

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

In the Matter of the Impasse)	
Between the:)	
)	IEERB No. F-15-008-3060
Carmel Clay Education Association)	
)	
and)	
)	
Carmel Clay Schools)	

**REPORT OF FINDINGS AND RECOMMENDATIONS
OF THE FACTFINDER**

I. Procedural Summary

1. On November 30, 2015, the Indiana Education Employment Relations Board (*IEERB*) appointed Sandra L. Jensen as the Factfinder following the declaration of impasse in the collective bargaining between the Carmel Clay School Corporation (*CCSC*) and the exclusive representative Carmel Clay Education Association (*CCEA*) for the establishment of a collective bargaining agreement for the period from July 1, 2015 through June 30, 2016. Dr. Rodger Smith was appointed by IEERB to serve as the Financial Consultant.
2. The declaration of impasse occurred when the teachers did not ratify a Tentative Agreement (*TA*) reached by the CCEA and the CCSC resulting in the declaration of impasse.
3. Becky Smith of the Indiana State Teachers Association served as the chief spokesperson for the CCEA and Eric Hylton, appeared as counsel for the CCEA.
4. Counsel, Hudnall Pfeiffer, appeared on behalf of the CCSC and also served as the chief spokesperson.
5. On December 6, 2015 the Factfinder consulted with the parties by email for the purpose of confirming that the IEERB and the CCSC would be responsible for ensuring that required notice of the Factfinding Hearing would be published and posted. Also addressed was the CCSC's responsibility to record the Factfinding Hearing and the need for the CCSC to provide three copies of the recording; one each for the Factfinder, the Financial Consultant, and the IEERB, immediately upon conclusion of the Factfinding Hearing.

6. Also on December 6, 2015, the Factfinder presented a number of inquiries to the parties in an effort to assist their preparation for the Factfinding Hearing by identifying certain topics of interest. The Factfinder did not require the parties to respond to the inquiries in advance of the Factfinding Hearing, however, the parties were provided the opportunity to do so. If a party chose to provide a response or additional tangible or documentary evidence regarding one of the inquiries before the Factfinding Hearing commenced, the Factfinder required the party to provide a copy of the response or additional material to the Factfinder and to the other party, with or without elaboration, not later than December 9, 2015. PowerPoint presentations or other material summarizing data already in the record were expressly excepted from the requirement to exchange tangible or documentary material by December 9, 2015. The parties were notified that additional tangible or documentary evidence would not be accepted after December 9, 2015.
7. Both the CCSC and the CCEA provided timely responses to the Factfinder's inquiries. Additional documentary material associated with those responses was also submitted timely by both parties in accordance with the Factfinder's instructions. The responses and documents provided by the parties are identified as follows:
 - a. CCSC's December 9, 2015, 4:52 p.m. email containing interlined responses.
 - b. CCSC's Exhibit 13 Cover.
 - c. CCSC's Exhibit 13.
 - d. CCSC's Exhibit 14 Cover.
 - e. CCSC's Exhibit 13.
 - f. CCEA's document entitled "Lane Changes".
 - g. CCEA's document entitled "Answers to Items of Interest".
 - h. "Carmel Clay Schools 2015 Strategic Plan" submitted by CCEA.
8. There were no objections expressed by either party to the items identified in Finding 7. These documents were identified as a part of the record of this Factfinding.
9. The parties also agreed to the IEERB's suggested order of presentation for the Factfinding Hearing. The order of presentation allowed each party one (1) hour to make presentation of material in support of their own Last Best Offer (*LBO*) followed by forty-five (45) minutes to present material explaining why the opposing party's *LBO* should not be selected. Thereafter, each party was provided thirty (30) minutes to offer rebuttal to the opposing

party's presentations followed by a final fifteen (15) minute opportunity to respond to the opposing party's rebuttal. In each instance the CCSC presented first and the Factfinding Hearing concluded with the CCEA's final response.

10. The parties were allowed to provide new facts and argument during the rebuttal opportunities; however, they were reminded that no new issues were to be raised during the two rebuttal opportunities. The Factfinder advised the parties that any new issues raised during the rebuttal periods would be disregarded, or, in the alternative and at the sole discretion of the Factfinder, the parties would be engaged in discussion regarding a fundamentally fair means of allowing the issue to be fully addressed by both parties.
11. The CCEA and the CCSC agreed that the Factfinding Hearing would commence at 5:00 p.m. (EST) on December 11, 2015 at the Carmel Clay School Corporation Educational Services Center. The Factfinding Hearing commenced as scheduled and concluded at approximately 11:18 p.m.
12. The President of the CCEA, Brian Lyday, made the CCEA's Factfinding Hearing presentation. The CCSC's presentation was made by Mr. Pfeiffer and by Roger McMichael, the CCSC's Associate Superintendent for Business Affairs. Each of these persons was sworn before making their presentation.
13. During the Factfinding Hearing the Factfinder and the Financial Consultant received the following additional documents:
 - a. The CCEA provided an additional copy of its LBO in an alternative format to assist with Mr. Lyday's presentation.
 - b. The CCSC provided a copy of the CCEA LBO in an alternative format to ease Mr. McMichael's presentation during the Factfinding Hearing.
 - c. The CCSC provided a document entitled "Summary of Increment Cost and Cost of Removing Step A" and identified as Exhibit 12. This document was described as a summarization of information contained in documents already included in the CCSC's LBO or material provided in response to the Factfinder's inquiries.
14. The documents identified in Finding 13 do not represent new documents. Items 13a and 13b contain duplicates of the documents included in the CCEA's LBO. Item 13c represents a summarization of material contained within the CCSC's LBO. There were no objection to

any of the documents identified in Finding 13. These documents were also accepted as a part of the record of this Factfinding.

