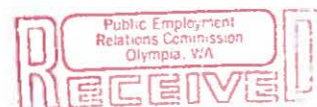


FACT FINDING PROCEEDINGS



Between

South Kitsap Education Association

-and-

South Kitsap School District

Findings of Fact **JAN 14 1981**

and

Recommendations

Re: Preparation Period

by

Kenneth M. McCaffree
Hansville, Washington 98340

Representatives:

For the Association: Marline Rennels
For the District: Chris L. Hirst

Public Employment Relations Commission
Case No. 3034-i-80-132

January 5, 1981

INTRODUCTION

Article VIII, Section C of the Collective Bargaining Agreement between the Board of Directors of South Kitsap School District #402, and the South Kitsap Education Association, 1978-1981 provides that "Prior to making changes in wages, hours or terms and conditions of employment, not specifically covered by the terms of this contract, such changes will be subject to bargaining during the period covered by this Contract." Accordingly, when the District proposed to change the number of class periods at the South Kitsap High School that would be taught each day by the teachers assigned there in 1980-81, the Association requested and the District acceded thereto to bargain on the issue. Initial discussions began in May 1980, and continued both intermittantly and somewhat informally until July and August. At this time agreement could not be reached, an impasse was declared, and subsequently the matter was taken to mediation and the fact finding process under the provisions of Chapter 41.59, RCW - Education Employment Relations Act.

Following a request to the Public Employment Relations Commission for a list of fact finders, the parties asked for the appointment of Kenneth M. McCaffree as fact-finder in this dispute. Confirmation of the appointment was made on October 3, 1980 and following thereto, by mutual agreement of the parties, hearings were held in Port Orchard on October 27 and November 13, 1980. (The list of witnesses is contained in Attachment A. There were two joint exhibits, 27 Association exhibits, 16 District exhibits, supplemental materials in the Association closing statement, the letter of November 17, 1980 from Don Sorte to the fact finder, collective bargaining agreements from five neighboring districts, and written opening statements from both the District and the Association.) The fact finder, after review of the facts and arguments of the parties, contacted them on or about December 10 and suggested means for resolving the issue. Reports were obtained from both parties about ten days later. The results of these considerations and discussion led to the conclusion that the fact finder should proceed to prepare his final written report for submission shortly after the first of January 1981. This report accordingly follows.

ISSUE

The issue in its narrowest form concerns whether the class schedule and teaching assignments at the South Kitsap High School for 1980-81 school year, or the part remaining to which a change could be applicable, would include six periods, all taught by a teacher (proposed by the District) or whether only five periods would be taught and the sixth used as a preparation period (proposed by the Association.)

In addition to the above brief statement, other matters were relevant. These included the length of each class period, the number of minutes of class

contact time per day per teacher, the size limit of classes, the total number of students per teacher per day, the number of class preparations per day, the availability of teacher aides, and the subject of extra compensation for teaching six periods rather than five.

Although there appeared to be no written record of the exact proposals made at the last meetings of the parties prior to the fact finding process, the following was reported as the positions of the parties at the beginning of mediation:

District (Dist. Ex. #4, Ass'n Ex. #24, August 15, 1980.)

1. Six periods of instruction would be implemented at the High School and all teachers would teach all six periods.
2. Each staff member, at all levels, would receive a 2% salary increase.
3. Class size at the High School would be reduced from 38 to 36 in academic areas. The total number of students assigned to each teacher would not exceed a maximum of 180 a day (for this year only).
4. Teachers at the High School would not have more than three different preparations each day. Any exception to this would require an approval process as defined in the contract.
5. The planning time of 50 minutes per day can be split into two 25-minute periods.
6. If the levy of spring 1981 passes, the Agreement will end and internal planning will be negotiable when the present contract expires. If the levy fails to pass, this Agreement would be in effect for the following two years and we would not be able to negotiate internal planning when the contract expires in June 1981.

Association (Dist. Ex. #5).

1. High School teachers will instruct five of the six periods.
2. The High School teachers will receive at least one preparation period within the instructional day.
3. Each instructional class period will continue to be (the same length as in 1978-80) 55 minutes per period.

