

BEFORE THE FACT-FINDER

In the matter of the request of: )  
WELLPINIT SCHOOL DISTRICT ) CASE 8838-F-90-162  
For fact-finding involving a )  
bargaining unit of certificated )  
employees represented by: ) FINDINGS OF FACT  
WELLPINIT EDUCATION ASSOCIATION ) AND  
RECOMMENDATIONS

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Associated Industries of the Inland Empire, by William Donohue, Attorney at Law, appeared on behalf of the district.

Gary Simpson, UniServ Field Representative, appeared on behalf of the association.

On August 20, 1990, the Wellpinit School District notified the Public Employment Relations Commission that the Wellpinit Education Association had rejected the district's last and final offer for settlement made in mediation, and requested the Commission to institute fact-finding proceedings under RCW 41.59.120. A fact-finding hearing was held in Spokane, Washington, on June 12, 1991,<sup>1</sup> before Fact-finder Katrina I. Boedecker. The parties made oral closing arguments at the hearing, in lieu of post-hearing briefs.

BACKGROUND

Wellpinit School District is located entirely on the Spokane Indian Reservation. The Reservation is in Stevens County in the eastern portion of Washington state. In the 1990-91 school year, 238

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<sup>1</sup> The parties were allowed additional time for negotiations and mediation after the request for fact-finding was filed; hence the delay in presenting the issues at a fact-finding hearing.

students were enrolled in its educational program: 80 students in the senior level grades; the remainder in the pre-school through elementary grades. Ninety-nine percent of the students are Native Indian ancestry and live on the Reservation. The school district employs 19 certificated staff and 25 classified staff at its one, and only, school site.

Wellpinit, itself, is an unincorporated town of less than 1000 population. Most of the land in the district is held in trust for members of the Spokane Indian Tribe. In the school district, there are only 8 to 11 real estate parcels that are subject to property taxes which would be impacted by a school district tax levy or bond authority.

Approximately 95% of the certificated staff lives outside of the school district. Due to a lack of available housing close to the district, most of the staff live in the vicinity of the city of Spokane. This creates a 45 minute to an hour and 15 minute commute, one way. Many of the teachers car-pool together.

Wellpinit School District receives most of its money from four sources. Approximately one-third of its budget is funded by federal "impact aid" under PL 874. In 1990 - 1991, the district received \$1.2 million in state appropriations and \$147,000 in special education funds. The rest of its budget is funded by other federal grant monies.

The last collective bargaining agreement which the parties had covered the period 1987 - 1988. Consequently, the certificated staff has not received a negotiated pay increase since September 1, 1987. On November 13, 1989, the Wellpinit Education Association made a formal written proposal to the district in response to a proposal it had received from the employer. On April 19, 1990, Jerry Hombel, president of the Wellpinit Education Association, and

School Board Chairman Jeff Moyer met and negotiated an agreement on most of the issues.

On July 1, 1990, Reid Riedlinger replaced Jess Cruzen as the district superintendent.

### ISSUES

During the course of the fact-finding hearing, the parties presented 16 issues on which they were at impasse.<sup>2</sup>

#### ISSUE ONE: TEACHER CONTRACTS

(1987-88 language) Section 2.2.1:<sup>3</sup>

1. Individual contracts for regular teaching assignments shall be in conformit with Washington State Law and Policies, this Agreement, rules and regulations of the District, and of the State Board of Education Code of Rules and Regulations, Chapter 44, as covered in the Appendix H attached hereto and by references incorporated herein.

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<sup>2</sup> Although some certificated staff had been expected to attend the hearing, none chose to do so. The record consists of testimony from Superintendent Riedlinger, Board Chairman Moyer, and Board Member Larry Brown, for the employer's case; and from UniServ Directors Jim Aucutt and Gary Simpson, for the association's case.

The majority of both parties' positions on the issues was put on the record by Moyer. Simpson did testify that Moyer had accurately represented the association's proposals and responses.

<sup>3</sup> Throughout this fact-finding report, the language of the 1987-88 contract is quoted exactly as it appears in the copy submitted in evidence. Typographical and other apparent errors have been corrected in the language recommended by the fact-finder for resolution of each issue.

2. All regular teacher positions in the District will be filled by certificated employees under contract to the District.

The employer proposed to delete the first paragraph of that language, on the basis that it recited current law and was redundant. The employer wanted to amend the next paragraph to reference the job description of certificated staff.

The association found a problem with reference to the job description, because it did not believe one existed in the district.

The employer entered the job description for certified teaching staff into evidence.

#### FINDINGS OF FACT AND RECOMMENDATION ON TEACHER CONTRACTS

Since the union voiced no objection to the elimination of the first paragraph, and since a job description does exist for certificated staff, your fact-finder recommends: The parties ratify the following language:

##### Section 2.2.1 - Teacher Contracts

All regular teacher positions in the District will be filled by certificated employees under contract to the District and the certificated employees shall meet the requirements of the Certificated Teacher Job Description of the District.

#### ISSUE TWO: GENERAL PROVISIONS

(1987-88 language) Section 2.2.2:

1. The salary schedule shall apply to all regular teachers now employed under annual teaching contract.

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3. Salary schedule placement shall be in accordance with the following criteria:

a. Evidence of experience as a teacher in this District or another, so so long as the experience is funded by LEAP. The Superintendent may, at his discretion, require verification of prior experience.

b. Evidence of credits from an accredited college or university. The Superintendent may, at his discretion, require verification of all credits earned/received.

c. For all teachers newly employed on or after the effective date of this Agreement, placement in the appropriate column for educational experience shall be determined by the number of quarter-hours (1/4) credits acquired after attainment of a Bachelor of Arts/Science degree. After the date referenced above, no pre-BA/BS credits will be recognized for salary schedule placement.

...  
h. The Extra Duty Pay Program shall be contained in Appendix B attached hereto, and by reference incorporated herein.

The employer proposed specifying that the salary schedule would be in effect for one year only, since the district gets notice from the state on a year-by-year basis as to what salary monies the certificated staff is entitled. Additionally, the employer desired to change the discretionary verification of credits earned to a mandatory verification. Finally, the employer wanted the right to revise the Extra Duty Pay salary schedule whenever it determined the need and to issue other "rider contracts" for additional salaries, without bargaining.

The union advanced that the salary schedule and placement, as well as the extra-curricular pay schedule, were its major priorities. The union was not agreeable to waive any of its bargaining rights in the wage area.

**FINDINGS OF FACT AND RECOMMENDATION ON GENERAL PROVISIONS**

Wages are clearly a mandatory subject of bargaining. A waiver in a mandatory bargaining area is a serious matter and the

employer has not advanced sufficient rationale to have the requested waivers granted. Public school districts statewide have multi-year collective bargaining agreements and also only get once a year money allocations. Your fact-finder recommends that the parties: Maintain the Section 2.2.2 - General Provisions language of their 1987-88 collective bargaining agreement.

ISSUE THREE: PAYROLL DEDUCTIONS

(1987-88 language) Section 2.3:

2. On or before November 15th of each school year, the Association shall give written notice to the Board of the dollar amount of dues and assessments that are to be deducted from Association members who have authorized such deduction in the coming school year under payroll deduction. The total for these deductions shall not be subject to change during the school year.

