

BEFORE THE FACTFINDER

In the matter of a labor
dispute between

EVERETT SCHOOL DISTRICT NO. 2

and

EVERETT EDUCATION ASSOCIATION

CASE NO. 4895-F-83-150

FACTFINDING RECOMMENDATIONS

Perkins, Coie, Stone, Olson & Williams, by Lawrence B. Hannah, Attorney-at-Law, appeared on behalf of the employer.

John Morrill, Uniserv Director, appeared on behalf of the employee organization.

The parties to these proceedings were parties to a collective bargaining agreement negotiated pursuant to Chapter 41.59 RCW. The contract expired on August 31, 1983. Negotiations for a successor agreement began in June, 1983, but the parties were unable to reach agreement. Unresolved issues were submitted to mediation under the auspices of the Public Employment Relations Commission, but the parties were unable to reach agreement. The employer made a request for factfinding pursuant to RCW 41.59.120, and Rex L. Lacy was designated by the Commission to serve as factfinder. A hearing was conducted in Everett, Washington on December 1 and 2, 1983, at which time both parties presented evidence and argument. The parties submitted post-hearing briefs.

THE ISSUES

As framed by the parties, the issues before the factfinder are:

1. ASSOCIATION DUES DEDUCTION

THE ASSOCIATION seeks to include a full "agency shop" provision in the collective bargaining agreement and to institute payroll deduction of NEA-PAC contributions.

THE DISTRICT resists an "agency shop" arrangement. The district is willing to include NEA-PAC payroll deductions, provided that a suitable method of accountability is established.

2. ASSOCIATION LEAVE

THE ASSOCIATION seeks to increase the annual allotment of association leave from 25 days to 45 days, and to remove the existing limitations on use of association leave. Additionally, the association seeks contractual language to the effect that the superintendent of schools may permit association leave beyond the 45 day limit. Finally, the association seeks provisions requiring the employer to pay for all costs of association leave.

THE DISTRICT resists any change from the current amount of association leave days or from the existing procedure for use of association leave.

3. PERSONAL LEAVE

THE ASSOCIATION desires to add a new provision to the collective bargaining agreement whereby bargaining unit employees may take one day of personal leave without providing the employer with reasons for the leave. The association also seeks a modification in the existing personal leave provision so that an employee taking personal leave for "compelling family matters" is paid their full contracted salary for the day. (The present practice is to deduct the cost of the substitute in such situations.)

THE DISTRICT resists the addition of more personal leave to the existing agreement.

4. COMPENSATION

THE ASSOCIATION seeks to have the collective bargaining agreement's "no strike" clause nullified during bargaining under provisions of the contract's "reopener" clauses.

THE DISTRICT desires to retain the "no strike" clause during periods of negotiations required under terms of the agreement's "reopener" provisions.

5. PROVISIONS GOVERNING SALARY SCHEDULE

THE ASSOCIATION wishes to remove the requirement that bargaining unit employees must possess a master's degree in order to advance beyond the "BA+75" column on the salary schedule.

THE DISTRICT desires to retain the existing salary schedule and requirements for advancement.

6. LENGTH OF CONTRACTS AND EXTENDED CONTRACTS

THE DISTRICT seeks to add a provision authorizing it to adopt a school calendar by June 1 of each year.

THE ASSOCIATION resists the district's proposal since it would waive its right to negotiate on the issue of the calendar.

7. INSURANCE BENEFITS

THE ASSOCIATION seeks to pool insurance monies and to redistribute any surplus insurance money to those bargaining unit employees whose insurance premiums exceed \$159.00 per month. The association also seeks a provision requiring "pass-through" of any increased state funding of insurance benefits.

THE DISTRICT proposes retention of the current insurance provisions, with the individual maximum benefit increased to \$159.00 per month. The district suggests that insurance benefit contribution rates be open for negotiation in future years.

8. WORKING DAY

THE DISTRICT proposes language which would grant it authority to occasionally extend the normal workday so bargaining unit employees could perform duties related to the educational program.

