STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF RHODE ISLAND STATE LABOR RELATIONS BOARD - AND - WARWICK SCHOOL COMMITTEE	CASE NO. ULP-4518

DECISION

- AND -

ORDER

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the City of Warwick, Rhode Island School Committee (hereinafter Respondent), predicated upon an Unfair Labor Practice Charge (hereinafter Charge) filed on October 4, 1991, by Warwick Teachers' Union, Local 915 (hereinafter Local 915).

The Charge, in substance, alleged that the Respondent had violated Section 28-7-13 (6) and (10) of the General Laws of the State of Rhode Island by its refusal to execute a written Collective Bargaining Agreement as provided by the provisions of Section 28-9.3-4 of the General Laws of the State of Rhode Island. Following the filing of the Charge on October 4, 1991, an informal conference between representatives of the Respondent and Local 915 was held before an agent of the Board on October 21, 1991. Following the informal conference, the Board issued its Complaint on October 29, 1991, alleging, in substance, that the Respondent had been and was engaging in an Unfair Labor Practice in violation of Title 28, Chapter 7, Section 13 (6) and

(10) of the General Laws of the State of Rhode Island by its refusal to sign a Collective Bargaining Agreement as agreed to by its representatives. Formal hearings on the Complaint were held on November 21, and December 9, 1991, and January 6 and 24, 1992.

From the evidence, it is clear that on March 19, 1991, Local 915 and the Respondent commenced negotiations for a new Collective Bargaining Agreement to commence September 1, 1991, which would succeed the then existing Collective Bargaining Agreement due to expire on August 31, 1991. The Chief Negotiator for Local 915 was Edward J. McElroy, Jr. (hereinafter McElroy), who was President and Chief Executive Officer of the Rhode Island Federation of Teachers and Executive Secretary of said Local 915. Since 1969, when Local 915 first negotiated a Collective Bargaining Agreement with the Respondent, McElroy has served as Local 915's Chief Negotiator. In addition, McElroy has served as negotiator for other Teacher Locals and in many capacities in the labor field and is clearly an experienced labor negotiator. The Respondent's Negotiating Committee was composed of Jane Kenney-Austin (a first-term member of the Respondent and hereinafter referred to as Austin), Robert H. Quinlan (a long-term member of the Respondent and hereinafter referred to as Quinlan), and Robert D. Watt, Jr., Esquire (legal counsel for the Respondent and hereinafter referred to as Watt). Watt was designated as Chief Spokesman and Negotiator for the Respondent.

At the first negotiating meeting on March 19, 1991, Local 915 and the Respondent agreed upon certain "ground rules" for the negotiations, which said "ground rules" were reduced to writing and signed on said date by McElroy and Watt as the "Chief Negotiator" for each party. Item 6 of said "ground rules" provided that:

"6. When tentative agreement is reached on any material, it will be so initialed by the respective spokesman. Agreement reached on individual items shall be tentative and contingent on total agreement".

Negotiating meetings took place on numerous dates between May 13, 1991, (when the parties exchanged proposed contract changes) and September 9-10, 1991, the date of the final negotiating session. In addition, there were mediation sessions held on various dates in an effort to resolve the terms of the proposed new Collective Bargaining Agreement. During the many months of negotiations, most of the issues had been resolved and agreed upon but at no time did the parties write out or initial such agreements as required by Item 6 of the "ground rules".

On or about September 4, 1991, when agreement on a new Collective Bargaining Agreement had not been reached, Local 915's members went on strike. At that time, numerous issues had not been resolved but the key issues unresolved were Salary Schedule, Personal Days, Class Size, Number of Periods in the High School, Health Care, Layoffs and Temporary Leaves.

Negotiation sessions took place on September 5, 6, 8 and a final session that commenced on the evening of September 9 in the City of Warwick Mayors' Office at about 7:00 p.m., concluded at Local 915's Offices at approximately 7:30 a.m. on September 10, 1991.

Prior to the commencement of the negotiation session of September 9 and 10, 1991, Watt had prepared a single sheet entitled "Offer VI - Economic Benefit; language and final agreement pending on other remaining issues". (Respondent's Exhibit #1).

This exhibit set forth a proposal for a three (3) year contract with five (5) items open in the first year; five (5)

items open in the second year and two (2) items open in the third year of the proposed contract.

Item 1 of the first year provided that:

> "Implementation of present Toll Gate Schedule at Veterans and Pilgrim High School". This item was deleted during the session of September 9-10, 1991.

