

**BEFORE THE INDIANA EDUCATION  
EMPLOYMENT RELATIONS BOARD**

In the matter of the Impasse	)	
Between the	)	Case No. F-13-01-3945
	)	
Jay School Corporation	)	
	)	Fact Finder:
and the	)	James E. Hoehne
	)	
Jay Classroom Teachers Association	)	

**RECOMMENDED ORDER OF THE FACT FINDER**

**Background:**

Pursuant to Indiana Code 20-29-8-7, on October 29, 2013, IEERB appointed James E. Hoehne as Fact Finder in the negotiations impasse between the Jay School Corporation and the Jay Classroom Teachers Association.

The parties, in this particular negotiating effort, were attempting to collectively bargain an agreement to be effective from July 1, 2013 to, and including, July 31, 2014 according to documentation provided by the Corporation, in Corporation Exhibit 2 (C-2), but from July 1, 2013 to, and including, June 30, 2014 according to documentation provided by the Association, in Association Exhibit 3 (A-3). Neither party addressed this issue in testimony, even though the Fact Finder specifically requested a declaration of open issues from each party; and, therefore, the Fact Finder is left to wonder if this is an actual proposed change by each of the parties, since the previous agreement between the parties ended on July 31, 2013 or if it is simply a typographical error. Since the issue is not addressed by either party in their respective Last Best Offer (LBO), it will not be further addressed by the Fact Finder and instead be left for the parties to resolve as they may.

The fact-finding hearing was held on November 5, 2013 at 9:00 AM in the Jay Board Room, located at the Jay County School Corporation Building, 1976 West Tyson Road, Portland, Indiana. The spokesperson for the Corporation was Amy A. Matthews, Attorney-Church, Church, Hittle & Antrim. Also appearing for the Corporation were Timothy D. Long, Superintendent-Jay School Corporation and Bradley T. DeRome, Business Manager/Treasurer-Jay School Corporation. Spokesperson for the Association was Eric M. Hylton, Attorney-Riley, Bennett & Egloff. Also appearing for the Association were

Byron Phelps, ISTA Uniserve Director and Christopher S. Campbell, ISTA Uniserve Director. Also present for the Association were Paul Szymczak, President of the Association, Donna Geesaman, Vice-President of the Association and Mindy Weaver, Vice-President of the Association.

There were twenty-one (21) original exhibits submitted with the Corporation's LBO and nine (9) original exhibits submitted with the Association's LBO. These, by IEERB practice, were considered to be accepted exhibits. Other exhibits offered during the hearing were as follows:

1. The Corporation offered a correction to its LBO which showed changes to two separate dollar amounts of Section B, line 2 of page 3 of the LBO. This was received by the Fact Finder but both parties were informed that it was rejected as presented. In the opinion of the Fact Finder, the original Corporation LBO must remain in tact since it is, in fact, the Last Best Offer.
2. Corporation Exhibit 22 (C-22) was submitted to the Fact Finder and was accepted. It contained general fund information for September 2013 and October 2013 that Dr. Glenn Krueger, IEERB Financial Consultant had requested through the Fact Finder.
3. Corporation Exhibit 23 (C-23) was submitted to the Fact Finder and was accepted. It contained information concerning FY 2014 State Tuition Support Reconciliations.
4. Corporation Exhibit 2a (C-2a) was submitted to the Fact Finder and was accepted. It contained a correction to C-2 insofar as an incorrect school name had been used in one line of the original. Since it was not a change to the LBO itself, the Fact Finder chose to accept the correction.
5. The Corporation offered a written synopsis of the PowerPoint presentation that it made during its presentation period. It was offered as clarification of the slides only since some of the slides were difficult to read. The Fact Finder asked the Association spokesperson if there was objection to the Fact Finder accepting the synopsis and Mr. Hylton replied that there was not.
6. Association Exhibit 10 (A-10) was submitted to the Fact Finder and was accepted over objection by the Corporation spokesperson, Ms. Matthews. The exhibit is a compilation spreadsheet combining the information contained on A-8a and A-8b. The parties were advised that the Fact Finder would perform random calculation checks on A-10 to insure that the document was what it was purported to be before assigning weight to the exhibit.

