

FF FILE



In the Matter of the Factfinding)
 between)
)
 PULLMAN SCHOOL DISTRICT NO. 267)
 BOARD OF DIRECTORS)
)
 THE "DISTRICT")
)
 and)
)
 THE PULLMAN EDUCATION ASSOCIATION)
)
 THE "ASSOCIATION")

FINDINGS AND RECOMMENDATIONS
 NOV 20 1980
 PERC Case No. 2999-F-80-129
 THOMAS F. LEVAK, FACTFINDER
 42 GREENRIDGE COURT
 LAKE OSWEGO, OREGON 97034

This matter first came for hearing before the Factfinder at 8:00 p.m., September 13, 1980. Certain procedural matters were discussed and the hearing was adjourned until 9:00 a.m., September 14, 1980. The proceedings concluded at 4:00 p.m. The District was represented by its attorney, Craig Hanson. The Association was represented by OEA Uniserv Representative, Jim Aucutt. Post hearing briefs were received by the Factfinder on October 30, 1980.

The District serves the citizens of Pullman, Washington, a college and farming community located in southeastern Washington adjacent to the Idaho border. The City of Pullman has a population of approximately 27,000 of which approximately 17,600 are students at Washington State University. 80% of the balance of the population is connected in some way with the University; that is, 80% of all households in Pullman, Washington contain a full-time staff or member of the University. The District presently employes 129 FTE certificated employees.

The parties are signatory to a written collective bargaining agreement in effect for the period of September 4, 1979 through August 31, 1981 (Jt. Ex. 1; herein the "Agreement"). Article VI, C of the Agreement provides that it may be opened for negotiations on four subjects - salary, benefits, agency shop and calendar - no later than May 1, 1980.

Pursuant to that article the Agreement was opened, and negotiations commenced on May 12, 1980. An impasse was declared by the District on July 14, 1980. A mediator was subsequently appointed by the Washington Public Employment Relations Commission, but no agreement was reached, and the instant factfinding resulted.

Issues:

1. Salary
2. Benefits
3. Agency Shop
4. Calendar

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Issue 1 - Salary

The 1979-80 salary schedule is attached herein (see Appendix A).

The District proposes a 10.23% increase on the salary schedule base. It contends that its offer is reasonable under all the circumstances for the following reasons:

- (1) The proposal is a fair balance between the program needs of the District and the needs of its teachers.
- (2) Concurrent with the passing of the Basic Education Act (herein "BEA") and the Levy Lid Act (herein "LLA") the District began a responsible program aimed at maintaining a superior educational format for the students of the District. Historically the District has maintained programs not available to most students in the State of Washington and has employed substantially more teachers than required by law in order to implement those programs. With the passage of the BEA and the LLA it became apparent that the District would be unable to raise funds on a local basis sufficient to maintain existing programs. Therefore, it began a program of systematically increasing its budgetary surplus so that rapid cutbacks could be avoided. Concurrently, it began lobbying efforts to modify the BEA and the LLA, so that it once again would be able to propose local levies. If any more money is paid toward salaries than proposed by the District, immediate cutbacks in the District's program, as well as layoffs, would result.
- (3) Teaching personnel at Washington State University received only a 6% increase during the 1980-81 school year, and District teachers received salaries on a par with professor positions at the University.

- (4) The proposal of the District is fair and competitive with other school districts.

The Association proposes a 17.5% increase on the salary schedule base. It contends that its proposal is reasonable for the following reasons:

- (1) The District is well able to pay the increase proposed by the Association. For the past three years the District has maintained an excessive surplus. In addition, the District has followed a pattern of under-estimating its ending net cash and investment balance. The Association's proposal is only \$134,306 more than the District's last offer. Between the time the current budget was prepared and the end of the fiscal year on August 31, 1980, the District realized an additional \$131,146 in spendable resources, almost enough to fund the Association's proposal. In addition, the District ended up with \$439,146 more than it anticipated in the spring of 1980 when bargaining began. Any rollback and loss of revenue during the 1980-81 school year can more than be made up with windfall monies. The best evidence at the hearing was that the District can fund the Association demands without any cut whatsoever in certificated personnel by merely diverting some of the unanticipated funds from the budget into the area of staff salaries.
- (2) The Consumer Price Index for the Seattle-Everett, Washington area (May 1979-May 1980) increased 17.5%. The Association's proposal is substantially less than the increase in the Index. Association exhibits establish that District teachers have lost 26.54% to inflation since the 1967-68 school year. The District itself offered 11.6% as part of a two year contract proposal.

