BEFORE
FACT-FINDING PANEL

EDWIN H. BENN (Fact-Finder and Neutral Chair)
JESSE J. SHARKEY (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

and

THE CHICAGO TEACHERS UNION, LOCAL 1, AMERICAN FEDERATION OF TEACHERS, AFL-CIO

CASE NO.: Arb. Ref. 12.178 (Fact-Finding)

FACT-FINDING REPORT

APPEARANCES:

For the Board: James C. Franczek, Jr., Esq.
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Dated: July 16, 2012

CONTENTS

I. SUMMARY

As more fully set forth in this Report (which issues under authority of the Illinois Educational Labor Relations Act ("Act") and further issues on a non-precedential basis), the following is a summary of the recommendations for the new collective bargaining agreement ("Agreement") between the Board of Education of the City of Chicago ("Board") and Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO ("Union" or "CTU") for employees represented by the Union working for the Chicago Public Schools ("CPS"):

1. Duration

Four years - July 1, 2012 to June 30, 2016.

2. General wage increases

(a) To be applied to all lanes and steps (and based upon projected increases in the cost of living):

Effective July 1, 2012: 2.25%.

Effective July 1, 2013: 2.25%.

Effective July 1, 2014: 2.50% (subject to reopening if health insurance is reopened, with any impasse resolved through expedited interest arbitration).

Effective July 1, 2015: 2.50% (subject to reopening if health insurance is reopened, with any impasse resolved through expedited interest arbitration).

(b) The Board's request to freeze step increases is not recommended.

(c) The Board's request to establish a differentiated compensation plan for merit pay in lieu of percentage wage increases is not recommended. If they choose, the parties can establish a committee to look into differentiated compensation — and it may well be that such a plan could prove more beneficial to many employees. However, the Board's request to establish merit pay is not recommended.

(d) To guarantee that the Board does not withhold contractually called-for pay increases as it did for 2011-2012, the provisions of Section 47-2.2 of the 2007-2012 Agreement which allowed the Board to withhold the 2011-2012 4% wage increase should not be operable for the term of this Agreement. As a further guarantee

that wage increases are paid as ultimately provided and because of recent litigation between the State of Illinois and AFSCME where a court found that a public employer does not have to pay wage increases which were agreed upon if appropriations are not made for those agreed-upon wage increases (and even after an arbitrator ordered the payment of those wage increases and finding a violation of the collective bargaining agreement for failure to pay the wage increases), in the event the Board does not pay a wage increase called for in the new Agreement, the Union should be relieved of its no-strike obligation as found in Section 47-1 of the 2007-2012 Agreement and the Union may (with 10 days notice to the Board) strike over that failure to pay. In such a case, the Union could strike without first having to go through the impasse resolution procedures found in the Act.

3. Heath insurance:

Currently, employees pay percentages of their salaries for single coverage ranging from 1.3% to 2.2%; for couples coverage ranging from 1.5% to 2.5%; and for family coverage ranging from 1.8% to 2.8%. Effective January 1, 2013 (and with a "trigger" requiring corresponding increases in employee contributions caused by higher health insurance costs to the Board if 5% or above), the Board seeks to change the contribution rate (depending upon the plan selected by an employee) to be capped at 2.2% for single coverage, 1.7% to 2.8% for couples coverage, and 2.3% to 3.5% for family coverage; institution of a Wellness Program; and an increase in co-payments for emergency room visits from $125 to $150 per visit. The Board also seeks to require employees on extended leaves of absence to pay COBRA rates instead of ordinary contribution rates paid by active employees. The Union seeks to maintain the *status quo* by freezing current premiums and co-pays and removing any triggers for higher employee costs.

Given the uncertainties in the next few years concerning the economy and how the insurance industry will react to efforts to implement health insurance at the national level (as well as the impact of the U. S. Supreme Court's decision in *National Federation of Independent Business, et al. v. Sebelius, et al.*, No. 11-393, 567 U.S. ___ (June 28, 2012) upholding the constitutionality of the Affordable Care Act), health insurance should not be set for the entire length of the Agreement, but, if they desire to do so, the parties should have the opportunity to address changes mid-term. Because of the three year freeze on employee contributions during the 2007-2012 Agreement with modest increases which followed for the duration of that Agreement and because of the substantial increases in salaries achieved by the employees over the life of the 2007-2012 Agreement (attributable to compounded percentage increases and step movements) and because the Board has experi-

enced increased health insurance costs from $250,765,000 in FY 2007 to $353,878,000 in FY 2011, the Board's proposal should be adopted. However, there should be no triggers for further contribution increases. To address any changed conditions in health care, heath insurance may be reopened for the last two years of the Agreement by either side. If health insurance is reopened, then wages for the same period should be reopened.

Should there be an impasse between the parties after negotiations for any reopener for health insurance and/or wages, that impasse should be resolved through an expedited interest arbitration proceeding to set the new rates or conditions utilizing the factors set forth in Section 12(a-10)(4) of the Act.

Employees who go on extended leaves of absence should not have to pay COBRA rates as proposed by the Board, but should be allowed to continue to pay the ordinary contributions as do other active employees as called for in the Agreement.

4. Compensation for the longer school day and year

The Board has exercised its statutory right to lengthen the school day and year. The lengthening of the school day and year as presently announced increases the employees' work by a weighted average of 19.4%. While the Board has the statutory right to lengthen the school day and year, employees cannot be expected to work those additional hours and days for free or without fair compensation for the added hours and days. If required to work longer, employees must be fairly compensated for that additional time.

There are several alternatives available to the Board which will dictate compensation for the longer school day and year:

a. Alternative 1

Like bank accounts, wage increases in collective bargaining agreements compound over years. Even with the 4% wage increase withheld by the Board for 2011-2012, employees still received four, 4% wage increases over the life of the 2007-2012 Agreement and the salary lanes therefore received a compounded wage increase of 16.98%. The 2007-2012 Agreement was entered into and then spanned the Great Recession and the cost of living only increased 10.33% during that period.[1] Even with the withheld 4% wage increase for 2011-2012, the employees were therefore still 6.65% ahead of the cost of living (16.98% - 10.33% = 6.65%).

If the Board chooses to require non-hourly paid employees to work the longer school day and year schedule as presently announced, to fairly compute what non-hourly paid

employees should receive for additional hours and days imposed by the Board, the following formula should be used:

1. The employees' last contractual wage rates for the salary lanes and steps in the salary schedules at the expiration of the 2003-2007 Agreement should be increased by the actual cost of living increase for the same period covered by the 2007-2012 Agreement (presently, 10.33%) and not by the compounded wage increase actually received (16.98%). This reduction (for computational purposes only) brings the employees' salaries in line with actual changes in the economy during the life of the 2007-2012 Agreement.

2. The rate computed in paragraph 1 should then be increased by the percentage of additional time caused by the Board's requirement that employees work a longer school day and year (here, 19.4%) yielding the wage adjustment for the longer school day and year;

3. The wage increase for 2012-2013 recommended by this Report (2.25%) should then be applied to the wage adjustment for the longer school day and year to yield the wage rate for the first year of the new Agreement.

Example: As of June 30, 2007 (the expiration of the 2003-2007 Agreement) a Lane II, step 8 Master's teacher had an annual salary of $57,721. Based on the Union's calculations showing a 21.4% increase in work at the elementary school level (with 70% of teachers working in elementary schools) and a 14.6% increase in work at the high school level (with 30% of teachers working in high schools) yielding a weighted average of 19.4%, the Board's movement to the longer school day and year calculates as follows:

- $57,721 increased by 10.33% for the actual increase in the cost of living during the period of the 2007-2012 Agreement (rather than by the compounded 16.98% increase actually received during that period) = $63,683.58.
- $63,683.58 + 19.4% = $76,038.19 (the wage adjustment for the longer school day and year).

- $76,038.19 + 2.25% = $77,749.05 (the wage rate for the first year of the new Agreement).

This formula and example make a realistic wage adjustment which factors out gains achieved by the employees exceeding the lower cost of living during the life of the 2007-2012 Agreement resulting from the Great Recession and are based on the realities of the economy during the period of the 2007-2012 Agreement.

In simple terms for comparison purposes, the adjustment for movement to the longer school day and year as announced by the Board amounts to a weighted average of a 19.4% increase in hours. The Union seeks that proportionate increase in pay to be added to the last wage rate earned in the 2007-2012 Agreement. Using this example of the Lane II, step 8 Master's teacher, the Union's formula would move that employee from $67,526 (the last wage rate under the 2007-2012 Agreement) to $80,626.04 ($67,526 + 19.4%). The formula used in this example takes into account the economic conditions caused by the Great Recession and the actual increase in the cost of living during the life of the 2007-2012 Agreement (10.33%) and begins its calculation with what the employee earned just prior to the beginning of the 2007-2012 Agreement ($57,721) and moves that employee on the basis of the actual cost of living (10.33%) to $63,683.58 ($57,721 + 10.33%) and then applies the 19.4% increase in hours, bringing that employee's wage rate to $76,038.19. Looking at what that means in terms of an increase over the last wage earned by this employee under the 2007-2012 Agreement, this employee's last wage earned under the 2007-2012 Agreement is adjusted by 12.6% (($76,038.19 - $67,526) / $67,526) = 12.6%) — and not 19.4% as sought by the Union. In short, in this example, the Union seeks to adjust the last wage rate in direct proportion to the 19.4% increase in hours. This example takes into account the realities of the economy as well as the actual increase in work hours of 19.4% and, in the end, increases the last wage rate for this employee by 12.6% for the increase in hours announced by the Board.

The recommended wage increase for 2012-2013 (2.25%) should then be added to the wage adjustment for the longer school day and year imposed by the Board to be the first year rate for the new Agreement.

Hourly paid employees should receive no additional compensation for having to work a longer school day and year.

Their additional compensation will be directly paid as a result of working more hours.

b. Alternative 2

Alternative 1 is no doubt very costly to the Board and, given its budget problems and the substantial increase attributable to the longer school day and year, is an option the Board likely cannot afford. However, the Board caused this problem by lengthening the school day and year to the extent it did when it was having serious budget problems and the Board cannot realistically expect that it should not have to compensate the employees for the problem it caused by an almost 20% increase for the employees' work time. Because the Board has the authority to set the length of the school day and year, as an alternative, the Board can reduce its costs by correspondingly reducing the length of the school day and/or year. That reduced percentage will then be applied in the formula in Alternative 1 to compute the wage adjustment for the longer school day and year.

There may be other ways for the parties to resolve the compensation issue caused by the Board's imposition of the longer school day and year. However, those other ways must come through collective bargaining and not through the impasse resolution process.

5. Sick leave and short-term disability leave

Employees currently receive 10 sick days and three personal days per year which can be accumulated up to a maximum of 325 days over the course of their career. Upon separation, those accumulated days are paid out to certain senior employees at the rate existing upon separation (up to 100% of their value) even though the accumulated days were earned in previous years at lesser rates. In FY 2012, CPS projects having to pay out $52 million in accumulated leave for departing employees and the Board estimates that CPS has $459 million on its books for accumulated leave.

The Board proposes that it will continue to keep leave banks for current employees in that days in those banks will remain available for use and payout upon separation, but will be frozen; going forward, and all employees will continue to receive 10 paid sick and three personal days per year, but those days not utilized in a year will not be eligible for carry over and, after July 1, 2012, will not be added to the employees' banks of days accumulated for payout upon separation (*i.e.*, a yearly "use or lose" system). In place of the present system, the Board proposes to add (at no-cost to the employee) a short-term disability benefit which activates after 10 days of illness (including maternity leave days) and will pay 100% of the employee's regular salary during the first 30 calendar

days of illness, disability (or maternity leave); 80% of salary for the next 30 calendar days; and 60% for the third 30 calendar day period (with long-term employees having the option of taking short-term disability benefits at the sliding scale rates or drawing down from their accumulated sick leave banks at 100% salary).

The Board's proposal provides a substantial no-cost benefit to the employees (particularly for those who do not have sufficient accumulated days in their leave banks, thereby providing, for those who need it, paid disability leave benefits including a paid maternity leave benefit they presently do not have); to a great degree maintains the existing benefit for employees with accumulated days for payout upon separation; and, in the long-term, provides a substantial cost reduction for the Board because leave banks will no longer be accumulating.

Paid sick days are typically designed to compensate employees when they are too ill to work. Here, with its carry over, banking and payout provisions, the sick leave benefit has become a costly retirement benefit unrelated to an employee being incapable of working due to illness. That benefit has now caused CPS potential substantial liabilities. In light of the Board's offer for a short-term disability benefit, maintenance of certain aspects of the sick leave benefit and the gradual phase out of the payout provisions of benefit over time and given how costly the sick leave benefit has become, that benefit should now be modified, but in a way that does not harm long-term employees who have planned their retirements based upon the prior promises of the Board to compensate them for banked sick leave.

The Board's proposal is recommended, with the condition that the parties are able to agree upon a method to compensate (monetarily or otherwise) long-term employees who exceed a specified number of years of service to be agreed upon by the parties. If the parties can agree upon how to treat those long-term employees, the Board's proposal is recommended. Otherwise, no change is recommended.

6. Job security/reassignment and appointment

Under current conditions, school closings, consolidations and other actions often leave senior and highly-qualified teachers with few opportunities to move to other schools. As a result, the teachers lose their positions and the students lose the ability to benefit from the experience and talent of those teachers.

The Union proposes establishment of a pool of displaced teachers from which principals must first hire for vacancies before hiring from other sources.

Perhaps the current system is in need of repair and is not functioning well. However, the current system is not broken to be corrected through the impasse resolution process. Any changes to the provisions of the Agreement governing job security/reassignment and appointment must be negotiated. The Union's proposal is not recommended.

7. All other issues raised by the Union

No changes from current contract language.

8. All other issues raised by the Board

No changes from current contract language.

9. Conformity with law

A number of the provisions of the Agreement may be inconsistent with present legal requirements. The parties should establish a committee to examine the 2007-2012 Agreement and change provisions not in conformity with current laws.

10. Tentative Agreements

All other agreements not addressed by this Report and reached by the parties during negotiations should be incorporated into the Agreement.

II. BACKGROUND

This Report issues pursuant to authority under the Act to give "... advisory findings of fact and recommended terms of a settlement for all disputed issues ..." for the new Agreement between the Board and the Union.[2]

The Panel issued a Scheduling Order dated May 1, 2012 ("Scheduling Order") which established procedures for mediation, hearing and issuance of this Report. Those procedures have been followed by the parties.

The undersigned is the "Neutral Chair" or "Fact-Finder" selected by the parties. 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 Jesse J. Sharkey.

My findings and recommendations constitute the Panel's Report for requirements of the Act, with the other Panel Members having the right to dis-

sent or concur (as may also be filed by them), with any dissents not constituting a rejection of the Report, but only constituting stated differences of opinion on issues ruled upon by me. If there are any differences of opinion amongst panel Members on any issues covered by the Report, my findings and recommendations take precedence.[3]

Unless rejected by either side, for the next 15 days this Report is "... private ... to the parties."[4] If this Report is not rejected by either side within that 15-day period, then the recommendations contained in this Report become the terms of the parties' new Agreement.[5] All proposals have been considered and the applicable statutory factors have been weighed and applied. Should the parties not reject this Report, no further bargaining is required by the parties on any proposals. However, the parties are obviously free to voluntarily engage in further bargaining after issuance of this Report. If either side rejects the Report, the Report will be made public and then, after certain waiting periods and other procedures are followed and because the Union has obtained a strike authorization from the necessary 75% vote (actually 90%) of the bargaining unit employees who are members of the Union, the Union can strike.[6]

III. THE REALITIES

Before getting into the merits of this case, there are several realities about this dispute which must first be discussed.

First, this is a highly-charged, volatile labor dispute with profound implications as up to 25,000 teachers and other staff and employees are poised to strike putting 400,000 children out of school. Public scrutiny of what happens here is obviously *very* high.

Second, although the Panel Members, negotiators and participants in the fact-finding and mediation process before me have conducted themselves in a

highly professional, courteous, cooperative and civil manner, the collective bargaining relationship between the parties — *i.e.,* the Board and Union — is toxic. The fact that the Union achieved a strike authorization vote of *90*% of the bargaining unit employees who are members of the Union (not just 90% of those voting) speaks volumes and underscores the disconnect in the relationship between the Board and the Union.[7]

Third, the Union chafes at the fact that during the 2007-2012 Agreement, the Board withheld a scheduled 4% wage increase for 2011-2012 that was to be applied to the salary lanes and steps in the last year of the 2007-2012 Agreement. Coupled with the Board's move to the longer school day and year without fair compensation from the Union's view, the Union sees the Board's wage offers in this matter as salt on that wound. With just those considerations, the Union's rage is understandable.

However, although it may not have seemed so at the time to the Union and its members, the 2007-2012 Agreement proved to be *very* lucrative for the employees — even with the Board's withholding the 4% wage increase for 2011-2012.

The 2007-2012 Agreement called for five, 4% wage increases.[8] At the end of the 2007-2012 Agreement, 16% of the scheduled 20% in wage increases — *i.e.,* four of the five scheduled 4% wage increases — were applied to the salary lanes and steps in the Agreement for the first four years of the 2007-2012 Agreement.

Moreover, no employees who were employed for the duration of the 2007-2012 Agreement received 16% for a wage increase. The employees received more — in most instances, *much* more.

Like savings accounts paying interest, percentage wage increases in collective bargaining agreements compound. Due to compounding, over the duration of the 2007-2012 Agreement and even with the withheld 4% increase in 2011-2012, the salary lanes on the salary schedules actually received a 16.98% salary increase.[9]

Further, the 2007-2012 Agreement was negotiated and signed on September 26, 2007.[10] The 2007-2012 Agreement was therefore negotiated and signed before — and then overlapped — the "Great Recession" which "... has been characterized as the greatest recession experienced by this country since the Great Depression of 1929."[11] Citation is no longer necessary to the facts that since the Great Recession effectively reared its head in 2008, this U.S. economy has been jolted by high unemployment, a housing crisis with record foreclosures, government bailout actions, drying up of revenue streams, budget deficits, mass layoffs and concession bargaining.

Because the Agreement spanned the term of the Great Recession, the cost of living during the same period covered by the 2007-2012 Agreement increased by only 10.33%.[12] However, even with the 4% increase which was withheld for 2011-2012, in the end, the employees received 16% in wage increases (compounded to 16.98%) over the life of the 2017-2012 Agreement. Just in terms of the wage increases applied to the salary lanes — and even with the 4% withheld by the Board for 2011-2012 — the employees were therefore 6.65% *ahead* of the cost of living for the same period (16.98% - 10.33% = 6.65%). Considering what happened to so much of the workforce in the rest of the country during the Great Recession, the employees covered by the 2007-2012 Agreement did quite well during the Great Recession.

Fourth, in addition to percentage increases in the 2007-2012 Agreement, employees also received step increases.[13] While the Board withheld the 4% wage increase for 2011-2012, the Board states that employees nevertheless continued to receive step increases for all years of the Agreement, including 2011-2012.[14] According to the Board, step increases average an additional 3.41% increase over any general across-the-board increase to salary lanes.[15] With step increases occurring every year for the first 13 steps following the first year and with approximately 91% of teachers now in steps 1 through 15, during the life of the 2007-2012 Agreement and in addition to the four, 4% increases they actually received, a very substantial number of employees received additional wage increases attributable to multiple step increases.[16] Indeed, because they were eligible for yearly step increases during the 2007-2012 Agreement, many employees (7,914 according to an analysis of the Board's census) received five step increases during the life of the 2007-2012 Agreement.[17] Many employees (19,761 according to an analysis of the Board's census) received more than one step increase during the life of the 2007-2012 Agreement.[18] And all employees received at least one step increase during that period (due to the phasing in of higher steps on the salary schedules).[19] For many employees, combining the four, 4% increases actually received along with the multiple step increases during the 2007-2012 Agreement, resulted in employees actually receiving, *in real money*, wage increases ranging in the area from 19% to 46%.[20]

Fifth, the Bureau of Labor Statistics maintains an "Inflation Calculator" which can be used show how inflation impacted salaries over the life of the 2007-2012 Agreement.[21] Again, given the four, 4% increases actually received along with the step movements, the employees did very well when their buying

power based on wages earned at the beginning of the 2007-2012 Agreement is compared with what they actually received at the end of the 2007-2012 Agreement.[22]

Thus, given the percentage increases *actually* received by employees under the 2007-2012 Agreement and further considering the additional increases due to step movements over the life of that Agreement *actually* received, under the 2007-2012 Agreement, the employees did very well — indeed, they did *extremely* well. And those monetary successes actually achieved by the employees during the 2007-2012 Agreement occurred at a time when the U. S. economy nearly went over the cliff.

The bottom line here is that the 2007-2012 Agreement overlapped the Great Recession; during the Great Recession, the cost of living only increased by 10.33%; notwithstanding the havoc inflicted upon the economy during the Great Recession — and even though the Board withheld the 4% increase for 2011-2012 — employees under the 2007-2012 Agreement nevertheless received 16% in wage increases, which compounded to 16.98%; with step movements built into the contract, the employees further received between one and five step increases (with most receiving more than one step increase) which translated into actual percentage wage increases between approximately 19% and 46% during the life of the 2007-2012 Agreement.

Sixth, the Board is exercising its statutory right to increase the school day and year — an action that the Union does not (and cannot) challenge. The Union sees that action as causing a 19.4% increase in work time for the employees.[23] Particularly given the additional time that teachers spend working outside of the classroom, it is simply unrealistic for the Board to expect the employees to work the substantial additional hours and days imposed by the

Board for free or without fair compensation. But, with the offer it made in this case (2% per year for four years), that is what the Board appears to be doing.[24]

Seventh, as much as the Act now provides for deference to the Board's decisions, the Act is not a license for the Board to unilaterally restructure the Union's contract to remove benefits which were put in place through decades of collective bargaining between the parties (which included prior strikes).

Finally, if the parties do not settle this contract, the reality of a crippling strike looms — an action that will be caused by the parties' inability to reach a settlement and which will keep 400,000 students out of school. Chicago's streets have not been kind to CPS students. According to the Chicago Tribune (June 26, 2012):[25]

> **Number of CPS students shot rises, as does fear of more to come**
>
> * * *
>
> The number of Chicago Public Schools students killed in gun violence this past school year dipped slightly from the previous year, but the total number of students who were shot was up sharply, according to figures from Chicago police. ...

