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| In the matter of Factfinding |) | |
| between |) | |
| Troutlake Education Association |) | PUBLIC EMPLOYMENT RELATIONS |
| "The Association" |) | COMMISSION CASE #1480-F-78-67 |
| and |) | |
| Troutlake School District R-400 |) | FINDINGS AND RECOMMENDATIONS: |
| "The District" |) | THOMAS F. LEVAK, FACTFINDER |
| |) | 7808 S. E. 28TH AVENUE |
| |) | PORTLAND, OREGON 97202 |
| |) | RECEIVED-OLYMPIA, WA |
| |) | JAN 2 1979 |

**PUBLIC EMPLOYMENT
RELATIONS COMMISSION**

DATE OF HEARING: November 27, 1978

PLACE OF HEARING: Troutlake School, Troutlake, Washington

APPEARING FOR THE ASSOCIATION: Douglas Suhm, UNISERV Representative;
Jerald F. Wood, Association Negotiator; Diane Isherwood, Trout-
lake teacher; Joan Sweetwood, Troutlake teacher.

APPEARING FOR THE DISTRICT: Taisto Pesola, Attorney at Law; Tony
Zevenbergen, Superintendent, Troutlake School District; Sylvia
B. Holly, Bookkeeper, Troutlake School District.

ISSUES: 1) Salary
2) Length of instructional day
3) Non-professional duties
4) Preparation time
5) Personal leave _____
6) Grievance procedure binding arbitration _____
7) Grievance procedure due process _____
8) Representation fee deductions _____

EXHIBITS: Exhibit 1 - A complete written contract proposal prepared
by the Association.

Exhibit 2 - A hand-written proposal of the District dated
September 27, 1978.

Exhibits 2a, 2b, 2c and 2d - Attachments to the District
proposal of September 27, 1978.

Exhibit 3 - A salary schedule in effect September 1, 1977
thru August 30, 1978.

Exhibit 4 - A written salary schedule proposed by the
Association on September 12, 1978.

Exhibit 5 - The budget of the District for the fiscal year 1978-79.

Exhibit 6 - Portions of the State basic education law.

Exhibit 7 - A computation of total program hour offerings.

Exhibit 8 - Bulletin #37-78 of the Superintendent of Public Instruction, dated August 22, 1978.

Exhibit 9 - A budget chart for the fiscal year 1978-79 prepared by the District.

This matter came for hearing on November 27, 1978. By mutual agreement of the parties, Mr. Taisto Pesola and Mr. Doug Suhm met with the factfinder at 2:00 p.m., to frame the issues and present their pre-hearing briefs. The issues were framed and the briefs received. At 7:00 p.m., the formal factfinding hearing was convened at the Troutlake School and was open to the public. Mr. Suhm presented the case for the Association and Mr. Pesola presented the case for the District. The hearing concluded at 12:30 a.m., November 28, 1978. The post-hearing brief of the Association was received on December 11, 1978, and the post-hearing written statement of the District was received on December 18, 1978.

The Troutlake School District encompasses an area of approximately eighty square miles and a population of approximately 600 persons. During the fiscal year 1977-78 the building housed 39 high school students, 78 grade school students and 11 teachers.

The District has never been party to a written collective bargaining agreement. Negotiations between the Association and the District commenced in November 1977. Following negotiations and mediation a 74-page document (Ex. 1) was tentatively agreed upon by the parties' bargaining representatives, subject to ratification by the Association membership within the bargaining unit and the District

School Board. The Board refused to ratify the tentative agreement on the grounds (1) that it did not have the financial ability to fund the proposed salaries; and, (2) that it was in disagreement with certain sections of the document. Further negotiations and another mediation session failed to result in agreement and the case is now before the Factfinder for recommendations.

Two preliminary matters should be noted: First, it is the contention of the Association that on all issues before the Factfinder the District has failed to bargain in good faith. It bases that allegation upon the rejection by the Board of the tentative written agreement (Jt. Ex. 1) and upon the District's action in resurrecting some of the disputed issues on the day of the factfinding hearing. On that contention, the Factfinder must hold that he has no jurisdiction under Washington statute to resolve allegations of unfair labor practices. Such allegations must be processed through and resolved by the Public Employment Relations Commission. However, while the Factfinder is prevented by statute from resolving unfair labor practice charges, he is authorized to determine the reasonableness of the parties' proposals. In determining reasonableness the Factfinder believes that the failure of the Board or the Superintendent to give no more than cursory attention to a proposal of the Association or to resurrect issues at a very late date without forewarning would constitute grounds for a finding that the District has not complied with the reasonableness requirement set forth by the statute.

