

FOOTNOTES

The Impact of Collective Bargaining

1. Bruce Zarahdnik, Tahoma School District, telephone conversation with Corrie White, April 24, 2000.
2. *Ibid.* Interest based bargaining generally requires the training of facilitators and others involved in the bargaining process. Due to employee turnover, this would be a continuous process. One school district that has recently begun using the interest based bargaining model stated that their initial negotiations of the plan took 25–30 days. Now that an interest based bargaining agreement is in place, the parties must still meet monthly and have regular contract support meetings.
3. Quoted by Tim Connelly, “Unions slap no confidence vote on CPSD boss,” *Lakewood Journal*, June 18, 1999.
4. Taken from “Info for Journalists,” <http://www.wa.nea.org/NWSRM/ClvrPrk.htm>, November 24, 1999. Printed copy on file with EFF. On the web site, these headlines appeared in reverse chronological order. They have been placed in chronological order for this study, as chronological order is standard for printed publications. Some duplicative headlines have been omitted.
5. The district administration pointed out that teacher placement decisions were made before the union negotiator was elected to his position. Colleen Pohlig, “Teacher Takes on Selah Schools Chief,” *Yakima Herald-Republic*, October 27, 1999. The unfair labor practices charge has not yet been decided by PERC.
6. In the school board race mentioned above, one of the incumbent members lost his position to a candidate who had criticized the board for backing up district administration. Colleen Pohlig, “Selah School Board Incumbent Falls,” *Yakima Herald-Republic*, November 3, 1999.
7. G. Gregory Moo, *Power Grab: How the National Education Association is Betraying our Children* (1999), p. 6
8. Quoted by John Fund, “Politics, Economics, and Education in the 21st Century,” *Imprimis*, May 1998, p.5.
9. Quoted by Damon Darlin, “To whom do our schools belong?” *Forbes*, September 23, 1996, p. 66.
10. Debby Abe, “Wilson High School Drops 3-Period-Per-Day Schedule,” *The News Tribune*, June 6, 1998; Debby Abe, “Wilson likely to drop 110-minute classes,” *The News Tribune*, May 17, 1998.

The History of Collective Bargaining in Washington’s Public Schools

1. Myron Lieberman, Charlene K. Haar, and Leo Troy. *The NEA & AFT: Teacher Unions in Power and Politics*, p.10.
2. *Ibid.*, p. 12.
3. *Ibid.*
4. See Legacy, <http://www.wa.nea.org/Publicat/COMMUNIC/LEGACY.HTM>, p. 2
5. *Ibid.*, p. 3.
6. *Ibid.*
7. RCW 41.56.
8. RCW 41.56.030.

The Fundamentals of Collective Bargaining

1. RCW 41.59.070. If employees are already represented by a union, only the union or the employees may file a petition concerning exclusive representation. The employer may not do so. See WAC 391-25-012 and 391-25-090.
2. RCW 41.59.080.
3. *Ibid.*
4. *Ibid.* See also WAC 391-35-010.
5. RCW 41.59.140.
6. *Ibid.* See also RCW 41.59.020(2).
7. *Clover Park School District*, Decision 6072-A (EDUC 1998).
8. *City of Clarkston*, Decision 3286 (PECB 1989).
9. *City of Dayton*, Decision 1990 (PECB 1984).
10. *Mukilteo School District*, Decision 3795-A (PECB 1992).
11. *City of Yakima*, Decisions 3503 and 3504 (PECB 1990).
12. *Peninsula School District No. 401 v. Public School Employees of Peninsula*, 130 Wn.2d 401, 924 P.2d 13 (1996).