Over the past several months, I have attempted to mediate a settlement in this dispute. Thus far, my efforts have failed. At this point in the statutory scheme and with the issuance of this Report, my participation in this matter as the Neutral Chair and Fact-Finder is now over. Every possible effort must still be made by the parties to make certain the students are back in school for the start of the 2012-2013 school year and not on the streets because of a strike resulting from the parties' inability to come to terms.

IV. THE STATUTORY FACTORS

Section 12(a-10)(4) of the Act provides that for issuing this Report, the Panel:

> ... shall 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.

V. THE IMPASSE RESOLUTION PROCESS — A GENERAL OVERVIEW

This is an impasse resolution proceeding. As a general proposition, impasse resolution for collective bargaining agreements is a *very* conservative process.

There are a number of general concepts that are followed in impasse resolution cases:

- No "breakthroughs";
- In order to change a working condition, it must be shown that the condition is broken;
- A working condition that is not functioning well is not broken;
- "Good ideas" are not reasons to change working conditions that are not broken;
- The party seeking a change in a working condition has the burden to show the condition is broken; and
- If a working condition is not broken, changes must be bargained.

The reason for this very conservative approach is because the emphasis for setting the terms of collective bargaining agreements is properly placed upon the parties through the give and take of the collective bargaining process and not on some third party to arbitrarily impose terms when the parties could not do so.[26]

The Board's view of the impasse resolution process under the Act is more narrow than the above. According the Board, under the Act great deference must be given to the Board's decisions and the statutory factors are geared to furthering the Board's educational mission within the Board's economic constraints. The Board asserts that for purposes of these proceedings:[27]

> ... [E]very habit of thought the Neutral Chair and the parties bring to this proceeding drawn from the IPLRA [the Illinois Public Labor Relations Act,

> 5 ILCS 315/14, governing security employee, peace officer and fire fighter] interest arbitrations must be jettisoned. Every custom and every reflexive mode of analysis utilized in attempting to resolve public sector labor disputes has to be re-evaluated. Unlike virtually any other legal action or matter labor professionals encounter, any rule or principle that is usual and customary, that has become "the common law of the work-place", is almost certainly inappropriate here.

In support of that more narrow view of the fact-finding process, the Board cites to several of the factors in Section 12(a-10)(4) of the Act — *i.e.*, Factors "(E) the interests and welfare of the public and the students and families served by the employer … (G) the impact of any economic adjustments on the employer's ability to pursue its educational mission … (K) … how each party's proposed compensation structure supports the educational goals of the district … (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."

I do not disagree with the Board's general view of the fact-finding process under the Act. The fact-finding process is indeed more narrow than the interest arbitration process found under Section 14(h) of the IPLRA for impasse resolutions for police, security and fire employees. However, when one reads Section 4.5(a)(4) of the Act which provides that the Board is not required to bargain over "[d]ecisions to determine class size, class staffing and assignment, class schedules, academic calendar, length of the work and school day … length of the work and school year … hours and places of instruction, or pupil assessment policies" and those topics are, pursuant to Section 4.5(b) of the Act "… permissive subjects of bargaining" (although the Board must bargain over the impact of those decisions per Section 4.5(b) of the Act), the Board's argument really comes down to an assertion that because it sets the educational

mission and goals of the CPS and formulates the budget for CPS, whatever the Board determines is appropriate must be found appropriate by this Panel.

If that unfettered discretion for the Board to unilaterally determine and set (or change) terms of collective bargaining agreements was intended by the Legislature, such a conclusion would have been very easy to draft — one that essentially completely removes the kinds of disputes in this matter from the collective bargaining and impasse resolution process. But that was not the case. Section 12(a-10)(4) of the Act makes all of the factors to be applied "as applicable". Further, there are other factors to be considered aside from those relied upon by the Board — *i.e.*, "(C) prior collective bargaining agreements and the bargaining history between the parties ... ; (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; [and] (J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living".

This remains an impasse resolution proceeding. The statutory factors in the Act may give more deference to the Board's positions because the factors encompass educational missions and goals as well as the budget to be determined solely by the Board. But nevertheless, the traditional impasse resolution factors remain in the mix to be balanced and given weight "as applicable". Even under the Act, these disputes are case-by-case calls.

VI. THE PRECEDENTIAL VALUE OF THIS REPORT

Aside from its impact on the current dispute between the parties, this Report can have no precedential value for future disputes.

The Board observes "[t]hese proceedings are historic from an educational, economic, legal and labor perspective."[28] I agree.

This proceeding comes at a time when the Board is facing very difficult budget problems; CPS will begin to implement Common Core State Standards requiring students to complete more rigorous, critical thinking tasks that involve writing, research and group work; curriculum changes will be implemented; a new teacher evaluation system ("REACH Students") will be implemented in the elementary schools; and the Board has moved to substantially lengthen the school day and year.[29] And this fact-finding proceeding is the first proceeding of its kind under the Act.[30]

While the parties have been proceeding under the impasse procedure found in Section 12(a-10)(4) of the Act for this Panel to give "... advisory findings of fact and recommended terms of a settlement for all disputed issues ..." for the new Agreement between the Board and the Union, the Act has another impasse procedure which has not been implemented by the parties.

As earlier noted, Section 4.5(a)(4) of the Act provides that the Board is not required to bargain over "[d]ecisions to determine class size, class staffing and assignment, class schedules, academic calendar, length of the work and school day ... length of the work and school year ... hours and places of instruction, or pupil assessment policies" and those topics are, pursuant to Section 4.5(b) of the Act "... permissive subjects of bargaining" (although the Board must bargain over the impact of those decisions per Section 4.5(b) of the Act). Under Sections 4.5(b) and 12(b) of the Act, there is a specific impasse procedure for these topics which is distinct from this procedure and the Act provides that as the fact-finder in this proceeding, I have no jurisdiction over those disputes.[31]

The second impasse procedure which limits my jurisdiction has not been implemented by the parties and I express no opinions on matters which may at some future time be covered by such a proceeding. Moreover, given that this is the first impasse procedure under the Act and is coming at a time of a huge sea change between the parties and in CPS, this Report should be limited to resolving *only* this specific dispute and should have no precedential value for future disputes between the parties.

This Report is therefore confined to this dispute — and no other future disputes. This Report is therefore non-precedential.

VII. THE PARTIES' OFFERS

The Scheduling Order establishing the procedures for this matter required the parties to file statements of disputed issues.[32] The parties responded by filing statements indentifying over 100 issues (61 from the Board and 45 from the Union) — many with numerous subparts.[33] Consistent with the provisions of the Act, the Scheduling Order also required the parties to file final offers.[34] The parties responded with the Board filing on 14 issues (with many subparts) and the Union filing on three specific issues, but incorporating all of its previously filed issues.[35]

VIII. DISCUSSION

A. Lengthening The School Day And Year

One issue which will not be decided in this proceeding is the propriety Board's determination to lengthen the school day and to add days to the school year. Under the Act, lengthening the school day and year is the Board's statutory right.[36]

B. Duration

The Board seeks a four year term.[37] The Union seeks a two year term.[38]

In unstable economic times, contracts of short duration often better serve the interests of parties as they permit the parties to address changing conditions in short order rather than having to wait years before being able to address contract terms which may have been reasonable at the time they were negotiated, but become unreasonable or unworkable through the passage of time. On the other hand, contracts of longer duration provide stability.

As we endure through and hopefully come out of the Great Recession, these are unstable economic times, which would weigh toward a shorter duration for the Agreement as sought by the Union. On the other hand, this collective bargaining relationship is tumultuous, even toxic, and these parties need to be separated from each other for some time in the collective bargaining process where they bring so many issues to the table at one time, which would weigh toward a longer duration as sought by the Board.

Both goals can be accomplished with the Board's offer on duration of four years as modified by this Report. This Report recommends opportunities for reopening contract terms (insurance and wages) so that the parties can address changing conditions.[39] Given the present economic uncertainties, the need to provide for stability in this relationship and considering that reopeners are available on certain core economic issues (or others which may be mutually agreed to by the parties), a four year general term is recommended (July 1, 2012 through June 30, 2016).

C. Wages

1. General Wage Increases

The Union seeks an increase of 22% in the first year of the Agreement (which includes the percentage movement to the longer school day and year) and 3% in the second year of the Agreement.[40] While further detailed in its fi-

nal offer set forth in Appendix C, the Board offers wage increases of 2% per year for four years with freezes on step increases. For the last year of its proposal, the Board's 2% offer is made "provided that the parties have mutually agreed upon a differentiated compensation plan to become effective on July 1, 2015."[41] The Board's 2% per year offer includes the movement to the longer school day and year.[42]

First, with respect to the Board's seeking a differentiated compensation plan, that proposal is a breakthrough. The current wage schedule is based on lanes (corresponding to educational degree achievements) and steps (for years of service); years of service and grade for other employees or other specified flat rates.[43] The current wage schedule is a product of years of collective bargaining between the parties which is a statutory factor which should be considered (Factor (C) — "prior collective bargaining agreements and the bargaining history between the parties").[44]

For the sake of discussion, I will assume that the Board's proposal for a differentiated compensation plan is a "good idea". However, more than a "good idea" is needed to justify the kind of breakthrough change sought by the Board. Under the statutory factors, 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. If they choose, the parties can establish a committee to look into differentiated compensation — and it may well be that such a plan could prove more beneficial to many in the bargaining unit. However, for purposes of this proceeding, that potentially "good idea" is not enough to cause a change.

Second, as specified in the Act, the "the average consumer prices in urban areas for goods and services, which is commonly known as the cost of liv-

ing" is a factor for consideration (Factor J — also referred to as the consumer price index, or "CPI").[45] Another factor for consideration is "the present and future general economic conditions in the locality and State" (Factor H).[46] Given that the 2007-2012 Agreement just expired on June 30, 2012, no hard data exist for cost of living increases covered by periods of the new Agreement. Cost of living forecasts therefore have to be considered.

The forecasters are typically in the same basic range — in the low-to-mid 2% increases in the cost of living for the next few years. *See e.g.*, the Federal Reserve Bank of Philadelphia's Second Quarter Survey of Professional Forecasters (May 11, 2012):[47]

> Measured on a fourth-quarter over fourth-quarter basis, headline CPI inflation is expected to average 2.3 percent in 2012, up from 2.0 percent in the last survey; 2.1 percent in 2013, down from 2.2 percent; and 2.5 percent in 2014, up from 2.3 percent. ...

These projections must carry significant weight.[48]

Third, several of the statutory factors under the Act look to the Board's ability to fund proposals based on existing resources and impact on the Board's ability to pursue its educational mission (Factor 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" — and Factor G — "the impact of any economic adjustments on the employer's ability to pursue its educational mission").[49]

However, given the length of the Agreement it seeks (and which has been recommended) — *i.e.*, four years — and the current unknowns concerning the economic recovery, the Board cannot really predict with any degree of absolute

certainty how its revenues will look in the future years of the Agreement (particularly years three and four). At most, then, the Board's ability (or inability) to fund the wage increases tips towards the speculative — particularly in the out years of the Agreement.

Fourth, external comparability for employees performing similar services in public education in the ten largest U. S. cities is a factor that can be considered (Factor 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").[50] The Board identifies the following cities for comparison purposes:[51]

1. New York
2. Los Angeles
3. Houston
4. Philadelphia
5. Phoenix
6. San Antonio
7. San Diego
8. Dallas
9. San Jose

The Union identifies the following comparable cities:[52]

1. New York
2. Los Angeles
3. Philadelphia
4. San Diego
5. San Jose

The Union omitted several large cities from its list of comparables. According to the Union (*id*.):

> ... Texas and Arizona are southern states where teachers do not have collective bargaining rights. Therefore, the compensation and working conditions for teachers in Houston, Phoenix, San Antonio and Dallas should not be weighted the same as for union-represented teachers with collective bargaining rights working in school districts in the remaining six of

> the ten largest cities: New York, Los Angeles, Chicago, Philadelphia, San Diego, and San Jose.

I reject the Union's approach that comparable cities under the Act should only be considered if the employees have collective bargaining rights. The Act does not make that distinction, but merely states in Factor (I) that the Panel can look to "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."

Under the interest arbitration procedures found in Section 14 of the IPLRA governing security employee, peace officer and fire fighter disputes, external comparability is also a listed factor.[53] Prior to the Great Recession in 2008, external comparability was *the* driving factor under the IPLRA for setting contract terms for those classifications of public employees and I was a big proponent for the use of external comparables to resolve interest arbitration disputes under the IPLRA.[54] However, with the shock to the economy inflicted by the Great Recession, after 2008 that approach had to change because it was no longer appropriate to compare municipalities with contracts negotiated prior to the crash with those being settled after the crash. Nor did it make sense to make comparisons amongst municipalities whose experience in the Great Recession may have been completely different — some municipalities fared far worse than others. Until the economy recovered, external comparability, in my mind, no longer yielded "apples to apples" comparisons as it did before the crash and the focus turned more towards the present state of the economy as better reflected by the cost of living.[55]

Until the economy recovers, the same analysis has to hold here. Like Section 14(h) of the IPLRA for security employee, peace officer and fire fighter

disputes where external comparability can be used for setting terms of collective bargaining agreements when it is an "applicable" factor, the same requirement for external comparability to be an "applicable" factor exists in Section 12(a-10)(4) of the Act governing this dispute. We are far from being out of the woods in any real recovery since the onset of the Great Recession. Further, there is no real evidence to show that the economies of the cities identified by the parties fared the same as Chicago so as to make external comparability an "applicable" factor. That will change in the future as the economy comes back. But for now, I just cannot give substantial weight to external comparables to dictate a recommendation in this case. The comparisons with other cities that the parties seek that I make do not, in my opinion, result in "apples to apples" comparisons.

Upon weighing the relevant factors as discussed, I am of the opinion 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. Although the Union has not done so in its offer, for purposes of this discussion concerning the general wage increase, the Union's offer of 22% in the first year of the Agreement must be parsed out to differentiate increases for movement to the longer school day and year from the general wage increase. As discussed at VIII(C)(2), the Union seeks a 19.4% increase attributable to the longer school day and year. For purposes here, that must be taken to mean that the amount attributable to the general wage increase for the first year is 2.6% (22% - 19.4% = 2.6%). The Union specifically then requests 3% in the second year of the Agreement. I find the Union's request for a general wage increase is too high. Similarly, the Board's offer of 2% per year (which includes movement to the longer school day and year) is too low.

As discussed at VIII(D), the Board's Health Insurance proposal is being recommended, which will mean increased costs for the employees with certain groups of employees having to pay more than before. For that reason, the recommended wage increase should be at or slightly higher than the forecasted cost of living increases.

On balance, the wage increases recommended shall be as follows to be applied on all lanes and steps and/or hourly rates:

Contract Year	Increase
2012-2013	2.25%
2013-2014	2.25%
2014-2015	2.50%
2015-2016	2.50%

There must also be a condition placed on the recommended wage increases. Although the Board agreed in the 2007-2012 Agreement that it would pay five, 4% wage increases, it did not pay the 4% wage increase for the 2011-2012 school year. The Board's rationale for that action was based in Section 47-2.2 of the 2007-2012 Agreement in that raises were made subject to Board's adoption of a resolution that there is a reasonable expectation that it will be able to fund the increases.[56]

The problem is obvious. The Board can now agree to the wage increases recommended in this Report (or any wage increases negotiated by the parties), but then, as it did for the 2011-2012 year of the last Agreement, not pay those wage increases. The wage increases recommended by this Report or agreed to by the parties will then be meaningless. To better guarantee that wage increases set by the Agreement are, in fact, granted (and to avoid the turmoil caused by the Board's withholding the 2011-2012 wage increase), there should

be no operable language in the Agreement similar to Section 47-2.2 of the 2007-2012 Agreement which permitted the Board to not pay a called-for wage increase.

Because of recent litigation between the State of Illinois and AFSCME, there has to be a further condition placed into the Agreement to further guarantee that wage increases called for by the Agreement are, in fact, paid.

Like the parties here, just prior to the Great Recession, the State of Illinois and AFSCME negotiated a collective bargaining agreement. That contract was signed on September 5, 2008 and was for the period September 5, 2008 through June 30, 2012. That contract called for 15.25% in wage increases over that period. The September 5, 2008 effective date of the State-AFSCME contract was significant because while at the time the country and the State were experiencing a recession, a few weeks after the parties completed their negotiations and the Agreement was ratified and signed, the stock market crashed and what was a recession became the Great Recession.

Unlike here, after the contract was in effect and the Great Recession hit, the State and AFSCME negotiated a series of concession agreements to avoid layoffs, which included an agreement by AFSCME to defer certain wage increases called for in the collective bargaining agreement. The total concessions granted by AFSCME to the State came to approximately $400,000,000. One of the wage increases which was deferred nevertheless required payment of a 2% increase on July 1, 2011 (rather than a 4% increase to be paid effective that date as originally negotiated). The State failed to pay the 2% wage increase to approximately 30,000 employees as renegotiated effective July 1, 2011 arguing that it did not have to do so because sufficient money to pay those increases were not appropriated by the General Assembly.

I was the arbitrator for disputes arising under the concession agreements between the State and AFSCME. By award dated July 19, 2011, I found that the State violated the collective bargaining agreement and the concession agreements by failing to pay the 2% wage increase as required to be paid effective July 1, 2011. I ordered the State to pay the 2% wage increase to the employees (with interest). The State made a series of statutory and Constitutional arguments which I found I could not address as an arbitrator because my function was to interpret the parties' negotiated agreements and the courts are charged with interpreting statutes, the Constitution and public policy.

The State moved to vacate the award and AFSCME moved to confirm it. On July 2, 2012, Judge Richard Billik of the Circuit Court of Cook County ruled in *State of Illinois, Department of Central Management Services v. American Federation of State, County and Municipal Employees, Council 31*, 2011-CH-25352 ("*State-AFSCME Pay Case*") which was followed by a written order on July 9, 2012, that even though a collective bargaining agreement requires payment of specified wage increases (and even though an arbitrator has found that the State was required to make the payments as negotiated), there is an overriding public policy that prohibits the State from disbursing public funds to pay the wage increases without the lawful authority to do so in terms of an appropriation for the expenditure of those funds. According to the Court:[57]

> ... [T]here is a well-defined and dominant public policy that can be identified under the circumstances in this case, and that is plaintiff [the State] cannot spend public funds for the Wage Increases without sufficient appropriation by the General Assembly to do so, pursuant to section 21 of the IPLRA. Plaintiff has thus identified a public policy which supersedes the policy defendant is advocating that favors collective bargaining and the enforcement of the payment obligations of the parties' agreements resulting therefrom.
>
> * * *
>
> ... Plaintiff has shown that it can assert an identifiable public policy that if established is a defense to plaintiff's compliance with that contractual

> obligation to pay the Wage Increases. The factual premise of that asserted public policy defense is that there are insufficient appropriated funds to allow plaintiff to pay any Wage Increases to defendant's members in any of the remaining 10 Agencies. The matter is remanded to arbitration for a further proceeding to allow plaintiff to establish its public policy defense. ...

By Supplemental Opinion and Award dated July 16, 2012, I declined the remand from Judge Billik and returned the case to him for further proceedings: because I found that in accord with well-established precedent, arbitrators do not determine public policy matters and only function to interpret negotiated contract language in collective bargaining agreements and public policy issues are for the courts to decide:

> With all due respect to the Court, the remand as set forth in the Court's Order of July 9, 2012 is declined. Because arbitrators only interpret language in collective bargaining agreements and courts interpret public policy, if there are any other proceedings to be had in this dispute concerning the State's public policy argument to justify its non-payment of the contractually required 2% wage increase of July 1, 2011, those proceedings must be before the Court and not before this arbitrator or any other arbitrator.

There was an observation that was made in my July 19, 2011 award in that case about the impact of that case which is relevant in this matter:[58]

> Because I am an arbitrator functioning solely under the terms of the Agreement and the Cost Savings Agreement, I have not considered the State's statutory or Constitutional arguments. However, if the State is correct in its statutory or Constitutional arguments that although it has negotiated multi-year collective bargaining agreements with the Union since 1975 (and, I note, has also long negotiated multi-year collective bargaining agreements with other unions), it now does not have to pay negotiated and agreed-upon wage increases in those multi-year collective bargaining agreements because wage increases agreed to by the State in those agreements are, in effect, unenforceable or are contingent upon sufficient appropriations from the General Assembly and that such positions find support in Section 21 of the IPLRA and the Constitution, then a major foundation of the collective bargaining process — the multi-year collective bargaining agreement — has been upended.
>
> Multi-year collective bargaining agreements bring stability to the parties and the public. Multi-year collective bargaining agreements set forth the parties' obligations and responsibilities over a period of years. It is mostly employers who seek multi-year collective bargaining agreements (typically longer agreements than those sought by unions) so that the employers can have a clear idea of costs associated with labor and so that they can plan and budget accordingly. Because employers in the public sector basically provide services to the public, labor costs (wages and benefits) constitute most of the costs public employers incur.

> If the State is correct that negotiated wage increases in multi-year collective bargaining agreements are unenforceable or are contingent upon action by the General Assembly (or, for other public entities, the various county, city, village, district councils, boards of trustees, etc.), it is quite likely that very few unions, if any, will now ever agree to multi-year collective bargaining agreements. If the State is correct in its position, I highly doubt that any interest arbitrator setting terms and conditions of collective bargaining agreements in security employee, peace officer and fire fighter disputes under Section 14 of the IPLRA will choose to impose anything more than a contract for one year's duration because final economic offers made by a public sector employer will, for all purposes, be illusory if those offers are contingent upon subsequent appropriations being passed by the public employer.
>
> If the State is correct in its statutory and Constitutional arguments, the result will be that public sector employers and unions will have to negotiate collective bargaining agreements *every year* instead of having mufti-year agreements (typically three to five years and sometimes longer) which bring labor peace and stability. Some public sector contracts in this state have taken years to negotiate or settle through the interest arbitration process under Section 14 of the IPLRA. Having been involved in the collective bargaining process as a mediator and interest arbitrator for over 25 years, I estimate that *thousands* of multi-year collective bargaining agreements have been settled in this state. If the State is correct that economic provisions of multi-year collective bargaining agreements are not enforceable or are contingent upon subsequent appropriations for the out years of the agreements, then the collective bargaining process will be, to say the least, severely undermined. If the State is correct, the result will be most chaotic and costly as public sector employers and unions will now have to drudge through the often laborious, time-consuming and costly collective bargaining process on a yearly basis. Unions will do that. Public sector employers will be loathe to have to engage in that costly and time consuming endeavor on a yearly basis. If the State is correct in its statutory and Constitutional arguments, the multi-year collective bargaining agreement is, for all purposes, probably dead.

