

In The Matter of the Factfinding Concerning)
)
The Board of Education of the City of Chicago)
)
and)
)
Service Employees International Union Local 73)

REPORT AND RECOMMENDATIONS

This matter arises under Section 12(a-10) of the Illinois Educational Labor Relations Act, 115 ILCS 5/12(a-10). In accordance with that provision, the Board of Education of the City of Chicago ("Board") appointed Mr. Paul J. Ciastko as its representative on the factfinding panel. Service Employees International Union Local 73 ("Union") appointed Mr. Don V. Villar as its representative. The parties jointly selected Martin H. Malin as the neutral chair of the factfinding panel.

I met with the parties' representatives on July 1, 2019, and accepted the appointment. The statute requires the panel to issue a private report to the parties if the dispute is not settled within 75 following its appointment. The 75th day following July 1, 2019 is September 14, 2019. Because September 14, 2019, falls on a Saturday, this report is issued on Monday, September 16.

At the July 1, 2019, meeting, the parties agreed to engage in mediation with the factfinder prior to the formal factfinding hearing.¹ The procedure was called an "informal conference" because the parties agreed that even if they were unable to resolve an issue by agreement, representations made in joint sessions could be considered by the factfinding panel in making its report, and that the three-member factfinding panel might reach a consensus with respect to one or more issues and remove those issues from the hearing agenda. As it turned out the latter option was not exercised.

In accordance with a schedule agreed to at the July 1 meeting, the parties jointly submitted a document setting forth each issue presented for factfinding and each party's position with respect to that issue. Pursuant to that schedule, the parties met with the neutral chair of the factfinding panel in mediation on August 12 and 13, 2019, at the Union's offices. With the agreement of the parties, Federal Mediation & Conciliation Service Commissioner Emil Totonchi, who was the mediator who had been working with the parties prior to the request for factfinding, also participated in the August 12-13 mediation sessions. Considerable progress was made in narrowing the issues for factfinding and the parties requested additional mediation in advance of the formal factfinding hearing scheduled to begin on August 27, 2019. The parties agreed to continue mediation with Commissioner Totonchi on August 20, 2019, starting at 9:00 a.m., at the offices of Franczek, PC. The neutral factfinder joined them as soon as other

¹Mediation by the factfinder is authorized by IELRA Sections 12(a-10)(3)(C) and (I).

commitments allowed, arriving around 1:00 p.m. Mediation continued until around 8:00 p.m. As a result of the mediation, numerous issues were resolved with tentative agreements, including: all Board and all Union proposals concerning security officers, discipline, evaluations, hiring preference for substitutes, and layoffs. The parties filed and exchanged pre-hearing briefs on August 23, 2019.

The factfinding hearing was held on August 27, 2019, and August 30, 2019, at Franczek, PC. At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. At the conclusion of the formal hearing, the parties engaged in further mediation with the neutral factfinder and Commissioner Totonchi, resulting in a tentative agreement with respect to Special Education Classroom Assistants' (SECAs) presence at Individualized Education Program (IEP) conferences.

The parties have agreed that the Report and Recommendations is to be issued by the neutral factfinder without need for concurrences by or signatures from the party-appointed members of the panel. However, the party-appointed members of the panel may file concurring or dissenting opinions and the filing of such shall not constitute a rejection of the recommendations contained in the report.

Background

The Union represents a bargaining unit that includes SECAs (including substitute SECAs), bus aides, security officers, custodians (including factor custodians and lead custodians) and parent workers. The parties' collective bargaining agreement expired on June 30, 2018, but they have abided by its terms pending the outcome of impasse procedures.

The Chicago Teachers Union (CTU) represents a bargaining that includes teachers and paraprofessional and school related personnel (PSRPs). The CTU-Board collective bargaining agreement ("CTU contract") expired on June 30, 2019, but the parties have abided by its terms pending the outcome of impasse procedures.

The current impasse procedures for CPS were enacted by the Illinois Legislature in 2011. This is the first time the Union and the Board have been involved in factfinding. The CTU and the Board engaged in factfinding before a panel chaired by Edwin Benn in 2012 and before a panel chaired by Steven Bierig in 2016. They are currently again engaged in factfinding before a panel chaired by Factfinder Bierig. Mr. Bierig issued his report and recommendations on August 11, 2019. The Board has accepted Mr. Bierig's recommendations while the CTU has rejected them and the factfinding report has been released to the public. Under the IELRA, the CTU is precluded from striking for 30 days after the report was released to the public.

The Factfinding Process under IELRA Section 12(a-10)

The statute provides that the recommendations shall be based "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.

The listing of statutory factors evokes analogy to interest arbitration under Section 14 of the Illinois Public Employment Relations Act, 5 ILCS 315/14. However, there are significant differences.