13. *Clark County*, Decision 3451 (PECB 1990).
14. *Ibid.*
15. RCW 28A.405.100
16. *Pasco Police Officers' Ass'n v. Pasco*, 132 Wn.2d 450, 938 P.2d 827 (1997).
17. *City of Olympia*, Decision 3194 (PECB 1989).
18. RCW 41.59.020(2). Good faith involves a sincere desire to reach an agreement. *Pasco Police Officers' Ass'n v. Pasco*, 938 P.2d 827 (1997).
19. *Mukilteo School District*, Decision 3795-A (PECB 1992).
20. *Pasco Police Officers' Ass'n v. Pasco*, 938 P.2d 827.
21. *Clark County*, Decision 3194 (PECB 1990).
22. *City of Sumner*, Decision 1839-A (PECB 1839).
23. *Mukilteo School District*, Decision 3795-A (PECB 1992).
24. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 196, 776 P.2d 1346 (1989).
25. *Wenatchee School District*, Decision 3240-A (PECB 1990).
26. *Federal Way School District No. 210*, Decision 232-A (EDUC 1977), *aff'd* King County Superior Court Cause No. 830404 (1978).
27. *International Association of Fire Fighters, Local 1052*, 776 P.2d 1346.
28. *City of Clarkston*, Decision 3286 (PECB 1989).
29. *Spokane Education Ass'n v. Barnes*, 83 Wn.2d 366, 517 P.2d 1362 (1974).
30. *International Ass'n of Fire Fighters, Local 1052*, 776 P.2d 1346.
31. *Pasco Police Officers' Ass'n v. Pasco*, 132 Wn.2d 450, 938 P.2d 827 (1997).
32. *Seattle School District*, Decision 2079 (PECB 1984), *rev'd on other grounds*, *Seattle School District*, Decision 2079-C (PECB 1986).
33. *Ibid.*
34. *City of Burlington*, Decisions 5840, 5841, 5842, and 5843 (PECB 1997).
35. *Ibid.*
36. *Ibid.*
37. RCW 41.59.935.
38. *City of Burlington*, Decisions 5840, 5841, 5842 and 5843.
39. RCW 41.59.100.
40. *Yaw v. Walla Walla School District No. 140*, 106 Wn.2d 408, 722 P.2d 803 (1986).
41. *North Beach Education Ass'n v. North Beach School District No. 64*, 31 Wn.App. 77, 639 P.2d 821 (1982).
42. WAC 391-45-010.
43. WAC 391-45-110; 391-45-130 and 391-45-270.
44. RCW 41.59.140(1)(a), (c).
45. RCW 41.59.140(1)(b).
46. *State ex rel Graham v. Northshore School District*, 99 Wn.2d 232, 662 P.2d 38 (1983). Employers may also permit employees to confer with the employer during work hours without loss of time or pay. See RCW 41.59.140(1)(b).
47. *City of Burlington*, Decisions 5840, 5841, 5842, and 5843 (PECB 1997).
48. *North Thurston School District*, Decision 4765-B (EDUC 1995).
49. RCW 41.59.140(1)(d).
50. *International Ass'n of Fire Fighters, Local 1445 v. Kelso*, 57 Wn.App 721, 790 P.2d 185 (1990).
51. RCW 41.59.140(a).
52. RCW 41.59.140(2)(b).
53. RCW 41.59.140(1)(e), (2)(c).
54. WAC 391-45-552. This does not mean that the parties are required to bargain permissive subjects to impasse. No further response needs to be made to the proposal addressing the permissive subject of bargaining.