I recognize that for collective bargaining agreements the State of Illinois and the Board operate under different statutory frameworks. But the consequences of the *State-AFSCME Pay Case* — *i.e.*, that the State (or any county, city, village, district councils, boards of trustees, etc.) can negotiate a multi-year collective bargaining agreement and then avoid having to pay negotiated wage increases in the out years of the contracts will jeopardize — if not kill — multi-year collective bargaining agreements because unions will not want to agree to contracts (especially where concessions may have been granted) only to find out down the road that wage increases previously promised are not go-

ing to be paid because of a subsequent refusal by the public employer to appropriate those funds.

And that is what happened here for the 2011-2012 4% wage increase. Because of the lack of an appropriation, the previously agreed-upon 4% wage increase was not granted. The result has been much of the fuel for the now toxic relationship between the parties. And that is what could be happening here as *the Board* seeks (and has obtained) the longer term of the Agreement (four years) arguing for stability while the Union sought a shorter term (two years) when there is now a legal cloud hanging over whether the Board as a public employer can pay promised wage increases if it chooses not to appropriate for those increases.

The *State-AFSCME Pay Case* has the very real potential impact of derailing the stabilizing effect of multi-year collective bargaining agreements. If that is to be the law in this State, so be it, and all public employers, unions, employees, negotiators, administrators (and arbitrators) will have to live with that result. But the direct consequence of that result is that public employers who want longer collective bargaining agreements will be frustrated in getting those as the unions will see promises made which can be easily broken and will simply not agree to multi-year contracts.

Consistent with the Board's request as discussed at VIII(B), I have recommend a four year contract. That recommendation avoids much of the problems caused by the *State-AFSCME Pay Case* due to the reopeners permitted for the third and fourth years (thus, in effect, making this a two year agreement for wages and insurance — a duration consistent with the Union's request). However, I am not satisfied that those reopeners will prevent a situation where a wage increase called for in the new Agreement is not paid by the Board —

particularly as the *State-AFSCME Pay Case* winds its way through the court system and because of the Board's stated budget difficulties.

The *State-AFSCME Pay Case* will play out and the law and the impact of the result in terms of whether multi-year agreements will be the exception or the norm will follow. However, for this case — and for purposes of stability — I cannot permit a situation which occurred in 2011-2012 which caused so much turmoil when the Board withheld the 4% wage increase for 2011-2012 to reoccur and I further cannot permit a wage increase to be withheld when this Agreement recommends concessions in benefits by the employees (*e.g.*, not receiving a fully proportionate increase based on their wages as of June 30, 2012 for longer days and hours imposed by the Board (discussed at VIII(C)(2)); greater health care premium contributions (discussed at VIII(D)); and phasing out the sick leave banking and payout provisions (discussed at VIII(E)).

To further make certain that wage increases in the Agreement are, in fact paid, in addition to the recommendation that there should be no operable language in the Agreement similar to Section 47-2.2 of the 2007-2012 Agreement which permitted the Board to not pay a called-for wage increase, I further recommend that in the event the Board does not pay a wage increase called for in the new Agreement, the Union should be relieved of its no-strike obligation as found in Section 47-1 of the 2007-2012 Agreement and the Union may (with 10 days notice to the Board) strike over that failure to pay a set wage increase. In such a case, the Union could strike without first having to go through the impasse resolution procedures found in the Act.[59] Knowing that a strike may result from failure to pay an increase will serve as a deterrent against non-payment.

The impasse procedures found in Section 12(a) of the Act are pre-conditions to a strike for the formulation of a collective bargaining agreement. This requirement freeing the Union from its no-strike obligations under the Agreement should the Board not follow the terms of the Agreement does not involve the formulation of the Agreement, but addresses compliance with the Agreement. In any event, statutory requirements can be waived and, further, the Union has already taken and obtained the necessary strike authorization vote.

2. Compensation For The Longer School Day And Year

a. The Computation

According to the Board:[60]

> Chicago Public School students spend 22 percent less time in the classroom than the average American public school student. The Full School Day – with expanded instructional time – will bring to an end Chicago's disgraceful status of having the shortest school day of all major American urban school districts.

The Union attacks any implication that CPS teachers have short work days, citing a study conducted by University of Illinois Professors Robert Bruno and Steven Ashby, *Beyond the Classroom, An Analysis of a Chicago Public School Teacher's Actual Workday* (April 9, 2012), which concluded:[61]

> Results from this survey revealed that claims that teachers are working "too short a day" are unwarranted at best and intellectually dishonest at worst. The following are some key findings:
>
> - Teachers on average work 58 hours per week during the school year.
> - The work of a teacher happens before, during, and after the school bell rings.
> - Teachers on average work a 10 hour and 48 minute standard school day.
> - Teachers are at school an average of almost nine hours per day even though elementary students attend school for 5 hours and 45 minutes and high school students for 6 hours and 45 minutes.
> - A typical teacher spends almost 2 hours more working at home in the evening.

- Teachers carve out another 3 hours and 45 minutes to do school-related work each weekend.
- A teacher's role goes beyond merely instructing in the classroom. Teachers spend just over 3 hours each day performing non-teaching related activities.
- Teachers also spend an average of 12 days during summer break doing at least one school-related activity.
- Teachers average 30 hours of professional development training while the school year is not in session.

It may well be that CPS students do not have long school days compared to other districts. However, CPS teachers clearly work long hours. And there is no dispute that the Board has the unilateral right to increase the length of the school day and year — which it has done.[62]

Compensation for the longer school day and year is *the* major flashpoint of this dispute. If the longer school day and year were not part of this equation, coming to terms on a new Agreement would have been a much easier task for the parties. However, the issue of compensation for the longer school day and year is here and is the proverbial elephant in the room. That issue must be decided.[63]

While the Board has the clear right to increase the school day and the school year, it is simply unfair and unrealistic to expect that employees should be required to work those additional hours and days for free or without fair compensation for the substantial additional work.

The Board's plan is not to add a few minutes each day or for an additional day for the year. According to the Union's calculations (which have not been challenged), the longer school day and year will increase teachers' work in the elementary schools by 21.4% and in the high schools by 14.6%, with a weighted average of 19.4%.[64]

Many of the employees already work long hours outside of the classroom or workplace.[65] As beneficial as the longer school day and year may be to the

students, the employees should not be required to work the increased hours and days without fair compensation. There simply is no persuasive argument against that proposition. Employees should not be required to work 20% more hours for free or for little increased compensation. The real question is how much should the employees should be paid for the extra hours and days imposed by the Board?

For purpose of discussion on this issue (and putting aside any disagreement the Union may have with the Board's budget projections), I will accept the Board's projections for FY 2013 of a total operating revenue for CPS of "… $4.749 billion, which represents a decrease by $120 million from the original amount budgeted for FY 2012 … CPS appears to be at risk of losing more than $60 million in State funding … [resulting in that] the initial deficit for FY 2013 approaches a range of over $600 million.[66] For purpose of discussion on this issue, for FY 2014 and FY 2015 I will also accept the Board's projections of flat revenues and high increases in pension contribution obligations, which along with debt service obligations, "… help drive the deficit to projections for those two fiscal years to a range of $1 and $1.3 billion."[67]

At first reading, those sobering deficit projections bring Factor F front and center (Section 12(a-10)(4)(F) of the Act — "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"). And the Board relies heavily upon that factor.[68]

By accepting the Board's projections, Factor F would ordinarily carry the day for the Board precluding further wage increases over-and-above the gen-

eral yearly wage increases discussed at VIII(C)(1). But as strong as Factor F appears to support the Board's position in this case, the Board cannot rely upon that factor for determining the issue of compensation for the longer school day and year.

Section 12(a-10)(4) of the Act is clear that the Panel "… shall base its findings and recommendations upon the following criteria *as applicable*" [emphasis added]. The Board cannot expect much weight, if any, to be given to a budget deficit argument to defeat the recommendation for additional compensation for the longer school day and year when *the Board* created the problem by unilaterally implementing the longer school day and year to the extent it has done. Again, *the Board* chose to exercise its statutory right to extend the school day and year. The Board cannot defeat additional compensation for those longer hours and additional days by arguing that although it has the right to impose the longer school day and year, it cannot afford to pay for it and the employees must therefore work those additional hours and days essentially for free. The analogy raised by the Board's argument is to an individual who buys a car he cannot afford and because he cannot make the payments argues that he should be able to keep the car even though he cannot make the payments. In such a case, "I can't afford it" is not a defense — he simply should not have bought the car in the first place. Given that the Board caused this problem, Factor F which looks to the budget is therefore not an "applicable" factor.

Now the question becomes what additional amounts over and above the wage increases should be paid for the longer school day and year?

As a general approach, in the first year of the Agreement the Union is seeking a direct proportionate increase to the existing salary schedules to be

paid for the added hours and days. I find that approach yields an increase which is too high.

The Union's argument is that because the school day and school year is increased according to its calculations by a weighted 19.4% (21.4% increase at the elementary school level and 14.6% at the high school level with a weighted average of 19.4% due to 30% of the teachers working in the high schools and 70% working in the elementary schools), wages should be increased by the same percentage for salaried employees to correspondingly compensate them for the increased work hours and days.[69] The logic of that argument is compelling. Salaried employees should not be forced to work substantially longer hours with increased days without being compensated and it makes sense to increase wages based on the proportional percentage increase in work time.

The Board's argument is that because of the favorable benefits the employees received under the 2007-2012 Agreement it has already, in effect, prepaid the employees in prior contracts for many benefits and thus, no further increases should be allowed at this time. But the other side of that argument is that those benefits were collectively bargained in the past and whatever agreements the parties came to in the past were not intended to tie their hands in future negotiations — especially ones that deal with changed circumstances in the economy and length of the school day and year as have surfaced in these negotiations. In short, from the Union's point of view, what was agreed to in the past should not be held against the employees for the new Agreement.

These past several years have been extraordinarily difficult on public employers including school districts. The Board's budget problems are a clear reflection of those problems. Although I have found that the Board's budget problems cannot defeat the Union's request for additional compensation for the

longer school day and year, how well the employees did during the Great Recession under the 2007-2012 Agreement must tilt the Union's request for additional compensation downward.

The Union's final offer seeks a wage adjustment of 22% for 2012-2013.[70] However, as discussed at III, over the life of the 2007-2012 Agreement, the employees actually received 16.98% in wage increases (the compounded 16% amount of the four, 4% increases they actually received) while the cost of living only went up 10.33%. Thus, over the life of the 2007-2012 Agreement and even with the withheld 4% increase for 2011-2012, the employees came out of the 2007-2012 Agreement 6.65% ahead of the cost of living.

To fairly compute an increased wage attributable to the longer school day and year, although not to the extent urged by the Board that it has pre-paid its part, consideration must still be given to the fact the employees did very well under the 2007-2012 Agreement (16.98% in compounded wage increases to the salary lanes) as compared to the actual increase in the cost of living for the period covered by the 2007-2012 Agreement (10.33%) which was further increased as employees made multiple (and up to five) step movements. One reasonable way to compute an increase for the longer school day and year and to give the Board credit for increases actually received by the employees under the 2007-2012 Agreement which exceeded the actual cost of living increase is as follows:

First, salaried employees' last contractual wage rates at the expiration of the 2003-2007 Agreement should be increased by the actual cost of living increase for that period (presently computed at 10.33%) and not by the compounded wage increase they actually received (16.98%).[71] This reduction (for

computational purposes only) brings the employees in line with actual changes in the economy during the life of the 2007-2012 Agreement.

Second, that reduced amount should be increased by the percentage increase caused by the Board's lengthening the school day and year. As an example and assuming the Union's computations that the Board's increased school day and year yields a weighted 19.4% increase in work time required by the salaried employees (which was not challenged), the result from the above paragraph shall then be increased by 19.4% — the weighted increase in hours among all teachers. That result yields the wage adjustment for the longer school day and year and becomes a transitional base salary attributed to the longer school day and year for employees moving into the 2012-2013 school year (the first year of this Agreement).

Third, the wage increase for 2012-2013 recommended by this Report (2.25%) should then be applied to the wage adjustment for the longer school day and year.

An example of the computation using the Lane II, step 8 Master's Degree teacher who, at the end of the 2003-2007 Agreement received $57,721 in annual salary (exclusive of pension pick up) shows the computation:

Lane/Step	**Annual Salary As Of 6/30/07 (End Of 2003-2007 Agreement)**[72]	**Increase By Actual Cost of Living During The 2007-2012 Agreement (Presently 10.33%)**	**Added Adjustment For Longer School Day And Year (using the Union's 19.4 Weighted Increase)**	**Added Wage Increase For 2012-2013 (2.25%)**
II-8 (Master's)	$57,721	$63,683.58	$76,038.19	$77,749.05

In simple terms for comparison purposes, the adjustment for movement to the longer school day and year as announced by the Board amounts to a

weighted average of a 19.4% increase in hours. The Union seeks that proportionate increase in pay to be added to the last wage rate earned in the 2007-2012 Agreement. Using this example of the Lane II, step 8 Master's teacher, the Union's formula would move that employee from $67,526 (the last wage rate under the 2007-2012 Agreement) to $80,626.04 ($67,526 + 19.4%). The formula used in this example takes into account the economic conditions caused by the Great Recession and the actual increase in the cost of living during the life of the 2007-2012 Agreement (10.33%) and begins its calculation with what the employee earned just prior to the beginning of the 2007-2012 Agreement ($57,721) and moves that employee on the basis of the actual cost of living (10.33%) to $63,683.58 ($57,721 + 10.33%) and then applies the 19.4% increase in hours, bringing that employee's wage rate to $76,038.19.

Looking at what that means in terms of an increase over the last wage earned by this employee under the 2007-2012 Agreement, this employee's last wage earned under the 2007-2012 Agreement is adjusted by 12.6% (($76,038.19 - $67,526) / $67,526) = 12.6%) — and not 19.4% as sought by the Union. In short, in this example, the Union seeks to adjust the last wage rate in direct proportion to the 19.4% increase in hours. This example takes into account the realities of the economy as well as the actual increase in work hours of 19.4% and, in the end, increases the last wage rate for this employee by 12.6% for the increase in hours announced by the Board.

Hourly paid employees should not receive this adjustment because by working the additional hours as a result of the longer school day and year, those employees directly receive the increased wages.[73]

b. Alternatives Available To The Board

Based upon the presentations made in these proceedings, if the Board is to fairly compensate the employees for having to work longer hours and days, the Board will not be able to afford the increases resulting from its decision to lengthen the school day and year to the extent it has announced. If the Board desires to lessen the monetary impact of the recommended compensation for the longer school day and year, it has a very straight-forward option — the Board can simply reduce the length of the school day and/or the school year from its stated expansion. Any reduction in the longer school day and year will therefore cause a proportionate decrease in compensation found appropriate for the presently stated longer school day and year.

The Board is totally in control of this issue and can literally dictate the added compensation, if any, attributable to the longer school day and year. However, what the Board cannot do is increase the school day and year to the extent it has done and also expect the salaried employees to effectively work the additional hours for free or without fair compensation because the Board claims it cannot pay for the increase it imposed.

There may be other ways for the parties to resolve the compensation issue caused by the Board's imposition of the longer school day and year. However, those other ways must come through collective bargaining and not through the impasse resolution process.

D. Health Insurance

Effective January 1, 2013, the Board seeks an increase in the employee contribution rate.[74] The Union seeks to maintain the *status quo* by freezing

current premiums and co-pays and removing any "triggers" for higher employee costs.[75]

At the beginning of the 2007-2012 Agreement and depending upon the option chosen by the employee (several HMO and PPO options, with distinctions for single, couple or family coverage), employees paid a percentage of salary (single coverage ranging from 1.3% to 2.2%; couples coverage ranging from 1.5% to 2.5%; and families ranging from 1.8% to 2.8%).[76] For calendar years 2008, 2009 and 2010, employee contributions were frozen at the 2007 level and converted from a percentage of base salary at the time to a flat dollar amount.[77] According to the Board:[78]

> ... The flat dollar amount then became the employee's contribution during that period, notwithstanding the fact the employees received a 4% wage increase in each of those three years without a concomitant increase in their contributions (unless an employee advanced to a higher step or lane during this period, in which case she paid the flat dollar contribution applicable to the new salary step/lane). To be strictly accurate, employee contributions were not "frozen" during this period; as a percentage of salary (the traditional approach) they *declined*. That was the good news for employees. As a consequence of this temporary freeze, employees were spared an increase of over $11.1 million. Not only did CPS absorb the increase in health care costs over the term of the Agreement, it took on the additional burden of discounting the employee contributions.

For 2011 and 2012, increases in contributions were dependent upon cost expense. If the cost of health care increased between 1% and 5%, the employee contribution increased by one-half of what it would have been under the percentage of salary approach and if the increase exceeded 5%, then employees paid the full amount of their contributions as measured by the applicable percentage of salary then earned.[79] The 5% figure is known as a "trigger". Thus, according to the Board, this provision restored the existing contribution rates, but did not increase them.[80]

The Board proposes to keep the existing structure of employee contributions (percentage of base salary depending on plan selected and category of coverage). However, effective January 1, 2013, the Board proposes to set the contribution rate (depending on the plan an employee selects) capped at 2.2% for single coverage; 1.7% to 2.8% for couples coverage; and 2.3% to 3.5% for family coverage.[81] According to the Board:[82]

> For couples, the increase is either 2/10 or 3/10 of a percentage point, depending upon the plan selected. For family coverage, the increase is between 1/2 and 7/10 of a percentage point. Note that under these modest increases there remains a significant range – within each category of coverage – under which employees may select the coverage most suited to their needs. In 2013 the contribution schedule for couples ranges more than a full percentage point – from 1.7% to 2.8%. For families the range is from 2.3% to 3.5%. Further, the schedule features overlapping ranges, such that an employee with a family selecting the Lower Cost HMO will pay only 1/10 of a percentage point more than a single employee opting for the Higher Cost PPO.

Further, under the Board's proposal, there could be additional increases in the contribution rates based upon a 5% trigger:[83]

> Increases in these contribution rates will hinge on the degree of success in containing health care costs. As long as the annual increase in cost does not exceed 5%, there will be no increase in the contributions. But if the increase in any year exceeds 5%, there will be a commensurate increase in the contribution rate(s). ...

As part of its health insurance proposal, the Board also proposes a Wellness Program with incentives for participation in the program which reduces health risk factors and an opt-out provision and non-participation requirement for a $600 per year contribution differential.[84]

The Board also proposes an increase in co-payments for emergency room visits from $125 to $150 per visit effective January 1, 2013.[85]

Clearly, during the 2007-2012 Agreement, the Board's health care costs substantially increased. According to the Board, between FY 2007 and FY 2011, its health care costs increased from $250,765,000 to $353,878,000.[86]

The Union does not really dispute this assertion, but argues that according to the Board's own data from its consulting firm, the cost per member per month for health care is rising considerably below market average.[87] But the fact remains that the Board's health care costs have been substantially rising.

The Board's proposed premium contribution changes are not significant. Wellness programs are beneficial to employees in the long-run an increase in the co-pay for emergency room visits is not a substantial economic burden. Further, balanced against the recommended increased wages, the premium payment adjustments sought by the Board are not significant particularly given the freezes in health care premiums during a major portion of the 2007-2012 Agreement. The largest increase is for those employees who have family coverage, going from a high of 2.8% of salary for premium to the proposed 3.5% of salary for premium — an increase of .7%. But again, looking at how well the employees did during the life of the 2007-2012 Agreement, that increase is also modest. Keeping the example as simple as possible by not considering the increased compensation due to the longer day and year, returning to the Lane II, step 3 Master's teachers in June 2007 who had the highest coverage for single, couples and family and then progressed through the wage and step increases of the Agreement and then adding in the 2.25% salary increase recommended by this Report for 2012-2013, the following is the result of the Board's insurance proposal:

COMPARISON OF HEALTH INSURANCE PREMIUM CONTRIBUTIONS FOR LANE II, STEP 3 MASTER'S TEACHERS

Date	Annual Salary (excluding additional compensation for length of day and year)	Single Coverage	Couples Coverage	Family Coverage
6/30/07	$47,576	$1,047 (at 2.2%)	$1,189 (at 2.5%)	$1,332 (at 2.8%)
7/1/12	$69,045[88]	$1,518 (at 2.2%)	$1,933 (at 2.8%)	$2,416 (at 3.5%)
Increase	$21,471	$471	$744	$1,084

Thus, in this example for an increase in salary totaling $21,471 for these employees since June 30, 2007, under the Board's proposal, these employees will pay a maximum of $471 more (for single coverage), $744 more (for couples coverage) and $1,084 more (for family coverage). Given the substantial salary increases over the duration of the 2007-2012 Agreement and further taking into account the wage increases for the upcoming years recommended by this Report, the Board's proposed premium increases are quite modest.

It is clear that family coverage costs more — but it should. There are more individuals who are covered by an employee's family coverage health insurance benefit as compared to coverage for singles or couples and therefore higher costs are attributable to family coverage due to potentially more use of the benefit. As the Board convincingly argues, the family coverage should also be increased more than the other coverages because the employees with single and couples coverage are, in effect, subsidizing the employees who have family coverage.

The unknown is what effect the 5% trigger for further increases requested by the Board may yield. And there is another elephant in the room — the uncertainty of the impact of health care reform legislation at the national

level, which was just decided in *National Federation of Independent Business, et al. v. Sebelius, supra* (June 28, 2012) upholding the constitutionality of the Affordable Care Act. *See e.g.,* Robert Frank, *Giving Health Care a Chance to Evolve*, New York Times, July 1, 2012, Sunday Business [discussing the Supreme Court's June 28, 2012 ruling in *Sebelius*]:[89]

> ... No one can be sure how the law will play out. ...
>
> * * *
>
> The new law will hardly be the final word on these issues. Though it takes tentative first steps on cost control, government budgets will be decimated unless we do much more to reduce inflation in medical services. ...