### **Legal Objection**

Mr. Hylton, spokesperson for the Association, raised a legal objection, during the hearing, to the Corporation's LBO and the fact that it did not contain a salary schedule, which ac-

ording to Mr. Hylton, made it an illegal LBO by statute for several reasons. First, if there is no salary schedule in the contract, how are the percentages outlined in IC 20-28-9-1-b to be allotted? Second, the Corporation is relying on a scattergram (spreadsheet) that is an exhibit (C-6) not a provision of the proposed contract to be the delivery mechanism for any negotiated salary increase. Third, there are no provisions in the Corporation LBO indicating how the Corporation's proposed \$200,000 pool of money will be dispersed among the individual teachers. Fourth, the Corporation is required to submit a salary schedule to the Department of Education (DOE); but, how can that be accomplished if there is no salary schedule in the contract? Fifth, the Corporation provided an Extra Curricular Activity (ECA) pay schedule in the contract - why not a teacher salary schedule? For these reasons, Mr. Hylton demanded that the Fact Finder declare the Corporation LBO as illegal and remove it from consideration for selection by the Fact Finder in this proceeding. The Corporation counters that their supplied exhibit, C-6, clearly explains the information necessary; that during negotiations and an ensuing IEERB mediation, it was discussed and stated that the \$200,000 pool of money was to be dispersed to the individual teachers in an equal and across-the-board manner to all teachers; and, finally, there are several recently-negotiated contracts throughout the state that do not have salary schedules, per se, included in them (no examples supplied).

The Fact Finder takes the Association's legal objection very seriously because, if sustained, it would render these fact-finding proceedings mute, since there then would be only one "legal" LBO for the Fact Finder to choose from in rendering his report. However, after due consideration, the Fact Finder denies the legal objection presented by Mr. Hylton for the following reasons:

1. The Fact Finder finds nothing in IC 20-28-9-1-b that requires the type of information now contained in historical versions of contract salary schedules, to be incorporated within the confines of the pages of its associative collective bargaining agreement. The Fact Finder is of the opinion that relevant exhibits offered in support of collective bargaining positions and likewise, in defense of LBO's become "associates" of those positions and defenses. To prepare an LBO, without using accompanying support such as exhibits and addendums, that would cover all possibilities and eventualities would require volumes upon volumes of endless language. The Fact Finder is of further opinion, that the provisions of the Corporation's LBO and its exhibit C-6 adequately convey the salary information necessary to allow the Fact Finder to continue on to a common sense decision in his report.
2. The Fact Finder feels, in reference to this issue, the Association is attempting to make the Fact Finder the "enforcement arm" of IEERB. However, it is not the responsibility nor the jurisdiction of the Fact Finder to insure that the parties live up to their obligations and requirements under their collective bargaining agreements; nor, is it

the jurisdiction of the Fact Finder to declare LBO's "illegal". Fact finders are responsible for selecting LBO's that eliminate a bargaining impasse by considering all relevant information, including exhibits presented by the parties, and then using that information to select the LBO that best accomplishes that task while staying in accordance with IC 20-29. Enforcement of collective bargaining agreements belongs in other arenas of jurisdiction, be it one responsible for unit determination, unfair labor practices or courts of legal jurisdiction.

3. The Fact Finder feels strongly that, with the onset of IC 20-29, the collective bargaining requirements and regulations for contracts under the jurisdiction of IEERB have been and are changing drastically and quickly. By-gone reliance on things such as traditional salary schedules will be, and in some cases is, a thing of the past. The amount of salary and wage information that a school corporation will be required to keep track of at any given time will be increasing exponentially once all school corporations have their various teacher evaluation methods in place. The day of line item salary schedules reflecting a number of teachers at any given level is coming to an end. Soon, the possibility will exist for each individual teacher in a school corporation to be at a different salary level no matter how small the differences. Couple that with multiple insurance plan selections and resulting premiums, as well as, multiple retirement vehicles with differing contributions, and one begins to see that the traditional salary schedules will not support the burden. And, with all of that information to keep track of, then the question of privacy of information comes into play. Would anyone, corporations, teachers or associations alike, really prefer to have each individual teacher's private wage and benefit levels and choices as a matter of public scrutiny in its collective bargaining agreement? It's one thing to make public a salary schedule when names are not used and pay rates are by groups. It is quite another to make public, individual teachers by name with their pay rates and benefit choices open for all to see.
4. Fact finders perform their duties by gathering and analyzing as much relevant information as possible concerning any given impasse situation. And, after doing so, the fact-finder selects the LBO to recommend to IEERB that is, in his/her opinion, the best option for accomplishing the assignment of eliminating a bargaining impasse. Are there situations that could develop whereby the fact-finder in any given case would be compelled to eliminate an LBO from consideration? Yes, certainly. However, in this particular situation, the legal objection that the Association has lodged against the Corporation's LBO does not, in the opinion of the Fact Finder, have merit for the above stated reasons and is denied. The Corporation's LBO will remain in consideration for selection.