Item 2 of the first year provided that:

> "Guarantee no layoffs during 1991/92 school year; School Committee right to provide 60 layoff notices prior to March 1, 1992 to take effect for school year 1992/93; Actual layoffs for school year 1992/93 shall not exceed 20 positions. Elimination of McSally Clause".

During the September 9-10, 1991, negotiating session, the parties agreed to reduce the number 60 to 40 and drop the elimination of the McSally Clause. Thus, this issue was resolved.

Item 3 of the first year provided that:

> "Elimination of Weighting
> - 25 absolute unweighted building average
> - 28 absolute individual unweighted class
> - where class has greater than 5 self contained special education children in a regular education classroom an aide shall be provided
> - payment according to present formula for any class of 27 or 28 unweighted
> - language that special education children are evenly and equitably distributed as permitted by law."

For an understanding of the following discussion, one must look to the Collective Bargaining Agreement which expired on August 31, 1991.

Section 12-6.1 provided that:

> "12-6.1 The Committee agrees that a class size of approximately twenty-five (25) pupils is a desirable educational goal. In this regard, the Committee shall keep class size as low as is administratively possible, and within the limits of physical plant".

Section 12-6.4 provided that:

> "12-6.4 The parties agree that class size shall not exceed 28 on a weighted basis. If during the school year circumstances arise which require that a class size exceed 28 on a weighted basis, the teachers will receive additional compensation for the weighted numbers beyond 28 based on a pro-rata of the teacher's salary for the length of time the numbers exceed 28."

The term weighting is applied to students with certain physical, learning and other disabilities. Such students may be considered as equal to one and one-half (1 1/2) times a normal student or two (2) times a normal student. Thus, if a class had twenty-five (25) students, two (2) of whom were weighted as two (2), there would be a weighted class size of twenty-nine (29) and the teacher would be paid the additional compensation for the period that such weighted class of twenty-nine (29) continued. It must also be noted that the Collective Bargaining Agreement that expired on August 31, 1991, made no distinction between elementary and secondary level. It is also of significant importance to note that Respondent's Exhibit #1 made no distinction between elementary and secondary level. The evidence is clear and undisputed that the Respondent, through its Negotiating Committee, had agreed to double pay for students twenty-seven (27) and twenty-eight (28).

From all of the evidence before it, the Board concludes that, during the September 9-10, 1991, negotiating session, Local 915 agreed to eliminate from the Collective Bargaining Agreement the concept of weighting in respect to class size and in return, the Respondent agreed that class size (in both the elementary and secondary level) would not exceed twenty-eight (28) and that in any class which exceeded twenty-five (25) the teacher would be compensated at a rate double the 1990/91 rate for students twenty-six (26), twenty-seven (27) and twenty-eight (28).

There is no doubt in the minds of the Board members that Watt did agree with McElroy, at some point during the early morning hours of September 10, 1991, between 1:45 a.m. and 7:00 a.m., that the Respondent agreed to pay for the twenty-sixth (26th) student. McElroy testified that once the salary schedule had been agreed to between 7:00 a.m. and 7:15 a.m. on September 10, 1991, that he, Watt and Austin, did review and go over the issues resolved at the marathon session of September 9-10, 1991. He testified that when he read the agreement on class size, he did say pay for twenty-sixth (26th), twenty-seventh (27th) and twenty-eighth (28th) students and that neither Watt nor Austin dissented.[1] Austin now says that she thought McElroy had misread the Respondent's Exhibit #1 and did not say anything at the time. She also testified that she did not know that Watt had agreed to pay for the twenty-sixth (26th) student. From the evidence presented, the Respondent through its Negotiating Committee did agree to double pay for the twenty-sixth (26th), twenty-seventh (27th) and twenty-eighth (28th) students and the Board so finds. Furthermore, there is absolutely no evidence before the Board that the Respondent, on September 9-10, 1991, or at any time prior thereto, had made or was making any distinction between class size on the elementary and secondary education level. Additionally, the prior Collective Bargaining Agreement made no such distinction. For all of the foregoing, the Board finds that as of the morning of September 10, 1991, the Respondent, through

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1. At that time, the third (3rd) member of the Respondent's negotiating team (Robert H. Quinlan) was upstairs in Local 915's office calling the members of the Respondent to advise them that "they had an agreement".

its Negotiating Committee, had agreed to the class size limitation in relation to both elementary and secondary education.