See also, Peter Frost, *Expect a shift in health plans*, Chicago Tribune, July 3, 2012, Business [also discussing the effect of the Supreme Court's decision in *Sebelius*]:[90]

> Many Chicago-area employers have remained on the sidelines with their employee health plans, waiting for the U.S. Supreme Court to determine whether the 2010 health care overhaul passed constitutional muster.
>
> But with the court's decision last week to uphold most of the law, companies may pursue a historic change.
>
> Many employers are quietly considering a move away from traditional defined benefit plans and toward defined contribution plans, which set aside a fixed amount of money each year for employees to use toward health care costs.
>
> * * *
>
> While there's little doubt a transition is afoot, companies are unlikely to make wholesale changes until a cloud of uncertainty is resolved.
>
> Because 2012 is an election year, there's a chance that the law, or major portions of it, could be repealed if Republicans are able to gain control of Congress and the White House from Democrats.
>
> Further, even if the law survives the general election, no one knows how well the state-based health insurance exchanges will work when they come online in 2014 ....

Bargaining on health care is almost impossible. As pointed out by the Board, *see* my interest award in *City of Chicago and Fraternal Order of Police, Lodge 7* (2007 Agreement) at 72 and cases cited:

> ... as I have unfortunately had to observe before, in the current economic climate collective bargaining between employers and unions on health care issues is most difficult. "Insurance costs are skyrocketing which makes bargaining on this issue border on the impossible."

Add to that the uncertainties of what will happen as national health care legislation plays out, setting long-term health insurance provisions for the out years of the Agreement is simply not wise because it is all premised on guesswork. But nevertheless, the Board has sustained substantial increased costs attributable to health insurance.

The focus at present for this dispute has be on the substantial increased costs sustained by the Board and the uncertainty of what is to come. Therefore, the Board's insurance proposal is recommended, but with several conditions:

First, because of all of the future uncertainties, there should be no triggers in the Agreement for increased insurance contributions by employees. However, commencing January 1, 2014 (or any other date agreed to by the parties), the parties should have the right to reopen the Agreement on health insurance. That reopener should cover the final two years of the Agreement — 2014-2015 and 2015-2016. By January 2014, the parties should be in a better position to assess what the real cost impacts of the Board's health insurance proposal are — both on the Board and the employees.

Second, should either party reopen on health insurance, unless agreed otherwise, the Agreement should also be reopened on wages. Simultaneously reopening on wages and health insurance will allow the parties to assess the economy at that time and address the real economic conditions on the ground, which at this time, are just guesses.

Third, Section 12(d) of the Act provides that "[n]othing in this Act prevents an employer and an exclusive bargaining representative from mutually submitting to final and binding impartial interest arbitration unresolved issues concerning the terms of a new collective bargaining agreement." Should there be an impasse between the parties after negotiations for any reopener described in this section, that dispute should be resolved by an expedited interest arbitration proceeding to set the new insurance rates, wages and conditions utilizing the factors set forth in Section 12(a-10)(4) of the Act.

Fourth, for employees who go on extended leaves of absence, the Board seeks to change the current contract provisions which provide that those employees pay only the contribution rate for active employees as opposed to COBRA, where they would pay the actual cost of coverage.[91] The Board states that this benefit is "... conservatively estimated at $670,000 per year."[92]

The Board has the burden to demonstrate why that type of change is needed. Without a specific showing of abuse or other factual basis for changing the benefit, the Board's showing falls far short of meeting its required burden. It is recommended that this provision concerning employees on extended leaves of absence should remain unchanged.

E. Sick Leave And Short-Term Disability Leave

Employees currently receive 10 sick and three personal days per year which can be accumulated up to a maximum of 325 over the course of their career.[93] Upon retirement, resignation, or death (and depending upon meeting specified criteria, *e.g.,* age and length of service), employees can receive a payout of between 85% and 100% of the value of accumulated sick days to a maximum of 325 days.[94] In FY 2012, CPS projects having to pay out $52 mil-

lion in accumulated sick leave for departing employees.[95] The Board estimates that CPS has $459 million on its books for accumulated sick leave.[96]

The Board proposes that it will continue to honor sick leave banks in that days in those banks will remain available for use and payout upon separation, but will be frozen; going forward, employees will continue to receive 10 paid sick days and three personal days per year, but those days not utilized in that year will not be eligible for carry over and will not be added to bank of accumulated sick leave and unused sick days accumulated after July 1, 2012 will not be used for payout on retirement.[97] The Board proposes to add (at no-cost to the employee) a short-term disability benefit which activates after 10 days of illness (including maternity leave days) and will pay 100% of the employee's regular salary during the first 30 calendar days of illness, disability (or maternity leave); 80% of salary for the next 30 calendar days; and 60% for the third 30 calendar day period (with long-term employees having the option of taking short-term disability benefits and the sliding scale rates or drawing down from their accumulated sick leave banks at 100% salary).[98]

The Board's proposal provides a substantial no-cost benefit to the employees (particularly for those who do not have sufficient accumulated days in their leave banks, thereby providing, for those who need it, a paid maternity leave benefit they do not presently have); to a great degree maintains the existing benefit for employees with accumulated days for payout upon separation; and, in the long-term, provides a substantial cost reduction for the Board because leave banks will no longer be accumulating.

Paid sick days are typically designed to compensate employees when they are too ill to work. Here, with its carry over, banking and payout provisions, the sick leave benefit has become a costly retirement benefit unrelated to an

employee being incapable of working due to illness. That benefit has now caused the Board potential substantial liabilities. In light of the Board's offer for a short-term disability benefit, maintenance of certain aspects of the sick leave benefit and the gradual phase out of the payout provisions of benefit over time and given how costly the sick leave benefit has become, that benefit should now be modified, but in a way that does not harm long-term employees who have planned their retirements based upon the prior promises of the Board to compensate them for banked sick leave.

The Board's proposal is recommended, with the condition that the parties are able to agree upon a method to compensate (monetarily or otherwise) long-term employees who exceed a specified number of years of service to be agreed upon by the parties. If the parties can agree upon how to treat long-term employees, the Board's proposal is recommended. Otherwise, no change is recommended.

The Union seeks leaves of absence provisions in Article 33; seeks to give PSRPs the right to take leaves of absence along with teachers; allowance of leave to attend legislative sessions and extensions of leave for commencement; conforming provisions to requirements of law; and extending the Pension Enhancement Program for another contract term and adjusting the payout method to satisfy legal obligations.[99] The Union has not demonstrated why those changes should be recommended. Those kinds of achievements will have to come through the bargaining process.

F. Job Security/Reassignment and Appointment

The Union points out that since the summer of 2010, CPS laid off 2,500 teachers, institutional coaches, city-wide specialists and paraprofessionals; there is an expectation that there will be further layoffs; entire staffs at targeted

schools are terminated regardless of qualifications; and there will be an expansion of non-union charter schools which serve to divert attendance away from neighborhood schools and cause existing schools to lay off staff.[100] The parties have been through and are still going through litigation concerning tenure and reassignments rights of faculty (in court, before the Illinois Educational Labor Relations Board and in arbitration).[101] The Union also asserts that in July 2010 and for the first time in CPS history, 1,288 teachers and PSRPs were laid off due to lack of work, which, according to the Union, meant they were discharged and were not placed into the reassigned teacher pool under Appendix H of the 2007-2012 Agreement (which would have allowed them a year's wages while worked temporary assignments in schools until they were permanently appointed), which resulted in protracted litigation.[102]

The Union argues that "[r]educing teacher turnover by preserving qualified teachers within the system is vital to improving education at CPS and a critically important bargaining objective by the CTU".[103] Therefore, according to the Union, "[a] robust, clear and well-developed reassignment and recall process is critical to providing students, their families and the teachers who serve them with highly qualified instructors who are provided a secure pathway back into their classrooms in the event of budget cuts, changes in educational focus, drops in enrollment and other school actions where the entire staff is cut."[104] The Union proposes establishment of a pool of displaced teachers from which principals must first hire for vacancies before hiring from other sources.[105]

Even assuming this Panel had jurisdiction to consider this issue, no change can be recommended.

Under current conditions, school closings, consolidations and other actions often leave senior and highly-qualified teachers with few opportunities to directly move to other schools. As a result, the teachers lose their positions and the students lose the ability to benefit from the experience and talent of those teachers. Perhaps the current system is in need of repair and is not functioning well. At best, the Union has made an argument for a good idea. The Union really argues that current job security/reassignment provisions utilized by the Board have unfair results. However, the current system is not broken to be corrected through the impasse resolution process. Any changes to the provisions of the Agreement governing job security/reassignment and appointment must be negotiated.

No change is recommended. If this issue is to be resolved, this issue must be addressed through bargaining.

G. Other Issues Raised By The Union

The Union has raised other issues concerning changes to evaluations, reducing class size, staffing of non-classroom teachers, full curriculum, preparation periods, professional development, special education periods, professional standards, bullying, and paperwork reduction.[106] Again, even if this Panel had jurisdiction to consider these issues, at most, the Union is proposing better ways from its standpoint to address these issues. The Union has not shown that the existing conditions are broken. These kinds of changes must come through bargaining. No changes for these issues can be recommended.

H. Conformity With Law

A number of the provisions of the Agreement may be inconsistent with present provisions of the law. The parties should establish a committee to ex-

amine the 2007-2012 Agreement and change provisions not in conformity with current laws.

I. Tentative Agreements

All other agreements not addressed by this Report and reached by the parties during negotiations should be incorporated into the Agreement.

IX. CONCLUSION

This is a volatile labor dispute in a toxic collective bargaining relationship. The different approaches of the parties have resulted in a confrontation that has all the makings of a full-scale labor - management war. The Union has now successfully taken a strike authorization vote — resoundingly so, with a 90% vote — and, absent the non-rejection of this Report or a meeting of the minds across the bargaining table, the war is about to become very real.

The tragic irony of this case is that as incendiary as this dispute is, when it comes to the children who are impacted by this matter, both sides truly have the same goal — to better educate the children of the City of Chicago. The parties' approaches are just so drastically different.

The Panel has now performed its statutory function and issued this Report with "... advisory findings of fact and recommended terms of a settlement for all disputed issues ..." for the new Agreement.[107] Under the statutory scheme, the next step is that during the 15-day period from today, the Board or the Union can either reject the Report or, through silence (and thus non-rejection), accept this Report's recommended terms which will then be incorporated into the parties' new Agreement thereby ending the dispute. The significance of the parties' actions (or non-actions) in the next 15 days is critical. A potential massive strike is looming. The public is now intensely watching to see what the parties choose to do.

While my colleagues on the Panel may not agree with all of the recommendations I have made, the recommendations made in this Report are, in my opinion, a fair a resolution of the disputed issues between the parties formulated in a most difficult situation and within the confines of my authority under the Act. Should either party reject this Report, the consequences may well be dire — approximately 25,000 teachers covered by the Agreement potentially going on strike putting some 400,000 students out of school when those students should be in school receiving quality educations.

As the Neutral Chair and Fact-Finder, it should also be lost on no one what I am now attempting to do with this Report. Section 12(a-10)(3)(I) of the Act gives me the authority "... to attempt mediation ...." Notwithstanding extensive and professional cooperation between the parties, thus far, the mediation process has been engaged in, but it has failed. As of this writing, the parties remain too far apart and the chasms on all of the major issues just have not been bridged. Major bargaining goals sought by both parties have not been obtained through this fact-finding process. This process is just not a substitute for the give and take across the bargaining table.

With the Board's position that there is going to be a longer school day and year and the corresponding costs which come with requiring employees to work longer, I recognize that given its current budgetary difficulties, the economic provisions of this Report may be too much for the Board to accept. The Board has control over much of the major monetary impact recommended by the Report — *i.e.*, the compensation for the longer school day and year. As discussed at VIII(C)(2)(b), if the Board desires to lessen the monetary impact of the recommended terms of this Report, it can simply reduce the school day and/or year from its stated expansion. The reduction in the compensation for the

longer school day and year as recommended in this Report will be proportionate.

I also recognize that if the Board implements the terms of this Report, it may well be that layoffs and/or increases in class size will follow — a situation which is self-defeating to the parties' overall stated goal of better educating the children in the City of Chicago. But again, in many respects, the Board has brought that prospect on itself by moving to the longer school day and year in such a dramatic fashion when it does not have the resources to do so. And the Union has also contributed to the potential problem by not compromising further on economic issues when it did so well under the 2007-2012 Agreement — something that may have to do with the bad blood caused by the Board's withholding the 4% wage increase called for in 2011-2012.

Additionally, those same economic provisions and the lack of any affirmative relief on other issues identified as important by the Union, but not achieved, may prove too little for the Union to voluntarily accept. While in my opinion, the recommendations in this Report are supported by the statutory factors or are not permitted by those same statutory factors, the reality is that the parties remain *so* far apart that even a fair resolution as recommended here will not avert the strike that is coming. I am still following the mandate in Section 12(a-10)(3)(K) of the Act that I am "to employ any other measures deemed appropriate to resolve the impasse." Should either side reject this Report, with this Report, I am attempting to drive the parties back to the bargaining table to resolve this dispute. There are still trade-offs that can be made. The parties now know their strengths and weaknesses and far as the statutory fact-finding process is concerned. There has to be more flexibility on both sides than has been shown thus far. If this dispute goes to the next step — *i.e.*, to the street

— neither party will win this dispute and the children of the City of Chicago will be the ultimate losers. The only difference will be that there will be a strike, but the differences between the parties will still be there.

The short but difficult solution to this dispute is that the Board cannot unilaterally restructure the Union's contract and further expect employees to work 20% more for free or without fair compensation because the Board opted to exercise its statutory right to lengthen to school day and year at a time when it is in a very difficult budget situation. And the employees must put aside the rage caused by the Board's withholding the 4% increase for 2011-2012 and recognize that because they still did *so* well over the life of the 2007-2012 Agreement, there must be a tempering of their economic demands for the next Agreement.

I have been a labor lawyer for almost 40 years and an arbitrator for over 25 years and I have been involved in thousands of disputes. That makes me a realist. At present, these parties are worlds apart and if the parties do not do more to compromise their positions, a crippling strike is inevitable. If that happens, *everyone* will lose.

Breaking this dispute down to its simplest terms, the Board has exercised its authority to impose a sea change driven by the substantial lengthening of the school day and year, with the expectation that the employees will work those additional hours (approximately 20% more) for free or without fair compensation for the additional work. The employees will not do that and should not be expected to do that. For its part, the Union is coming off an extremely lucrative contract for the employees for the period 2007-2012 — even with the 4% wage increase withheld for 2011-2012 — as its terms were negotiated prior to the devastation caused by the Great Recession. The Union cannot

ignore the fact that its membership immensely benefited from the terms of that lucrative contract and cannot expect the same type of benefits to continue when the economic conditions are far worse now than when the 2007-2012 Agreement was negotiated.

Should either party reject this Report, the door is then clearly open to a strike. However, up to this point, I have done all that I can possibly do to resolve this dispute short of that drastic economic action which will only hurt the 400,000 children in the CPS. It is now up to the parties to resolve this dispute. The parties must do more than they have done thus far to avoid a certain calamity.

It has been my honor to serve as the Fact-Finder and Neutral Chair on this Panel and I thank all the participants in this process for their professional, courteous, cooperative and civil manner in the midst of this very volatile labor dispute.

Edwin H. Benn
Fact- Finder and Neutral Chair

_____
Joseph T. Moriarty
Board Panel Member

__: I concur

__: I concur in part and dissent in part

__: I dissent

_____
Jesse J. Sharkey
Union Panel Member

__: I concur

__: I concur in part and dissent in part

__: I dissent

Dated: July 16, 2012

X. APPENDICES

APPENDIX "A" — BOARD ISSUES

ISSUE NO.	DESCRIPTION
1.	PREAMBLE
2.	RECOGNITION CLAUSE (SCOPE OF BARGAINING UNIT)
3.	RECOGNITION CLAUSE (EXCLUSIVE BARGAINING REP.)
4.	RECLASSIFICATIONS
5.	DUES CHECKOFF AND OTHER VOLUNTARY DEDUCTIONS
6.	FAIR SHARE OBLIGATION
7.	LEAVES OF ABSENCE FOR UNION BUSINESS
8.	UNION DELEGATES
9.	ACCESS TO BOARD PREMISES
10.	UNION MEETINGS
11.	PERIODS FOR UNION BUSINESS (CITY-WIDE)
12.	POSTING OR DISTRIBUTION OF UNION MATERIALS
13.	EXCHANGE OF INFORMATION
14.	PROFESSIONAL PERSONNEL LEADERSHIP COMMITTEE
15.	PROFESSIONAL PROBLEMS COMMITTEE (SCHOOL-BASED)
16.	PROFESSIONAL PROBLEMS COMMITTEE (CITY-WIDE)
17.	PROFESSIONAL PROBLEMS COMMITTEE (SUBSTITUTES)
18.	REPRODUCTION OF AGREEMENT
19.	EQUAL EMPLOYMENT OPPORTUNITY
20.	GRIEVANCE PROCEDURE
21.	MANAGEMENT RIGHTS
22.	BOARD POLICIES AND PROCEDURES
23.	TEACHER CLASSIFICATIONS (APPOINTED TEACHERS)
24.	TEACHER CLASSIFICATIONS (ASSIGNED TEACHERS)
25.	APPOINTMENTS AND TRANSFERS (FILLING VACANCIES)
26.	APPOINTMENTS AND TRANSFERS (TRANSFER PERIODS)
27.	SUMMER SCHOOL CLASS STAFFING AND ASSIGNMENTS
28.	SCHOOL AND WORK DAY AND YEAR
29.	SALARIES AND OTHER COMPENSATION (SALARY STRUCTURE)
30.	SALARIES AND OTHER COMPENSATION (SALARY INCREASES)
31.	TRAVEL REIMBURSEMENT
32.	BUDGETARY APPROPRIATIONS
33.	PENSION PICK UP
34.	WAGE REOPENER
35.	PAYROLL PROCEDURES (DEFERRED PAY SCHEDULE)
36.	PAYROLL PROCEDURES
37.	TEXTS AND SUPPLIES (APPROPRIATIONS AND RECOMMENDATIONS)
38.	TEXTS AND SUPPLIES (DISTRIBUTION)
39.	TEXTS AND SUPPLIES (SUPPLY MONEY)
40.	HOLIDAYS
41.	PERSONAL DAYS
42.	VACATIONS
43.	SICK DAYS, SHORT-TERM DISABILITY LEAVE AND MATERNITY LEAVES
44.	LEAVES OF ABSENCE
45.	HEALTH CARE BENEFITS AND WELLNESS PROGRAM
46.	PROFESSIONAL DEVELOPMENT, SUPPORT AND EVALUATION OF TEACHERS
47.	PROFESSIONAL DEVELOPMENT, SUPPORT AND EVALUATION OF PSRPS
48.	EMPLOYEE DISCIPLINE
49.	PERSONNEL FILES
50.	GENERAL WORKING CONDITIONS
51.	TEACHER WORKING CONDITIONS
52.	SPECIAL EDUCATION AND SSP WORKING CONDITIONS
53.	PSRP WORKING CONDITIONS
54.	LAYOFF AND RECALL OF TEACHERS AND SSPS
55.	LAYOFF AND RECALL OF PSRPS
56.	JOINT COMMITTEES
57.	CONTINUITY OF OPERATIONS
58.	LEGALITY CLAUSES
59.	DURATION
60.	SUBCONTRACTING OR OUTSOURCING

61. MINIMUM STAFFING

APPENDIX "B" — UNION ISSUES

ISSUE NO.	DESCRIPTION
1.	PREAMBLE
2.	RECOGNITION
3.	FAIR PRACTICES
4.	PROFESSIONAL STANDARDS
5.	GRIEVANCE PROCEDURE
6.	ELEMENTARY SCHOOL
7.	MIDDLE SCHOOL
8.	HIGH SCHOOL
9.	ELEMENTARY SCHOOL COUNSELORS
10.	PROFESSIONAL DEVELOPMENT TEACHERS AND TEACHER LEADERS
11.	PARAPROFESSIONAL AND SCHOOL RELATED PERSONNEL
12.	COUNSELORS
13.	LEGISLATIVE PARTNERSHIP
14.	EXTRACURRICULAR PERSONNEL
15.	LIBRARIANS: ELEMENTARY & HIGH SCHOOL
16.	PLAYGROUND TEACHERS
17.	SCHOOL PSYCHOLOGISTS
18.	SCHOOL SOCIAL WORKERS
19.	SPECIAL EDUCATION TEACHERS
20.	SPEECH-LANGUAGE PATHOLOGISTS (SLPs) AND SPEECH-LANGUAGE PATHOLOGIST PARAPROFESSIONALS (SLPPs)
21.	CLASSIFICATION OF TEACHERS
22.	SUMMER SCHOOL
23.	TEACHER ASSISTANTS
24.	SCHOOL NURSES
25.	CLASS COVERAGE
26.	CLASS-SIZE
27.	DISCIPLINE
28.	INSURANCE
29.	LEAVES OF ABSENCE
30.	PERSONNEL FILES: BOARD OF EDUCATION
31.	PROMOTIONAL AND PROFESSIONAL OPPORTUNITIES
32.	SALARIES
33.	TEACHER ASSIGNMENT PROCEDURE
34.	TEACHER EFFICIENCY RATINGS
35.	TEACHER PROGRAMMING
36.	APPOINTMENT AND ASSIGNMENT OF TEACHERS
37.	GENERAL PROVISIONS
38.	COMMITTEES
39.	CONFORMITY
40.	APPENDIX A
41.	APPENDIX C
42.	APPENDIX D
43.	APPENDIX H
44.	APPENDIX I
45.	APPENDIX K

APPENDIX "C" — BOARD FINAL OFFER

In accordance with the Neutral Chair's May 1, 2012 Scheduling Order, the Board of Education of the City of Chicago submits its final offers on all disputed issues not covered by Section 4.5 of the *Illinois Educational Labor Relations Act* ("*IELRA*") in advance of the mediation sessions scheduled to begin on May 31, 2012.

The Board's final offers are presented in two parts—(1) a term sheet describing the major changes between the Board's May 10, 2012 submission of proposals and its final offers and (2) a redlined version of the proposals submitted by the Board on May 10, 2012 to reflect the Board's final offers.

