



STATE OF INDIANA

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INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

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December 30, 2013

TO ALL OPEN DOOR REQUESTS:

South Bend Tribune

sbtnews@sbtinfo.com

Re: Fact-Finding Report
Case No. F-13-01-3060
Carmel Clay Schools and the
Carmel Clay Education Association

IEERB was established by statute in 1973 to promote harmonious and cooperative relationships between public school teachers and the school corporations they serve, thereby improving education for all Hoosier children. Among IEERB's major functions are conciliation and mediation, fact finding, research, unit determination and representation, and unfair labor practice adjudication. More information is available on IEERB's website (www.IN.gov/ieerb).

Pursuant to Indiana Code section 20-29-8-7(k) and Indiana Administrative Code section 2-4-4(e) find enclosed a copy of the fact-finding report concerning the above referenced parties.

If you have any questions regarding this matter, you may contact the office at (317) 233-6620.

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Enclosure – Report of Findings and Recommendations of the Factfinder

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

In the Matter of the Impasse)
Between the:)
) **IEERB No. F-13-04-3060**
Carmel Clay Education Association)
)
And)
)
Carmel Clay Schools)

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

PROCEDURAL SUMMARY AND BACKGROUND:

Pursuant to Indiana Code 20-29-8-7, on December 6, 2013 the Indiana Education Employment Relations Board (*IEERB*) appointed Sandra L. Jensen as the Factfinder in the contract negotiations impasse between the Carmel Clay Schools (*CCS*) and the exclusive representative Carmel Clay Education Association (*CCEA*) for the contract period from July 1, 2013 to June 30, 2014. The IEERB also appointed Dr. Rodger Smith to serve as the Financial Consultant to assist the Factfinder.

The CCS was represented throughout by counsel, Hudnall Pfeiffer, who also served as the chief spokesperson as specified at 560 IAC 2-4-1. From December 6, 2013 until December 11, 2013, the chief spokesperson for the CCEA was its President, Brian Lyday. On December 11, 2013, an appearance was filed by counsel, Eric Hylton, which appearance provided notice that Mr. Hylton would serve as the CCEA chief spokesperson from that date forward.

The Factfinder was required to address multiple procedural and substantive matters both preliminary to and following the factfinding hearing. In certain instances, the Factfinder expressed to the parties her intent to include discussion of the matters within the Factfinder's report of recommendations and findings with the expectation that the IEERB would afford the parties an opportunity for review of the Factfinder's orders. For that reason, these matters are discussed here and the previously issued orders are referenced as appropriate.

The matter arising after the conclusion of the Factfinding Hearing resulted from correspondence submitted to the Factfinder by Mr. Pfeiffer in which there was an attempt to further elaborate upon a response provided during the Factfinding Hearing to a question posed to both parties by the Factfinder. The submission drew opposition from Mr. Hylton. The Factfinder read a sufficient amount of Mr. Pfeiffer's correspondence to ascertain its purpose and issued notice of her intent to strike the correspondence as requested by Mr. Hylton.

Time permitting this Factfinder might have considered a request for leave to further address a point in contention but offering such correspondence without leave and without an opportunity for consultation with the opposing party was unusual. The Factfinder reports that she did not read the entirety of Mr. Pfeiffer's correspondence.

As a consequence of the Factfinder's orders on certain preliminary matters, the CCEA filed a motion with the IEERB on December 11, 2013 seeking a stay of the Factfinding Proceedings and requesting an emergency hearing before the IEERB. See *Motion to Strike Carmel Clay Schools' LBO, Motion for Emergency Hearing with IEERB Board and Motion to Stay Fact-Finding*. The IEERB issued an order denying the motions on December 12, 2013 and within that order confirmed the Factfinder's belief that all preliminary matters would be subject to review by the IEERB following completion of the Factfinding process.

The Factfinding Hearing was commenced at approximately 8:30 p.m.¹ on December 13, 2013 at the CCS Education Services, Public Meeting Room, 5201 East Main Street, Carmel, Indiana 46033. The representative for the CCS was Mr. Pfeiffer and the representative for the CCEA was Mr. Hylton. Roger McMichael, CCS's Assistant Superintendent for Business, also gave testimony as did Brian Lyday (*Lyday*), CCEA President. Additionally, Chris Campbell, Indiana State Teachers Association Uniserve Director, was present on behalf of CCEA and Ryan Newman, Human Resources Director, was present on behalf of CCS.

CCEA'S MOTION TO AMEND ITS LAST BEST OFFER:

¹ The Factfinding Hearing was scheduled to commence at 5:00 p.m. but was delayed as a result of the parties' unsuccessful effort to achieve agreement that would allow the submission of identical LBOs.