- (3) District teachers suffer in comparison to teachers in comparable districts. Contrary to the contentions of the District, its teachers consistently fall behind other districts and rank near the bottom of comparable schedules.

Recommendation

The Factfinder has carefully considered the arguments of the parties and has examined the testimony and voluminous written evidence offered at the hearing. Based on the evidence the Factfinder recommends that the District implement an 11.6% increase on the salary schedule base. In formulating his recommendation the Factfinder has applied a set of standards universally recognized by factfinders and interest arbitrators. Those standards are:

1. The financial ability of the unit of government to meet its costs.
2. The interest and welfare of the public.
3. The average consumer prices for goods and services, commonly known as the cost of living.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in public employment and in private employment.
5. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

6. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining.

Ability to Pay

The Factfinder has examined the budget in great detail. He has also thoroughly analyzed the planning consideration documents prepared by the District's administrative team over the last 3 years. His examination has lead to an unavoidable conclusion: During the 1980-81 school year the District is operating on a deficit accounting basis; that is, during 1980-81, the District has budgeted to spend \$450,000 more than it will receive in revenues. The Factfinder has not been persuaded by the arguments of the Association that so called "windfall" receipts or underestimations by the District will remedy the deficit situation to any significant degree. The best evidence is that the projected deficit is a certainty.

The deficit situation is, of course, a result of the LLA and BEA. Historically, citizens of Pullman have readily passed local levies necessary to maintain an extraordinary level of education. With the passage of the LLA and BEA such levies are no longer possible. The only reason the District is presently able to maintain its established level of education is because it has carefully planned for a substantial budget surplus.

The fact that the surplus was planned and was not an accidental windfall, is of paramount importance. Of equal importance is the fact that the present level of expenditure virtually insures that no surplus will exist by the end of 1981-82 school year. Thus, it would be improper to apply the ability to pay standard solely to circumstances existing

during the 1980-81 school year. Rather, the standard must be considered in the light of the deficit situation of the District and the virtual certainty that it will be unable to maintain funds sufficient to support its present level of education in the very near future.

The Factfinder is also persuaded by the fact that the District not only planned its surplus, it took other planned steps. For example, administrative expenditures were trimmed and the Gladish Building was shutdown. In addition, the best estimate of the District is that in the near future further shutdowns may be necessary.

There is no doubt in the mind of the Factfinder that unless the District is able to obtain legislative relief through the amendment of the BEA and LLA, it will have to cutback on both staff and programs within the very near future. Indeed, the only evidence is that the Association has already taken the position during bargaining that its proposal should be adopted, even though the adoption of the proposal would necessitate immediate staff and program cuts.

The Factfinder believes that the District should not be compelled to make immediate cuts. Rather, cuts should be foreclosed until the District has had an opportunity to seek legislative relief. At the least, such cuts should be implemented on a gradual basis in order to reduce the impact both upon the students and the balance of the teaching staff.

If the District is willing to implement the Factfinder's recommendation, the Association will have to carefully consider the benefit it will have gained. Neither a 10.27% increase or an 11.6% increase can be implemented from state supplied funds. The only source is from the established surplus. Thus, unless the BEA and LLA are amended, any salary increases in the 1981-82 school year may have to be limited to 8.5%. Even worse, in order to implement a full 8.5% increase, certifi-

cated staff may have to be cut by 5 to 11 teachers. The Association's contention that the heavy surplus will continue in the future is not supported by the facts.