THE ASSOCIATION opposes inclusion of any provision which would give the district the right to make unlimited extensions of the workday.

9. LAYOFF AND RECALL

THE DISTRICT desires to amend the existing layoff and recall provision to specify that administrators could return ("bump back") to bargaining unit positions in the event of layoffs.

THE ASSOCIATION opposes the district's proposed amendment to the existing layoff and recall procedure.

10. LEAVE BENEFITS FOR SUBSTITUTES

THE ASSOCIATION desires to have long-term substitute employees be eligible for up to three (3) days of sick leave.

THE DISTRICT opposes paying long-term substitute employees sick leave benefits.

11. GRIEVANCE PROCEDURE

THE ASSOCIATION seeks the right to file grievances in its own name.

THE DISTRICT desires to retain the existing grievance procedure.

12. DURATION

THE DISTRICT seeks a three (3) year agreement.

THE ASSOCIATION proposes a one (1) year agreement, but would accept a two (2) year contract if association proposals are included in the contract.

13. OPTIONAL DAYS

THE DISTRICT wishes to provide bargaining unit employees the option of working two (2) voluntary days at per diem rate during the 1983-84 school year.

THE ASSOCIATION desires that bargaining unit employees be allowed five (5) optional days in a one-year agreement, or three (3) days annually if a two-year duration is established.

14. SICK LEAVE CASHOUT

THE DISTRICT proposes that 1982-83 retirees should not be eligible to participate in sick leave cashout.

THE ASSOCIATION desires to include 1982-83 retirees in the sick leave cashout program.

DISCUSSION

After protracted negotiations, the parties to this proceeding still have differences of opinion on a relatively wide range of issues. The parties had the services of a mediator, and the factfinder has not attempted to mediate any of the issues presented. The function of the factfinder is to comment (for the parties and for possible public consumption) on the parties' respective positions and to make recommendations on how the issues should be resolved. The factfinder does not determine "rights" between the parties, and the factfinder is not bound to accept the entire position of either party as to the whole package or as to any particular issue. Good points and defects are noted in the positions of both parties. Undoubtedly, further negotiations are necessary to conclude bargaining. Both parties should re-evaluate their positions in light of the following recommendations.

The Association Dues Deduction Issue

It is evident that this is a historical issue which has been raised in several rounds of bargaining. Through this process, the parties have become polarized and are seemingly unwilling to make any accommodation to resolve

the dispute. While the employer has genuine concerns about the imposition of an "agency shop" provision, the union, as exclusive bargaining representative of all non-supervisory certificated employees, has legitimate concerns about its financial condition when a sizable portion of the bargaining unit does not pay any fees or dues.

The union represents 463 non-supervisory certificated employees, of which 100 employees are not association members. Evidence presented to the factfinder suggests that union membership has been growing in the last few years. In such a situation, a general imposition of an "agency shop" provision would disrupt the union's efforts to persuade non-members to join. However, the union should at least be guaranteed that it would receive current levels of funding. Given the expense of representing employees in negotiations and grievance processing, a form of union security is reasonable.

In a related matter, the union desires inclusion of NEA-PAC payroll deduction. Similar language is commonplace in other collective bargaining agreements, and the employer has not demonstrated any compelling reasons to deny the union's requested modification in the existing payroll deduction procedure.

RECOMMENDATION: The parties should agree to a "modified agency shop" provision effective on and after September 1, 1984. Non-members as of that date would not be required to join the union, but would have the opportunity to do so. If the choice is made to join the union, the choice would be irrevocable. All new employees starting work on or after September 1, 1984 would be subject to "agency shop" provisions as provided in RCW 41.59.100. Such an approach would guarantee the rights of the current non-members while establishing a defined (and potentially self-liquidating) group. The parties should also make provision for NEA-PAC contributions to be included in payroll deductions.