1. On December 9, 2013, the CCEA filed its *Motion to Amend Carmel Clay Education Association's LBO [Last Best Offer]*, along with the submission of 12 Exhibits. The CCEA's motion prompted the CCS's filing, on December 10, 2013, of its *Opposition to Carmel Clay Education Association's Motion to Amend Its LBO, and Request that Factfinder Reject the Association's LBO for Noncompliance and Select Carmel Clay Schools' LBO*.
2. On December 10, 2013 the Factfinder issued an ORDER DENYING CARMEL CLAY EDUCATION ASSOCIATION'S MOTION TO AMEND ITS LAST BEST OFFER ("*ORDER DENYING MOTION TO AMEND*").
3. Review of the material provided to the Factfinder by the IEERB at the time of appointment prompted the determination that the CCEA's LBO submission contained only a copy of its proposed contract which resulted in the IEERB's issuance of a *Notice of Substantial Noncompliance of Last Best Offer* on December 5, 2013. The Factfinder concluded, and affirms the conclusion here, that:

The Indiana General Assembly established a factfinding process that must be completed within fifteen (15) days. To effectively complete the factfinding process in a manner that allows each party to properly prepare and that provides for a quality determination for the benefit of every person involved it is imperative that both parties comply with the strict timing requirements that have been established.

...

In its motion to amend, the CCEA acknowledges awareness of the deadline for submitting its LBO. The CCEA acknowledges its conscious decision to delay the scheduling of the meeting at which a ratification vote would be taken with respect to the mediated agreement. The CCEA further accepts that in anticipation that the mediated agreement would be ratified it failed to put forth the effort required to complete the timely preparation of its LBO. Under these circumstances, the CCEA alone is responsible for its inability to submit a complete LBO.

Excerpt from the Factfinder's December 10, 2013 ORDER DENYING MOTION TO AMEND.

4. The Factfinder remains puzzled by the CCEA's claim that its LBO was not completed in time for submission to IEERB or the CCS by the deadline of December 2, 2013 when "Submittal 1" attached to the CCEA's motion to amend its LBO contains a Proof of Service reading:

This LBO was electronically delivered by the undersigned to Joe Erne, a representative of the Indiana Education Employment Relations Board, on **November 25, 2013**, and will be sent via electronic mail to the IEERB at impasse@ieerb.in.gov by Brian Lyday.

(Emphasis added) The signature of Brian Lyday beneath that proof of service certification also purports to have been affixed to the document on November 25, 2013.

5. In any event, the Factfinder further concluded that to allow the CCEA to amend its LBO in such a significant manner at such a late date would work a substantial hardship upon the CCS, the Factfinder and the Financial Consultant as well as result in the establishment of precedent that utterly ignores the requirements set forth at 560 IAC 2-4-3.1.

CCS'S MOTION TO REJECT THE CCEA'S LAST BEST OFFER AS NONCOMPLIANT AND SELECT THE CCS'S LAST BEST OFFER:

6. The CCS's December 10, 2013, filing of its *Opposition to Carmel Clay Education Association's Motion to Amend Its LBO, and Request that Factfinder Reject the Association's LBO for Noncompliance and Select Carmel Clay Schools' LBO*, also sought the outright rejection of the CCEA LBO as authorized by 560 IAC 2-4-3(d). The Factfinder did not immediately address the CCS's motion to reject the CCEA's LBO and Select its LBO as the 2013-2014 Carmel Clay Contract and the CCS renewed its motion during the Factfinding Hearing presentation.
7. The Factfinder would emphasize at the outset of this discussion that the CCEA's LBO consists only of the CCEA's proposed contract. No other document, as required by 560 IAC 2-4-3.1, was timely submitted by the CCEA as part of its LBO.
8. A review of 560 IAC 2-4-3.1(b) and "LBO Requirements for 2013 Bargaining Season" at http://www.in.gov/ieerb/files/LBO_Requirements_for_2013_Bargaining_Season_8-28-13_cpg.pdf, reveal that the CCEA's LBO is lacking the following **required** items of information:
 - i. A verification of the correctness of all information;
 - ii. A verification that the LBO does not result in deficit financing;
 - iii. The LBO amount;
 - iv. The DOE certification of general fund revenue amount;
 - v. The DLGF certification of general fund operating referendum amount;
 - vi. Fiscal rationale for the Last, Best Offer; and
 - vii. Policy rationale for LBO (four factors listed in IC 20-29-8-8).