Duration

Instead of a five-year term, the Board proposes a four-year term with the successor agreement effective from July 1, 2012 through June 30, 2016. [Article 28]

Salaries and Other Compensation

I. **INCREASES TO BASE SALARIES AND HOURLY WAGE RATES:** The base salary or hourly wage rate of full-time employees shall be increased in accordance with the chart below. [Article 9 | Appendix A]

	Annual Work Days	Year 1 Effective 07-01-2012	Year 2 Effective 07-01-2013	Year 3 Effective 07-01-2014	Year 4 Effective 07-01-2015
Teachers and School Service Personnel ("SSPs")	208 (+5)*	2.00%	2.00%	2.00%	2.00%✦
Paraprofessional and School-Related Personnel ("PSRPs") (Except for School Clerks)±	208 (+5)	2.00%	2.00%	2.00%	2.00%
School Clerks±	211 (+8)	2.00%	2.00%	2.00%	2.00%

* The (+) notes the increase in the number of work days from the current to the full work year. [Article 8 | Appendices B and C]

✦ In Year 4, the Board is offering a 2.00% increase to the base salary or hourly wage rate of employees who are paid on the teacher and SSP or PSRP salary schedules, provided that the parties have mutually agreed upon a differentiated compensation plan to become effective on July 1, 2015. The 2.00% is an across-the-board increase; under the differentiated compensation plan, employees may be eligible for greater increases depending on the terms and conditions of the plan. The joint Differentiated Plan Committee remains charged with the responsibility for negotiating this plan under the terms set forth in the Board's proposal. [Article 9 | Appendix A]

± When the full school and work day and year are implemented, PSRPs (except for school clerks) will not work additional hours per day than their current schedules, but will work 5 additional work days (from 203 to 208) for which they will be paid their hourly rate as increased over time. School clerks likewise will continue to work the same work hours per day, but will work 8 additional work days (from 203 to 211) at their hourly rate as increased over time. [Appendices A and C]

II. STEP INCREASES:

Effective July 1, 2012, for the duration of the successor agreement, employees paid on the teacher and SSP or PSRP salary schedules shall be "frozen" on their current steps and shall not receive step increases. [Article 9 | Appendix A]

III. LANE INCREASES:

For Current Teachers and SSPs	Effective upon ratification, for employees who are paid on the teacher and SSP salary schedule, the current lane system will be retained through December 31, 2012, provided that only employees enrolled in graduate or other approved credit programs as of December 31, 2012 and who are properly on track for a lane advancement shall be eligible for a lane advancement after December 31, 2012. Within sixty days of the ratification of the successor agreement, and after notice from the Talent Office to this effect, employees who intend to pursue lane advancements after December 31, 2012 shall complete a form certifying this intention and confirming other requirements will be satisfied. The parties direct the joint Differentiated Compensation Committee to include lanes or their equivalent in the new compensation structure, provided that such lanes are structured to improve teacher content knowledge in a subject matter which will ensure to the benefit of students. [Section 9-3 | Appendix A]
For New Hires Following Ratification	Employees who are hired after the ratification of the successor agreement shall be eligible for lane advancements to the

extent such lane advancements are provided for in the differentiated compensation plan to become effective on July 1, 2012.

IV. CADRE SUBSTITUTES AND DAY-TO-DAY-SUBSTITUTES: Effective upon ratification the flat rates per day currently set forth in current Appendices 1J and 1K shall be increased as follows:

	Year 1 Effective 07-01-2012	Year 2 Effective 07-01-2013	Year 3 Effective 07-01-2014	Year 4 Effective 07-01-2015
Cadre Substitute [Current Appendix 1(i)]	2.00%	2.00%	2.00%	2.00%*
Cadre Substitute [Current Appendix 1J(ii)]	2.00%	2.00%	2.00%	2.00%*
Day-to-Day Substitute [Current Appendix 1K(i)]	2.00%	2.00%	2.00%	2.00%*
Day-to-Day Substitute [Current Appendix 1K(ii)]	2.00%	2.00%	2.00%	2.00%*
Day-to-Day Substitute [Current Appendix 1K(iii)]	2.00%	2.00%	2.00%	2.00%*

[Article 9 | Appendix A]

* In Year 4, the Board is offering a 2.00% increase to the per diem rates of Cadre and day-to-day substitutes, provided that the parties have mutually agreed upon a differentiated compensation plan to become effective on July 1, 2015. The 2.00% is an across-the-board increase; under the differentiated compensation plan, employees may be eligible for greater increases depending on the terms and conditions of the plan. The joint Differentiated Compensation Plan Committee remains charged with the responsibility for negotiating this plan under the terms of the Board's initial proposal. [Appendix 9 | Appendix A]

V. OTHER EMPLOYEES PAID DAILY, PER DIEM OR HOURLY RATES: Effective July 1, 2012, with the exception of Cadre substitutes or day-to-day substitutes, employees who are appointed to positions paid on a daily, per diem or hourly rate shall be paid the daily, per diem or hourly rate in effect on June 30, 2011 for the duration of the successor agreement. [Article 9 | Appendix A]

VI. INCREMENTS AND STIPENDS: Effective July 1, 2012, employees who are appointed to positions that are eligible for the increments and stipends set forth in current Appendix A shall continue to receive such increments and stipends based on the rate in effect on

June 30, 2011 through June 30, 2014. Effective July 1, 2014, the compensation of employees who currently receive increments and stipends shall be governed by the differentiated compensation plan. [Article 9 | Appendix A]

VII. ADDITIONAL TEACHING PERIODS DIFFERENTIAL ("OVERTIME INDICATOR"): This provision shall be struck from the successor agreement.

VIII. AFTER-SCHOOL NON-INSTRUCTIONAL, AFTER-SCHOOL INSTRUCTIONAL AND EXTRA-CURRICULAR RATES OF PAY: Effective July 1, 2012, employees who are engaged in such after-school or extracurricular activities shall be paid the hourly rates in effect on June 30, 2011 for the duration of the successor agreement. [Article 9 | Appendix A]

IX. PART-TIME TEACHERS AND SSPs: Part-time teachers and SSPs shall be paid a pro rata portion of the applicable full-time teacher or SSP salary based on the portion of the full-time teacher or SSP day the part-time teacher works. [Article 9 | Appendix A]

X. TRAVEL REIMBURSEMENT: An employee who is required to use a personally owned vehicle during the course of his or her employment shall be reimbursed for the cost of such travel based on the standard mileage rates established by the Internal Revenue Service. [Article 9 | Appendix A]

Health Care Benefits

I. EMPLOYEE CONTRIBUTION RATES: The proposed rate increases to couple and family coverage shall not become effective until January 1, 2013. [Section 16-1.5]

II. WELLNESS PROGRAM: The tobacco user premium differential shall become a graduated differential—one premium differential for those earning $30,000.00 or less annually and one premium differential for those earning more than $30,000.00 per year. [Section 16-2.5(g)]

Vacation

The Board proposes a new formula for vacation accrual for full-time bargaining unit employees assigned to fifty-two-week work schedules. [Section 13-2]

APPENDIX "D" — UNION FINAL OFFER

* * *

The Union incorporates all of the proposals contained in its May 10,

2012 submission to the Fact-Finding Panel as its final offer, except as modified below:

1. The Union will not submit a proposed Appendix J, but instead proposes to:

   a. maintain its initial May 10 proposal for Appendix H Sec. 1 (pertaining to laid off teachers entering the reassigned teacher pool);

   b. maintain the existing contract language in Appendix H Section 2.A (pertaining to removal of tenured teachers in accordance with seniority); and 2

   c. substitute the following amended proposal for Article 42-5:

> 42-5. The BOARD shall establish, and maintain a policy according to the following procedure for filling new or vacant positions: Principals shall select applicants from a rehire pool consisting of all teachers and all other bargaining unit employees (except those removed for cause) who were: a) laid off, displaced or honorably terminated, or non-renewed within the previous thirty-six (36) ~~twenty-four (24)~~ months; and b) have requested to be placed in the rehire pool. If no qualified member of the rehire pool is available or accepts appointment to a new or vacant position, the Principal may consider for hire any applicants from outside the rehire pool. For teachers and staff hired into vacancies from the rehire pool, tenure and prior seniority will be restored as of that date.
>
> Notwithstanding the foregoing, teachers and other bargaining unit members in the rehire pool shall be offered positions for which they are qualified in the same school from which they were laid off or displaced, in the same order in which they were removed from the school. An employee who declines an offer shall remain eligible for other available positions.

2. The Union substitutes the following for the first paragraph of Appendix A:

> All wages and salaries, and other compensation tied to wages and salaries, to be adjusted with a twenty-two percent (22%) ~~twenty-four percent (24%)~~ increase effective July 1, 2012 and a three percent (3%) ~~five percent (5%~~) increase effective July 1, 2013.

XI. ENDNOTES

[1] The cost of living computation is based upon available data from the Bureau of Labor Statistics ("BLS") through May 31, 2012, which covers 59 of the 60 months of the July 1, 2007 - June 30, 2012 Agreement. The June 2012 data will be released by the BLS by on the day after this Report issues. For purposes of this Report, any monetary conclusions must be adjusted to take into account changes, if any, presented by the June 2012 cost of living data upon its release by BLS.

[2] Section 12(a-10)(4) of the Act, 115 ILCS 5/1, *et seq*. The impasse resolution procedures governing this proceeding are found in Section 12(a-10)(4) of the Act which provides for the convening of a three-person Fact-Finding Panel ("Panel"), with the parties each appointing a member and the selection of an impartial individual to serve as the fact-finder and chairperson ("Fact-Finder" or "Neutral Chair") of the Panel.

The Board governs, maintains and has financial oversight of the CPS. 105 ILCS 5/34, *et seq*. There are approximately 400,000 students in the CPS. Board Exh. 10. For the 2011-2012 school year, there were 474 elementary schools, 106 high schools, 87 charter schools and 8 contract schools in CPS. *Id*.

See also, http://www.cps.edu/About_CPS/At-a-glance/Pages/Stats_and_facts.aspx

The Union represents teachers and paraprofessional school-related personnel ("PSRPs") and others. Joint Exh. 1 at Section 1-1 and Appendix D. Covered employees are either paid on the basis of an annual salary or hourly. Joint Exh. 1, Appendix A. With other staff, there are approximately 25,000 teachers covered by the Agreement. Board Brief at 8. The 2007-2012 Agreement expired June 30, 2012. Joint Exh. 1 at Section 49-1.

[3] *See* Scheduling Order at IV:

> ... 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.

[4] Section 12(a-10)(4) of the Act.

[5] Section 12(a-10)(5) of the Act.

[6] Sections 12(a-10)(4), (5) and Sections 13(b)(2.5), (2.10), (3)-(5) of the Act. A strike authorization was conducted during the week of June 4, 2012 On June 11, 2012, the Union announced that it received a 90% vote for a strike authorization.
http://www.ctunet.com/blog/members-vote-yes-to-authorization

In addition to fact-finding, the Act provides that the undersigned can engage in mediation with the parties in an effort to settle the terms of the Agreement. Sections 12(a-10)(3)(I), (K) of the Act. *See also*, Scheduling Order at II(5). The parties have gone through that mediation process — a lengthy and intense series of meetings — with the undersigned acting as the mediator. The mediation process failed to bridge all of the chasms between the parties.

The parties have also filed briefs and exhibits and presentations have been held. Scheduling Order at II(4), (6)-(9), as modified.

[7] Stand for Children co-founder Jonah Edelman — who claims to have been instrumental in the passage of the recent amendments to the Act — discussed the new 75% threshold requirement in the Act for the Union to strike.

http://www.youtube.com/watch?v=kog8g9sTDSo

At 13:09 of the video, Mr. Edelman states:

Mr. Edelman: The unions cannot strike in Chicago. They will never be able to muster the 75% threshold necessary to strike.

Apparently, Mr. Edelman was wrong — by 15%.

[8] Joint Exh. 1 at Section 47-2 ("The Board and the Union recognize that the increases in wage rates set forth in Appendix A of this Agreement constitute an increase of four percent for Fiscal Years 2008, 2009, 2010, 2011 and 2012.").

[9] In terms of specifics for teachers in 38.6 week positions, over the life of the 2007-2012 Agreement, the compounded wage changes for lane and steps were as follows for Lane II Master's teachers. *See* the 2003-2007 Agreement, Appendix A1D-1 at p. 216 (teachers on a 193 day school term); Joint Exh. 1, Appendix at p. 125 (the 2010-2011 salary schedule at which the wage rates were frozen resulting from the Board's failure to grant the 2011-2012 4% wage increase):

Lane II Master's Degree Annual Salaries

Step	6/30/07 (End of 2003-2007 Agreement	6/30/12 (End of 2007-2012 Agreement Without 2011-2012 4% Wage Increase)	Difference	Real Percentage Increase
1	43,204	50,542	7,338	16.98%
2	45,302	52,998	7,696	16.99%
3	47,576	55,657	8,081	16.98%
4	49,676	58,114	8,438	16.99%
5	51,774	60,568	8,794	16.98%
6	53,874	63,025	9,151	16.98%
7	55,622	65,069	9,447	16.98%
8	57,721	67,526	9,805	16.99%
9	59,820	69,981	10,161	16.98%
10	61,919	72,436	10,517	16.98%
11	64,193	75,096	10,903	16.98%
12	66,292	77,552	11,260	16.98%
13	68,261	79,856	11,595	16.99%

The same calculations will occur throughout the salary schedules. For example, these are the changes from steps 3, 5, 9 and 13 of the salary lanes in the Agreement (*id.*):

Annual Salaries (Steps 3, 5, 9, 13)

Lane and Step	6/30/07 (End of 2003-2007 Agreement	6/30/12 (End of 2007-2012 Agreement Without 2011-2012 4% Wage Increase)	Difference	Real Percentage Increase
I-3	44,778	52,384	7,606	16.99%
I-5	48,975	57,294	8,319	16.99%
I-9	57,022	66,707	9,685	16.99%
I-13	65,379	76,484	11,105	16.99%
II-3	47,576	55,657	8,081	16.98%
II-5	51,774	60,568	8,794	16.99%
II-9	59,820	69,981	10,161	16.99%
II-13	68,261	79,856	11,595	16.99%
III-3	48,975	57,293	8,318	16.98%
III-5	53,174	62,206	9,032	16.99%
III-9	61,220	71,619	10,399	16.99%
III-13	69,702	81,541	11,839	16.98%
IV-3	50,375	58,931	8,556	16.98%
IV-5	54,573	63,843	9,270	16.99%
IV-9	62,619	73,256	10,637	16.99%
IV-13	71,143	83,227	12,084	16.99%
V-3	51,774	60,568	8,794	16.98%
V-5	55,972	65,480	9,508	16.99%
V-9	64,018	74,892	10,874	16.99%
V-13	72,583	84,912	12,329	16.99%
VI-3	53,174	62,206	9,032	16.99%
VI-5	57,371	67,116	9,745	16.99%
VI-9	65,417	76,529	11,112	16.99%
VI-13	74,025	86,598	12,573	16.98%

During the 2007-2012 Agreement, salary steps were added and phased in at top of the salary schedules (step 14 for employees after 13 years of service; step 15 for employees after 20 years of service; and step 16 for employees after 25 years of service). *See e.g.*, Joint Exh. 1, Appendix A at pp. 124-126; Board Exh. 47; Board June 13, 2012 Presentation at Appendix. For the Lane II Master's teacher those added salary steps paid as follows at the end of the 2007-2012 Agreement (Board Exh. 47):

Step	Annual Salary
14	80,937
15	81,937
16	82,937

For purposes of this discussion concerning percentage increases which compares the salaries for employees over the life of the 2007-2012 Agreement, because those added steps did not exist as of the expiration of the 2003-2007 Agreement and were phased in over the life of the 2007-2012 Agreement, no comparisons for those specific steps can be made.

[10] Joint Exh. 1 at p. 120.

[11] Willis, "U.S. Recession Worst Since Great Depression, Revised Data Show", Bloomberg.com (August 1, 2009). www.bloomberg.com/apps/news?pid=20601087&sid=aNivTjr852TI

[12] According to the Bureau of Labor Statistics the cost of living increased during the life of the 2007-2012 Agreement as follows:

Cost of living Increase
7/1/07 - 5/31/12

Start (7/1/07)	End (5/31/12)	Difference	Percent Increase
208.299	229.815	21.516	10.33%

This information is found at the BLS website for the BLS data bases: http://data.bls.gov/cgi-bin/surveymost?cu

To obtain the data from the BLS website, designate year ranges for U.S. All items, 1982-84=100 and use the link at the bottom of the page "Retrieve data".

The cost of living changes are for the period July 1, 2007 through May 31, 2012 as reflected by the June 14, 2012 release of information by the BLS:

http://www.bls.gov/schedule/news_release/201206_sched.htm

The data from the BLS through May 2012 covers 59 of the 60 months of the 2007-2012 Agreement. The BLS cost of living data for June 2012 (the last month of the 2007-2012 Agreement) is scheduled for release on July 17, 2012 — one day after the statutory time period for release of this Report expires — and is therefore not included in this Report. www.bls.gov/schedule/news_release/201207_sched.htm

[13] For all employees in the Lane II Master's Degree and based upon the differences in the 2010-2011 salary schedule (Joint Exh. 1, Appendix A at p. 125; Board Exh. 47), the step differences for annual salary (exclusive of pension pickup) are as follows:

Annual Salary Lane II Master's Degree

Step	2010-2011 Annual Salary	Difference	Step Percentage Increase
1	50,542	-	-
2	52,998	2,456	4.86%
3	55,657	2,659	5.02%
4	58,114	2,457	4.41%
5	60,568	2,454	4.22%
6	63,025	2,457	4.06%
7	65,069	2,044	3.24%
8	67,526	2,457	3.78%
9	69,981	2,455	3.64%
10	72,436	2,455	3.51%
11	75,096	2,660	3.67%
12	77,552	2,456	3.27%
13	79,856	2,304	2.97%
14	80,937	1,081	1.35%
15	81,937	1,000	1.24%
16	82,937	1,000	1.20%

[14] The Board advises that although employees did not receive the 4% increase for 2011-2012, employees did receive step increases. If so, the annual salary schedule looked as follows for 2011-2012 for Master's Lane II teachers:

2011-2012 Lane II Master's Degree

Step Movement	2010-2011 Annual Salary	2011-2012 Annual Salary (Step Increase Only)
1-2	50,542	52,998
2-3	52,998	55,657
3-4	55,657	58,114
4-5	58,114	60,568
5-6	60,568	63,025
6-7	63,025	65,069
7-8	65,069	67,526
8-9	67,526	69,981
9-10	69,981	72,436
10-11	72,436	75,096
11-12	75,096	77,552
12-13	77,552	79,856
13-14	79,856	80,937
14-15	80,937	81,937
15-16	81,937	82,937

[15] Board Brief at 31; Board Exh. 42 (using the 2010-2011 salary schedule for teachers found at Joint Exh. 1 at p. 125 (including pension pickup).

[16] Board June 13, 2012 Presentation at slide 27; Joint Exh. 1, Appendix A at pp. 125, 141.

The Agreement provides for step movements within salary lanes based on years of service. Joint Exh. 1, Appendix A. For steps 1 through 14, teachers and other certified employees on the teacher salary schedule advance one step after completing one year of service (*i.e.*, the step increase is added on their anniversary dates of employment). To reach step 15, the employee must have 20 years of service. On the FY 2011 salary schedule no step 16 exists. Step 16 was scheduled to be implemented during FY 2012. According to the Board, nevertheless, step 16 was in fact implemented in FY 2011 by the Board for employees who have 25 years of service. Other employees such as PSRPs have service requirements for step advancements listed in the Agreement. *See* Joint Exh. 1, Appendix A.

According to the Board, the census of full-time appointed teachers in 38.6 week positions as of June 1, 2012 shows (Board June 13, 2012 Presentation at Appendix A):

June 1, 2012 Step Census

Step	Lane I (BA)	Lane II (MA)	Lane III (MA+15)	Lane IV (MA+30)	Lane V (MA+45)	Lane VI (PhD/EdD)
1	514	249	21	21	13	2
2	469	263	25	18	18	1
3	429	395	57	33	25	1
4	438	390	72	58	32	2
5	469	474	114	80	61	3
6	314	444	129	97	66	3
7	305	474	134	110	87	3
8	295	461	155	123	133	7

9	229	390	150	124	115	11
10	221	389	138	151	131	13
11	199	332	140	36	116	11
12	188	307	140	123	132	11
13	159	262	106	114	124	12
14	891	1169	563	596	908	69
15	485	456	271	231	467	28
16	442	373	229	211	507	24
Total	6047	6828	2444	2126	2935	201

I recognize that not all employees received five step increases over the life of the 2007-2012 Agreement. Those employees in the higher steps received fewer step increases because the higher steps require more years of service before movements to the next step are made. However, nevertheless, many employees received multiple step increases over the life of the 2007-2012 Agreement and, with the addition of steps 14-16 during the life of the 2007-2012 Agreement, all employees who were employed for the duration of that contract received at least one step increase.

[17] As of June 1, 2012, and because of the yearly step movements, employees in steps 6-13 as of that date therefore received five step movements over the life of the 2007-2012 Agreement (Board June 13, 2012 Presentation at Appendix A):

Employees With Five Step Movements

Step	Lane I (BA)	Lane II (MA)	Lane III (MA+15)	Lane IV (MA+30)	Lane V (MA+45)	Lane VI (PhD/EdD)	
6	314	444	129	97	66	3	
7	305	474	134	110	87	3	
8	295	461	155	123	133	7	
9	229	390	150	124	115	11	
10	221	389	138	151	131	13	
11	199	332	140	36	116	11	
12	188	307	140	123	132	11	
13	159	262	106	114	124	12	
Total	1,910	3,059	1,092	878	904	71	
Grand Total							**7,914**

[18] Again, looking to the Board's census (*id*.), and noting the timing of the step movements, the following is shown for employees as of June 1, 2012 who made at least one step movement over the life of the 2007-2012 Agreement:

Employees With One Or More Step Movements

Step	Lane I (BA)	Lane II (MA)	Lane III (MA+15)	Lane IV (MA+30)	Lane V (MA+45)	Lane VI (PhD/EdD)	
2	469	263	25	18	18	1	
3	429	395	57	33	25	1	
4	438	390	72	58	32	2	
5	469	474	114	80	61	3	
6	314	444	129	97	66	3	
7	305	474	134	110	87	3	
8	295	461	155	123	133	7	
9	229	390	150	124	115	11	
10	221	389	138	151	131	13	
11	199	332	140	36	116	11	

12	188	307	140	123	132	11
13	159	262	106	114	124	12
14	891	1,169	563	596	908	69
15	485	456	271	231	467	28
16	442	373	229	211	507	24
Total	5,533	6,579	2,423	2,105	2,922	199
Grand Total						**19,761**

[19] During the life of the 2007-2012 Agreement, all employees who were employed for the duration of the contract received at least one step movement. That minimum of one step movement was due to the phasing in of steps 14-16 during the life of the 2007-2012 Agreement. For example, irrespective of years of service, all employees who were at step 13 at the beginning of the 2007-2012 Agreement (and thus were topped-out under the 2003-2007 Agreement) moved to the higher steps (at least to step 14 which only had one additional year of service after step 13 as a requirement for movement).