### **Disputed Issues**

The Fact Finder's report will include only items listed in IC 20-29-6-4, which consists of salary, wages and salary/wage related benefits plus a grievance procedure as authorized by IC 20-29-6-5.

The report consists of the selection of one party's LBO as the recommended contract terms and may not impose terms beyond those proposed by parties in their LBO's per IC 20-29-6-15.1.

The parties LBO's and testimony yielded the following disputed issues:

Corporation Perspective

Salary Increase

Grievance Procedure

New Hire Language

Removal of Assistant Coaching Positions from Bargaining Unit

Association Perspective

Salary Increase

New Hire Language

Removal of Assistant Coaching Positions from Bargaining Unit

Job Sharing

Corporation's Memorandum of Understanding on Wage Payment

1. Salary Increase - The Corporation's LBO includes a salary increase pool of \$200,000 to be utilized for teacher base salary increases effective January 1, 2014. It is to be dispersed to the base salary rates in an equal and across-the-board manner. The Association's LBO includes a salary increase equal to \$2000 per teacher to be utilized for teacher base salary increases retroactive to the first pay period of the 2013-2014 school year.
2. Grievance Procedure - The Corporation LBO includes a grievance procedure with the final step in the procedure being a School Board decision. The Association LBO does not include a grievance procedure proposal.
3. New Hire Language - The Corporation's LBO is silent on the issue but the Corporation spokesperson addressed the subject as an open issue during testimony and rebuttal. The Association's LBO is silent on the issue but the Association spokesperson addressed the issue during rebuttal.
4. Removal of Assistant Coaching Positions from the Bargaining Unit - The Corporation's LBO contains language that would remove Assistant Boys and Girls Basketball Coaches and Assistant Football Coach from the bargaining unit. The Association's

LBO is silent on the issue but the Association spokesperson addressed the issue during rebuttal.

5. Job Sharing - The Corporation's LBO is silent on the issue of teacher job sharing. The Association's LBO is, also, silent on the issue. However, both parties offered testimony on the issue during rebuttal.
6. Corporation's Memorandum on Wage Payment - The Corporation's LBO contains no reference to this issue; however, a memorandum of understanding concerning the issue is attached to the Corporation's Exhibit C-2a and the Corporation spokesperson offered testimony on the issue. The Association's LBO is silent on the issue; but, the Association spokesperson offered testimony during rebuttal on the issue.

The Jay School Corporation and the Jay Classroom Teachers Association collectively bargained and revised many areas of the prior collective bargaining agreement (CBA) and as such, this order will not focus on those issues. This order will focus on issues over which there is disagreement between the parties.

#### **Findings, Rationale and Conclusions:**

1. IC 20-29-8-8 requires that fact-finders consider specific factors in arriving at their recommendations - those being past memoranda of agreements and contracts between the parties; comparisons of wages and hours of the employees involved with wages of other public and private employees doing comparable work, while giving consideration to those factors that are peculiar to the school corporation; the public interest; and the financial impact on the school corporation and whether or not any settlement will cause the school corporation to engage in deficit financing as described in IC 20-29-6-3.
2. IC 20-29-6-15.1-(b) declares that fact-finding must culminate in the fact-finder imposing contract terms on the parties. The fact-finder must select one party's last best offer as the contract terms. The fact finder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing as defined in IC 20-29-2-6.
3. Both parties have reviewed relevant financial documents concerning the financial status, including, but not limited to, revenues and expenditures of the Corporation for 2013 and projections for 2014.
4. Both parties have executed and submitted a Fact Finder Verification Sheet as evidence that their respective LBO's do not place the Corporation into deficit financing. In addition, both parties also testified at the fact-finding hearing that their LBO's would not place the Corporation in deficit financing.

