BEFORE THE FACT-FINDER

In the matter of the request of:	)	
	)	
FEDERAL WAY SCHOOL DISTRICT	)	CASE 10816-F-93-171
	)	
For fact-finding involving a bargaining unit of certificated employees represented by:	)	FINDINGS OF FACT AND RECOMMENDATIONS
	)	
FEDERAL WAY EDUCATION ASSOCIATION	)	
	)	

Curran, Kleweno, and Johnson, by Joseph McKamey, Attorney at Law, appeared on behalf of the Federal Way School District.

Edward Brillault, Puget Sound Uniserv Council Director, appeared on behalf of the Federal Way Education Association.

On December 6, 1993, the Federal Way School District notified the Public Employment Relations Commission that, notwithstanding the assistance of a mediator, four issues regarding terms and conditions of employment remained unresolved in collective bargaining between the employer and the Federal Way Education Association. The employer requested the Commission to conduct fact-finding proceedings pursuant to Chapter 41.59 RCW. On December 13, 1993, Commission staff member Frederick J. Rosenberry was designated as Fact-finder. A hearing was held at Federal Way, Washington, on January 26, 1994. The parties made oral arguments at the hearing, in lieu of filing post-hearing briefs.

BACKGROUND

The Federal Way School District, located in King County, is an employer within the meaning of RCW 41.59.020(5). The employer is governed by an elected board of directors. Its day-to-day operation is administered by Superintendent Richard Harris. The

employer provides educational opportunities for approximately 18,700 students enrolled in four high schools, six junior high schools and twenty-two elementary schools.[1]

The Federal Way Education Association, an employee organization within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative of approximately 1,100 non-supervisory, certificated employees of the Federal Way School District. The association is affiliated with the Washington Education Association.

The employer is a party to collective bargaining relationships with labor organizations representing several other bargaining units within the employer's workforce. Included among those are:

Food service and transportation employees, represented by Public School Employees of Washington;

Custodial and maintenance employees represented by International Union of Operating Engineers, Local 286;

Principals and assistant principals, represented by an independent organization;

Office-clerical employees, represented by the Classified Public Employees Association; and

Professional and technical employees, who are also represented by the Classified Public Employees Association.

The Parties' Current Negotiations -

The association and the employer are parties to a collective bargaining agreement with a term from September 1, 1991 to August 31, 1994. Their collective bargaining agreement contains a provision allowing for negotiations on limited issues during the term of that contract. It states in relevant part:

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[1] Statistical data supplemented by information contained in the 1993/1994 Washington Education Directory, published by Barbara Krohn and Associates.

> For the 1993-1994 school year, each party may present two (2) items for bargaining. Additional items that are mutually acceptable can be bargained. Bargaining on openers shall commence no later than April 1, 1993.

The parties invoked the interim opener, and met for collective bargaining on several occasions in 1993. In the course of their negotiations they addressed and resolved a number of issues.

During the advanced stages of bargaining, the employer presented certain "package" proposals addressing the outstanding issues on an "all or nothing" basis. Some of the proposed packages granted concessions to the association in exchange for the association reciprocating with concessions that the employer sought. The employer's package proposals were not acceptable to the association; likewise, the association's proposals were not acceptable to the employer. The bargaining thus deadlocked because of intractable differences regarding four issues, as follows:

1. The employer's rate of contribution toward the cost of employees health insurance.
2. Standards associated with the implementation of a professional growth component of the evaluation process.
3. Scope and standards to be met by the members of the bargaining unit to validate claims for optional day compensation.
4. The amount of stipend to be paid to elementary music instructors.

The association acknowledges that the foregoing items are at issue. It maintains, however, that the matter of the employer's rate of contribution for employee health insurance was resolved to the associations's satisfaction early in the collective bargaining, and claimed surprise that the issue resurfaced in fact-finding. The employer acknowledges that the matter of medical contributions,

standing by itself, may have appeared resolved. It asserts, however, that the offer relied upon by the association was an integral part of an "all or nothing" package proposal that was not acceptable to the association.

The Employer's Financial Condition -

The parties raise the financial condition of the employer as being relevant to this proceeding. The employer maintains that it has adequate funds to operate, but that it has a "tight fiscal picture". It does not claim "inability to pay" as a reason for rejection of the association's proposals, but rather responds that it has no surplus, that all of its economic resources are earmarked for specific purposes, and that it should not be required to divert funds designated for other programs to pay the cost of every change proposed by the association.