[20] Using the Lane II, step 3 Master's teacher as an example, *see e.g.*, the 2003-2007 Agreement, Appendix A1D-1 at p. 216; Joint Exh. 1, Appendix A at p. 125; and factoring in step movements only for 2011-2012, the wage increase for those individuals over the life of the 2007-2012 Agreement (exclusive of pension pickup) is:

Step Movement Wage Gains

Step (As of 6/30/12)	Step Movement From/To	Number of Step Moves	Annual Salary 6/30/07	Annual Salary 6/30/12	Difference	Percent Increase
1 - 1st 12 mos.	1-6	5	43,204	63,025	19,821	45.88%
2 - after 1 yr.	2-7	5	45,302	65,069	19,767	43.63%
3 - after 2 yrs.	3-8	5	47,576	67,526	19,950	41.93%
4 - after 3 yrs.	4-9	5	49,676	69,981	20,305	40.87%
5 - after 4 yrs.	5-10	5	51,774	72,436	20,662	39.91%
6 - after 5 yrs.	6-11	5	53,874	75,096	21,222	39.39%
7 - after 6 yrs.	7-12	5	55,622	77,552	21,930	39.43%
8 - after 7 yrs.	8-13	5	57,721	79,856	22,135	38.35%
9 - after 8 yrs.	9-14	5	59,820	80,937	21,117	35.30%
10 - after 9 yrs.	10-14	4	61,919	80,937	19,018	30.71%
11 - after 10 yrs.	11-14	3	64,193	80,937	16,744	26.08%
12 - after 11 yrs.	12-14	2	66,292	80,937	14,645	22.09%
13 - after 12 yrs.	13-14	1	68,261	80,937	12,676	18.57%
13 - after 12 yrs.	13-15	2	68,261	81,937	13,676	20.03%
13 - after 12 yrs.	13-16	3	68,261	82,937	14,676	21.50%

Again, during the life of the 2007-2012 Agreement, all employees who were employed for the duration of that contract received at least one step movement and most received more — as many as five step movements. From the above, it appears that only employees with 12 to 15 years of service prior to the phase in of step 14 received only one step movement over the life of the 2007-2012 Agreement. Those employees were at step 13 and then, because of the five year duration of the contract, could only move to step 14 when it was phased in (which has a seven year period until the next step movement to step 15). If an employee had 16 years of service prior to the phase in of step 14, that employee would move from step 13 to step 14 when step 14 was phased in and then, because the next step movement for step 15 occurs at 20 years,

that employee exceeded 20 years of service before the 2007-2012 Agreement expired and therefore moved another step to step 15.

[21] http://www.bls.gov/data/inflation_calculator.htm

[22] Again focusing on the Lane II Master's teacher which will be reflective of the remainder of the salary schedule, the BLS Inflation Calculator shows the following:

Inflation Calculator Salary Gains

Step	Annual Salary 6/30/07	Inflation Calculator - (6/30/07 Salary in 2012 Dollars	Annual Salary 6/30/12	6/30/12 Salary With Maximum Step Movements from 6/30/07
1-1st 12 mos.	43,204	47,887	50,542	63,025
2 - after 1 yr.	45,302	50,212	52,998	65,069
3-after 2 yrs.	47,576	52,732	55,657	67,526
4 - after 3 yrs.	49,676	55,060	58,114	69,981
5 - after 4 yrs.	51,774	57,385	60,568	72,436
6 - after 5 yrs.	53,874	59,713	63,025	75,096
7 - after 6 yrs.	55,622	61,651	65,069	77,552
8 - after 7 yrs.	57,721	63,977	67,526	79,856
9 - after 8 yrs.	59,820	66,304	69,981	80,937
10 - after 9 yrs.	61,919	68,630	72,436	80,937
11 - after 10 yrs.	64,193	71,151	75,096	80,937
12 - after 11 yrs.	66,292	73,477	77,552	80,937
13 - after 12 yrs.	68,261	75,659	79,856	82,937

[23] Union Brief at 8; Union June 13, 2012 Presentation; Union June 13, 2012 Presentation Exhs. 1-3.

[24] Board Final Offer at 1-2; Board Brief at 30-42.

[25] http://www.chicagotribune.com/news/education/ct-met-cps-student-violence-0625-20120626,0,2802957.story

[26] *See* Section 1 of the Act:

> It is the public policy of this State and the purpose of this Act to promote orderly and constructive relationships between all educational employees and their employers. ... [T]he General Assembly has determined that the overall policy may best be accomplished by ... (b) requiring educational employers to negotiate and bargain with employee organizations representing educational employees and to enter into written agreements evidencing the result of such bargaining ...."

See also, my award under the Act's sister impasse resolution process for police, security and fire employees in Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315/14 in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 7-8:

> ... [I]nterest arbitration is a *very* conservative process which does not impose terms and conditions on parties which may amount to "good ideas" from a party's (or even an arbitrator's) perspective. For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one. *See* my recent award in *City of Chicago and [Fraternal Order of Police, Lodge No. 7*, (2010)] ... at 6-7 [citation omitted, emphasis in original]:
>
> > ... "The burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken."
> >
> > As shown by the burdens placed on the parties to obtain changes to existing collective bargaining agreements, interest arbitration is a *very* conservative process. It would be presumptuous of me to believe that I could come up with a resolution satisfactory to the parties on these issues when the parties with their sophisticated negotiators could not do so, particularly after years of bargaining. For these issues, at best, the parties' proposed changes were good ideas from their perspectives. However, it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change.

The *Cook County* award is published at the Illinois State Labor Relations Board's website: www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf

The *City of Chicago* award is published at the Illinois State Labor Relations Board's website: www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Chicago%20&%20FOP%20Lodge%20No.%207%20(2010).pdf

[27] Board Brief at 16-17.

[28] Board Brief at 2.

[29] Board Brief at 2-4; Union Brief at 2-9.

[30] Board Brief at 2 ("The stakes have been raised by a new law that requires, for the first time, that the parties proceed through a fact-finding procedure as they negotiate towards a resolution.").

[31] Section 4.5(b) of the Act provides:

> (b) The subject or matters described in subsection (a) are permissive subjects of bargaining between an educational employer and an exclusive representative of its employees and, for the purpose of this Act, are within the sole discretion of the educational employer to decide to bargain, provided that the educational employer is required to bargain over the impact of a decision concerning such subject or matter on the bargaining unit upon request by the exclusive representative. During this bargaining, the educational employer shall not be precluded from implementing its decision. If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act. Neither the Board nor any mediator or fact-finder appointed pursuant to subsection (a-10) of Section 12 of this Act shall have jurisdiction over such a dispute or impasse.

Section 12(b) of the Act provides:

> (b) If, after a period of bargaining of at least 60 days, a dispute or impasse exists between an educational employer whose territorial boundaries are coterminous with

> those of a city having a population in excess of 500,000 and the exclusive bargaining representative over a subject or matter set forth in Section 4.5 of this Act, the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties. The procedure shall provide for mediation of disputes by a rotating mediation panel and may, at the request of either party, include the issuance of advisory findings of fact and recommendations.

[32] Scheduling Order at II(1).

[33] The parties' statements of disputed issues are attached as Appendices A and B.

[34] Scheduling Order at II(3). *See also*, Section 12(a-10)(3)(J) of the Act ("The fact-finder shall have the following duties and powers: ... to require the parties to submit final offers for each disputed issue either individually or as a package or as a combination of both ....").

[35] The parties' statements of final offers are attached as Appendices C and D.

As noted, the Scheduling Order directed to the parties to file final offers. Scheduling Order at II(3). The purpose behind final offer impasse resolution is to force parties to submit reasonable offers (with the parties knowing that the least unreasonable offer may end up getting selected) and hopefully therefore to get the parties sufficiently close in their offers so that the parties have a good chance of reaching a settlement. That does not always work (as here).

However, the Act does not require final offers. With respect to whether a final offer will ultimately be selected, the Scheduling Order provided that "[u]nless 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." Scheduling Order at IV. The parties were so far apart on so many issues that it is apparent that selection of a final offer will not work in all cases. Therefore, not all issues will be determined in this Report on the basis of final offers submitted.

[36] *See* Section 4.5(a)(4) of the Act.

[37] Board Final Offer at 1; Board Brief at 54-55.

[38] Union Final Offer at 2; Union Brief at 43.

[39] *See* discussion at VIII(C) and (D) addressing reopening insurance and wages in the out years of the Agreement.

[40] Union Final Offer at 2; Union Brief at 43-44.

[41] Board Final Offer at 2. The Board's proposes "... the establishment of a joint labor-management committee to negotiate a differentiated compensation plan ... that will correlate teacher compensation not only with solid evidence of performance (inclusive of both evidence of student performance and a substantial amount of actual classroom observation) and market factors, but also compensate teachers qualified to teach hard to staff subject areas, such as mathematics and science, as well as those teachers who work in underperforming or hard to staff schools, who assume various leadership and mentoring roles within the school building in progressive career ladders ... [t]he committee is established in the first year, with the goal of making recommendations on the specific parameters of differentiated pay in the third year with implementation in the fourth year of the agreement." Board Brief at 42-43.

[42] *Id*.

[43] Joint Exh. 1, Appendix A.

[44] Section 12(a-10)(4)(C) of the Act.

[45] Section 12(a-10)(4)(J) of the Act.

[46] Section 12(a-10)(4)(H) of the Act

[47] http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2012/survq212.cfm

[48] The Board also relies upon this forecaster. Board Brief at 41-42; Board Exh. 79 at 5. However, the Board argues that "[u]nder the Board's final offer on wages [2% per year], CTU members' wage increases will continue to exceed the cost of living as predicted by current forecasts, which are 2% or lower for 2012 and 2013." Board Brief at 41-42. The Federal Reserve Bank of Philadelphia's Second Quarter Survey of Professional Forecasters tracks two cost of living projections — "Headline CPI" and "Core CPI". "Headline" inflation data include more volatile indicators such as food and energy prices, while "Core" inflation data do not. *See Monetary Trends* (September 2007), "Measure for Measure: Headline Versus Core Inflation" ("... the 'core' measure — which excludes food and energy prices ... [while] the corresponding headline measure, which does not."). http://research.stlouisfed.org/publications/mt/20070901/cover.pdf

For purposes of setting wage rates, I have found that "Headline" cost of living data to be a more reliable indicator for determining wage rates based on the cost of living. *See Cook County Sheriff & County of Cook and AFSCME Council 31, supra* at 25:

> With respect to the CPI, the [Federal Reserve Bank of Philadelphia's] Survey distinguishes between "Headline CPI" and "Core CPI" — the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion.

The Federal Reserve Bank of Philadelphia's Survey shows the following cost of living percentage increase forecasts for "Headline CPI" and "Core CPI" (Board Exh. 79 at 5):

CPI (Q4/Q4 Annual Averages)

Year	Headline CPI	Core CPI
2012	2.3	2.0
2013	2.1	2.0
2014	2.5	2.2

The Board's lower figures for its cost of living argument come from examining "Core CPI" in that survey. *Id*. Because employees are directly impacted by energy and food costs, the higher Headline CPI figures are more appropriate.

The Board's reliance upon the Congressional Budget Office's January 2012, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022* (Board Brief at 41-42; Board Exh. 80) for the proposition that cost of living will be "... 2% or lower for 2012 and 2013" is not persuasive. As shown by Table 2-1 of that exhibit (*id*. at 27), the examination is based on "Core" and not "Headline" projections. Further, for 2012, the projection (fourth quarter to fourth quarter) is for an increase of 1.4%. *Id*. at Summary Table 2 at XV. However, the BLS cost of living data for the period January 2012 through May 2012 already shows increase at 1.4% for 2012:

Cost of living Increase
1/1/12 - 5/31/12

1/1/12	5/31/12	Difference	Percent Increase
226.665	229.815	3.15	1.4%

The fact that for the first five months of 2012, the cost of living data reflect the projection for the entire year in the Board's exhibit is no reflection on the Board's logic, but just shows how these projections can change in a short period of time and what different kinds of indicators exist. The more recent projections for headline figures for May 2012 are in the higher range which I find to be more current and reliable.

[49] *See* Sections 12(a-10)(4)(F) and (G) of the Act.

[50] *See* Section 12(a-10)(4)(I) of the Act.

[51] Board Brief at 35.

[52] Union Brief at 57.

[53] *See* Section 14(h)(4)(A) of the IPLRA, 5 ILCS 315/14(h)(4)(A).

[54] *See* Benn, "A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act," Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

> ... The parties in these proceedings often choose to give comparability the most attention. *See* Peter Feuille, "Compulsory Interest Arbitration Comes to Illinois," Illinois Public Employee Relations Report, Spring, 1986 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... *[o]f these three, comparability usually is the most important*.").

See also, my awards in *Village of Streamwood and Laborers International Union of North America*, S-MA-89-89 (1989); *City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5*, S-MA-89-74 (1990); *City of Countryside and Illinois Fraternal Order of Police Labor Council*, S-MA-92-155 (1994); *City of Naperville and Illinois Fraternal Order of Police Labor Council*, S-MA-92-98 (1994); *Village of Libertyville and Illinois Fraternal Order of Police Labor Council*, S-MA-93-148 (1995); *Village of Algonquin and Metropolitan Alliance of Police*, S-MA-95-85 (1996); *County of Will/Will County Sheriff and MAP Chapter #123, S-MA-00-123* (2002) and *County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council*, S-MA-00-285 (2002), where issues were decided by my placing heavy emphasis on comparable communities.

Interest arbitration awards under the IPLRA can be found at the Illinois Labor Relation Board's website:

http://www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm

[55] *See* my award in *North Maine Fire Protection District and North Maine Firefighters Association* (September 8, 2009) at 12-13
http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/North%20Maine%20FPD%20&%20IAFF.pdf:

> Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration

process) in the period after the drastic economic downturn again allowing for "apples to apples" comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.

Instead of relying upon comparables, in *ISP [State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726*, S-MA-08-262 (2009)] and *Boone County [County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council*, S-MA-08-010 [025] (2009)], I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index ("CPI").

[56] Section 47-2.2 of the 2007-2012 Agreement provides:

> Any adjustments to the increase of four percent for Fiscal Years 2009, 2010, 2011 and 2012 to Appendix A of this Agreement are contingent upon a reasonable expectation by the BOARD of its ability to fund the increases for Fiscal Years 2009, 2010, 2011 and 2012. Therefore, any adjustments to the scheduled increases to Appendix A for Fiscal Years 2009, 2010, 2011 and 2012 shall not be effective until and unless the BOARD adopts a Resolution no later than fifteen calendar days prior to the beginning of each Fiscal Year that it finds there is a reasonable expectation that it will be able to fund such increases for that Fiscal Year. In the event the BOARD fails to adopt timely such a Resolution, the UNION may, by written notice to the BOARD no later than ten calendar days prior to the beginning of the Fiscal Year in which the BOARD fails to adopt such Resolution, demand that negotiations begin anew with respect to Appendix A. In the event that said negotiations fail to result in an agreement, the UNION may, on thirty calendar days' written notice, terminate this Agreement and, accordingly, retains whatever lawful rights it otherwise might have under section 13 of the Illinois Educational Labor Relations Act, including the right to strike.

[57] Court Order of July 9, 2012 at 24, 32.

[58] *State-AFSCME Pay Case* at 21-23 [footnotes omitted].

[59] Section 47-1 of the Agreement provides:

> During the term of this Agreement, the Union agrees not to strike nor to picket in any manner which would tend to disrupt the operation of any public school in the city of Chicago or of the administrative offices or any other facility of the Board.

[60] http://www.cps.edu/PROGRAMS/DISTRICTINITIATIVES/FullDay/Pages/SchoolDay.aspx

[61] Union Brief at 7. The Bruno and Ashby study is found at:
http://www.ler.illinois.edu/labor/images/Teachers%20Activity-Time%20Study%202012%20(1)-Final.pdf

[62] *See* Section 4.5(b) of the Act.

[63] Referring to the impasse resolution process found in Sections 4.5 and 12(b) of the Act. the Board argues that "... any compensation increase based on working a full day and year are

outside the jurisdiction of the Neutral Chair and must be resolved through the exclusive dispute resolution procedure provided for such subjects." Board Brief at 6.

According to the Board (Board Brief at 7, note 6):

> On January 12, 2012, during a bargaining session, the Board submitted to the CTU formal notice of its decision to implement a full school and work day and year beginning with the 2012-2013 school year along with the details of such decision. (Exhibit 8). In this correspondence, the Board reaffirmed its commitment "to bargain promptly with your representatives *upon request* over the impact of the school and work year and day, *including compensation*, additional content for the day, and any other impact issues you might identify." *Id*. (emphasis added). Following this session, the CTU's counsel sent correspondence to the Board's counsel to "confirm [their] discussions of today" and stated as follows: "[T]he CTU does not at this time demand impact bargaining over length of the work/school day or length of the work/school year. At such time as the Union may demand impact bargaining, notice thereof will be provided in writing. In the meantime, any questions or comments pertaining to the letter are at your invitation and should not be misconstrued to constitute bargaining in any form." (Exhibit 9). The CTU has maintained true to its word and has not since demanded impact bargaining in any way.

The short answer to the jurisdictional question raised by the Board is that I have not been informed with finality by any duly established entity that I do *not* have jurisdiction to consider the matter. The parties did not implement the impasse resolution procedures found in Sections 4.5 and 12(b) of the Act. Further, the Board's argument that I do not have jurisdiction to consider this issue is the same as arguing that an arbitrator has no jurisdiction to consider a grievance under a collective bargaining agreement because the grievance is not arbitrable. It is well-settled that grievances are presumptively arbitrable must be considered unless it can be said "with positive assurance" that the governing language is not susceptible of an interpretation that covers the dispute. *See Steelworkers* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582-583 (1960): *Gateway Coal Co. v. Mine Workers,* 414 U.S. 368, 377 (1974); *Wright v. Universal Maritime Service Corp., et al.*, 525 U.S. 70, 77 (1998). Illinois follows the federal rule that grievances are presumptively arbitrable. *See Jupiter Mechanical Industries, Inc. v. Sprinkler Fitters and Apprentices Local Union No. 281*, 281 Ill. App. 3d 217, 221, 666 N.E.2d 781, 783 (1st Dist. 1996), appeal denied 168 Ill. 2d 593, 671 N.E.2d 732 (1996) ("Generally, where the interpretation of a collective bargaining contract is involved, there is a presumption of arbitration" [citing *Warrior & Gulf, supra*]).

The Board has not shown with any degree of certainty that I cannot consider the issue of additional compensation for the longer school day and year. I must therefore consider this issue.

The Board also argues that the Union "... has clearly and unmistakably waived its right to demand impact bargaining over all impact issues related to the full school and work day and year." Board Brief at 6-7. I disagree.

Waivers of statutory rights (here, the right to engage in impact bargaining), must be clear and unmistakable. *See Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) [footnote omitted]:

> ... [W]e will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is "explicitly stated". More succinctly, the waiver must be clear and unmistakable.

The Union stated in its January 12, 2012 letter that it "... does not *at this time* demand impact bargaining over length of the work/school day or length of the work/school year." Board Exh. 9 [emphasis added]. The decision to not demand impact bargaining "... at this time ..." does not constitute a "clear and unmistakable" waiver of the right to engage in impact bargaining. The Union just declined to exercise its statutory right "... at this time ...." That is not a waiver. Just as easily, that response can be interpreted as a delay in the exercise of a right.

The real answer to the technical disputes over whether, in this particular case, I can consider compensation for the extended school day and year comes from the Act. Additional compensation for the longer school day and year is *the* issue in this case. For me to ignore that most important issue which, standing alone, may well be the issue which sets off a strike putting up to 25,000 teachers on the street and keeping 400,000 students out of school on argu-

ments that are, for all purposes, technicalities, will be completely contrary to my direction under Section 12(a-10)(3)(K) of the Act "to employ any other measures deemed appropriate to resolve the impasse" and Sections 12(a-10)(4)(E), (M) and (N) of the Act which gives the Panel authority to consider "the interests and welfare of the public and the students and families served by the employer ... 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 ... the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State." To ignore this issue on technicalities which have not been decided or have not been shown to have strong legal footing will leave the elephant in room firmly remaining in the room. I choose not leave that elephant lounging in the room and I will address the compensation issue for the longer school day and year. The issue, in this case, is just too important to ignore.

[64] Union Brief at 8; Union June 13, 2012 Presentation; Union June 13, 2012 Presentation Exhs. 1-3.

Union June 13, 2012 Presentation Exh. 3 summarizes the calculations (which utilized the Board's Full School Day Principal Guides for Elementary and High Schools (April 2012 revisions) as well as correspondence between the parties (Board Exh. 8)):

Effect of CPS Longer School Days on Teacher Work Hours

Elementary Schools:

	Current	Announced	
Instruction	276	315	
Supervision	17	15	
Planning/PD	62	85	
Total	355	415	+16.9%

High Schools:

	Current	Announced	
Instruction	244	276	
Passing	32	36	
Planning/PD	99	102	
Total	375	414	+10.4%

Total Teacher Attendance Days:

Current	Announced
183	190

Total Minutes Worked (Daily minutes x teacher attendance days):

	Current	Announced	
Elementary	64,965	78,850	(+21.4%)
High School	68,625	78,660	(+14.6%)

Weighted average increase among all teachers: **19.4%**
(70% elementary, 30% high school)

From the Union's calculations (which have not been challenged), the "weighted average" of 19.4% is computed as follows:

Increased elementary school hours = 21.4%
Increased high school hours = 14.6%
70% of teachers are in elementary schools
30% of teachers are in high schools

21.4% x .70 = 14.98%
14.6% x .30 = 4.38%
19.36% = 19.4%

[65] *See* Bruno and Stevens, *supra*.

