

FACT-FINDING REPORT

**FACT-FINDER: STEVEN M. BIERIG
EMPLOYER REPRESENTATIVE: JOSEPH MORIARTY
UNION REPRESENTATIVE: ROBERT BLOCH**

IN THE MATTER OF THE FACT-FINDING BETWEEN: THE CHICAGO BOARD OF EDUCATION AND THE CHICAGO TEACHERS UNION, LOCAL 1, AMERICAN FEDERATION OF TEACHERS, AFL-CIO	ISSUES: <ul style="list-style-type: none">• WAGES• STEPS AND LANES• PENSION PICK-UP• HEALTH CARE• TERM OF AGREEMENT ARB. NO. 16-77
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Before: The Fact-Finding Panel:

**Steven M. Bierig, Fact-Finder and Neutral Chair
Joseph Moriarty, Employer Member
Robert Bloch, Union Member**

APPEARANCES:

**For the CTU: Robert Bloch
Dowd, Bloch, Bennett, Cervone, Auerbach and Yokich**

**For the CPS: James C. Franczek, Jr.
Franczek, Radelet**

Dates of Hearings: March 23-24, 2016

**Location of Hearings: Franczek Radelet
300 S. Wacker 34th Floor
Chicago, IL**

Pre-Hearing Briefs Filed: March 18, 2016

Date of Recommendation: April 16, 2016

RECOMMENDATION:

For reasons stated in this Report, the Fact-Finder recommends that the following terms from the Board's January 29, 2016 Comprehensive Contract Proposal be incorporated into the July 1, 2015 - June 30, 2019 Collective Bargaining Agreement between the parties:

- **Wages:**

Wage Schedule for July 1, 2015 - June 30, 2019 Contract	
Date	% Increase
July 1, 2015	0.00%
July 1, 2016	2.75%
July 1, 2017	3.00%
July 1, 2018	1.00%
January 1, 2019	2.00%
TOTAL INCREASE = 8.75%	

- **Steps and Lanes**

Steps and Lanes July 1, 2015 - June 30, 2019 Contract	
Date	Steps and Lanes
July 1, 2015	No
July 1, 2016	Yes
July 1, 2017	Yes
July 1, 2018	Yes

- **Pension Pick-up**

Pension Pick-up July 1, 2015 - June 30, 2019 Contract	
Date	Board Pension Pick-up
July 1, 2015	7.00%
July 1, 2016	3.50%
July 1, 2017	0.00%
July 1, 2018	0.00%

- **Health Care**

The Fact-Finder recommends that the Board's Health Care proposal be accepted.

- **Term of Agreement**

The Fact-Finder recommends that the term of the Agreement shall be four years: July 1, 2015 through June 30, 2019.

The Fact-Finder further recommends that in addition to the above-mentioned issues, the remainder of the Board's Comprehensive Contract Proposal of January 29, 2016, which was transmitted to the Big Bargaining Team, be incorporated into the 2015 - 2019 Collective Bargaining Agreement.

**Steven
Bierig** 
Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o=Steven
M. Bierig Attorney Arbitrator
Mediator, ou,
email=arb438@comcast.net, c=US
Date: 2016.04.16 13:45:49 -05'00'

**Steven M. Bierig, Fact-Finder
April 16, 2016**

I. INTRODUCTION

The Fact-Finding Hearings took place on March 23 and 24, 2016 at the Offices of Franczek Radelet, located at 300 S. Wacker Drive, Suite 3400, in Chicago, Illinois. The Hearings commenced at 9:00 a.m. on March 23 and at 10:00 a.m. on March 24, 2016. The Hearings took place before the undersigned Fact-Finder who was selected to issue a Fact-Finding Recommendation in this matter. At the Hearings, the parties were afforded a full opportunity to present such evidence and arguments as desired, including examination and cross-examination of all witnesses. No transcript of the Hearings was prepared, but the Fact-Finder did record the Hearings for his own use, with the understanding that said recording would be destroyed at the time of the submission of the Recommendation to the parties. The Hearings concluded at approximately 4:15 p.m. on March 24, 2016, at which time the evidentiary portion of the Fact-Finding was declared closed. The parties filed Pre-Hearing Briefs on or about March 18, 2016. The parties filed Final Offers on March 10, 2016. The parties stipulated to the Fact-Finder’s jurisdiction and authority to issue a Recommendation in this matter.

II. RELEVANT STATUTORY LANGUAGE

Section 12(a-10)(4) of the Illinois Employment Labor Relations Act:

* * * *

Under Section 12(a-10)(4) the fact-finding panel, acting by a majority of its members, must base its findings and recommendations upon the following criteria, as applicable:

- (A) the lawful authority of the employer;
- (B) the federal and State statutes or local ordinances and resolutions applicable to the employer;
- (C) prior collective bargaining agreements and the bargaining history between the parties;
- (D) stipulations of the parties;
- (E) the interests and welfare of the public and the students and families served by the employer;

(F) the employer's financial ability to fund the proposals based on existing available resources, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue;

(G) the impact of any economic adjustments on the employer's ability to pursue its educational mission;

(H) the present and future general economic conditions in the locality and State;

(I) a comparison of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of employees performing similar services in public education in the 10 largest U.S. cities;

(J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;

(K) the overall compensation presently received by the employees involved in the dispute, including direct wage compensation; vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment and all other benefits received; and how each party's proposed compensation structure supports the educational goals of the district;

(L) changes in any of the circumstances listed in items (A) through (K) of this paragraph (4) during the fact-finding proceedings;

(M) the effect that any term the parties are at impasse on has or may have on the overall educational environment, learning conditions, and working conditions with the school district; and

(N) the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State.

115 ILCS 5/12(a-10)(4)

III. RELEVANT CONTRACT PROVISIONS

Article 36-4 Pension pick-up

Article 36-4.1

Amount of Pick Up

The BOARD shall pick up for each teacher and other bargaining unit employee a sum equal to 7% of the amount due each such employee as set forth in this Article and in the annual salary schedules set forth in Appendix A-1A through A-1D and A-1F through A-1H (except for Appendix A-1K(i) and A-3E) for the Public School Teachers' Pension and Retirement Fund of Chicago and the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund to be applied to the retirement account of each such employee (not the survivors' annuity account).

Article 36-4.2

Claim to Funds Picked Up

The employee shall have no right or claim to the funds so picked up, except as they may subsequently become available upon retirement or resignation from the Public School Teachers' Pension and Retirement Fund of Chicago and the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund, or as provided under the laws governing the above two pension funds.

Article 36-4.3

Indemnification

The BOARD does not warrant that the payments made by the BOARD for the employees as set forth above are permissible prior to January 1, 1982, or that any of such payments are excludable from the employees' gross wages, and as such, the UNION and each individual bargaining unit employee shall and does hereby agree to indemnify and hold harmless the BOARD and its members, officers, agents and employees from and against any and all claims, or liability by reason of payments of said contributions to the Public School Teachers' Pension and Retirement Fund of Chicago and the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund made pursuant to the provisions of this Article. This pension pick-up will not constitute a continuing element of compensation or benefit beyond Fiscal Year 2015 or 2016 should this Agreement be extended for one year.

Article 36-4.4

Subjects of Negotiations for Future Years

All terms and conditions of employment for future years, including without limitations, salaries, benefits and pension pick-up, are the subject of negotiation for those years.

IV. RELEVANT PORTIONS OF THE SCHEDULING ORDER OF MARCH 12, 2016

This Order issues under authority of the impasse procedures in Section 12(a-10) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, et seq.

I. FACT-FINDING PANEL

Pursuant to Section 12(a-10) of the Act, the Board of Education of the Board of Chicago and the Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO have selected and convened a three-person Fact-Finding Panel. The Board's appointee to the Panel as the Board Member is Joseph T. Moriarty. The Union's appointee to the Panel as the Union Member is Robert E. Bloch. The parties may substitute appointees prior to the conclusion of the proceedings.

Pursuant to Section 12(a-10)(2) of the Act, the parties selected Steven M. Bierig on February 1, 2016 as the qualified impartial individual to serve as the fact finder and chairperson of the Panel. Unless indicated otherwise by the parties or under circumstances permitted by Sections 12(a-10)(3)(C) and (K) of the Act concerning mediation activities by the Neutral Chair, the Panel Members and the parties' advocates shall be in attendance at any conference of the Panel and shall otherwise be advised of any communications between or among Panel Members. The parties may waive any requirements of the Act with respect to their Panel Members' participation on the Panel with respect to meetings, preliminary hearings, evidentiary hearings and oral argument upon the record.

* * * *

II. PROCEEDINGS

The proceedings in this matter as specified in Section 12(a-10)(2) of the Act commenced effective February 1, 2016 , with the parties' selection of the Neutral Chair....

* * * *

IV. PANEL REPORT

In accord with Section 12(a-10)(4) of the Act, if the dispute is not settled, the Panel's Report based on the factors set forth in that section, as applicable, shall issue on April 16, 2016. The Report shall set forth the Panel's advisory findings of fact and recommended terms of settlement for all disputed issues. Unless indicated otherwise by the Neutral Chair, the Report's recommended terms of settlement shall be based on the parties' last final offers on each issue in dispute. The Report shall be delivered by hand or electronic mail to each panel member and party.

