

**BEFORE
FACT-FINDING PANEL**

**Steven Bierig (Fact-Finder and Neutral Chair)
Robert E. Bloch (Union Panel Member)
Joseph T. Moriarty (Board Panel Member)**

In the Matter of the Fact-Finding between))	
Board of Education of the))	
City of Chicago,))	
Employer,))	
and))	Arb. Ref. 16-77
Chicago Teachers Union,))	(Fact-Finding)
Local 1, American Federation))	
of Teachers, AFL-CIO,))	
Union.))	

BOARD OF EDUCATION CONCURRENCE

The Fact-finder recommends that the January 29, 2016 tentative agreement become the parties' collective bargaining agreement. I concur.

The tentative agreement creates a multi-pronged path for significant progress toward resolving CPS' fiscal crisis while giving teachers and staff generous raises and other valuable consideration. While the tentative agreement requires short-term CTU concessions, it does not put the entire burden of solving the crisis on "the backs of" CTU bargaining unit. Rather, the tentative agreement is a plan by which the work of putting CPS on the path to fiscal health will be shared by taxpayers and employees. It is, as the Fact-finder described it, "an extremely carefully balanced document that sought to protect, and indeed, did protect, the core interests of both parties." (Fact-finder Recommendation at p. 45)

I. BACKGROUND AND RELEVANT FACTS

A. CPS Fiscal Condition.

CPS has expenditures that exceed its revenue by nearly \$1 billion. (Walter Presentation at Slide 7) Its cash position is bleak. It has a projected \$24 million cash-on-hand at the end of the fiscal year - the equivalent of 2 days of payroll - and that is only if CPS takes significant cost-cutting measures before the end of the school year. (Bennett Presentation at Slide 3) CPS' ability to borrow has been hampered by the Governor and Republican legislative leadership who threatened, in the midst of CPS bond offerings, to bankrupt CPS and put it into a sort of state-created receivership. (Id. at Slide 5)¹ That bit of treachery - of which CPS students are the principal and ultimate victims - drove down the demand for CPS bonds and drove up CPS' cost of borrowing, leaving CPS with less cash and fewer borrowing options than it needs going forward. Without significant changes in its revenues and expenditures, CPS cannot continue to provide services to its students.

CTU does not dispute CPS' fiscal condition.

¹Governor Rauner threatened to take over CPS and put it into bankruptcy on January 20, 2016, six days after CPS' issued its preliminary official statement incident to its bond offering. (Bennett Presentation at Slide 5) Senator Christine Radogno and Representative Jim Durkin, the Republican leadership, introduced legislation to do just that on January 22, 2016. (Id.; *See*, SB2275, HB4498 and HB4499 at www.ilga.gov) The result was that CPS bond offering had to be reduced by nearly \$250 million and the bonds were sold at an 8.50% rate of interest.

B. The Root of the Fiscal Crisis

CPS financial peril is due, in the main, to repeated broken State promises that have produced a backward educational funding system, which both provides too little funding and distributes it in a perniciously discriminatory manner. The ultimate impact of this system is that the poorest and most disadvantaged of the State's children go without educational necessities so that the State can fund the operations and pensions of teachers of comparatively much wealthier school districts with many fewer disadvantaged students.

It isn't supposed to be this way. First, the Illinois State Constitution provides that the State bears "primary responsibility for financing the system of public education," a system which must be both "efficient" and "high quality." Illinois Constitution, Article X, Section 1. Second, the State promised to provide a per pupil foundation level funding to school districts that represents "the minimum level of per pupil financial support that should be available to provide for the basic public education of each pupil." 105 ILCS 5/18-8.05. Third, with respect to CPS' teacher pensions, the State promised to give CPS 20% to 30% of what it contributes annually to teacher pensions for downstate and suburban districts. 40 ILCS 5/17-127. The State has broken all of these promises.

The State has effectively abdicated its duty to shoulder “primary responsibility” to fund public schools generally and CPS, in particular.² State funding accounts for only 30% of CPS revenues and it is on the decline. Counting the approximately \$3.7 billion pension subsidy, the State’s funding level is an anemic 34% of all public education costs in Illinois.³ This failure garners Illinois an embarrassing last place rank among all states in the level of support it provides to its public school students.⁴

The miserliness of the amount of State funding only adds to the embarrassment. The foundation level funding (or minimum needed to educate a child when combined with local resources) has lagged at \$6,119 per student since 2010.⁵ The Illinois State Board of Education estimates that the foundation level should be approximately \$8,899 per student which means that Illinois understates the minimum funding level by 32%. Even more scandalously, the State hasn’t fully funded even that depressed, minimum amount in 6 years. Instead it pro-rates the

² The Illinois Supreme Court has held that despite the plain constitution text, the constitutional promise is an unenforceable aspiration. Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46, 1973 Ill. LEXIS 235 (Ill. 1973).