[66] Board Brief at 27.

[67] Board Brief at 28-30.

[68] Board Brief at 39-41.

[69] Union June 13, 2012 Presentation; Union June 13, 2012 Presentation Exhibits 1-3.

[70] Union Final Offer at 2.

[71] As earlier noted, the cost of living changes covers the period July 1, 2007 through May 31, 2012 — 59 of the 60 months covered by the 2007-2012 Agreement. The June 2012 information is due out from the BLS on July 17, 2012 — one day after the issuance of this Report. Should the June 2012 cost of living data change the computation for cost of living data over the 60-month period covered by the 2007-2012 Agreement, the calculation should be adjusted to address that change.

[72] 2003-2007 Agreement, Appendix A1D-1 at p. 216.

[73] Looking at the three positions on wage increases (the Board's, the Union's and the one recommended by this Report) and assuming the Board keeps the longer school day and year at the presently stated levels, the salary schedule for Lane II Master's, step 8 teachers (paid at $67,526 as of June 30, 2012) will look as follows:

Comparison of Salary Increases — Lane II Master's Step 8

Date	Board (2%, 2%, 2%, 2%)	Union (22%, 3%)	This Report (Adjustment for 1st year for longer school day and year, then 2.25%, 2.25%, 2.5%, 2.5%)
7/1/12	68,876	82,382	77,749
7/1/13	70,254	84,853	79,498
7/1/14	71,659	(No offer)	81,486
7/1/15	73,092	(No offer)	83,522

[74] Board Final Offer at 4-5; Board Brief at 46-53.

[75] Union Final Offer at p. 37.

[76] Board Brief at 45; Joint Exh. 1 at Appendix B.

[77] Joint Exh. 1 at Appendix B, p. 200:

> Effective July 1, 2007
> Employee health care contributions as a result of wage increases shall be frozen for benefit (calendar) years 2008, 2009 and 2010 with a conversion effective January 1, 2008 after open enrollment. To effectuate the freeze on employee health care contributions, the above percentages shall be applied to the salary

> schedules in effect as of June 30, 2007, thereby creating flat rate contributions for each plan that correlate to each step of the salary schedules.
>
> * * *

[78] Board Brief at 44-45 [emphasis in original, footnote omitted].

[79] Joint Exh. 1, Appendix B at pp. 202-204.

[80] Board Brief at 45, note 37.

[81] Board Final Offer at 4; Board Statement of Disputed Issues at p. 45; Board Brief at 46.

[82] Board Brief at 46, note 38.

[83] Board Brief at 47.

[84] Board Final Offer at 5; Board Brief at 48-50.

[85] Board Brief at 50-52.

[86] Board Brief at 44; Board Exhs. 39 at p. 44; 83 at p. 40.

[87] Union Statement of Proposals at p. 37.

[88] A Lane II, step 3 Master's teacher in June 2007 made 5 step movements taking that individual to step 8 which, at the July 2010 rate earned $67,526. $67,526 + 2.25% = $69,045.

[89] The internet version is found at:
http://www.nytimes.com/2012/07/01/business/health-care-ruling-lets-the-system-evolve-economic-view.html?_r=1&pagewanted=all

[90] The internet version is found at:
http://www.chicagotribune.com/business/ct-biz-0703-corp-exchanges--20120703,0,735742.story?dssReturn

[91] Board Brief at 47-48. *See* Sections 32-1.1 and 32-3 of the 2007-2012 Agreement.

[92] Board Brief at 48.

[93] Joint Exh. 1 at Sections, 33-7, 33-8, 37-1, 37-3; Board Brief at 52-53; Board Statement of Disputed Issues at p. 43.

[94] *Id*.

[95] Board Brief at 52-53; Board Exh. 39.

[96] *Id*.

[97] Board Statement of Disputed Issues at p. 43; Board Brief at 53-54.

[98] *Id*.

[99] Union Statement of Proposals at p. 38.

[100] Union Brief at 21.

[101] Union Brief at 21-22.

[102] Union Brief at 22. *See also*, the Illinois Supreme Court's decision in *Chicago Teachers Union, Local 1 v. Chicago Board of Education*, 963 N.E.2d 918, 357 Ill. Dec. 520 (2012) (holding that neither section 34-18(31) nor section 34-84 of the School Code, considered separately or together, gives laid-off tenured teachers either a substantive right to be rehired after an economic layoff or a right to certain procedures during the rehiring process).

[103] Union Brief at 23.

[104] *Id*.

[105] Union Statement of Proposals at pp. 30, 40, 48 and Appendix H.

[106] Union Brief at 9-20, 27-43.

[107] Section 12(a-10)(4) of the Act.

BEFORE
FACT-FINDING PANEL

Edwin H. Benn (Fact-Finder and Neutral Chair)
Jesse J. Sharkey (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. 12.178
	)	(Fact-Finding)
Chicago Teachers Union,	)	
Local 1, American Federation	)	
of Teachers, AFL-CIO,	)	
	)	
Union.	)	

SEPARATE OPINION OF PANEL MEMBER JOSEPH T. MORIARTY
AT THE CONCLUSION OF FACT-FINDING

I concur in part and dissent in part with the Neutral Chair's recommendations. I have appended here what I believe are the undisputed facts and the governing legal principles on which I base this opinion.

I think it necessary to state that it was an honor to serve on the panel with the Neutral Chair and my counter-part, CTU Vice President, Jesse Sharkey. Mr. Sharkey is an effective advocate for his members. The Neutral Chair is a long-time labor arbitrator for whose work and efforts I have great respect and admiration. Regrettably, I fear that in his zeal to mediate a settlement and to force compromises that either one or both of

the parties cannot or would not accept, he has come to a seriously flawed recommendation.

I must begin by stating my overall disappointment in the Neutral Chair's failure to remain within the limits of his lawful authority in devising his recommendation. In particular, his recommendations on issues explicitly beyond his legal purview disregards the reform legislation overwhelmingly passed by the General Assembly last year with the support of all stakeholders, including the CTU, and, in so doing, harms the credibility of the recommendation.[1]

Moreover, if accepted by the parties to this process, the Neutral Chair's recommendation would result in nearly 4,000 teacher layoffs and an explosion in class sizes throughout the system. That result is unacceptable.

The Neutral Chair is worried about the prospect of a CTU strike, a strike he appears to recognize is illegally motivated, conspicuously so. His worry over that prospect is legitimate and I share it. A strike will impact the health, safety and well-being of hundreds of thousands of young people in our City. A strike could unravel years of significant, though as yet insufficient, gains in this school system. A strike could reverse positive trends that have brought greater economic and racial diversity to our student population. A strike could be devastating to our City, our students and our teachers and other employees.

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[1]Even though he lacks jurisdiction over the issue, the Neutral Chair decided to issue a recommendation on salary increases for the FSD/FSY because the issue "is just too important to ignore." (Report at note 62). The Neutral Chair even suggests that the issue of the FSD/FSY "may well be the issue that sets off a strike" when the law clearly prohibits such a strike. A fact-finder is simply not permitted to substitute his judgment for the mandates and prohibitions of the General Assembly.

It is no small irony that the process that was created to level the bargaining playing field by dulling the threat of a legal strike has now been taken captive and overwhelmed by the threat of what would likely be an illegal strike. Indeed, such is the worry of the Neutral Chair about the impending ordeal that he has, in my view, elected to utterly disregard the law and the salient facts. As stated, I share the Neutral Chair's sentiments about the prospect of a strike but I think it's a mistake to ignore the legal principles that all stakeholders in Illinois public education, *including the CTU*, agreed to little more than a year ago in the vain hope of avoiding one.

Rather, I believe that a proper application of the law should have resolved the disputed issues in the following manner:

A. Compensation. Any discussion of compensation should begin with an analysis of how our teachers have been compensated historically and how they compare to teachers in other large urban school districts. It also must take into account the district's financial wherewithal and the shrinking resources available to it to do its work. State law requires that both be considered. CPS teachers deserve to be and are well paid. Their jobs are extraordinarily important. They face a host of seemingly insurmountable challenges – including, to name just a few of them, material and other resource shortages, underprepared students, students distracted by inadequate nutrition, disabilities, violence, adult responsibilities and more - and every day, with few exceptions, 22,000 of them meet those challenges.

The Board and Chicago taxpayers have paid and, no matter what the terms of the successor agreement, will continue to pay CPS teachers very well. As the Neutral

Chair demonstrated, over the course of the last five years, CPS teachers have received increases that were as high as 41.97% even after cancelling the 4% increase to the salary schedule for the 2011-12 school year. As compared to the ten largest urban school districts in the nation, CPS teachers rank either first or second in salary as illustrated in Table 1 below. The average salary for a CPS teacher is $76,949, about $7,695 per month over the course of their 10-month schedule.

Table 1 - Teacher Salaries in the 10 Largest Urban Districts[2]

	BA Min	BA Max	MA Min	MA Max	PhD Min	PhD Max
New York City	$ 45,530	$63,006	$51,425	$68,901	$57,320	$74,796
Los Angeles	$ 45,637	$52,406	$46,221	$52,990	$46,805	$53,574
Houston	$ 44,987	$66,182	$46,017	$69,550	$47,047	$72,920
Philadelphia	$ 45,360	$67,705	$46,694	$76,462	$51,866	$86,715
San Diego	$ 38,347	$60,003	$40,687	$64,475	$47,709	$78,416
San Jose	$ 43,436	$76,924	$46,012	$79,599	$46,012	$79,599
Dallas	$ 45,100	$64,256	$46,100	$70,196	$48,100	$72,266
Phoenix (HS)	$ 37,317	$47,055	$38,446	$59,330	N/A	N/A
Phoenix (Elem)	$32,039	$38,965	$34,394	$53,011	N/A	N/A
San Antonio	$43,650	$53,654	$45,650	$55,654	N/A	N/A
Average	$41,140	$58,716	$44,165	$65,017	$49,266	$74,041
Chicago	$50,577	$85,135	$54,080	$88,743	$61,087	$95,957
Chicago % of Average	*120.0%*	*145.0%*	*122.5%*	*136.5%*	*124.0%*	*120.0%*

The challenge for the Neutral Chair in this case was to consider the history of generous CPS compensation packages, current CPS teacher compensation vis-à-vis

[2]Chicago ranks first in salary paid to teachers in large urban districts based on salary tables. Some NYC teachers may overtake CPS teachers in some instances due to added longevity bonuses. CPS teachers currently work a 38.6 week schedule, excluding 2 one-week paid vacations, at 6.25 on-site hours per day. When salaries are converted to an hourly rate for the on-site time requirement for comparison purposes, the Chicago rate far exceeds the statutory comparables.

comparable districts, the district's current fiscal challenges, including the looming "pension cliff" that will drain an additional $338 million from operating funds in FY2014 and even more in the years beyond, and strive to align them so that the Board can reasonably accomplish its educational mission for the benefit of the City's school children while fairly compensating teachers. Regrettably, he was well-wide of the mark.

The Neutral Chair's recommendation includes a "cost of living adjustment" (COLA) and what I describe as a "FSD/FSY premium." They require separate analyses.

1. The COLA Adjustment. Applying the statutory factors to the Union's wage demand, the Neutral Chair should have accepted the Board's offer of 2% per year and suspended lane and step adjustments for the contract term. That offer keeps CPS teachers on pace with its statutory comparables and it exceeds the cost-of-living for the Chicago metropolitan area over the last five years and its current pace.[3]

The Neutral Chair's recommended COLA adjustment is fiscally reckless and inconsistent with many of the principles and pronouncements concerning COLA adjustments to compensation in his analysis of the prior contract. Using a teacher at Lane II, Step 8, as the Neutral Chair did in a different part of his analysis, the recommended increases of 2.25%, 2.25%, 2.50%, 2.50% with steps would increase that teacher's salary from $67,526 to $85,186 or by $17,660 over the course of the 4 years. As illustrated in Table 2, that amounts to an average salary increase of more than 6.5%

[3] The average CPI-U increase over the last 5-years for the Chicago metropolitan area was 2.09%. In 2012, its pace is 1.6%.

per year, which is well in excess of cost-of-living increases in the Chicago metropolitan area.[4]

Table 2 – Recommended Step Increases for a Lane II, Step 8 Teachers

	Current	2012-13	2013-14	2014-15	2015-16	Increase	% Inc.
8	$67,526	$69,045	$70,599	$72,364	$74,173		
9	$69,981	$71,556	$73,166	$74,995	$76,870		
10	$72,436	$74,066	$75,732	$77,626	$79,566		
11	$75,096	$76,786	$78,513	$80,476	$82,488		
12	$77,552	$79,297	$81,081	$83,108	$85,186	$17,660	26.15%

The great salary enhancer in all of this is steps, not the COLA percentage, as the Neutral Chair noted in his analysis of the prior contract. As shown in Table 3, without steps, that same teacher would increase his or her salary by $6,647 over the 4 years, or an average of just under 2.5% per year.

Table 3 – Increases for a Lane II, Step 8 Teacher without Step Increases.

	Current	2012-13	2013-14	2014-15	2015-16	Increase	% Inc.
8	$67,526	$69,045	$70,599	$72,364	$74,173	$6,647	9.84%

As the Neutral Chair noted, increases on the magnitude of 6.5% a year were generous in the extreme for the period of 2007-2012. They are absurd for the period of 2012-2016 given the Board's fiscal condition and the funding and pension cliffs it faces

[4] These numbers do not include the pension pick-up benefit paid for by the Board. When that is calculated, the hypothetical teacher's salary increases from $72,253 to $91,149. That benefit, in which the Board pays 7% of the employee's pension contribution, equals $5,300 to $6,300 per year in additional net pay to the teacher or $23,440. It cannot be ignored.

during the term of this contract. The Neutral Chair ignored those factors. He should not have.

Additionally, the recommendation is not educationally sound. The Board has budgeted 2% for 2012 for salary increases this fiscal year and it had to drain its reserves just to do that. Each percentage point costs the Board $20 million. Thus, just the COLA recommendation will increase the Board's budget by at least $180 million over the term of the contract. Using the nearly $77,000 average teacher salary, this recommendation could result in nearly 2,300 teacher layoffs just to pay for a COLA adjustment, the domino effect of which would be hefty increases in class size. Recommending that the Board accept those costs and that teachers endure the burden of layoffs and added work load of higher class sizes so that the sacred cow of "steps" can be maintained is not in the best interests of Chicago's school children. Steps should be suspended for the life of the contract.

The Neutral Chair should have accepted the Board's offer. At the very least, he should have suspended steps during the life of the contract.

2. <u>The Full School Day/ Full School Year (FSD/FSY) premium.</u> At the outset, it is clear that the Neutral Chair appears to take some offense at the manner in which the FSD/FSY has been rolled out or at least the asserted "unilateralness" of it. More than once he reminds us that the Board controls this and can change it. He ignores the history of the longer school day, the reasons that the Board has been empowered to act unilaterally and the course of bargaining over the FSD/FSY. The result is that he

assumes authority that the law does not give him. Moreover, even accepting his method of calculating his FSD/FSY premium, he ignores the "real money" step increases given to teachers and fails to give the Board full credit for what it has paid over and above COLA in the recent past.

First, the FSD/FSY issue has its genesis in a perniciously-used provision of the CTU collective bargaining agreement that permits elementary schools to schedule 45-minute teacher lunches at the end of the day and 20 minute breaks in the middle of the day, both at the expense of at least 45 minutes per day in instructional time, recess and other educational activities for school children. This has caused elementary school children in Chicago to have an absurdly short instructional day that leaves CPS unable to provide them with anything more than the bare minimum in instructional minutes required by State law.

As the CTU has noted previously, it has come to view this shortened elementary day as a dearly-held perk. Indeed, in prior negotiations, the Board has tried to rectify this by proposing to extend the day. The CTU response has been consistently and resoundingly negative. Indeed, the CTU voted to strike in 2003 unless seven days were shaved off the calendar in order to compensate them for adding a mere 15 minutes to the short school day, only seven of which were instructional. And so, to break that deadlock, the General Assembly gave the Board the power to lengthen the school day unilaterally.

But even so empowered, the Board did not act unilaterally. The CTU president declined repeated Board invitations to participate with educators, public officials, community leaders and parent groups in planning for the FSD/FSY back in September 2011. Then the Board invited the CTU to bargain with it over the impact of the FSD/FSY in January 2012 and repeatedly after that and it has refused. CTU has never engaged the Board in an honest discussion on the FSD/FSY. Instead, at the bargaining table, it has made proposals to have teachers maintain their current 7-hour schedule but to reduce their contact with students, in some, if not all cases, to under two hours per day, while having 40-minute breaks, 45-minute lunches and the rest of their time preparing for their fewer than two hours of daily instruction. The Neutral Chair's apparent offense at the Board's use of its authority is unjustified. Regardless, it should not have impelled him to ignore the law. And he surely did.

Second, as stated, the Neutral Chair assumed authority that the law not only does not give him but authority that the law explicitly denies him. He cannot issue a recommendation on the impact on compensation for the FSD/FSY. That does not, as CTU sometimes suggests, mean that the CTU does not have a forum to address that issue. It does. It's just a different forum that CTU has refused to invoke.

Third, while his calculus for the FSD/FSY premium (2007 salary increased by the 10.33% actual cost-of-living between 2007 and 2012, increased by the percentage of added minutes to the day) is creative, there are two fundamental problems with his approach and method:

(1) Teachers are professional employees whose work is primarily intellectual. Reducing their compensation to a minute by minute payment for service is completely at odds with how professionals are paid and what we expect of professionals.

(2) The Chair only gives the Board credit for COLA increases to the salary schedule over the last contract. He does not factor in steps. As shown above, those steps do indeed signify very "real money," as the Neutral Chair noted, both to teachers and to taxpayers and should not be taken for granted in this calculation.

If steps were taken into account, the FSD/FSY premium would have been zero even using this formula.

Fourth, the Neutral Chair failed to take into account the impact of his recommendation educationally and fiscally. The combined effect of the Chair's recommendation for COLA, steps and the FSD/FSY premium is a near 17% increase in teacher salaries in the 2012-13 school year. The additional 15% over what has been budgeted would add approximately $300 million in costs to next year's budget. To meet it, the Board would have to layoff something on the order of 3,950 teachers and increase class sizes enormously. The Hobson's choice leveled by the Chair is to keep CPS students at subpar numbers of instructional minutes while paying teachers at the top of the salary ranges compared to their counterparts while they teach less time than their counterparts. That's fiscally and educationally unsound and not in the interest of school children.

In conclusion, on the issue of compensation, as a matter of law and fact, the Chair should have adopted the Board's recommendation of a 2% increase and a

suspension of steps and lanes for the duration of the contract. He should have awarded nothing for the FSD/FSY and remanded that issue to the legally required process.

B. Duration. I concur with the Neutral Chair's decision to recommend a four-year agreement, which was the offer advanced by the Board, but for slightly different reasons. Despite the tumult, I have a much more optimistic view of the parties' current and future relationship. They can and do work together every day –in schools and in conference rooms at 125 South Clark Street and in the Merchandise Mart -- for the benefit of school children because, above all else, they share a common and sincere interest in protecting and nurturing them. Their ability to work together will not be enhanced by annual or biennial show downs. The parties and the system need quiet time so that the parties can concentrate on the important collaborative work in which they have and will continue to engage for the benefit of Chicago's school children including implementation of Common Core State Standards, restorative justice programs and effective response to intervention (RTI) programs. For these reasons, I concur with the Neutral Chair's recommendation on duration.

C. Health Care. I agree with much of the Neutral Chair's recommendations and conclusions on health care.[5] The Board's costs are rising significantly and its

[5] I have to note however that the recommendation contains several errors, omissions or inconsistencies. First, the Board's proposal was to increase the emergency room co-payment from $125 to $150 effective January 1, 2013 *and then to increase it by $25 each successive calendar year until non-emergency cases presented at emergency rooms fell below the levels present in 2010.* The Board is unclear as to whether this omission was unintentional or if this portion of the proposal was rejected. Second, the Neutral Chair ignored the Board's proposal for a graduated contribution differential for tobacco users based on salary. Finally, the Neutral Chair did not recommend the Board's proposal that employees on certain leaves of absence who wish to remain on the health care plans be required to pay the full cost of coverage, which was an integral part of the Board's package health care proposal.

proposals are innocuous or beneficial to employees. The proposed increases in premiums for couple and family coverage are modest and the wellness program with premium differential is in the interests of our employees. But his failure to adopt the Board's full offer coupled with a recommendation for a re-opener on wages and health care with a condition of interest arbitration compels me to dissent on his recommendation on this issue. Those recommendations are beyond his authority and will not create the much-needed stability in this relationship.

D. Sick Days. I dissent on the Chair's recommendation on sick days. The Board's proposal protects employees' current sick day banks and permits them to be paid out in the future on the same terms as exist today. The proposal makes future sick days "use or lose" while giving all employees a short-term disability benefit, which the Neutral Chair recognizes as extremely generous. But he conditions sick day reforms on *even more compensation for as yet unearned sick days* to a subset of employees, which is a budget-busting deal killer that deprives all employees of a very good benefit. The recommendation is extremely short-sighted and contrary to the collective interests of the Board's employees.

E. Job Security. I concur with the Neutral Chair that no recommendation should be made on the Union's job security proposals. As with the FSD/FSY, this panel has no statutory authority over that issue. The CTU and the Board have been embroiled in seemingly endless litigation on this issue since 2010. The courts, labor boards and labor arbitrators have consistently and uniformly sided with the Board on this important issue. The Board has made an offer to CTU to help ameliorate the

harmful effects of layoffs on tenured teachers in a targeted way while controlling the Board's costs. The CTU thinks it ungenerous. But its own demands on this issue violate state law. The Neutral Chair correctly finds that the issue cannot be decided here but it's an issue ripe for further discussion.

F. **Illegal Provisions.** The CTU contract has been treated by the CTU as an historical document – almost a religious relic -- that cannot be altered. Provisions negotiated in 1968 over mimeographing and in 1976 over social workers schedules and in 2007 over probationary employees and at all points in between remain even though time and the law - the Illinois School Code in particular - have passed them by. I would excise from the agreement all that is illegal – namely provisions that shorten teacher probationary periods, provisions that mandate that principals hire or appoint by seniority, and provisions that conflict or are inconsistent with the Performance Evaluation Reform Act. A committee on those issues is unnecessary and likely to yield only disputes. However, I would have created a committee to clean up the obsolete language. Accordingly, I dissent on this issue as well.

