for the meeting. The supervisor shall provide the aggrieved party and the Association with a written answer to the grievance within two (2) days after the meeting. Such answer shall include the reasons upon which the decision was based.

Step 2. If the grievant is not satisfied with the disposition of his grievance at Level 1, or if no decision has been rendered within six (6) days after presentation of the grievance, then the grievance may be referred to the superintendent or his official designee. The Superintendent shall arrange for a hearing with the grievant and/or the Association, to take place within five (5) days of his receipt of the appeal. The parties in interest shall have the right to include in the representation such witnesses and counselors as they deem necessary to develop facts pertinent to the grievance. Upon conclusion of the hearing, the superintendent will have four (4) days to provide his written decision to the Association.

Step 3. If the grievant is not satisfied with the disposition of his grievance at Level 11, or if no decision has been rendered within ten (10) days after he has first met with the superintendent, he may within five (5) days after a decision by the superintendent, or fifteen (15) days after he has first met with the superintendent, whichever is sooner, request in writing that the grievance be submitted to the Board. Within fifteen (15) days after receipt of the request from

the aggrieved person, submit the grievance to binding arbitration. If any question arises as to arbitrability, such question will first be ruled upon by the arbitrator selected to hear the dispute.

2. Within ten (10) days after such written notice of submission to arbitration, the superintendent and the Association will attempt to agree upon a mutually acceptable arbitrator and to obtain a commitment from such arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the ten day period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties will be bound by the expedited rules and procedures of the American Arbitration Association.

3. Neither party shall be permitted to assert in the arbitration proceedings any evidence which was not submitted to the other party before the completion of level 11 at meetings.

4. The arbitrator selected will confer with the representatives of the superintendent and the Association and hold hearings promptly and will issue his decision not later than twenty (20) days from the date of the close of the hearings, or, if oral hearings have been waived, then from the date the final statements and proofs are submitted to him. The arbitrator's decision will be in writing and will set forth his findings of fact, reasoning and conclusions on the issues submitted. The arbitrator will be without power of authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. The decision of the arbitrator will be submitted to the Board and the Association and will be final and binding upon the parties.

5. The costs for the services of the arbitrator, including per diem expenses, if any, and his travel and subsistence expenses and the cost of hearing room will be borne equally by the

Board and the Association. All other costs will be borne by the party incurring them.

Section 17.5 - Exceptions to Time Limits

When a grievance is submitted on or after June 1, the time limits shall consist of all weekdays, so that the matter may be resolved before the close of the school term or as soon as possible thereafter.

Section 17.6 - No Reprisals

No reprisals of any kind will be taken by the Board or the school administration against any teacher because of his participation in this grievance procedure.

Section 17.7 - Cooperation of Board and Administration

The Board and the administration will cooperate with the Association in its investigation of any grievance; and further, will furnish the Association such information as is requested for the processing of any grievance.

Section 17.8 - Released Time

Should the investigation or processing of any grievance require that a teacher or an Association representative be released from his regular assignment, he shall be released without loss of pay or benefits.

Section 17.9 - Personnel Files

All documents, communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of the participants.

Section 17.10 - Grievance Forms

Forms for filing grievances, serving notices, taking appeals, reports and recommendations, and other necessary documents will be prepared jointly by the superintendent and the Association so as to facilitate operation of the grievance procedure. The costs of preparing such forms shall be borne by the Board.

The Association feels this procedure is superior to the present procedure or to the procedure proposed by the District in

that the Association's proposal has clear definitions, definite time limits, understandable procedure and arbitration as the final step of the grievance procedure on all contract items.

DISTRICT POSITION. Last year's agreement contained a grievance procedure which was never used. The District proposed in mediation to accept binding arbitration with some exceptions on the arbitrator's powers. This major philosophical change by the District was rejected by the Association.

ISSUE #19. Workload (Class Size).

ASSOCIATION POSITION. The following is the Association's latest position:

WORK LOAD

Section 9.1

The District agrees that every effort will be made to establish class size according to the optimum standards as set forth in this section. The Association realizes that the District must have some flexibility and agrees to allow the District to have classes up to the maximum standards as set forth in this section. The District agrees not to exceed the maximum standards as set forth in this section.

Section 9.2.