The Interest of the Public

The District has convinced the Factfinder that Pullman, Washington is a unique community with a unique school program. As noted earlier, 80% of the households within the city contain a full-time staff member of the University. Throughout the years the community has been ready, willing and able to pay for a very high level of education. 80% of Pullman High School graduates attend college, in comparison to 30% of those in surrounding districts. Students of the District annually test in the 80-90% level on a national comparison basis. An examination of the "K-12 Instructional Program Survey for the 1980-81" (Dt. Ex. 18G) demonstrates the superior level of education within the District. The District is rated in the top 3 in the state in level of educational opportunity.

In short, the community virtually demands a high level of education. An immediate cut of teachers and programs in order to satisfy the Association's proposal is unreasonable in the face of that demand. While a reduction may be inevitable in the near future, it should be made as gradual and painless as possible.

The Cost of Living

There is no doubt that the cost of living has increased dramatically in recent years. However, the Factfinder is not convinced that yearly wage increases equal to the Consumer Price Index established by the Bureau of Labor Statistics should be an automatic event.* First of all, an increase in the cost of living is only one standard to be considered by a factfinder. Second, the Consumer Price Index itself has not proven to be a reliable indicator of true increases in the cost of living for any

particular community. The Bureau of Labor Statistics itself does not hold that its index is an exact measurement of changes in the cost of living. For example, changes in the value of real estate may be relatively unimportant in a stable, college community.

Third, other costs must also be considered. For example, the Bureau of Labor Statistics considers increased costs of health care in formulating Index increases. Yet increased health care costs will be absorbed by the District at the rate of \$100 per teacher per month for the 1980-81 school year, a very substantial sum. Fourth, the Factfinder must predicate his recommendation not only upon the increase in the cost of living over the past year, but also upon (1) the manner in which the District has kept up with increases in the cost of living over the years; and (2) the projected cost of living increase for next year.

It is apparent that the District has maintained pace with the cost of living throughout the years. Its yearly increases, together with the development of the existing fringe benefit package, represents a substantial effort to maintain buying power for its teacher. During the past five years District teachers have enjoyed a 50% salary increase, in comparison to Washington State University faculty members, who have received only a 37% increase.

The projected increase in the Consumer Price Index for the next 12 months is 9 to 12%, depending upon the expert you choose to guide you. The Factfinder has examined projections contained in the Wall Street Journal, Barrons, Forbes and in other relevant periodicals. The best estimates are all that increases during the next year will be more moderate than in the past two years. Of course, the experts have been wrong in the past. However, reasonable people must make their decisions and reach their projections based upon advice from the best available economic experts.

When all of the above factors are considered, it seems clear that an 11.6% increase will be sufficient to allow Pullman teachers to maintain their buying power during the 1980-81 school year.

Comparisons

The average salary for an associate professor at Washington State University is \$22,096. An 11.6% increase for the District teachers would result in an average salary of almost \$23,000. Washington State University faculty members received only a 6% increase for the 1980-81 school year. As noted, during the past five years District teachers have received a 50% salary increase while Washington State University faculty have received only a 37% increase.

The Factfinder has carefully examined the salary comparison materials submitted by both the District and the Association. That examination has lead the Factfinder to the conclusion that the comparative materials set forth in District Exhibit 15 offer a better basis for comparison than materials submitted by the Association. District Exhibit 15 utilizes 5 hypothetical teachers having varying degrees of experience and educational levels. It then compares those teachers with teachers employed by: first class districts of the same size as the District (2,000 - 3,000), all Frontier League Schools and the Quad Cities Schools. The Factfinder agrees with the conclusion reached by the District; that is, teachers employed by the District fair very well in comparison to other comparable districts. Among the 18 first class districts of the same size as the District, Pullman is the most liberal in the basic placement of teachers on the salary schedule. Also, Pullman offers both a Masters Degree stipend and a PhD stipend.

Comparison with other Frontier League Schools shows that an 11.6% settlement would place District teachers at or near the top at all levels

of the study. The result is the same in a comparison with Quad Cities Schools.