9. The Factfinder's initial determination is best explained in the AMENDED REPORT OF PRE-FACTFINDING TELECONFERENCE, as follows:

...560 IAC 2-4-3(d) specifies only that "failure to substantially comply with the requirements of an LBO *could* result in rejection of the submitted LBO and acceptance of the opposing party's LBO." (*Emphasis added*). Factfinder Jensen noted that while the CCS had requested that she reject the CCEA's submitted LBO, 560 IAC 2-4-3(d) did not mandate such rejection and she assured the CCEA that she had not rejected their LBO despite the fact that it had been deemed substantially non-compliant by the IEERB. Further, Factfinder Jensen offered her observation that theoretically one LBO submission could be deemed substantially non-compliant while the other LBO could be determined to be unlawful. The factfinder expressed the belief that in that theoretical situation the outright rejection of a substantially non-compliant LBO would be improper noting her desire, instead, to afford the parties full opportunity to a factfinding hearing.²

10. After hearing argument from both parties during the pre-factfinding hearing teleconference the Factfinder concluded that to allow the CCEA to present in the Factfinding Hearing that material it attempted to include as an amendment to its LBO would constitute the equivalent of allowing the CCEA to amend its LBO through the Factfinding Hearing. Consequently, the Factfinder determined that the CCEA "would not be permitted to present in the factfinding hearing that evidence that it had been disallowed from presenting as an amendment to its LBO."
11. During the Factfinding Hearing it became apparent that the evidentiary material that the CCEA attempted to present through the amendment of its LBO was necessary not only to support the CCEA's position that its LBO did not result in deficit financing, but was also necessary to refute the CCS's claims that the CCEA's LBO did result in deficit financing.
12. The Factfinder was unconcerned that her order prohibiting the presentation of the evidence hampered the CCEA's ability to support its own position because this result was a consequence of the CCEA's own failure to submit a compliant LBO.
13. While not overwhelmed with concern, because again the result was the consequence of the CCEA's own failure to submit a compliant LBO, the Factfinder was sympathetic to the fact that strictly disallowing the use of any of the evidence that the Factfinder had rejected as an amendment to the CCEA's LBO placed the CCEA in the position of being unable to defend against the CCS's claims that the CCEA's LBO did result in deficit financing.

² It is noted that references to 560 IAC 2-4-3(d) are erroneous. These references should be to 560 IAC 2-4-3.1(d).

14. The Factfinder concluded that in order to permit the CCEA any meaningful purpose in participating in the factfinding hearing she would allow the evidence to be discussed in the CCEA's Factfinding Hearing presentation solely for the purpose of refuting CCS's evidence and arguments and that in all other respects the evidence would be ignored.
15. The vast majority of this evidence is essentially the CCEA's fiscal support for its LBO, which should have been but was not included within its submitted LBO.
16. Nearly all of this evidence was included as an exhibit to the CCEA's motion to amend its LBO, which was denied by the Factfinder for the reasons discussed previously.
17. The Factfinder acknowledges having previously denied the CCEA's motion to amend its LBO and having also previously ordered that the CCEA was prohibited from presenting at the Factfinding Hearing that evidence attached to its motion to amend its LBO. Despite those previous orders, and over the objection of and to the detriment of the CCS, the Factfinder allowed these documents to be presented and discussed by the CCEA under the restriction that the Factfinder would consider the evidence solely as the CCEA's defense against the claims presented by the CCS.
18. While every effort has been made, the Factfinder, herself, is uncertain as to her ability to consider this evidence solely for defense against CCS's claims separate and apart from her consideration of this evidence from other perspectives.
19. As a consequence of the CCEA's near complete failure to submit a compliant LBO the CCEA was prevented from providing the Factfinder with information supporting its LBO with respect to the policy rationale set forth at I.C. 20-29-8-8 and was further prevented from providing a full fiscal analysis of its LBO.
20. The situation that occurred during the Factfinding Hearing because of the CCEA's submission of a non-compliant LBO proved to be illogical at best and in reality probably outright absurd.
21. The effort undertaken by the Factfinder to afford the CCEA the ability to participate in the remainder of the Factfinding process without imposing an unfair burden upon CCS has proved daunting and utterly frustrating.
22. While this Factfinder truly disfavors the wholesale rejection of any party's LBO submission in favor of an opposing party's submitted LBO, the procedural difficulties as well as legal and evidentiary issues that developed because of the CCEA's submission of a thoroughly

non-compliant LBO clearly reveal that the IEERB acted under good counsel in authorizing such a remedy.

23. After having endured this proceeding, it is the Factfinder's conclusion that the Impasse Factfinding, as prescribed at I.C. 20-29-8 and 560 IAC 2-4, is virtually impossible to complete as intended by the Indiana General Assembly and the IEERB unless first a substantially compliant³ LBO has been submitted by both parties.