The employer explains that one of its bargaining objectives has been to obtain an agreement with the association that is revenue neutral. Because of that goal, at various times and in different package forms, the employer proposed some trades such as a one day reduction in the number of optional days available to the members of the bargaining unit to offset the cost of agreeing to the association's economic proposals. The employer reports that it is close to accomplishing its longstanding desire to accumulate a carry-over fund balance of approximately 3% of its annual budget. This amount extrapolates to approximately $3,000,000.

The association maintains that the total cost of its proposals for 1993-1994 is approximately $250,000 more than is proposed by the employer, an amount that it argues can be reasonably absorbed by the employer. In support of its argument, the association points to statistical data that the employer is not employing certificated staff commensurate with its budgeted amount, and that it has a pattern of concluding each fiscal year with surplus funds. The

association asserts that the employer has a proclivity to understate its beginning and ending operating balances, and that the accumulating carry-over funds should be available for bargaining.

DISCUSSION

The Standards to be Applied

The Educational Employment Relations Act was enacted in 1975. Its purpose, set forth in RCW 41.59.010, is to:

> ... prescribe certain rights and obligations of the educational employees of the school districts of the state of Washington, and to establish procedures governing the relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education.

The same statute defines collective bargaining at RCW 41.59.020(2), as follows:

> The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: PROVIDED, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. **The obligation to bargain does not compel either party to agree to a proposal or to make a concession.**

[Emphasis by **bold** supplied.]

In the event that the parties are unable to bring their collective bargaining to a conclusion, RCW 41.59.120 provides for referral of impasse issues to a fact-finder who is empowered to "make findings of fact and recommend terms of settlement". Process rules for fact-finding are contained in Chapter 391-55 WAC.

The function and scope of authority of the fact-finder is described in WAC 391-55-345, which states in relevant part:

> ... fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties. ...

The term "reasonable" is defined as:

> Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Black's Law Dictionary, Sixth Edition, West Publishing Company (1990).

Collective bargaining contemplates the exercise of flexible authority on the part of the parties' representatives, with the mutual goal of reaching an agreement regarding employment-related matters, by making necessary fiscal and operational decisions that may require good faith trades, compromises and acquiescence. Terms and conditions of employment do not remain static. Employees' and employers' goals and interests are constantly changing, making collective bargaining an evolutionary process.

The negotiations that preceded this fact-finding were conducted in the context of a interim opener within a three-year contract. Mid-term negotiations provide the parties an opportunity to "tune-up" or "adjust" their agreement to conform to contemporary standards. However, it is not reasonable to expect that there will be an entire "rebuild" of the agreement. The parties will have an opportunity to bargain for a complete overhaul of their agreement, if that is what they want, when negotiations for a successor agreement take place in the near future.

Issue 1: INSURANCE

The relevant provision of the parties' current collective bargaining agreement states:

> Section 10 - Insurance Contribution
>
> A. Insurance Contribution Agreement
>
> The Board agrees to provide a maximum monthly contribution of Two Hundred Eighty Nine Dollars and 95/100 ($289.95) per month per full time certificated employee who elects to participate in any district approved health plan. Part-time certificated employees shall receive a prorated amount thereof.
>
> In the event the Legislature authorizes and funds insurance contributions beyond the maximum monthly contribution level, such level shall be increased accordingly.

The foregoing provision, which was introduced into the parties' contract in 1991, indexes the employer's contribution to the amount allocated by the state Legislature.[2]

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[2] For accounting purposes, the Legislature uses full-time equivalents (FTE's) for disbursement of funds. At the district level the FTE funds are contributed toward the cost of medical insurance for eligible part-time employees on a pro-rated basis.

For the 1992-1993 school year the Legislature increased the allocation to $317.79 per month for full-time certificated employees. In conformity with the parties' 1991-1994 agreement, the employer funded employee insurance benefits for 1992-1993 at $317.79 per month.

The funding level provided by the Legislature remained unchanged for the 1993-1994 school year, but Chapter 386, Laws of 1993,[3] requires certain payments to subsidize the cost of health insurance benefits for retired school employees. Chapter 386, Section 1, states, in relevant part:

> It is the Legislature's intent to increase access to health insurance for retired and disabled school employees and also to improve equity between state employees and school employees by providing for the reduction of health insurance premiums charged to retired school employees through a subsidy charged against health insurance allocations for active employees.

That subsidy is collected beginning with the 1993-1994 school year, at the rate of $10.00 per month for each current full-time equivalent employee.