In grades 7-12, classes involving special facilities (laboratory and shop classes) and state legal requirements (Home Ec and Vo-Ag) shall have no more students than facilities allow. The safety of the students will be paramount at all times.

Section 9.3

The District shall meet the following optimum standards, and shall not exceed the following maximum standards, per grade level throughout the district:

k-3	Optimum-18	Maximum-25
4-6	Optimum-20	Maximum-26
7-12	Optimum-25	Maximum-31

Section 9.4

During the first week of school in September, should the average class size in a given school exceed the state optimum, the superintendent shall, in consultation with the building principals and teachers involved and the transportation supervisor, consider the following options: employ new teachers; bus students to other schools; or change elementary service boundaries.

Class size is one of the most significant items and issues to the teachers. The District practice of assigning aids when classes reach 30 is not a feasible solution, the Association argued because it does not alleviate the overcrowding, contributes to further confusion and educationally is less desirable. The Association presented a petition signed by numerous elementary teachers in the district that was critical of large classes and the use of aids.

The Association argued that large classes place an additional workload on the teacher - additional preparation, grading, supervision and problems. As a result, teaching effectiveness declines and student disciplinary problems increase. The Association regards this as a mandatory subject for bargaining and a necessary subject for teachers.

DISTRICT POSITION. Class size is not a mandatory subject for bargaining and therefore should not be included in the contract. The District is not unsympathetic to the problem of large classes as witnessed by the proposal to continue to use aids in large classes. The decision of how to cope with class size is a management prerogative, not a mandatory subject for bargaining.

ISSUE #20. Salary. The present salary schedule provides a

base salary of \$8938 and a top salary of \$17,431 in a schedule of 7 columns and a maximum of 13 steps. The Ratio of base to top salary is 1 to 1.95. There is no dispute over the format of the schedule.

ASSOCIATION POSITION. The Association proposed a base salary of \$10,000 which represents an increase of 11.88%. The Association also proposed additional stipends of 6% for a masters degree and 7th year of college education and 10% for the doctors degree. The Association presented arguments and evidence that this proposed salary was necessary to offset the increase in the cost of living and to remain comparable with other first class district in the state. The Association also argued that the District had the ability to pay the requested amount. The Association feels that their proposal would be realistic in terms of local and statewide settlements.

DISTRICT POSITION. The funding of public education in Washington was changed by the 1977 legislature to permit state funding of teachers salaries based on a formula. This formula would have allowed West Valley School District to increase its average salary by 4.52% plus increment. The Board offered a 6.7% increase on the base to provide a cost of living increase for each teacher.

The District argued that comparisons of the base salary with other districts is misleading because the West Valley School District has a high ratio (1.95 to 1), and an experienced staff. Consequently the average teacher salary in the District is \$14,883 compared to a state wide average of \$14,921 and an area average of \$14,745. When total compensation is considered (salary and fringe benefits), the Board argued, West Valley would be considered a leading district.

The District's proposal calls for a base salary of \$9,537 and a top salary of \$18,597 with \$458 for a Masters Degree and \$600 for a 7th year with Masters.

ISSUE #21. Certificated Transportation Reimbursement.

ASSOCIATION POSITION. Increase from the present practice of 13¢ per mile to 15¢ per mile.

DISTRICT POSITION. Pay an amount equal to the state rate to take care of future changes during the life of the agreement.

ANALYSIS AND RECOMMENDATIONS

ISSUE #1. Management Rights.

ANALYSIS. Management rights clauses are commonly found in teacher collective bargaining agreements in states where full scale collective bargaining is lawful. These clauses vary from a single sentence (such as "All terms and conditions of employment not covered by this agreement shall continue to be subject to the Board's direction and control), to multi-paragraph enumeration of the Board's legal, operational and managerial responsibilities. The form actually found in teacher contracts often reflects the preferences of the negotiators and what can be bargained. The dispute over this issue is not whether the agreement should contain a management rights provision but the form it should take.

RECOMMENDATION. After thorough analysis of the proposal, evidence and commonly found provisions, the factfinder recommends the following:

1. The present Section 2.1 be continued as in the 1976-77 agreement.
2. Section 2.2 be modified to read as follows:
The parties hereby recognize that the District has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities, properties and employment related activities of its employees, except as limited by this agreement and applicable law.