III. The Conclusion. . . . and the Beginning.

I concur in part and dissent in part for the reasons stated above. Regrettably, the fact-finding process has failed in this case. It has not produced a basis for further negotiation or a path forward to resolve this dispute. That is disappointing.

My comments in dissent should not be construed as advocating stridency in bargaining. I have said to my colleagues many times during the course of these

negotiations, which began in November 2011, that CTU has not really bargained with the Board yet, that its canny strategy has been to wait to take a strike vote (whether legal or not) and to get the fact-finding hurdle behind it before it begins bargaining in earnest. And so now it must begin.

Reasonable compromises on the issues that divide the Board and its teachers can and must be reached for the good of the system and the welfare of the City's school children. But time has run short. In a few short weeks, nearly half our school children will resume regular classes. The momentous issues of the future of public education in the City and the futures of those school children are now upon us. What remains to be is seen is whether CTU will use its voice for the benefit of school children or for the parochial interests within its own complex organization which so often in the past have acted as an impediment to creation of the schools our children deserve. We have to hope for the former.

Respectfully submitted,

BOARD OF EDUCATION OF THE
CITY OF CHICAGO

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BEFORE
FACT-FINDING PANEL

Edwin H. Benn (Fact-Finder and Neutral Chair)
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In the Matter of the Fact-Finding between	)	
	)	
Board of Education of the City of Chicago,	)	
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and	)	Arb. Ref. 12.178
	)	(Fact-Finding)
Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO,	)	
	)	
Union.	)	

APPENDIX TO OPINION OF PANEL MEMBER JOSEPH T. MORIARTY

I. UNDISPUTED FACTS

The undisputed facts are as follows:

A. The current student school day and year.

1. CPS provides its students with the bare minimum of instructional minutes required by law—an average of 308 minutes per day over the course of 170 student attendance days.

2. In the vast majority of CPS elementary schools, teachers are scheduled to take their 45-minute duty-free lunch period at the end of the school day, which eliminates a 45-minute lunch for students and reduces a student's instructional day by 20 minutes.[1] In these

[1] This reduction in instructional time occurs because teachers' 2 10-minute break periods are combined to provide a 20-minute teacher and student lunch period in the middle of the school day, even though a 45-minute duty-free lunch period is scheduled for teachers at the end of the school day.

schools, recess and other educational opportunities cannot be provided for students as a result of the shortened lunch period.

3. As a result of the short school day, principals are limited in their abilities to provide both the minimum instructional minutes and enrichment opportunities to students, such as art, music, foreign language and technology.

4. Comparable urban districts provide elementary students a longer school day and year that includes recess and enrichment opportunities.

5. Comparable urban districts provide high school students with a longer school day and year.

B. *The 2011-2012 teacher work day and year.*

6. Under the default contractual schedule, elementary teachers are required to be onsite for seven hours, including a 45-minute lunch. They teach 296 minutes per day for 170 days per year, which is 50,320 minutes per year. However, most elementary school teachers are on-site for 6.25 hours and teach 276 minutes per day because they take their lunch at the end of the day and have a 20-minute lunch period at mid-day.

7. The expired agreement provides for a variety of schedules for high school teachers in which they were required to be onsite for seven hours and teach up to 250 minutes per day for 170 days per year, which is 42,500 minutes per year.

8. As a result of the short school day, principals are unable to schedule the necessary amount of preparation and collaboration time that teachers deserve to improve their practice through lesson planning, mentoring and professional development.

C. *The 2012-2013 planned Full School Day and Year ("FSD/FSY")*

9. The Board has adopted a school and work day for elementary school teachers that will require them to teach 315 minutes per day for 180 days per year, which is 56,700

minutes per year. The 56,700 minutes per year is 6,380 minutes above the 2011-2012 requirements, which is a 13.00% increase in instructional work time.

10. The Board has adopted a school and work day for high school teachers that will require them to teach up to 271 minutes per day for 180 days per year, which is 48,780 minutes per year. The 48,780 minutes per year represents a 15.00% increase in instructional work time. This maximum is, however, only reached if teachers are required to teach 6 classes. For the 2012-2013 school year, two-thirds of the high schools will require teachers to teach between 248 and 251 minutes per day. When these figures are measured against the 250-minute current allowable maximum, these teachers will actually teach between 2 minutes fewer to 1 minute more than the current maximum, which is between 44,640 and 45,180 minutes per year. These figures represent up to a 6.00% increase in instructional work time due mostly to the 10 additional student attendance days.

D. *Teacher salaries in the Chicago public school system.*

11. CPS teachers' salaries average $76,949 including the seven percent pension pick-up.

12. Over the term of the expired agreement, teachers received overall salary increases ranging between 36.77% and 41.94% even after taking into account the cancelation of the 4% salary table increase in the 2011-2012 school year.

13. Over the term of the expired agreement, at least 91% of all teachers received step increases—in addition to the 4.00% general wage increases 4 years in a row—with the vast majority receiving multiple step increases year after year. Step increases range from 1.14% to 5.35% with an average step increase of 3.41%.

14. Teachers and PSRPs contribute 9.00% of their salaries towards their pensions but the Board "picks up" 7.00% of this contribution on behalf of the employee, which decreases the employee contribution to 2.00% and increases the employee salary by 7.00%. This so-called "pension pick up", in addition to increasing teacher and PSRP net income by 7.00%, is not taxed.

15. Teachers and PSRPs do not contribute to social security and have no withholding for that purpose, which increases their net pay by approximately 4.25% above average workers.

16. Teachers are able to enhance their salaries through a number of available stipends, increments and additional work opportunities. These increases are earned through such manners as becoming a National Board Certified Teacher, being a clinician, teaching driver's education, coaching sports, participating in after-school programs and teaching summer school.

E. *The Board's denial of the 4% increase in 2011.*[2]

17. The CTU has consistently maintained that in times of economic distress, the Board should use the contract escape clause and cancel the increases instead of laying off those teachers. *See*, Chicago Teachers Union and the Board of Education of the City of Chicago, (Case No. 2011-CA-0033-C). *See also*, Chicago Teachers Union and the Board of Education of the City of Chicago (Grievance Nos. 10-07-129; 10-07-163; Cohen).

18. In 2011, when the Board faced a deficit of more than $700 million, it decided to cancel the 4.00% contractual wage increase for all represented employees to save $100 million and avoid teacher layoffs and potential class size increases.

[2] I have included this fact here only because the Neutral Chair has referenced alleged teacher "rage" over the cancelation of last year's 4% increase to the salary schedule as a consideration in this matter. CTU takes very inconsistent positions on this point. When it contests layoffs, CTU maintains that the Board should take the 4%; when it contests withholding of the increase, it takes the opposite position. It's a no-win situation for the Board and its teachers.

19. During the term of the recently expired collective bargaining agreement, consumer price index- urban in the Chicago metropolitan area increased an average of 2.09% per year.

20. During the 12-month period ending May 31, 2012, the consumer price index-urban for the Chicago-Gary-Kenosha metropolitan area showed a 1.0% increase for all items and a 1.6% increase for all items less food and energy. (See, http://www.bls.gov/ro5/cpichi.htm)

F. *Teacher salaries in comparable urban school districts.*

21. CPS teachers are the highest paid among the 10 largest urban school districts, exclusive of additional and separate longevity payments or analogous payments.

22. CPS teachers have remained largely immune from the significant economic concessions that have been imposed upon their counterparts in public school districts in the nation's ten largest cities during the Great Recession. From coast to coast, comparable public school districts that have faced massive budget deficits and severe fiscal crises, like the one CPS is now in, teachers have made dramatic and repeated economic concessions.

- In Los Angeles, over the course of the last three years, teachers have taken a total of 16 unpaid furlough days and their base salaries have been set by a salary schedule frozen at 2008-2009 levels. In June 2012, in order to save upwards of 4,000 positions and avoid layoffs, Los Angeles teachers agreed to take 10 unpaid furlough days during the 2012-2013 school year.

- In New York City, teachers agreed to concessions in order to save 4,100 teaching positions and avoid layoffs.

- In San Diego, teachers have taken 10 unpaid furlough days since 2010, resulting in a 2.7% decrease in their annual salary; in June 2012, they agreed to the cancellation of 7% general wage increases, and further agreed to 10 unpaid furlough days over the course of the next 2 school years.

- Philadelphia teachers recently negotiated a 1-year contract extension that provided for 0% general wage increases.

- Teachers in Phoenix, Houston, San Antonio and Dallas received 0% general wage increases for the 2011-2012 school year.

G. *CPS's finances and budget.*

23. At the time of this submission, the Board has published a proposed budget for Fiscal Year 2013 and is currently conducting public budget hearings regarding such budget. To balance CPS's FY2013 operating budget of $5.162 billion, CPS was forced to close a deficit of $665 million. To balance this budget, CPS implemented $144 million in administrative and operating expenditures outside of the classroom and by redirecting centrally-run education programs. The remaining deficit was then closed by raising property taxes to the maximum allowable amount and by draining $432 million from CPS's fund balance.

24. CPS has committed $130 million in new discretionary funding for schools to provide the local school communities and principals with the resources necessary to implement the FSD/FSY in a manner that ensures the longer day is a better day with recess, enrichment and teacher preparation and collaboration time.

25. For FY2014, CPS continues to project a deficit in the area of $1 billion. This projection is driven by the staggering increase in CPS's employer pension contribution for next year---from $197 million in FY2013 to $535 million in FY2014---caused by the end of the 2010 pension relief legislation. The projection is also driven by the extraordinary amount of $548 million for debt service payments that CPS will be required to set aside out of its operating funds in FY2014. Finally, these projections are soundly based on flat revenue assumptions from both state and local sources, no increase in local revenue, no increase in employee

compensation, a conservative 8.00% increase in health care costs and the need to account for the one-time resources used to close the FY2013 deficit (i.e., the draining of the fund balance).

26. For FY2015 and beyond, absent pension reforms and school funding reforms, deficits will sky-rocket. The deficit projection for FY2015 is already at $1.3 billion.

H. The bargaining history over the FSD/FSY.

27. On January 12, 2012, during a bargaining session, the Board formally notified the CTU verbally and in writing of its decision to implement the FSD/FSY beginning with the 2012-2013 school year. During this session, the Board reaffirmed its commitment "to bargain promptly with [the CTU's] representatives *upon request* over the impact of the school and work year and day, *including compensation*, additional content for the day, and any other impact issues you might identify." At this session, the CTU President informed the Board that it did not intend to demand impact bargaining over the FSD/FSY "at this time."

28. Following this session, the CTU's counsel sent correspondence to the Board's counsel to "confirm [their] discussions of today" and stated as follows: "[T]he CTU does not at this time demand impact bargaining over length of the work/school day or length of the work/school year. At such time as the Union may demand impact bargaining, notice thereof will be provided in writing. In the meantime, any questions or comments pertaining to the letter are at your invitation and should not be misconstrued to constitute bargaining in any form."

29. The CTU has never demanded impact bargaining over the FSD/FSY.

30. During the fact-finding proceedings, the CTU never attributed the size of its wage offer to the FSD/FSY. Instead, the CTU cagily argued that its wage offer was justified based on

the amount of work some teachers perform outside of the scheduled school day and comparables.

III. The law.

This panel was convened pursuant to 115 ILCS 5/12(a-10) and has limited jurisdiction. The law explicitly forbids this panel from issuing any recommendations on any on the impact of a change to the work day or the work year. (*See*, 115 ILCS 5/4.5(b): "Neither the Board nor any mediator or fact-finder appointed pursuant to subsection (a-10) of Section 12 of this Act shall have jurisdiction over such a dispute or impasse.") Rather, any bargaining dispute or impasse over the length of work day or year must "be resolved *exclusively*" through a dispute resolution procedure negotiated by the parties that is independent of this fact-finding procedure.[3]

On issues that are within its purview, the law requires that the fact-finding panel consider certain "applicable" criteria that are deliberately tailored to address the specific challenges and goals of the Chicago public school system. They include:

- the interests and welfare of the public and the students and families served by the employer;
- 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;
- the impact of any economic adjustments on the employer's ability to pursue its educational mission;
- the present and future general economic conditions in the locality and State;
- a comparison of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions

[3] This exclusive dispute resolution procedure is detailed in a memorandum of understanding executed by the parties and has been employed in the past.

of employment of employees performing similar services in public education in the 10 largest U.S. cities;

- the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;
- 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;
- 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
- 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). The term "as applicable" is not a grant of discretion to the panel to disregard any of these factors based on their value judgments or priorities; rather, "as applicable" means just what it is commonly understood to mean: "those which can apply, do apply; those which cannot, do not apply." In this case, all of the statutory factors apply to this economic dispute.

Finally, this panel cannot decide issues that one party has waived, or issues that have not been submitted to it.

Concurrent and Dissent

Jesse Sharkey – Chicago Teachers Union appointed member

Introduction:

The fact-finding process was written into statute by SB 7, a "collaboration" which began with the threat of completely removing collective bargaining rights for teachers in Illinois.[1] The fact that everyone accepted the final bill owed to the following deal for Chicago: the district was allowed to impose a longer day and year, and the union preserved the right to strike, provided we reached 75% strike authorization.

Of course, this is the first time Chicago has negotiated a contract under the new strictures, and there has been much gnashing and crying (The union has voted too early! The fact finder must take 'fiscal reality into account! Etc!) which amounts to this: some of the champions of this new law had clearly hoped that it would simply allow them to impose their will—and do away with the tiresome business of negotiating in good faith with the people who actually make the schools work.[2] But reality has a nasty habit of interfering with plans—the teachers, PSRP's and clinicians of the Chicago Public Schools have rallied, voted, and otherwise proven that we will have a say in what happens to our schools.

Now we arrive at this report—a look at the issues by an experienced labor arbitrator—a neutral party—who has the power to tell us what we don't want to hear, but only if we listen.

As Benn lays out in his conclusion, "The short but difficult solution to this dispute is that the Board cannot unilaterally restructure the Union's contract and further expect employees to work 20% more for free or without fair compensation…" And Benn goes on to calculate fair compensation as 14.85% in the first year. Benn also points out that "the Board can reduce its costs by correspondingly reducing the length of the school day and year."

If that were the sum total of the issues on the table the Union could accept the report, remind the Board that in early June CEO Brizard wrote, "teachers deserve a raise and will receive one that is fair. How much that raise should be is in the hands of an independent fact finder" and move on.[3] But the question of compensation—

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[1] The original education reform legislation in Illinois, called "Performance Counts" was introduced just prior to the negotiations that produced SB7. Performance Counts would have replaced collective bargaining with a system in which the employer could impose their final offer in the event of an impasse. Unions could only strike with the employers permission. http://www.iasaedu.org/images/stories/Performance%20Counts%20Act%20of%202010_final%281%29.pdf

[2] See Jonah Edelman at the Aspen Institute http://www.youtube.com/watch?v=ddtd0vt6oYE

[3] Brizard, JC. June 5, 2012. http://www.cps.edu/News/Announcements/Pages/06_05_2012_A1.aspx

however important—does not trump our concerns about class size, a better day, and job security.

Ultimately, the fact finding process will leave these and other many unsettled issues for the bargaining table, but will serve a useful role if it helps to encourage both parties to move from their currently held positions.

Dissent/Concurring Discussion

1. Duration.

I respectfully dissent. The Union proposed a 2-year agreement and cannot accept Fact-Finder Chairman Edwin Benn's proposed 4-year agreement, despite his recommendation that wages and benefits can be reopened in the third and fourth years.

Though Mr. Benn recommended a re-opener of health insurance and wage issues at the request of either party for the third and fourth years of the proposed agreement, he recommends that any dispute be submitted to binding arbitration, and the Union could not agree to defer these important issues to arbitration. It would prefer to negotiate its own agreed solution.

2. General wage increases.

I concur, for all salaried employees including teachers, clinicians, and PSRP's listed in Appendix A, and subject to the two-year limit on duration.

3. Health Insurance.

I respectfully dissent. I cannot agree that the entire burden of increased health care costs be placed on families. Also, I cannot agree to an increase in Emergency Room co-pays without conditions. Many CPS staff use emergency rooms for after-hours medical care because of the scarcity of night and weekend urgent care facilities in Chicago, and because the demands of teaching make it difficult to schedule medical appointments during office hours. This problem must be addressed as part of the health insurance package. Finally, the Union has proposed that the parties establish a meaningful Labor-Management Cooperation Committee with authority to make agreed changes in health care providers, plan design and employee cost. Without such a committee, there is no agreed mechanism for providing the highest quality health care at the lowest possible cost.

4. Compensation for longer school day and year

I concur, for all salaried employees including teachers, clinicians, and PSRP's listed in Appendix A.

Fact-Finder Benn has rightly recognized what nearly every Chicagoan who follows this dispute recognizes:

"Breaking this dispute down to its simplest terms, the Board has exercised its authority to impose a sea change driven by the substantial lengthening of the school day and year, with the expectation that the employees will work those additional hours (approximately 20% more) for free or without fair compensation for the additional work. The employees will not do that and should not be expected to do that. (Sec. IX at 59)"

Fact-Finder Benn proposes a first year total increase 14.85%, plus maintaining existing steps and lanes. It is very significant how he calculated it.

Fact-Finder Benn recognizes that CPS is increasing work day/year by 19.4%, and he bases his calculation in part on the premise that teachers' pay should be increased proportionately. But Mr. Benn also gives CPS a credit for past raises that exceeded the cost of living for the entire 2007-12 contract. Thus, while 2007-12 contract rates increased 17% (compounded), Benn gave CPS a credit against the next contract for all increases over cost of living—which he calculates at 10.3% for the same period. He deducts this difference (6.7%) from the 19.4%, then adds in this year's cost of living, settling at 14.85%

So CPS cannot claim that Mr. Benn's recommendation somehow overpays teachers because of raises teachers received in the past. CPS cannot claim that the last contract already paid teachers enough for next year's wages, because Mr. Benn proposes 14.85% even after <u>deducting</u> the prior years' increases that exceeded the cost of living. Notably, if wages in the 2007-12 contract were suppressed to be cost of living only, it would have significantly lowered Chicago teachers' pay relative to other major cities.

In the end, Mr. Benn is saying that even if teachers only received cost of living increases from 2007 through the end of the next contract, they should still be paid 14.85% this coming year.

Note that the recommendation states that *if* CPS reduces length of work day/year, the reduction in compensation "will be proportionate."

Fact-Finder Benn later suggests the Union should compromise here due to its receipt of unexpected benefits in the 2007-12 contract that was negotiated before the onset of the current recession. He also suggests that the Union should "put aside the rage caused by the Board's withholding the 4% increase for 2011-12." (p. 59)

In the end, though the Union concurs with the total amount of wage increases recommended by Mr. Benn, its reasons are not the same. The Union's position on a salary increase is based on the undeniable facts that a promised salary increase was revoked, that educators at CPS will be working much harder, must grapple with enormous changes to be imposed in curriculum and teacher evaluation, and are already working close to 60 hours per week, as documented in a 2012 University of Illinois study. Without delineating all of the factors individually and in detail, the Union nevertheless concurs that the pay recommendation in Mr. Benn's report would settle the issue of a raise, including the 2.25% for the second year.

5. Sick leave and short-term disability leave.

I respectfully dissent. Fact-Finder Benn declines to take sufficiently into account that compensation for unused sick days has been negotiated over decades into the labor contract, in exchange for wage increases. His adoption of a use-it-or-lose-it proposal on unused sick leave is unnecessarily restrictive. The Union has proposed that employees be compensated for unused sick leave.

6. Job Security/Reassignment

I respectfully dissent.

CPS in recent years has laid off thousands of teachers for reasons that have nothing to do with teaching abilities or job performance, but rather to balance its budget or to close schools. Unlike almost any other employees with collective bargaining rights, these teachers currently have no right to be recalled to employment. They are fired – CPS's term for it is "honorably dismissed." If these teachers hope to find employment, they must line up like any other new applicant and are given literally no credit for their years of service.

Unfortunately, these layoffs have become a fact of life in Chicago, with almost 1,300 teachers and hundreds of PSRPs laid off in 2010, hundreds more in 2011, and we expect more than a 1,000 layoffs this year. The Board's stated policy of school closures combined with a stated goal of opening 60 more charter schools within 5 years ensures that layoffs will be a semi-permanent feature of life in the Chicago Public Schools for the foreseeable future.[4] No union seeking to viability of work in the public school public school teaching—as a career

[4] http://articles.chicagotribune.com/2012-05-16/news/ct-met-cps-charter-growth-20120517_1_charter-schools-charter-movement-cps-plans

Mr. Benn acknowledges that "perhaps the current system is in need of repair and is not functioning well," but he declines to recommend any changes to permit recall rights to teachers.

7. and 8. Other issues

I respectfully dissent.

Mr. Benn has declined to address, and categorically rejected, any other changes to the labor contract. Regrettably, he doesn't recognize the other "sea changes" (p.58) imposed by CPS that require modifications to the labor contract such as a new evaluation system and the Common Core standards. The new contract must address evaluations of teachers. In addition, many of the unions proposals that concerned day-to-day workplace concerns, such as language on heat and air conditioning, language on paperwork reduction, rules on teaching assignments, and others were intended to offer some relief to educators who are struggling under the weight of constantly rising expectations.

Conclusion

There is no doubt that this report has the potential to help the Chicago Teachers Union and the Chicago Board of Education climb down from the high wire on which we are grappling. By offering his straightforward analysis of the Longer Day and compensation, Arbitrator Benn has injected some rationality into the discussion about what scale of reforms CPS is able afford in an era of fiscal restraint.

There is no doubt that CPS will complain bitterly about this award, claiming that Mr. Benn misinterpreted the law and had no right to make such a finding. But in making this complaint, CPS runs the risk of ignoring what Arbitrator Benn calls The Realities: "This is a highly charged, volatile labor dispute with profound implications as up to 25,000 teachers and other staff and employees are poised to strike putting 400,000 children out of school."

Finally, Arbitrator Benn said that "this [fact finding] process is not a substitute for the give and take across the bargaining table." The Union couldn't agree more, and has every intention of working as hard as possible to negotiate a reasonable settlement to this dispute.