Under the IPLRA, interest arbitration is provided as a substitute for strikes by law enforcement, firefighters and a few others who for matters of public safety are prohibited from

striking. Subject to very limited exceptions for review by Circuit Court and rejection by super-majority vote of the employer's governing body, the interest arbitration award provides finality to the parties' collective bargaining process. Consequently, most arbitrators, including me, view their role as determining, based on the statutory factors, the contract that the parties likely would have reached had their negotiation process not broken down.²

Under the IELRA CPS impasse procedures, however, the employees retain the right to strike. Factfinding does not bring finality to the parties' collective bargaining process. Instead, it is a step in that process. It makes no sense for the factfinder to seek to determine what terms the parties would have agreed to had their process not broken down because their process is continuing. Instead, the role of the factfinder is to recommend the terms that the parties should agree to in their on-going negotiation process. Such a role recognizes that the statute envisions that once the parties receive a confidential report from the factfinder, the recommendations of that independent neutral will motivate them to reconsider their positions and move toward agreement. Furthermore, if the parties do not reach agreement and at least one party rejects the recommendation, then the factfinder's report is made public and the expectation is that public pressure will further motivate the parties to reassess their positions and reach agreement without a work stoppage.

But the factfinder does not have carte blanche to recommend his personal ideal of where the parties should end up in their negotiations. Rather, the statute limits the factfinder to the enumerated factors in determining what agreement the parties should reach. Notably, IPLRA § 14(H)(8) allows the interest arbitrator to consider "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment." The IERLA's factors for factfinding contain no comparable provision. On the other hand, whereas the IPLRA confines the interest arbitrator to selecting the final offer of one of the parties in resolving impasses over economic issues, the IELRA factfinding statute imposes no such limitation on the neutral.

An important factor to be considered in recommending terms for settlement is CPS's financial condition. Prior to 2017, CPS was teetering on the verge of insolvency. In 2017, Illinois reformed the way the State funds public education with an Evidence Based Funding (EBF) formula. Under EBF, school districts are placed in one of four tiers based on their ability to meet "adequacy targets" determined by the cost of providing students with core investments as well as considering whether students are low income, English learners or require special education services. In FY 2017 and FY 2018, CPS received an increase of almost \$900 million in revenue from additional state funding and the implementation of a property tax levy dedicated to teacher pensions. Under the school funding reform legislation, the State now pays the normal

²This is the view of most, but not all interest arbitrators. See the discussion in *Village of Oak Lawn and Oak Lawn Professional Firefighters Local 3405, IAFF*, ILRB No. S-MA-18-341 at 4 - 5 (Malin 2019).

cost of CPS's pension contributions. This enabled CPS to go from a negative \$275 million operating fund balance in FY 2017 to a positive fund balance in FY 2018. All four major bond rating agencies have upgraded CPS's bond rating.

Although its finances are greatly improved, CPS still faces financial challenges. Its structural deficit has been greatly reduced but it remains at around \$200 million. Three of the four rating agencies still rate CPS's bonds as below investment grade. Furthermore, even assuming that CPS can afford Union proposals, that does not necessarily mean that those proposals should be adopted. Inability to pay is a shield – an affirmative defense. Ability to pay is not a sword.

With the above understanding of my role in this process, I turn to the issues that remain in dispute.

Term of the Agreement

The Union proposes a four year term which would have the agreement expiring June 30, 2022. The Board proposes a five year term which would have the agreement expiring June 30, 2023. In the CTU factfinding, the CTU proposed a three-year term while the Board proposed a five-year term.³ Factfinder Bierig recommended a five-year term. He reasoned:

First, a 5-year Term allows both parties to have stability and predictability, which allows the parties to work jointly on the matters that concern them without the burden of negotiating an additional contract within a short period of time. Further, I note that it avoids the expiration of the Contract during the campaign period preceding the mayoral and School Board elections. A 5-year Contract allows the parties to function without unnecessary distractions and to focus on the needs of all stakeholders. As a Fact-Finder, I find that my Recommendation for a 5-year Contract is a key component to my determination. I find that a 5-year Contract allows both sides to have labor stability and to cement a relationship on a solid footing. Therefore, I recommend a 5-year Contract.

Bd. of Educ. of the City of Chicago and Chicago Teachers Union, Local 1 at 100-01 (Bierig 2019).

The Union observes that one factor that led Neutral Bierig to recommend a five-year contract was to avoid having the contract expire during the mayoral election campaign period and, if CPS moves to an elected school board, during the school board election campaign period. But, says the Union, because its contract will be effective July 1, 2018, a five-year term means that it will be expiring during the mayoral and, potentially, school board campaign periods.

³I note that the CTU's proposed three-year term and the Union's proposed four-year term would have the contracts expiring at the same time, i.e. June 30, 2022. The Board's proposals of five year terms for each contract would keep the one-year separation in their expiration dates.

The Union further observes that there is a reasonable likelihood that the legislature will amend section 4.5 of the IELRA, restoring mandatory bargaining rights on a range of issues that currently, for CPS and only for CPS, are permissive subjects of bargaining. The Union urges that a longer term for the instant agreement postpones the time that the Union will be able to exercise its rights to bargain those issues if the legislature acts as expected.

The Union's concerns carry considerable weight but I have determined, on balance, to recommend a five-year term. I agree with Factfinder Bierig that a five-year term affords stability and predictability, allowing parties to work jointly on matters of mutual concern without the distraction of negotiating a new contract within a short period of time. Because when the instant contract is implemented it will be more than a year into its term, this concern carries greater weight than it did in the CTU contract. Some of the tentative agreements that the parties reached in the mediation leading up to the factfinding hearing called for establishing joint committees that would meet on paid time to address certain issues. A five-year contract affords these committees time to study and make recommendations and affords the parties time to implement the committee recommendations without having to turn right around and renegotiate. An example of this concern is bus aides. The parties are in agreement that a joint committee should investigate the possibility of bus aides performing compensated work at their schools between morning and afternoon routes. This was not memorialized in a tentative agreement because the parties were at odds with respect to other matters concerning bus aides. However, I will recommend that this committee be created and it is very likely that creation of the committee will be included when this contract is resolved. The committee will need time to work and the parties will need time to implement the committee's recommendations and refine that implementation in light of the first couple of years' experience. A five-year term, which actually affords the parties fewer than four years given that we are already into the second year, facilitates this.