1. **Salary Increase** - On the disputed issue of a Salary Increase, there were a number of factors facing the two parties in proposing and negotiating any form of salary increase during collective bargaining. Jay School Corporation has seen decreasing student enrollments in four of the last five years and projections by the Corporation anticipate a continuing pattern of student enrollment losses for 2014 and 2015 (C-12), thus affecting Department of Education provided revenues which are student enrollment driven. Coupled with that is the revised DOE retroactive funding adjustments whereby the revenue adjustments dictated by the Fall student count are retroactive to July 1 of each year; and, the revenue adjustments dictated by the Spring student count are retroactive to January 1 of each year. This is troubling to a school corporation which is suffering declining student enrollments because anticipated revenues have to be revised and on a two to three month retroactive basis. The Corporation cited several possible factors for the losses, but prime among the reasons appears to be the state school voucher system from which the Corporation estimates the recent losses of sixty (60) students resulting in an estimated loss of \$300,000 in revenue. The medical insurance plan mechanism of the Corporation is a "self-funded" mechanism that has experienced a recent spike in insurance claims and benefit payouts - so much so that an additional appropriation by the Corporation to the insurance fund to guarantee payment of claims is anticipated. Self-funded insurance plans can suffer these types of unexpected claims increases; but, one must be careful in taking no preventative action and just surmising that "things will get better" because the extent and duration of the spikes can vary drastically, in some cases, and must be accounted for in a planning sense. Dr. Glenn Krueger, IEERB Financial Consultant, requested, through the Fact Finder, additional information from the parties concerning the Corporation's General Fund status, for which the Corporation supplied Exhibit C-22 (C-22) that included a General Fund report as of September 30, 2013 and as of October 31, 2013. Dr. Krueger's intent was to evaluate and make simple estimations of where the Corporation's General Fund might be positioned by December 31, 2013. If receipts and expenditures continue on an as-current basis, it might be a cloudy picture for the Corporation and for the Association, at best. But, even in light of the tenuous General Fund situation, the Corporation is proposing a \$200,000 salary increase package to be added to all base rates which will then become a year-over-year cost, but not effective until January 1, 2014. Meanwhile the Association is proposing an approximate \$512,000 salary increase package to be added to all base rates which will likewise become a year-over-year cost, but retroactive to July 1, 2013. C-22 indicates that the Jay School Corporation General Fund Balance declined from \$316,397.12 on September 30, 2013 to \$76,029.56 on October 31, 2013. It is also noted that three other funds (Capital Projects, Transportation and School Lunch) illustrated in the same exhibit are shown in negative status. Those funds

are indicative of the Corporation's overall financial health as of October 31, 2013. With that information, one begins to question not only the reasonableness of the size of the Association's proposed salary increase in its LBO, but the retroactivity factor as well. The Fact Finder's decision is, however, limited to the General Fund only. Also, it appears that the goal of the Association is to use as much available funds as possible to support a salary increase. The Association's proposal is to increase the total salary by \$512,000 and if that increase would put the Corporation in deficit jeopardy, the Association would lower the level of its salary demand until it fits under the "cap". This sounds like a demand for whatever funds are available without regard to any revenue or expenditure estimates or projections, no matter how well documented. And, the Association provides no mechanism that will ensure that deficit financing will not occur. The Fact Finder understands that the teachers have given up spending power when it comes to their individual salaries because of increased insurance contributions and payments on their part because of the 1260 Legislation on health insurance contribution limits; and, the teachers have received minimal or no salary increases in recent contracts. This a very difficult situation for the teachers to be in. However, being employed by a school corporation being run without regard to financial plans or projections would be an even worse scenario for them.