Second, it was stipulated at the hearing that the tentative written agreement (Ex. 1) constitutes the total agreement of the parties for the fiscal year 1978-79 and is adopted by them in all respects, with the exception of the eight disputed subjects before

the Factfinder for resolution.

ISSUE 1 - Salary

ASSOCIATION PROPOSAL: The Association proposes three changes in the salary schedule. First, it proposes to increase the base salary to \$10,400. Second, it proposes to increase the number of experience years from ten to twelve. Third, it proposes an additional step of BA + 75 hours. The top pay for BA + 60 at twelve years at the highest index of 1.80 would become \$18,720. The top pay for BA + 75 at twelve years at the highest index of 1.85 would become \$19,240. The Association justifies its proposal through the following arguments:

- (1) The District can afford the increase.
- (2) The increase is competitive with that paid in comparable districts.
- (3) The increase would help the District attract and retain good teachers.
- (4) The modifications would operate as an incentive to teachers to continue their education.
- (5) The average teacher salary in the District is 36% below the state average.

DISTRICT PROPOSAL: The District proposes four changes in the salary schedule. First, it proposes to increase the base salary to \$10,573. Second, it proposes to increase the number of experience years to thirteen. Third, it proposes two additional steps of BA + 75 and BA + 90. Fourth, it proposes a revision of the Index Schedule. The top pay for BA + 75 at thirteen years would become \$17,657. The top pay for BA + 90 at thirteen years would become \$17,974.

The District justifies its proposal through the following arguments:

- (1) Ability to afford is not the issue; reasonableness is the issue and the District proposal is reasonable under the 1978-79 Budget.
- (2) The increase is competitive with comparable districts.
- (3) The proposal is identical to those implemented in Klickitat and Glenwood, which share a tri-district relationship with Troutlake.

FINDING AND RECOMMENDATION

The Factfinder concludes that the proposal of the District is the most reasonable under all the circumstances and, therefore, recommends its adoption. The following are his reasons: In the Spring of 1978 the Board instructed the Superintendent to compute a budget based upon an assumed salary increase of 10%. At that time a cash carry-over from 1977-78 in the amount of \$48,689 was believed to exist. The budget was prepared and an offer based on that budget totalling \$135,450 in salary was eventually made as the District's final offer. However, following the presentation of that final offer, certain errors were discovered in the budget. Among others, costs of the Host Reading Program had not been calculated; the District's share of the tri-district car had been omitted; and, the allocations by the District to the shop and the sanitary service costs had not been computed. In summary, the revised budget figures resulted in an actual cash deficit for the fiscal year 1978-79 of \$8,301.52.

In the face of the projected deficit the District was faced

with a second problem. As noted, Troutlake is a member of a tri-district, together with Klickitat and Glenwood. The tri-district members share similar geographical and sociological interests and also share a common superintendent, a common counselor, bookkeeper, math teacher, music teacher, home economics teacher and librarian. In addition, Uniserv acts as collective bargaining representative for the Associations in each of the three districts. The Associations representing the districts at Klickitat and Glenwood have entered into collective bargaining agreements with those districts. Those agreements provide for salary schedules in excess of the final offer made by the Troutlake District. The Superintendent found himself in the quandary of wanting to maintain uniform salary schedules throughout the tri-district but without the funds to do so under the existing budget. The Superintendent resolved the problem in favor of the teachers by deciding to make overhead cuts where necessary and offer an increase to the Association identical to the other two members of the tri-district. That offer - made shortly before the factfinding hearing - allocates an additional \$4,829 to teacher salaries.

The Factfinder believes that the District proposal is both expeditious and fair to its teachers. The District still faces the problems of state budget approval and possible future unfunded liability. Under the existing budget no provision exists for the necessary carry-over of \$14,000 to the next fiscal year. Certain costs are not even within the existing budget, e.g., the cost of an arbitrator under the proposed grievance procedure. The District's proposal is competitive with comparable districts, such as White Salmon and Lyle. The District faces substantial economic problems.

It is entitled to a stable salary structure within the tri-district community.

The Factfinder also finds that errors in the computation of the budget were not the fault of the Association. Therefore, the recommended salary structure should be implemented retroactive to September 1, 1978, and retroactive pay should be paid in a lump sum.