The Association Leave Issue

Association leave is to allow the union an opportunity to perform business related to the representation of bargaining unit employees. It must be emphasized that the leave is intended to benefit the association members and not employees of other employers. Currently, the union is granted 25 days a year to attend conventions and participate in other activities on behalf of the association's membership. Given complexities in the labor relations field, a union must be given sufficient time to devote its efforts for the benefit of its members. To this end, it is reasonable to increase the number of association leave days with specific limitations on the use of such leave.

RECOMMENDATION: The parties should agree to add ten (10) days to the existing association leave. The days should be phased in over a two-year period with five (5) added in the 1983-84 school year and five (5) added (to a total of 35 days) in the 1984-85 school year. The parties should also agree on two limitations on the use of association leave: First, such leave should be limited only to those activities directly related to the affairs of the Everett Education Association. Second, the parties should agree to a provision limiting individual use of association leave so that one employee cannot use more than ten (10) days of the aggregate annual amount. With these limitations in place, the parties should delete the requirement that the superintendent of schools must approve association leave.

The Personal Leave Issue

Examination of the 1982-83 collective bargaining agreement discloses that bargaining unit employees now have four (4) days of personal leave available to them at full pay, and one (1) personal leave day with deduction for a substitute pay in addition to twelve (12) days of illness, injury and emergency leave with full pay. However, the personal leave provisions are not as expansive as they might first appear. To qualify for personal leave under the existing procedure, a bargaining unit employee must specify a reason for the leave. It must be remembered that the personal leave in existence is granted in addition to the twelve (12) days granted for "illness, injury or emergency." It is conceivable that the bargaining unit employees could use the twelve (12) day allotment in an emergency without giving specific reasons for leave. In the same manner, since the twelve (12) days illness, injury or emergency leave can be accumulated from year to year, it is conceivable that the affected employee could take more than twelve (12) days on account of one or more emergencies. In such a situation an additional personal leave day is not warranted.

RECOMMENDATION: The parties should agree to the existing personal leave provisions in the context of the possible use of the twelve (12) day "illness, injury or emergency" leave as detailed above.

The Compensation Issue

The association seeks to nullify the existing "no strike" clause during any negotiations required by reopener provisions. In maintaining this position, the association argues that nullifying the no strike penalties would somehow equalize the relative bargaining positions between the parties. There are

serious questions relating to the legality of public employee strikes in Washington. As noted before, the factfinder does not have authority to determine the respective rights between the parties, and shall not make any recommendation which would give either party the belief that it possessed a right which it did not possess.

RECOMMENDATION: The parties should agree to continue the no strike and no lockout provisions in effect during the term of any negotiations called for in reopener sections.

The Salary Schedule Issue

This issue relates to the status of the existing salary schedule. In the last round of bargaining, the "master's degree barrier" was removed for employees eligible to move to the "BA+135" credit column. Now the association seeks a further change so that the "barrier" would not apply for advancement to the "BA+90" column. Given the existing limitations on salary increases, acceptance of the association's proposal would only redistribute existing funds and this way disrupt the existing salary structure. Furthermore, the association did not demonstrate the need to eliminate the "master's degree barrier" at the present time. Given the close scrutiny recently leveled at educators and the entire educational structure, it would be inappropriate to eliminate an incentive to gain additional training.

RECOMMENDATION: The parties should agree to the existing contract language establishing a "master's degree barrier" before a bargaining unit employee can advance to the "BA+90" column and beyond on the salary schedule.

The Length of Contract Issue

In a recent decision, an examiner appointed from the staff of the Public Employment Relations Commission held that a school calendar is a mandatory subject of bargaining. See: Lower Snoqualmie School District, Decision No. 1602 (EDUC, 1983). The parties to a collective bargaining agreement can establish a calendar for the duration of a contract, effectively waiving further negotiation on the subject, but there is a strong presumption favoring negotiation. This presumption must be balanced with the district's legitimate interest in establishing a school calendar. Apart from providing the public a reasonable period of notification, contracts for services must be established. To this end, a reasonable approach would be to establish a "perpetual" calendar formula in the contract or at least set the calendar for the period of this collective bargaining agreement, and to begin negotiations for successor contracts ahead of the negotiations for the other contract provisions.