Employer's Proposal -

The employer maintains that the new law requires that it charge the subsidy for retired employees against the allocation made by the Legislature to fund health insurance for current employees. The employer points out that the Legislature has allocated $317.79 per month per FTE for the purchase of employee insurance for the 1993-1994 school year, and maintains that the law requires it to deduct the $10.00 subsidy from the $317.79 allocation, thus reducing the

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[3] Substitute House Bill 1784 was approved by the Legislature on May 15, 1993.

employer's insurance contribution for active employees to $307.79 per month per FTE. Accordingly, it proposes:

> Its rate of contribution for active employees medical insurance be set at $307.79 per month retroactive to October 1, 1993.

The employer points out that it has diverted $10.00 per month per FTE from other revenue sources during the current bargaining, to maintain a $317.79 monthly contribution rate on behalf of its active employees, and that no active employee has suffered any loss thus far as a result of the employer's obligation to pay the subsidy for retired employees' medical insurance. The employer argues, however, that it is not responsible for the reduction in the amount of funds available for active employees' insurance, and that it is required to "carve out" the cost of the retirees' medical supplement from the funds heretofore earmarked for employee medical insurance.

The employer does not desire to divert funds designated for other programs toward the cost of active employees' medical insurance, to offset the $10.00 deduction imposed by the Legislature. In support of its position, the employer looks to a recent fact-finding report addressing this issue at the Seattle School District,[4] and to a recently-issued arbitration award involving the Oak Harbor School District.[5]

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[4] Fact-finder Katrina A. Boedecker issued her Findings of Fact and Recommendations on August 27, 1993, in Public Employment Relations Commission case 10578-F-93-166. It was concluded there that it was not reasonable to require the employer to absorb the subsidy from other revenue sources.

[5] Arbitrator Gary L. Axon issued his opinion and award on November 29, 1993. The arbitrator ruled that the contract permitted the employer to reduce the medical insurance contribution by an amount commensurate with the amount of subsidy.

The Association's Proposal -

The association is opposed to a reduction in the amount that the employer contributes towards insurance benefits for active employees, because such a change would increase the out-of-pocket expense to many bargaining unit members. The association proposes that:

> ... the rate of contribution toward active employees medical insurance be set at $327.79 per month retroactive to September 1, 1993.

The association's proposal contemplates that the employer would then deduct the $10.00 per month amount earmarked for retired employees' medical insurance from the $327.79 amount, so that the employer's contribution for active employees would continue at $317.79 per month. The association's proposal thus calls for the employer to supplement the state health insurance allocation to the extent of $10.00 per month per FTE.

The association contends that there is no legal prohibition against the employer supplementing the revenue that it receives from the state for active employees' medical insurance, and that the employer has discretionary authority to earmark the necessary amount of funds for this purpose. The association calculates the amount at issue as approximately $132,000 for the 1993-1994 school year. The association also points out that the employer has supplemented the Legislature's insurance allocation to maintain a $317.79 rate of contribution for some segments of its active workforce, including custodial/maintenance, office-clerical, professional/technical, and administrative employees.

The association further maintains that the employer would be faced with an "administrative nightmare" if it were to attempt to retroactively reduce the rate of contribution towards insurance for its active employees.

Findings of Fact on INSURANCE -

There is no dispute that, for the period from October 1, 1993 to September 30, 1994, the employer is required to remit $10.00 per month per FTE to the state Health Care Authority, for each of its current employees.

The parties' collective bargaining agreement is silent regarding the matter of the employer paying a supplement toward the cost of retired employees' medical insurance. There is no evidence that would suggest that the parties contemplated, at the time their current agreement was being negotiated, that the Legislature would impose a reduction of the amount allocated to school districts for the insurance benefits of active employees.

The employer acknowledges that it will continue to pay a $10.00 monthly supplement towards the cost of insurance, to maintain a $317.79 rate of contribution for certain segments of its employees. It maintains, however, that it agreed to do so in past bargaining with organizations representing those employees, and has no alternative but to honor its existing contracts. It maintains, however, that it has no such commitment with the association.

The Oak Harbor School District case cited by the employer is distinguished from the case at hand, because it arose as a grievance regarding the interpretation and application of the terms of an existing collective bargaining agreement. That case did not arise in the context of collective bargaining regarding a new contract or a contract opener.