The employer sought language that would allow a bargaining unit member who had committed to dues deduction for the entire school year to cease the payroll deduction at any time.

The union opposed any change in the language.

FINDINGS OF FACT AND RECOMMENDATION ON PAYROLL DEDUCTIONS

Fixed payroll deductions of union dues are traditionally a sensitive subject in bargaining. These parties have previously agreed to a modified maintenance of membership arrangement. Once the union obtains such language, the employer is hard-pressed to remove those rights without substantial justification. The employer advanced no rationale for its proposal here. Your fact-finder recommends that the parties: Maintain the Section 2.3 - Payroll Deductions language of their 1987-88 collective bargaining agreement.

ISSUE FOUR: VOLUNTARY TRANSFERS

(1987-88 language) Section 2.9.2:

Not later than May 15th of each school year, the Superintendent or his/her designee shall post in all school buildings a list of the known vacancies which will occur during the following school year. Vacancies that occur after May 15th shall be posted in all school buildings and the District office. Teachers who desire a change in specialty, grade and/or subject assignment or who desire transfer to another building shall file a written statement of such desire with the Superintendent not later than February 15th or with five (5) days after the Superintendent has posted a vacancy. Such statement will include the specialty, grade and/or subject to which the teacher desires to be assigned and the school or schools to which he/she desires to be transferred, in order of preference. Such written statements must be renewed on an annual basis if the teacher desires continued consideration.

Said notice of vacancy or new position shall clearly set forth the qualifications for the position and the procedures for applying. The District shall publicize within the bargaining unit for five (5) days the availability of vacancy or new position covered by this Agreement, except where circumstances will not permit.

All vacancies or new positions shall be filled on the basis of qualifications for the position, as determined by the District. Existing employees shall be considered for the positions if deemed qualified by the Board. If there is more than one such applicant, then District seniority shall be considered. The District shall have the right to assign substitutes or otherwise fill vacancies and new positions that occur during the school year.

At least thirty (30) days prior to the beginning of the school year, the Superintendent or his/her designee shall, if requested by the employee, notify by personal conference (and in writing, if requested) of the reason why his/her request for reassignment and/or transfer was not granted.

The employer proposed to delete the entire section, and to substitute language in which the district would retain the sole authority to assign and transfer employees.

Neither party stated the union's position on this subject.

**FINDINGS OF FACT AND RECOMMENDATION ON VOLUNTARY TRANSFERS**

The 1987-88 language provides a reasonable structure in which each party can function in the event of a vacancy or a new position. At the same time, the language gives the Superintendent and Board substantial discretion in granting transfers. The employer has not advanced sufficient reasons to alter the language previously agreed upon. Your fact-finder recommends that the parties: Maintain the Section 2.9.2 - Voluntary Transfers language of the 1987-88 collective bargaining agreement.

**ISSUE FIVE: INVOLUNTARY TRANSFERS AND REASSIGNMENTS**

(1987-88 language) Section 2.9.3:

Notice of an involuntary transfer or reassignment will be given to teachers as soon as practicable and, except in cases of emergency, not later than June 15, prior to implementing an involuntary transfer, the District shall discuss the transfer with the affected employee and shall consider the employee's concerns, provided that the employee is available. The District shall continue to have the exclusive right to transfer staff, as necessary, for the benefit of the educational program.

The employer proposed to eliminate the date reference, reasoning that it is not practical to assign all employees in the spring of a preceding school year. The employer cited its experience of the last two school years, when it had to assign a teacher the day before school started.



Neither party stated the union's position on this subject.

FINDINGS OF FACT AND RECOMMENDATION ON INVOLUNTARY TRANSFERS AND REASSIGNMENTS An involuntary transfer can have a major effect on an employee's overall job performance and satisfaction. Nothing in the existing language seems to unduly restrict the employer in filling vacancies. There was no evidence that the union had grieved the actions of filling certain teaching positions the day before school started in the previous two years. The language does allow for exceptions to the June notification in "cases of emergency". The employer has not advanced persuasive justification for its proposal. Your fact-finder recommends that the parties: Maintain the Section 2.9.3 - Involuntary Transfers and Reassignments language of their 1987-88 collective bargaining agreement.

ISSUE SIX: COVERING CLASSES

(1987-88 language) Section 2.10:

The building principal is responsible to see that all classes are covered at all times.

Any arrangements made for class coverage between employees must have prior approval of the building principal.

The District shall provide substitutes where needed (in the judgment of the District), when practical, and if substitutes are available, for any employee who is absent due to illness or injury.

Absences for other purposes will usually be covered by a substitute (provided that one is available), except when the absence is for a short period of time (1/2 day or less) and the hiring of a substitute is not feasible by the building principal.

In an emergency it may be necessary to use other staff members to cover classes.

The union wanted to remedy what it saw as a problem with the language: The employer could demand that other bargaining unit members forfeit their preparation periods all day long to provide a "rolling substitute" for an absent teacher instead of hiring a substitute for the entire day.

The employer wanted to maintain some language that would allow it to use other staff members to cover classrooms if substitutes were not available or accessible for assignment.

FINDINGS OF FACT AND RECOMMENDATION ON COVERING CLASSES

There was no evidence presented of any grievances filed regarding this language or, in fact, of any specific problem associated with the practice in this area. Therefore, it is unclear whether the union is proposing to fix an area where there has been perceived abuse, or is merely trying to stem potential abuse.

The language proposed by the employer eliminates the district's discretion to decide whether or not to hire a substitute, and would have another bargaining unit member cover a classroom only if a substitute was "not available or accessible". Your fact-finder recommends: The parties should ratify the following language:

**Section 2.13 - Covering Classes**

The Building Principal/Designee is responsible to see that all classes are covered at all times. The teachers are responsible to assure students are supervised at all times when assigned a classroom.

In some cases it may be necessary to use other staff members to cover classrooms, if substitutes are not available or accessible for assignment.

ISSUE SEVEN: LENGTH OF WORKDAY

(1987-88 language) Section 2.11:

All certificated teachers may be assigned appropriate starting and dismissal time, providing that their total workday shall be no longer than seven hours and forty minutes including a continuous thirty (30) minute duty free lunch period. Employees shall report to work thirty (30) minutes before the regular school day begins and continue to work thirty (30) minutes after the regular school day ends. The length of the assigned workday shall be considered a normal day of instruction of children. An employee may, upon receipt of permission from his/her building principal, leave directly after the close of school.

The employer specifies several problems with the workday language. Parents who work during the day have not been able to have parent/teacher conferences in the evening. The district has not been able to enlist certificated staff to participate in, or attend, certain educational programs of the district. The district advances language that would allow it to require the certificated staff to work, outside the 7 hour and 40 minute day, on: Class preparation, consulting with students and parents, curriculum development committees, extra-curricular activities and anything else that pertains to the district's goals. There is no hour/minute definition of the workday in the employer's language. The district does acknowledge that, due to the housing shortage in the immediate vicinity of the school district, most of its teachers are commuting 60 to 90 minutes each way in car-pools.