RECOMMENDATION: The parties should agree to a "perpetual calendar" provision. In the alternative the parties should agree now on calendars for the period of this collective bargaining agreement. Negotiations for a successor calendar should commence in the month of April in order to set the calendar for the ensuing school year well in advance of negotiations on other issues.

The Insurance Benefit Issue

Under guidelines imposed by the state legislature, local school districts can grant insurance benefits at the rate of \$159.00 per month per FTE. The amount of money available to individual employees is not at issue in these proceedings. Rather, the dispute revolves around how the insurance funds should be distributed. Evidence presented to the factfinder clearly shows that this issue divides the parties in almost every respect. The association seeks a "pooling" arrangement whereby unspent funds could be applied to a number of alternative types of insurance. The district proposed a new insurance plan which would have changed the traditional insurance plans. In response to the district's initiative, the association resisted change because it did not feel it completely understood the proposed modifications. The factfinder feels that the district's proposal should be studied in some detail. To this end, the existing plan (which does not provide for any pooling) should be retained while a thorough study is conducted.

RECOMMENDATION: The parties should agree to continue the existing insurance provisions for the 1983-84 school year. The parties should establish a committee of equal membership to explore the plan proposed by the district as well as other insurance alternatives. The committee's recommendations should be implemented for the 1984-85 school year. In the event that the committee cannot reach a final recommendation, pooling arrangements should be implemented on the existing plans for the 1984-85 year. The pooling should be arranged to cover the costs of dental insurance first, with the remainder of the insurance money being applied to medical insurance premiums. If individual bargaining unit employees desire to pay for other types of insurance, they should pay for such coverage by salary deduction.

The Work Day Issue

The district has proposed to include a provision in the collective bargaining agreement allowing it to extend the normal work day at its discretion. As a limitation on the exercise of this right, the district proposes to extend the work day only when necessary for the educational program. The association

expresses concern that the district's proposal would amount to a "blank check" that would give the employer an unlimited right to extend the work day. The parties indicated that this issue was raised in prior negotiations, and at one point, extensions were granted within specific limits. Apparently, the procedure accompanying the limitation caused a number of difficulties. However, the concept of limitations is worthwhile. By limiting the number of extended work days, the district can still accomplish its educational needs and will ensure that only priority needs will be addressed.

RECOMMENDATION: The parties should agree to a contract provision allowing the district to extend the normal work day to accomplish educational programs and objectives. Such extensions may include a return to the school building during evening hours to participate in parent-teacher conferences and school open houses. However, the district should only be allowed to extend the work day two times in any month, and should give affected employees one week's notice before the extended day is to be worked.

The Layoff Recall Issue

The district wishes to specify that administrators should be allowed to return to the bargaining unit in the event of a layoff. As framed at the factfinding hearing, the district characterizes this proposal as a natural extension of a "career ladder." Since former bargaining unit employees make up a sizable majority of the district's administrative staff, the district believes that a "bump back" would aid the bargaining unit employee's long-term job security. The association, on the other hand, has legitimate concerns over the seniority issue which is interwoven in the entire layoff/recall issue.

RECOMMENDATION: The parties should agree on layoff/recall provisions which give recognition to the bargaining unit work of persons who have been promoted from the bargaining unit to administrative positions with the district and have worked continuously for the district since their promotion.

The Substitute Employee Leave Issue

The association seeks to provide up to three (3) days of sick leave for long-term substitute employees. For purposes of the contract a "long-term" substitute who works in the same assignment for twenty (20) consecutive days or who works thirty (30) days in a calendar year. In effect, the association's proposal could amount to a triple payment by the district. If a regular full-time employee is absent on sick leave, he or she is

compensated and the district is then required to find a substitute employee, who is paid at a set rate. If this is a long-term substitute, the association's proposal would allow that person to be on sick leave and be compensated, and the district would again be required to find a substitute replacement. Given the difficult financial circumstances facing schools throughout the state, it would appear that the association's proposal is not justified.