ISSUE 2 - Length of Instructional Day

ASSOCIATION PROPOSAL: The Association opposes the increase in the instructional day from 7 1/2 hours to 7 3/4 hours for the following reason: The additional time is harmful to grade school students.

DISTRICT PROPOSAL: The District proposes the increase in the instructional day for the following reason: The increase is necessary in order to comply with the basic educational law.

FINDINGS AND RECOMMENDATION

The teacher contact provisions of the basic education act directs that classroom contact average no less than 25 hours per week. Failure to meet the requirements of the act will result in a loss of funds to the District. The District has elected not to use any or part of the two-hundred minutes provided in WAC 180-16-205 (4b) for informal, unstructured, instruction-related contact with students. It should be noted that while there was some discussion of the minimum program hour offering provisions of the act at the hearing, those provisions are not at issue. The Factfinder takes note of the fact that until two years ago the entire grade school was on the longer 7 3/4-hour work day and further takes note of the testimony of Mr. Wood at the hearing that the Association would have agreed to the 7 3/4-hour day during negotiations, had the Superintendent placed in writing the

fact that the additional 1/4 hour was necessary to comply with the basic education act. The Factfinder concludes that it is reasonably necessary for the District to increase the instructional day to 7 3/4 hours to comply with the basic education act and therefore recommends the increase.

ISSUE 3 - Non-Professional Duties.

ASSOCIATION PROPOSAL: The Association proposes the inclusion of Article III, Section 7 of Exhibit 1, which provision would prohibit the District from requiring teachers to perform certain non-professional duties, except where there is an unavailability of personnel due to lack of funds or illness. Its argument is that teachers can best perform their professional duties in an effective manner when non-professional duties do not interfere with their responsibilities towards their students.

DISTRICT PROPOSAL: The District opposes the inclusion of the provision for the following reasons:

- (1) In a small district teachers must perform non-professional duties.
- (2) The low teacher/student ratio justifies the performance of non-professional work by teachers.

FINDINGS AND RECOMMENDATION

The Association did not provide any persuasive evidence to support its contention that performance of non-professional duties by teachers would interfere with their ability to teach. Historically, teachers employed by the District have performed some non-professional duties. The Factfinder believes that in a district the size of Troutlake, having such a low teacher/student ratio, it is not unreasonable to expect teachers to perform some non-professional duties. Therefore, it is

recommended that Article III, Section 7 not be included in the collective bargaining agreement.

ISSUE 4 - Preparation Time.

ASSOCIATION PROPOSAL: The Association proposes language set forth in Article III, Section 8(a) of Exhibit 1 that would provide for 45 continuous minutes of preparation time during each instructional school day. The Association argues that the continuous time is necessary to aid a teacher in planning the school day.

DISTRICT PROPOSAL: The District objects to a 45-minute continuous planning period on the grounds that the District does not have the personnel necessary to provide adequate student supervision, should such planning periods be allowed.

FINDINGS AND RECOMMENDATION

The Association did not provide any persuasive evidence to support a demand for 45-minute continuous preparation period. However, it certainly is necessary for teachers to have substantial periods of time allocated to them during the classroom day for planning. Many comparable school districts have solved the problem by allocating two planning periods during the day of no less than 20-minutes each. Such shorter but substantial periods of time allow for effective planning, together with fulfilling the District's need for effective student supervision. Therefore, the Factfinder recommends that a total of 45-minutes be allocated during each day for planning periods, divided into two periods of no less than 20-minutes each.

ISSUE 5 - Personal Leave

ASSOCIATION PROPOSAL: The Association proposes the inclusion of Article III, Section 14(f) of Exhibit 1 which provides for three days

personal leave per year with pay. The Association argues that the issue of personal leave was not raised by the District until the day of the factfinding hearing.

DISTRICT PROPOSAL: The District proposes the inclusion of personal leave for the reason that it cannot afford additional paid time-off.

FINDINGS AND RECOMMENDATION

The Factfinder finds that because of the budgetary problems faced by the District this fiscal year the provision for personal leave should not be included in the collective bargaining agreement. The Factfinder finds that the District has acted reasonably in rejecting that provision in light of those budgetary problems.

ISSUE 6 - Grievance Procedure Binding Arbitration.

ASSOCIATION PROPOSAL: The Association has proposed a grievance procedure concluding in binding arbitration which is set forth without article number in Exhibit 1. The Association argues that disputes or misunderstandings involving the collective bargaining agreement should be subject to a final and binding resolution by an impartial third party.