15. In addition to the items identified in Finding 7 and Finding 13, the parties' LBOs, their Power Point presentations and the recording of the Factfinding Hearing comprise the full record of this Factfinding.¹
16. "The purpose of Factfinding is to provide a final solution on the items permitted to be bargained under IC 20-29-6-4 whenever the parties are unable by themselves, or through a mediator, to resolve a dispute." *Indiana Code § 20-29-8-5.*
17. Indiana Code § 20-29-6-4 specifies that:

(a) A school employer shall bargain collectively with the exclusive representative on the following:

(1) Salary.

(2) Wages.

(3) Salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11

(b) Salary and wages include the amounts of pay increases available to employees under the compensation plan adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, any components of the teacher evaluation plan, rubric, or tool, or any performance stipend or addition to base salary based on a performance stipend to an individual teacher under IC 20-43-10-3.

Indiana Code § 20-29-6-4.

18. In accordance with Indiana Code § 20-29-8-7:

(c) The factfinder:

(1) may restrict the factfinder's findings to those issues that the factfinder determines significant;

(2) must restrict the findings to the items listed in IC 20-29-6-4; and

(3) may not impose terms beyond those proposed by the parties last, best offers.

...

(f)... Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

19. Indiana Code § 20-29-8-8 specifies as follows:

¹ The Factfinder relinquished control of the documents identified in Finding 13 to the IEERB, without retaining a copy for her records.

Sec. 8. In conducting hearings and investigations, the factfinder is not bound by IC 4-21.5. The factfinder shall, however, consider the following factors:

(1) Past memoranda of agreements and contracts between the parties.

(2) Comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation.

(3) The public interest.

(4) The financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing as described in IC 20-29-6-3.

20. Indiana Code § 20-29-6-3 describes unlawful deficit financing as an agreement that would result in a "reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue."

II. Past Memoranda of Agreement and Contracts between the Parties

21. The CCSC's and the CCEA's 2012-2013 and 2013-2014 Collective Bargaining Agreements (*CBA*) were established through Factfinding while the 2014-2015 CBA was reached by the parties through mediation.

22. The 2015-2016 TA that was not ratified by the teachers is very similar to the previous three CBAs. Both the CCSC's and the CCEA's proposed 2015-2016 CBAs resemble the previous three CBAs but the CCSC's proposed 2015-2016 CBA (*CCSC Proposal*) more closely parallels the terms and provisions of the past three year's CBAs. The dissimilarity in the CCEA's proposed 2015-2016 CBA (*CCEA Proposal*) results predominantly from the CCEA's resurrection of language contained in the 2008-2012 CBA.

23. A comparison of both the CCSC Proposal and the CCEA Proposal reveals that both proposals differ from the most recent three CBAs with respect to certain terms and provisions described as follows:

- a. The Board will be required to schedule a mutually agreeable time for considering the appeal of a grievance. This is a change from previous CBAs that allowed the Board to unilaterally determine the process, the time and communication associated with addressing a grievance.

- b. Teachers with graduate school hours earned “by the teacher to secure his/her first Indiana teacher’s license” will now be given credit for those graduate school hours on the salary schedule. In previous CBAs this credit was not given.
- c. Paragraph(s) addressing performance grant distributions will be removed from both the CCEA and CCSC Proposal as required by Indiana Code § 20-29-6-4(b).
- d. Two “insurance holidays” will be added. These “holidays” allow teachers to avoid paying insurance premiums on two occasions annually.
- e. Higher quality breast pumps will be provided and mail order prescriptions will no longer be required.
- f. Dental coverage and voluntary life insurance benefits will be increased.
- g. Teachers will be granted one additional paid day of bereavement leave for necessary travel.

24. The items identified in the previous Finding were included in the TA and are not in dispute. The parties’ presentations do not indicate that these items have a significant impact upon financial concerns. The Factfinder concludes that these items are not sufficiently significant to warrant further discussion.

25. The compensation that would have been afforded to teachers under the TA was revised by both the CCSC and the CCEA. The financial impacts associated with the compensation packages will be discussed in Section IV, *infra*.

26. One of the notable differences between the TA and the CCSC Proposal is the reduction in the percentage salary increase from the 2% specified in the TA to .5% in the CCSC Proposal. The CCSC explained that it intended to use cash on hand to fund a 2% increase for all of its staff, both teaching and non-teaching. However, the necessity to avoid deficit financing and the prohibition on the use of funds on hand following a declaration of impasse obligated the CCSC to decrease the amount of the salary increase.