RECOMMENDATION: The parties should agree to retain existing practices relating to use and payment of long-term substitute employees.

The Grievance Procedure Issue

The association seeks to have the right to file grievances in its own right on any article subject to the collective bargaining agreement's grievance procedure. Currently, the association may file in its own name concerning a specified set of association rights specified in the contract. However, scrutiny of the 1982-83 contract discloses that the association may file a "class action" grievance for those issues which may have general applicability to a number of bargaining unit employees. Given this right and the association's ability to grieve to protect its rights as an employee organization, the factfinder is not persuaded that any expansion of the grievance procedure is necessary. If an individual employee, or group of employees, feels that the contract has been violated, a grievance can be filed. This process guarantees that there is a real party in interest to the dispute and that a union is not simply filing a number of grievances to correct mistakes made in the negotiation process. If the person bringing the grievance is somehow threatened or coerced because of the grievance, there are legal safeguards available through the provisions of Chapter 41.59 RCW.

RECOMMENDATION: The parties should agree to retain the existing grievance procedure.

The Duration Issue

These parties have a well established, often stormy, bargaining relationship. Seldom is agreement reached without the assistance of a mediator and/or factfinder. In that light, the district proposes a three (3) year agreement, and the association proposes a one (1) year contract. The best interests of the community and the parties would be served by a two (2) year agreement. Such a contract, which would be a complete document, without reopeners, would give the parties a bit of "breathing room" and would stabilize the educational program for the citizens of Everett, Washington.

RECOMMENDATION: The parties should adopt a two (2) year agreement with an assurance of "flow through" of any increased state funding for salaries and insurance and without reopeners, other than the insurance provision if a new insurance plan is adopted as the result of the insurance committee's efforts.

The Optional Days Issue

Legislative action has placed stringent limitations on the ability of local school districts to grant compensation increases above those provided in state appropriations acts. In order to provide a method of salary improvement and a way to improve the educational program, the parties have embraced the concept of optional training days for the district's non-supervisory certificated staff. Bargaining unit employees would volunteer for additional days of work and be paid for the work performed. The major dispute relates to the number of days to be offered. While the district proposes two (2) days at an approximate cost of \$185,000, the association seeks five (5) days, costing approximately \$462,500. The factfinder expresses no opinion as to the legality of the optional days concept, and merely makes recommendations on the issue as framed by the parties.

RECOMMENDATION: The parties should agree to a provision allowing three (3) optional days each year of the agreement. The purposes for the optional days and the scheduling should also be agreed to by the parties.

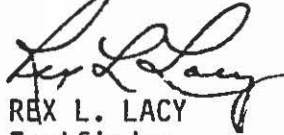
The Sick Leave Cashout Issue

Legislation allowing certificated employees to receive compensation for unused portions of accrued sick leave was enacted in 1980, but declared unconstitutional in 1982. In 1982, a new act specifying that parties could negotiate "sick leave cashout" was signed into law. The repeal of the original act left approximately ten (10) bargaining unit employees without the option to exercise the cashout option when they retired, and simultaneously generated an issue for collective bargaining between the parties as to which the 1982-83 contract could not possibly have constituted a waiver of bargaining rights. During the latest round of negotiations, the parties have agreed to allow 1983-84, and, in the event of a multi-year agreement, 1984-85 retirees to participate in sick leave cashout. The only issue that remains is the status of the 1982-83 retirees. In effect, a "notch year" has been created with employees on either side of the 1982-83 retirees enjoying the cashout benefit. Exclusion of the 1982-83 retirees from the program is unnecessary and should be avoided.

RECOMMENDATION: The parties should agree that 1982-83 retirees retiring on and after the effective date of the latest sick leave cashout legislation should be allowed to participate in the sick leave cashout program under the same standards established for 1983-84 retirees.

DATED at Olympia, Washington, this 19th day of December, 1983.

PUBLIC EMPLOYMENT RELATIONS
COMMISSION



REX L. LACY
Factfinder