CCEA'S SUBMISSION OF DOCUMENTS AS AN OFFER TO PROVE IN PRESERVATION OF OBJECTION TO THE FACTFINDER'S EVIDENTIARY RULING:

24. The CCEA, in arguing against the Factfinder's restriction on the CCEA's use of the evidence that had been presented as a part of its failed attempt to amend its LBO cited I.C. 20-29-8-7(f), which states:

(f) The factfinding process may not exceed fifteen (15) days from beginning to end, and not more than two (2) of those days may be used for public testimony, which may be taken at the discretion of the factfinder. ***During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer.*** Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

(Emphasis added.)

25. Mr. Hylton argued that the Factfinder's restriction as to the use the CCEA's could make of the evidence it intended to present prevented the CCEA from presenting the fiscal rationale for its LBO which amounted to a violation of I.C. 20-29-8-7(f).
26. The Factfinder considered I.C. 20-29-8-7(f) in conjunction with 560 IAC 2-4-3.1(b) and the "LBO Requirements for 2013 Bargaining Season" at http://www.in.gov/ieerb/files/LBO_Requirements_for_2013_Bargaining_Season_8-28-13_cpg.pdf, in ruling on the CCEA's objection to the restriction placed upon its presentation of fiscal rationale for its LBO.
27. 560 IAC 2-4-3.1(b) states:

³ The Factfinder recognizes that an exercise of the authority granted by 560 IAC 2-4-3(d) must be made cautiously. An LBO may be imperfect as to its content and remain substantially compliant such that outright rejection would not be proper.

(b) Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not place the employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue. The LBO shall:

- (1) be submitted in the format required by the IEERB; and
- (2) include all information and documents required by the IEERB.

Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties upon declaration of impasse.

28. The IEERB's "LBO Requirements for 2013 Bargaining Season" includes, at Section II. A. 5, as a required part of an LBO the "Fiscal Rationale for the Last, Best Offer"
29. The Factfinder concluded through a reading of 560 IAC 2-4-3.1(b) and the "LBO Requirements for 2013 Bargaining Season" that the fiscal rationale for an LBO is but one required component of an LBO.
30. The Factfinder concluded further that while I.C. 20-29-8-7(f) requires the full presentation of an "LBO, including the fiscal rationale...", where, as is the case here, a party such as the CCEA presents an LBO that is missing the required fiscal rationale component, it is then impossible for that party to present the non-existent portion of its LBO during the Factfinding Hearing.
31. The CCEA was not prevented from presenting its LBO but because in this instance the CCEA's LBO did not include the fiscal rational component, there was no fiscal rationale in existence that could be presented.
32. In an effort to preserve for review by the IEERB and for possible judicial review or appeal, the CCEA's objection to the Factfinder's refusal to allow the CCEA to use the documents and information included as a part of the denied motion to amend its LBO, the CCEA sought and was granted the opportunity to submit the documentary exhibits as the equivalent of an offer to prove.
33. The documents received from the CCEA for this purpose are 28 PowerPoint pages under the title "FACT FINDING December 13, 2013 Carmel Clay Education Association". The Factfinder notes that these documents were presented and discussed, as noted in Finding 17, by the CCEA in an effort to refute the CCS's claim that the CCEA LBO resulted in deficit financing

CCEA'S MOTION TO STRIKE THE CCS'S LAST BEST OFFER:

34. On December 11, 2013, the CCEA filed its *Motion to Strike Carmel Clay Schools' LBO, Motion for Emergency Hearing with IEERB Board and Motion to Stay Fact-Finding* and on the same date the CCS filed its response, *Carmel Clay Schools' Opposition to Carmel Clay Education Association's Motion to Strike*.
35. The Factfinder issued an order denying the CCEA's motion to strike the CCS's LBO on December 11, 2013. The Factfinder concluded that the events forming the basis of the motion to strike related to a divergence from requirements set forth in I.C. 20-29-6-13 and 560 IAC 2-4-3.1 associated with the scheduling and completion of impasse mediation, which according to law occurs prior to the appointment of a Factfinder.
36. The Factfinder concluded,
1. Despite any anomalies existing in association with the completion of the required mediation, the parties' pleadings clearly reflect their mutual understanding that the LBO's were required to be submitted to the IEERB and served upon one another by December 2, 2013.
 2. For purposes of the factfinding process, the factfinder concludes that greater importance should be placed upon the fact that each party was notified and each party was provided the exact same opportunity to submit their LBOs.
 3. Given that the parties were provided the exact same opportunity to submit their respective LBO's the factfinder concludes that going forward the only means to preserve fundamental fairness is through a commitment to and the enforcement of the time limitations prescribed by statute and administrative rule for the factfinding process.
37. The CCEA renewed its motion to strike the CCS's LBO during the Factfinding Hearing.
38. The Factfinder remains of the opinion that the IEERB's resetting of the time schedule in order to otherwise afford the parties full opportunity to conduct mediation as prescribed by I.C. 20-29-6-13 and 560 IAC 2-4-3.1, could have had no impact upon the Factfinding process or the ability of the parties to submit their LBOs because both parties were aware of the date upon which their LBO submissions were due.
39. The Factfinder therefore affirms the previous determination to deny the CCEA's motion to strike the LBO submission of the CCS for purposes of the Factfinding process.