27. The other most significant difference in the TA and the CCSC Proposal is the inclusion of language intended to address the Court of Appeals decision in *Jay Classroom Teachers Association v. Jay School Corporation and Indiana Education Employment Relations Board*, Indiana Court of Appeals 49A05-1412-PL-0586. The CCSC Proposal provides an alternative to address the possibility that under the *Jay Decision*, if upheld by the Indiana Supreme Court, that it will be unable to continue unilaterally determining the placement of long term

substitute and newly hired teachers on the salary schedule. In this event, the CCSC Proposal specifies that all newly hired teachers and long term substitute teachers will be placed at the bottom of the salary schedule.

28. By comparison, the CCEA Proposal contains a variety of provisions that differ from the most recent three CBAs as well as the TA. These differences almost universally result from the CCEA's resurrection of certain terms contained in the 2008-2012 CBA that have not been included in any of the three most recent CBAs. The most significant differences between the CCEA Proposal and the most recent three CBAs relate to the following subjects:
- a. Under the CCEA's proposal all long term substitute and newly hired teachers' salaries will be placed at the bottom level of the salary schedule and years of service credit will only be given for service at Carmel Clay Schools;
 - b. "Row A" on the salary schedule, which represents the lowest salaries on the salary schedule, will be removed;
 - c. Requirements associated with the tax deferred savings plan will be revised to reinstate language from the 2008-2012 CBA; and,
 - d. Requirements associated with the group insurance program will be altered to revive language from the 2008-2012 CBA.
29. None of the items identified in Finding 28 were included in the TA.
30. It is observed that while both the CCSC Proposal and the CCEA Proposal provide the right for a teacher to request Board review of the Superintendent's determination of a grievance, the CCEA Proposal inadvertently fails to specify the time within which a teacher may seek such appeal to the Board. Mr. Lyday stated during the Factfinding Hearing that the deadline had been inadvertently omitted and should be stated as seven (7) days.² The CCEA Proposal differs from the CCSC Proposal by allowing the grievance of a provision of the CBA and also allowing the grievance of a provision of the teacher handbook, Board policy and state and federal law. These differences are not believed to represent a significant concern.
31. The CCEA's intention to eliminate "Row A" from the salary schedule requires consideration of a variety of factors. First of these is the impact upon teachers previously hired under "Row A" of the salary schedule. A teacher who is not rated effective or highly effective may

² The Factfinder assumes the IERB would be permitted to correct such a clerical or typographical error if the CCEA Proposal is otherwise appropriate for selection as the parties CBA.

not, by application of Indiana Code § 20-28-9-1.5(c), be elevated on the salary schedule. Consequently, teachers previously hired at the “Row A” salary who are not rated effective or highly effective will remain at that salary, while those teachers hired at the “Row A” salary who are rated effective or highly effective would advance to “Row B” on the salary schedule. The consequence of removing “Row A” from the salary schedule combined with the CCEA Proposal’s requirement that all newly hired teachers and long term substitute teachers be hired at the minimum salary level results in all newly hired teachers and long term substitute teachers being hired with a salary established using “Row B”. The effect of these two new provisions in concert is that newly hired teachers and long term substitutes having no creditable service time and no evaluation will be earning salaries greater than those of teachers having a year of service who were rated less than effective and equal to the salaries of teachers with one year of effective or highly effective service credit. The result of eliminating “Row A” from the salary schedule lacks fairness that exemplifies a result seemingly disfavored by the Indiana Court of Appeals, which stated; “Although the teacher [hired in “Row A” before its elimination] may receive increases thereafter, they will always be increases from *that* initial salary...” *Jay, supra* at 20.

32. Complicating the consideration of the CCEA Proposal with respect to the elimination of “Row A” from the salary schedule is the CCEA’s seemingly opposing plans for implementation. The CCEA states in its Factfinding Hearing presentation;

There are 50.95 FTE teachers on Row A currently. 15.55 FTE teachers are assumed eligible for a “step” increase given an Effective or Highly Effective rating. These teachers are not impacted by this proposal as they would move to Step B in an increment proposal.

This leaves 35.45 FTE affected by the proposal. *The proposal would increase each FTE by approximately \$2,219 (with adjustments needed for those affected by the first 15 days at substitute pay).*

(Emphasis added). This statement by CCEA appears to anticipate moving the 35.45 teachers rated less than effective or highly effective from the “Row A” to the “Row B” salary despite the fact that such an increment step would violate Indiana Code § 20-28-9-1.5(c).

33. In response to the Factfinder’s inquiry during the Factfinding Hearing, Mr. Lyday acknowledged that absent an effective or highly effective evaluation the teachers with “Row A” salaries would remain at the “Row A” after a year of service despite the fact that newly

hired, unevaluated, teachers would be hired and immediately earn nearly \$2,000 more per year.

34. The most significant reasonably expected outcome of removing "Row A" from the salary schedule might be a demoralizing impact upon teachers recently hired under the existing "Row A" salary schedule that may result in decreased morale and discord amongst those teachers who are beginning careers at Carmel Clay Schools.