In the case of both proposals, variations were discussed at various times in mediation and elsewhere. The District stated all of the above proposal was withdrawn except item 1. The Association contended that one of six periods internal to the six-period instructional day must be a preparation period. Other matters were those discussed in an attempt to find a combination of factors that would resolve the fundamental difference between teaching six periods versus teaching only five periods with one period for preparation, out of the proposed six-period instructional day for the High School.

FINDINGS OF FACT

The facts (and arguments of the parties, as well) were centered around two issues: the ability of the District to pay, and practices on preparation period scheduling in the District and other areas. In addition, a description of the bargaining steps, the positions stated, and behavior of the negotiators were presented. Facts, comments, and conclusions of fact on each of these three matters follow.

A. History of Bargaining Efforts

The initial discussion of an informal nature took place in May 1980. A formal letter to negotiate was sent in June (Ass'n Ex. #24). The first formal meeting took place on June 27, 1980, and subsequent discussions were, for the most part, informal exchanges until the mediation sessions on August 26 and on September 11 (Ass'n Ex. #s 21, 22, 23; Dist. Ex. #s 1, 2 and 3 contain schedule of events and record of proposal/discussions). The proposals set out above were presumably exchanged on or about August 15, 1980 between Dionne and the SKEA negotiators.

Neither party during the course of the negotiations altered its position on the six versus five teaching periods in a six-period day. There was substantial discussion over ways to otherwise amend the agreement to make one side's position or the other's acceptable to the other party. This is illustrated by points two through five of the above District proposal and point three of the Association's proposal. On balance, even though a degree of frustration and to some extent a measure of emotionalism developed over the issue, the bargaining over it, and the public statements of both parties on the matter, there was a reasonable effort in good faith on the part of both the District and the Association to reach an agreement on the issue (Ass'n Ex. #s 1, 25, 26; Dist. Ex. #s 6 and 16).

No further discussion on bargaining history is made below.

B. Ability to Pay

The availability of funds and the ability of the District to pay for the Association's proposal was a major item dealt with in the hearings and exhibits provided the fact-finder. The detail offered will not be set forth here (Ass'n Ex. #s 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15; Dist. Ex. #s 7, 8, 9, 10, 11, 12, 15 and 16 and the Sorte letter to fact-finder, November 17, 1980.) A summary and conclusions regarding what the facts show do follow.

1. The number of additional high school staff required to reduce teaching assignments from six periods to five was estimated by the District to be 15 (Dist. Ex. #7). Subsequent testimony and further examination of District Ex. #7 supported the conclusion that the estimate of 15 was a maximum and the actual number required could be as low as eight or nine teachers. (See data in closing statement of Association.) Computer runs to determine scheduling arrangements and maximum requirements were not done. This exercise would require spelling out a number of scheduling assumptions, class sizes, number of offerings by subject, and so forth, that had not been done. Thus an accurate, or exact, staff requirement was not made available.

2. Number of staff per 1000 students in the District was less than other comparable districts in the State, and less than the funding ratio used in allocating Basic Education Funds from the State (Ass'n Ex. #2, 4 and 5, and Sorte letter of November 17, 1980).
3. The data on cash balances and budgeting efficiency, including projections for 1981-82 and 1982-83, were extensive and detailed (Dist. Ex. #s 8, 9, 10, 11 and Ass'n Ex. #s 6, 7, 8, 9, 10, 11, 12 and 13). The cash balance as a percent of funds available was high in 1979-80 (5.5 percent), a fact resulting from transition from local levy support to state support. These monies were folded into the 1980-81 budget. Other annual figures on cash balances were consistent, and indicated a reasonable budgeted margin (Ass'n Ex. #10). Further, the pattern of budgeted expenditures and budgeted revenues in relation to actual, and the efficiency of budgeting were also consistent. Funds available were estimated within one percent of actual in 1977-78 and 1979-80, and underestimated by nearly five percent in 1978-79 (Ass'n Ex. #13). Disbursements, however, were consistently underestimated in relation to actual (Ass'n Ex. #12). These facts are summarized as follows*:

<u>Year</u>	<u>Actual Over Budget</u>	
	<u>Revenues</u>	<u>Disbursement</u>
1977-78	.2+	1.6-
1978-79	4.9-	5.4-
1979-80	.9+	2.0-

* (+ means budget estimate less than actual
- means budget estimate exceeded actual)