CCEA'S MOTION TO REJECT THE CCS'S LAST BEST OFFER AS NONCOMPLIANT AND SELECT THE CCEA'S LAST BEST OFFER:

40. During the Factfinding Hearing, the CCEA argued that the CCS's LBO is noncompliant for the reason that the CCD failed to include the "DOE [Department of Education] certification of general fund revenue amount" (*"Certification"*) as required by the IEERB as set forth in the IEERB document "LBO Requirements for 2013 Bargaining Season" as posted at http://www.in.gov/ieerb/files/LBO_Requirements_for_2013_Bargaining_Season_8-28-13_cpg.pdf
41. As is noted previously, 560 IAC 2-4-3.1(b) specifies that the LBO submitted must comply with the LBO requirements as set forth in the "LBO Requirements for 2013 Bargaining Season", which specifies at Section 2. A. 2. that the "DOE certification of general fund revenue amount" is required information that must be included within a compliant LBO.
42. The CCS's LBO does not contain the correct document but does include a DOE "Estimate of General Fund Revenue" dated July 26, 2013 (*"Estimate"*).
43. The CCS responded to the CCEA's claim stating that it had not received the Certification. The CCS maintained that the only document received was the Estimate contained within its LBO.
44. Mr. Lyday explained that mail he receives as the President of the CCEA from the DOE is sent to him at the CCS's office located at 5201 E. Main Street, Carmel, Indiana. This is the same address at which Mr. McMichael and the CCS's Superintendent maintain offices. Mr. Lyday provided a copy of the Certification dated October 11, 2013 along with an envelope, postmarked October 11, 2013, addressed to him at the CCS's office.
45. The Factfinder must presume that the CCS understands the requirements associated with the submission of its LBO. Therefore, the Factfinder agrees with the CCEA that the burden was upon the CCS to include the document in its LBO. The CCS was fully capable of making inquiry if, in fact, it did not receive the Certification. The Factfinder further agrees with the CCEA that if the CCS would have been prevented from submitting a timely LBO because of the unavailability of the Certification, the CCS should have made a notation in the LBO submitted that the required document was unavailable and the Estimate was being provided as the best available information.

46. The CCS did not, as was pointed out by the CCEA, take all steps possible to fulfill the requirements for the submission of a perfectly compliant LBO.
47. The reasonable assumption is that CCS did receive the same Certification that was received by Mr. Lyday.
48. In fact, despite the CCS's claim during the Factfinding Hearing that it had not received the Certification from the DOE, Dr. Smith concluded from a review of the CCS's LBO that the general fund revenue figure from the Certification, \$ 83,635,320, was utilized by the CCS in its fiscal evaluation. Therefore, it may be reasonably determined that while the correct general fund revenue amount was known to someone within CCS, the incorrect document was included in the CCS LBO.
49. The Certification provides for an additional \$580,392 in revenue above the Estimate.
50. Given that the CCS LBO leaves a general fund balance of at most \$234,792 and possibly as little as \$170,387, the CCS's LBO would have resulted in deficit financing if it had not utilized the Certification amount.
51. Obviously the CCEA, as well as the CCS, were aware of the correct general fund revenue as specified by the Certification. Therefore, the CCEA cannot, and in fact did not, claim that the error in the CCS's LBO resulted in substantial controversy.
52. There exists no evidence to support a conclusion that the CCS's failure to include the Certification in its LBO was for the purpose of being deceitful or that the failure was misleading or detrimental to the CCEA or the completion of the Factfinding process.
53. The CCS's LBO submission was clearly not perfect and the CCS, as well as every other party to an Impasse Factfinding proceeding, would be well warned to exercise extreme care in the preparation of their LBOs. However, CCS's error, in this instance, proves to be harmless.

CONSIDERATION OF THE PARTY'S RESPECTIVE LBO'S:

54. The CCS LBO contains virtually identical provisions to those accepted by the IEERB through Impasse Factfinding in between *Carmel Clay Schools and Carmel Clay Education Association, Case No. F-12-01-3060, (hereafter referred to as "Carmel Clay I")*.
55. Revisions to the CCS's proposed contract have been made to address concerns raised through the *Carmel Clay I* proceeding. In *Carmel Clay I* the Catastrophic Leave Bank ("CLB") was

terminated in favor of a Short Term Disability Plan, which prompted inquiry by the CCEA as to the disposition of the teacher donated leave days held in the CLB. It was determined in *Carmel Clay I* that Impasse Factfinding was not the appropriate venue for such a determination and the matter remained unresolved. In the CCS's present LBO, the CCS offers a means of returning one previously donated day to teachers who participated in the CLB. The CCS LBO also affords a means of having additional days returned upon proof provided by the teacher that he/she donated additional days.