35. While there are undoubtedly many ways to effect salary increases for new teachers one possible way to avoid this dilemma in the process might be to apply a greater percentage of available monies to those starting salaries instead of applying an equal percentage to all salary levels. This approach would seemingly be more in line with Recommendation 11 of the "Indiana Blue Ribbon Commission on the Recruitment and Retention of Excellent Educators" (*IBC Report*), which states:

The introduction of legislation that would require a significant amount of new money appropriated to schools to be directed to educator salaries, specifically to educators with one to ten years of experience.

36. The most significant aspect of the CCEA Proposal's revisions to the tax deferred savings plan and the group insurance program relates to the requirement that the CCSC and the CCEA "mutually agree" on significant aspects of the programs.

37. With respect to the group insurance program, under the CCEA Proposal the parties would be required to "mutually agree to any and all aspects of the insurance program contained in this Agreement, including without limitation, carriers, eligibility requirements, plan design, premium, open enrollment and open transfer". By contrast, the CCSC Proposal gives the CCSC "the right, in its discretion, to change modify or alter any aspects of the insurance programs contained in this Agreement, including without limitation, carriers, eligibility requirements, plan design, premium, open enrollment and open transfer periods."

38. The *Jay Decision* was issued on November 13, 2015 after these parties had declared impasse with respect to their collective bargaining efforts in accordance with Indiana Code § 20-29-6-15.1. The Factfinder is making every effort to reconcile the impacts of the *Jay Decision* upon the processes for Factfinding set forth by the Indiana General Assembly. In doing so, the Factfinder observes that while the Factfinder is not allowed to consider any terms other than those that may be collectively bargained, *Id.*, she also observes that Factfinding is not, per se, collective bargaining by which the parties would agree upon the terms of a CBA.

Conversely, the express purpose of Factfinding is to “impose contract terms on the parties.” *Id.* The Court of Appeals determination that Indiana Code § 20-29-6-2(a)(2) prohibits a CBA established through Factfinding from containing terms inconsistent with the school employees’ rights set forth at Indiana Code § 20-29-4-1 complicates the Factfinder’s ability to comply with the dictates of Indiana Code § 20-29-6-15.1, which require the Factfinder to (1) restrict Factfinding to “only those items permitted to be bargained” as set forth in Indiana Code § 20-29-6-4; (2) prevent the occurrence of deficit financing considering only general fund and referendum dollars; and (3) include only terms “proposed by the parties in their last, best offers”.³ The Factfinder has attempted to consider the implications of Indiana Code §§ 20-29-6-2(a)(2), 20-29-4-1, 20-29-4-3, 20-29-6-4, 20-29-6-15.1 and the *Jay Decision* in addressing the issues raised relating to the group health plan.

39. Mr. Hylton pointed out that similar to teachers’ salaries, which were at issue in the *Jay Decision*, Indiana Code § 20-29-4-1 also requires collective bargaining of teachers’ “related fringe benefits”, which would include health insurance. Mr. Hylton argued that just as the *Jay Decision* prohibits school employers from unilaterally determining the placement of a newly hired teacher on the salary schedule, school employers are similarly prohibited from taking unilateral action pertaining to a health care program because that program is a wage related fringe benefit.

40. Just as the *Jay Decision* determines Indiana Code § 20-29-6-2(a)(2) prohibits a CBA established through Factfinding from violating teachers’ rights under Indiana Code § 20-29-4-1, the implication of the *Jay Decision* would also prohibit a CBA established through Factfinding from violating other laws as well. Included would be laws associated with a school corporation’s rights and responsibilities as established at Indiana Code § 20-29-4-3.

41. Indiana Code § 20-29-4-3 states;

School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by law, including but not limited to...

certain items enumerated.

³ Given the recent issuance of the *Jay Decision* and the 30 day time period within which this recommendation must be issued, the Factfinder has been unable to conduct a full and complete study of its implications. The Factfinder observes that in some respects the result of the *Jay Decision* appears contradictory to the Factfinding process and is hopeful that future clarification through IEERB interpretations and guidance, administrative rules or future litigation will prove insightful.