Finally, a five-year term allows for the phasing in of certain improvements in terms and conditions of employment which, for reasons of cost or need to work out details, cannot be recommended for immediate implementation. Accordingly, I recommend that the contract be for a five-year term, expiring on June 30, 2023.

Wages

Before Factfinder Bierig, the CTU proposed 5 percent across-the-board wage increases in each year of a three-year contract. The Board proposed a five-year contract with increases of 2.5 percent in each of the first three years, 3 percent in the fourth year and 3.5 percent in the final year. Neutral Bierig recommended a five-year contract with across-the board increases of 3 percent in each of the first three years and 3.5 percent in each of the final two years. The CTU rejected the factfinder's recommendations but the Board accepted them. When the CTU contract is settled, across-the-board increases will at least equal the levels in the factfinder's recommendation.

In the instant proceeding, the parties have agreed to a framework whereby across-the-

board increases will equal those agreed to by the Board with the CTU, except for custodians hired after January 18, 2005, who are discussed below. This framework ensures that all members of the bargaining unit will see significant improvements in real wages in each year of the contract. The CPI-U for the Chicago area increased from 233.514 in July 2017 (using 1982-84 as a base of 100) to 237.870 in July 2018, or 1.85%. The CPI-U for the Chicago area increased to 241.489 in July 2019, or 1.56%.⁴ The Federal Reserve Bank of Philadelphia's Survey of Professional Forecasters forecasts annual increases in the CPI between 2019 and 2023 of 2.10%.⁵ Thus, the inflation rate has been and likely will continue to be significantly below the across-the-board wage increases. When step increases are added in, the increase in real wages for most members of the bargaining unit is even greater.

The Union cautions against placing excessive weight on the CPI-U. It urges that the Bureau of Labor Statistics in the 1990s changed its method for calculating the CPI-U from examining prices in a fixed basket of goods to examining a market basket of goods which takes into account consumer tendency to react to price increases by substituting lower priced alternatives. The Union argues that the substitution alternative is not as available to lower-wage workers such as the members of the bargaining unit. Furthermore, says the Union, rent and utilities, which consume a higher than average percentage of lower-wage workers' pay, have increased at a rate far above the increase in the CPI. The Union points to the United States Department of Housing and Urban Development's calculations of Home Income Limits to establish eligibility for public housing which sets the limit for very low income for a family of two in the Chicago region at \$35,650. The Union also points to the Illinois State Board of Education's income limits for a family of four to qualify for free or reduced-fee lunch, which for the 2018-19 school year were \$32,630 and \$46,435, respectively. The Union avers that 27% of the bargaining unit qualify for free lunch and 98% qualify for reduced fee lunch.

The Union's analysis, however, is not persuasive. The statute that guides my recommendation lists as the relevant factor, "the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living." Interest arbitrators and factfinders almost uniformly consider the CPI-U Chicago-Naperville-Elgin-IL-IN-WI, and the FRB of Philadelphia's Survey to be the relevant benchmarks to consult when dealing with parties in the Chicago metropolitan area. These benchmarks are so well-accepted that we may assume they guide parties in their negotiations.

The parties' agreed-on framework also provides that there will be further refinements and improvements for particular groups of employees. They disagree over what those refinements or improvements should be.

⁴https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_chicago_table.pdf

⁵<https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2019/survq219>.

Bus Aides and Custodians

Under the expired contract, custodians receive longevity pay of \$.50 per hour for ten to 15 years of service, \$.75 per hour for 16 to 20 years of service and \$1.00 per hour for 21 or more years of service. The Union proposes to double the longevity payments to \$1.00, \$1.50 and \$2.00 respectively. The Union urges that longevity rates have not increased since 2007. The Board opposes any increase in longevity pay.

Custodians hired after January 18, 2005, are paid the prevailing wage set by the collective bargaining agreement between the Building Owners and Managers Association of Chicago (BOMA) and SEIU Local 1. However, because the Board, pursuant to section 4-3.I, cancelled all wage increases for 2016, the custodians fell behind the BOMA wage scale. The Union represents that current custodian wage rates are \$1.36 per hour below the BOMA rates. That action is the subject of a pending grievance.

The Union proposes a new series of step increases for custodians hired after January 18, 2005, which will ultimately achieve parity with their senior colleagues. The Union argues that the average custodian salary was \$33,804.47 in FY 2012 and \$34,491.47 in FY 2019, for an average annual increase of only 2.0%, well below the compounded general wage increases in that period of 10.4%. The union maintains that the cost of its proposed step increases is \$2,039,000 in FY 2020 and \$4,597,000 in FY 2023, which it computes to be 0.0341% and 0.0769% of the Board's operating budget in those years. The Union's calculation assumes that its grievance over the custodian pay freeze in 2016 will be sustained and the custodians will be made whole for the missed 2.0% wage increase.