DISTRICT PROPOSAL: The District opposes binding arbitration for the following reasons:

- (1) The procedure frustrates attempts at resolving disputes within the community.
- (2) The procedure interjects a third party unfamiliar and unconcerned with the desires and needs of the District.
- (3) A contract provision should not be legislated by an arbitrator.

FINDINGS AND RECOMMENDATION

The Factfinder recommends the inclusion of the grievance procedure within the collective bargaining agreement for the following reasons: An examination of collective bargaining agreements executed throughout the United States shows that over 95% of all those agreements provide for binding arbitration of disputes involving the interpretation and application of contract provisions. Arbitration has been approved by decisions of the United States Supreme Court in cases involving both the private and public sectors as the most appropriate alternative to work stoppages or protracted courtroom litigation. The costs of arbitration are normally less than one-fifth the costs of resolving a dispute through courtroom litigation and most disputes are resolved in one-tenth the time. In addition, arbitrators selected to resolve disputes are normally experts in the area of collective bargaining contracts, as opposed to judges, whose expertise in the area of collective bargaining is either narrow or non-existent. The language proposed by the Association is fair and equitable in all respects. Also, it does not apply to the resolution of "rights" disputes resulting from impasses in collective bargaining. The offered grievance procedure relates only to the resolution of disputes arising under the existing agreement. For all of the above reasons the language offered by the Association is strongly recommended.

ISSUE 7 - Grievance Procedure Due Process.

ASSOCIATION PROPOSAL: The Association proposes the language set forth in Article III, Section 2 of Exhibit 1 which guarantees basic due process rights to all teachers.

DISTRICT PROPOSAL: The District objects to the inclusion of due process language on the grounds that the United States Constitution and state law adequately protect teachers.

FINDINGS AND RECOMMENDATIONS

The Factfinder recommends the inclusion of the due process language for the following reasons: Article III, Section 2 merely sets forth basic rights that are or should be afforded all employees under collective bargaining agreements. The principles of due process and progressive discipline are so ingrained within the common law of collective bargaining as established by labor arbitrators that the failure to include such provisions might even be considered an oversight. Even in the absence of such language, a public employer would be hard-pressed to justify a failure to provide the rights set forth in Article III, Section 2. The Board did not provide any persuasive evidence to support its contention that such generally accepted language should not be included in the collective bargaining agreement. Neither did it offer any explanation for resurrecting the issue at the time of factfinding. Therefore, the language is recommended.

ISSUE 8 - Representation Fee Deductions.

ASSOCIATION PROPOSAL: The Association proposes the inclusion of the language contained in Article II, Section 2 of Exhibit 1, which language provides in part for the deduction of a representation fee. The Association argues that it is fair and equitable for all teachers to pay their fair share of the costs of administering and negotiating the collective bargaining agreement.

DISTRICT PROPOSAL: The District opposes the concept of a representation fee for the following reasons:

- (1) The concept violates an individual's freedom of choice.

- (2) The representation fee is inconsistent with legislative intent.
- (3) The Association cannot demonstrate a need for fees from non-members.
- (4) Non-members do not enjoy a free ride.
- (5) The Association should justify the financial support of its constituents.

FINDINGS AND RECOMMENDATION

The Factfinder recommends the inclusion of the representation fee deduction language for the following reasons: State law provides a democratic voting procedure for determining a bargaining representative, if any. Once a bargaining representative has been selected, 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 members and must process grievances on behalf of all members, 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 services rendered. The element of compulsion here is no different from that found in the majority rule compulsion in normal taxation or in a school district imposing an assessment for support of the district. In a school district election all persons living within the community are allowed to register their vote. If a majority votes in favor of the assessment all individuals must pay, not just those who voted in favor of the assessment. The representation fee provision offered by the Association does not require an individual to become a member of the Association. Further, it protects their guaranteed freedom from association with causes they oppose by allowing them to deduct that portion of the fee allocable to political

contributions. The Factfinder is aware that some factfinders will not recommend an agency shop. 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 statute. The language contained in RCW 41.59.100 no more prohibits the factfinder from making a recommendation 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 does require a factfinder to make recommendation in every area. The representative fee deduction language offered by the Association is reasonable and in compliance with the law. Therefore, it is recommended.

Submitted this 29th day of December, 1978, by

Thomas F. Levak

Thomas F. Levak, Factfinder.