For purposes of issuance of the Report, the parties waive the tri-partite panel provisions of Section 12(a-10)(2) of the Act and the Report required by Section 12(a-10)(4) of the Act shall be issued by the Neutral Chair. However, by waiving the tri-partite panel provisions for issuance of the Report as described, the parties' Panel Members do not waive any right to file concurring or dissenting opinions on specific issues ruled upon by the Neutral Chair. Such concurring or

dissenting opinions by the parties' Panel Members shall be included with the issuance of the Report by the Neutral Chair. For purposes of the Report, the Neutral Chair's opinion on any issue as stated in the Report shall take precedence over any differences between the parties' Panel Members and the Neutral Chair. Any such concurring or dissenting opinions filed by the parties' Panel Members shall not constitute a rejection of the Report by a party as provided in the next paragraph, but shall only constitute stated differences of opinion on issues ruled upon by the Neutral Chair in the Report.

As set forth in Sections 12(a-10)(4) and (5) of the Act, upon issuance to the parties, the Report shall be private to the parties and, for the 15 day period after issuance of the Report, shall not be released to the media unless the parties agree to accept the Report's recommended terms of settlement. However, if a party submits a notice of rejection of the Report as allowed by Section 12(a-10)(5) of the Act, and pursuant to that action, the Neutral Chair shall immediately publish the Report and the notice(s) of rejection to all newspapers of general circulation in Chicago with simultaneous written notice to the parties. Such date of publication is acknowledged to constitute the date of release as set forth in Section 13(b)(2.5) of the Act.

To accomplish the publication requirements in Section 12(a-10)(5) of the Act and under this Order, by April 15, 2016, the parties shall file with the Neutral Chair their respective lists of newspapers which they believe should receive the Report and the notice(s) of rejection along with email addresses, fax numbers and mailing addresses.

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V. ISSUES

- **WAGES**
- **HEALTH CARE**
- **PENSION PICK-UP**
- **STEPS AND LANES**
- **TERM OF AGREEMENT**

VI. THE PARTIES' FINAL OFFERS AS PRESENTED ON MARCH 10, 2016:

ISSUE	BOARD OFFER	UNION OFFER																
WAGES	<table border="1"> <tr><td>2015</td><td>0.00%</td></tr> <tr><td>2016</td><td>2.00%</td></tr> <tr><td>2017</td><td>4.00%</td></tr> <tr><td>2018</td><td>4.00%</td></tr> </table>	2015	0.00%	2016	2.00%	2017	4.00%	2018	4.00%	<table border="1"> <tr><td>2015</td><td>2.00%</td></tr> <tr><td>2016</td><td>2.00%</td></tr> <tr><td>2017</td><td>No offer</td></tr> <tr><td>2018</td><td>No offer</td></tr> </table>	2015	2.00%	2016	2.00%	2017	No offer	2018	No offer
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HEALTH CARE	<p><u>1/29/16 Comprehensive Contract Proposal</u> In the CCP, the Board proposed changes in Health Care plans and employee contributions that will result in savings of approximately \$58M. This Health Care proposal is contained in its entirety in Employer Exhibit 32 and is not replicated here.</p> <p>Further, the Board proposed that if, by April 15, 2016, the Labor Management Cooperation Committee (LMCC) (comprised of CTU and CPS members) agreed on an alternative plan design and cost saving initiatives that would achieve the same annual cost savings as in the CCP, CPS will implement the alternative plan and initiatives effective January 1, 2017.</p> <p><u>3/10/16 Board Fact-Finding Proposal</u> Because of the BBT's rejection of the Health Care provision of the CCP, implementation of any potential April 15, 2016 LMCC agreement is no longer possible. Thus, the Board proposes that the April 15, 2016 date be changed to April 15, 2017, and that any alternative plan would go into effect January 1, 2018.</p>	STATUS QUO																
TERM OF AGREEMENT	4 Years	2 Years																

VII. STATEMENT OF FACTS

A. Introduction

The parties involved in the instant Fact-Finding are the Chicago Board of Education (the “Board” or “CPS”) and the Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO (the “CTU” or the “Union”). The parties’ previous collective bargaining agreement was in effect from July 1, 2012 through June 30, 2015. The instant Fact-Finding concerns the Collective Bargaining Agreement (the “Contract”) that will succeed the contract that expired on June 30, 2015. This Fact-Finding is governed by a tripartite Fact-Finding Panel (the “Panel”) consisting of a Neutral Chair Fact-Finder (Steven Bierig), an Employer Representative (Joseph Moriarty) and a Union Representative (Robert Bloch). (Jt. Ex. 1)

B. The Parties to the Dispute

The Board is statutorily charged with the governance, maintenance and financial oversight of the Chicago Public School System. The Board is organized under and operates pursuant to Article 34 of the Illinois School Code and is an “educational employer” under Section 2(a) of the IELRA. The Board is composed of seven members appointed by the Mayor of the City of Chicago. CPS is the third largest school district in the nation serving approximately 392,000 students over 678 schools.

The Union is a labor organization subject to Section 2(c) of the Illinois Educational Labor Relations Act (the “IELRA”) and is the historical exclusive bargaining representative of the nearly 30,000 Teachers and PSRPs, or Paraprofessionals and School-Related Personnel. The CTU is the largest Teachers’ Union in Illinois.

The Chicago Public Schools’ student population consists of approximately 39% African-American, 46% Latino, and 10% Caucasian students. Over 17% of CPS students speak a primary language other than English. Approximately 87% of CPS students come from families who are

considered low income and are eligible for free or reduced lunch services. A substantial number of CPS students are transitory or homeless. (Er. Ex. 8, 9, 36)

According to the Northwest Evaluation Association Measure of Academic Progress, the percentage of elementary school students' reading and math scores at or above the national average has increased every year since 2013. High school students achieved gains in ACT scores since 2013. Graduation rates have also increased in recent years; the 5-year graduation rate in 2014-2015 was nearly 70%, which was the highest ever recorded for CPS students. (Er. Ex. 10-12)

C. The Relevant Statutes

The instant Fact-Finding procedures are governed by Section 12(a-10) of the IELRA, 115 ILCS 5/12 (a-10). These procedures were established by Senate Bill 7, Public Acts 97-007 and 97-008, which took effect on June 13, 2011 and apply only to CPS and no other school district in Illinois. The procedures outlined in the Statute include mandatory mediation and mandatory Fact-Finding in the event that no agreement is reached.

The Statute sets forth a number of factors that the Fact-Finder may consider in determining his Recommendation. Each of these factors is relevant, although no one factor is determinative. A Fact-Finder has discretion to rely on some factors, as applicable, more heavily than others where the Fact-Finder deems appropriate. The Statute does not rank the factors in any order of importance. In *City of Decatur and International Association of Firefighters, Local 505, S-MA-29* (Eglit 1986), an Interest Arbitration, Arbitrator Eglit observed that the importance of each statutory factor is not ranked: "... moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make the determination as to which factors bear most heavily in this particular dispute." Thus, some of the statutory factors may be deemed more significant than others, depending upon the issues and the evidence presented. While the above-cited case is an Interest Arbitration, and not an

IELRA Fact-Finding procedure, I find that the concept of allowing a Fact-Finder to determine a statutory factor's weight based upon the specific circumstances of the case is equally appropriate to Fact-Finding.

I also note that under the Statute, the Fact-Finder is not obligated to recommend the "last best offer" of either party, but may recommend an option that, in the opinion of the Fact-Finder, most closely comports with the applicable factors prescribed by the IELRA. Thus, in the instant Fact-Finding, the Fact-Finder is free to recommend what he believes to be the appropriate Contract provisions, based on the relevant statutory factors.

C. Prior Collective Bargaining Agreements

Every labor contract between the Board and the CTU since the 1967 contract has contained a Step Schedule, under which every Teacher and PSRP receives a specified base salary increase on designated anniversary dates, known as "Steps", and a Lane Schedule, under which each Teacher receives a specified base salary increase based on the Teacher's educational advancement, known as "Lanes". The Step Schedules have varied from as many as sixteen to as few as five Steps, depending on the particular contract. Contracts have designated as few as three to as many as six Lanes.

Bargaining Unit employees receive retirement benefits through the Chicago Teachers Pension Fund ("CTPF"). CTPF charges employees contributions at the rate of 9% of an employee's pay. Beginning in 1981, the Board agreed that it would pay 7 of the 9 percentage points on the employee's behalf; the employee was responsible for the remaining 2%. This provision was negotiated into the contract in lieu of additional salary increases in 1981. This Pension Pick-up has been paid continuously and has been included in every labor contract since it was first negotiated in 1981.

According to the Union, were the Pension Pick-up eliminated, the immediate effect would be a 7% pay cut to employees. The Union contends that the elimination of the Pick-up would have the

additional negative impact of reducing the amount of salary on which pensions are ultimately calculated.

According to the Union, the practice of paying the Steps and Lanes and the Pension Pick-ups is well-established, and on the four occasions between 1983 and 2003 that a labor contract expired, the Board continued to pay the Steps and Lanes and the Pension Pick-ups that, based upon the expired contract's schedule, accrued during the interim periods.