The Union compares the increases in custodian starting pay between 2014 and 2019 to increases for comparable employees in New York, Los Angeles, San Diego and San Jose. The Union avers that during this time period, custodian starting pay in New York increased 39.63%, in Los Angeles 37.2%, in San Diego 10.4% and in San Jose 18.4%. In contrast, says the Union, Custodian starting pay in CPS during this period increased 11.1%. The Union rejects comparison to the other of the ten most populous cities on the ground that Philadelphia was in receivership during most of this period, and workers in Phoenix, Houston, Dallas and San Antonio do not have collective bargaining rights.

The Board proposes that custodians hired after January 18, 2005, be brought up to BOMA rates that would be in effect had the 2016 wage increase not been cancelled. This amounts to increases as follows:

Year Effective	Year 1	Year 2	Year 3	Year 4`	Year 5
7/1/2018	7.2%	6.9%	6.6%	6.3%	5.3%
7/1/2019	3.1%	3.0%	2.9%	2.8%	2.5%
7/1/2020	3.3%	3.2%	3.1%	3.0%	2.7%

Bus aides assist diverse learners, i.e. students with special needs, on the busses. CPS contracts with outside companies for bus service and the bus drivers are not CPS employees. Bus aides have the option of meeting their busses in the morning at the bus barn or at the home of the first student to be picked up.

With respect to bus aides, the Union proposes that they be eligible for longevity pay at the same level as it proposed for custodians. The Union further argues that bus aides' schedules are highly irregular. They perform their morning runs which are guaranteed two hours' pay and their afternoon runs which are also guaranteed two hours' pay but have considerable down time between runs for which they are not compensated. The Union proposes that bus aides be paid a split shift premium equal to one hour at the Chicago minimum wage (currently \$13.00) to compensate bus aides for the time between runs. The Union also proposes that when bus aides are dropped off outside the City of Chicago (as there are bus barns located outside the City limits), they be paid a stipend of \$5.00 in recognition of the added transportation costs they incur.

The Board is amenable to longevity pay for bus aides but proposes that it be at the custodian rates in the expired contract. This is consistent with the Board's opposition to increasing longevity pay for custodians. The Board strongly opposes the split-shift premium, arguing that it is not appropriate to pay employees for not working. The Board urges that the split shift is inherent in the position of bus aide and any inconvenience is already compensated in the bus aides' wage rate. Bus aides are free to fill that time with other gainful employment and, as testified to by Field Manager Chi Chi Wonuigwe, some do providing ride share or home health aide services for example. Furthermore, says the Board, bus aides' wage rates are considerably above the wages paid to their peers at the school districts in the other ten most populous cities. The Board is amenable to studying options for giving bus aides the opportunity to perform compensated services at the schools and has proposed a committee for that purpose. The Board is amenable to the stipend to cover transportation expenses when an aide is dropped off outside the City limits.

At the outset, I observe that much of the Union's analysis with respect to custodians is not persuasive. In particular, the Union's comparison of the average custodian pay in 2012 with the average custodian pay in 2019 is not helpful. It fails to account for the replacement during that period of custodians hired prior to January 18, 2005 with new hires. As the more senior

custodians retire or otherwise leave CPS, their replacement by new hires will inherently reduce the average custodian's pay. Furthermore, the Union's analysis assumes no wage increase in 2018 but the 2018 increase is the subject of these negotiations and, regardless of whether it settles with the Union's proposal, the Board's proposal or somewhere in between it will be substantial.

The Union's comparison of percentage increases in starting wages for custodians in the period 2014 to 2019 is also not helpful. It too assumes no wage increase in 2018. It also fails to engage with half of the cities in the statutorily defined pool of comparables. The Union's failure to consider Philadelphia, Phoenix, Dallas, Houston and San Antonio is understandable because in interest arbitration we would not consider as comparable a community where the employees are not represented in collective bargaining or a community where there are special circumstances such as the Philadelphia receivership. That is because in interest arbitration the arbitrator's role is to determine the terms the parties would have agreed to had their bargaining process not broken down and terms imposed unilaterally by an employer on unrepresented employees are of no probative value for that determination. But in this factfinding my task is to recommend the terms on which the parties should agree and the statute defines the communities to which I should compare CPS as the ten most populous cities, not the ten most populous cities whose terms and conditions of employment are determined in collective bargaining.

The statute also directs my consideration to the cost of living. The Union makes the very forceful point that longevity payments have not increased since 2007. The CPI-U for the Chicago area in July 2007 was 205.561.⁶ In July 2019, it had increased to 241.589, an increase of 17.52%. The value of the longevity pay will continue to erode due to inflation through the rest of the term of the contract. The forecasted inflation rate is 2.1% per year. I recommend that longevity pay be increased by \$.25 across the board to \$.75, \$1.00 and \$1.25 respectively. This accounts for the decrease in the real value of the longevity pay over the years and provides some cushion so that the parties will not have to revisit this issue in their next round of bargaining.

With respect to the custodians hired after January 18, 2005, the Board's offer provides for increases significantly exceeding the rate of inflation and thus provides for increases in real wages for custodians. As of July 11, 2017 (the date the last wage increase was effective), the custodian starting wage rate was below most of the nine comparables. Except for New York, which is an extreme outlier with a July 1, 2017, starting rate of \$25.00 per hour, the Board's proposed increases catches the custodians up with their peers in the comparable communities. The Union has not justified its substantially greater wage increases for custodians hired after January 18, 2005. I recommend the Board's offer.