42. Under Indiana Code § 20-26-5-4(a)(8)(A), a school employer, such as the CCSC, has the: “...specific power....to do the following: (A) Employ, contract for, and discharge superintendents, supervisors, principals, *teachers*...” but with the stipulation that “the compensation, terms of employment, and discharge of teachers are, however, subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers.” (*emphasis added*).
43. Clearly, at least two of the “laws relating to employment, contracting, compensation, and discharge of teachers” are brought into issue with respect to the CCEA Proposal’s terms associated with the group insurance plan. The first is Indiana Code §§ 20-29 relating to collective bargaining and the other is Indiana Code § 20-26-5-4(a)(15), which authorizes the CCSC to maintain a self-funded insurance program for health and dental coverage for its employees.
44. “When construing statutes, our primary goal is to determine and give effect to the intent of the legislature. *See Foremost Life Ins. Co. v. Dep’t of Ins.* 274 Ind. 181, 186, 409 N.E.2d 1092, 1095 (1980). When two statutes on the same subject must be construed together, a court should attempt to give effect to both and *must* attempt to harmonize any inconsistencies or conflicts before applying any other rule of statutory construction. *State v. Universal Outdoor, Inc.*, 880 N.E.2d 1188, 1191 (Ind. 2008); *Bd. of Trs. of Ind. Pub. Emps. Ret. Fund v. Grannan*, 578 N.E.2d 371, 375 (Ind. Ct. App. 1991), *trans. denied*.” *Moryl v. Ransone*, 4 N.E. 3d 1133, (Ind. 2014).
45. The collective bargaining provisions of Ind. Code §§ 20-29, particularly Indiana Code § 20-29-8-5, which refers to Indiana Code § 20-29-6-4, must be considered in concert with laws specifically applicable to the CCSC’s participation in programs of insurance for health and dental benefits for employees.
46. With respect to health insurance plans the CCSC is authorized:
- In accordance with IC 20-26-17, to:
- (A) participate in a state employee health plan under IC 5-10-8-6.6 or IC 5-10-8-6.7;
 - (B) purchase insurance; or
 - (C) establish and maintain a program of self-insurance; to benefit school corporation employees, including accident, sickness, health, or dental coverage, provided that a plan of self-insurance must include an aggregate stop-loss provision.

Indiana Code § 20-26-5-4(a)(15).

47. The CCSC is, however, obligated to observe Indiana Code § 20-26-17, and particular to this issue, the limitation set forth in Section 3 on the expenditure of funds for employee health plans.
48. It is the conclusion of the Factfinder that, a teachers' organization and a school corporation may collectively bargain the coverages to be provided by a group insurance plan but to allow the school corporation, in this instance the CCSC, to comply with the requirements of Indiana Code § 20-26-17 and possibly other laws relating to self-funded group insurance programs, it must be in a position to control certain aspects of that program without obtaining the teachers organization's, in this instance the CCEA's, mutual agreement. To determine otherwise would place teachers in a position to collectively bargain for increased benefits and later withhold their mutual agreement to an increase in individual premiums necessary to fund those benefits, which action would force the school corporation to either expend a greater amount than is legally allowed by Indiana Code § 20-26-17-3 or violate a CBA. The Factfinder believes it was not the intent of the Indiana General Assembly to potentially place a school corporation in this untenable position.
49. In this instance the evidence is clear that the CCSC and the CCEA did collectively bargain the coverages to be provided by the group insurance plan. This is evidenced by the inclusion of new coverages including improved breast pumps, increased dental coverages, and the elimination of the requirement to participate in mail-order prescription services in the unratified TA that were retained in both the CCEA Proposal and the CCSC Proposal.
50. It is the opinion of the Factfinder that application of the *Jay Decision* to this issue would require the CCSC and the CCEA to collectively bargain the benefits that will be provided to the teachers with respect to a program of group insurance, but would afford the CCSC's maintenance of control over the amount of premiums, plan design, carriers and other matters associated in order to comply with other laws. This implementation scheme is not, in the opinion of the Factfinder, contrary to the *Jay Decision* and does not constitute a failure to collectively bargain as required by Indiana Code §§ 20-29.
51. With respect to the tax deferred savings plans, the CCEA Proposal clearly states that the plan vendor, plan design and employer contributions must be "mutually agreed" and requires the establishment of a 403(b) retirement plan that "*will include provisions for ...matching*

employer contributions.” The plain language of this provision, found at Article 8(b) of the CCEA Proposal clearly requires the 403(b) plan to include matching employer contributions. Upon inquiry by the Factfinder regarding the financial impact of fulfilling this requirement, the CCEA offered the following response:

Article 8: Reinstates language from the 2008-2012 CBA. This language was removed in the CCSC LBO in 2012-2013. The teachers presently have and the district maintains 401a, 403b, & 457 plans. This language changes no current practice and only provides additional language for clarification. The 403b plans, maintained by the CCSC, previously provided for salary reduction contributions and currently remain a practice of the district. The plan previously provided for matching employer contributions, although this provision was removed in CCSC LBO 2012-2013. The vendor currently maintains accounts with funds deposited for those prior employer contributions. The association intends to solely make clear that these accounts must be maintained. CCEA has not asked for any matching contributions in its LBO and the parties would need mutual agreement in the future to do so; therefore, there is no financial impact.

52. The Factfinder observes from the CCEA’s response that the matching employer contributions had existed during the period of time covered by the 2008-2012 CBA, from which this language was taken. The language clearly was intended to impose a duty upon the CCSC from 2008 through 2012 to provide employer matching contributions and the language still accomplishes that purpose, regardless of the CCEA’s intent. This language was eliminated with the 2012-2013 CBA when the requirement for the CCSC to make the matching contributions was also eliminated. To avoid a renewal of the requirement for the CCSC to provide matching contributions that language must not be included in the 2015-2016 CBA.
53. This language would need to be stricken if the CCEA Proposal were selected as the 2015-2016 CBA.
54. While revisions exist between the CBAs for each of the years 2012-2013, 2013-2014, and 2014-2015, the differences between those CBAs, the TA and the CCSC Proposal are generally insignificant or were made to address potentially new legal requirements.
55. While the CCEA Proposal is not dissimilar to the TA or the previous three CBAs it is clearly more divergent than the CCSC Proposal.