Within the last 50 years, the only instance of the Board temporarily failing to pay Steps and Lanes after a contract expired occurred during a very brief period in 2012. When Teachers returned to school in August and September 2012 without a contract, the Board discontinued paying newly-accrued Steps and Lanes. However, pursuant to an Unfair Labor Practice Charge resolution, the Steps and Lanes were restored retroactively to July 1, 2012.

According to the Union, there are no historical exceptions to the Board paying the Pension Pick-up. Even during the 2012 contract hiatus when it temporarily ceased paying Steps and Lanes, the Board continued to pay the Pension Pick-up.

D. 2015-2016 Bargaining History

As noted above, the prior contract between the parties expired on June 30, 2015. The parties began bargaining in approximately November 2014. On January 29, 2016, after 17 consecutive days of bargaining, the Board presented a Comprehensive Contract Proposal ("CCP") to the Union, which included potential resolutions regarding over 100 issues. The Union identified the CCP as a "Serious Offer" and agreed to take it to their Big Bargaining Team for approval. The Union contends that the promulgation of the CCP and the Union taking the CCP to the BBT did not constitute a tentative agreement.

I note that the collective bargaining term, “tentative agreement” denotes that the principals at the bargaining table have the authority to sign off, or agree, on resolutions of individual issues reached at the bargaining table. In the instant case, based on the evidence and testimony at the Fact-Finding Hearing, the events of January 29, 2016 did not rise to the level of a tentative agreement. Rather, the Union characterized the CCP as a “Serious Offer” that it agreed to take back to its democratically-selected 40-member bargaining team, also known as the “Big Bargaining Team” (“BBT”), for approval. I emphasize that the Board’s CCP and the Union’s presentation of said CCP to the BBT did not constitute a tentative agreement in the traditional sense of bargaining, but rather was a framework worked out by the individuals charged with negotiating a successor agreement.

The CCP can be divided into four interrelated parts:

A. Economics

- Salary increases of 8.75% COLA plus Step and Lane increases in years 2, 3 and 4, with Pension Pick-up to be phased out in Fiscal Year 2017 and Fiscal Year 2018, for a total salary package of 13.55% in increases
- Health insurance contribution increases of .8% in Fiscal Year 2017 and 7% in Fiscal Year 2018 in addition to plan changes in Fiscal Year 2017 and Fiscal Year 2018
- A retirement incentive of \$1,500/yr for each year of service for Teachers and \$750/yr for PSRPs
- No economic layoffs of Teachers and Teachers' Assistants for the duration of the Contract.

B. Non-Economic Issues

- Provisions regarding Teacher autonomy for grading and instructional plans
- School-based control over student assessments beyond the legally required minimums
- Preparation periods

- Elimination of case management responsibilities for Counselors, Clinicians and Special Education Teachers
- Elimination of paperwork that is redundant, obsolete or better accomplished by other means
- Expansion of self-directed professional development
- Extension of layoff and recall rights for Teachers and PSRPs
- Improvements to the Teacher evaluation process, including increased right to appeal ratings
- Joint Arbitration Review Committee to resolve grievances prior to arbitration
- Factoring seniority into economic layoffs of PSRPs
- Special Education student class ratios
- Recruitment of substitute teachers
- Air conditioning in all classrooms by the end of school year 2018-2019

C. Policy and Funding Issues

- Committing to jointly work with the General Assembly to create a new stand-alone tax levy for CTPF contributions
- Identifying and seeking sustainable progressive revenue sources from the General Assembly
- Committing to not close schools in Fiscal Year 2018 and Fiscal Year 2019 because of under-enrollment
- “Zero net increase” in the number of Board authorized charter schools and caps on total charter student enrollment
- Committing to revise or amend laws governing the Charter School Commission
- Committing to spend a minimum of \$500,000 annually per school for 20 to 55 schools per year for Community Schools, integrating many important support services

D. Four-Year Term

However, the CCP was rejected unanimously by the BBT on February 1, 2016, subsequent to which, the parties invoked Fact-Finding pursuant to Section 115 ILCS 5/12 (a-10) (4) of the IELRA. Since that time, according to the Board, the CPS' financial situation has deteriorated, as discussed below. Therefore, the Board contends that it was forced to make modifications to the CCP, which resulted in the March 10, 2016 proposal.

E. THE FISCAL CRISIS WITHIN CPS

1. The Board's Budget Process

Pursuant to Section 34-43 of the School Code, the Board must adopt a balanced budget for each fiscal year, which begins on July 1 of a given year and ends on June 30 of the following year. After the Board adopts a balanced budget, the Board is prohibited from incurring any expenditure that exceeds that budget without a proportional reduction in other expenditures. CPS' annual financial reports are audited by an external independent auditor, and a Comprehensive Annual Financial Report ("CAFR") is generated. (Er. Ex. 2)

The evidence presented shows that the CPS has experienced a deficit that has resulted from increases in non-discretionary costs and declining revenue. CPS has attempted to address this situation by cutting significant funds from non-classroom spending since 2011. CPS revenue has decreased for a number of reasons. First, local property tax revenues have not increased, while state and federal education funding has declined since 2010. In addition, CPS' pension obligations have significantly increased, requiring CPS to make further cuts while relying on its reserve funds to bridge any monetary gap. This shortfall has been remedied in large part through borrowing in the bond market.

2. Revenues

CPS receives its operating revenue from local, state and federal sources. The largest source of revenue, approximately 40%, is obtained from local property taxes. CPS is subject to the Property Tax Extension Limitation Law (“PTELL”), also known as the Property Tax Cap. CPS has increased taxes to the maximum amount allowed under PTELL and has no legal authority under state law to increase taxes any further. In Fiscal Year 2016, base property tax receipts increased by only \$19 million. CPS also receives income in the form of Personal Property Replacement Tax (“PPRT”) revenue, which is a tax on the federal taxable income of corporations, businesses and public utilities. In Fiscal Year 2016, CPS expected PPRT revenue to be \$208 million, less than 4% of CPS' total revenue. (Er. Ex. 1)

CPS also receives General State Aid (“GSA”) based on a formula established by the Illinois General Assembly. GSA has been reduced each year since Fiscal Year 2010, which according to the Board, is a major cause of CPS' deficit. According to the Board, since 2010, the General Assembly has failed to appropriate sufficient funds to meet statutory funding obligations. As a result, CPS contends that it has been underfunded by over half a billion dollars since Fiscal Year 2010 and by \$83 million in Fiscal Year 2016 alone. (Er. Ex. 1)

CPS also receives limited federal funds under the Elementary and Secondary Education Act, which is restricted to very specific purposes. In Fiscal Year 2016, federal funds accounted for less than 15% of CPS' total revenue. (Er. Ex. 1)

3. Expenditures

For Fiscal Year 2016, roughly 68% of CPS' expenditures are spent on employee salaries, compensation and benefits. Employment related expenditures also include over \$676 million for the Board's required employer pension contribution to CTPF, which represents almost 12% of CPS'

total annual budget. The remaining 20% of expenditures are non-personnel costs, including supplies, commodities, food, services, tuition for public charter schools operating within Chicago, and other items. In addition to these expenses, CPS will pay over \$254 million in debt service this year. (Er. Ex. 1)

4. CPS' Pension Situation

As noted above, over 12% of CPS' entire budget is allocated toward pension payments for the CTPF. For Fiscal Year 2016, CPS is required to contribute \$676 million to CTPF, while the state is expected to contribute only \$12 million. Further, CPS' estimated required contributions accelerate dramatically in the next several years:

Fiscal Year	Projected CPS Contribution (in millions)	Projected State Contribution (in millions)
2017	\$696	\$13
2018	\$716	\$13
2019	\$737	\$13
2020	\$759	\$14

(Er. Ex. 1, 3)

5. CPS' Debt Service Costs

In previous years, CPS debt service has remained relatively low through the use of 1-time measures such as debt restructuring, the use of reserves, and grant funding from the State. These measures are no longer available. As a result, in Fiscal Year 2017, debt service is expected to rise from the current amount of \$254 million to \$452 million. This represents 8% of CPS' \$5.7 billion operating budget. In Fiscal Year 2025, this debt service is expected to rise to \$506 million, assuming no additional bonds are sold. Further, GSA is projected to decline over the next several years, in part due to the State's failure to fund, but also due to the projected demographics of the District. Based on these

conditions, fewer dollars will be available for operating purposes, including classroom expenses. (Er. Ex. 1)

6. Prior Cost Cutting

CPS contends that it has done its best to respond to the structural deficit by reducing expenditures through cuts. CPS contends that it has made it a priority to keep cuts away from the classroom whenever possible by cutting costs from Central Office, administration and operations. CPS has cut total administrative costs by hundreds of millions of dollars since Fiscal Year 2011. Between 2009 and 2012, CPS cut Central Office personnel by more than over 28%. Non-union Central Office employees have not received a salary increase since 2012. Principals and Assistant Principals have not had an annual salary increase since 2011. CPS has also implemented increases to health insurance premiums for its non-union employees, as well as those represented by SEIU, Local 73, which are greater increases than those contemplated by the CCP. CPS has already begun phasing out the Pension Pick-up for non-union staff. According to the Board, other unionized employees have also been subject to cuts. Employees represented by SEIU, Local 73, lost a 2.00% COLA increase for Fiscal Year 2017, and employees represented by UNITE HERE received no raise for Fiscal Year 2016. (Er. Ex. 1, 13-14)

