

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of fact finding of a dispute  
between:

GRANDVIEW EDUCATION  
ASSOCIATION

and

GRANDVIEW SCHOOL DISTRICT

CASE 127817-F-16

FACT FINDER'S REPORT  
AND RECOMMENDATIONS

*James A. Gasper*, Attorney at Law, Washington Education Association, for  
Grandview Education Association.

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School District.

On January 7, 2016, the Grandview School District (employer) requested that the Public Employment Relations Commission assign a fact finder, pursuant to WAC 391-55-300, to recommend terms of settlement with the Grandview Education Association (union) regarding the use of the Ekahau security system while employees are in district buildings. On January 25, 2016, the Commission designated Stephen W. Irvin to serve as the fact finder. In accordance with WAC 391-55-320, the parties submitted written proposals on the disputed issue to the fact finder on February 12, 2016. The parties participated in a hearing on February 19, 2016, and filed post-hearing briefs on February 22, 2016, to complete the record.

**BACKGROUND**

The Grandview School District has more than 500 staff members and 3,600 students in six schools (two high schools, one middle school, and three elementary schools). The union is the exclusive bargaining representative for a bargaining unit of approximately 200 of the employer's certificated personnel. Kevin Chase is the superintendent of the district, which is party to a collective bargaining agreement with the union that has been in effect since September 1, 2013, and expires on August 31, 2016.

In 2013, the employer used a grant from the Washington State Legislature to purchase the Ekahau security system, which features individual badges that give employees the ability to call for assistance during an emergency via the district's wireless network, and receive messages from others with access to the system. The badges also allow those with the appropriate password to track where employees are in the building through the system's dashboard.

During the 2013-2014 school year, the employer began using the Ekahau security system on a trial basis at Grandview Middle School. Employees voluntarily used the Ekahau badges during the trial period. The employer decided to keep the system at the middle school in the 2014-2015 school year, and wanted to install it at the district's other five schools.

On January 12, 2015, Chase attached information on the Ekahau system to an e-mail to all employees:

We are rolling out a new safety measure to help keep students and staff safe. It is the Ekahau badge system. I have attached a rational [sic] and description of the system to this email. We have been using this system at the MS for over a year and have found it to be very helpful in responding to incidents quickly and effectively. Thank you for taking the time to read the attached information.

The final paragraph of attachment stated:

It is a district expectation that all staff will have the badge on their person at all times while on the job. It is a foundational part of our emergency response plan. Student and staff safety count on being able to communicate a threat, communicate important information to staff during an emergency, locate staff in case of an emergency so incident command can make good decisions based on peoples location. You are also the student's life line to information and so we can locate classes full of students.

The union responded to Chase's e-mail with a demand to bargain.<sup>1</sup> The parties attempted to reach agreement on the issue during three bilateral negotiation sessions before requesting mediation from the Commission on April 10, 2015. During mediation, the parties exchanged proposals for a

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<sup>1</sup> The employer has not required employees at the middle school to use the Ekahau system since the union's demand to bargain.

memorandum of agreement (MOA) on September 18, 2015. On December 4, 2015, the union made a new MOA proposal that the employer did not accept before requesting fact finding.

### APPLICABLE STANDARDS

Following bilateral negotiations and mediation, parties covered by Chapter 41.59 RCW may request that their differences be submitted to fact finding. The fact finder shall recommend terms of settlement within 30 days after his or her appointment. The fact finder's recommendations are advisory only. RCW 41.59.120(2). The fact finder's recommendations 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. RCW 41.59.120(3). Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties. WAC 391-55-345.

### PARTIES' PROPOSALS

The employer submitted its last MOA proposal on September 18, 2015, for the fact finder's consideration:

1. The District has decided to install the Ekahau security system in each school building for the discrete purpose of security and safety of staff and students. The District intends to purchase individual USB chargers for each bargaining unit employee badge prior to the implementation of this Agreement.
2. Ekahau badges are the property of the District. Employees will report lost, damaged, or non-functioning badges to their building principal as soon as is practicable. Repair and/or replacement of badges is solely the responsibility of the District. A badge will be assigned to each employee in the bargaining unit. The District will reasonably accommodate an employee in the use of the badge upon written recommendation of his/her physician in the case of a bona fide medical condition.
3. As soon as practicable after arriving in the building at the start of the work day, employees shall endeavor to pick up their assigned Ekahau badge from the central charging station. If the employee is unable or forgets to pick up the

badge prior to the beginning of the student day, the employee will notify the office in his/her school as soon as practicable and make arrangements to pick up the badge.

4. During the contracted work day when employees are in their classroom/work station or supervising students, the employee will have the Ekahau badge in close enough physical proximity to be able to sound an alert if needed, respond to an alert that is sounded, and read any message that is sent in a timely manner.
5. Employees may choose to carry the Ekahau badge with them or leave it in their classroom/work station during their contractual preparation time, lunch periods, and during the thirty minutes before and after the student day (when not in their classroom/work station). Employees who leave their badge in their classroom/work station during these times will plug the badge into the USB charger in their classroom/worksite. Employees will not be liable for unauthorized use of badges during these times, provided, however, that employees will make every effort to safeguard and secure the badges against unauthorized use when not in their possession.
6. Employees will return the badges to the central charging station when leaving the building at the end of their contracted day.
7. The District understands that the use of the Ekahau system requires employees to change their behavior that may take time for habituation. Accordingly, the District agrees that disciplinary action for an employee's failure to use the Ekahau system as directed will include a progression of at least two verbal warnings and two written reprimands before more severe disciplinary action is imposed. This restriction on disciplinary action does not apply in cases of a deliberate failure or refusal to comply.
8. Except for enforcement of the requirements reflected in sections 1-7, above, information from the Ekahau system will not be used as evidence on the basis of which to impose discipline. No information from the Ekahau system will be used to support an evaluation judgment.
9. The parties have mutually developed a fact sheet (Refer to Attachment A) informing employees about the capabilities and usage of the Ekahau system which will be provided to employees annually. The Association and District shall jointly encourage and support the usage of the badges by all bargaining unit employees. Training will be provided by the District for newly employed staff within the first days of their employment, and will be available for other staff upon request.
10. Access to the Ekahau Dashboard (Refer to Attachment A) shall be limited to the District representatives and emergency responders with a legitimate need to know.