³ See, Illinois State Board of Education, <http://webprod1.isbe.net/ilearn/ASP/index.asp#>

⁴ Illinois State Board of Education, <http://www.isbe.net/budget/FY14/fact-sheet4-efab.pdf>

⁵ See, Illinois State Board of Education FY17 Budget Presentation, <http://www.isbe.net/budget/FY14/fact-sheet4-efab.pdf>

foundation amount. Pro-ration has cost CPS students nearly \$570 million in State funding since fiscal year 2010. (Mock Presentation at Slide 5)⁶

Cruellest of all in this string of broken State promises is the fact that Illinois gives its most disadvantaged school districts fewer resources than its most advantaged school districts. (Id., at Slide 10)⁷ It is one of only 6 states with this dubious distinction and, in that dishonorable group, Illinois is the least generous to its poorest students. (Id.)⁸

This reverse Robin Hood effect is most starkly shown by the facts that:

- CPS educates approximately 392,000 Illinois public school students, 336,000 of them in traditional, non-Charter schools, with the following demographic characteristics:
 - 85.2% are Black or Hispanic
 - 86.9% are low income
 - 17.8% are English Language Learners
 - 14% are disabled
 - 5% are homeless;⁹

⁶Citing FY 09-16 CPS Appropriation Allocations (District 299) - <http://webprod1.isbe.net/FRISInquiry/finq.asp> ; FY 16 CTPF Appropriations- <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0005.pdf>

⁷Citations: Education Trust <https://edtrust.org/map/>.

⁸This fact is undeniable. One Republican legislative leader tried to deny but could only muster it by ignoring the \$3.7 billion in educational funding in the State pension subsidy that virtually excludes CPS. *See*, Radogno, Christine. "CPS Gets More than Its Fair Share of Funding." Chicago Tribune, December 4, 2015. (<http://www.chicagotribune.com/ct-cps-teachers-pension-emanuel-radogno-perspec-1207-jm-20151204-story.html>)

⁹Illinois State Board of Education, School Report Cards, <http://www.illinoisreportcard.com/District.aspx?districtid=1501629902>

- CPS taxpayers provide the State more than 20% of all State income tax revenue;¹⁰
- CPS receives little more than 15% of State education funding to public schools. (Mock Presentation at Slide 8)¹¹

This discriminatory result is - for CPS at least - a function of the State's repudiation of its promise to give CPS 20-30% of the State-wide pension subsidy, which would garner CPS \$750 million in additional State funding. Instead, CPS receives less than ½ of a percent of State pension subsidies. (*Id.* at Slides 6-7)¹² This accounts for a paltry \$12 million compared to \$3.7 billion for the rest of the state, or \$31 per CPS student versus \$2,231 per student for the rest of the State. (*Id.* at Slide 7)¹³

¹⁰Illinois Department of Revenue, 2013 Individual Income Tax Stratifications, <http://www.revenue.state.il.us/About/Idor/TaxStats/2013/IIT-ZIPCode-2013-Final.pdf>

¹¹ Citations: FY 09 Statewide Operating Appropriations: http://www.isbe.net/budget/FY10/FY10_budget.pdf; FY 09 TRIP and CTPF Appropriations: <http://ledger.illinoiscomptroller.com/ledger/assets/File/Appropriations/Approp%202009.pdf>; FY 09 TRS Contribution: <http://trs.illinois.gov/pubs/cafr/FY2009/2009cafr.pdf>; FY 09-16 CPS Allocations (District 299): <http://webprod1.isbe.net/FRISInquiry/finq.asp>; "FY 16 Statewide Operating and TRS, TRIP, and CTPF Appropriations: <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0005.pdf>"; FY 09-16 PK-12 ISBE Fall Enrollment Counts: http://www.isbe.net/research/htmls/fall_housing.htm; Actuarial forecast TRS state pension contributions, FY 17-21: <http://trs.illinois.gov/pubs/actuarial/2015ValuationRept.pdf> Actuarial forecast CTPF state pension contributions, FY 17-21: <http://www.ctpf.org/AnnualReports/Actuarial2015.pdf>

¹² Citations: FY 16 TRS and CTPF Appropriations- <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0005.pdf>; FY 16 PK-12 ISBE Fall Enrollment Counts- http://www.isbe.net/research/xls/district_sum16.xls

¹³FY16 TRS and CTPF Appropriations- <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0005.pdf>; FY 16 PK-12 ISBE Fall Enrollment Counts- http://www.isbe.net/research/xls/district_suFY_m16.xls

C. The Bargaining History and the Parties' Fact-finding Demands.

About a year ago, CPS negotiators, accompanied by representatives of the City's mayor, made a simple proposition to the CTU leadership: CTU and CPS could accomplish much more for CPS students if the parties reached agreement, pooled their lobbying efforts and combined their bully pulpits to convince State leadership to fulfill its promise to fund CPS adequately and to fix the funding formula. CTU leadership agreed to try.