Management Rights

1. See, e.g., RCW 28A.320.015.
2. RCW 41.59.020., RCW 41.59.140

3. RCW 41.59.140.
4. *City of Chehalis*, Decision 2803 (PECB 1987).
5. *Spokane County*, Decision 5698 (PECB 1996).
6. *City of Bremerton*, Decision 4739 (PECB 1994).
7. *King County*, Decision 5810 (PECB 1997), *aff'd King County*, Decision 5810-A (PECB, 1997).
8. *Tacoma School District*, Decision 2756 (EDUC 1987).
9. *City of Clarkston*, Decision 3286 (PECB 1989).
10. *Collective Bargaining Agreement between the Grandview Education Association and Grandview School District* (1998–2001), p. 4.
11. *Collective Bargaining Agreement between Riverside School District No. 416 and Riverside Education Association* (1996–1999), p. 4.
12. “Nothing in this chapter shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer’s responsibilities to students, the public, and other constituent elements of the institution.”
13. *City of Yakima*, Decision 3564 (PECB 1990).
14. *Collective Bargaining Agreement between Highland School District No. 203 and Highland Education Association* (1998–2001), art. II, § 1, p. 4.
15. *Riverview School District Agreement with Riverview Education Association* (1999–2001), Section 2.4, p.2.
16. *King County*, Decision 5810-A (PECB 1997).
17. *International Association of Fire Fighters, Local 469*, Decision 3546 (PECB 1990), *aff'd* Decision 3564-A (PECB 1991).
18. *Issaquah Education Association/Issaquah School District Negotiated Agreement* (1997–1999), p. 2.
19. *International Association of Fire Fighters, Local 469*, Decision 3546 (PECB 1990), *aff'd* Decision 3564-A (PECB 1991). This decision was based in part on other grounds, such as lack of specificity in the purported waiver.
20. *Lakewood School District Certified Employees’ Agreement* (1998–1999), Section 3.1, p. 3.
21. *Mukilteo School District*, Decision 3795-A (PECB 1992).
22. *Pasco Police Officer’s Ass’n v. Pasco*, 132 Wn.2d 450, 938 P.2d 827 (1997).
23. This sample management rights clause is a composite of clauses contained in the *Collective Bargaining Agreement between Arlington Education Association and Arlington School District* (1995–1998), pp. 6–7; the *Collective Bargaining Agreement between Bethel School District and Bethel Education Association* (1998–1999), pp. 1–2; the *Granite Falls School District Collective Bargaining Agreement* (1997–2000), pp. 4–5; and the *Collective Bargaining Agreement between Cheney Education Association and Cheney School District* (1998–2001), pp. 4–5. Minor editorial changes have been made for the sake of clarity. Inclusion of these clauses in this sample is not intended as an indication that these clauses will be fully effective when interpreted in conjunction with other provisions in the respective agreements.
24. The language in section E of the sample clause would probably not be specific enough to reserve district discretion over leave decisions. A reservation of the right to establish work rules and procedures and to determine schedules of work was held not to be a waiver of the right to bargain certain leave provisions. *See International Association of Fire Fighters, Local 469*, Decision 3546 (PECB 1990), *aff'd* Decision 3564-A (PECB 1991).

Agency Shop

1. RCW 41.59.060.
2. *Tentative Contractual Agreement between Chehalis School District No. 302 and the Chehalis Education Association* (1998–1999), p. 2.
3. RCW 41.59.100. Provisions stating that payment of dues is a “condition of employment” or providing for the termination of employees who do not pay dues are relatively rare in Washington State contracts. However, such clauses are not necessary to enforce an agency shop agreement since the district is obligated to deduct the representational fee from the employee’s paycheck regardless of whether the employee consents. The teacher has no choice but to pay.
4. *Chehalis Agreement*, p. 2.
5. *Agreement, Shelton Education Association and Shelton School District* (1999–2001), p. 2.
6. RCW 41.59.060.
7. RCW 42.17.680.
8. RCW 28A.405.400.
9. Source: WEA PAC meeting handout at 1999 WEA Representative Assembly.
10. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995).
11. RCW 42.17.130 (forbidding use of public facilities for campaigns); *see also* RCW 41.06.250 (prohibiting solicitation of political contributions on public property).
12. *Florida Elections Commission v. Marion County Education Association*, FEC 96-287, May 17, 1999.

