BEFORE THE FACT-FINDER

In the matter of the request of:	)	
	)	
KENNEWICK SCHOOL DISTRICT	)	CASE 10701-F-93-169
	)	
For fact-finding involving a bargaining unit of certificated employees represented by:	)	FINDINGS OF FACT AND RECOMMENDATIONS
	)	
KENNEWICK EDUCATION ASSOCIATION	)	
	)	

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared on behalf of the Kennewick School District.

Diane Schmidtke, Uniserv Field Representative, appeared on behalf of the Kennewick Education Association.

On October 4, 1993, the Kennewick School District notified the Public Employment Relations Commission that it had rejected the offer of settlement made by the Kennewick Education Association in mediation, and requested the Commission to initiate fact-finding proceedings pursuant RCW 41.59.120. On October 15, 1993, Rex L. Lacy, a member of the Commission's staff, was designated to serve as fact-finder in this matter. A hearing set by the fact-finder for November 12, 1993 was continued at the request of the parties. A hearing was held at Kennewick, Washington, on December 14, 1993, before the fact-finder. The parties made oral closing arguments at the hearing, in lieu of filing post-hearing briefs.

BACKGROUND

The Kennewick School District, an "employer" within the meaning of RCW 41.59.020(5), is located in Benton County, Washington. An elected school board is responsible for the overall operation of the district. The district provides educational opportunities to approximately 13,000 students, through two high schools, one

vocational skills center, four middle schools, and 15 elementary schools. Dr. Gary Fields is superintendent, Don Matheson is director of personnel, and Robert Schwerdtfeger is the district's labor relations consultant and negotiator.

The Kennewick Education Association, an "employee organization" within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative of all of the district's non-supervisory certificated employees. Uniserv Representative Diane Schmidtke serves as chief negotiator for the association.

The district and the association have been parties to a series of collective bargaining agreements, the latest of which is effective from September 1, 1992 to August 31, 1995. That contract provides for reopeners in the second and third years of the agreement. The parties thus reopened several provisions in May of 1993. When the parties were unable to reach agreement on the disputed issues, mediation was conducted by a member of the Commission's staff. Unable to reach agreement in the course of mediation, the district requested fact-finding pursuant to RCW 41.59.120, which provides:

> (1) **Either an employer or an exclusive bargaining representative may** declare that an impasse has been reached between them in collective bargaining and may **request the commission to appoint a mediator** for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the commission determines that its assistance is needed, not later than five days after the receipt of a request therefor, it shall appoint a mediator in accordance with rules and regulations for such appointment prescribed by the commission. The mediator shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator, without the consent of both parties, shall not make findings of fact or recommend terms of settlement. The services of the mediator, including, if any, per diem expenses, shall be provided by the commission without cost to the parties. ...
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> (2) **If the mediator is unable to effect settlement of the controversy within ten days** after his or her appointment, **either party**, by written notification to the other, **may request that their differences be submitted to fact-finding** with recommendations, except that the time

> for mediation may be extended by mutual agreement between the parties. Within five days after receipt of the aforesaid written request for fact-finding, the parties shall select a person to serve as fact-finder and obtain a commitment from that person to serve. If they are unable to agree upon a fact-finder or to obtain such a commitment within that time, **either party may request the commission to designate a fact-finder**. The commission, within five days after receipt of such request, shall designate a fact-finder in accordance with rules and regulations for such designation prescribed by the commission. The fact-finder so designated shall not be the same person who was appointed mediator pursuant to subsection (1) of this section without the consent of both parties.
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> The fact-finder, within five days after his appointment, shall meet with the parties or their representatives, or both, either jointly or separately, and make inquiries and investigations, hold hearings, and take such other steps as he may deem appropriate. For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. If the dispute is not settled within ten days after his appointment, **the fact-finder shall make findings of fact and recommend terms of settlement** within thirty days after his appointment, which recommendations shall be advisory only.

[Emphasis by **bold** supplied.]