In Fiscal Year 2016, CPS cut \$200 million from its operating budget and eliminated 1,400 positions, while reducing spending on programs such as athletics, facility repair and maintenance, and Teacher professional development. While these cuts have narrowed the gap, the Board contends that such cuts are a tiny part of the bigger problem. Therefore, even continued cuts to Central Office and other administrative cost centers cannot fully alleviate CPS' fiscal crisis. (Er. Ex. 1)

7. CPS' Attempts to Bridge the Gap Between Revenues and Expenses

The increase in CPS costs significantly exceeds the growth in revenues. Currently, CPS has over \$6.7 billion in outstanding debt. However, in light of the most recent bond sale, as well as CPS' poor credit ratings, the bond markets are skeptical that CPS can provide a sustainable path forward for future borrowing. (Er. Ex. 22-24)

In January 2016, the Board planned a bond issuance of \$875 million. According to the Board, as a result of Governor Rauner's announcements during the bond sale regarding bankruptcy and a potential State takeover of the CPS, as well as the Union's rejection of the CCP, CPS was forced to offer an interest rate of 8.50% in order to sell the bonds. The issuance also included additional discounts, which meant that the total proceeds available from the \$725 million bond issue were only \$615 million, far less than the \$875 million bond sale that was originally intended. As a result of this increased cost, CPS generated fewer proceeds for various capital projects. According to the Board, there is little likelihood of obtaining additional funding from any source due to the lack of a labor agreement and continued threats from the State to place CPS into bankruptcy. It is uncontested that the Board is in significant financial straits and sources of funding are extremely limited. (Er. Ex. 22)

The Board contends that the State has effectively prevented any further borrowing. As previously mentioned, prior to the Board's February bond issuance, Governor Rauner proposed legislation that would authorize CPS to declare bankruptcy and put CPS under direct State control. The Board contends that the Illinois State Board of Education ("ISBE") is expected to declare CPS in financial difficulty as early as April. According to ISBE's latest review of the Board's Financial Profile, CPS' profile score has declined every year since 2012. (Er. Ex. 15-20, 23)

Further, the Board contends that Bond market analysts have repeatedly pointed to the lack of a contract with CTU as a major contributor to CPS' continued financial and operational uncertainty and inability to obtain future financing. (Er. Ex. 22)

8. CPS' Current Financial Position and Cash Flow Challenge

According to the Board, the CPS has employed every short-term tactic to alleviate its recurring structural budget deficit. In its initial budget for Fiscal Year 2016, CPS assumed that it would receive almost \$480 million in pension funding relief from the State under pending legislative proposals in order to present a balanced budget. Unfortunately, this legislative pension relief did not occur. Also, the Board's financing obtained at a high interest rate significantly increased the ongoing cost of CPS' debt service and added to its long-term structural deficit. As a result, the Board contends that it faces not only an insurmountable long-term debt burden and ongoing structural deficit, but also an immediate and cash flow crisis. The Board must make a \$676 million payment to CTPF by June 30, 2016. The Board contends that it barely has sufficient funds to operate the school system through the end of the current school year. The Board contends that it will have to exhaust its cash reserves over the next several months and that by June 2016, the Board will have a negative \$846 million cash position. The only way that CPS will be able to continue to meet its obligations is through \$870 million in short-term borrowing. This will leave the Board with only \$24 million in operational cash reserves as of June 30, 2016. (Er. Ex. 1, 21-24)

The CPS is attempting to operate through until the end of the school year by requiring furlough days and a freeze on any non-mandatory spending. As of March 18, 2016, schools have been forced to absorb \$26 million in mid-year budget cuts, and during the week of March 11, Principals were asked to refrain from spending \$45 million previously budgeted for non-personnel, classroom related purchases. Principals were further asked to save another \$10

million in personnel expenses through a hiring slowdown for any positions that are not absolutely essential to students. (Er. Ex. 25-26)

VIII. THE ISSUES OF THE PARTIES

A. The Preliminary Issue of the Board's Economic Position

The Fact-Finder notes that both parties have presented arguments regarding the implications of the Board's economic situation and its effect on the Recommendation in this case. I will present the parties' positions regarding the Boards' economic situation prior to the specific issues raised in this proceeding.

1. The Union

According to the Union, the difference between the parties' positions in this case is a total of \$183 million for the period of July 1, 2015 through June 30, 2017. This amount is a very small percentage of the Board's annual budget, which in 2015-2016 is \$5.687 billion. The Union contends that the difference in 2015-2016 is \$53 million, and in 2016-2017 is \$130 million.

The Union contends that the Board's drastic proposals to eliminate certain salary structures such as the Steps and Lanes and the Pension Pick-up, which have been continuously in effect for a significant length of time, would effectively reduce overall compensation over the term of the Contract. Further, the Board's proposals will result in the flight of Teachers and PSRPs from the Chicago Public Schools to neighboring school districts.

According to the Union, for the 2015-2016 school year, the differences between the parties' proposals represent less than 1% of the Board's total budget. The Union contends that the Board has

demonstrated its ability to adjust its budget to cover costs in this small range. The Union argues that its proposal is eminently affordable and should be recommended.

As for the future, the Union contends that the Board's financial difficulties greatly exceed the small differences in the parties' proposals. The Board contends that its extreme financial situation requires recommendation of its proposal; however, the Union argues that the Board's financial issues are so much more significant than the marginal differences between the parties' proposals. Based on history, the Board's revenue is unpredictable in the range of hundreds of millions of dollars annually. It is clear that a recommendation of the Board's proposal will not and cannot solve the Board's budget issues and in addition, will have the further detrimental effect of depriving Teachers and PSRPs of raises they need to keep up with the cost of living. The Union contends that the Board cannot escape its significant financial difficulties by reducing the pay and benefits for this group that is so essential to the education and future of the City's children. Simply put, the Board's financial troubles do not justify the cuts the Board proposes.

The Union contends that approximately half of the difference between the parties' proposals results from the Board's breakthrough proposal to freeze Steps and Lanes in the 2015-2016 school year; however that significant change to the structure of compensation cannot meet the high standard applicable in impasse resolution procedures.

The Union proposes a 2% cost of living increase while the Board proposes no cost of living adjustment. The Union calculates that each percentage point of cost of living increase costs approximately \$13.5 million, and therefore, the 2% increase that the Union proposes will cost approximately \$27 million. The remaining \$26 million difference between the parties for the 2015-2016 school year is comprised of the Union's proposal that Steps and Lanes be continued.

The Board will argue for its proposal by citing its present economic difficulties. However the Union has repeatedly indicated that the economic challenges faced by CPS will not be resolved by

recommendation of the Board's proposal. The Board has computed its budget gap for 2015-2016 as \$480 million and its budget gap for 2016-2017 as \$1.1 billion, far more than the difference between the parties' proposals. The Union does not contest that the Board has serious budget issues. However, the Fact-Finder's recommendation of the Board's proposal cannot solve the Board's budget situation, and will only serve to undermine the educational goals of the Chicago Public Schools and further diminish the morale of the men and women who are in the classroom each and every day.

2. The Board

The Board proposes two significant changes to the CCP, namely the immediate elimination of the Pension Pick-up and increases in base salaries over four years. These proposals will result in an overall compensation increase of 14.80% over the life of the Contract as opposed to 13.55% under the original compensation terms set forth in the CCP. According to the Board, the Pension Pick-up must be eliminated immediately because the CPS has experienced further financial difficulties due to the high interest bond offering and it is necessary for the Board to save more money earlier than was the case when the CCP was presented. Therefore, the modified proposal provides greater increases at the end of the Contract and a greater overall increase over the proposed term of the Contract. The Board contends that while the elimination of the Pension Pick-up is an extremely difficult and unpopular option, it is clearly a better alternative to dramatic layoffs.

With the understanding that the immediate elimination of the Pension Pick-up is a considerable change from the 2-year phase out set forth in the CCP, the Board is also making the general proposal of across-the-board cost of living adjustments, totaling 10% over four years compared to 8.75% under the CCP. The Board contends that at the end of the four years, every Bargaining Unit member will receive higher increases than would have occurred under the CCP. However, those raises will be realized more

significantly in the last two years of the Contract, which will allow CPS to save more money in the first two years. The Board contends that its proposal is consistent with the framework of the CCP.

Thus, the Board contends that while it acknowledges that its March 10, 2016 proposal will not, in and of itself, resolve the financial difficulties that the Board faces, it is a serious attempt to work toward a resolution of the problem, as opposed to exacerbating an existing troublesome situation.