With respect to bus aides, the parties agree that bus aides dropped off outside the City limits should be compensated for the added transportation expenses. Accordingly, I recommend

⁶At that time the index was known as Chicago-Kenosha-Gary-IL-IN-WI, but the later name change did not affect the computation of the index.

that the parties agree to pay a stipend of \$5.00 whenever a bus aide is dropped off outside City limits.

The parties are in agreement that bus aides should receive longevity pay but they disagree over the amounts. That disagreement derives from their disagreement over whether longevity payments to custodians should be increased. In light of my recommendation that custodian longevity pay be increased by \$.25 per hour, I recommend that bus aides receive longevity pay equal to that paid to custodians.

The major disagreement between the parties is over the Union's proposed shift differential recognizing that bus aides work split shifts. I am not persuaded by the Union's arguments. Shift differentials are common where one group of workers work a less desirable shift than their colleagues. For example, workers working an overnight shift are often paid a shift differential. Such a differential serves two purposes. It compensates those employees for taking on the less desirable shift and it provides an incentive for employees to volunteer to work the less desirable shift. That is not the situation involving the bus aides. Working a split shift is part of the job of bus aide. There is no reason to assume that the irregularity of the schedule is not already considered in the bus aides' wage rates. Beyond making bus aides eligible for longevity pay, a case has not been made for increasing bus aide wage rates beyond the across-the-board increases which already provide significant increases to real wages. Furthermore, a split shift differential would be highly problematic to administer. Would it be paid to aides who spend the time between routes earning additional income by, for example, providing platform-based ride share and delivery services? If not, how would the Board keep track of who was entitled to it and who was not? Accordingly, I do not recommend the split shift differential.

The Board has indicated that it is amenable to establishing a committee to explore opportunities in the schools for bus aides to perform compensated services between their runs. The Union does not oppose such a committee but is concerned that if committee time is not paid, the committee may not form or may form but not meet. The Union is also concerned that the committee may not follow through. I recommend that the parties agree to establish the committee and that bargaining unit employees on the committee be compensated for their time at committee meetings. The parties have already agreed to establish a security officer committee that will meet on paid time and will consist of two bargaining unit security officers, one Union staff person and three Board representatives. I recommend the same model for this bus aides committee: two bargaining unit bus aides, one union staff representative and three Board representatives with the bargaining unit members paid for their time. I further recommend that the parties agree that the committee will meet at least once before January 31, 2020, that the committee will provide an interim report by end of the 2019-20 school year, and a final report by February 1, 2021.

SECAs

The Union proposes that SECA Is' starting pay be increased to \$32,515 effective July 1,

2018 and to \$40,641 effective July 1, 2019 and thereafter by the across-the-board wage increases. It proposes increasing SECA IIs' starting pay to \$33,843 effective July 1, 2018, and to \$42,641 effective July 1, 2019, and by the across the board wage increases thereafter. It also proposes changing the timing of step increases. Currently, step increases are paid after year 1, after year 2, and then for 3.5 to 6 years, 7 to 11 years, 12 to 16 years, 17 to 20 years, and year 21 and thereafter. The Union proposes that SECAs be paid step increases after year 1, year 2 and then every two years through year 20. The Union argues that SECAs should, at a minimum, be paid at the level HUD defines as very low income for a family of two in the Chicago area. It maintains that substantial upgrades to SECA pay are needed in light of the large number of SECA vacancies.

The Union further proposes to increase the differential paid to SECAs with an Associates Degree and to establish a third lane for SECAs with a Bachelor's Degree at a level \$2,000 above SECA II. Finally, it proposes that bilingual SECAs receive an additional stipend of \$1,000 per year.

The Board opposes adjusting SECA salaries beyond the across the board wage increases and opposes changing the step schedules. The Board maintains that the Union's proposal would give SECAs a 16% increase in the first year. It finds such an increase unjustified and urges that SECAs are paid more than their counterparts in the comparable communities, as well as in surrounding suburban school districts. The Board also opposes a stipend for bilingual SECAs but is open to increasing the differential between SECA I and SECA II and to establishing a SECA III lane for SECAs who have Bachelor's Degrees as long as it is done at the end of the contract term.

SECAs provide enormously valuable services assisting, guiding and supporting students with special needs. However, they are already receiving general wage increases that assure them significant gains in real income. Furthermore, between FY 2019 and FY 2023, 87% of SECAs will be eligible for at least one step increase, further increasing their real income. SECAs' wage rates were higher than their peers in every one of the comparable communities. The record does not support the Union's claim that the Board is having particular difficulty attracting and retaining SECAs. No data for SECA turnover rates was presented. Toni Lisa Campbell, Senior Manager for Strategic Planning and Professional Development, testified that in mid to late 2018, the Board had 3,600 SECAs and in mid to late 2019 it had over 4,000. Although the step schedule appears somewhat irregular, the CTU contract has the same step schedule for Paraprofessional and School Related Personnel (PSRP). Accordingly, I am unable to recommend the Union's proposed salary and step adjustments.