As to the issue of the twenty-sixth (26th) student, it is clear from the testimony of both McElroy and Austin that Watt had agreed with McElroy to include the twenty-sixth (26th) student with double pay. As previously noted, this agreement took place between Watt and McElroy prior to the agreement on the salary issue which agreement occurred some time between 7:00 a.m. and 7:15 a.m. on September 10, 1991. The failure of the Respondent to have Watt testify in this matter can lead only to the conclusion that his testimony would have been prejudicial to the Respondent and would, in fact, have confirmed the testimony of McElroy.

The basic thrust of the Respondent's objection to the issue of agreement upon double pay for the twenty-sixth (26th) student was and is that Watt had no authority to so agree. It should be noted, at this point, that McElroy had no knowledge that Watt had no such authority. In fact, the evidence in the case would appear to the contrary. Watt during the extensive negotiations indicated to McElroy that he had authority to settle issues. It should also be noted, at this point, that Austin heard McElroy read, in relation to class size, that the twenty-sixth (26th) student would be paid for at double pay. There can be little doubt that class size and the elimination of weighting were major issues to both the Respondent and Local 915 and had been discussed on many occassions during the long period of negotiations and reported to the Respondent by its Negotiating Committee. For Austin to now say she thought it was a mistake and thus made no objection seems, to this Board, to fly in the face of reality. While it is true that Austin was only a

first-term member of the Respondent and was serving on its Negotiating Committee for the first time, she had been appointed thereto and was serving on the Negotiating Committee in place of other members on the Respondent who had fifteen (15) and seventeen (17) years experience. This fact speaks volumes for the trust and confidence that the Respondent had in Austin's ability and capabilities of fulfilling the position of one (1) of two (2) of its membership to serve on its Negotiating Committee. By her failure to raise any question as to double pay for the twenty-sixth (26th) student, the Board concludes and finds that she, at least by acquiescence, agreed thereto.

The Respondent failed to have Quinlan testify in this matter even though he had been present at the December 9, 1991, hearing. Again, the Board concludes, that if Quinlan had been called to testify, his testimony would not have been favorable to the Respondent's position on this issue of double pay for the twenty-sixth (26th) student. From all of the evidence, the Board concludes that the Respondent's Negotiating Committee did agree to double pay for the twenty-sixth (26th) student.

The Respondent, following the September 9-10, 1991, negotiating session, claimed that the agreement by Watt to pay for the twenty-sixth (26th) student was made without authority and in direct contravention of the Respondent's instructions.

As to this issue of the lack of authority of the Respondent's Negotiating Committee to make binding agreements, the Board notes that Title 28, Chapter 9.3, Section 3 of the General Laws of the State of Rhode Island in part provides that:

> "An association or labor organization <u>or the school committee</u> may designate any person or persons to negotiate or bargain in its behalf". (Underlining added)

Further the Board notes that Title 28, Chapter 9.3, Section 4 in part provides that:

> "It shall be the obligation of the school committee to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent.... This obligation shall include the duty to cause any agreement resulting from negotiation or bargaining to be reduced to a written contract..."

Nowhere is it required that the agreements resulting from negotiation be then reviewed and approved by the Respondent as a whole, before there can be an agreement between the parties. If the Respondent's Negotiating Committee, selected by it, has no authority to make agreements with the bargaining agent, what is the purpose of the Negotiating Committee? If the Respondent's Negotiating Committee has no authority to bind it, then why doesn't the Respondent bargain, as a whole, with the bargaining agent? Further, McElroy testified that he was lead to believe by both Watt and Quinlan that they had the authority and with respect to Quinlan that he had the votes on the Respondent to support him in any decision he made. It is the Board's conclusion that the Respondent's Negotiating Committee did have authority to bind it and did so when Watt and Austin agreed to double pay for the twenty-sixth (26th) student.

Item 4 of the first year provided that:

"No co-pay, Blue Cross Health Mate Coverage".

The evidence clearly established that the Respondent agreed to eliminate its request that employees covered under the Collective Bargaining Agreement pay a portion of their Blue Cross/Blue Shield Coverage. The evidence also clearly established that Local 915 and the Respondent agreed to leave in effect the Blue Cross/Blue Shield Coverage in the prior

Collective Bargaining Agreement and to institute, effective September 1, 1992, the "managed care benefit" program of Blue Cross/Blue Shield with the specifics of the plan to be worked out between Local 915 and the Respondent. In particular, Austin testified at Page 255 of the Transcript in response to a question from Counsel as follows:

> "Q. And, was managed benefits then agreed to?
> A. Yes, I believe that managed benefits were agreed to".