4. The allocation of funds among programs was considered in testimony and exhibit (Ass'n Ex. #s 11 and 12; Dist. Ex. #s 10 and 16). These data show no consistent trends except a rising proportion of funds going to pupil transportation (Ass'n Ex. #11). Expenditures by program, by source of funds indicate use of State Basic Education Funds for some programs for which catagorical funds are also allocated by the State, such as handicapped. What was described by the District as "Basic Ed Programs" was as follows (Dist. Ex. #s 10 and 16):

Basic education
Handicapped
Vocational Ed
Gifted
Swimming Pool
Instructional Support
General Support

The Basic Educational Act, and, to the knowledge of this fact-finder, other legislation does not require School District's to utilize only categorical monies for categorical programs. The allocation of funds to programs from basic state support is a decision made by the local School Board and District. Although the actual dollars so utilized were not specified, some of the allocation from the State for "Basic Education" was assigned by the District to programs labeled other than "Basic Education." (See also Sorte letter of November 17, 1980.)

5. The District does obtain some funds each year because of the impact of federal installations and employees in the area.

C. Preparation Period Practices

The District practice in the junior high schools and elementary schools does not include an internal preparation period for teachers. In fact, in 1977 the matter of a six-period day was raised by the Board, and instituted in the junior highs (Dist. Ex. #13). Subsequently, as a result of an arbitration award (Jt. Ex. #2, material in closing statement of the Association), the Association and District did negotiate a type of compensation in lieu of a preparation period in the six-period day at the junior high schools (Dist. Ex. #14). Prior to the current negotiations the high school was and still is on a five-period schedule, and teachers are in class with students in each of the five periods.

Outside the South Kitsap School District, the practice is that teachers are generally given an internal preparation period during the instructional day. The five neighboring first class districts comparable to South Kitsap all provide for internal preparation for high school and junior high teachers, and only in the case of Bremerton do elementary teachers fail to be assured such a schedule. (The Bremerton 1979-81 Agreement provides for "not less than forty-five (45) continuous minutes per day at the kindergarten through six grade level) (Ass'n Ex. #18; Collective Bargaining Agreements from Bremerton, Peninsula, Bainbridge, Central Kitsap and North Kitsap).

Other work schedules and conditions were also presented to the fact-finder. These data related to number of preparations per day (Ass'n Ex. #19), salary levels (Ass'n Ex. #14) and levy successes. As a summary of these data, the fact-finder concluded that work loads in the five comparison districts were no greater and generally less than in South Kitsap, that South Kitsap had the lowest salary schedule among the six districts, and that compared to North Kitsap, where there has been a record of more levy failures than in South Kitsap, South Kitsap provided less salary and equal or greater work loads for comparable positions in the school and on the salary schedule (Ass'n Ex. #15). There were some exceptions across these districts to the above, but the clear conclusion is that South Kitsap teachers were sixth in benefits, including extent of work load and scheduling in the list of six comparison districts.

DISCUSSION AND CONCLUSIONS

The complexities of school fundings in the state of Washington, as well as the normal difficulties in analyzing budgeting, expenditure patterns and school finance, overshadow, to some extent, a clear-cut analysis and appraisal of the South Kitsap School District's exact financial situation. Two observations, however, are pertinent here. Whatever funds are available can be allocated among programs and/or expenditure items as the Board elects to do. This is very evident in the instant case, where monies provided the District under Basic Education (State support) have been used for the handicapped program, a gifted children's program and apparently a very small amount for the operation of a swimming pool. Accordingly, the Board may also choose the extent to which salaries, benefits, work loads, and related conditions are provided certificated staff versus putting the available dollars in other categories. Under these circumstances, there is some question

whether a fact-finder should place his judgement ahead of that of elected officials to recommend how available monies are allocated, given whatever other constraints and limitations may bear on the issue at hand. There are enough monies available to meet the demand of the Association. The real issue is the comparison of the alternative uses of the money. The claim that the District does not have the ability to pay is, in fact, an argument that the money can be used "better" or "more advantageously" some where other than in funding additional staff in order to provide teachers with more planning and preparation time, and less contact time with students in the classroom.