2. **Grievance Procedure** - The Corporation has proposed, in its LBO, a Grievance Procedure with the final step being School Board review and decision. The Association has proposed no grievance procedure in its LBO. The Association argues that with the limited scope of collective bargaining now allowed by statute, the need and/or importance of a grievance procedure is minimal. However, it is the experience of the Fact Finder, that a contractual and collectively bargained grievance procedure, no matter how limited in scope, is still the individual employee's avenue to be heard when problems, real or imagined, arise. The Fact Finder considers it a true role reversal for a Corporation (employer) to propose a grievance procedure and for an Association (exclusive representative of employees) to decline to propose a grievance procedure. Nonetheless, the Fact Finder has heard the proposals, explanations and arguments and will consider them in the LBO selection accordingly.
3. **New Hire Language** - The Corporation argues that "teachers hired after the commencement of the 2013-2014 school year may be placed on any line of the scale as determined by the Superintendent. After the initial placement of any teacher, the teacher shall remain on the same line on the scale, regardless of any other factors". The Corporation argues that this type of provision exists in many IEERB reviewed collective bargaining agreements in the State of Indiana. The Association objects to this type of procedure since it could allow for abuse in the hiring process with respect to beginning salary levels and the Association also argues that such a plan

would violate the duty to bargain wages and benefits as called for in IC 20-29-6-9. The Association spokesperson further argued that if the Fact Finder were to choose the Corporation's LBO with this provision associated with it, the Fact Finder would be creating the opportunity for abuses in the future. The Fact Finder would again remind the Association spokesperson of the responsibilities of a fact-finder and that problems of abuse of language, unit determination, unfair labor practices and those resulting in lawsuit need to be taken up in the proper venue; and, fact-finding is not that venue. The Fact Finder concedes that the hiring latitude that this provision would allow the Superintendent could be a powerful tool in the competitive world of hiring qualified teachers. However, that tool would need to be used cautiously and skillfully since it could have broad ramifications on school unity and morale. However, the Fact Finder is bound by the provisions of each party's LBO and, as such, is not allowed to enhance an LBO. Therefore, since both LBO's were silent on this issue, the Fact Finder will not include consideration of this disputed issue in LBO selection.

4. **Removal of Assistant Coaching Positions from the Bargaining Unit** - The Corporation proposes in its LBO, to remove the positions of "assistant Basketball Coaches" and "assistant Football Coach" from the bargaining unit covered by the collective bargaining agreement (CBA). No real justification or reasoning for this move was offered by the Corporation; but, the Fact Finder notes that the "High School Varsity Boys' and Girls' head Basketball Coaches" and the "High School Varsity head Football Coach" were excluded from the unit in, at least, the prior collective bargaining agreement. The Association objects to this proposal by the Corporation on the grounds that, if the Fact Finder selects the Corporation's LBO with this provision in it, the door will be open to even further unit deterioration in the future since the Corporation could, presumably, continue to propose more and more positions to be removed from unit recognition. As stated earlier, the Fact Finder's responsibility does not extend to unit determination. Issues of concern in that area belong in a proper venue for review. But, even more important, issues subject to fact finder LBO review and selection are restricted to salary, wages and salary/wage related fringe benefits and grievance procedures. In the opinion of the Fact Finder, the removal of positions from the bargaining unit is not a subject open to fact-finder review, since it is a teacher assignment issue rather than one of the issues just noted, and therefore, can only be a subject of discussion, per IC 20-29-6-7(4). The Fact Finder will not consider this disputed issue when considering LBO selection.
5. **Job Sharing** - The Fact Finder would consider arguments concerning the Corporation's Job Sharing proposal only as far as salary provisions and percentages are concerned. The balance of the Job Sharing proposal is teacher assignment and would not be considered by the Fact Finder for the same reasons as stated in No. 4

above, with regards to Assistant Coaches. The Corporation discussed a Job Sharing provision for the CBA because it sees the opportunity as a benefit for teachers needing the assistance that it offers. The Corporation was under the opinion that the Association would be offering such a program and were surprised when they did not. The Association argues that this can be a subject of discussion only per IC-20-29-6-7(4). The Fact Finder, while acknowledging that the portions of this proposal that concern salary and percentages would be considered as relevant to an LBO, also agrees with the Association's argument that the actual Job Sharing plan itself is a subject of discussion and needs to be pursued by the parties as such. This disputed issue will not be considered by the Fact Finder in LBO selection.