This controversial issue has been addressed in school districts throughout the state. The outcome has been mixed. Some employers have reduced the rate of contribution for active employees; other employer's have paid the retired employees' subsidy and maintained the rate of contribution for active employees at $317.79 per month

per FTE. Among school districts contiguous to the Federal Way School District, several employers have used other funds to maintain the $317.79 per month rate of contribution for active employees, including the Auburn, Bethel, Fife, Highline, Kent, Puyallup, Renton, and Sumner school districts. Notwithstanding a fact-finding recommendation to the contrary, the same is also true in the Seattle School District.[6]

Evaluation of this issue on "average" effect is not entirely valid. The evidence suggests that average salary and benefits for a member of the certificated instructional staff at Federal Way is approximately $47,073 per year, so that the $120 per year amount proposed by the association extrapolates to approximately a one fourth of one percent (.25%) increase in labor cost to the employer. There was reference at the hearing, however, to a "pooling" of insurance funds. Such arrangements redistribute the insurance allocations left unused by some employees to the benefit of other employees in the bargaining unit.[7] The record contains no statistical data setting forth the distribution of "pooled" funds, but the Fact-finder feels confident in making an inference that employees who insure only themselves would not be adversely affected by the

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[6] The fact-finding report for the Seattle School District, which concluded that it was reasonable for the employer to pass the effects of the Health Care Authority subsidy on to the active members of the bargaining unit, was the result of an ex parte fact-finding hearing. That employer and employee organization subsequently agreed in bilateral collective bargaining to earmark funds from other revenue sources to supplement the cost of active employees' insurance, so that no active employees suffered any adverse effect from the legislative action.

[7] The existence and legitimacy of such pooling arrangements are acknowledged by RCW 28A.400.280. The amount allocated by the state is sufficient to purchase full family medical and dental coverage for state employees. In the Fact-finder's experience the state allocation is more than needed by school district employees who insure no dependents.

changes imposed by the Legislature. Rather, it is logical that the financial impact of the subsidy for retired employees' insurance would be borne by active employees who are insuring dependents. Thus, only a segment of the bargaining unit would bear the majority, if not all, of the burden of the payments to the state Health Care Authority, because of the reduction of the amount of funds that would go into the insurance "pool" at the local level. The employer has not addressed this uneven effect on its employees.

There is some merit to the "administrative nightmare" argument advanced by the association. During the current bargaining, the employer has continued to contribute $317.79 per month toward the cost of insurance for its active employees, and it is inferred that those with dependents will have enjoyed the benefit of that amount going into the local insurance "pool". Were it to prevail on this issue, the employer would have to make a retroactive adjustment to its contributions going into the local insurance pool for the remainder of the current school year. Because more than half of the year has already gone by, those who would already bear a disproportionate burden would have to pay at twice or more the rate for the balance of the current year or drop their health care coverage at a time when health care reform is a critical issue at both the state and national levels.

The Fact-finder finds the increase proposed by the association to be nominal, particularly in a year when salaries are generally frozen for school district employees. The Fact-Finder finds the association's proposal to be reasonable in the context of the whole of the negotiations between the parties.

FACT-FINDER'S RECOMMENDATION -

The parties' collective bargaining agreement should be amended to reflect that the employer will continue to pay $317.79 per month per full-time-equivalent employee toward the cost of

active employees' participation in the insurance programs set forth in Section 10.D. of the agreement. The employer should absorb the cost of the subsidy for retired employees for the 1993-1994 school year. It is the intent of this recommendation that the practice currently in effect, which evidence establishes as an employer supplement toward the cost of active employees medical insurance be continued.

Issue 2: PROFESSIONAL GROWTH

The parties' collective bargaining agreement contains a provision calling for the employer to establish a staff development advisory committee. The evident purpose is to improve the instructional program. The contract is silent, however, regarding the implementation of instructional staff "professional growth".

The committee was created in light of administrative rules regarding instructional staff "Professional Development Programs" contained in Chapter 392-192 WAC, adopted by the state Superintendent of Public Instruction. These parties formed their joint committee in 1992, to design a professional development program and draft a comprehensive policy statement on "professional growth".

On December 15, 1992, the committee submitted a draft report to the employer and association. It was described as:

> VISION STATEMENT
> [A] continuous process encouraging and supporting personal and professional growth. An effective education for every student can best be achieved through the education, empowerment, collaboration, and leadership of all staff.

The financing of professional growth activities, which is one facet of the program, is of particular interest to the association. As

to that subject, the committee's draft report states, in relevant part:

> RESOURCES
> If the certificated employee is on the professional growth program, **available resources** can be allocated for the following possible purposes:
>
> | | |
> |---|---|
> | Travel | Substitutes |
> | Credits | Collegial study groups |
> | Collegial visiting | Support Groups |
> | Action Research | Networking |
>
> [Emphasis by **bold** supplied.]