In a written proposal dated November 13, 1989, the union proposed changing the workday to 7 hours and 30 minutes, since that was the area standard in other certificated bargaining agreements.<sup>4</sup>

**FINDINGS OF FACT AND RECOMMENDATION ON LENGTH OF WORKDAY**

It is not unusual in the education realm to have certificated staff attend to duties beyond the stated workday. However, the employer's proposal appears to give it carte blanche as to the number of occasions, length of time, and purposes for which it could require staff to extend the workday. There is no reference to overtime payment in the employer's language,

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<sup>4</sup> On January 30, 1991, local members of the bargaining unit met with the employer, without the UniServ representative present. At that time, the employees made the following proposal to the employer:

Each teacher will work an extra twenty hours a year: This twenty hours will be working at after-school and weekend activities. Activities will consist of: Sporting Events: Ticket-taking, working of game clock or score board, working concessions; Class and School Fund Raisers: dances, bake sales, school carnival, etc; Committees needed to help better the school; School Plays and Programs; and Field Trips.

The teachers will have the choice of signing up for these activities. Each teacher will have served 10 hours by the end of the first semester. All twenty hours will be served on or before the last day of school. With the current number of staff members this would provide 360 hours each year for extra curricular activities.

At the fact-finding hearing, the UniServ representative objected to the introduction of this proposal, because he was unaware of the offer and was only authorized to advocate for the proposals of which he had knowledge. Additionally, he argued that it was merely an informal proposal and since it did not settle the issue it should not be considered. Since no local bargaining unit members appeared at the hearing, the union's official position continues to be changing the work day to 7 hours and 30 minutes.

although the board president did testify to giving "traded time" later to teachers who worked beyond the normal workday.

Some of the employer's proposed purposes for the overtime work do not appear to be necessary. The certificated staff should have adequate class preparation time built into the workweek. Teachers are required to be available 30 minutes before and after the student instructional day, in part, to consult with students when necessary.

Curriculum development work and supervising or directing students in extra-curricular activities are distinct bodies of work for which bargaining unit members should receive payment when required to perform.

Being present to consult with parents who are unavailable to attend during the regular workday is a reasonable expectation for the employer to have of its certificated staff. There are some school functions, building meetings and informal instructional activities, not specified on an extra-curricular schedule, that may also entail additional time beyond the employee's normal workday.

The employer has acknowledged that it had to go far outside the local area to recruit its staff. Thus, the commuting problem must be considered. A balance can be struck by limiting the number of times an employee would be required to extend the workday. Your fact-finder recommends: The parties should ratify the following language:

#### Section 2.11 - Length of Workday

All certificated teachers may be assigned appropriate starting and dismissal times, providing that their total workday shall be no longer than seven hours and forty minutes including a continuous thirty (30) minute duty free lunch period. Employ-

ees shall report to work thirty (30) minutes before the regular school day begins and continue to work thirty (30) minutes after the regular school day ends. The length of the assigned workday shall be considered a normal day of instruction of children. An employee may, upon receipt of permission from his/her building principal, leave directly after the close of school.

Outside of the normal workday, employees will not be required to accept over nine assignments of supervising student activities, attendance or participation at school functions (including open-houses), faculty meetings, parent conferences or other reasonable duties when appropriate. Assignments will be made in a manner so that no one person will have an undue share of such duties. Five of the assignments per teacher, per year, may be unpaid; for required participation in four other assignments, each teacher, for each assignment, shall receive his/her hourly rate for the time required, or a minimum payment of \$35.00, whichever is greater.

Adequate notice will be provided for these assignments; most of these activities shall be specified by the superintendent or his/her designee on a sign-up sheet during the first week of each term.

With prior, written, mutual agreement between the teacher and the superintendent or his/her designee, the teacher may receive hour for hour time off in lieu of payment.

#### ISSUE EIGHT: LENGTH OF CONTRACT

1987-88 language) Section 2.13:

1. The length of the regular individual teaching contact shall be one hundred eighty-one (181) days. An extension of contracted days by the District shall be computed on 1/181st of the base amount computed from the current teachers salary schedule.

The union proposed a 180-day work year, with 10 additional work days added at per diem, as follows: 2 days prior to the student year, 3 days after the student year ended, and 5 days at individual

teacher discretion. The union argued that Wellpinit was the only school district in the area that was above a 180-day work year.

The employer proposed continuing the 181-day work year. The employer contended that other districts used local monies when they reduce the work year and add per diem days. Because the state does not fund extra days and Wellpinit's lack of levy capacity, the employer argues that funding extra days would be difficult. Throughout the hearing, the employer argued that it should not be compared to other school districts in the state because of the extreme poverty on the Reservation.

**FINDINGS OF FACT AND RECOMMENDATION ON LENGTH OF CONTRACT**

The union's proposal to add per diem days to the work year is basically a method of getting more salary money to the bargaining unit members, albeit from local money instead of state funds. The employer does have limited taxing ability. A "salary" issue is dealt with later in this fact-finding report. Your fact-finder recommends the parties: **Maintain the Section 2.13 - Length of Contract language of the 1987-88 collective bargaining agreement.**

**ISSUE NINE: EVALUATION, CERTIFICATED PERSONNEL**

(1987-88 language) Section 2.14:

**General** - Members shall be evaluated during each school year in accordance with the procedures and criteria set forth. Every nonprovisional employee whose work is judged unsatisfactory based upon the evaluation criteria shall be placed in a probationary status no later than February 1 and shall be given until May 1 to demonstrate improvement in his/her area or areas of deficiency.

**Evaluation**

1. **Responsibility for Evaluation** - Within each school and the principal or his/her administrative/supervisory designees shall be

responsible for the evaluation of employees assigned to that school. An employee assigned to two or more schools shall be evaluated by the principal of each school or by a common administrative/supervisory designee from the central staff. If possible, the employee shall be notified in advance who the evaluator(s) will be. The administrative organization plan of the school district shall be used to determine lines of responsibility for any employee who is not regularly assigned to any school. Any principal or other supervisor may designate other administrative and/or supervisory staff members to assist in the observation and evaluation process.

2. MINIMUM EVALUATION CRITERIA - All employees shall be evaluated in accordance with the appropriate criteria set forth in the evaluation forms attached to this Agreement as Appendix D, which are hereby made a part of this Agreement.

3. REQUIRED EVALUATIONS -

a. All employees newly employed by the School District shall be evaluated within the first ninety (90) calendar days of the commencement of their employment.

b. All employees, including new employees, shall be evaluated annually, such evaluation to be completed not later than the last day of school.

c. If an employee is transferred to another position not under the supervisor's jurisdiction, an evaluation shall be made at the time of such transfer.

d. If an employee resigns during the school year, a final evaluation shall be completed prior to the resignation date. Five (5) school days notice shall be given.

e. If the supervisor contemplates recommending that an employee be placed on probation, an evaluation shall be made on or before January 15th.

4. ADDITIONAL EVALUATIONS - In addition to the evaluations required under paragraph 3, herein, principals and other supervisors and their designees may make evaluations at any time during the school year, which evaluations may cover individual observations for such



period of time as may be identified in the evaluation report. Any additional evaluations shall be for the purpose of improving employee performance except as provided in paragraph 3.

5. MINIMUM OBSERVATION CRITERIA - During each school year each employee shall be observed for the purpose of evaluation at least twice in the performance of his/her assigned duties. Total observation time for each employee for each school year shall be not less than sixty (60) minutes. A minimum of one observation for a total observation time of thirty (30) continuous minutes shall be required in connection with the evaluation of all employees.