B. The Specific Issues

1. Wages

The parties have made the following final Wage proposals:

BOARD PROPOSAL		UNION PROPOSAL	
DATE	COLA	DATE	COLA
July 1, 2015	0.00%	July 1, 2015	2.00%
July 1, 2016	2.00%	July 1, 2016	2.00%
July 1, 2017	4.00%	July 1, 2017	No offer
July 1, 2018	4.00%	July 1, 2018	No offer
Total increase - 4 years: 10%		Total Increase - 2 years: 4.0%	

a. The Union

The Union considers its Wage proposal, which provides for 2% each year over two years, a modest affordable approach. The Union computes the cost of its Wage proposal to be \$13.5 million for each 1% of wage increase for a total of \$27 million per year. According to the Union, Teachers and PSRPs will continue to experience cost of living increases over the term of the next Contract. The Federal Reserve Bank of Philadelphia’s Quarterly Survey of Professional Forecasters published on February 12, 2016 states, “... headline CPI inflation is expected to average 1.5 percent in 2016 and 2.2 percent in 2017.” This totals 3.7% over those two years. The Union proposes a 4% increase over the two years of its

proposed Contract term. The Union contends that its proposal should be recommended for closely matching headline CPI, citing *City of Chicago Police Department and the Policemen's Benevolent and Protective Association of Illinois, Unit 156 – Sergeants*, Case No. L-MA-12-005 (Bierig, 2013) (awarding an 8% increase over five years where the forecast predicted “an increase of 7.3%” over the same 5-year time period). Further, the Union contends that its proposal is consistent with the 2% increases that the Board granted in SEIU Local 73's contract.

The Union contends that the CPI should be given substantial weight, based on arbitral precedent as well as future economic uncertainty. In Arbitrator Edwin Benn's 2012 Fact-Finding Report, he noted that “... given the present unknowns of the economic recovery and the Board's future ability (or inability) to fund wage increases in the out years, the most reliable factor is the cost of living...” (*Benn* at 28). Fact-Finder Benn came to this conclusion after considering the Board's financial resources and the wages of teachers in other big cities. Given this precedent, the Union's proposal should be recommended.

The Union contends that although at first glance it might appear that the parties' Wage proposals are similar, the Board's proposed breakthrough of eliminating the 7% Pension Pick-up portends that the end result of the Board's proposal is quite dissimilar from that of the Union. The Board proposes a 0% raise in the 2015-2016 school year, followed in the 2016-2017 school year by a 2% raise with the elimination of the 7% Pension Pick-up. Under the Board's proposal, Teachers will have lost 5% of their salaries as of June 30, 2017, while under the Union's proposal, Teachers will have received a 4% raise by that time. There is a 9% difference between the parties' proposals after two years, during which time the Union's proposal provides a 4% increase and the Board's results in a net 5% salary cut. Given that the cost of living is expected to increase, albeit by only approximately 2% each year, the Union's modest increases are the more reasonable proposal.

Therefore, the Union requests that its Wage proposal be implemented.

b. The Board

The Board urges the Fact-Finder to recommend the Board's final Wage offer because it is reasonable and supported by the statutory factors. Under Section 12(a-10)(4)(F), the Board's ability to fund must be based on "existing available resources", and cannot be "... predicated on an assumption that lines of credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue." Currently, there are no readily available additional funding sources. According to the Board, based on information available at this time, there is a strong risk of an actual decrease in available funding sources as evidenced by CPS' recent experience in bond issuance, limited access to capital markets, proposed legislation to "cap" CPS' borrowing authority, and proposals to allow CPS to declare bankruptcy and be taken over by the State. Based upon the projections in the Board's recent bond offering, the Board will end this fiscal year with \$24 million in cash reserves, even after the deep cuts that have been implemented. Based on these severe assessments of the Board's current available resources, Section 12(a-10)(4)(F) of the Statute alone warrants recommending the Board's proposals.

According to the Board, the CPS' dire financial condition is the primary factor that compels recommendation of the Board's proposal. However, the Board further contends that other statutory factors also support the Board's proposal. Subsections (l) and (j) of the Statute, which authorize the Fact-Finder to consider comparable wages and conditions of employment for school districts in the ten largest U.S. cities and the cost of living in urban areas, also favor the Board's proposal. Under the Board's offer on Wages, CTU members' wage increases will continue to exceed the cost of living as predicted by current forecasts, which are at most 1.5% for 2015 and 2016. The Board contends that according to a 2014 study by the National Council on Teacher Quality, Chicago Teachers have the highest lifetime expected earnings among teachers in the ten largest cities,

regardless of cost of living adjustments. Chicago's top Teacher salary is second only to New York on an unadjusted basis, and Chicago's top paid Teachers earn over \$7,904 per year more than any other teacher in the ten largest cities when cost of living is considered.

Since 2014, and after years of cost cutting and wage freezes, several comparable cities recently negotiated new collective bargaining agreements with wage increases. However, even with these recent increases, CPS Teachers still earn more than their peers in other comparable cities. These were the first significant wage increases for New York and Los Angeles teachers in approximately five years. In contrast, CPS Teachers continued to receive their Step and Lane increases during this same period of time and received significant COLA increases in all but one of those years. Thus, the Board's proposal ensures that CPS Teachers will remain among the highest paid teachers in the ten largest U.S. cities.

Therefore, for all of the reasons mentioned above, the Board's Wage proposal should be recommended.

2. Steps and Lanes

BOARD PROPOSAL			UNION PROPOSAL		
DATE	STEPS	LANES	DATE	STEPS	LANES
July 1, 2015	No	No	July 1, 2015	Yes	Yes
July 1, 2016	Yes	Yes	July 1, 2016	Yes	Yes
July 1, 2017	Yes	Yes	July 1, 2017	No offer	No offer
July 1, 2018	Yes	Yes	July 1, 2018	No offer	No offer

a. The Union

The Union contends that the elimination of Steps and Lanes, even for one year, is a breakthrough change that cannot be accomplished through Fact-Finding. The conservative nature of

Fact-Finding is well-established and was confirmed by Fact-Finder Benn during the 2012 Fact-Finding proceeding. The breakthrough proposal of eliminating Steps and Lanes is therefore inappropriate because radical changes to the basics of compensation structure should not be recommended absent meeting the 3-prong breakthrough test, which the Board cannot fulfill.

In Fact-Finding, just as in Interest Arbitration, significant modifications to a well-established benefit, such as the Board's Step and Lane proposal, are often referred to as breakthrough changes and must meet a high standard to be recommended. "The traditional way of conceptualizing Interest Arbitration [and by extension, Fact-Finding] is that parties should not be able to obtain in Interest Arbitration any result which they could not get in a traditional collective bargaining situation." *City of Burbank and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-97-056 (Goldstein, 1998). Pursuant to *City of Burbank*, a party requesting a major change to the *status quo* must meet a 3-factor test:

1. the old system or procedure has not worked as anticipated when originally agreed to;
2. the existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and
3. the party seeking to maintain the status quo has resisted attempts to bargain over the change (i.e., refused a quid pro quo).

Id.

It is understood that Fact-Finding process has a different statutory origin than that of Interest Arbitration. Significantly, in 2012, Benn held that the concept of "no breakthroughs" applies to Fact-Finding as well as Interest Arbitration. Benn described this Fact-Finding process as a "very conservative process," and therefore indicated that Fact-Finding should allow for "no breakthroughs." (*Benn* at 18). Benn specifically rejected the Board's 2012 proposal for a

differentiated compensation plan, calling it a “breakthrough.” Benn held that “... the Board has not shown that such a dramatic change is warranted and it certainly has not shown that the existing method of compensating employees is broken.” (*Benn* at 24). Benn confirmed that a proposal considered merely a good idea is not enough to justify a major contractual change through the Fact-Finding process.

Based on this precedent, the Union contends that the Board’s proposal to eliminate payment for Steps and Lanes should be rejected. Such a major change to compensation for Teachers cannot be obtained through this conservative process when the procedure has been in place since 1967.

The Union contends that the Board cannot meet any of the three prongs of the *Burbank* test. First, the Board has not demonstrated that the system of compensating Teachers for experience and education is not working as anticipated. The system has been in place for decades, including through the most recent financial crisis. The Board has not proven that there have been any unexpected adverse effects from rewarding Teachers for experience and education. The Board has indicated that the elimination of Steps and Lanes is based upon a desire to cut costs. However, the conservative nature of this proceeding does not allow for cost-cutting through significant changes to the long-standing, well-established structure for compensation.

Second, the Board cannot demonstrate any operational hardship resulting from providing pay increases for education and experience. The Board does not claim that Steps and Lanes poses any particular burden. In fact, the Board very recently agreed to continue paying its employees represented by SEIU Local 73 based on their experience. Specifically, in Article 4-1.5 of that contract, the Board agreed to continue its practice of granting longevity raises to custodial employees. According to the Union, there is no operational difference in recommending experience and education raises to this Bargaining Unit.

Third, before granting a request for a breakthrough change, Interest Arbitrators require that the party seeking to maintain the *status quo* has resisted attempts to bargain over the change. In this case, the Union seeks to maintain the *status quo* and has not resisted attempts to bargain regarding said change. In the instant case, the freezing of Steps and Lanes was discussed at bargaining, although ultimately not agreed upon. It is uncontested that the CCP did include freezing of Steps and Lanes in the first year of the Contract. In return, the Board did propose noneconomic benefits, although not sufficient enough for the Union to give up such an established compensation structure. The Board indicated that there have been changes in circumstances since January 29, 2016 but offers nothing at all in exchange for the elimination of experience and education raises. Thus, the Board cannot meet the third prong of the breakthrough test and therefore, for all these reasons, the Board cannot meet the high standard required to eliminate the long-standing compensation structure of Steps and Lanes.

