

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 26th day of February, 1998, by and between the State of Washington, its Attorney General, the Public Disclosure Commission (PDC), and their agents and representatives, all hereinafter collectively referred to as "State", and the National Education Association ("NEA"), the Washington Education Association ("WEA"), the Community Outreach Program, the Washington Education Association Political Action Committee ("WEA-PAC"), UniServ Councils and local education associations which are the subject of matters set forth herein, officers, agents and representatives of the foregoing, all hereinafter collectively referred to as "WEA and its affiliates", and is binding upon each of them (hereinafter collectively referred to as "the parties").

WHEREAS the State has filed an action against WEA, WEA-PAC and Community Outreach program in Thurston County Superior Court entitled *State of Washington ex rel. Public Disclosure Commission*, Cause No. 96-2-04395-5; and

WHEREAS WEA, James Seibert and Kris Hanselman have filed an action in Thurston County Superior Court, Cause No. 97-2-02700-1 against the PDC, Melissa Warheit, Susan Harris and Doug Ellis; and

WHEREAS the PDC has filed an administrative action against National Education Association, and against WEA, PDC Case No. 98-176; and

WHEREAS the PDC received a complaint on October 22, 1997, alleging that WEA, WEA-PAC, several WEA affiliates and several candidates violated RCW 42.17.640, RCW 42.17.730 and RCW 42.17.780;

In resolution of all of the aforementioned and any related matters hereinafter referred to as "pending matters" as set forth herein, involving WEA and its affiliates, the parties agree to the facts as follows:

1. The Washington Education Association ("WEA") is a labor organization, incorporated in Washington State. WEA represents approximately 65,000 educational employees who work in the state's K-12 and post-secondary schools (hereinafter collectively referred to as "school districts"). WEA is a State affiliate of the National Education Association; WEA has regional affiliates which are called "Uniserv Councils", and local affiliates.
2. For several years prior to April, 1994, most WEA members voluntarily executed payroll deduction forms that continued in effect until revoked, authorizing deduction from each employee's wages of thirteen dollars (\$13.00) annually to be paid to their political committee, Political Unity of Leaders in State Education, "PULSE". Annual reauthorization of these deductions was not required. A portion of the funds collected was distributed to regional political committees, called UniServ PACs.
3. In 1993, PULSE had a membership of 48,984 and a budget of \$630,242.00.
4. PULSE and the UniServ PACs, as political committees, filed regular reports with the Public Disclosure Commission ("PDC").
5. PULSE's expenditures, all of which it reported to PDC, included contributions in support of, and in opposition to candidates and ballot propositions, general operational expenses for the salary of a bookkeeper, supplies and rent, and expenses related to internal communications, the member lobby program, member trainings, and

PULSE Board meetings.

6. In the general election of November 1992, the voters approved Initiative 134 (hereinafter "I-134") that made additions to and changes in Chapter 42.17, RCW, related to campaign financing and reporting. RCW 42.17.680 (3) provides:

No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The request is valid for no more than twelve months from the date it is made by the employee.

7. In reaction to the passage of I-134, WEA formed a taskforce entitled the Life after 134 Task Force (hereinafter "Task Force") to review the impact of I-134 on the operation of PULSE and to develop possible alternatives for a new structure.

8. The Task Force concluded that annual written authorizations would be required for all payroll deductions to PULSE. The Task Force also decided that the PDC would probably determine that PULSE and the 22 then-existing UniServ political committees were "affiliated entities" and thus shared one contribution limit under I134.

9. Based on recommendations of the Task Force, in April 1994, the WEA Representative Assembly disbanded PULSE and the UniServ political committees, and created WEA-PAC, a centralized political committee, to replace the UniServ political committees and to continue many of the political activities formerly conducted by PULSE.

10. Prior to January 1, 1994, approximately 49,000 of the approximately 60,000 WEA members had authorized the one dollar per month payroll deduction to PULSE. Subsequent to January 1, 1994, the number of members who authorized payroll deductions to PULSE/WEA-PAC dropped from approximately 49,000 to approximately 11,000.

11. In April 1994, at the WEA Representative Assembly (the annual membership convention of the WEA), WEA members voted to adopt a new mission statement, to create WEA-PAC, and to amend the WEA ByLaws by adopting Article II, Section 2, which provides:

The annual dues of an active member shall include an additional twelve dollars (\$12) annually dedicated to the political education component of the Washington Education Association. The twelve dollars (\$12) shall be divided equally, fifty percent (50%) to the state and fifty percent (50%) to the Uniserv Councils.

12. For purposes of the proposed Bylaw Amendment at the WEA Representative Assembly, the WEA leadership explained to the Assembly what it believed were the differences between "soft" and "hard" money. WEA believed "soft" money was that which could appropriately be used for political action related activities other than direct contributions to candidates and which could be collected using continuous payroll deductions. WEA believed "hard" money was to be used for campaign contributions to endorsed candidates and school district levies, that "hard" money had to be reported to the PDC, and that payroll deductions for "hard" money had to be annually reauthorized.