By Respondent's Exhibit #1 these were to be effective in the second year of the three (3) year contract.

Item 5 related to the salary schedule.

The evidence is clear and uncontradicted that Local 915 and the Respondent agreed to a three (3) year salary schedule as proposed by the Respondent and set forth on Respondent's Exhibit #1. Agreement on the salary schedule occurred at approximately 7:15 a.m. on September 10, 1991.

In addition to the five (5) items set forth on Respondent's Exhibit #1 for the first year of the proposed three (3) year contract was the matter of Local 915's demand that the number of personal days be increased from one (1) to three (3) in return for which Local 915 would give up certain temporary leave provisions. As of the commencement of negotiations on September 9, 1991, the Respondent's Negotiating Committee had agreed to give one (1) additional personal day but had not agreed to the second additional personal day as requested by Local 915. It is clear from the evidence that the Respondent strongly objected to

the granting of a third (3rd) personal day and such was known to both Watt and Austin.[2]

The evidence is clear that Watt at some time between 1:45 a.m. and 7:15 a.m. on September 10, 1991, agreed with McElroy that Local 915 could have the third (3rd) personal day. The matter of the third (3rd) personal day came up on the morning of September 10, 1991, after Quinlan had left the negotiating room to go upstairs to call members of the Respondent to advise them that an agreement had been reached. According to the testimony of Austin, the matter of the third (3rd) personal day was discussed and McElroy indicated that the Respondent's position was not acceptable and that thereafter Watt agreed to the third (3rd) personal day. (Transcript Page 200). According to Austin, she did not contradict Watt because she was taken by surprise. The testimony of Austin on this matter is found at Page 200 of the Transcript and it is as follows:

> "A. There was a pause, and Mr. Watt agreed to the third personal day.
> Q. Mr. Watt agreed to the third personal day?
> A. Yes.
> Q. What did you say at that point?
> A. I did not contradict Mr. Watt at that point.
> Q. Would you tell the Board why you did not?
> A. I was taken by surprise by his agreements and disturbed by - - I was taken by surprise. Immediately before that, he had accurately stated our position, which had been two days at 50 or go back to the original contract language. <u>At that point in time, I believe we had a basic settlement</u>. Teachers were ready to go back to work. Negotiations were breaking up. I hesitated at that point to contradict Mr. Watt, and before I had thought through the ramifications, it was over". (Underlining added).

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2. Whether this was known by Quinlan is unclear for he never testified in this matter. Consequently, the Board has no knowledge of his knowledge of this subject.

According to McElroy when the issue of the third (3rd) personal day came up on the morning of September 10, 1991, after Quinlan had left the negotiating room, Watt turned his head toward Austin and she nodded assent. According to Austin, Watt did turn toward her but didn't say anything and that she didn't nod assent. Considering the alleged importance of this issue to the Respondent, it seems improbable to this Board that Austin didn't, in some manner, either by affirmative action or by her silence, indicate her assent to the third (3rd) personal day. The Board, from all of the evidence and after weighing the testimony, concludes that Watt had, some time between 1:45 a.m. and 7:00 a.m. on September 10, 1991, agreed with McElroy on the third (3rd) personal day and did at the wrapping up session between 7:00 a.m. and 7:30 a.m. on September 10, 1991, again agree to the third (3rd) personal day and that Austin, at least by her inaction and/or her failure to object, concurred in the granting of the third (3rd) personal day.

With respect to Respondent's Exhibit #1, the second year of the proposed Collective Bargaining Agreement contained five (5) items still open for discussion on September 9, 1991.

Item 1 of the second year provided that:

"1. Continuation of present Toll Gate Schedule at Veterans and Pilgrim High School".

This item had been deleted during the negotiating session on September 9-10, 1991, and is not in dispute.

Item 2 of the second year provided that:

"2. School Committee right to provide 60 layoff notices prior to March 1, 1993, to take effect for school year 1993/94; actual layoffs for school year 1993/94 shall not exceed 20 positions".

As previously pointed out herein, the parties agreed to this proposal by changing the figure 60 to 40.

Item 3 of the second year provided that:

"3. No co-pay; Blue Cross Health Mate Coverage".