The Union asks that the compensation for Steps and Lanes remains unchanged.

b. The Board

The Board urges that its proposal regarding the elimination of Steps and Lanes for one year as part of the larger compensation package be recommended. The Board's proposals must be understood as carefully calibrated and interdependent on one another. The immediate elimination of the Pension Pick-up is necessary to fund the COLA and the Step and Lane increases for the last two years of the Contract. COLA and Step and Lane increases in Fiscal Years 2018 and 2019 depend on a sufficient number of Teachers accepting early retirement in 2016 and 2017 as well as on achieving significant health care cost savings. Thus, the elements of COLA, Steps and Lanes, Pension Pick-up, health insurance premiums, and retirement incentives must be read in harmony in order to result in both savings to CPS and a fair and equitable compensation package to the Bargaining Unit members over the course of four years.

The Board rejects the view that the elimination of Steps and Lanes is a breakthrough. Steps and Lanes are another form of compensation that must be reviewed in the larger context of the overall compensation package.

For these reasons, the Board’s proposal regarding freezing of Steps and Lanes should be recommended.

3. The Pension Pick-up

BOARD PROPOSAL		UNION PROPOSAL	
DATE	PICK-UP	DATE	PICK-UP
July 1, 2015	7.00%	July 1, 2015	7.00%
July 1, 2016	0.00%	July 1, 2016	7.00%
July 1, 2017	0.00%	July 1, 2017	No offer
July 1, 2018	0.00%	July 1, 2018	No offer

a. The Union

The Union asks that the *status quo* remain. The Board’s proposal to eliminate the long-standing Pension Pick-up benefit is an extremely radical change to the structure of employee benefits that is not appropriate for the conservative impasse resolution process. As discussed above, Benn held that Interest Arbitration authority is applicable to this proceeding, and said authority requires the party proposing a major, or breakthrough change to prove that its request meets all three elements of the *Burbank* 3-prong test, in that the old system is not working as planned, the existing system creates operational hardship, and that the other party has resisted attempts to bargain over the change. See *City of Burbank and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-97-056 (Goldstein, 1998). The Board’s proposal to eliminate this long-standing benefit cannot meet any of the three prongs of the *Burbank* test.

First, the Board has not demonstrated that the system of Pension Pick-up is not working as anticipated. The system has been in place for over 3½ decades, including through various major

financial crises. While it is uncontested that the Board is experiencing major financial challenges today, it has faced them in the past as well, and the Pension Pick-up has continued unabated.

Second, the Board cannot demonstrate any operational hardship resulting from the Pension Pick-up. The Union notes that every contract into which the Board has entered with its other unions includes a Pension Pick-up. In fact, the contract into which the Board recently entered with SEIU Local 73 states that through June 30, 2018, the Board will continue the Pension Pick-up pursuant to past practice. Having agreed to continue Pension Pick-up for thousands of its employees who are represented by other unions, the Board cannot credibly contend that there is an operational hardship in treating the Union's Teachers and PSRPs in the same manner.

Third, before accepting a request for a breakthrough change, Interest Arbitrators require that a party has attempted a *quid pro quo* with the other side without success. As mentioned above, during bargaining, the Board had offered some non-economic concessions, but withdrew them in its March 10, 2016 Final Offer. The Union contends that the Board is asking the Union's represented employees to take a drastic pay cut through elimination of the 7% Pension Pick-up and to pay more for health coverage, without receiving anything in return.

For all these reasons, the Union contends that the Board cannot meet the high standard required to eliminate the long-standing benefit of the 7% Pension Pick-up and asks that the *status quo* remain.

b. The Board

Employee participants are required to contribute 9% of salary to the pension plan, where 7% goes towards their service and disability retirement account and 2% to the survivor's account. In contrast, employee non-Teacher participants in the Municipal Employees' Annuity and Benefit Fund of Chicago (MEABF) are required to contribute 10% of salary to the plan. For all CTU employees, the Board

currently picks up and pays to CTPF and MEABF the 7% employee contribution to the service and disability retirement account.

The Pension Pick-up is an extremely costly benefit for the Board. First, it reduces the employee's individual contribution and shifts the costs onto the Board. Additionally, it increases employees' pension base. Thus, the Pension Pick-up costs the Board twice; first, the Board pays 7% of the employee's portion, and second the employee is paid an enhanced pension that the Board's operating revenues have to support through increased employer contributions.

The 2012-2015 contract specifically indicates that the Pension Pick-up is not a vested or permanent component of compensation. Section 36-4.3 of the 2012-2015 contract provides, "This pension pick up will not constitute a continuing element of compensation or benefit beyond Fiscal Year 2015 ..." Thus, it is absolutely clear that the parties agreed that this component of compensation would be reviewed on a regular basis and was not intended to remain without negotiation at each contract end.

While Pension Pick-up has historically been the norm throughout Illinois, it is now increasingly being rolled back and eliminated. ISBE recently conducted a survey of salary and Pension Pick-up of all Illinois school districts. For Fiscal Year 2014, 858 institutions statewide and 141 institutions within Cook County reported salary and Pension Pick-up information. According to the Board, the evidence demonstrates that Pension Pick-up is declining. The Board contends that CPS must join the scores of other school districts that have eliminated this practice.

Further, as noted above, the Board's modified proposals must be understood as carefully calibrated and interdependent with all the remaining proposals. The immediate elimination of the Pension Pick-up is necessary to fund COLA and Step and Lane increases for the last two years of the Contract. COLA and Step and Lane increases in Fiscal Years 2018 and 2019 depend on a sufficient number of Teachers accepting early retirement in 2016 and 2017 and on achieving significant health

care cost savings. The five elements of COLA, Steps and Lanes, Pension Pick-up, health insurance premiums, and the retirement incentives must mesh in harmony in order to result in both savings to CPS and a fair and equitable compensation package over the course of four years.

The Board contends that its request to eliminate the 7% Pension Pick-up after the first year of the Contract is a fair approach when reviewed in the context of the entire compensation package. It rejects the Union’s argument that this is a breakthrough proposal and therefore should be recommended by the Fact-Finder.

4. Health Care Contributions

BOARD PROPOSAL	UNION PROPOSAL
<p><u>1/29/16 Comprehensive Contract Proposal</u> In the CCP, the Board proposed changes in Health Care plans and employee contributions that will result in savings of approximately \$58M. This Health Care proposal is contained in its entirety in Employer Exhibit 32 and is not replicated here.</p> <p>Further, the Board proposed that if, by April 15, 2016, the Labor Management Cooperation Committee (LMCC) (comprised of CTU and CPS members) agreed on an alternative plan design and cost saving initiatives that would achieve the same annual cost savings as in the CCP, CPS will implement the alternative plan and initiatives effective January 1, 2017.</p> <p><u>3/10/16 Board Fact-Finding Proposal</u> Because of the BBT’s rejection of the Health Care provision of the CCP, implementation of any potential April 15, 2016 LMCC agreement is no longer possible. Thus, the Board proposes that the April 15, 2016 date be changed to April 15, 2017, and that any alternative plan would go into effect January 1, 2018.</p>	<p style="text-align: center;"><i>STATUS QUO</i></p>

a. The Union

The Union asks that the *status quo* remain. The Union contends that the Board's attempt to increase the Health Care contributions of the Bargaining Unit is such a small change that it effectively makes no difference in the alleviation of the Board's larger financial difficulties. The Union contends that there is no need to increase Health Care contributions to balance the Board's overwhelming deficit.

The Union asks that the *status quo* remain.

b. The Board

As part of the CCP, the Board proposed a reasonable increase in employee premium contributions and Health Care terms that result in savings of approximately \$58 million annualized, which would have been phased in over two calendar years, 2017 and 2018, and over three Fiscal Years, 2017, 2018 and 2019. The Board contends that the Health Care changes are a significant part of its overall proposal. According to the Board, the Board's initial proposal as part of the CCP indicated that if by April 15, 2016, the Labor Management Cooperation Committee (comprised of both CTU and CPS members) agreed to an alternative plan design and cost saving initiatives that would achieve the same annual cost savings as in the CCP, CPS would implement that alternative plan and initiatives effective January 1, 2017.

However, with the BBT's rejection of the CCP, the April 2016 date is no longer viable. Therefore, the Board now proposes that the April 15, 2016 date be changed to April 15, 2017 and that any alternative plan would go into effect January 1, 2018. This change simply reflects the reality that a Contract will not be completed by April 2016.

As for the increased contributions, the Board contends that the steady increase in the cost of health insurance presents extraordinary challenges for both employers and employees. This is not limited to the educational employee context. Like everyone else, CPS has

experienced steady growth in its health care costs. In 2001, health care benefits cost CPS \$3,891 per participating employee; in 2012, that figure rose to \$9,622, and is budgeted at \$10,163 per employee in 2016. Thus, CPS is shouldering an additional burden of \$6,272 per employee as compared to 2001. This additional burden is the equivalent of an 8% wage increase to employees.