With respect to the Union's proposed bilingual stipend, I note that the CTU contract has several bilingual PSRP positions but they do not appear to be paid at a higher rate than their monolingual counterparts. There is no evidence in the record before me that the Board is having difficulty attracting bilingual SECAs and, although I agree that it would be nice to reward bilingual SECAs for their special qualification and the special service they provide, as Neutrals

Benn and Bierig have observed in the CTU factfinding recommendations, factfinding is an inherently conservative process. Just because a proposal is a nice idea does not provide a reason to recommend it.

It is apparent from Ms. Campbell's testimony that there is a significant intellectual component to a SECA's job responsibilities. While SECAs do not instruct students, they do guide and support them. Such guidance and support include, as appropriate, reading aloud, repeating, verbally prompting a student, reinforcing the instructional material and, where necessary, redirecting a student and providing the student with a sensory break if the student is being over-stimulated. Ms. Campbell testified that CPS encourages SECA professional development and coursework.

The statutory factors include "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." There is no dispute that well-educated SECAs further the overall educational environment and learning conditions of the district. The expired contract recognized this by paying SECAs with an Associate's Degree at a higher scale than those lacking such a degree. The Board indicated it is open to increasing the differential between SECA Is and SECA IIs and I recommend that the differential be increased by \$1,000 per year. The Board also indicated that it is open to establishing a SECA III lane for SECAs with Bachelor's Degrees. The Union represents that its informal poll suggests that 54% have a Bachelor's Degree. I recommend that a SECA III lane be established at rates \$2,000 per year above SECA IIs. To afford the Board the opportunity to budget for this, I recommend that the SECA III lane be established effective July 1, 2021. Of course, to justify advancement to SECA III, the Bachelor's Degree must be relevant to SECA job performance. I am not in a position to specify criteria for determining such relevance. I remand to the parties to discuss and agree on implementation of my recommendation so that they can define the criteria for a qualifying Bachelor's Degree.

Parent Workers

Section 4-5 of the expired contract provides, "4-5. Effective July 1, 2004, bargaining unit employees in the classifications of Parent Worker - School Security Aide, Parent Worker - Bus Monitor, Parent Worker - School Security Officer, Parent Worker - Child Welfare Attendant, Parent Worker - SECA, and Parent Worker - Other shall be paid an hourly rate which is equal to 75% of the Step 1 hourly rate for the corresponding full-time classification." The Union proposes to increase Parent Worker compensation to the Step 1 hourly rate for the corresponding full-time classification.

CPS Chief Talent Officer Matthew Lyons testified that the parties have been unable to locate the reference points for parent workers to set their wages at 75% of the referent Step I rate. In the expired contract, according to Mr. Lyons, the parties negotiated the parent worker wage rates contained in the contract.

In light of Mr. Lyons's testimony, it appears that the premise that parent worker wages are set at 75% of a comparable full-time classification is no longer valid. It appears that the largest number of parent workers are bus monitors and their duties are very different and much less demanding than the duties of bus aides. Accordingly, I do not recommend the Union's proposal concerning parent bus workers.

Board Authority to Freeze Wages

Section 4-3.1 of the expired contract provides:

The parties recognize that the BOARD is facing unprecedented fiscal challenges, the resolution of which is dependent on the BOARD's receipt of significantly greater revenue or a significant decline in BOARD expenditures. In the event the BOARD is unable to project that it can balance its budget for fiscal years 2017 (July 1, 2016 to June 30, 2017) or 2018 (July 1, 2017 to June 30, 2018), the BOARD shall notify the UNION by the February 15th preceding the start of the applicable fiscal year and the general wage increase set forth in paragraphs 4-3(a) and 4-3(b) shall be frozen at the February 15th rate for the subsequent fiscal year unless the BOARD is ultimately able to adopt a balanced budget that includes the general wage increase set forth in paragraphs 4-3(a) and 4-3(b) for the fiscal year in question, in which case, the BOARD shall pay said general wage increase. If the BOARD notifies the UNION that its budget will not balance by February 15th, the BOARD and the UNION shall bargain over the impact and effect of the wage freeze on the bargaining unit.

The Union urges that the unprecedented fiscal challenges that justified Section 4-3.1 no longer exist and therefore there is no reason to retain this provision. No similar provision currently exists in the CTU contract. I agree that there is no justification for retaining this provision and recommend that it be deleted.

Health Insurance

Unlike most workplaces where employees contribute a percentage of the health insurance premium, CPS employees contribute a percentage of their pay. CPS is completely self-insured and projects increases in healthcare costs of 6% per year.

In the CTU negotiations, the Board proposed that the percentage of pay increase by 0.5% in each of the last three years of its proposed five-year contract, i.e. in 2021-22, 2022-23 and 2023-24. The CTU proposed no increase. Factfinder Bierig recommended that contributions increase by 0.25% in 2021-22 and 2022-23 and by 0.5% in 2023-24. In this proceeding, the Board proposes that employee contributions to health insurance increase by 0.25% in each of the last two years of its proposed five-year contract. The Board's proposed five-year contract with the Union would expire June 30, 2023, thus rendering the Bierig recommendation for 2023-24 irrelevant to the instant proceeding. The Board proposes no changes to the health insurance plan

for the five-year term, including no changes to co-pays, deductibles, plan choices or out-of-pocket costs.