Fact-finding proceedings are also regulated by the Commission's impasse resolution rules, which include:

> WAC 391-55-315 EDUCATIONAL EMPLOYEES--CONDUCT OF FACT FINDING PROCEEDINGS. Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-360. **The fact finder shall interpret and apply these rules insofar as they relate to the powers and duties of the fact finder**. Any party who proceeds with fact finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection thereto in writing, shall be deemed to have waived its right to object.
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> WAC 391-55-320 EDUCATIONAL EMPLOYEES--SUBMISSION OF PROPOSALS FOR FACT FINDING. At least seven days before the date of the hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact finding.

[Emphasis by **bold** supplied.]

Pursuant to WAC 391-55-345, the findings of fact and recommendations of the Fact-finder are based on a standard of "reasonability of the proposal ... in the context of the whole of the negotiations between the parties".

ISSUES

At the direction of the Fact-finder, both parties submitted their proposals by telefacsimile, prior to the fact-finding hearing. During the fact-finding hearing, the parties presented evidence supporting their respective positions on five issues:

1. Insurance,
2. Student behavior committee,
3. Additional responsibility,
4. Assignment and transfer, and
5. School calendar.

The parties provided the Fact-finder with tentative agreements involving issues that had been resolved, and indicated a desire to have those included in the final resolution of the dispute.

DISCUSSION

ISSUE ONE: INSURANCE

The district has traditionally provided health insurance benefits for bargaining unit employees and their dependents through a "pool" arrangement. The district's position in the current negotiations with regards to the insurance issue is:

> Insurance: $317.79 per FTE pooled. All employees will have $317.19 per mo/FTE. The $10.00 contribution to the Health Care Authority will be taken from the pool and the balance distributed as in the past.

The effect of the district's proposal will be to increase insurance costs for employees with multiple dependents, who will be required to pay greater premium costs because of the reduced contributions to the local pool. The district contends, however, that reducing the local insurance pool by $10.00 per FTE would allow the district

to comply with the intent of the Washington state Legislature when it enacted Chapter 386, Laws of 1993 (SHB 1784).[1] The district referred the fact-finder to a recent arbitration award, Oak Harbor School District (Axon, November 1, 1993), as support for its position on the insurance issue.[2] Additionally, the district points out that the other five bargaining units in the district have already agreed to this reduction from their insurance pool.[3]

The association's position on this issue is to continue the past practice on insurance benefits. During the 1992-1993 school year, the certificated employees' insurance pool received a monthly contribution of $317.79 per FTE, under the provisions set forth in Article III, Section 14 of the collective bargaining agreement. The association contends that the district can afford to pay both the $317.79 per FTE contribution to the local insurance pool and the $10 to the Health Care Authority, that it is not illegal for the district to pay the $10 contribution to the Health Care Authority, and that a different piece of legislation removed the restrictions on the amount of insurance benefits that a school district can provide for its employees.[4]

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[1] The employer did not provide a copy of the cited legislation. Its apparent purpose is to establish a state-wide pool of funds to provide health care benefits for retired employees of school districts.

[2] Interpreting an existing collective bargaining agreement between the parties to that case, Arbitrator Axon ruled that the $10 per FTE contribution for retired employees must be deducted from the $317.79 allocation for current employees.

[3] This does not mean that all of the district's employees are suffering the $10 per month reduction of their benefits. Unrefuted testimony at the fact-finding hearing indicates that administrators may not have been assessed the $10 per FTE reduction.

[4] The association made reference to Engrossed Second Substitute Senate Bill 5304, but did not provide a copy, a session law citation or an RCW citation.

During the course of the fact-finding hearing, the association acknowledged that it had offered during earlier negotiations to reduce the insurance pool for certificated employees by $10 per month per FTE, in exchange for the district agreeing to the association's proposal on additional responsibilities.[5]

FINDINGS OF FACT ON INSURANCE ISSUE

Regardless of the legality of insurance benefits payments of amounts in excess of the state allocation, and regardless of the district's ability to pay the $10 per FTE amount to the Health Care Authority, it is **reasonable** to reduce the insurance pool by $10 per month per FTE. The reduction was set up by the state Legislature; teacher bargaining units elsewhere in the state have made a similar sacrifice to fund benefits for their retired colleagues; other bargaining units within the Kennewick School District have already agreed to the reduction; and nothing indicates that the district is precluded from bringing its administrators in line with the same benefit level being offered to these employees.