The parties got close to agreement. On June 23, 2015, CTU leadership announced that agreement was "this close."¹⁴ It didn't happen. CPS pressed the effort through July. Again the parties came close. It didn't happen then either. After much war-like noise in the fall and early winter 2015-16, and after 17 straight days of intense bargaining in which CPS made significant compromises, CPS and CTU leadership reached a tentative, comprehensive agreement for a 4-year deal. Again, it didn't happen.

Each time the parties came close to agreement, it was because CPS gave CTU significant and generous consideration with respect to wages and working conditions. But each time, it was defeated by poison pills added to the deal at the last

¹⁴ "Chicago Teachers Union President hints contract agreement 'this close'", Chicago Tribune, June 23, 2015 (<http://www.chicagotribune.com/news/local/breaking/ct-karen-lewis-contract-met-20150623-story.html>)

moment, reportedly at the insistence of CTU's so-called "Big Bargaining Team (BBT)."¹⁵

- In June, 2015, the BBT conditioned agreement on reducing teachers' instructional responsibilities by 30 minutes per day.¹⁶
- In August, 2015, the BBT demanded a lower performance standard for teachers so that fewer would be rated in the lower two evaluation rating categories.
- On February 1, 2016, the BBT reportedly refused to make any economic concessions while also demanding that CPS be prohibited from reducing staff to realize savings.

As a consequence, nearly a year of potential cooperation on behalf of CPS students was lost.

Now in fact-finding, faithful to the reported demands of the BBT, CTU leadership has proposed that CPS retroactively increase their compensation for 2015-16 at a cost of \$70 million and spend another \$70 million in increased compensation for 2016-17. It has abandoned all other demands here.

¹⁵The BBT has about 45 members. Most are active teachers, some are active PSRPs and some are retired teachers. According to the CTU, the BBT consists of the CTU Executive Board and a few others who are selected to ensure all teacher and PSRP groups are represented.

¹⁶CTU has tried to sell the reduction in teachers' instructional time as a cost-saving measure. Some have bought it. (See e.g., Illinois Raise Your Hand, Budget Solutions, CTU Contract Savings <http://ilraiseyourhand.org/content/solutions-cps-budget-crisis>) But it isn't. The reduction in teachers' instructional time was never offered in exchange for a reduction in teacher salary. Rather, it was a demand for more *paid* teacher preparation time at the expense of student instructional time. To increase teachers' paid preparation time by reducing teachers' instructional time and maintain the same instructional time for students, CPS would have to spend an additional \$50-\$60 million for additional teachers. Otherwise, CPS would be required to cut student instructional time and go back to the days of 20-minute student lunches with no recess.

In fact-finding, CPS has proposed to eliminate pension pick-up immediately and to eliminate the pledge to conduct no economic layoff of teachers. This represents a change in CPS' January 29, 2016 offer which became necessary because of its deteriorating economics.¹⁷ To compensate for those changes, CPS has also increased its wage offer from 8.75% COLA over 4 years to a 10% COLA over 4 years, which when combined with an offer to resume lane and steps in the 2nd, 3rd and 4th years amounts to 15.4% average per employee salary increase over the life of the contract. CPS maintained all other aspects of the January 29, 2016 tentative agreement in its fact-finding offer.

RECOMMENDATION

Arbitrator Bierig comes to the most reasonable recommendation under the extraordinary circumstances facing CPS and CTU. I concur in his recommendation. The parties worked extremely hard to reach the January 29th tentative agreement. That agreement is not in and of itself a fiscal solution for CPS, as the Fact-finder notes, but it offers a roadmap for one. (Fact-Finder Recommendation at p. 46) It addresses the three elements needed for fiscal recovery: reduced CPS expenditures, increased local revenues and increased State revenue. The logic of the tentative agreement is that the fiscal crisis is too vast for one remedy and that combined contributions are required to make it work.

¹⁷See, footnote 1.