56. Additional improvements for the teachers provided by the CCS LBO result from an increase in the number of personal days from 2 to 4 and the determination of "hourly rate" based upon a 6 hour day instead of an 8 hour day. These revisions represent a return to benefits previously enjoyed by teachers under the 2008 – 2012 contract.
57. The CCS LBO provides for "a 1% salary increase retroactive to July 1, 2013. The total cost is \$550,000 which includes the retroactive amount from July – December 2013. Each eligible teacher also will move one row down the schedule. The cost of this movement is \$550,000, net of turnover savings. Eligible teachers will also move vertically based on academic credentials but the increase cannot exceed the 33% statutory limit; the estimated cost is \$18,000." Also provided for by the CCS LBO is a \$200,000 bonus pool to be shared by teachers receiving a highly effective or effective evaluation.
58. The CCS LBO results in total expenditures of \$100,008,870 offset against revenue, excluding cash on hand, of approximately \$100,243,662.
59. While the CCS LBO spends nearly all of the CCS general fund revenue, the LBO indicates a remaining balance of \$ 234,792. More detailed information provided through the CCS Factfinding Hearing presentation established that the balance of general fund revenue remaining after fulfilling the CCS LBO is only \$170,387.
60. While the exact figures vary slightly between the written LBO submission and the Factfinding Hearing presentation, all evidence supports the conclusion that the CCS LBO does not result in deficit financing.
61. The CCEA did not contend that the CCS's LBO results in deficit financing.
62. To avoid confusion the Factfinder believes an important reminder is, once again, necessary. Because of the CCEA's failure to comply with the LBO submission requirements, the CCEA's LBO consists solely of the CCEA's proposed contract. Consequently, the

Factfinder and Financial Consultant are constrained to consider the CCEA's LBO based upon a review of the four corners of the CCEA's proposed contract and the CCS's Factfinding Hearing presentation. For reasons discussed previously the CCEA's Factfinding Hearing presentation is also considered to the extent the Factfinder is assured in her own mind that such consideration relates to a CCEA response to a CCS strike against a provision of the CCEA's LBO.

63. According to the CCS's Factfinding Hearing presentation, the CCEA's LBO provides numerous increases beyond those provided for in the CCS's LBO. Those increases include a second step increase on the salary schedule, a 1% 403(b) matching contribution, an additional 1% salary schedule increase, academic credit for every three hours of credit, increased dental benefits, paid leave for the CCEA president, an increase in the National Board Certification, additional pay for every minute worked over 450 daily minutes or 185 days, as well as additional leaves to be paid at \$1.00 per day for each day of leave used.
64. The CCEA proposed contract does not include the \$200,000 bonus pool provided for by the CCS.
65. The CCEA offered specific opposition only to the CCS's conclusion that the CCEA's LBO provided a two step increase on the salary schedule. In all other respects the CCEA agreed with the CCS's summary of the types of contract increases the CCEA's LBO would provide for the teachers.
66. The Factfinder and Financial Consultant concur in the determination that the CCEA's LBO does, in fact, provide for a two step increase on the salary schedule. The CCEA's proposed contract specifies that a "teacher's Instructional Wages and retirement benefits will be initially determined by providing one year of "effective" credit for each verified full year of public, private, or parochial school teaching..." *CCEA Proposed Contract, Article VII, B, 2*. The 2012-2013 contract established through *Carmel Clay I* did not provide for a step increase on the salary schedule. By providing one year of "effective" teaching credit for each year of teaching, the CCEA proposed contract would provide for the teachers to make up the step on the salary schedule that was missed under the 2012-2013 contract as well as receive a second step up the salary schedule for the present 2013-2014 contract.
67. The CCS estimates the expense associated with one step up the salary schedule to be \$1,250,000 which can be offset by turnover savings. The resulting actual cost is \$550,000.