FACT-FINDER'S RECOMMENDATION:

The collective bargaining agreement should be amended to reduce the district's monthly contribution to the insurance pool by $10 per FTE, commencing September 1, 1993, and the $10 per FTE amount shall be remitted to the Health Care Authority.

ISSUE TWO: STUDENT BEHAVIOR COMMITTEE

The parties' current contract contains no language on this subject, and such committees apparently do not exist at this time. The association opened this issue, and now proposes:

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[5] The estimated value of the insurance deduction is $80,000 per year, while the association's proposal on additional responsibility would require the district to increase its salary expenditures by about $120,000 per year.

> When the majority of unit members at a site determine that a student behavior committee is needed, the principal and a staff selected representative shall assist in the formation and efforts of a student behavior committee.

The association sees its role as an equal partner in the selection of the committee, and in the efforts of the student behavior committee to resolve matters brought to the committee.

The district categorizes this as the beginning of a movement towards "site-based decision making", and couched its proposal in slightly different terms:

> When the majority of unit members at a site determine that a student behavior committee is needed, the principal, assisted by a staff selected representative, shall form a student behavior committee.

The district is steeped in the philosophy that "the principal is in charge of their school", and seeks to move forward only very slowly and deliberately with "shared governance". By only allowing a representative selected by the teaching staff to "assist", the principal would have the final say on what was done.

The parties presented evidence indicating that they were "very close" to reaching resolution on this issue during their negotiations and mediation. Indeed, in a "best offer" dated August 19, 1993, the district proposed to include the association's language as a method to settle this issue.

FINDINGS OF FACT ON STUDENT BEHAVIOR COMMITTEE

The proposal advanced by the association provides a **reasonable** solution to this issue, for multiple reasons:

First, this issue, standing alone, certainly does not reach such heights of contention as to justify a breakdown of negotiations. The stated concerns of the parties are much

more related to the stormy seas of site-based decisionmaking and philosophy than with the substance of student behavior. The formation of these committees, and the cooperative efforts of principals and bargaining unit members to resolve student behavior problems at the individual building level, can serve the interests of taxpayers, patrons and students regardless of the "turf" interests of the participants. If such committees serve as a conduit to shared responsibility on issues of greater magnitude, that will be a bonus for everybody.

Second, the parties had reached agreement on this issue during the course of bargaining. The language is not so onerous as to cause any concern until the process has been tried and has failed. The public is not well-served by any revival or perpetuation of this issue.

FACT-FINDER'S RECOMMENDATION:

The collective bargaining agreement should be amended to provide that:

> **"When the majority of unit members at a site determine that a student behavior committee is needed, the principal and a staff-selected representative shall assist in the formation and efforts of a student behavior committee."**

ISSUE THREE: ADDITIONAL RESPONSIBILITIES

The "Additional Responsibilities" schedule of the parties' collective bargaining agreement provides compensation for a variety of athletic coaching, extra-curricular and specialty assignments.

The district's proposals have changed somewhat during mediation and fact-finding. On August 19, 1993, the district's "best" offer on this issue was:

> Additional Responsibilities - Add the amount of $70,000.00 to the current schedule in exchange for the District's proposal on Assignment and Transfer.

The district's proposal at the fact-finding hearing was to adopt either of two options for the salary matrix,[6] as follows:

> **Option #1** - KEA matrix (August 26, 1993, 11:30 am), up to 15 years experience, with $70,000 of additional money, ... Written verification from previous district will be required to validate out of district experience. Cost of the schedule conversion movement on the new schedule will not exceed $70,000. For the purpose of placement upon the matrix, experience will count within individual sport or activity only. Base driver to be renegotiated annually.
>
> or
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> **Option #2** - Eliminate the use of "percentage of base" to calculate stipends. Increase all 1992-1993 stipends by 10% and list these amounts expressed as dollars for each category or duty. Continue the current schedule as modified.

The district asserts that either method will require at least a 10% increase of expenditures to fund the amended additional responsibilities salary matrix.