13. Anticipated dues revenue from the ByLaws amendment referenced in paragraph 11 is used by the WEA

Board of Directors to establish an annual budget that includes the "political education component". Dues received as a result of such amendment are used for expenditures for the "political education component". These expenditures are tracked separately in the WEA budget, as are expenditures for other WEA programs. Beginning with the 1994/95 budget, WEA has referred to this component as the "Community Outreach Program". The WEA budget is organized by sections, each alphabetically coded. The budget section referred to as "Community Outreach Program" is coded with the letter "J".

14. WEA-PAC submitted timely registration with the PDC as a political committee, and has regularly filed reports with the PDC, reporting its expenditures. From the date of its inception, WEA-PAC made contributions to candidate campaigns and paid for independent expenditures, as defined in RCW 42.17.

15. WEA-PAC is partially funded by voluntary payroll deduction in the amount of one dollar per month per WEA-PAC member. WEA members who wish to join WEA-PAC must either affirmatively authorize this deduction on an annual basis, or make a comparable direct payment to WEA-PAC. WEA-PAC membership is voluntary.

16. The dues referenced in paragraph 11 are calculated as \$12 per member per year. Of the \$12 per member per year, approximately \$6 per member per year is rebated to the WEA's Uniserv Councils.

17. Members of WEA are required to pay the dues referred to in paragraph 11. School employees who do not wish to be members of WEA (agency fee payers) are not required to pay these dues.

18. School districts deduct dues of WEA members and agency shop fees of non-WEA members through payroll deduction. School district payroll officers are instructed to deduct separately each of the following dues from WEA members: NEA, WEA, Community Outreach (called "Political Education" in 1994-95), NEA-PAC, WEA-PAC, Uniserv, and Local. WEA does not maintain a separate bank account for the dues referenced in paragraph 11.

19. From September 1, 1994, through November 30, 1996, monies were expended from the J account to pay PULSE's and WEA-PAC's overhead, interest, and other administrative expenses, including fundraising, bookkeeping, meeting costs, printing, audits, and supplies. The sum of \$176,028 was also transferred from the J account to another WEA budget account to reimburse that account for \$162,225 given to WEA-PAC from that account, plus interest. From September 1995 through June 1996, expenditures totaling \$45,200 were made from the J account and paid to the Washington State Democratic Party. On August 30, 1996, Jim Seibert, WEA Executive Director, directed that \$40,000 of this \$45,200 be credited to the J account from the WEA-PAC account. The following expenditures were also made from the J account: \$500 to the "Yes on Referendum 43" Committee, \$3,000 to the Privacy Fund Political Committee, and \$5,000 to the "No on 48" Committee.

20. In 1994, WEA-PAC reported to PDC that it had received loans from WEA totaling \$162,225. On October 31, 1996, WEA-PAC reported to PDC overhead expenditures of WEA-PAC for January 1996 through October 28, 1996, totaling \$63,018.19.

21. Between October 1995 and August 1996, WEA-PAC contributed a total of \$700 in excess of the contribution limits in RCW 42.17.640 to six legislative candidates.

22. During the course of the 1996 campaign to defeat Initiatives 173 and 177, WEA received \$410,000 from NEA which WEA then gave to the "No on 173/177 Committee" as contributions from WEA. Neither NEA nor WEA disclosed that NEA was the source of the contributions.

23. NEA is the employer of Jim Seibert who is a registered lobbyist in the state of Washington. NEA was the

employer of Kris Hanselman until December 31, 1996, who during part of that time, was a registered lobbyist in the state of Washington. The lobbying activities of Mr. Seibert and Ms. Hanselman were on behalf of WEA.

In resolution of all of the aforementioned and any related matters (hereinafter referred to as "pending matters"), as set forth herein, involving WEA and its affiliates, based on the above facts, the State has made the following legal conclusions as agreed by the parties