The implementation of the study committee report then became a subject of collective bargaining between the parties in 1993.

The Association's Proposal -

The association supports the professional growth committee report, but proposes that the employer allocate additional funding to the program, in order to make more money available to teachers to help pay for the cost of participation. Specifically, the association would alter an agreement between the parties regarding purchases of instructional materials and supplies. That agreement is described in a letter dated November 25, 1991, from the employer to the association. The letter states:

> As part of the settlement of the new collective bargaining agreement, the Federal Way School District has committed to structuring the budget to assure that for the school year 1991-1992 each building will be allocated, on a per instructional employee basis, $50 for the purchase of instructional material or supplies consistent with the established curriculum of the District. Starting with the second year of the contract and contingent upon the passage of the District's maintenance and operations levies, each full time employee (pro-rated for less than full time) shall be eligible for reimbursement from the District

> for purchases of educational materials and supplies related to their instructional program. The maximum amount of reimbursement for 1992-93 and 1993-94 school years shall be $150.
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> | | | |
> |---|---|---|
> | 1991-92 | $50 | (Building budget) |
> | 1992-93 | $150 | (Maximum reimbursement) |
> | 1993-94 | $150 | (Maximum reimbursement) |

The association proposes that there be a diffusion of use of the funds heretofore reserved for materials, that the $150 maximum amount presently allowed be increased to $250, and that the qualifying uses of those funds be expanded to include fees required of teachers to attend workshops. The association estimates the increased cost to the employer to implement the foregoing to be approximately $110,000 per year.

The association sees the result of its proposal as being that the $250 could be used to offset "some, but certainly not all" of the costs of the professional growth plan. The association argues that professional growth plans can be expensive for individual employees, and that the contract should specify how much "professional growth" money is available for employees. The association contends that, if the employer is committed to the plan, it has a responsibility to help defray employee costs for participation. Further, it argues that the employer has the financial capacity to support the plan, and that an employer subsidy creates additional incentive for members of the bargaining unit to take part in professional growth activities.

<u>The Employer's Proposal</u> -

The employer also supports adoption of the committee's draft report. It maintains, however, that it has budgeted resources available to employees who desire to participate in a professional growth program, and that it is opposed to allocating new sources of revenue to the program.

The employer cites that portion of the committee report which uses the term "available resources" as the fiscal standard for staff to exercise plan provisions. The employer points out that employees are free to request financial assistance from building budgets, use optional work days, use grant money, or use other resources to help defray the costs associated with professional growth. Further, the employer observes that the committee, which was made up of equal numbers of employer and association representatives, did not recommend an increase in "materials and supplies" as a funding source for professional growth options. The employer indicates it would be willing to divert funds to this program only if the association is willing to grant changes elsewhere in the collective bargaining agreement that would offset the increased cost.

Findings of Fact on PROFESSIONAL GROWTH -
Adoption of the association's proposal would result in a significant change in the scope and purpose of the employer's commitment to provide funds for the purchase of instructional materials and supplies. The association has not demonstrated a linkage between professional grown and instructional materials, from either direction.

Both parties have indicated their acceptance of the professional growth program recommended by the joint committee. The employer acknowledges the importance of the program, but persuasively defends that limited resources preclude it from making the association-requested improvements at this time. The program will be subject to reformation and implementation in the future, in the context of negotiations of a successor agreement.

FACT-FINDER'S RECOMMENDATION -
The Fact-finder recommends that the professional growth committee report be adopted, as drafted. The employer should allow members of the bargaining unit access to "existing

resources" in a fair and even-handed manner, but there should be no designation of a specific amount of funds for "professional growth" at this time. The Fact-finder further recommends that the substance of the employer's November 25, 1991, letter regarding materials and supplies should be continued, without change, for the 1993-1994 school year.