On August 26, 1993, the association's position on this issue called for adding five lanes to the matrix, to provide credit for experience up to 30 years. Additionally, the association proposed to add $120,000 "new money" to the cost of the additional responsibilities salary schedule in 1993-94, together with $30,000 in new

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[6] The employer's proposals make reference to certain modifications related to high school and middle school counselors. The fact-finder understands that those changes are not in dispute, and thus does not make findings or recommendations on them here.

money in 1994-95. Finally, the association proposed to work with the district's business manager to adjust the application of the funds on the proposed matrix. On December 14, 1993, the association reiterated its proposal to add the lanes and $120,000 to the salary matrix for the 1993-94, but did not address further increases in 1994-95.

Both the parties agree that the current additional responsibilities salary matrix needs a major adjustment, to bring employees performing the enumerated duties into a closer relationship with their counterparts in school districts of comparable size.[7] The method of achieving the goal of improving the salaries set forth in the current matrix is the issue in this case.

FINDINGS OF FACT ON ADDITIONAL RESPONSIBILITIES ISSUE

A substantial improvement of the compensation for "additional responsibilities" is **reasonable** in this situation. For the reasons indicated, however, the Fact-finder is unable to adopt the entire proposal of either party.

The evidence presented to the fact-finder reveals that the Kennewick School District has the largest student enrollment in its conference, yet provides the lowest compensation in the conference for the tasks encompassed in the "additional responsibilities" salary matrix.[8] The evidence indicates that the top step of the "additional responsibilities" matrix at Kennewick is $3,642, which is the lowest in the Big Nine Conference. The other "tri-cities" school districts are at

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[7] The focus of both parties is on the conference in which the district's schools compete in athletics and other scholastic events.

[8] Unrefuted evidence presented at the hearing indicates that the Kennewick School District, which competes in athletics at the highest "AAA" level, pays its coaches less than some school districts competing at the lower "AA" level.

the top of the conference, with Pasco paying a maximum of $5,510 and Richland paying a top step of $5,581. Because of their close proximity, one would not expect a 53% ($1,939) difference among these three districts.

The justification for adding more "experience" lanes to the matrix is less clear. It is true that both Richland and Pasco give credit for experience up to 30 years, but critical evidence is lacking in the record before the Fact-finder. The parties have not provided (and may not even possess) the demographic information which would be necessary to place the current employees on an expanded matrix. The Fact-finder does not have any idea of how many coaches and other employees on the matrix have 20, 25, or 30 years of experience, and has no basis for calculating the cost of an expanded matrix, although it seems logical that the numbers of employees to be benefitted by additional experience lanes would decrease as the experience requirement increases. The Fact-finder is left with the task of fashioning a recommendation that will accomplish the greatest good with the resources available.

The district's December 14, 1993 offer to add $70,000 to the cost of the current salary schedule is inadequate, for multiple reasons:

First, the district would recognize a maximum of 15 years of experience at a time when its neighbors and competitors are recognizing up to twice that much experience. The 15-year level is an improvement from the 6-year maximum currently in effect, but the district provided no justification to cut off experience credit at the 15-year level.

Second, the district would eliminate the percentage-of-base formula currently used to calculate stipends, and would convert the current percentage-driven incremental increases into dollar amounts, at a time when its neighbors and competitors are compensating their employees according to percentage-

of-base systems. The district provided no justification to change a system that appears to be an area-wide standard.

Third, the district continues to condition either of its proposed alternatives on the association's acceptance of the district's proposal on assignment and transfer, which is an altogether separate issue which should rise or fall on its own merits. Even if the parties were at "impasse" on assignment and transfer, an improvement of the coaching stipends would be a **reasonable** outcome of this process.

Justification is also lacking for the association's proposal to add both experience lanes and $120,000 to the cost of the "additional responsibilities" matrix cost during the 1993-1994 school year.

First, the matrix would be expanded from 6 experience lanes to 11 under the association's proposal, with employees receiving additional incremental movement for 10, 15, 20, 25, and 30 years of experience. The Richland and Pasco contracts are cited as justification for this proposal, but the association does not explain away its acceptance of less favorable schedules in the past.