- The CCEA agrees with the CCS's calculations with respect to a one step salary increase and claimed in its Factfinding Hearing presentation that its LBO and proposed contract provide for only a one step increase at a cost equal to the CCS's LBO cost for the same step increase.
68. However, as discussed in Finding 66, it is clear that the CCEA's LBO provides for a second step up the salary schedule and without additional offsets, the cost associated with that second step increase would be an additional \$1,250,000.
69. It is reasonable to conclude that the step increases proposed by the CCEA would result in approximate total expenditures of \$1,750,000.
70. The CCEA agreed with the CCS's conclusion that a 1% salary increase equaled \$550,000 and further concurred with the CCS that the 2% salary increase proposed by the CCEA would result in the expenditure of \$1,100,000.
71. The CCEA and the CCS were in essential agreement as to certain other costs associated with the CCEA's LBO as follows:
- a. increased dental benefits at approximately \$55,000;
 - b. cost of the additional nominally paid leaves at \$6,550;
 - c. increases associated with the National Board Certification at \$5,900; and
 - d. the 403(b) contribution at approximately \$488,075.
72. The divergence in the CCS and CCEA cost estimations associated with the receipt of academic credit for each 3 hours of credit received were extreme. The CCEA claimed the costs to be merely \$18,000. The CCS maintained that the estimated costs would be nearer \$100,000 while acknowledging that the estimate was purely that...an estimate.
73. With respect to the paid leave for the CCEA President, the CCEA estimated the associated cost to be \$42,356 based upon an average teacher salary while the CCS reflected a cost of \$80,000, which approximates the salary of the current CCEA President, Mr. Lyday.
74. Oddly, the CCEA offered no additional expense calculations associated with its proposal to pay teachers an additional wage for each minute worked over 450 daily minutes or over 185 days. The CCS, conversely estimated that the costs associated with this provision could approximate \$10,300,000.
75. While it appears that the CCEA's LBO will result in expenditures in excess of the CCS's LBO, the CCEA was, for the reasons discussed previously, prevented from presenting fiscal evidence in support of its LBO. Therefore, it is not known whether the CCEA agreed with

the CCS's revenue estimations, offsets relating to retiring teachers, etc. As a result it is not clear to the Factfinder or the Financial Consultant whether the CCEA's LBO results in deficit financing and the CCEA has provided no deficit financing verification.

76. The CCS also pointed out and the CCEA did not dispute that the CCEA's LBO also does the following:

- a. reinstates the catastrophic leave bank that was eliminated from the 2012-2013 contract through *Carmel Clay I* with IEERB approval;
- b. eliminates the Short Term Disability plan that was established through *Carmel Clay I* for the 2012-2013 contract with IEERB approval;
- c. continues to provide for additional teacher wages based upon minutes worked in excess of 450 daily minutes or 185 days that through *Carmel Clay I* was rejected by the IEERB; and
- d. continues to provide for additional wages for required teachers duties such as a counselor stipend and curriculum writing stipend that through *Carmel Clay I* was rejected by the IEERB.

The Factfinder reaffirms her findings and recommendations contained within the FACTFINDER'S FINDINGS AND RECOMMENDED ORDER in *Carmel Clay I* and offers continuing concurrence with the IEERB's ORDER in *Carmel Clay I* with respect to these provisions in the current CCEA LBO.

77. The CCEA LBO also provides for the CCEA president to be paid full salary and benefits while being relieved of all teaching responsibilities in order to conduct CCEA business. The Factfinder concludes that the public interest is served by having limited state resources utilized for the compensation of teachers who are providing services to Indiana's students. To utilize public funding for carrying out CCEA business is not in the public interest.

78. With respect to the CCEA LBO provisions that afford additional compensation (as noted in Finding 76 (d & e)) the IEERB stated as follows in the *Carmel Clay I* ORDER:

While teachers cannot bargain for additional pay (above their salaries) for performing their teaching duties, teachers and schools can and must bargain pay for work outside a teacher's duties.

79. In issuing the *Carmel Clay I* ORDER, the IEERB noted the Factfinder's distinction between required assigned work and additional assignments undertaken by a teacher on a voluntary basis.

80. The Factfinder offers elaboration relating to this issue because of a belief that both the CCS and the CCEA are misconstruing or misunderstanding the *Carmel Clay I* and the *Nettle Creek* Orders.
81. Both the CCEA and the CCS accept the Factfinder's and IEERB's conclusion that teachers and school districts cannot bargain for additional pay for tasks that are already a teacher's responsibility to perform. Both the CCEA and the CCS also recognize the need to bargain with respect to extra compensation for a teacher who accepts additional work that is outside the teacher's assigned responsibilities.
82. Both the CCEA and the CCS agree that while days and hours are not included within the collective bargaining process; days, hours and teacher assignments are negotiated in "individual teacher contracts".
83. Both the CCEA and the CCS offered the opinion that assignments not included within the individual teacher contract are bargainable and the Factfinder agrees with this position.
84. What becomes problematic is the position that was seemingly also taken by both the CCEA and the CCS that even assignments required under an individual teacher contract become bargainable for additional compensation if the tasks either (1) require additional time beyond the hours set forth in the individual teacher contract, or (2) are required to occur outside of the normal instructional day. Mr. Hylton noted that these tasks might include evening faculty meetings or evening teacher parent conferences. Mr. Pfeiffer noted that such tasks as "home bound instruction, credit recovery, remediation, curriculum projects, translation services, testing for gifted/talented, kindergarten screening, and preparation for leadership or professional development", which according to Article 6, Section A7 of the CCS's proposed contract would qualify for additional compensation are also duties that if assigned during the days and hours established in the individual teacher contracts would then be considered a teacher assignment for which additional compensation is inappropriate.
85. The Factfinder observes that if a teacher is a professional being paid a salary, that salary should be the complete compensation expected by a teacher for the fulfillment of the responsibilities set forth in the individual teacher contract regardless of the number of hours necessary for completion or the time of day or night the work is completed. Only this result is consistent with *Nettle Creek's* conclusion, as cited in *Carmel Clay I* that "demanding extra