In contrast, CTU's demands in Fact-finding essentially walk away from the historic fiscal crisis facing CPS and pretend that it can be fixed without CTU concessions. CTU demands that CPS increase expenditures by \$140 million over two years. Its logic is that taxpayers, without any give from the CTU bargaining unit, will shoulder the *entire* burden of eliminating CPS' deficit and provide revenues sufficient to fund CTU raises and benefits and its growing operational costs.

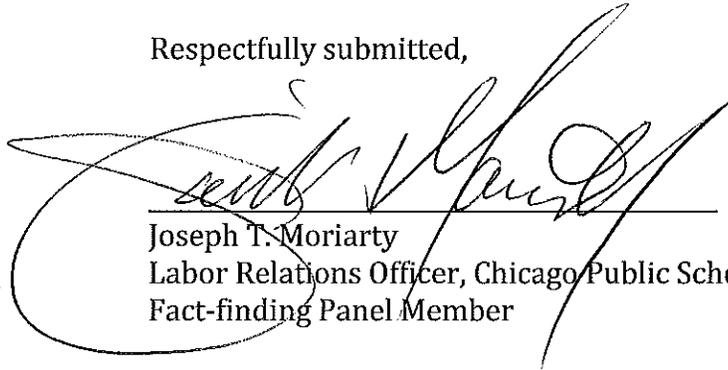
The public interest, including the interests of students, parents and taxpayers, demands that CPS and CTU cease the unnecessary rancor, work together to reach a contract and direct their combined attention to work underway in the General Assembly to reform Illinois' educational funding system. The resolution of this crisis requires that the State begin the long-hill climb to live up to its promises,¹⁸ that the City contribute local revenues and that CTU make short-term concessions so that, in the long term, teacher and staff compensation can keep pace with the cost-of-living and remain competitive. The January 29th tentative agreement accomplished that. CTU's fact-finding offer doesn't even try.

I accept that CTU and its BBT do not want to endure the hard things necessary to get CPS' fiscal house in order. I empathize with them. But ultimately, neither CPS nor CTU can count on the State to fully make up for its past sins, especially not in time for the end of this school year or the start of next school year. CPS, City taxpayers and

¹⁸Contrary to rhetoric from the Governor and Republican legislative leaders, CPS and other financially troubled school districts do not ask for a "handout" or a "bailout." CPS and its students simply ask that the State live up to the commitments it has ignored. Many in the General Assembly recognize this and are making efforts to do this now. CPS and CTU need to unite in support of those efforts.

CTU each have to shoulder part of this burden. CPS and the City taxpayers have already made their commitment. It is time for CTU and its members to make theirs and for CPS and CTU to present a united front in the State capital to get the funding CPS students deserve.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Joseph T. Moriarty', is written over a horizontal line. The signature is highly cursive and loops around the text below it.

Joseph T. Moriarty
Labor Relations Officer, Chicago Public Schools
Fact-finding Panel Member

Dated: April 16, 2016
Chicago, Illinois

BEFORE
FACT-FINDING PANEL

STEVEN M. BIERIG (Fact-Finder and Neutral Chair)
ROBERT E. BLOCH (Union Panel Member)
JOSEPH T. MORIARTY (Board Panel Member)

In the Matter of the Fact-finding
Between

THE BOARD OF EDUCATION)	
OF THE CITY OF CHICAGO)	CASE NO.: 16-77
)	(Fact-Finding)
and)	
)	
THE CHICAGO TEACHERS)	
UNION, LOCAL 1, AMERICAN)	
FEDERATION OF TEACHERS,)	
AFL-CIO)	

DISSENT BY UNION PANEL MEMBER ROBERT BLOCH

I must respectfully dissent.

The Neutral Fact Finder's report will be Dead On Arrival – not because of his failure to carefully consider and act upon his statutory duty, but because his hands are tied by a statute that won't permit him to consider the most pressing issue affecting negotiations. And by simply recommending adoption of an earlier failed proposal, his report won't bring the parties any closer to a contract settlement.

The reality is that the Chicago Board of Education simply cannot afford to sign a contract with the Chicago Teachers Union. CPS finances have surpassed the danger zone and are now

nearly at meltdown. We need revenue solutions to finance public education, not more cuts to the system, which has already been cut well past the bone and now threatens the vital organs. The Fact Finder was constrained by a statute drafted by the Board of Education that prohibits consideration of revenue solutions to address CPS's extreme financial problems. Forced to build those financial problems into his report, the Fact Finder was unable to recommend anything new that would assist the parties in reaching an agreement.

CPS is broke on purpose. As the Fact Finder determined, CPS has a \$1.1 billion deficit and is \$6.7 billion in debt. Its total debt now well exceeds its entire annual budget of \$5.7 billion. Even with its most recent round of financing, by June 30, 2016 CPS will have a *negative cash position* of -\$846 million. This means, in effect, that by June it will have overdrawn its bank account by \$846 million. There are serious doubts whether CPS will be able to open its doors next fall.