The second observation is that the actual costs of implementing the internal preparation period appear to be over-estimated. The data in District Exhibit #7 on the number of additional staff required are high estimates. Further, the incremented cost of an additional teacher, including support personnel, etc., except in very unusual circumstances that were not pointed out in this case, will be less than the current average cost per teacher. It is not evident that new teachers, including temporaries and part-time instructors, will equal the average cost, at least in principle. However, if the average direct cost per teacher, as used by the District in Exhibit #12 is increased by \$2000 to \$25,000 and the number needed is estimated at 12 (half-way between the eight of the Association and the 15 of the District, and one higher than that suggested by citizen and parent, Tom Donnelly), the total required is approximately \$300,000. If the District would find \$180,000 to provide a two percent across the board increase, as proposed in August 1980, the fact-finder finds it difficult to conclude that an additional \$120,000 could not be reallocated within a projected 1980-81 budget in excess of \$16 million dollars.

After examining the details of the budget, expenditure patterns, funds available, facts and arguments offered by the parties on these matters, and the implications of the above two observations on the District's ability to pay, the fact-finder has set aside this issue as substantially less than controlling in the instant case. The history of practices in the District and those followed in surrounding districts offer a more ~~fruitful~~ basis for recommending a resolution of the instant issue in dispute between the parties.

The District has stressed the past practices in the junior high schools where teachers do meet students in six periods without an internal preparation period. This represents a negotiated position with other considerations having been included. The junior high situation, however, sets up a reasonable basis and understandable expectation on the part of the District that the Association would be similarly amenable to instituting a similar arrangement in the high school. It is evident, however, that the Association views the value of the internal preparation period, and a smaller number of periods with students, in a substantially different manner in 1980 than in 1977.

The major argument in support of the Association's position is the existence of the internal preparation period inside the instructional day in the immediately surrounding five districts cited above. There is no doubt that the circumstances in South Kitsap are less favorable to high school teachers with respect to preparation periods, work loads and scheduling, and salary levels than in the other five Districts. This situation is persuasive that the Association has stronger argument and supporting evidence than the District's position to adhere to practices elsewhere in the District. Overall, market pressures among personnel in the teaching occupation and a sense of equity among professionals in similar pursuits and situations strongly support the condition of an internal preparation period

in the schedule of South Kitsap high school teachers. These conditions dictate clearly and point to the inevitability of a five on six schedule for teaching in secondary schools.

RECOMMENDATIONS

The offering of a recommendation for a contract term cannot depend alone on the "facts" of a situation, but also must take into account some assessment of the "situation" and/or bargaining relationship into which the recommendation is placed. In the instant case, there has been more than the usual amount of community interest, polarization of opinions and positions, and emotionalism attached to a single issue. The issue is also being considered within a school year when a change in scheduling and teaching assignments, hiring new staff, and so forth, complicates the implementation of that change. Furthermore, the fact-finder is aware that the parties will be re-negotiating the current Agreement within six or seven months and any change now can clearly be re-negotiated along with the bargaining of overall terms and conditions of employment in the next few months. The fact-finder, however, believes that the orderly and early resolution of this issue may provide an atmosphere of greater confidence of each party in the other and an attitude more amenable to peaceful resolution of other issues that will be negotiated during the summer of 1981.

Accordingly, with these considerations in mind, the appraisal of the current situation, and based on the conclusions of facts set forth above, the fact-finder recommends that:

1. A six-period day be instituted at the high school at the beginning of the next trimester period and that the teachers, for this trimester only, will teach six periods with no internal preparation period.

2. That beginning with the 1981-82 school year, high school teachers in the South Kitsap School District shall teach only five periods in a six-period day, and shall be provided one continuous preparation period inside the six-period instructional day.
3. That this issue shall be considered settled and not subject to re-negotiation or proposal of change by either party until after the successor agreement to the 1978-1981 agreement has been signed by the District and the Association.

There were other conditions considered and discussed, both by the parties in negotiations and at the hearing, that have not been incorporated here. These represented potential amendments to the above, but have been regarded in this context as outside the issue on which this fact-finder was asked to make a recommendation.

The parties are urged to incorporate the above three points in a memorandum of understanding. The fact-finder will be available, if requested by both parties, to assist in completing such an understanding and/or otherwise implement the recommendation set forth above.

Respectfully submitted,


Kenneth M. McCaffrey