- pay for required hours outside the contracted work day and work year is prohibited.” To do otherwise relegates a teacher to the status of an hourly employee.
86. The determination as to whether teachers and school districts may bargain with respect to additional compensation should be focused solely upon the nature of the task to be completed with no consideration whatsoever to the hours necessary for completion or the time of day within which the task is completed.
87. As a part of this discussion between the parties and the Factfinder at the Factfinding Hearing, Mr. Hylton observed that the extra pay provided to teachers who serve in “Organizational Positions” (*CCS LBO, Exhibit 3, pg. 32*) offers proof of pay for additional work that occurs within the regular work day. Mr. Pfeiffer, on behalf of CCS, disagreed; observing that “Organizational Positions” are actually not equivalent to a routine teaching position but are instead different positions altogether with higher salary schedules. The Factfinder accepts the CCS contention as accurate.
88. The Factfinder offers these insights because it appears as though the CCEA, and to a lesser extent, the CCS, is attempting to develop magical contract language that will comply with the prohibition on the bargaining of extra hours for required teachers duties while at the same time retaining the right to bargain additional compensation for those extra hours.
89. It is concerning to the Factfinder that the CCS believes that although the types of work set forth in Article 6, Section A7 of the CCS proposed contract are the types of work that a teacher may complete for additional hourly compensation, those types of work are also teacher’s duties. If these tasks are teacher’s duties there should be no additional compensation.
90. Conversely, the Factfinder points out that the CCEA’s proposed contract is replete with the phrase or some version of the phrase “time a teacher volunteers to work when requested and/or required to do so.” In the first instance the Factfinder ponders how any person can “volunteer” to undertake work that the person is “required” to complete. Further is the Factfinder’s surprise that somehow by “volunteering” to perform work that a teacher is already “required” to perform somehow entitles the teacher to receive compensation over and above the salary earned for simply performing the work that the teacher is already required to perform.

FACTFINDER'S RECOMMENDATION:

91. For the reasons discussed in Findings 34 through 53, the Factfinder concludes that the CCEA's motions to reject and or strike the CCS LBO should be denied.
92. The Factfinder concludes that the CCS's LBO does not result in deficit financing.
93. The evidence considered leads the Factfinder to a reasonable belief that the CCEA LBO would result in deficit financing. However, because this Factfinding can be and has been determined on other grounds, *infra*, and because the CCEA failed to submit a compliant LBO containing a fiscal rationale, which failure resulted in severe complications in the admission of evidence during the Factfinding Hearing and caused even greater difficulty relating to the Factfinder's and Financial Consultant's consideration of the evidence admitted, the Factfinder declines to decide this matter.
94. As a result of the CCEA's failure to submit an LBO compliant with 560 IAC 2-4-3.1 and the IEERB established "LBO Requirements for 2013 Bargaining Season" as posted at http://www.in.gov/ieerb/files/LBO_Requirements_for_2013_Bargaining_Season_8-28-13_cpg.pdf and for the reasons discussed in Findings 1 through 33 it is the Factfinder's conclusion that the CCS's motion to reject the CCEA LBO should be granted and that the CCS LBO should be accepted by operation of 560 IAC 2-4-3.1(d).
95. Alternatively or in addition to Finding 94, the Factfinder concludes that the CCEA LBO should be rejected for the fact that it bargains additional compensation for performing teacher's duties which was prohibited by *Nettle Creek*, and which prohibition was affirmed in *Carmel Clay I. Carmel Clay I ORDER, page 3*. Further, the CCEA LBO seeks full paid leave for the CCEA President, which the Factfinder concludes is contrary to the public interest. Additionally, the CCEA LBO would reinstate the Catastrophic Leave Bank and eliminate the Short Term Disability Plan, despite the previous determination of the Factfinder and the IEERB that the Short Term Disability Plan provided a better benefit to the teachers as a whole. *Carmel Clay I ORDER, page 4*.

Dated: December 19, 2013

(signed document in case file)

Sandra L. Jensen

Factfinder

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