Section 2.3 should be changed to read as follows:

Unless specifically provided in this agreement, nothing shall limit in any way the District's contracting or subcontracting of work or shall require the District to continue in existence any of its present programs in present form and/or location or on any other basis.

ISSUE #2. Status of the Agreement

ANALYSIS. Contract clauses of this type are commonly found in negotiated contracts between teachers and school boards. The parties are in agreement on paragraph A. The limit on policy changes on conditions of employment contained in paragraph B goes beyond commonly accepted language.

RECOMMENDATION. A Status of Agreement Article should be included in the agreement between the parties. It should include paragraph A from the Association proposal and the following language as paragraph B:

The Association and the District agree that for the life of this agreement, except for any specific reopener clause contained in this agreement, this agreement may be reopened for amendment only by the mutual consent of the parties.

ISSUE #3. Salary Checks and Deductions

RECOMMENDATION: The following language should be added to the Associations proposal and the entire amended proposal should be made part of the agreement between the parties:

The Association will indemnify, and hold the District harmless against any claims made and against any suit instituted against the District on account of any payroll deductions for the Association. The Association agrees to refund to the District any amounts paid to it in error.

Approved full family medical and dental insurance premiums to be paid for each employee at the premium rates in effect as of October 1, 1977 and September 1, 1977 respectively.

ISSUE #4. Waiver

RECOMMENDATIONS: The following should be added to the Status of Agreement Article in the negotiated agreement between the parties:

The parties acknowledge that during negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of those rights and opportunities as set forth in this agreement. Wherefore, except as otherwise expressly provided in this Agreement, each voluntarily and unqualifiedly waives the right to oblige the other party to bargain with respect to any subject or matter not specifically referred to or covered by this agreement even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated this agreement.

ISSUE #5. Term of Agreement.

ANALYSIS. The parties were substantially in agreement on the concept of a two year agreement but had not reached agreement on specific contract language.

RECOMMENDATION. The following contract language is recommended:

A. Except as provided in paragraph B of this article, this agreement shall be in full force and effect from September 1, 1977, to and including August 31, 1979.

B. This Agreement shall be subject to reopening on or after April 15, 1978 for the following items for 1978-79 portion of the agreement: Salary Schedule - Certificated Employees, Athletic Activity Schedule, Activity Schedule, and Insurance.

C. The schedule and procedure for reopening and opening shall be as follows:

1. The party desiring to open or reopen shall notify the other party of its intent to open or reopen not later than April 1st.

2. Between receipt of the notice of intent to open or reopen and May 1st the parties shall meet and discuss ground rules.

3. The party initiating opening or reopening shall present the other party with its written demands by May 1st.

ISSUE #6. Retirement.

ANALYSIS: The party proposing changes to existing contract language should be prepared to offer evidence of difficulty with that language as well as argument. This can either be a negotiated employment condition or a matter handled by law or Board policy. In the absence of specific state law, the interests of the members of the bargaining specific state law, the interests of the members of the bargaining unit are perhaps best served by negotiated retirement age.

RECOMMENDATION: The Board's position should be adopted.

ISSUE #7. Association Release Time.

ANALYSIS. The Washington Education Employment Relations Act makes the employee bargaining agent responsible for negotiating and processing grievances for all members of the bargaining unit. Contractual provisions providing for leaves to conduct negotiations, process grievances, or engage in labor - management discussions are granted in many teacher contracts. Some agreements also provide leave time for attending Association conventions or conferences. The District's chief objections to the Association proposal was in terms of its legality in light of the Enumclaw decision and the lack of specific requirements that such leave should be used for bargaining and grievance matter.

RECOMMENDATION. The factfinder recommends the following:

Association Leave.

A. To enhance the working relationship

between the District and its employees, the District shall allow persons holding official offices or appointments in the Association according to the following criteria:

1. Leave time is to be spent meeting or conferring with District representatives and/or in meetings designed to enhance the working relationship between the members of the bargaining unit and the District. Such meetings shall include but not be collective bargaining, grievance adjudication and other labor - management meeting.

2. Leave time must be requested by the Association for a specified purpose which is in accordance with No. 1 above. The request must be made in writing, stating the individual involved, to the superintendent a minimum of three (3) working days before the leave is to take effect. The leave time may not be used for Association business which is not in accordance with No. 1 above.