11. Through the process of negotiation of this Agreement, the Association became aware of building "safety teams" designated by the District, which include members of the bargaining unit. This Agreement is not intended to limit the Association's ability to negotiate the terms and conditions of such assignment of bargaining unit members.
12. Storage of Ekahau records in District electronic systems is limited to thirty days after the date of the recording. All records beyond this time frame shall be erased from District electronic systems and shall not be archived, subject to the requirements of the Public Records Act (when a request has been received). If a public records request for Ekahau records is received by the District, all affected employees shall be immediately informed who made the request. The employee(s) shall be provided a reasonable time to pursue an injunction to prevent the release of Ekahau records. The requested records shall be released only to the individual who made the request. The District shall hold harmless and defend each employee from claims for damages caused or alleged to have been caused in whole, or in part, by that employee while performing his or her duties, as provided for in Article III, Section 7 Staff Protection.
13. Any matter arising under this Agreement that creates a dispute between the parties is subject to the grievance procedure established within the current version of the Grandview Education Association and Grandview School District Collective Bargaining Agreement.

The union submitted a new proposal for the fact finder's consideration:

1. The District may test the Ekahau system in buildings staffed by GEA members during SY 2015-16;
2. In no event will the District's use of the system have any negative consequence or impact upon members of the GEA;
3. Members of the GEA may voluntarily acquire from the District and use the Ekahau badges during the test period; said use shall be limited solely to their work hours on District property;
4. The District is fully and completely responsible for all equipment and its maintenance; no member shall have any personal liability for the ordinary use of the equipment;
5. Any and all information acquired by the District during this period of test usage shall be provided to the GEA upon request; and
6. Each party acknowledges that the implementation of the MOA is dependent upon mutual ratification by their respective principals. The parties further agree that any intent to implement and continued use of the Ekahau system by the

District will be a subject of further bargaining during the contract reopener scheduled for summer 2016.

## DISCUSSION

Reasonability in collective bargaining is directly tied to the parties' interests, and the manner in which those interests are met via a proposed settlement. In this case, the employer's interest is to provide a safe environment for its students and employees through use of the Ekahau security system. The union's interest is to ensure that its members' rights are not infringed upon by the employer's new technology.

In September 2013, the parties successfully negotiated a memorandum of understanding regarding the use of security cameras in classrooms. The parties agreed that the cameras were installed "for the discrete purpose of security and safety of staff and students and for theft deterrence." The parties also agreed that information recorded by the security cameras could not be used as evidence or the basis for employee discipline.

The parties started down a similar path when they began to bargain the use of the Ekahau system, but the nature of the system and its potential uses made it more difficult for the parties to reach an agreement. Washington Education Association representative Janet Beck, who became part of the negotiations in April 2015, credibly testified that the union's concerns increased as more information about the system became available. Chase credibly testified that the employer's proposals were designed to alleviate the union's concerns along the way.

It is apparent that the parties would be best served by continuing the collective bargaining process on the issue. It is also apparent that there is an information gap that needs to be closed before the parties can reach a mutually acceptable agreement. With that in mind, the fact finder recommends a compromise approach that provides information about the system that will aid in the parties' future attempts to reach a solution on the issue.

- For the remainder of the 2015-2016 school year, the employer will use the Ekahau security system in each school building on a trial basis for the discrete purpose of security and safety of its employees and students.
- Each party will designate an equal number of representatives for a labor-management committee that will meet by the end of June 2016 to discuss the Ekahau system and issues that arise during the trial period.
- The parties will continue to negotiate future implementation of the Ekahau system as part of negotiations for a successor contract.
- During the trial period, all employees will have the Ekahau badge in close enough physical proximity to be able to sound an alert if needed, respond to an alert that is sounded, and read any message that is sent in a timely manner during the contracted work day when employees are in their classroom/work station or supervising students.
- The employer will reasonably accommodate an employee in the use of the badge upon written recommendation of his/her physician in the case of a bona fide medical condition.
- Employees may choose to carry the Ekahau badge with them or leave it in a secured area in their classroom/work station during their contractual preparation time, lunch periods, and during the thirty minutes before and after the student day.
- Employees will report lost, damaged, or non-functioning badges to their building principal as soon as is practicable. Repair and/or replacement of badges is solely the responsibility of the employer.
- During the trial period, information from the Ekahau system will not be used as evidence or as a basis for employee discipline. No information from the Ekahau system will be used to support an evaluation judgment.

ISSUED at Olympia, Washington, this 24th day of February, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, Fact Finder





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### RECORD OF SERVICE - ISSUED 02/24/2016

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