III. Comparison of Wages and Hours of the Employees Involved with Wages of Other Employees Working for Other Public Agencies and Private Concerns Doing Comparable Work, Giving Consideration to Factors Peculiar to School Corporation

56. The CCEA offered evidence that a new teacher hired at Carmel Clay Schools is hired with a salary of \$35,718, which is less than the lowest teacher salary offered at six (6) area school corporations. The CCEA documented that this salary is 7.8% less than the starting salary of the school corporation with the closest starting salary.
57. The CCEA also established that the Carmel Clay teachers at the highest salary level earn less than the highest salary levels at each of the same six (6) area school corporations, earning 3.26% less than the highest salaried teacher at the school corporation with the closest top salary.
58. However, the CCSC, highlighting the fact that the CCEA provided data for only the highest salary and for the lowest salary offered at those six (6) comparable schools. The CCSC explained that focusing only on the highest and lowest salaries provides a skewed comparison of the Carmel Clay teachers' salaries to the salaries of teachers at those schools.
59. The CCSC offered that school corporations have deviated away from "step and lane" schedules to such an extent that the Indiana School Board Association no longer compiles salary comparison data. The CCSC observed that in recent years the more common practice has involved the use of stipends and other salary enhancements, such as hiring bonuses that provide increases applicable to only one contract term.
60. To counter the CCEA's position, the CCSC explained that many area school corporations recognize only the educational degree, i.e. Bachelor degree or Master degree, whereas Carmel Clay teachers benefit from seven educational degree levels including Bachelor degree, Bachelor degree plus 15, Bachelor degree plus 30, Master degree, Master degree plus 15, Master degree plus 30, and Doctor of Education degree.
61. Furthermore, the CCSC offered that while the Carmel Clay School's lowest and highest salaries are lower than the same level salaries offered by other area schools, the Carmel Clay School's salary schedule is designed to provide consistently increasing salaries over an 18 year period at which time its teachers reach the highest salary level. By comparison, CCSC advised that while teachers at other area school corporations begin at higher salaries, those salaries do not increase consistently over time. The CCSC further reported that teachers at some of those schools only reach the highest salary levels after 22 years of service. The

- CCSC concluded that the Carmel Clay teachers actually achieve greater “career earnings” by virtue of steadily increasing salaries and reaching the highest salaries four years sooner.
62. CCSC also explained that because of its ability, under the present CBA, to hire teachers at a salary level above the minimum provided by the salary schedule, some Carmel Clay teachers’ career earnings do not actually begin from the minimum salary on the salary schedule. The CCSC recognized, however, that the *Jay Decision* may eliminate its continued ability to exercise flexibility in placing new teachers above the minimum salary on the salary schedule.
63. While the CCSC noted the insufficiency of the CCEA data, the CCSC provided no actual comparable data to support its position. The parties each explained their positions cogently and both outcomes are clearly plausible.
64. In an effort to evaluate the merits of the parties’ positions, the Factfinder considered the entirety of the “Indiana Blue Ribbon Commission on the Recruitment and Retention of Excellent Educators” (*IBC Report*) and the “Final Report” of the Interim Study Committee on Education dated November 1, 2015. (*Final Report*).
65. As the CCEA established, the salary schedule associated with the 2014-2015 Carmel Clay Schools CBA provides a salary of \$35,718 for a first year teacher holding only a Bachelor degree. According to the IBC Report the median income for a first year teacher is only \$35,000. By comparison to Indiana median teacher compensation the very lowest salary on the Carmel Clay Schools’ salary schedule is very close to the average compensation provided to a teacher with two years of experience. The considerations do not take into account the ability to increase salary based on seven different levels of educational accomplishment by which a first year teacher at Carmel Clay Schools may earn as much as \$43,484 and a second year teacher may earn as much as \$47,189.
66. This trend continues with Carmel Clay teachers having 10 and 20 years of experience. The median compensation for a 10 year teacher in Indiana is \$46,268, whereas Carmel Clay Schools provides compensation for a 10 year teacher between \$49,037 and \$60,140 depending upon educational qualifications. Similarly, the median compensation for a teacher with 20 years of teaching credit is \$60,849. Carmel Clay teachers with 19 years of service credit earn from \$62,362 to \$76,796 depending upon educational accomplishments.

67. While the record lacks sufficient data to properly evaluate Carmel Clay Schools' salaries as compared specifically to the six (6) area schools identified by the CCEA, the material in the record clearly supports the CCSC's position if the comparison relates to median teacher compensation for Indiana as a whole.