3. A maximum of 20 person days of this leave is available with the cost of a substitute to be deducted from the pay of the individual taking such leave.

B. Ten additional days of Association leave will be available for attending Association Conventions or Conferences. Full per diem salary and benefits will be deducted from the pay of such person(s) taking leave under this section. No more than five (5) employees may use this leave on any given school day. Requests for such leave must be made to the Superintendent five (5) working days before the leave is to take effect.

C. In the event a court of competent jurisdiction or PERC rules sections A or B above contrary to law, this section shall be void and subject to reopen negotiation in compliance with such ruling. The Association

agrees to indemnify the District for any monies found to have been improperly expended.

ISSUE #8. Other Leaves

ANALYSIS. Emergency leaves are intended to be used to allow teachers time off to take care of emergencies other than family illness and bereavement. The Association's proposal adequately defines the reasons for such need. It is deficient in that it does not require notification to the Superintendent of the need to take such leave and the warning that violations of this leave could lead to loss of pay for the period of the violation and/or other discipline.

RECOMMENDATION: To the Association's Emergency leave proposal add a notification requirement and a warning as to discipline for violations. Two days emergency leave during the first year of the agreement; increase to three days in the second year.

Bereavement leave - accept the Association's wording.

ISSUE #9. Non Discrimination

ANALYSIS: The parties are in disagreement over content of the Article, not in the basic concept or intent of the Article.

RECOMMENDATION: Modify the Association proposal by adding the word unlawful before discrimination and include this modified proposal in the contract.

ISSUE #10. Fringe Benefits/Insurance

ANALYSIS: No hard evidence was presented to show why a listing of insurance carriers in the contract was necessary. Such a list would be even more unnecessary in a two year agreement.

RECOMMENDATION: The Association proposal for listing insurance carriers be denied.

ISSUE #11. Agency Shop/Open Shop

ANALYSIS: This issue is frequently submitted to factfinders

because it represents one issue in which both the philosophical and practical battle lines between management and labor are drawn. The arguments in support and in opposition to Agency Shop are basically the same ones used in other factfinding cases, with one exception. Management, in this case, presented unrefuted evidence that not all of the WVEA and WEA dues goes for collective bargaining, contract administration and grievance processing. Thus, the fair share amount to be deducted from non-members is an issue to be resolved if an Agency Shop provision is recommended.

RECOMMENDATION: The Association's Agency Shop proposal be amended so that the fair share deductions for non-members is 80% of the combined local, state and national dues. This amended Agency shop provision should be made part of the agreement between the parties.

ISSUE #12. No Strike Clause.

ANALYSIS: No strike clauses are commonly found in collective bargaining agreements containing binding arbitration of grievances.

RECOMMENDATION: Substitute the following for the first paragraph of the District's proposal and included the modified proposal in the bargaining agreement.

During the period September 1, 1977 to and including August 31, 1978 the Association and its members will not cause, initiate or participate or join in any strike, work stoppage, withholding of services, slowdown, picketing or other restriction of work.

From the period of the successful completion of negotiations on reopened items on September 1, 1978 whichever is later, until after August 31, 1979 the Association and its members will not cause, initiate, or participate or join in any strike, work stoppage,

withholding of services, slowdown, picketing or other restriction of work.

ISSUE #13. Work Day

ANALYSIS: The Association presented no hard evidence to show that present contract language had been abused or that the workday had actually been extended by the District at will.

RECOMMENDATION: Present contract language be retained.

ISSUE #14. Assignments, Vacancies, and Transfers

ANALYSIS: Notification of next year's assignment in August precludes preparation or summer school work in the area.

RECOMMENDATION: Add to existing contract provision that preliminary assignments for the forthcoming year will be made in writing by May 15th each year. Final assignments will be made, except for emergency changes, by August 15th each year.

ISSUE #15. Reduction in Force.

ANALYSIS: This complex issue is made even more complex because the parties were still working from two separate proposals and because of the non-mandatory aspects of RIF proposals set forth in the Federal Way decision. Also each party thinks their proposal is fair and equitable. Since this District has been faced with declining enrollment for several years, both parties recognize the need for a RIF clause in the contract.

RECOMMENDATIONS: All of the following recommendations represent modifications and/or additions to the District's proposal.