6. EVALUATION PROCEDURES -

a. Upon completion of an observation for the purpose of evaluation, by the principal or other evaluator, the employee shall be provided with a copy of the evaluation report within three (3) working days.

b. The employee shall sign the school district's copy of the report. The signature of the employee does not, however, necessarily imply that the employee agrees with the contents of the evaluation report.

c. The employee shall have the right to attach any comments to the evaluation report. This may be done at the time the employee received a copy and prior to the report being forwarded to the district personnel office; or they may be forwarded to the personnel office within seven (7) school days following the evaluation conference. Notice of attachment must be given to the Superintendent within twenty-four hours of signing the copy of the evaluation report.

d. Following the completion of each evaluation report required under paragraph 3, herein, a meeting shall be held between the principal, or other supervisor, and the employee to discuss the report.

e. In the event that any evaluation report indicates that the employee has performance deficiencies in one or more of the areas defined in the evaluation criteria, the principal or other supervisor and the employee shall attempt to develop a mutually agreeable written plan designed to improve the employees effectiveness in the deficient areas. In

connection with the development of such plan, consideration should be given to utilizing the services of available-in-district resource persons (e.g. coordinator, department head, psychologist, fellow teacher) to observe the employee's performance and make recommendations for improvement. If the supervisor and employee are unable to agree upon a mutually acceptable plan, the supervisor will prepare and deliver a plan to the employee.

#### PROBATION

1. SUPERVISOR'S REPORT - In the event that a principal or other supervisor determines on the basis of the evaluation criteria that the performance of an employee under his/her supervision is unsatisfactory, the supervisor shall report the same in writing to the Superintendent on or before January 20. The report shall include the following:

- a. The evaluation report prepared pursuant to the provisions of paragraph 3 herein.
- b. A recommended specific program designed to assist the employee in improving his/her performance.
- c. Any written comments by the employee.

2. ESTABLISHMENT OF PROBATIONARY PERIOD

- a. Specific areas of performance deficiencies.
- b. A suggested specific program for improvement.
- c. A statement indicating the duration of the probationary period and that the purpose of the probationary period is to give the employee the opportunity to demonstrate improvement in his/her area of deficiency.
- d. A statement indicating areas of assistance to be provided by the supervisory staff.

3. EVALUATION DURING THE PROBATIONARY PERIOD

- a. At or about the time of the delivery of a probationary letter, the principal or other supervisor shall hold a conference with the probationary employee to discuss performance deficiencies and the remedial measures to be taken.

b. During the probationary period the principal or other certificated evaluator shall meet with the probationary employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The provisions of paragraphs 6-a and 6-b, (Evaluation Procedures) shall apply to the documentation of evaluation reports during the probationary period.

c. The probationary employee shall be removed from probation at any time he/she has demonstrated improvement to the satisfaction of the principal or other supervisor in those areas specifically detailed in his/her notice of probation. In this event, a statement will be attached to the probationary letter indicating the employee has successfully met the conditions of probation.

4. SUPERVISOR'S POST PROBATION REPORT -

Unless the probationary employee has previously been removed from probation, the principal or other supervisor shall submit a written report to the superintendent at the end of the probationary period, which report shall identify whether the performance of the probationary employee has improved and which shall set forth one of the following recommendations for further action:

a. That the employee has demonstrated sufficient improvement to justify the removal of the probationary status; or

b. That the employee has demonstrated sufficient improvement to justify the removal of the probationary status of accompanied by a letter identifying areas where further improvement is required; or

c. That the employee has not demonstrated sufficient improvement and action should be taken to non-renew the employment contract of the employee.

5. ACTION BY THE SUPERINTENDENT - Following a review of all reports submitted pursuant to paragraph 4. The Superintendent shall determine which of the alternative courses of action is proper and shall take appropriate action to implement such determination. In the event that the Superintendent determines that the employee has not demonstrated sufficient improvement, the Superintendent shall

make a determination of probable cause for the non-renewal of the employee's contract and shall provide written notice thereof to the employee on or before May 15 pursuant to applicable law.

6. IMPLEMENTATION OF THE LAW - Should any conflict arise between this procedure and the law, the law shall be controlling.

The employer asserts that it needs to be more definitive about when each step of the evaluation process will occur. It has advice of legal counsel that the current procedure does not conform to state law, in that there are problems with observations versus evaluations, the timelines, and the number of observations required.

Neither party stated the union's position on this subject.

FINDINGS OF FACT AND RECOMMENDATION ON EVALUATION, CERTIFICATED STAFF The evaluation criteria and procedures proposed by the employer are not uncommon in the education field. During the presentation of salary proposals, the employer appeared to be attempting to use money, instead of the evaluation process, as a means of improving performance. The employer should be strongly encouraged to use the evaluation process as the method for obtaining satisfactory performance, and the adoption of the employer's proposal in this area will hopefully provide that encouragement. Although the union voiced no objection to the employer's evaluation proposal, one substantive change will be recommended in that the employer's proposal did not include the final paragraph containing the "supremacy of the law" clause. The employer's proposal references an evaluation from Appendix E and an evaluator's guide as Appendix F. Neither appendix was submitted into evidence. Since the union voiced no objection to any part of the employer's evaluation proposal, this recommendation assumes the appendixes will be attached to the parties' collective bargaining agreement. After living with the

evaluation forms for a year, if the union perceives a problem with them, it can propose changes during the next regular contract bargaining between the parties. Your fact-finder recommends: The parties should ratify the following language:

#### Section 2.14 - Evaluation, Certificated Personnel

The following cycle and time lines will be observed in the certified evaluation process:

##### 1. General

Certificated employees, for whom the Association is the authorized bargaining representative, shall be evaluated during each school year in accordance with the procedures and criteria hereinafter set forth.

##### 2. Responsibility for Evaluation

School administrators/designee shall be responsible for the evaluation of employees assigned to them. Evaluation shall be made by the Principal/designee. Any Principal/designee charged with the responsibility of evaluation of employees may designate other administrative employees to assist in the observation and evaluation process.

##### 3. Evaluation Criteria

All certificated employees, for whom the Association is the authorized bargaining representative, shall be evaluated on the following criteria:

- A. Instructional skill.
- B. Classroom management.
- C. Professional preparation and scholarship.
- D. Knowledge of subject matter taught.
- E. Handling of student discipline and attendance problems.
- F. Interest in teaching pupils.
- G. Effort toward improvement when needed.

All evaluations shall be documented on the evaluation report form which is attached hereto as (Appendix E). In completing the evaluation report form, the evaluator shall utilize the above criteria in the evaluator's guide as set forth in (Ap-

pendix F) attached hereto. Evaluations shall be made in narrative form.

#### 4. Required Evaluations

- A. All employees newly employed by the District shall be evaluated within the first ninety (90) calendar days after commencement of their employment.
- B. All employees, including new employees, shall be evaluated annually, such evaluations shall be completed not later than the last day of the year in which the evaluation takes place.
- C. If an employee is transferred to another position not under the supervisor's jurisdiction, an evaluation shall be made at the time of such transfer. A note of explanation shall be attached explaining the transfer.
- D. If an employee resigns during the school year, a final evaluation shall be completed prior to resignation date.
- E. If the supervisor contemplates recommending that an employee be placed on probation, an evaluation shall be made on or before January 15.