The fiscal crisis and uncertain future cash flow situation requires recommendation of a plan that limits health care expenditures immediately, with the potential to implement the LMCC's plan at a later date. To that end, the Board's proposal contains increases to employee premium contributions and modest increases in co-pays for various hospital, emergency room, urgent care, and doctor's office visits. The proposal includes a prescription drug plan that will ensure that all Union members have access to affordable drugs while lowering overall health care costs for CPS. These proposals are commonplace in the current environment of the increasing costs of health care. Other school districts in the statutorily comparable cities have implemented similar changes. More importantly, because of the difficult fiscal conditions of CPS, the Board's proposals are necessary as part of its overall comprehensive plan to restore CPS' financial health.

The Board asks that its proposal be implemented.

5. Term of Agreement

The Board has requested a 4-year Contract while the Union has asked for a 2-year Contract.

a. The Union

The Union contends that the most logical term of the Contract, based on the current situation, is two years. According to the Union, a 2-year Contract makes much more sense in light of the Board's current financial position. A 2-year Contract gives the parties the opportunity to allow the Board's

financial crisis to resolve. It is clear that the imposition of a longer term Contract in the current uncertain political and economic climate is counterintuitive. A 2-year Contract allows the parties the opportunity to work out the larger financial issues in the short term and be able to negotiate a more meaningful contract in the future that will benefit both parties for the long term.

The Union asks that a 2-year Contract be recommended.

b. The Board

The Board requests that a 4-year Contract be recommended. Overall, the Board's proposal can be achieved only with a 4-year Contract. Any realistic solution to the problems facing the parties can only be realized by providing the parties with a degree of long term stability. The significant and substantial commitments proposed by the Board can only be successfully implemented and the benefits realized over a 4-year term. A 4-year Contract brings desperately needed stability for the Board to achieve real and ongoing budgetary relief. Further, it gives both the Board and the Union the predictability to meet the terms of the Contract. Finally, four years gives both parties the flexibility to cooperatively confront the State for additional funding to allow the Chicago Public Schools to keep operating. The Board contends that anything less than a 4-year Contract simply will not work.

Accordingly, the Board asks that the Fact-Finder recommend a 4-year Contract.

IX. DISCUSSION

A. Introduction

After a review of all of the evidence, stipulations, exhibits, testimony, pre-Hearing briefs and all of the factors set forth in the Statute, the Fact-Finder recommends that the following terms from the Board’s January 29, 2016 Comprehensive Contract Proposal be incorporated into the July 1, 2015 - June 30, 2019 Collective Bargaining Agreement between the parties:

- **Wages:**

Wage Schedule for July 1, 2015 - June 30, 2019 Contract	
Date	% Increase
July 1, 2015	0.00%
July 1, 2016	2.75%
July 1, 2017	3.00%
July 1, 2018	1.00%
January 1, 2019	2.00%
TOTAL INCREASE = 8.75%	

- **Steps and Lanes**

Steps and Lanes July 1, 2015 - June 30, 2019 Contract	
Date	Steps and Lanes
July 1, 2015	No
July 1, 2016	Yes
July 1, 2017	Yes
July 1, 2018	Yes

- **Pension Pick-up**

Pension Pick-up July 1, 2015 - June 30, 2019 Contract	
Date	Board Pension Pick-up
July 1, 2015	7.00%
July 1, 2016	3.50%
July 1, 2017	0.00%
July 1, 2018	0.00%

- **Health Care**

The Fact-Finder recommends that the Board's Health Care proposal be accepted.

- **Term of Agreement**

The Fact-Finder recommends that the term of the Contract shall be four years: July 1, 2015 through June 30, 2019.

The Fact-Finder further recommends that in addition to the above-mentioned issues, the remainder of the Board's Comprehensive Contract Proposal of January 29, 2016, which was transmitted to the Big Bargaining Team, be incorporated into the 2015-2019 Contract.

B. Analysis

As noted above, the five issues before the Fact-Finder are as follows:

- 1) **Wages**
- 2) **Pension Pick-up**
- 3) **Steps and Lanes**
- 4) **Health Insurance**
- 5) **Term of Contract**

I first note that I am cognizant of the fact that as a Fact-Finder, I do not have the authority to impose any particular solution on the parties; that is the role of an Interest Arbitrator. In the instant case, the Statute allows for the Fact-Finder to select from a number of options for Recommendation. First, I could choose one of the parties' proposals for Recommendation. Second, I could propose a Recommendation that in some way modifies one or both of the parties' proposals. Third, I could, based on the factors identified in the Statute, recommend new proposals that I believe would assist the parties in resolving the situation. I am cognizant of the fact that my role involves determining and suggesting what I believe to be the most reasonable Recommendation based on the current circumstances; I am not the ultimate decision maker in this case.

It is clear that I have not been present at the bargaining table and have not been privy to the parties' more than 15 months of negotiations, including the 17 consecutive days of bargaining that led to the CCP, and any discussions that occurred subsequent to February 1. Rather, I can base this Recommendation only on the evidence presented to me during the two Hearing days of March 23-24, which occurred approximately 3 weeks before the issuance of this Report.

After my review of these options, as more fully discussed below, I have chosen to recommend that which I believe is not only consistent with the language and intent of the Statute, but also fulfills the needs of both parties, in light of the difficulties that the parties face in the current political climate and financial crisis. As discussed below, I am recommending that the CCP that was identified by the Union as a "Serious Offer", but rejected by the BBT, be the basis for the 2015-2019 Contract between the parties. I realize that this Recommendation deviates from the parties' proposals of March 10, 2016; however, I believe that based on the evidence, this is the most appropriate resolution of the instant matter.

This Recommendation in no way attempts to undermine the role of the BBT and I respect the BBT's right, as the democratic representative of the Union membership, to have rejected the CCP. However, based on the evidence and the Statute, the CCP is the most reasonable approach to an extremely difficult situation. Therefore, I believe that of all the options available to me, the CCP is the most viable choice and is recommended.

The Fact-Finder notes that the parties have discussed and debated, at significant length, the significance of the CCP. It is well known that Interest Arbitration, and by extension, Fact-Finding, is an extremely conservative process in which parties should not be able to obtain what they could not have obtained in bargaining. In the instant case, the Board contends that the parties should use the basic framework of the CCP as the basis for the Contract because it was negotiated by the parties over a long period of time by experienced, knowledgeable and skilled

negotiators. The Board stresses that the individuals in the best position to reach a reasonable solution to the overwhelming problems facing the parties in this case are those who were present at the bargaining table over the 15-month period of November 2014 through January 2015. There is precedent under Illinois Labor Law to support the view that in an Interest Arbitration context, where a bargaining unit has found a proposal to be lacking, an Interest Arbitrator is nonetheless not precluded from giving serious consideration to said rejected proposal when fashioning an Award. Such precedent is relevant to the instant case. *See City of Waukegan and International Ass'n of Firefighters, Local 473*, Case No. S-MA-00-141, at 66 (Hill, 2001); *City of Peru and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-93-153 at 16-18 (Berman, 1995); *Village of Schaumburg and Schaumburg Lodge No. 71, Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-93-155 at 33-35 (Fleischli, 1994); *County of Ogle and Ogle County Sheriff and Illinois FOP Labor Council*, S-MA-03-051, at 48-63 (Goldstein, 2005); *See Also City of Chicago Police Department and the Policemen's Benevolent and Protective Association of Illinois, Unit 156 – Sergeants*, Case No. L-MA-12-005 (Bierig, 2013)

Illinois Interest Arbitrators have concluded that the value of a rejected significant proposal, or in this case, "Serious Offer", by the bargaining unit depends upon the circumstances surrounding the negotiations that led to it, the nature of the proposal itself, and the reasons for its rejection. *City of Chicago and Fraternal Order of Police, Lodge 7* (Briggs, 2002) at 19-20. In the instant case, the depth and integrity of the bargaining process between the Board and the Union has not been disputed. The Board argues that a Recommendation divergent from the basic nature of the CCP would undermine the essential nature of bargaining and only serves to encourage parties to reject the results of lengthy bargaining between experienced, knowledgeable representatives, forcing further third party involvement to obtain a better deal. The Board contends that the Fact-Finder should give great weight to the CCP. Further, the Board contends that the CCP not only closely comports with the factors set forth in the Statute, but also is the most appropriate Recommendation based on the facts in this case.

In *City of Chicago and Fraternal Order of Police, Chicago Lodge 7* (Briggs, 2002), Arbitrator Briggs discussed at length the viability of a bargained-for and subsequently rejected TA in the context of an Interest Arbitration. While I note that there was no TA in the instant case, the concepts discussed in Briggs' Award are applicable, as it carefully examines the interrelationship between the bargaining history of a contract and its rejection by the bargaining unit:

As noted, the FOP membership rejected the Tentative Agreement on January 12, 2001 by more than a two-to-one margin. ... Thus, the City urges, ... the Board should adopt the Tentative Agreement negotiated by the parties' duly-authorized representatives in exhaustive, informed, good-faith negotiations.