Finally, the owner of the largest private employer of Pullman, Washington, Paloose Producers Company, testified that his employees received an average wage increase of 10% for 1980. No other evidence was offered regarding comparative increases of employees in the private sector.

Other Factors

In formulating his recommendations the Factfinder has also carefully considered the overall working conditions of District teachers. The relatively low student-teacher ratio cannot be ignored. On the other hand, it is almost certain that the ratio will worsen in the relatively near future, reducing the significance of this factor. Other factors were not offered into evidence.

In summary, based upon all of the above standards, the Factfinder recommends an increase of 11.6%.

Issue 2 - Benefits

The District has offered to increase its contribution to the insurance package \$100 per teacher per month. At the factfinding hearing the Association stated that it would accept that offer. Accordingly, the Factfinder finds that the offer of the District is reasonable and should be adopted.

Issue 3 - Agency Shop

The Association proposes that the following provisions be added to the agreement:

"ASSOCIATION DEDUCTIONS

Any certificated employee who is a member of the Association or who has applied for membership shall sign and deliver an authorization form to the Association. Such membership authorization shall continue in effect from year to year unless revoked in writing and sent to the Association and the District between August 1 and September 30 of each year. Dues deduction for certificated employees employed after the commencement of the school year shall be appropriately pro-rated, consistent with the Association's dues policy.

No member of the bargaining unit will be required to join the Association; however, those employees who are not Association members, but are members of the bargaining unit, will be required to pay a fair share representation fee to the Association. The amount of the fair share representation fee will be determined by the Association, and transmitted to the business office in writing. The fair share representation fee shall be an amount equal to the regular dues for the Association membership, but non-members shall be neither required nor allowed to make a political (PULSE or NEA-PAC) deduction. The fair share representation fee shall be regarded as fair compensation and reimbursement to the Association for fulfilling its legal obligation to represent all the members of the bargaining unit.

In the event that the fair share representation fee is regarded by an employee as a violation of their rights in that Association, such bonafide objections then will be resolved according to the provisions of RCW 41.59.100 or the Public Employment Relations Commission and any contribution to a charitable organization in lieu of a payment of the representation fee shall be governed by RCW 41.59.100."

The Association argues that since it has a responsibility for providing fair representation for all members of the bargaining unit, regardless of their membership in the Association, it should be entitled to an agency fee for such services. It is also noted that its proposed language is in accordance with state law.

The District argues that an agency shop is not needed for security since only 5 members of the bargaining unit are not members of the union. Second, it argues that the deduction is not a true fair-share proposal,

since it must be equal to dues of the Washington Education Association and the Pullman Education Association. Third, the District argues that an agency shop can limit the hiring of good teachers. Fourth, it argues that Pullman and surrounding Whitman County are not union oriented and that mandatory union dues are opposed by the public. Fifth, it argues that there is no evidence before the Factfinder regarding comparability; that is, the number of neighboring districts that have what the District calls "forced unionism." Sixth, it states that there is no evidence before the Factfinder as to the Association's inability to pay its bills if the 5 Pullman teachers are not forced to pay dues. Finally, it argues that a school board must agree to the creation of an agency shop and that it cannot be imposed upon it.

The Factfinder recommends that the parties adopt the language proposed by the Association. Washington law provides a Democratic voting procedure for the determination of a collective bargaining representative, if any. Once a collective bargaining representative has been selected, either through election or through mutual agreement, that representative is placed by law in an agency relationship to all members of the bargaining unit. The Association must bargain on behalf of all employees and must process grievances on behalf of all employees, whether or not they are members of the Association and whether or not they pay Association dues. It is only equitable to require an agency fee for agency service rendered.

The element of compulsion here is no different then that found in the majority rule compulsion in normal taxation or in that compulsion found when a school district imposes an assessment for support of the district. In a school district levy all persons living within the community are allowed to register their vote. If the require percentage votes

in favor of the levy, all members of the community must pay, not just those who voted in favor of the assessment. Just as all citizens in a community accept the benefits bestowed upon them, so do members of a contractual bargaining share the benefits negotiated for them by their bargaining representative.