#### 5. Other Evaluations

Principals/designees authorized to make evaluations may make evaluations other than those specifically required at any time during the school year. When such evaluations are made in report form, it shall be identified in the evaluation report both as to date, time and length of observation, and shall be discussed with the employee within reasonable time.

#### 6. Observation Requirements

- A. Each certificated employee shall be observed for the purpose of evaluation at least twice during each school year in the performance of assigned duties.
- B. Observation time for the purpose of evaluation shall total not less than sixty (60) minutes during each year.
- C. Employees newly employed by the District shall be observed at least once during the first ninety (90) calendar days of their employment period for a total observation time of not less than thirty (30) minutes.

7. Evaluation Procedures
  - A. Following each required evaluation observation, the principal/designee shall promptly document the results thereof using the appropriate evaluation report form (Appendix E). The employee shall be provided with a copy of the evaluation report within three (3) days after such report is prepared.
  - B. The employee shall sign the District's copy of the evaluation report to indicate receipt of a copy, provided, however, the signature of the employee does not indicate agreement with or approval of the report.
  - C. All evaluation reports shall be promptly forwarded to the District's personnel office.
  - D. Within three(3) working days after completion of each required evaluation report, a conference will be held between the evaluation supervisor and the employee to discuss the report. If the employee disagrees with the report, the employee shall be entitled to add comments or explanations as he/she deems necessary.
  - E. In the event that an evaluation report indicates that the employee has performance deficiencies in one or more areas defined in the evaluation criteria, the principal/designee and the employee shall attempt to develop a mutually agreeable written plan designed to improve the employee's effectiveness in the deficient areas. In connection with the development of such plan, consideration shall be given to utilizing the services available resource personnel to observe the employee's performance and make recommendations for improvement. (Appendix F)
8. Probation
  - A. Supervisor's Report. In the event the Principal/designee determines that, based on the evaluation criteria, the performance of the employee is unsatisfactory, the Principal/designee shall report the same to the Superintendent on or before January 30. The report shall include:
    - i. The evaluation report on which unsatisfactory performance has been based.

ii. Identification of specific areas of deficiency.

iii. A specific and reasonable program designed to assist the employee in improving his/her performance and remedying his/her deficiencies.

**B. Probationary Period**

If the Superintendent concurs with the supervisor's judgement that the performance of the employee is unsatisfactory, the Superintendent shall place the employee in a probationary status beginning on or before February 1 and ending on May 1. On or before February 1, the employee shall be given written notice of the action of the Superintendent, which notice shall contain the following information:

i. Specific areas of performance deficiencies.

ii. A suggested specific and reasonable program for improvement.

iii. A statement indicating the duration of the probationary period and the purpose of the probationary period is to give the employee the opportunity to demonstrate improvement in his/her area or areas of deficiency.

**C. Evaluation During Probation**

i. Within five (5) working days after the delivery of the probationary letter, the principal/designee shall schedule a personal conference with the probationary employee to discuss performance deficiencies and the remedial measures to be taken.

ii. During the probationary period, the probationary employee will be evaluated at least twice monthly by the Superintendent/designee to supervise and make a written evaluation of the progress made by the employee. Such evaluations shall be documented on the regular evaluation report form (Appendix E), in accordance with the procedures set out in Section 7 Evaluation Procedures.

iii. The probationary employee may be removed from probation at any time if there has been demonstrated improvement to the satisfaction of the principal/designee in those areas specifically set forth in the notice of probation.



**9. Implementation of the Law.**

**Should any conflict arise between this procedure and the law, the law shall be controlling.**

**ISSUE TEN: FORMAL DISCIPLINARY ACTION**

(1987-88 language) Section 2.15:

No employee shall be formally disciplined without just cause. Formal discipline is defined as disciplinary action which results in a written record being placed in the employee's personal file.

The specific grounds forming the basis for formal disciplinary action will be made available to the employee to the employee in writing.

Any formal disciplinary action taken against an employee shall be appropriate to the behavior or situation which precipitates the action.

Any employee shall be entitled, upon his/her request, to have present a representative of the teachers during any formal disciplinary action. Any administrator shall be entitled to have a representative of their own choosing during any formal disciplinary action.

It is agreed that formal disciplinary matters pursuant to this provisions shall be subject to the grievance procedure contained in the Agreement. In matters involving adverse contract changed, including non-renewal and discharge, affected employees shall use appeal procedures provided in applicable statute rather than the grievance procedure of this Agreement.

The employer testified that this language was a problem for both parties, because there was no reference to progressive discipline.

**FINDINGS OF FACT AND RECOMMENDATION ON FORMAL DISCIPLINARY ACTION** A delineation of progressive discipline steps was found in a district policy attached to the expired collective

bargaining agreement. An exhibit entered into evidence was entitled "Appendix I Progressive Discipline Policy of the Wellpinit School District No. 49". Since the goal that the parties wanted to achieve was to recognize progressive discipline in the collective bargaining agreement, the contract language should be modified to accommodate the philosophy of progressive discipline and the Appendix should continue. Your fact-finder recommends: The parties should ratify the following language:

**Section 2.15 - Formal Disciplinary Action**

1. No employee shall be disciplined without just cause. All discipline shall be progressive in nature, as follows:
  - A. First offense - Verbal warning.
  - B. Second offense - Written warning.
  - C. Third offense - Disciplinary suspension, demotion, or leave of absence, with pay.
  - D. Fourth Offense - One to three day suspension or leave of absence without pay.
  - E. Fifth Offense - Dismissal.
2. The specific grounds forming the basis for formal disciplinary action will be made available to the employee, in writing.
3. Any formal disciplinary action taken against an employee shall be appropriate to the behavior or situation which precipitates the action.
4. Any employee shall be entitled, upon his/her request, to have present a representative of the teachers during any formal disciplinary action. Any administrator shall be entitled to have a representative of his/her own choosing during any formal disciplinary action.
5. It is agreed that disciplinary matters pursuant to this provision shall be subject to the grievance procedure contained in the Agreement. In matters involving adverse contract changes, including non-renewal and discharge, affected employees shall use appeal procedures provided in the appli-

cable statute, rather than the grievance procedure of this Agreement.

Your fact-finder further recommends: The Appendix entitled "Progressive Discipline Policy of the Wellpinit School District No. 49" continues to be attached to the collective bargaining agreement.

ISSUE ELEVEN: BEREAVEMENT LEAVE

(1987-88 language) Section 3.3:

In the event of death in an employee's or spouse's immediate family, the employee shall be allowed up to five (5) days aggregate of absence on full pay. Immediate family is defined as anyone living within the household of the employee and/or father, mother, sister, brother, spouse, child, grandparent, uncle, aunt, nephew, niece, son-in-law, mother-in-law and grandchild.

Request for bereavement leave must be approved by the Superintendent prior to the actual leave. Such leave is non-accumulative.

The employer proposed adding "father-in-law" and "daughter-in-law" to the definition of family. Additionally, it wanted to reduce the number of days of leave from five to three. The employer contends that this is necessary because salary money for coverage of any extra days comes from its Basic Education Act allotment, and thus reduces the money the district has for its program offering.

Neither party stated the union's position on this subject.