IV. The Financial Impact on the School Corporation and Whether Any Settlement Will Cause the School Corporation to Engage in Deficit Financing as Described in IC 20-29-6-3

68. After consideration of the parties' financial data it is the Factfinder's conclusion that the total revenue for consideration in establishing the Carmel Clay Schools CBA is \$107,107,247. This revenue is comprised of \$89,004,102 as certified by the Indiana Department of Education plus \$13,352,145 as established by the Department of Local Government Finance, and enhanced by an additional \$4,751,000 in miscellaneous revenue.

69. The Factfinder recognizes that the CCEA identified general fund revenue in the amount of \$89,058,711. This is inconsistent with the DOE Certification provided by both the CCEA and the CCSC.

70. The Factfinder also recognizes that while the miscellaneous revenue figure provided by the CCEA and the CCSC are similar they are not the exact same figure. The CCSC identified the miscellaneous revenue as \$4,751,000 while the CCEA offered only \$4,587,139 in miscellaneous revenue. The Factfinder and the Financial Consultant have been unable to identify the exact composition of either the CCSC or the CCEA miscellaneous revenue figures. Therefore, for purposes of this analysis the higher of the two revenue amounts, or \$4,751,000, is being used.

71. The CCEA Proposal contains all of the terms and provisions included in the CCSC Proposal and the CCEA offered no contradictory financial data associated with these terms and provisions. For this reason, the expenditures associated with the CCSC Proposal are considered first.

72. The total non-teacher expenses provided by the CCSC include \$1,305,000, which represents a two percent (2%) salary and wage increase for non-teaching staff, hiring three additional student services coordinators at a cost of \$169,500, a \$175,000 contribution to the self-funded workers compensation fund, and \$350,000 to cover increased fixed expenses, including items such as electric and insurance. The total of these expenses is \$40,825,297.

73. The CCEA argued that additional monies would be available for teacher compensation if the CCSC had not expended revenue on these non-teaching expenses. The Factfinder observes that it is the CCSC's responsibility to properly fund its workers compensation program and to ensure that fixed expenses, such as electric bills, are paid. It is also the sole responsibility of CCSC to ensure that all Carmel Clay School employees, not only the teachers, are provided adequate salaries and benefits.
74. The collective bargaining requirements of Indiana Code §§ 20-29 do not allow teachers to control overall budgetary obligations of a school employer. In fact, Indiana Code § 20-26-5-4(a)(16), authorizes the CCSC "to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with applicable law."
75. It is not clear that the CCEA possesses any authority to dispute the CCSC's budgeting determinations. However, if the CCEA desired the Factfinder to view the other expenditures made by the CCSC as unnecessary or as an intentional effort to artificially decrease the funds available for teachers' salaries and benefits, it would be necessary for the CCEA to provide data to support a conclusion that the non-teacher expenses are unnecessary, frivolous or otherwise improper. The CCEA made no such allegation.
76. The CCEA merely expressed the opinion that the CCSC was not required to make the expenditures, offering further that the CCSC could have exercised discretion to forego expending revenue on non-teacher salaries, workers compensation funds and the hiring of additional non-teacher staff in favor of awarding teachers a greater proportion of the available revenue. This position is not persuasive.
77. Within any school, the teachers are likely the most highly visible employees. However, a teacher's ability to focus on the students, the lesson plans, and other teaching functions is facilitated by the non-teaching staff in the school corporation who ensure that teachers are hired, payroll is processed, insurance benefits are available, buildings and grounds are maintained, safe and clean, and meals are served. Therefore, the custodians, the nurses, the instructional aides, the administrative assistants, the maintenance and cafeteria works, the bus drivers, principals, and other non-teaching staff are entitled to just compensation in the same manner as are the teachers. Without undermining the value of Indiana's teachers, the Factfinder observes that both teaching staff and non-teaching staff are valuable to children's learning.

78. In this instance, the material presented during Factfinding establishes clearly and without contest that the CCSC intended all Carmel Clay Schools staff, including both the teachers and the non-teaching staff, to receive a 2% salary increase. The CCSC was prepared to expend financial resources on hand, which it could do during the collective bargaining phase, in order to ensure this salary increase occurred for all of its employees.
79. The teachers' failure to ratify the TA caused them to lose out on their opportunity to share in the CCSC's anticipated 2% salary increase because following a declaration of impasse the CCSC is no longer permitted to spend funds on hand.
80. The total revenue of \$107,107,247 reduced by the total non-teacher expenses of \$40,825,297 leaves \$66,501,950 to fund the LBOs.
81. The expense associated with the CCSC Proposal, the terms of which are fully incorporated into the CCEA Proposal, is \$66,157,574.
82. The Factfinder has calculated the total amount of revenue remaining after funding the CCSC Proposal is \$344,376⁴.
83. In addition to all of the terms and provisions included in the CCSC Proposal, the CCEA Proposal provides for an additional 1.5% across-the-board salary increase, adds a 1% stipend for teachers at the top of the salary schedule, eliminates Row A from the salary schedule, and requires all newly hired teachers and all long term substitutes to be paid at the lowest applicable salary schedule giving credit only for service at Carmel Clay Schools. The parties' estimation of expenses associated with the CCEA Proposal's additional terms and provisions, displayed below, are not significantly different:

	CCEA	CCSC
Added 1.5% salary	834,000	835,000
Eliminate Row A	93,898	78,695
1% Stipend for top	146,416	152,705
New Hires at Bottom Row		(110,190)
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	1,074,314	956,210

⁴ The Factfinder recognizes that this figure is \$220,000 different than the figure presented by the CCSC. The source of this difference has not been identified by either the Factfinder or the Financial Consultant.