Second, the $120,000 increase requested by the association would, according to the district, equate to nearly a 20% cost increase in one year. That has to be regarded as a large increase in a year when salaries and benefits are generally "frozen" for school district and state employees.

Third, the association continues to condition its acceptance of the district's insurance proposal, an altogether separate issue which should rise or fall on its own merits, on the acceptance of the association's proposal on this issue. Even if the parties were at "impasse" on insurance, an improvement of the coaching stipends would be a **reasonable** outcome of this process.

It is **reasonable** to move towards comparable compensation for the "additional responsibility" tasks over the two years remaining in the parties' current collective bargaining agreement. The amount of that effort should be increased by a modest amount from that offered by the employer, and should be spread initially over the existing compensation matrix. Once the existing matrix has been brought up to comparability, any remaining funds should be used to add "experience" lanes at progressively higher levels. An additional 5% in "new money" should be added in the third year of the parties' current contract, and the system should be immune from further adjustment by contract reopener for 1994-95.

FACT-FINDER'S RECOMMENDATION:

The collective bargaining provision for "additional responsibilities" should be revised to increase expenditures by a total of $80,000 in 1993-94, plus a 5% increase of total expenditures in 1994-95, as follows:

1. **Increase compensation levels on the existing matrix to the average of the compensation for comparable tasks under the Richland and Pasco contracts.**
2. **Utilize funds (if any) remaining after Step 1 to create an experience lane at the 10-year level.**
3. **Utilize funds (if any) remaining after Step 2 to create an experience lane at the 15-year level.**
4. **Utilize funds (if any) remaining after Step 3 to create an experience lane at the 20-year level.**
5. **Utilize funds (if any) remaining after Step 4 to create an experience lane at the 25-year level.**
6. **Utilize funds (if any) remaining after Step 5 to create an experience lane at the 30-year level.**
7. **This provision of the contract should be exempt from the "reopener" for 1994-95, in order to give the recommended system a chance to operate.**

ISSUE FOUR: ASSIGNMENT AND TRANSFER

This issue has a long and contentious history. The parties' first contractual agreement on assignment and transfer was negotiated in the late 1970's or early 1980's. That language prevailed through the 1991-92 school year. The employees in this bargaining unit went on strike in 1992, with assignment and transfer among the issues at impasse in those negotiations. The parties' current contract thus incorporates substantial recent changes on this subject.[9] Less than a year later, however, and before the newly-negotiated language could even be tested for defects by actual use, the district reopened the provision.

In its "best offer" advanced on August 19, 1993, the district presented the association with the following language regarding assignment and transfer:

> 3. Assignment and Transfer: (See page 19)
> B-3
>
> Delete sentence three (After the end...).
>
> Add "If additional openings are created by a transfer to an open position, such opening shall be filled by considering outside and inside candidates on an equal basis".

The association rejected the district's August 19, 1993 "best offer", and it made a counter-proposal on August 26, 1993.

The district's position on this issue at the fact-finding hearing was as follows:

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[9] The parties testified that the current process involves posting of vacancies, application for the vacancy by interested employees, interview of applicants, and notification of acceptance of a proffered position. All of that process leads to filling the vacant position the following school year.

Assignments and Transfers New Article III, Section 9, B3.
Replace current text with; "Current employees who have applied for a transfer to a posted position will be screened and evaluated by a site based committee comprised of the following: The site principal or designee, the site KEA building representative, and teachers as selected by the site.

The committee will compare the posting and the written requests of the indistrict applicants, and will have the right to conduct personal interviews if the majority of the committee so chooses. Each member of the committee will have one vote, and applicants for indistrict transfers will be approved or denied by a simple majority vote of the members present. The chair of the committee will be selected by the committee members.

Serving on this site based screening committee shall not interfere with an individual's teaching duties. Rules for the committee, if needed, will be established by the committee. The District reserves the right to exclude twenty (20) positions to be used at District Discretion to address District hiring needs.

Article III, Section 9, B4.
Replace with the following:

"After the site based screening/selection committee has made their decision, the committee chair shall notify indistrict applicants of the committee decision."