Issue 3: OPTIONAL DAYS

The parties' 1991-1994 collective bargaining agreement contained provisions for employees to earn additional compensation for "optional" work above and beyond the standard work year. Article III, Section 15, paragraphs 2, 4, and 5, state:

> 2. For school years 1991-1992, there shall be two (2) prior approved optional days at per diem for inservice opportunities. **For school years 1992-93 and 1993-94 there shall be three (3) such days.**
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> Optional days shall be those approved by the District consistent with District needs and priorities. Days recommended by the Staff Development Committee and/or by individual staff members will be considered for prior approval. The District shall develop an approval procedure.
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> ...
>
> 4. **Employees may use up to one (1) day per school year to perform needed services.** Such services are normally to be on-site, District related activities supportive of the employees instructional program within the classroom or the support personnel's certificated responsibilities. Examples of such service activities would include but not be limited to:
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> Preparing and infusing of instructional materials
>
> Participation in instructional related District committees
>
> Professional consultation outside of normal District scheduled conferences

Staffing meetings

Grade level/Department meetings

Curriculum development

Classroom preparation

The employee must receive prior approval from the immediate supervisor for performance of such services and must be performed on non-contractual work time and reported in minimum blocks of one (1) hour units. The employee shall be compensated for prior approved work so performed at the employee's daily hourly per diem rate of pay for each hour so worked up to the maximum allotment.

5. For school year 1991-92 and 1992-93 there will be 3 district directed professional days. **For school [year] 1993-94 there will be 4 District directed professional days**. These days shall be compensated at per diem.

[Emphasis by **bold** supplied.]

With the additional day provided in subsection 5, the members of the bargaining unit have up to a total of eight optional days available to them during the 1993-1994 school year, with three different standards for qualification.

Association Proposal -

The association proposes that paragraphs 2 and 5 of the existing agreement be deleted, and that the relevant portion of paragraph 4 be amended as follows:

> Employees may use up to [~~one (1) day~~] eight (8) days per school year to perform needed services. ...

In the parties' parlance, the optional day available under paragraph 4 is referred to as the "stacking day". The precise derivation of that term was not made known to the Fact-finder.

In support of its proposal that it be allowed to "stack" all eight optional days, the association maintains that the current standard has resulted in significant disparate treatment between buildings and between individuals. The association criticizes the present system, maintaining that optional days are not consistently used in the most beneficial manner, that it is questionable whether employer-directed days are always educationally significant, and that employer-direction is seen by many employees as being "heavy handed" and not responsive to the needs of the staff. According to the association, "stacking" days have the greatest educational impact, and that allowing bargaining unit members greater freedom in determining the use of their time enhances the employer's commitment to educational reform.

Employer's Proposal -

The employer maintains there is no justification for it to relinquish additional control over the types of activities that qualify for optional day compensation. The employer proposes continuation of existing contract language, and that there be no change in the number of available optional days or standards for their use.

In support of its argument the employer maintains that the association is calling for an unreasonable erosion of the management's right to direct the activities of the staff for the advancement of employer goals, and that the association has failed to articulate a legitimate reason why the employer should be divested of control. The employer estimates the cost for full staff utilization of an optional day to be approximately $252,000. The employer maintains that it relinquished some control over staff time with the adoption of the current agreement. It points out that the parties 1991-1994 contract reduced the basic contract work year for bargaining unit employees from 181 days to 180 days, and that it increased the number of optional days up to a maximum of eight (with an estimated value of more than $2,000,000) in the

current year.[8] The employer desires to maintain control over qualifying activities sufficient to ensure that the employer receives what it believes to be maximum value for the investment.

At one point in the negotiations, the employer was willing to acquiesce to some association proposals on other issues, if the association would have been willing to accept a reduction in the number of optional days from eight to seven. This was not acceptable to the association, and the employer has since withdrawn that proposal.

Findings of Fact on OPTIONAL DAYS -

At issue here is the purpose of and accountability for the "optional" days of work made available to the members of the bargaining unit. The current contract provisions identify the purposes of optional days as improvement of employees' professional skills, communication, and other purposes incidental to their teaching duties. The collective bargaining agreement already provides for staff member input into activities that may be appropriate subjects for optional days. The same contract calls for an increased number of optional days during its term. The idea of relinquishing some control has been opened, with the introduction of the "stack" day. It is unrealistic to expect rapid change on such a core issue in the middle of the parties' three-year agreement.

The employer desires to retain the degree of control that it now has, at least in the context of an interim opener on an arrangement that is thoroughly detailed in the existing contract. The employer bears ultimate responsibility for the success or failure of its

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[8] The Fact-finder was not provided with evidence that discloses the number of optional days that were available under the immediately preceding collective bargaining agreement.

educational program. Its discomfort with the idea of relinquishing further control at this time is reasonable.

The employer has not been unyielding on this issue. During the term of the current agreement, the number of optional days made available to the staff has increased, from six during the first year of the agreement, to seven during the second year, and then to eight days during the 1993-1994 school year.