Furthermore, the fair share provision proposed by the Association does not require any teacher to become a member of the Association. No person who chooses to remain a non-member of the Association will be subject to its bylaws or its constitution. No such person may be "forced to walk a picket line" or be made subject to any other sanction contained in the bylaws or constitution.

Also, the fair share provision proposal by the Association protects every employee whose religious beliefs would otherwise prohibit association with a labor organization. The language proposed by the Association even allows employees to deduct any monies that would be used for a political purpose, thus recognizing decisions of the federal courts in that regard.

Furthermore, the District cannot be heard to complain regarding the amount of the deduction, since the legislature has established by statute that the amount of the deduction shall be equal to the regular dues of the Association.

In making his recommendation, the Factfinder is well aware that some factfinders will not recommend for or against any agency shop. Such factfinders cite RCW 41.59.120 as their excuse for not making a recommendation. In the mind of this Factfinder such a position is a clear "cop-out" on the Factfinder's obligation to resolve all questions of reasonableness under the Washington status. The language contained in RCW 41.59.120 no more prohibits the Factfinder from making a recommenda-

tion in this area than it does in any other. All subjects of collective bargaining are matters for mutual agreement; i.e., the law specifically provides that collective bargaining does not require agreements or concessions on any subject. However, the law clearly requires a factfinder to make a recommendation in every area.

The District's argument that Pullman and surrounding Whitman County is not union oriented is clearly without merit. The fact is the Association exists. The District bargains with it and has recognized it as the exclusive collection bargaining representative of all teachers. The fact the District or some members of the community may not "believe in" unionism is therefore irrelevant. The brief file by the District attempts to ignore the fact that the issue is not "forced unionism" but the mere payment of a agency fee.

Also without merit is the District's contention that since the Association is strong, it does not "need" the agency fee of non-members. The relative strength of the Association is not the issue. Were membership in the Association low, the District would undoubtedly argue that non-members should not have to pay an agency fee to an association not voluntarily supported by a high percentage of employees.

The issue is not membership in the Association; the issue is whether teachers should be required to pay a fee for the services performed by the Association. If a teacher doesn't want to pay money to the Association, he can give it to a charity; but he shouldn't be a free rider. The language proposed by the Association is reasonable and in compliance with Washington law and the public policy stated therein. Therefore, it is recommended.

Issue 4 - Calendar

At the factfinding hearing the Association stated it would accept the District's proposal on Calendar. Accordingly, it is the recommendation of the Factfinder that the parties adopt that proposal.

Dated this 19th day of November 1980.



Thomas Levak, Factfinder

APPENDIX A

1979-80 CERTIFICATED SALARY SCHEDULE

PULLMAN PUBLIC SCHOOLS
Pullman, Washington

0 - 14 A		15 - 29 B		30 - 44 C		45 - 59 D		60+ E	
1.00	11,370	1.05	11,939	1.10	12,507	1.15	13,076	1.20	13,644
1.04	11,825	1.09	12,394	1.14	12,962	1.19	13,531	1.24	14,099
1.08	12,280	1.13	12,848	1.18	13,417	1.23	13,985	1.28	14,554
1.12	12,735	1.17	13,303	1.22	13,872	1.27	14,440	1.32	15,009
1.16	13,190	1.21	13,758	1.26	14,327	1.31	14,895	1.36	15,464
				1.31	14,895	1.36	15,464	1.41	16,032
				1.36	15,464	1.41	16,032	1.46	16,601
				1.41	16,032	1.46	16,601	1.51	17,169
				1.46	16,601	1.51	17,169	1.56	17,738
				1.51	17,169	1.56	17,738	1.61	18,306
								1.67	18,988
								1.73	19,671
								1.79	20,353
								1.85	21,035
								1.91	21,717

Additional Stipends as follows:

- Master's Degree 5% additional of base (\$568.50)
- Ed.D. or Ph.D. 10% additional of base (\$1,137)

An additional 5% of the base (\$568.50) will be granted after nineteen (19) years experience if no further educational increments are available on the schedule.