The association professed surprise at the district's proposal at the fact-finding hearing, after it had resisted the concept of "site based decision making" during the negotiations. The association reiterated its position that the assignment/transfer issue should be resolved by continuing the language of the current contract, and it even suggested that the employer's "site-based" program was "premature".

FINDINGS OF FACT ON ASSIGNMENT AND TRANSFER

The Fact-finder concludes that some elements of the employer's proposals cannot be recommended in their present form:

1. The bargaining history, and particularly the recent revision of the assignment/transfer provisions in the context of a strike, weigh heavily against the employer. A system which gives a preference to existing employees (i.e., a "seniority-based" system) has been in effect for 10 years or more, and was given new life just a year ago. It appears that the district dislikes the current contract provision because it prevents the district from unilaterally filling vacant positions for reasons the district deems to be important. That was clearly the import of the "twenty (20) positions to be used at District Discretion to address District hiring needs" provision in the district's proposal at the fact-finding hearing. Although less visible, that was presumably also the import of putting inside and outside candidates on an equal footing in the employer's earlier proposal. The district's position is directly in opposition to a system which gives a preference to existing employees, and is **not reasonable** absent demonstrated need for such an exception.

2. The Fact-finder can readily recognize that the length of an assignment/transfer process could potentially be a serious problem. The current language may fix that problem, but was never tried out before the district reopened this subject for the second year of the contract. The evidence does not support a conclusion that it would be **reasonable** to throw out the untested new language without a fair trial.

3. Your Fact-finder is intrigued by the employer's proposal to apply "site based decision making" on an issue of the magnitude of importance of assignment/transfer, although several questions arise regarding the plausibility of such a program. The first question is whether these parties are capable of divesting themselves of past prejudices regarding this issue. The second question is whether these parties will be able to abandon their historical roles in addressing the expressed desires of employees to transfer from one position to another. The third question is whether it is possible for

these parties to complete the task of drafting language that allows a site-based program to operate, considering the limited time remaining in the current school year. The fourth question is how to handle any problems that arise should these parties fail to devise an effective program to be used for the 1994-95 school year. Finally, the Fact-finder questions whether the issue of site-based decisionmaking should develop as an "inch worm" process, slowly and deliberately after much study, much talk, and probably some gnashing of teeth, or as a sweeping "do it now" reform.

The answers to the first four questions lie with the parties themselves. If they are unable to change direction, or are unable to work out acceptable contract language, then it is **reasonable** to keep the existing contract in effect for 1994-95 as the "default", without any changes whatsoever.

The parties have both indicated that they are desirous of moving toward site-based decisionmaking, and such a system could be **reasonable**. Site-based decisionmaking has been endorsed by the state Legislature; both parties are aware that school districts throughout the state of Washington (including districts in the Yakima valley) are commencing the use of site-based processes; these parties have discussed the matter in negotiations; and your Fact-finder has recommended that they agree to form site-based committees to deal with student behavior problems. Nothing in the evidence suggests that an "inch worm" approach is appropriate here, or that exclusion of some positions from the site-based process is justified. If the staffs at the various schools are to work as teams, rather than as collections of individuals, putting the "site-based" process in place for assignment/transfer decisions may well be a vital step in reaching that goal.

THE FACT-FINDER'S RECOMMENDATION:

The recommendation on the assignment/transfer issue is that one of the following two alternatives be adopted:

1. The parties' collective bargaining agreement could be amended to provide for a pure site-based process, as follows:

   a. Assignments and Transfers, New Article III, Section 9, B3. Replace current text with:

      "Current employees who have applied for a transfer to a posted position will be screened and evaluated by a site-based committee comprised of the following: The site principal or designee, the site KEA building representative, and teachers as selected by the staff at the site. Each member of the committee will have one vote on committee actions. The chair of the committee will be selected by the committee members. Serving on this site based screening committee shall not interfere with an individual's teaching duties. Rules for the committee, if needed, will be established by the committee.