1. Change title of first paragraph from Certificated Staff to Decision and Notice.
2. Include the first sentence as is in the Decision and Notice paragraph but add the following:

The Association and the teachers to be laid off shall be notified prior to the Board meeting where the decision to reduce, modify or eliminate programs is to be made.

3. A second paragraph entitled Criteria should commence with the following criteria.... All references to non-bargaining unit personnel should be eliminated from this section.
4. Under the section discussing preferral consideration for laid off employees in the employment of substitutes, change the phrase "in their area of speciality" to in their area of certification and experience.

ISSUE #16. Preparation Time.

ANALYSIS: To attempt to institute preparation time for all teachers into the school day at this time of the school year would be exceedingly difficult.

RECOMMENDATION: The first year of the agreement should not contain a preparation time clause but such a clause as proposed by the Association should be included in the second year of the Agreement.

ISSUE #17. Just Cause

ANALYSIS: Just cause provisions are commonly found in teacher contracts and are more common in private sector contracts.

RECOMMENDATION: Modify the Association proposal as follows and include in the agreement.

Paragraph A - add the term upon request at the end of the paragraph.

Paragraph C. Preface the paragraph with the phrase "For minor offenses", the Board.... At the end of the first sentence add the following: For major offenses, major penalties may be assessed.

Paragraph E eliminate.

ISSUE #18. Grievance Procedure

ANALYSIS: A simple, easy to understand grievance procedure with clear definitions, clearly defined appeal steps, realistic timelines and binding arbitration is essential in the administration of multi-year contracts. A poorly designed, complex grievance procedure often discourages the filing of grievances; while a properly designed grievance procedure can often be used by Management to improve supervisory effectiveness.

RECOMMENDATION: The factfinder objects to the length of the Association's proposal grievance procedure and therefore proposes the following for inclusion in the agreement.

GRIEVANCE PROCEDURE

1. Definition

A grievance is an alleged misinterpretation of, or violation of terms and/or provisions of this Agreement.

Grievant shall mean an individual, a group of individuals and/or the Association.

Nothing contained herein shall be construed as limiting the right of any employee having a complain to discuss the matter informally with any appropriate member of the administration.

2. Procedure for Proccessing Grievances

a. Immediate Supervisor:

The grievant and the Association representative or the Association may orally present a grievance to the immediate supervisor. If the grievance is not settled orally, a written statement of grievance shall be presented to the immediate supervisor within twenty (20) working days after the occurrence of the grievance or within twenty (20) working days from the time the grievant or the Association should have reasonably become aware of the occurrence of the events giving rise to the grievance, whichever is later.

The "Statement of Grievance" shall name the grievant(s) involved, the facts giving rise to the grievance, the provision(s) of the Agreement alleged to be violated, and the remedy (specific relief) requested.

The immediate supervisor, upon receipt of the written grievance, shall sign and date the grievance form and shall give a copy of the grievance form to the grievant(s), Association representative and the superintendent. The immediate supervisor shall answer the grievance in writing. The immediate supervisor's answer shall include the reasons upon which the decision was based, within five (5) working days of receiving the grievance and shall concurrently send a copy of the grievance, his/her decision and all supportive evidence to the grievant(s) association representative and the superintendent.

b. Superintendent:

If no satisfactory settlement is reached at Step 1, the grievance may be appealed to Step 11, Superintendent, or his designated representative, within seven (7) working days of receipt of the decision rendered in Step 1.

The Superintendent or his designated representative shall arrange for a grievance meeting with the grievant(s) and/or Association representative and such meeting shall be scheduled within seven (7) working days of the receipt of the Step 11 Appeal. The purpose of this meeting shall be to effect a resolution of the grievance.

The Superintendent or his designated representative shall provide a written decision, incorporating the reasons upon which the decision was based to the grievant(s), Association representative and immediate supervisor within five (5) working days from the conclusion of the meeting.

c. School Board:

If no satisfactory settlement is reached at Step 11, the grievance may be appealed to Step 111 within seven (7) school days after receiving the disposition of the Superintendent or after the above stated time limits have expired, and submit the grievance to the Board.

If the grievance is submitted to the Board, the Board within seven (7) days shall meet with the grievant, the Association representative and the superintendent to review such grievance in executive session or give such grievance the consideration as it shall deem appropriate.