Again as previously pointed out herein, the parties agreed to change this to the Blue Cross/Blue Shield "Managed Care Benefits" program.

Item 4 of the second year provided that:

"4. Department head ratios

- 2 step system
- 13.9.1 DHs max of $3,000
- 13.9.2 DHs max of $4,000
- 13.9.3 DHs max of $5,000
- 13.9.4 DHs max of $5,000

This issue was obviously agreed to for it appears in both Union Exhibit #5, which is Local 915's version of the Collective Bargaining Agreement as agreed to on September 10, 1991, and Respondent's Exhibit #4, which is its version of the Collective Bargaining Agreement as agreed to on September 10, 1991.

Item 5 of the second year related to the salary schedule.

As previously noted, the matter of the salary schedule had been agreed to.

In addition to the first and second year proposals, Respondent's Exhibit #1 contained two (2) proposals for the third (3rd) year of the contract.

Item 1 of the third year provided that:

"1. Implementation of 7 subject/6 period Schedule. Version II at all three high schools".

According to McElroy, this was agreed to with the language to be worked out. This is supported by a review of the proposed provisions for Section 12-8.4 (b) of the proposed Collective Bargaining Agreement which is found in Union Exhibit #5. Proposed Section 12-8.4 (b) reads as follows:

"Effective with the 1993/94 school year, the senior high school schedule shall be a seven (7) period

schedule, six (6) period day. The parties shall establish a committee to work out the details of this schedule".

The only testimony to contradict that of McElroy on this subject was that of Austin who simply testified that Union Exhibit #5 was not her understanding but that Respondent's Exhibit #4 which is a lengthy exposition on the working of the proposed seven (7) period schedule was her understanding of the agreement. The Board has reviewed all of the exhibits and the testimony and concludes that Union Exhibit #5 does reflect the basic agreement arrived at during the negotiating session of September 9-10, 1991, with respect to this proposed change.

Item 2 of the third year related to the salary schedule.

As previously noted herein, this was agreed upon and is not in dispute herein.

There is clear evidence that Quinlan understood that the parties had arrived at an agreement on the morning of September 10, 1991, for he left the meeting immediately following the Salary Schedule agreement to notify the other members of the Respondent that an agreement had been reached. Whether he knew that Watt had agreed to the third personal day, we will never know for the Respondent did not present him as a witness. Further, Austin in her testimony stated that when the negotiating session ended on the morning of September 10, 1991, she thought an agreement had been reached. If she thought an agreement had been reached, it would have had to include the issue of class size, the third personal day and all other items. Additionally, it appears obvious to this Board that the failure to have Watt testify is a clear admission that his testimony would have supported McElroy.

After a careful review of all the testimony and exhibits herein, the Board concludes that Local 915 and the Respondent, through its duly authorized Negotiating Committee, did arrive at an Agreement as the result of negotiations and collective bargaining during the period March 19, 1991, up to and including September 10, 1991, as set forth in Union Exhibit #5 in this matter.

The question next arises as to the scope of the Board's authority in this matter to order the parties to enter into a written Collective Bargaining Agreement as agreed to during negotiations.

In Warren Education Association v. Lapan, 103 RI 163, 235 A2d 866 (1967)[3], the Supreme Court of the State of Rhode Island, in finding that the proceeding for a Writ of Mandamus was not the appropriate remedy, found that Warren Education Association had a plain and adequate relief for its alleged grievance through proceedings before this Board.

At Page 873 of 235 A2d, the Supreme Court said:

> "It is clear to us from our examination of the statute and from a review of the facts before us, that contrary to the Association's assertions, the state labor relations board may compel the committee to sign a written contract formalizing any prior oral agreement reached by the parties at the bargaining table".

The Board further notes the Supreme Court's language at Page 873 of 235 A2d that:

> "Once either party complains to the state labor relations board under this section (§28-9.1-4), the Board shall treat the complaint in the same manner as

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3. This case involved a civil action in the nature of Mandamus wherein the Plaintiff sought to obtain a Writ of Mandamus directing the Warren School Committee to execute a written agreement emboding the terms agreed upon, by the parties, during collective bargaining negotiations.

if it were a charge of an unfair labor practice brought pursuant to §28-7-13". (Matter in parenthesis added).

Therefore, based upon the Board's authority as sanctioned and approved by the Supreme Court of the State of Rhode Island, the Board will direct the Respondent to enter into and execute a written Collective Bargaining Agreement pursuant to the terms and conditions set forth in Union Exhibit #5.