      The committee will compare the posting and the written requests of the indistrict applicants, and will have the right to conduct personal interviews if the majority of the committee so chooses. Applicants for in-district transfers will be approved or denied by a simple majority vote of the members present.

   b. Article III, Section 9, B4. Replace current text with the following:

      "After the site based screening/selection committee has made their decision, the committee chair shall notify indistrict applicants of the committee decision."

   c. If the site-based system is to be implemented for the 1994-95 school year, the following time lines should be met:

      By February 1, 1994: The parties shall notify one another of the principals' designees and the bar-

gaining unit employees who will serve on the site-based committees.

By May 1, 1994: The district will notify the site-based committees of the number of vacancies known to exist or anticipated for that site for 1994-95.

By May 15, 1994: The district will post all vacancies for 1994-95 in all of the district's schools and facilities.

By June 1, 1994: The site-based committee at each site where vacancies exist will screen and interview (if that procedure is chosen by vote of the committee) any indistrict employees seeking to transfer to a vacant position at that site.

By June 15, 1994: The site-based committee at each site where vacancies exist will submit the names of successful candidates to the superintendent of schools. After that date, the district shall have the right to select applicants from outside the district to fill any remaining vacancies.

2. **In the absence of agreement on (and full implementation of) the site-based system, as described in paragraph 1 of this recommendation, the assignment/transfer provisions of the parties' 1992-95 collective bargaining agreement should be continued in effect without change.**

ISSUE FIVE: CALENDAR

The parties' 1992-95 contract contained a "calendar" for 1993-94, but anticipated that the parties would negotiate the work year for 1994-95. During their negotiations, the parties agreed to negotiate the 1994-1995 calendar by November 1, 1993. Although they did not submit a copy in evidence, the Fact-finder understands the situation to be that the parties have, in fact, agreed upon a calendar for 1994-95, and that they only remain in doubt as to the procedures and timing for future negotiations on the calendar.

At the fact-finding hearing in December of 1993, the district's position on the calendar was:

> The school calendar for subsequent years shall be settled by November 1, each year.

The district categorizes its proposal as an "evergreen" settlement to the calendar issue, asserting that resolution of the school calendar each year by November 1 for the succeeding year would allow employees, students, and parents to plan their activities more appropriately.

At the fact-finding hearing, the association indicated a preference to negotiate the calendar at the time the contract is opened (i.e., without the commitment to negotiate a year in advance).

FINDINGS OF FACT ON THE CALENDAR ISSUE

It is possible to develop a "perpetual" formula from which the school calendar for any future year can be projected. Both of these parties would apparently prefer to retain some flexibility concerning the calendar, however. The parties' agreement on a November 1, 1993 target date for resolving the 1994-95 calendar became moot after the parties reached impasse and fact-finding proceedings were commenced, but it is **reasonable** for the district and association to continue the process they commenced in the 1992-1995 agreement. Regardless of the year, a practice of negotiating the school calendar at least one year in advance will allow the parties, students, parents, and the community at-large to plan around the school calendar. The concept is sound, and it should be continued.

THE FACT-FINDER RECOMMENDS: The parties shall resolve the calendar for 1995-96 by November 1, 1994.

TENTATIVE AGREEMENTS

At the outset of the hearing, the parties stipulated that they had reached tentative agreement on three issues: Length of workday, site-based decisionmaking, and mentor teacher. They agreed that those provisions should be included in their current collective bargaining agreement, and asked for the Fact-finder to include those tentative agreements in the fact-finding recommendations. Your Fact-finder agrees with the parties' request. It is so recommended.

RESPONSIBILITIES OF PARTIES

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

> **RCW 41.59.120 RESOLVING IMPASSES IN COLLECTIVE BARGAINING--MEDIATION--FACT-FINDING WITH RECOMMENDATIONS--OTHER.**
> ...
> (3): Such [fact-finder's] recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact-finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact-finder.
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> WAC 391-55-350 EDUCATIONAL EMPLOYEES -- RESPONSIBILITY OF PARTIES AFTER FACT-FINDING. Not more than seven days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact-finder. If the recommendations of

the fact-finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may request mediation pursuant to chapter 41.58 RCW and, upon the concurrence of the other party, the executive director shall assign a mediator.

ISSUED at Olympia, Washington, this 13th day of January, 1993.

REX L. LACY, Fact-finder