13. RCW 28A.405.400.
14. This clause is a composite based on the content of contracts such as the *Aberdeen Education Association Collective Bargaining Agreement* (1996–1999), p.7; the *Anacortes Education Association and Anacortes School District Contract Agreement* (1998–2001), p.4; and the *Negotiated Agreement between the Auburn Education Association and the Auburn School District* (1997–2000), p.11.
15. *See, e.g., Weaver v. University of Cincinnati*, 970 F.2d 1523 (6th Cir. 1992), *cert den.*, 507 U.S. 917, 113 S.Ct. 1274, 122 L. Ed. 2d 668 (1993).
16. *Prescott v. County of El Dorado*, 177 F.3d 1102 (9th Cir. 1999). Because *Prescott* was decided by the Court of Appeals for the Ninth Circuit and Washington is in the Ninth Circuit, *Prescott* is binding on Washington courts.
17. The language of this clause is based in part on the content of the *Collective Bargaining Agreement between Lind School District and Lind Education Association* (1998–2002), p.4; the *Ephrata Education Association and Ephrata School District Agreement* (1996–1998), pp. 3–4; and the *Collective Bargaining Agreement between Mill A Education Association and Mill A School District* (1997–1999), p.3.
18. This clause is based in part on the *Agreement between Manson School District and the Manson Education Association* (1994–1996), p.3.
19. *Chehalis Agreement*, p. 2.

Employee Rights

1. *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977).
2. *Air Line Pilots Association v. Miller*, 523 U.S. 866 (1998).
3. *Chicago Teachers' Union v. Hudson*, 475 U.S. 292 (1986).
4. WA Const., art. I, § 11; RCW 41.59.100.
5. *Grant v. Spellman*, 99 Wn.2d 815, 664 P.2d 1227 (1983); *Edmonds School District No. 15*, Decision 1239-A (EDUC 1983).
6. *Elma Teachers Organization and Elma School District, Agreement* (1997–1999), Article II, Section A, p. 3.
7. *Master Agreement, Napavine Education Association, Napavine School District* (1997–1999), p. 2. PULSE has been replaced by WEA PAC.
8. *Leer v. WEA*, No. C96-1612Z (W.D. Wash., 1998).
9. *Agreement by and between the Cusick Education Association and the Cusick School District #59* (1995–1998), p. 3. The August window for resigning was the practice of the Washington Education Association. Contract language should be updated to reflect the union's current practice.
10. RCW 41.59.100.
11. This case requires the union to provide teachers with an adequate explanation of the basis for their agency fee (i.e., what expenses are included), a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for any amounts that are in dispute.

Just Cause

1. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985).
2. RCW 28A.400.300(1); *See also* RCW 28A.405.210.
3. RCW 28A.405.220.
4. RCW 28A.405.470.
5. *Clarke v. Shoreline School Dist.*, 106 Wn.2d 102, 720 P.2d 793 (1986).
6. *Pryse v. Yakima School Dist.*, 30 Wn.App. 16, 632 P.2d 60 (1981).
7. *Clarke*, 720 P.2d 793.
8. RCW 28A.405.350.
9. “What it takes to fire a teacher,” *Seattle Times*, May 23, 1999.
10. Jolayne Houtz, “Bad teachers: One of education’s most shameful problems has no easy solutions,” *Seattle Times*, May 23, 1999.
11. *Ibid.*
12. *Ibid.*
13. RCW 28A.405.220.
14. *North Beach Educ. Ass’n, v. North Beach School District*, 31 Wn. App. 77. 639 P.2d 821 (1982).
15. *Collective Bargaining Agreement, Bellingham School District 501, Bellingham Education Association* (1997–1999), art. V, § 10, p. 16.
16. *Grief Bros. Cooperage Corp.*, 42 LA 555 (1964)
17. *Ibid.*

Teacher Evaluation

1. RCW 28A.600.020.
2. WAC 392-191-010.
3. RCW 28A.405.110.
4. This sample clause is based in part on the contents of the *Agreement between Kent School District and Kent Education Association* (1996–1999), art. VIII, § 1; the *Master Agreement between Mansfield School District and Mansfield Teacher's Association* (1997–2000), art. IV, § E; and the *Klickitat Collective Bargaining Agreement* (1999–2002), p.25.