The Union points to Section 28.3 (Impasse Resolution, Ratification and Enactment) of the 1995-1999 Agreement, noting that ratification by the Lodge membership is a prerequisite to reaching complete agreement. It notes as well that the Section provides steps to be followed in the event either the Lodge or the City rejected the recommended agreement. ...

In the relatively short history of Illinois public sector interest arbitration there have been but a handful of cases where a tentative agreement was negotiated by the parties' representatives, recommended for ratification by the union bargaining team, then rejected by the union membership. The interest arbitrators to whom those cases were presented had to decide what weight, if any, should be given to the terms of the negotiated settlements. ... In the interest of brevity, the undersigned Arbitrator will not repeat those quotes here. Generally, Illinois interest arbitrators have concluded that the weight to be afforded a rejected tentative agreement depends upon (1) the circumstances surrounding the negotiations that led to it: (Was it negotiated in good faith by informed, responsible representatives?); (2) the nature of the tentative agreement itself (Is it an accurate reflection of the accord the parties would have reached in a normal strike-driven bargaining process? Is it based upon miscalculation or other error?); and (3) the reasons for the rejection ...

Turning again to the present case, it is important to recognize that the outcome of these interest arbitration proceedings must approximate what the parties themselves would have

negotiated, had they reached complete agreement through free and good-faith collective bargaining. Interest arbitration was not designed to be a routinely relied-upon substitute for the parties' own judgment. It is a last resort, to be used only when the bargaining process has been exhausted. There is also a danger that it can be used more out of concern for strategy than contractual substance. For example, a bargaining unit might reject an otherwise reasonable tentative agreement in hopes of using it as a starting point in a subsequent interest arbitration proceeding. In a 43-bargaining unit city like Chicago, if such a strategy were employed successfully by one unit, the others might follow suit. The likely result would bring meaningful collective bargaining to its knees.

It is clear in the present case that the Lodge membership had the contractual right ... to reject the tentative agreement. The Board acknowledges the legitimacy of that right and the democratic values it reflects. On the other hand, we are absolutely convinced from the record that the process leading to the November, 2000 Tentative Agreement constituted intense, hard-fought collective bargaining between informed advocates.

Details of the parties' extended efforts to achieve a negotiated contract have already been described. ... It is ... apparent that the parties each made gains and that each demonstrated a willingness to compromise. Moreover, their logical approach to the negotiations ... undoubtedly enabled the parties to gather, condense and scrutinize a variety of information integral to the construction of an "ecosystem" within which a variety of constituencies could exist in labor relations harmony. On balance, while the Board supports the FOP's right to reject the "Tentative Agreement", it also recognizes that the Tentative Agreement reflects a delicate balance of accommodation. Any significant change in that balance --- any material modification of the ecosystem that has evolved through the collective bargaining process --- could easily inflict more harm than good on the parties, on their future relationship, and on the many other entities affected by the outcome of these proceedings. Accordingly, and for the reasons explained in the foregoing paragraphs, the Board has decided to give the Tentative Agreement significant weight. We believe such consideration falls well within the scope of the Act, in that it focuses on elements of the employment relationship "normally and traditionally "taken into account by the parties themselves at the bargaining table."

(Briggs at p. 18-21)

Conversely, the Union contends that while Fact-Finding is generally intended to reach the conclusion that the parties would have negotiated, the CCP in this case was unanimously rejected by the BBT and by extension, the membership of the Union that it represents. According to the Union, the rejection by the BBT proves that the CCP was not a true meeting of the minds. See *City of Waterloo and Illinois FOP Labor Council*, S-MA-97-198 at 2-3 (Perkovich, November, 1999); *Village of Oak Brook and Teamsters Local 714*, S-MA-96-73 at 10-11 (Benn, 1996), *County of Sangamon and Fraternal Order of Police Labor Council*, S-MA-97-54 at 5-7 (Meyers, February, 1999)

I have carefully reviewed the contents of the CCP and the efforts that led to its proposal. After a review of all the facts of this case, I believe that significant and substantial weight should be granted to the CCP. The parties, who were represented by extremely experienced and knowledgeable negotiators, worked diligently over a lengthy period of time that encompassed 15 months of negotiations, including 17 days of continuous bargaining sessions, until the CCP was proposed on January 29, 2016. Based on the evidence, including the bargaining history, the challenges facing the Board, and the needs of the members of the Bargaining Unit to at a minimum maintain financial positions while avoiding layoffs, I find that the CCP should be given substantial weight. I find that by incorporating the CCP into their Contract, the parties will have a fighting chance to experience a significant period of labor peace during which they can combine forces to resolve the larger problems facing them.

As recounted above, the evidence in this proceeding establishes that from the inception of negotiations, both parties acknowledged the reality of economic exigencies affecting the parties and the threat of a pension crisis that may ultimately culminate in legislative changes. The CCP, although rejected by the BBT, did constitute an extremely carefully balanced document that sought to protect, and indeed, did protect, the core interests of both parties. The CCP was a proposal that

provided security to employees while providing some measure of economic relief to the Board. The fact that the CCP was rejected does not negate the relevance and significance of the CCP as a guide to the appropriate resolution of the issues before the Fact-Finder.

As identified at the Hearing, the financial and political problems facing the Board are monumental. The resolution of the Contract will not in and of itself make a significant difference in alleviating the Board's overall financial crisis. Although considered, this Recommendation is not contemplated as a resolution of that crisis, but rather, as a resolution to the parties' labor issues as called for by the Statute. It appears that the political conflict between the Board and the State is a dark cloud that overhangs these entire proceedings. It is clear that these issues will not be resolved by any Recommendation that I may present. However, it is my fervent hope that the resolution of the instant collective bargaining issue may lead to a spirit of cooperation between the Board and the Union in which those parties may jointly petition the State for a modicum of relief that will allow the Chicago Public Schools to continue operating and for students to remain in class without interruption.

As noted above, this Fact-Finding is a small component of a much larger issue. I have reviewed the parties' proposals and find that the best approach is a Recommendation of the CCP, which was the product of the parties' lengthy and thorough negotiation process. I am cognizant that the BBT rejected the CCP unanimously. I take this rejection seriously and am cognizant that the BBT represents the almost 30,000 members of the Union. However, even with that in mind, I have reviewed the CCP extensively and find that it is a "fair deal" proposed to the Union after numerous exhaustive bargaining sessions. I also note that the Union did characterize the CCP as a "Serious Offer". While I am also cognizant that, as the Union indicates, this is a relatively minor tip of a much larger iceberg, it is nonetheless a step in the right direction. Further, I note that the terms of

the CCP are consistent with the relevant statutory factors. With that in mind, I am recommending that the parties accept the conditions of the CCP which are summarized as follows:

DATE	COLA	Steps	Lanes	Pension Pick-up	Board Health Care Proposal
7/1/15	0.00%	No	No	7.0%	Yes
7/1/16	2.75%	Yes	Yes	3.5%	Yes
7/1/17	3.00%	Yes	Yes	0.0%	Yes
7/1/18	1.00%	Yes	Yes	0.0%	Yes
1/1/19	2.00%	Yes	Yes	0.0%	Yes

Obviously, based on this chart, I am recommending a 4-year Contract. Further, as I have indicated, I am recommending that the remaining conditions as stated in the CCP also be implemented.

X. RECOMMENDATION:

For reasons stated in this Report, the Fact-Finder recommends that the following terms from the Board's January 29, 2016 Comprehensive Contract Proposal be incorporated into the July 1, 2015 - June 30, 2019 Collective Bargaining Agreement between the parties:

- **Wages:**

Wage Schedule for July 1, 2015 - June 30, 2019 Contract	
Date	% Increase
July 1, 2015	0.00%
July 1, 2016	2.75%
July 1, 2017	3.00%
July 1, 2018	1.00%
January 1, 2019	2.00%
TOTAL INCREASE = 8.75%	

- **Steps and Lanes**

Steps and Lanes July 1, 2015 - June 30, 2019 Contract	
Date	Steps and Lanes
July 1, 2015	No
July 1, 2016	Yes
July 1, 2017	Yes
July 1, 2018	Yes

- **Pension Pick-up**

Pension Pick-up July 1, 2015 - June 30, 2019 Contract	
Date	Board Pension Pick-up
July 1, 2015	7.00%
July 1, 2016	3.50%
July 1, 2017	0.00%
July 1, 2018	0.00%

- **Health Care**

The Fact-Finder recommends that the Board's Health Care proposal be accepted.

- **Term of Agreement**

The Fact-Finder recommends that the term of the Agreement shall be four years: July 1, 2015 through June 30, 2019.

The Fact-Finder further recommends that in addition to the above-mentioned issues, the remainder of the Board's Comprehensive Contract Proposal of January 29, 2016, which was transmitted to the Big Bargaining Team, be incorporated into the 2015 - 2019 Collective Bargaining Agreement.

**Steven
Bierig**

Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o=Steven
M. Bierig Attorney Arbitrator
Mediator, ou,
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c=US
Date: 2016.04.16 13:46:07 -05'00'

**Steven M. Bierig, Fact-Finder
April 16, 2016**