FINDINGS OF FACT AND RECOMMENDATION ON BEREAVEMENT LEAVE

Neither party presented any examples of use, much less abuse, of bereavement leave during the time period of the last collective bargaining agreement to the present. The addition of "father-in-law" and "daughter-in-law" is logical to complete the definition of family, but the employer has not advanced adequate reasons to reduce the number of days

potentially available. The current language gives the employer certain control over the use of the leave: "up to five days" shall be allowed; request for the leave "must be approved by the Superintendent prior to" the leave being taken. Your fact-finder recommends: The parties should ratify the following language:

#### Section 3.3 - Bereavement Leave

In the event of a death in an employee's or spouse's immediate family, the employee shall be allowed up to five (5) days aggregate of absence on full pay. Immediate family is defined as anyone living within the household of the employee and/or father, mother, sister, brother, spouse, child, grandparent, uncle, aunt, nephew, niece, son-in-law, daughter-in-law, father-in-law, mother-in-law and grandchild.

Request for bereavement leave must be approved by the Superintendent prior to the actual leave. Such leave is non-accumulative.

#### ISSUE TWELVE: PERSONAL LEAVE

(1987-88 language) Section 3.4:

Two (2) days per contract year may be granted for personal leave. Notification shall be given to the immediate supervisor at least one (1) full day prior to the leave. In the event that one (1) full days notice is not possible under the circumstances, as much notice as is possible will be given to the immediate supervisor.

When personal leave is requested for business, household, or family matters (as distinguished from "personal" matters), the immediate supervisor may require that the employee give reason(s) for the leave. It is understood that personal leave for business, household, or family matters will be granted contingent on prior approval and when the necessity for the leave makes it impossible for the employee to attend to the matter during non-work hours.

Only one (1) employee will be allowed to utilize personal leave on any given day. Personal leave does not accrue year to year.

The employer proposed to delete the entire section. It advanced that there was a letter between the parties stating that 1987-88 would be the last year that personal leave would be granted. Additionally, the employer claimed that the money for the coverage of these days would be from the "01 accounts", and that it did not want to use program funds in this manner.

Neither party stated the union's position on this subject.

FINDINGS OF FACT AND RECOMMENDATION ON PERSONAL LEAVE The employer did not put any document into evidence to support its claim about personal leave being abandoned by agreement of the parties after 1987-88.<sup>5</sup> The employer voiced a general hesitancy to use program monies for any leave coverage, but it did not offer specific evidence of programs that would have to be curtailed or eliminated if personal leave continued. Personal leave provisions are common in certificated collective bargaining agreements throughout the state. Your fact-finder recommends that the parties should: Maintain the Section 3.4 - Personal Leave language of the 1987-88 collective bargaining agreement.

ISSUE THIRTEEN: DURATION OF AGREEMENT

(1987-88 language) Section 7.1:

For teaching salary purposes, this Agreement shall be effective September 1, [obliterated].

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<sup>5</sup> An attachment to the parties' 1987-88 contract entitled "Negotiations for 1984-85" referenced a "District Discretionary Day" that was available for the 1984-85 school year only. It specified that "... this option shall unconditionally expire on August 31, 1985".

The remainder of the provisions shall be effective upon ratification by both parties and shall continue in effect until August 31, 1986/87, except as expressly modified below. On that days, all terms and conditions of this Agreement shall unconditionally expire.

[In an addendum, the contract was made effective September 1, 1987 through August 31, 1988.]

The employer proposed basically a two-year agreement, from September 1, 1989 through August 31, 1991, but its language contained a clause making the provisions effective upon ratification. The employer's proposal also eliminated the "unconditionally expire" sentence.

The union advances that the bargaining unit members' salaries have been frozen since September 1, 1988, with the last negotiated raise being effective September 1, 1987. The union argues that the employees need salary relief retroactive to 1988. It also contends that the retroactive salary increases should be paid with interest, because the state has funded increases each year that the district has not passed through to the bargaining unit members.

FINDINGS OF FACT AND RECOMMENDATION ON DURATION Neither party argued this provision adequately. The impact of the employer's proposal would have the parties begin bargaining for the 1991-92 school year immediately after receiving this fact-finding report. The union's proposal would cause interest to be awarded on retroactive salary monies for three years where the union might, itself, have been responsible for some of the delay. The parties need a respite from the bargaining table in order to let their labor/management relationship level out. The Commission records show that the parties mutually sought mediation from the Commission to

resolve their dispute on January 18, 1990.<sup>6</sup> The duration of the collective bargaining agreement should cover the year in which the parties sought mediation, the time the parties were in mediation and fact-finding, and the year following the issuance of the fact-finding report. Your fact-finder recommends: The parties should ratify the following language:

**Section 7.1 - Duration**

This agreement shall be effective retroactively to September 1, 1989 and shall continue in effect until August 31, 1992.

**ISSUE FOURTEEN: EXTRA-CURRICULAR STIPENDS**

(1987-1988 language) Appendix - Extra-Curricular Stipends:

Head Football Coach	\$1705.00...10%
Assistant	\$1023.00....6%
Head Volleyball Coach	\$1705.00...10%
Assistant	\$1023.00....6%
Head Boys Basketball Coach	\$1705.00...10%
Assistant	\$1023.00....6%
Head Girls Basketball Coach	\$1705.00...10%
Assistant	\$1023.00....6%
Head Baseball Coach	\$1364.00....8%
Head Softball Coach	\$1364.00....8%
Journ/Annual Advisor	\$1023.00....6%
Athletic Director	\$2046.00...12%
Wrestling	\$1705.00...10%
Track	\$1364.00....8%
Gymnastics	\$1364.00....8%
Cheerleader Advisor	\$1023.00....6%
Cross Country	\$1023.00....6%
Jr. High Head Boys Basketball Coach	\$1023.00....6%

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<sup>6</sup>

Wellpinit School District, Case 8373-M-90-3254.

Jr. High Head Girls Basketball Coach	\$1023.00....6%
Jr. High Head Football Coach	\$1023.00....6%
Jr. High Head Volleyball Coach	\$1023.00....6%
Christmas Program Director	\$ 341.00....2%

The employer's proposal eliminates all references to a percentage increase. It lists, instead, set dollar amounts. It is unclear how the employer developed the dollar amounts it offered. The previous percentages were based on the state allocation salary schedule. The employer's offer increased the amounts at different rates: 10% stipends were increased by 2.5%; 8% stipends were increased by approximately 15%; 6% stipends were increased by approximately 25%, for example. The employer proposal eliminated the gymnastics coach stipend and the assistant coach stipends for volleyball and boys and girls basketball. It combined the track and cross country positions into one stipend payment. It divided the cheerleader advisor payments into three equal sums to cover the separate seasons of football, basketball and wrestling. It changed the "Journ/Annual Advisor" title to "Annual/School Paper". It added a new category of "Senior Class Advisor" for a stipend. At \$4,000.00, the employer almost doubled the amount offered for the athletic director. The employer also sought language that would allow the district the right to add or revise the schedule "as needed". Moyer also testified that there was concern about having to pay a coach's stipend even though the sport was canceled because not enough students were interested in the activity.