1. The WEA has changed its policies with respect to expenditures from the Community Outreach Program budget. These policies do not and will not allow Community Outreach dues to be used for payment of administrative and overhead expenses of WEA-PAC or for contributions to any other political committee, candidate or political party.
2. There were substantial legal issues as to whether the Community Outreach Program from September, 1994, to November, 1996 was or was not a "political committee" within the meaning of RCW 42.17.020(3) and was or was not a "person" pursuant to RCW 42.17.020(3). This agreement finally resolves such issues.
3. Since November, 1996, the Community Outreach Program has not been and is not a "political committee", within the meaning of RCW 42.17.020 (33). The parties agree that since November, 1996, the expenditures that have been and are being made from the Community Outreach Program dues do not make that program a "political committee". A non-exclusive description of the activities that do not make that program a "political committee" is set forth in the Guidelines attached hereto and made a part hereof as Exhibit A.
4. In-kind and direct contributions to WEA-PAC, other political committees and political parties fall within a different category. Prior to November, 1996, WEA made expenditures from Community Outreach dues for these purposes. Subsequent to November, 1996, these expenditures were not to be made from Community Outreach dues and any expenditures from Community Outreach Program dues that were of this character were incidental and are included in the monies described in Paragraph 6 below. The PDC acknowledges and agrees that WEA legally may use its general treasury funds for these activities, as long as it does so in compliance with the Guidelines set forth in Exhibit A.
5. WEA-PAC violated RCW 42.17.080 and 42.17.090 by failing to report in-kind contributions that it received for its fundraising and administrative support from WEA's "J account" from September 1, 1994 through December 31, 1995. WEA-PAC also violated RCW 42.17.080 and 42.17.090 by failing to timely report in-kind contributions received for its fundraising and administrative support from WEA's "J-account" from January through October 1996. WEA-PAC did not intentionally make these reporting errors; it did not understand that it was required to report to PDC the fundraising and administrative support that it received from its affiliated entities. The PDC acknowledges that it recently has become aware that many similar political committees have also failed to file such reports.
6. Community Outreach funds expended for in-kind and direct contributions to WEA-PAC and other political committees in the amount of approximately \$319,000 will be returned to WEA members. This amount constitutes the following: (1) the "loan" referenced in paragraph 7 below: \$162,225; (2) contributions to WEA-PAC for administrative expenses and overhead: \$142,929; (3) contributions to other political committees: \$13,850. The PDC agrees that WEA's general treasury funds lawfully could have been used for such purposes.
7. WEA-PAC violated RCW 42.17.080 and RCW 42.17.090 by reporting \$162,225 as "loans" and later reporting these "loans" as "forgiven". The receipt of such monies by WEA-PAC was legal; the manner in which it was reported was not.
8. As a lobbyist employer, WEA has filed and files regular reports with the PDC. However, WEA failed to report

its contributions to WEA-PAC and, as a result, unintentionally violated RCW 42.17.170 and RCW 42.17.180. The expenditures of such monies were legal; the failure to report was not.

9. WEA did not timely report \$ 272,702 in contributions to the "No on 173/177 Committee" in violation of RCW 42.17.170 and RCW 42.17.180. These errors occurred during a change of personnel responsible for preparation of such reports. The expenditures of such monies were legal; the failure to report timely was not.

10. WEA, its Uniserv Councils, its local associations, and WEA-PAC are "affiliated entities" for purposes of sharing contribution limits, and are separate entities for purposes of reporting contributions. WEA-PAC acts as a repository for funds received from Uniserv Councils and local education associations. PDC acknowledges that it is not a violation of RCW 42.17 for WEA-PAC to return to the Uniserv Councils and local education associations monies held by WEA-PAC for those entities, so that Uniserv Councils and locals can expend such monies for election campaigns.

11. WEA violated RCW 42.17.120 by submitting \$410,000 to the "No on 173/177 Committee" without disclosing that funds received from NEA were the source of the contributions. WEA did not understand that the law required the NEA to be treated as an entity separate from the WEA for purposes of RCW 42.17.120.

12. NEA violated RCW 42.17.120 by giving \$410,000 to WEA to oppose Initiatives 173 and 177 which WEA then gave to the "No on 173/177 Committee" as contributions from WEA. NEA did not understand that the law required the NEA to be treated as an entity separate from WEA for purposes of RCW 42.17.120.

13. NEA unintentionally violated RCW 42.17.180 by failing to file employer lobbyist reports.

14. WEA-PAC unintentionally exceeded the contribution limits imposed by RCW 42.17.640 by a total of \$700 given to six legislative candidates between October 1995 and August 1996.

15. WEA will send a letter to each of its current members (approximately 65,000) informing them of the terms of this Settlement Agreement, within 30 days from the entry of the Order of Dismissal. Each current member will receive a rebate of \$5.00 either through a reduction of future WEA or Community Outreach dues beginning September 1998, or through an arrangement otherwise approved by the State. The \$5.00 rebate represents the approximate per-member amount of Community Outreach dues contributed to WEA-PAC or other political committees.

16. As a penalty, for all reporting obligations, WEA and its affiliates will pay \$80,000.00 to the State. The penalty shall be by a check payable to the state of Washington and shall be delivered to the Office of the Attorney General within 60 days from the entry of the Order of Dismissal.

17. WEA and its affiliates will pay costs and attorney fees in the amount of \$20,000.00 to the State. The payment shall be by check payable to the state of Washington and shall be delivered to the Office of the Attorney General within 60 days from the entry of the Order of Dismissal.

18. All lawsuits, administrative charges and pending complaints between the WEA, WEA-PAC, any WEA affiliated organization, NEA and the PDC, that are referenced in this Agreement, will be dismissed with prejudice, forthwith.

19. This Agreement fully and finally resolves all issues raised or that could have been raised by the State with respect to the matters resolved herein, and all pending matters between the State and WEA and its affiliates.

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IN WITNESS WHEREOF the Parties, by and through their duly authorized attorneys and representatives have placed their hand and seal this ____ day of _____, 1998

STATE OF WASHINGTON Washington Education Association and its affiliates

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