From the evidence presented, the Board concludes that the refusal of the Respondent to execute a written Collective Bargaining Agreement, as orally agreed upon, is due in substantial measure to the Respondent's discontent with its Negotiating Committee and in particular what it feels was an exercise of unwarranted authority by at least one of its Negotiating Committee. Watever may be the discontent between the Respondent and its Negotiating Committee the same is no basis upon which to deprive Local 915 and its members of the benefits negotiated, in good faith. It is clear to the Board that Local 915 agreed to the Salary Schedule after it was satisfied that its issues of class size and personal days had been agreed upon. The Board will therefore in its Order, to be entered herein, direct the payment by the Respondent of <u>all</u> benefits, orally negotiated and agreed upon during the negotiating period of March 19, 1991, to and including September 10, 1991. So that there will be no confusion, the Board will in its Order direct the Respondent to pay to the members of Local 915 <u>all</u> benefits they would have received had the Respondent executed and implemented a written Collective Bargaining Agreement including all changes as provided for and set forth in Union Exhibit #5.

Based upon all of the testimony and documentary evidence presented during the four (4) days of hearings and upon the foregoing discussion, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Some time prior to March 19, 1991, the first negotiating session, the Respondent selected and appointed a Negotiating Committee composed of three (3) persons; to wit, Robert D. Watt, Jr., its Legal Counsel (designated as Chief Spokesman and Negotiator) and two (2) of its members, Robert H. Quinlan and Jane Kenney-Austin.

2. The Negotiating Committee referred to in Paragraph 1 above had the authority to conclude and agree upon the terms of a Collective Bargaining Agreement with the Warwick Teachers' Union, Local 915.

3. The Chief Spokesman and Negotiator for the Warwick Teachers' Union, Local 915 was Edward J. McElroy, Jr., its Executive Secretary.

4. Negotiations for a new Collective Bargaining Agreement, to commence September 1, 1991, began on March 19, 1991, and continued on various dates up to and including approximately 7:30 a.m. on the morning of September 10, 1991.

5. Commencing on or about September 4, 1991, the membership of Local 915 went on strike and intensive negotiating sessions were held on September 5, 6 and 8, 1991, with a final negotiating session commencing at approximately 7:00 p.m. on September 9, 1991, and concluding on September 10, 1991, at approximately 7:30 a.m.

6. Prior to the commencement of the negotiating session of September 9-10, 1991, the Respondent, through Watt its Chief

Spokesman and Negotiator, had prepared a single sheet entitled "Offer VI - Economic Benefit; language and final agreement pending on other remaining issues", which is Respondent's Exhibit #1 in this proceeding.

7. Respondent's Exhibit #1 set forth, with the exception of Local 915's request for a third (3rd) personal day, the issues remaining to be resolved as of the commencement of the negotiating session of September 9-10, 1991.

8. That the Respondent, through Watt by explicit agreement with McElroy some time between the hours of 1:45 a.m. and 7:15 a.m. on September 10, 1991, agreed to grant Local 915's request for a third (3rd) personal day.

9. That the Respondent, through Watt between 7:15 a.m. and 7:30 a.m. on September 10, 1991, agreed for a second (2nd) time, in the presence of Austin, to the granting of Local 915's request for a third (3rd) personal day.

10. That the Respondent, through Austin's acquiescence in Watt's agreeing to the third (3rd) personal day and without any objection thereto on her part, agreed to grant the third (3rd) personal day.

11. That Item 1 of the unresolved issues, under the 1st Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was withdrawn from negotiation during the final negotiating session of September 9-10, 1991, and thus became a resolved issue.

12. That Item 2 of the unresolved issues, under the 1st Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved by the Respondent's withdrawal of its request to eliminate the McSally

Clause, so called, and by the agreement of Local 915 and the Respondent to reduce the number of layoff notices from "60" to "40".

13. That Item 3 of the unresolved issues, under the 1st Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved by: (1) Local 915's agreement to eliminate "weighting" from the Collective Bargaining Agreement; (2) The Respondent's agreement through Watt and Austin that "...class size shall not exceed 28 students in a regular class"; (3) The Respondent's agreement through Watt and Austin that "...for any class which exceeds 25 students, the teacher shall be compensated at a rate double the 1990/91 rate for students 26, 27 and 28; (4) The mutual agreement that "...an aide shall be provided to any regular education classroom to which five (5) or more self-contained special education students are assigned; and (5) The mutual agreement that "...special education students - students with I.E.P's shall be evenly and equitably distributed throughout all available classes to the extent permitted by law".