The Union opposes the Board's proposed increases in contributions. The Union maintains that under the Board's proposal, at the end of the contract's term, employees will be contributing a higher percentage of plan premiums than they contributed in the base year of FY 2018. Furthermore, says the Union, the total amount of new dollars that a typical bargaining unit employee will contribute significantly exceeds 6% per year compounded over five years. To maintain employee contributions to the percentage of premiums they paid in the expired contract, their contribution need increase at the end of this contract's term by 0.20%.

Section 11-5 of the expired contract provides for a tobacco contribution differential of \$150 or \$250 per year depending on whether the employee earns more than \$30,000 per year. No similar differential exists in the CTU contract. The Union observes that bargaining unit employees are more likely to be tobacco users and have to pay the differential than the employees in the CTU bargaining unit, as tobacco use generally increases as education level and income decrease. The Union proposes that the tobacco differential be eliminated. The Board has indicated that it is not opposed to eliminating the tobacco differential. Accordingly, I shall recommend that the tobacco differential be eliminated.

The CPS approach of basing employee contributions to healthcare on a percentage of pay is uncommon but not unique. *See, e.g., County of Will and Sheriff of Will County and Illinois FOP Labor Council*, No. S-MA-12-083 (Malin 2013). This approach is generally more favorable to employees because as long as healthcare costs increase at a higher rate than wages, as has been the case for many years and likely will be the case for many years to come, the percentage of premiums that the employee pays decreases. This approach is particularly favorable for lower-wage employees such as those in the instant bargaining unit, because their higher paid coworkers' dollar contributions are significantly greater, thereby subsidizing their lower paid colleagues.

Mr. Lyons testified that because CPS is 100% self-insured, there are no premiums. Instead, CPS pays for all covered health care costs incurred by covered employees and dependents. One employee might incur no healthcare costs in a given year while another might incur \$1 million in costs. All covered employees and their dependents form a risk pool over whom the risks and costs are spread. Consequently, Mr. Lyons testified, there are no premiums. Employees simply contribute to the pool.

Mr. Lyons testified that the appropriate way to view the Board's proposal is its effect on employee income compared to making no changes to the percentage contribution. His calculations showed that a SECA I, who begins at step 1 in FY 2018, will pay \$99 more in FY 2022 (year 4 of the contract) and \$206 more in FY 2023 (year 5 of the contract). For Security Officers the amounts are \$114 and \$235 respectively. For Custodians, the amounts are \$105 and \$216 respectively. For Bus Aides, the amounts are \$45 and \$92 respectively.

Although no premiums are paid to anyone because CPS is 100% self-insured, an analogous figure may be obtained by dividing total healthcare costs by the number of covered employees and dependents to get an average cost of insuring one employee in the three different categories (single, single plus one and family). I will call this figure a “premium,” placing it in quotation marks to recognize that it is a construct and not a real premium paid to an insurance company. The Board has not computed such a number. To illustrate the general impact of the Board’s proposal on employee contribution rates, I constructed two hypothetical employees and a hypothetical “premium.” For ease of computation, I used round numbers. The employees earn 30,000 and \$20,000 in the base year and the “premium” in the base year is \$10,000. I assume the base year contribution rate is 2.1%. The calculations are as follows:

Assume an employee earns \$30,000 and that health insurance costs \$10,000 per employee
 $2.1\% \text{ of } 30,000 = \$630 = 6.3\% \text{ of cost of health insurance}$

July 1, 2018: 3% raise = \$30,900; 2.1% = \$649; cost of insurance increases 6% to \$10,600
Employee is now paying 6.12% of insurance costs

July 1, 2019: 3% raise = \$31,487; 2.1% = \$668.37; cost of insurance increases 6% to \$11,236;
employee pays 5.95% of costs

July 1, 2020: 3% raise = \$32,226; 2.1% = \$676.74; insurance cost increases 6% to \$11,910;
employee pays 5.68%

July 1, 2021: 3.5% raise = \$33,354; 2.35% = \$783.82; insurance costs increase 6% to \$12,625;
employee is now paying 6.2%

July 1, 2022: 3.5% raise = \$34,421; 2.6% = \$895; insurance costs increase 6% to \$13,383;
employee now pays 6.7%

Assume an employee earns \$20,000: $2.1\% = \$420 = 4.2\% \text{ of cost of health insurance}$

July 1, 2018: 3% raise = \$20,600; 2.1% = \$433 = 4.08%

July 1, 2019: 3% raise = \$21,218; 2.1% = \$446 = 4.0%

July 1, 2020: 3% raise = \$21,855; 2.1% = \$459 = 3.9%

July 1, 2021: 3.5% raise = \$22,620; 2.35% = \$532 = 4.3%

July 1, 2022: 3.5% raise = \$23,412; 3.6% = \$609 = 4.5%

The hypotheticals illustrate the points discussed above. Each year that healthcare costs increase at a higher rate than wages, the employee percentage of the “premium” declines unless

adjustments are made to the percentage of pay the employees contribute. It is true that under the Board proposal in year 5 (and for the \$20,000 earner in year 4), employees would be paying a larger percentage of "premiums" than they paid in the base year. However, that is somewhat offset by the fact that in prior years the percentage of "premiums" they paid was less than the base year. There is also a certain arbitrariness to selection of the base year. The percentage of "premiums" the employees paid in the year beginning July 1, 2018, was very likely less than the percentage they paid in the year beginning July 1, 2017, as their wage rates probably increased less than the increase in healthcare costs.