6. **Corporation's Memorandum on Wage Payment** - The Corporation is caught in a position of conflict concerning the ability to offer teachers the option to receive their pay in twenty (20) or twenty-six (26) pays ... On one hand, the Corporation argues that since it is a matter of wages, it has to be bargained with the exclusive representative, the Association. However, the State Board of Accounts has mandated that such a program cannot be included in the Collective Bargaining Agreement (CBA). Therefore, in an effort to give the teachers this option as a benefit, the Corporation is proposing it as a Memorandum of Understanding to be signed by the parties and attached to the CBA as an addendum. The Association argues that if the Memorandum is not physically contained within the CBA, it is not part of the CBA. The Fact Finder would simply reply to the Association spokesperson, that many collective bargaining agreements, both public and private, have historically had Memorandums of Understanding and addendums attached to them as supplements and the Fact Finder is of the opinion that, if the provisions contained in those memorandums and addendums are negotiated, signed, attached and carry their essence from the CBA, they are a recognizable and defensible attachment to the CBA itself. However, more importantly, the Corporation LBO is silent on the issue even though the Memorandum is included in Corporation C-2a. The Association's LBO is, also, silent on the issue. Therefore, this disputed issue will not be used by the Fact Finder in LBO selection.
7. Deficit financing is the major concern in selecting an LBO because it not only is affected by the DOE Certification of Estimated General Fund Revenue; but, it is also affected by trends, projections and estimates of expenditures to come, at least in the next calendar and/or fiscal year. And, the changeover from state funding going from fiscal to calendar year allotments has only exacerbated the problem. School corporations are businesses and like private sector businesses, they must plan for the future - be it one month, one year, five years, etc.. The Association's argument that the DOE Certification is the only thing that a Fact Finder should consider in his/her LBO selection process is very near-sighted. If there is no plan to handle the unexpected, then the corporation (business) is relying on chance and

luck to get through - a very poor position to take. The Association objected to the Corporation's characterization of anticipated loss of Special Education funds since, even though there was a loss in special education student count from December 1, 2012 to October 2, 2013, the actual number will not be known until the next official count on December 1, 2013. The Fact Finder would agree that the Corporation's statement is an estimate; but, it appears to be backed by reasonable conjecture. The Association made the same type of objection to the Corporation's characterization of anticipated loss of Career and Technical Fund grant money. The Association also objected to the Corporation's characterization of the change in Full-Day Kindergarten Grant Fund allocation from annually to monthly. The Fact Finder would agree that the same total amount of grant funds will be allocated whether it is a one-time payment or twelve payments; but, how the funds come available, and in what amounts, would affect how the expenses for Full-Day Kindergarten are paid and planned for in the future. The DOE Certification is simply the starting point in the process that an IEERB Financial Consultant and Fact Finder use to evaluate a corporation's possible dangers of deficit spending. But, estimates and projections become a valuable analysis tool when considering LBO's. And, the fact that Jay School Corporation has been in a declining student count situation in recent years and is projected to be as such in at least the next two years, only heightens the concern.

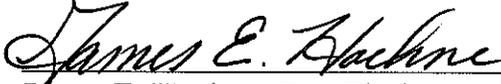
**LBO Selection - Recommendation:**

IC 20-29-6-15.1 clearly prohibits the Fact Finder's order from putting the Corporation in a position of deficit financing as defined in IC 20-29-2-6.

The Fact Finder, based upon the facts and evidence as entered by the parties and based upon the above discussion, recommends that the Jay School Corporation's Last Best Offer (LBO) be adopted as the Jay School Corporation's 2013-2014 Master Contract, as specified in the Corporation's LBO, while excluding those items indicated in the previous section above.

Either party may appeal this Order to IEERB, in writing, within thirty (30) days of receipt of the decision per IC 20-29-6-18. If no appeal is timely submitted to IEERB, the recommended order becomes the final contract pursuant to IC 20-29-8-5.

Recommended this 11th day of November, 2013.

  
James E. Hoehne, Fact Finder

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