14. That Item 4 of the unresolved issues, under the 1st Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved by the agreement of Local 915 and the Respondent that the Blue Cross/Blue Shield "Managed Care Benefit" program would be implemented affective September 1, 1992, with the specifics of the plan to be worked out between Local 915 and the Respondent.

15. That Item 5 (Salary Schedule) of the unresolved issues, under the 1st Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1,

referred to in Paragraph 6 of these "Findings of Fact", was resolved by Local 915's agreement with the Salary Schedule as proposed by the Respondent and as set forth on said Respondent's Exhibit #1.

16. That Items 1, 2 and 3 of the unresolved issues, under the 2nd Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", were resolved as set forth in Paragraphs 11, 12 and 14 of these "Findings of Fact".

17. That Item 4 of the unresovled issues, under the 2nd Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved as set forth in Local 915's Exhibit #5 (Section 13-9.6).

18. That Item 5 (Salary Schedule) of the unresolved issues under the 2nd Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved as set forth in Paragraph 15 of these "Findings of Fact".

19. That Item 1 of the unresolved issues, under the 3rd Year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved as set forth in Local 915's Exhibit #5 (Section 12-8.4 (b)).

20. That Item 2 (Salary Schedule) of the unresolved issues, under the 3rd year of the proposed three (3) year Collective Bargaining Agreement, as set forth in Respondent's Exhibit #1, referred to in Paragraph 6 of these "Findings of Fact", was resolved as set forth in Paragraph 15 of these "Findings of Fact".

21. After reviewing the testimony and documentary evidence, the Board finds that Union Exhibit #5 entitled "WARWICK TEACHERS UNION 91-94 DRAFT", sets forth all changes to the Collective Bargaining Agreement which was to expire on August 31, 1991, and were to be included in the Collective Bargaining Agreement covering the period September 1, 1991, to August 31, 1994, as the result of the collective bargaining negotiations between Local 915 and the Respondent during the period March 19, 1991, to and including September 10, 1991.

22. That pursuant to the findings of the Supreme Court of the State of Rhode Island in Warren Education Association v. Lapan, 103 RI 163, 235 A2d 866 (1967), the Board has the authority to order and direct the Respondent to enter into and execute a written Collective Bargaining Agreement pursuant to the terms and conditions as set forth in Union Exhibit #5.

CONCLUSIONS OF LAW

1. Local 915 has proven by a fair preponderance of the credible evidence that Local 915 and the Respondent did orally agree upon the terms and conditions for a Collective Bargaining Agreement covering the period September 1, 1991, to and including August 31, 1994, during negotiating sessions during the period March 19, 1991, up to and including September 10, 1991.

2. Local 915 has proven by a fair preponderance of the credible evidence that the Respondent committed and continues to commit an Unfair Labor Practice by its refusal to enter into and execute a written Collective Bargaining Agreement in accordance with the terms and conditions as negotiated by and between Local 915 and the Respondent during the period March 19, 1991, to and including September 10, 1991, all as set forth in Union Exhibit #5.

3. The Respondent has failed to prove by a fair preponderance of the credible evidence that it did not orally agree upon the terms and conditions of the Collective Bargaining Agreement covering the period September 1, 1991, to and including August 31, 1994.

ORDER

1. The Respondent shall cease and desist from refusing to enter into and execute a written Collective Bargaining Agreement including the terms and conditions orally agreed upon during the negotiating period of March 19, 1991, up to and including September 10, 1991.

2. The Respondent shall, within thirty (30) days of the date hereof enter into and execute a written Collective Bargaining Agreement in accordance with the terms and conditions as set forth in Union Exhibit #5 which terms and conditions were orally agreed upon during the negotiating period of March 19, 1991, up to and including September 10, 1991.

3. The Respondent is Ordered and Directed to pay to the members of Local 915 all benefits they would have received had the Respondent executed and implemented a written Collective Bargaining Agreement including all changes as provided for and

set forth in Union Exhibit #5 including reimbursement for the third (3rd) personal day.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Joseph V. Mulvey, Chairman

Raymond Petrarca, Member

Frank J. Montanaro, Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: May 18, , 1992.

By: Donna M. Geoffroy
Donna M. Geoffroy
Agent