This financial mess didn't happen by accident. CPS has failed for decades to secure a source of stable, sustainable, and increasing funding to finance its operations. CPS has also suffered from a history of fiscal mismanagement, and the City of Chicago has raided the property tax base supporting CPS operations by diverting hundreds of millions of property tax dollars to downtown TIFs. CPS has postponed hundreds of millions of dollars in mandatory pension contributions until its pension obligations have become unsustainable. And in an act of monumentally poor judgment, CPS balanced its budget this year – which is required by law – by *assuming* the State would provide \$480 million in aid that never came. CPS's problems are compounded by Governor Rauner's *jihad* against CPS, its educators and their collective voice, the CTU, in support of his extremist agenda.

The solution to these problems requires legislation to establish a sustainable and progressive source of funding for public education. CPS can't afford *any* contract proposal – including its own – until it achieves a stable funding source. But CPS's educators didn't create this problem, and long term cuts in their compensation won't solve the problem.

The previously-rejected CPS January 29 proposal recommended by the Fact Finder actually *reduces* teacher and PSRP take home pay over the 4-year period of the contract. Though the 7% pension pickup has been a contract fixture for 35 years, the January 29 proposal recommended by the Fact Finder will eliminate the 7% pension pickup, which both reduces take home pay by 7% and reduces the salary basis on which pensions are calculated - a double whammy. Adding up the cumulative effects of eliminating the 7% pickup and the burden of increased health care costs against the salary increases, under the January 29 proposal CPS educators will take home less money on June 30, 2019 than they earned on July 1, 2014. Also under the proposal, for the first time in 50 years, educators won't receive the step and lane adjustments this school year that they have always received based on their longevity and educational attainment.

The cumulative economic effect of the January 29 proposal is shown in the chart below:

School year	Salary Increase (COLA)	Step/Lanes	7% Pension Pickup	Health Care	Total cumulative pay
2015-16	0.00%	None	Unchanged	Unchanged	Freeze
2016-17	+2.75%	Yes	-3.50%	-1.00%	-1.75%
2017-18	+3.00%	Yes	-3.50%	-1.00%	-3.25%
2018-19	+3.00%	Yes	n/a	unchanged	- .25%

It is no surprise that this proposal, when tendered by CPS on January 29, was unanimously rejected by the Union's big bargaining team, and it will be no surprise when the Union rejects this proposal again.

Ironically, CPS has itself rejected the January 29 proposal recommended by the Fact Finder. As the Fact Finder noted (p. 15), in CPS's March 10 Final Offer it announced that it couldn't afford its own January 29 proposal any more. Moreover, at the fact finding hearing, CPS candidly admitted it can't afford its March 10 Offer either. Its financial problems are so severe that without structural reform in financing public education it can't afford its own or the Union's contract proposals. What is the point of long term cuts to employee compensation when they are insufficient to solve CPS's budget problems? Everyone agrees that the differences in cost between the Union's proposals and CPS proposals are insignificant when compared to the scope of CPS's budget and cash flow deficits.

It was perhaps inevitable that the Neutral Fact Finder would have no new ideas for the parties and instead attempted only to resuscitate a dead proposal. But the decisions cited by the Fact Finder to justify this course all arose in interest arbitrations where the Union and the employer had achieved tentative agreements at the bargaining table that were later rejected on ratification votes. Here, however, as the Fact Finder found, there was no tentative agreement achieved, only a promise by the Union to take CPS's January 29 proposal back to its big bargaining team. That bargaining team rejected the CPS proposal unanimously.

That said, there were many positive non-economic elements to the January 29 proposal that merited serious consideration, most of which are listed in the fact finder's report. These terms were positive developments – in many cases, breakthroughs – in improving the educational

environment for teachers and students and seeking long-term solutions to chronically underfunded public education. But these improvements weren't sufficient to overcome other unacceptable terms, and they failed to address one of the most pressing problems: the attrition of educators in the school district and resulting increases in class sizes. CPS refused to make meaningful commitments in this area, and in fact took steps to accelerate the problem by encouraging teacher retirements without committing to hire new teachers in their places.

The Fact Finder's limited options in fashioning a recommended award arise from intractable problems in the face of CPS's funding crisis. More effort will be needed – including reforms to the Educational Labor Relations Act, which has impeded more than assisted the parties in negotiating labor contracts.



Robert E. Bloch
Union Panel Member

Dated: April 16, 2016