The union's proposal maintained percentage calculations, all indexed to the salary schedule.<sup>7</sup> The 10% and 8% stipends were proposed at 12%; the 6% stipends were changed to 10% at the high school and 8% at the junior high school. The proposal added

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<sup>7</sup>

It is not stated whether the percentages were from the base of the state allocation model or were to be calculated from each coach's or advisor's actual salary.



"Senior Class Advisor" and "General Class Advisor" as two new categories. The union echoed the employer's proposal of \$4,000 for the athletic director, and also sought an additional preparation period for that position.<sup>8</sup>

FINDINGS OF FACT AND RECOMMENDATION ON EXTRA-CURRICULAR STIPENDS The parties have long lived with the payment for extra-curricular stipends as percentage calculations. The employer advanced no adequate reason to justify changing that practice. Since the salary discussion that follows refers to the state allocation model, the extra-curricular language should be clarified to specify that the percentages are from the base salary of that model. Also, since the base figure to be used to calculate the stipends will be substantially increased over the 1987-88 level, most of the actual percentages themselves will not be recommended to be increased. The athletic director stipend should be increased to \$4,000 and indexed to the base salary. There was no testimony as to why an extra preparation period was needed for that position, so that will not be recommended. The senior class advisor will qualify for a new stipend. Again, because there was no record

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<sup>8</sup> At the January 30, 1991, meeting between the local members of the bargaining unit and the employer, the employees made the following proposal:

**Coaching and Coaches' Salaries:** The coaches will be paid from a pool that will be developed by the teachers. The district will take 3% from each teacher's salary and put the money into the coaches' pool. All coaching positions must be offered to certified staff members before being offered to a non-certified or a non-staff person.

At the fact-finding hearing, the UniServ representative objected to the introduction of this proposal, because he was unaware of the offer. He maintained that the official union position continued to be the historical listing of each coaching category with a defined percentage stipend.

made on the general class advisor, that position will not be added to qualify for extra payment. By that same token, the employer offered no justification for the eliminations and combinations in its proposed schedule, so those will not be recommended. Your fact-finder recommends: The parties should ratify the following language:

**Appendix - Extra-Curricular Stipends**

Athletic Director	\$4,000 *
Head Football Coach	10%
Assistant	6%
Head Volleyball Coach	10%
Assistant	6%
Head Boys Basketball Coach	10%
Assistant	6%
Head Girls Basketball Coach	10%
Assistant	6%
Head Baseball Coach	8%
Head Softball Coach	8%
Journ/Annual Advisor	6%
Wrestling	10%
Track	8%
Gymnastics	8%
Cheerleader Advisor	6%
Cross Country	6%
Jr. High Head Boys Basketball Coach	6%
Jr. High Head Girls Basketball Coach	6%
Jr. High Head Football Coach	6%
Jr. High Head Volleyball Coach	6%
Christmas Program Director	2%
Senior Class Advisor	\$ 500 *

\* Dollar amounts listed are to be indexed to the salary schedule. All percentages are to be calculated from the base salary [Years = 0; BA column] of the state allocation model referred to in the "wage" section.

The district has the right to cancel an activity, without having to pay the extra-curricular stipend, if not enough students turn out for the sport/activity at the beginning of the season.

ISSUE FIFTEEN: JOB DESCRIPTION

(1987-88 language) [There was no language about job descriptions in the 1987-88 collective bargaining agreement.]

The employer offered a full job description at the hearing.

The union voiced no objection.

FINDINGS OF FACT AND RECOMMENDATION ON JOB DESCRIPTION

Since neither the employer nor the union evidenced any controversy over this proposal, your fact-finder recommends:  
The parties should ratify the following language:

APPENDIX - JOB DESCRIPTION

TITLE: CERTIFIED TEACHING STAFF

QUALIFICATIONS:

1. A certificate for the particular position as required by the State Board of Education.
2. Such additional requirements as set by the Board.

REPORTS TO: Principal and/or assigned

SUPERVISES: May be required to supervise Instructional Aids, Classroom Aids and/or volunteers

JOB GOAL: To enable the district to provide quality education for all children in the school system

**GENERAL RESPONSIBILITIES:**

1. **Professional Skills:** The teacher is expected to establish procedures of management to allow a maximum of learning and a minimum of disciplinary action by:
  - \* Planning and organizing effectively.
  - \* Demonstrating competency in his/her area.
  - \* Creating and maintaining an atmosphere conducive to learning.
  - \* Providing opportunities for pupil participation in educational activities.
  - \* Making provisions for individual differences.
  - \* Encouraging the development of independent work habits.
  - \* Encouraging a flexible, individual approach to problem solving.
  - \* Using appropriate language for students to model.
  - \* Using varied and appropriate instructional techniques to accomplish predetermined instructional objectives.
  
2. **Professional relationships:** The teacher is expected to establish and maintain a professional relationship with students by:
  - \* Encouraging respect for the rights, opinions, property, and contributions of others.
  - \* Being sensitive to factors which affect pupil achievement and behavior in educational, social and/or extracurricular programs.
  - \* Being available for extra help.
  - \* Using methods of management that result in desired changes in behavior.
  - \* Communicating and maintaining a working relationship with parents.
  - \* Maintaining confidentiality with respect to students and their records.
  - \* Refraining from personal criticism of staff to students.
  - \* Avoiding use of position for commercial gain.

The teacher is expected to establish and maintain a professional relationship with fellow staff members by:

  - \* Cooperating with other staff members.
  - \* Consulting with coworkers in evaluating and meeting student needs.

- \* Leaving clear and complete instructions for substitutes.
- \* Following the curriculum, policies, mission and goals approved by the Board.
- \* Cooperating in evaluation of present curriculum.
- \* Recommending possible revision of curriculum.

3. Professional Development: The teacher is expected to demonstrate professional development by:

- \* Participating actively in inservice programs.
- \* Keeping abreast of professional developments in his/her particular area and in education as a whole.
- \* Exploring new teaching techniques as alternatives to better accomplish predetermined instructional objectives.

The teacher is expected to follow the code of ethics as outlined by his or her respective professional group.

**TERMS OF EMPLOYMENT:**

Salary and work year to be established in accordance with particular position and appropriate Board-staff agreement.

**EVALUATION:**

In accordance with Board policy and appropriate procedural regulations on Evaluation of Certified Staff Personnel.

ISSUE SIXTEEN: TERO COMPLIANCE

(1987-88 language) [There was no language about TERO compliance in the 1987-88 collective bargaining agreement.]

On September 15, 1987, the Spokane Tribal Business Council, under the authority of the Constitution of the Spokane Indians, ratified a Tribal Employment Rights Ordinance (TERO). The stated purpose of the Ordinance is to "... assist in and require the fair employment of Indians on or near the Spokane Indian Reservation and to prevent

discrimination against Indians in the employment practices of Reservation employers." The TERO applies to the school district as an employer engaged in work on the Reservation. Section 5.0 of the TERO requires compliance by Unions, as follows:

Every union with a collective bargaining agreement with an employer must file a written agreement stating the union will comply with this Ordinance and the Rules, Regulations and Orders of the [Spokane Employment Rights] Commission. Until such agreement is filed with the commission, employers may not commence work on the Reservation.

The Spokane Employment Rights Commission forwarded a model union agreement to the parties during their negotiations. The employer proposed that the model be adopted exactly as written. The employer asserted that since one-third of its budget is funded by federal "impact aid" money, it believed it must comply with the ordinance.