Seniority Pay

1. WA Const. art IX, § 1.
2. *Seattle School District No. 1 v. State of Washington (Doran Decision 1)*, 90 Wn.2d 476, 585 P.2d 71 (1978).
3. RCW 28A.150.200 et seq.
4. RCW 28A.405.200.
5. See RCW 28A.150.100.
6. State Salary Schedule (1997–1999), *School Apportionment & Financial Services Administrative Budgeting and Financial Reporting Handbook* (1998–1999), pp.34–42; *Salary Compliance: School District Certificated Instructional Staff Basic and Special Education Programs, Report to Fiscal Committees of the Washington State Legislature* (February, 1998, Office of Superintendent of Public Instruction).
7. Source: Bureau of the Census, Small Area Income and Poverty Estimates Program.
8. *Hill v. Dayton School District*, 85 Wn.2d 204, 532 P.2d 1154 (1975); *Oak Harbor Sch. Dist. v. Ed. Ass'n.* 86 Wn. 2d 497, 545 P.2d 1197 (1976).
9. *Yakima Education Association and Yakima Public Schools District No. 7, Negotiated Agreement* (1997–1999), p. 23.
10. *Agreement between Cashmere Education Association and Cashmere School District No. 222* (1998–1999), art. V, § 22, p. 22.
11. *Yakima Agreement*, p. 25
12. RCW 49.60.400. These provisions apply to all actions taken after December, 1998.
13. The Court held that racial classifications must be justified by a compelling state purpose and that societal discrimination was insufficient to justify such classifications. *Wygant v. Jackson Bd. of Educ.* 476 U.S. 267 (1985).
14. *Negotiated Agreement between the Auburn Education Association and the Auburn School District No. 408* (1997–2000), p. 28.
15. This sample clause is based in part on the *Agreement between Cashmere Education Association and Cashmere School District No. 222* (1998–1999), and other collective bargaining agreements that allow some consideration of district educational needs.

Insurance Benefits

1. RCW 28A.335.190.
2. RCW 28A.400.200(3)(b).
3. AGO 1996 No. 9.
4. Gus Kiss, William Meacham Insurance, telephone conversation with Corrie White, April 21, 2000.
5. Mich'l Prentice Needham, Deputy Program Manager of PEBB Programs at the Washington State Health Care Authority, e-mail to Corrie White, April 19, 2000.
6. Mich'l Prentice Needham, telephone conversation with Corrie White, April 24, 2000.
7. RCW 48.62.031.
8. Gus Kiss, William Meacham Insurance, telephone conversation with Corrie White on April 21, 2000.
9. John Nicholson, Local Government Self-Insurance Program Administrator, Office of State Risk Management, telephone conversation with Corrie White, April 11, 2000.
10. RCW 48.62.071.
11. RCW 48.62.161; WAC 236-22-100 and Reviser's Note.
12. WAC 236-22-100 and Reviser's Note.
13. RCW 48.62.151.
14. WAC 236-22-038.
15. Mike Peterson, Executive Director of the Sound Partnership, telephone conversations with Corrie White, April 19–20, 2000.
16. For example, <http://www.keenanassoc.com>.

17. Gus Kiss, William Meacham Insurance, telephone conversation with Corrie White on April 18, 2000.
18. These are general policy recommendations and are not intended to provide specific plans. School districts should consult with legal counsel and with insurance experts in reaching an insurance plan.