FACT-FINDER'S RECOMMENDATION:

The Fact-finder recommends that the existing contract provisions on optional days be retained without change. It is important that there be equitable administration of optional days, and the employer should take steps to ensure that its policy is uniformly applied in a fair, even-handed and non-discriminatory manner throughout its workforce.

Issue 4: ELEMENTARY MUSIC STIPEND

The Federal Way School District employs approximately 44 music instructors at the elementary school level. Appendix A of the current collective bargaining agreement calls for a stipend at 2% of the annual base rate. The rates are:

ELEMENTARY SCHOOL ACTIVITIES	$ AMOUNT	% OF BASE
Instrumental Music	$429	0.02
Vocal Music	$429	0.02[9]

The parties recognize that music instructors at the elementary school level are faced with somewhat unique circumstances, that they may work in more than one location, and that they devote

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[9] The figure "0.02" under the "% of BASE" column in Appendix A is understood by the parties to mean 2% of the 1992-1993-1994 base rate. (2% of $21,425 = $428.50)

considerable time beyond the normal instruction day to promote the employer's music programs.

The stipend for music instructors at the elementary level was the subject of a joint association/employer study. The committee found that vocal music instructors contributed an average of 471 additional hours per year, and that instrumental music instructors contributed an average of 322 additional hours per year, beyond the norm, toward the employer's music programs. Much of that time was spent preparing for and conducting music performances outside of the normal instructional day. There were exceptions in both cases.

By letter dated April 30, 1992, the six-member study committee submitted a report regarding its findings to the employer. The report stated in relevant part:

> After reviewing the information, the teachers have proposed that the stipend for a full time elementary music teacher be 7% of the base salary ($1456.07). This percentage is less than the secondary stipends that are 10-15% of base.
>
> ...
> We believe that the amount of stipend proposed is reasonable and hope that the Board will support our decision.

The result of that process was that both parties now agree that the stipend presently paid to these music instructors warrants some improvement.

The Employer's Proposal -

The employer is willing to either change the manner in which it provides additional compensation for elementary music teachers or increase the amount of their stipend. It proposes either of two alternatives to the association.

Alternative One: The employer proposes a five-step stipend matrix that is indexed to the number of instructional time increments, called sections, taught by the instructor.[10] The matrix generates a maximum stipend of 5% of the 1993-1994 annual base salary for those staff members who instruct 41 or more sections.[11] The employer's proposed matrix would appear as follows:

1-10 sections	$ 214
11-20 sections	$ 428
21-30 sections	$ 729
31-40 sections	$ 1,017
41+ sections	$ 1,070

The employer views a full-time teacher as someone who teaches for approximately the equivalent of 45 sections per week. Therefore, it proposes 100% of the stipend at that level. The stipend levels proposed by the employer do not progress evenly up the scale, and could even reduce the compensation for a teacher who has only a small number of music classes. The cost of the employer's proposal was estimated to be approximately $34,867.

Alternative Two: The employer proposes shifting the decision regarding the amount of elementary music stipend to a building-based decisionmaking body made up of members of the bargaining unit and representatives of the employer, as follows:

> The 1992-93 actual expenditure adjusted by new schools for 1993-94 will be redistributed to the buildings as building budget item to compensate staff for non-school time student performances as identified in the activities calendar for the school. The current stipend would be eliminated.

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[10] Sections normally are 30 minute time increments. There are exceptions, however.

[11] The employer views this as the upper limit of normal teacher capacity.

In making this alternative proposal, the employer recognizes the validity of arguments that there are other teachers who make a significant contribution to the educational process beyond that contemplated by a basic contract. In recognition of such contributions, the employer's alternative proposal would allow site-based decisions regarding how stipends should be distributed at the building level.

The Association Proposal -

The association proposes a five-step stipend matrix that is indexed to the number of sections taught by the instructor. Its matrix would generate a maximum stipend of 8.75% of the 1993-1994 annual base salary for those staff members who instruct 41 or more sections. The association's proposed matrix would appear as:

1-10 sections	25%	$ 375
11-20 sections	50%	$ 750
21-30 sections	75%	$ 1,125
31-40 sections	100%	$ 1,500
41+ sections	125%	$ 1,875

In order to avoid having staff members who are currently instructing less than 11 sections suffer a reduction of their stipend, the association proposes that the affected individuals be "grandfathered" until the application of the revised matrix would generate an increased amount of stipend for them. The cost of the association's proposal was estimated to be $54,699.