The union desired modifications to the model which would allow it to have an agency shop clause, and to have the employer hold the union harmless in the face of any controversy over TERO compliance.

**FINDINGS OF FACT AND RECOMMENDATION ON TERO COMPLIANCE** The matter of TERO compliance was presented to the fact-finder as an item that was at impasse between the parties, blocking the settlement of their collective bargaining agreement, thus a finding and recommendation will be made on the issue.<sup>9</sup>

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<sup>9</sup> It is unclear whether the parties' collective bargaining agreement must contain TERO compliance language, if the model Memorandum of Understanding between the parties will suffice, or if TERO compliance can be achieved by other means. Certainly this fact-finding report cannot rule on whether TERO compliance is a mandatory subject of bargaining. WAC 391-55-345. Nor does this report pretend to rule on any potential conflict of laws question.

**Section 5.1(e) of the TERO details:**

The union will grant temporary work permits to Indians who do not wish to join the union.

**Additionally, Section 5.4 of the TERO specifies:**

In any hearing before the Commission where the issue is compliance by an employer of any of the requirements and provisions of the foregoing subsections of Section 5, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

Based on the language of the TERO, without any direction from the parties otherwise, the union's modification regarding the agency shop provision will not be recommended, but a modification to add a hold-harmless clause is appropriate. Your fact-finder recommends: The parties should ratify the following language:

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
WELLPINIT SCHOOL DISTRICT #49  
AND  
WELLPINIT EDUCATION ASSOCIATION

This memorandum of understanding relates only to work performed with the Wellpinit School District and further relates only to those individual employees hired and/or applicants referred for employment through the Spokane Tribal Employment Rights Office.

**HIRING:** The parties agree to include and/or modify the Master Labor Agreements to assure the Spokane Tribal Employment Rights Office has exclusive referral rights for Indian preference applicants for employment opportunities available within the Wellpinit School District #49. The parties should meet and establish hiring procedures consistent with the Spokane Tribal Employment Rights Ordinance.

**Union Membership:** The parties recognize all employees have the right to self-organization, to





7 [The actual salary amounts were printed  
8 in the Appendix. Those figures have  
9 been left out here, as they are not  
10 necessary for understanding the wage  
11 proposal.]  
12  
13  
14 or more

The employer proposed continuing the statewide salary allocation schedule, as amended by the Legislature, for a teacher's first seven years of work. After the seventh year of teaching, the bargaining unit member's salary would be tied directly to his/her performance evaluation. The employer characterized this as a self-policing wage offer: If the employee wanted to do the bare minimum of work, he/she could; but if the employee wanted to do more work, then that employee would be rewarded for the effort with more money.<sup>10</sup> Moyer did testify that previously, for as long as he had

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<sup>10</sup> Specifically, the employer proposed:

#### MERIT PAY SYSTEM FOR CERTIFIED EMPLOYEES

The Board's philosophy regarding MERIT PAY for certified employees is that those persons doing the best job should receive the best pay. With this philosophy in mind:

1. Certified employees will be asked to play a key role in developing the process and criteria for evaluation.
2. Administrators and/or supervisors will make the evaluation of the certified staff their first priority.
3. During the spring the Board will determine the approximate amount of money to be spent and negotiate merit pay increases.
4. At the end of the evaluation cycle, the administrators and/or supervisors will determine which of the certified staff have done outstanding, competent, or unsatisfactory work over the past year and will classify them accordingly.

The Board desires that the certified staff with similar accomplishments receive similar raises, therefore:

served on the school board, the district had always passed all the state allocated money through to the certificated staff.

The union voiced a strong objection to the employer's proposal. The union believes that the district had a failing administrator who could not deal with teachers who might demonstrate poor performance, and that the district was therefore prompted to use money as a motivator. The union proposed that the statewide salary allocation schedule be continued. The union did acknowledge that the appropriations act stated that "not more than" the state allocation could be spent on certificated salaries for the work year and that all of the money did not have to be put on the salary schedule. The union also agreed that the Legislature set the exact salary level for only the first year BA degree teacher and the first year MA degree teacher; apart from those two cells, the district did not have to follow the state allocation model.

**FINDINGS OF FACT AND RECOMMENDATION ON SALARY SCHEDULE** The record establishes that the District has placed employees on probation over the past few years. Grievances were filed and the employer never proceeded with the discipline, because it was advised that it had "bad forms". The evaluation procedure is the proper method to use to correct performance, and the fact-finder is recommending the changes the employer sought in the evaluation section of the collective bargaining agreement. It is not proper to withhold money that the state allots to the district for each certificated employee based on his/her

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1. All certified personnel with performance classified as outstanding or competent will receive their standard increment as determined by the amount of money available divided equally.

2. Personnel with performance classified as unsatisfactory will receive no increment of increase. They will be placed in an intensive improvement program and without improvement may be dismissed.

level of training and length of experience. The parties have lived with the statewide salary allocation schedule since 1977. The employer advanced no persuasive reasons to abandon that schedule. Since the bargaining unit members have not received a recent pay increase, but the state continues to allocate increased amounts of money to the district based on each employee's length of service and level of education every year, the salary recommendation is to be retroactive to the effective date of the collective bargaining agreement. Your fact-finder recommends: The parties should ratify the following language:

**STATEWIDE SALARY ALLOCATION SCHEDULE**  
**FOR CERTIFIED INSTRUCTIONAL STAFF**

YEARS OF SERVICE	BA	BA-15	BA+30	BA+45	BA+90	BA+135	MA	MA+45	MA+90 or Ph.D
0									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15 or more									

The salary payments are retroactive to September 1, 1989. Any retroactive increases due to a bargaining unit member based on additional experience and/or increased educational level are to be paid to the bargaining unit member in the pay period following prompt ratification of the collective bargaining agreement by both parties.

RESPONSIBILITIES OF PARTIES

The above report and recommendations addresses all the items that were presented at the fact-finding hearing. The parties are reminded of the requirements of the statute and administrative code at this point. Specifically:

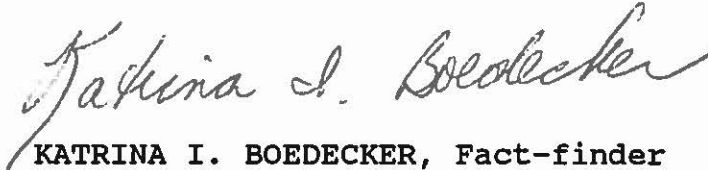
RCW 41.59.120 RESOLVING IMPASSES IN COLLECTIVE BARGAINING--MEDIATION--FACT-FINDING WITH RECOMMENDATIONS--OTHER.

...  
(3): Such [fact-finder's] recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact-finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact-finder.

\* \* \*

WAC 391-55-350 EDUCATIONAL EMPLOYEES -- RESPONSIBILITY OF PARTIES AFTER FACT-FINDING.  
Not more than seven days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact-finder. If the recommendations of the fact-finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may request mediation pursuant to chapter 41.58 RCW and, upon the concurrence of the other party, the executive director shall assign a mediator.

DATED at Olympia, Washington, this 21st day of August, 1991.

  
KATRINA I. BOEDECKER, Fact-finder