84. Beginning with the revenue remaining after funding the CCSC Proposal, or \$344,376, and subtracting the lesser of the two expense estimations, which is the \$956,210 estimation presented by the CCSC, the Factfinder determines that the CCEA Proposal results in a negative balance of \$-611,834.
85. It is concluded that the CCEA Proposal results in deficit financing.

V. The Public Interest

86. It is clear from the data contained within the record that educators and education support professionals across Indiana are concerned about recruiting and maintaining qualified teachers, particularly teachers in "shortage areas", which include exceptional needs, career and technical education, mathematics, science and world language teachers. *BRC Report, pg.32.*
87. The data indicates that teacher salaries are one item under consideration in addressing these teacher shortages. As the CCEA pointed out, one of the recommendations involves:
- The introduction of legislation that would require a significant amount of new money appropriated to schools to be directed to educator salaries, specifically to educators with one to ten years of experience.
- Final Report, Recommendation 11, pg. 4.* However, another recommendation is:
- The introduction of legislation which would provide for further review for increased salary flexibility in teacher shortage areas per school corporation.
- Final Report, Recommendation 5, pg. 4.*
88. The Factfinder observes that the CCEA emphasized Recommendation 11 of the Final Report, which supports the goal of adding new money to enhance the salaries of those teachers with one to ten years of experience. However, the CCEA Proposal is not entirely consistent with this initiative. The CCEA Proposal provides a 2% increase to all teachers across-the-board plus it adds a 1% stipend increase to those teachers at the top of the salary schedule.
89. The only additional compensation added to the salaries of teachers with one to ten years of experience occurs through the elimination of "Row A" on the salary schedule, which positively impacts only newly hired teachers or long term substitute teachers. The removal of the "Row A" salary will have no impact upon teachers with two to 10 years of service, who are specifically identified as important to Recommendation 11 of the Final Report.

Furthermore, as was noted previously, the Factfinder concludes that implementation of this provision of the CCEA Proposal may decrease morale and create discord amongst teachers beginning new careers. While less tangible, this latter result would be counter-indicated in an atmosphere focused on recruiting and retaining excellent teachers.

90. Furthermore, the CCEA Proposal would have the effect of prohibiting the CCSC from exercising flexibility of any kind in recruiting the most highly qualified teachers through an upward salary adjustment, which contradicts the Final Report's Recommendation 5.
91. While the CCSC and the CCEA, through collective bargaining, could have enhanced the percentage of the salary increase afforded to those teachers with one to ten years of service instead of offering an across-the-board increase, that cannot be accomplished through Factfinding following a declaration of impasse of collective bargaining because the Factfinder "may not impose terms beyond those proposed by the parties in their last, best offers." *Indiana Code § 20-29-8-7(c)(3)*.
92. The expressed intent of the CCSC is to retain the ability to exercise discretion with respect to the salaries of new teachers for the purpose of recruiting highly qualified teachers, specifically teachers in shortage areas. The CCSC's intention is consistent with Recommendation 5 of the Final Report. However, the CCSC recognizes that the *Jay Decision* may have bearing upon this issue. To address this possibility the CCSC Proposal has included, within its terms, the intent to maintain its current practice of exercising discretion with respect to the salaries of newly hired teachers unless such practice is deemed impermissible as a result of the *Jay Decision*. In the latter instance, the CCSC Proposal contains terms that acquiesce to establishing newly hired teacher salaries in the manner prescribed by the CCEA, by placing all newly hired teachers at the bottom of the salary schedule, giving credit only for prior years of service at Carmel Clay Schools. While that latter possibility is inconsistent with Finding 5 of the Final Report, it may be necessitated by the *Jay Decision*,⁵

⁵ Counsel for the parties offered argument regarding the applicability of the *Jay Decision* upon this Factfinding. With respect to the group insurance program the Factfinder has previously concluded that the CCSC Proposal's provisions are not inconsistent with the *Jay Decision*. The Factfinder further concludes that by including an alternative means of addressing the potential application of the *Jay Decision* to the salaries of newly hired teachers in its Proposal, the CCSC has avoided any inconsistency with the *Jay Decision* on that issue.

93. Moreover, Indiana Code § 20-29-6-3 has expressly prohibited a school corporation from engaging in deficit financing. Only the CCEA Proposal expressly violates this prohibition.

94. It is the conclusion of the Factfinder that the CCEA Proposal does not serve the interests of Carmel Clay students and is inconsistent with applicable law.

VI. Recommendation

It is the recommendation of the Factfinder that the CCSC Proposal be adopted as the 2015-2016 Carmel Clay Schools Collective Bargaining Agreement.

Dated: December 29, 2015



Sandra L. Jensen
Factfinder

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