The disposition by the Board shall be made to the grievant by completing Grievance Report Form, Step 111 within five (5) days of the meeting. A notification of such disposition shall be furnished the grievant, the Association and the immediate supervisor.

d. Arbitration:

If no satisfactory settlement is reached at Step 111, the Association within fifteen (15) working days of the receipt of the Step 111 decision may appeal the final decision of the Employer to the American Arbitration Association for arbitration under the voluntary rules. Any grievance arising out of or relating to the interpretation or application of the terms and/or provisions of this Agreement may be submitted to arbitration unless specifically and expressly excluded within this Article.

The arbitrator shall hold a hearing within twenty (20) working days of his appointment. Ten (10) working days notice shall be given to both parties of the time and place of the hearing. The arbitrator will issue his decision within twenty (20) days from the

date final written briefs have been submitted or if revised by both parties, twenty (20) days after the completion of the hearing.

The Arbitrator's decision will be in writing and will set forth his/her findings of fact, reasoning, and conclusions on the issues submitted to him/her. The decision of the Arbitrator shall be final and binding upon the Employer, the Association and the grievant(s).

3. Jurisdiction of Arbitrator

The arbitrator shall be without power or authority to add to, subtract from or alter any of the terms of this Agreement.

The arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law.

The arbitrator shall have no power or authority to rule on any of the following:

- a. The termination of services of or failure to re-employ any provisional employee.
- b. The termination of services or failure to re-employ any employee to a position on the supplemental salary schedule.
- c. Any matter involving employee evaluation, provided that Evaluation Procedure shall be subject to the arbitrator's reviews.
- d. Any matter involving employee probation procedures, discharge, non-renewal, adverse effect or reduction in force.

4. Time Limits:

Time limits provided in this procedure may be extended by mutual agreement when signed by the parties.

Failure on the part of the Employer at any step of this procedure to communicate the decision on a grievance within the specific time limit, shall permit the Association to lodge an appeal at the next step of this procedure.

Any grievance not advanced by the grievant from one step to the next within the time limits of that step shall be deemed resolved by the Employee's answer at the previous step.

5. Accelerated Grievance Filing:

In order to expedite grievance adjudication, the parties agree that any Association grievances, class action grievances and grievances involving the evaluation procedures will be lodged at Step 11 of this procedure.

Any grievance that has been filed prior to the termination date of this Contract may be processed to conclusion even if the Contract has expired.

6. Reprisals:

No reprisal of any kind will be taken by the Employer against any employee because of his participation in any grievance.

7. Costs:

The fees and expenses of the arbitrator shall be shared equally by the parties. All other expenses shall be borne by the party incurring them.

ISSUE #19. Class Size

ANALYSIS: Class size is obviously important to teachers, students, parents, administrators, and members of school boards. It is not a matter that can be determined entirely by agreement between two of these parties. Nor has class size been made a mandatory subject for bargaining by legislative feat or by a decision of PERC or the courts. Class loads for K-6 as of September 29, 1977 shows only 3 of 60 classes with enrollments of 30 or more (30, 30, 33).

RECOMMENDATION: The collective bargaining agreement should not contain a class size article.

ISSUE #20. Salary


Analysis. The State prescribed formula for the funding of teacher's salaries introduced a great deal of uncertainty into collective bargaining and salary negotiations this year. The traditional criteria used by factfinders in evaluating salary proposals traditionally include changes in the cost of living, comparability and total compensation. To this must now be added, in Washington, the criteria of what the state contribution for teacher's salaries will be and what commitments or penalties must the board absorb if it exceeds the formula. The District's proposal does provide a cost of living increase on the base, that because of the high index will impact throughout the schedule. The Association's case for comparability is severely weakened when total compensation and total salary schedules are compared. After careful consideration of the arguments, evidence and criteria, I conclude that the District's proposal is appropriate for the first year of the contract.

RECOMMENDATIONS. The District proposed salary schedule and increase be included in the agreement as the first year's salary schedule.

ISSUE #21. Certificated Transportation Reimbursement.

RECOMMENDATION. For the duration of the contract, 15¢ per mile.

Submitted on this the 25th day of October.


John H. Abernathy
Factfinder