The association argues that it was originally contemplated that an increased music instruction stipend would be implemented retroactive to September 1, 1991, and that failure to do so has resulted in considerable savings to the employer. The association notes that the joint committee unanimously recommended a 7% stipend. In support of its request for an even higher stipend, the association argues that 40 has historically been the maximum number of sections assigned to a teacher without assistance, that assignment of more

than 40 sections should be considered an "overload" warranting additional compensation for the extra burden imposed on the teacher; that a 7% stipend does not come close to being commensurate with a teacher's hourly rate; that a 7% stipend for music teachers at the elementary level would still be considerably less than is paid to their counterparts in the employer's secondary schools; and that the music programs have generated tremendous favorable public relations. Therefore, the association urges that the elementary teachers should be rewarded in accordance with the association's proposal.

Findings of Fact on ELEMENTARY MUSIC STIPENDS -
Neither party takes an entirely unreasonable position on this issue. The parties agree that the matter needs attention. Only the amount of the stipend and the mechanics of its computation remain unresolved.

The employer's "site-based decisionmaking" proposal significantly expands the scope of this interim opener on elementary music stipends, and is not recommended. The parties may want to give further consideration to that type of approach in bargaining for a successor contract, but it is not appropriate here.

Although the statistical evidence provided to the Fact-finder is of mixed value, the Fact-finder infers that the employer's willingness to substantially increase the elementary music stipend is based on market forces, determined at least in part by comparable area standards. The employer is prepared to spend a considerable amount to narrow the gap, and its proposal goes a long way toward the goal sought by the association. In looking at the current stipend rate as compared to the maximum stipend rate proposed, the employer's proposal for up to a 150% increase in one year cannot be characterized as unfair, and must be viewed as being "reasonable" on the context of the whole of the collective bargaining agreement. The

association has not justified the further increases which it has requested, which could provide up to a 337% increase in this stipend in one year.

The Fact-finder is unable to recommend the mechanics proposed by either party. One of the exhibits showed that there were some employees who had 40 sections, while several others had 41 sections. The reasons for that small difference were not made clear to the Fact-finder, yet the employer's proposal would heavily discount the stipend for the former group. Similarly, the "overload at 41" claim advanced by the association does not seem to equate to the substantial bonus that the association proposes for those teachers.

The Fact-finder notes that the recommendation of the study committee was framed in terms of "full-time-equivalent" as a basis for pro rata distribution of the stipend. The parties are well-acquainted with "FTE" computations in the payment of salary and computation of employer contributions to the insurance pool. An employee who is paid at the 1.0 FTE rate on the salary schedule and spends their entire work time as a music instructor at the elementary school level should logically receive the maximum stipend amount. One who is paid at .5 FTE on the salary schedule and spends 100% of their work time as a music instructor at the elementary school level should logically receive 50% of the maximum stipend amount. One who is paid at 1.0 FTE on the salary schedule but spends only 70% of their work time as a music instructor at the elementary school level, should receive 70% of the maximum stipend amount. The approach recommended by the parties' study committee would be supportable by the Fact-finder.

The record does not reflect the employer's position regarding the association's proposal that the instructors who would be adversely affected by a pro rata application of the stipend be "red circled"

at their current rate for the time being. The evidence indicates that there are a few teachers who might be affected. The association's proposal is a reasonable solution, and is recommended by the Fact-finder.

FACT-FINDER'S RECOMMENDATION

The Fact-finder recommends that the stipend for music instructors at the elementary school level be increased, retroactive to September 1, 1993, to a maximum of 5% of the 1993-1994 base salary for employees working 1.0 FTE in such assignments, with a pro rata application of the stipend to employees working less than 1.0 FTE in such assignments. No member of the bargaining unit should suffer a reduction of their stipend as a result of this recommendation, and any current employee who would be adversely affected by a pro rata application of the 5% maximum stipend shall continue to receive their current stipend until they (1) cease performing any elementary music instruction; or (2) the stipend computed as described here exceeds $429 per year.

RESPONSIBILITIES OF THE PARTIES

The foregoing report and recommendations address all of the items that were presented at the fact-finding hearing. The parties have responsibilities under the following statute and administrative rules:

> RCW 41.59.120 RESOLVING IMPASSES IN COLLECTIVEBARGAINING--MEDIATION--FACT-FINDING WITH RECOMMENDATIONS--OTHER.
>
> ...
>
> (3) Such [fact-finders] 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 23rd day of February, 1994.

Frederick J. Rosenberry

FREDERICK J. ROSENBERRY, Fact-finder