No-Strike Clause

1. *Port of Seattle v. International Longshoremen's and Warehousemen's Union*, 52 Wn.2d 317, 324 P.2d 1099 (1958).
2. Ed Heiser, Public Employment Relations Commission, in e-mail to author, December 16, 1999.
3. *Local 174, Teamsters v. Lucas Flour Co.* 369 U.S. 95, 105–106; *Seattle Times Co. v. Seattle Mailer's Union No. 32*, 664 F.2d 1366 (1982).
4. RCW 41.56.120.
5. RCW 41.59
6. *Collective Bargaining Agreement between Davenport School District No. 207 and the Davenport Education Association*, (1998–2001), p. 2.
7. *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962).
8. *Green River Community College*, Decision 4008-A (CCOL, 1993)
9. *Granite Falls School District Collective Bargaining Agreement*, (1997–2000), p. 4
10. *Agreement between Kent School District and Kent Education Association*, (1996–1999), art. V, § 1.
11. *Green River Community College*, Decision 4008-A (CCOL, 1993).
12. *Collective Bargaining Agreement between East Valley Education Association and East Valley School District No. 361*, (1998–2000), p. 6.
13. *Agreement by and between Lake Washington School District No. 414 and Lake Washington Education Association*, (1996–1999), p. 50.
14. *Collective Bargaining Agreement, Snohomish Education Association and Snohomish School District*, (1996–1999), p. 63.
15. *Negotiated Agreement between the Walla Walla Public Schools and Walla Walla Valley Education Association*, (1997–1999), Article II, Section 3, p. 2–6.
16. *Collective Bargaining Agreement between Spokane School District No. 81 Board of Directors and the Spokane Education Association*, (1998–2001), p. 6, 90.
17. N.Y. Civil Service § 210; Mich Comp. Laws § 423.202a. A provision of the Michigan law providing for an automatic fine on the union whenever a member went on strike was held to violate due process. *Michigan State AFL-CIO, et al. v. Michigan Employment Relations Commission* (Wayne County Circuit Court, Docket Nos. 94-420652-CL & 94-423581-CL, March 2, 1995.) A provision requiring a showing of fault on the part of the labor union would be more likely to survive constitutional scrutiny.
18. This sample clause is based in part on the *Kent Agreement*, Art. 5, § 1.

Class Size

1. Resolution B-6, NEA 1998–99 Resolutions.
2. WAC 392-127-111.
3. WAC 392-140-746.
4. Eric A. Hanushek, *The Evidence on Class Size* (W. Allen Wallis Institute of Political Economy, University of Rochester), Occasional Paper 98-1, February 1998, p. 26.
5. *Ibid*; “Class Size Reduction: Lessons Learned from Experience,” *WestEd Policy Brief No. 23*, August 1998, p. 3 .
6. Joan McRobbie, WestEd, quoted in “Small Classes: Popular, but Still Unproven,” *Education Week*, February 18, 1998.
7. Hanushek, *The Evidence on Class Size*, pp. 27–30.
8. State of Washington Joint Legislative Audit and Review Committee, *K–12 Finance and Student Performance Study, Report 99-9*, September 15, 1999, p.52.
9. *Class Size Reduction: Lessons Learned from Experience*, p.11.
10. *Collectively Bargained Agreement, Selah School District No. 119, Selah Education Association* (1998–2001), p. 20.
11. The issue of whether class size is a mandatory or permissive subject of bargaining has not been ruled on in this state.

Educational Policy

1. RCW 28A.320.230
2. Taken from the *Negotiated Agreement, Issaquah Education Association, Issaquah School District* (1997–1999), p. 52
3. RCW 28A.320.230

4. RCW 28A.320.230
5. *Mullikan v. Board of Directors*, 93 Wn.2d 522, 611 P.2d 414 (1980)
6. RCW 28A.405.060
7. *Collective Bargaining Agreement between Centerville Education Association and Centerville School District No. 215* (1997–1999), p. 7
8. *Collective Bargaining Agreement between Rainier School District and Rainier Education Association* (1998–2001), p. 4

Other Considerations

1. RCW 28A.400.200
2. State of Washington, Joint Legislative Audit and Review Committee, *K–12 Supplemental Contracts, Report 97-1*, January 10, 1997.