I find the most significant factor applicable to this issue is "prior collective bargaining agreements and the bargaining history between the parties." Historically, there has been parity between the instant bargaining unit and the CTU bargaining unit with respect to health insurance. Indeed, the absence of the tobacco contribution differential from the CTU's contract is the factor driving its elimination from the instant contract. Therefore, I recommend the Board's offer subject to the proviso that if the CTU contract, when agreed to, has a more favorable contribution rate than the Board's offer, the more favorable rate will apply to the instant contract.

New Employee Orientation and Professional Development (PD) Days

Section 1-1.1 provides, in relevant part, "The BOARD shall grant the UNION an opportunity during the orientation of new employees to present the benefits of UNION membership, at which time the UNION may give such employees a copy of this Agreement."

The Union proposes to amend it as follows:

The BOARD shall grant the UNION an opportunity during the orientation of new employees to present the benefits of UNION membership, at which time the Union may give such employees a copy of this Agreement. *If new employee orientation occurs informally or on a one-on-one basis at the school level, the Principal, or their designee, shall introduce the new employee to the Union Steward or Union designated member at the school to meet privately with the member for the purposes of this Section. If the new employee orientation occurs in a group setting, then the Union shall be provided with as much advance notice as practicable and be allowed to set up an information or sign-up table as well as meet with new employees for up to twenty (20) minutes prior to the last hour of the orientation.*

Union Presence at Professional Development Days

The Union shall be granted twenty (20) minutes during the course of the day, but prior to the last hour of the schedule, at Professional Development Days or School Improvement Days to meet with bargaining unit employees present. The Union agrees that nothing in its presentation shall be defamatory toward the BOARD or its agents and the Union is responsible for the content of the presentation. The Union shall be provided a table for employee membership sign ups and other Union information at the training. The Board shall provide the Union with as much advance notice as is practicable regarding the

date, time, location and what group of employees shall be in attendance.

The Union argues that its proposal is very important in light of the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018) that fair share fees are unconstitutional. The Union maintains that the current contract language is insufficient because it is unclear how to operationalize it when new employee orientation occurs informally or one-on-one. Furthermore, in the Union's view, being allowed to speak to employees before or after PD meetings is insufficient because many employees will not have arrived until right before the meeting starts and many employees will leave as soon as the meeting concludes. The Union notes that it currently presents at Bus Aide PD sessions and disputes the Board's contention that it cannot spare a brief amount of time in the PD sessions, pointing to anecdotal evidence of the use of SECA PD days to have SECAs clean classrooms, organize books and perform other tasks unrelated to professional development.

The Board opposes the Union's proposal. The Board maintains that the contract already allows the Union to make a presentation at new employee orientation and no additional language is necessary. The Board maintains that PD time is precious and there is no time for Union presentations during PD sessions. The Board says the Union is free to speak to employees before or after the PD sessions. The Board further argues that at central office there is no room to set up tables and no groups are allowed to set up tables. It has no objection to the Union setting up tables in locations where there is space.

I sympathize with the Union's concern of the impact of *Janus* on its future as a representative and fiscally sound organization. However, that is not one of the factors that the IELRA calls for me to consider in making my recommendations.

The IELRA does include among the enumerated factors, "the interests and welfare of the public and the students and families served by the employer," and "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." Having a fiscally sound and broadly representative exclusive representative is in the public interest and the interests of the students and families served by the Board, and contributes to a positive educational environment. There is a good deal of evidence that employee voice communicated through their exclusive representative contributes to improvement in the delivery of educational services. For a summary see Martin H. Malin, *Education Reform and Labor-Management Cooperation: What Role for the Law?*, 45 *U. Toledo L. Rev.* 527 (2014). Having a fiscally sound exclusive representative facilitates such labor-management cooperation and is in the public interest as well as the interest of students, parents and all other constituents of our public schools.

This understanding is reflected in the State of Illinois's brief to the Supreme Court in *Janus*, as well as in several amicus briefs that were submitted in the case. It is also reflected in the numerous states that, in the wake of *Janus*, have enacted legislation mandating that exclusive representatives be allowed to meet with new hires and transfers into the bargaining unit, typically

for at least 30 minutes on paid time. These states include California, Maine, Maryland, New Jersey, New York, Oregon and Washington. The first half of the Union's proposal adds necessary details to the vague language existing in the contract. I shall recommend it.

The Board's argument that it cannot accommodate a 15 - 20 minute Union presentation during a PD session contains no specific factual support in the record before me. Absent specific factual evidence, the Board's assertion is not plausible. With sufficient notice and proper planning, the Board should be able to work a brief Union presentation into the PD agenda. To facilitate such planning, the Union must give the Board sufficient notice that it plans to attend. Giving the Union the opportunity to report to incumbent employees at PD sessions furthers the public interest in having a broadly representative, fiscally sound exclusive representative. Allowing the Union to button-hole employees as they are leaving at the end of the session is not sufficient. The Board's concern that there is insufficient space when meetings are held at the central office for the set up of tables is legitimate. Consequently, the Union's ability to set up tables must be on a space-available basis.

Accordingly, I recommend the Union offer, modified as follows:

The BOARD shall grant the UNION an opportunity during the orientation of new employees to present the benefits of UNION membership, at which time the Union may give such employees a copy of this Agreement. *If new employee orientation occurs informally or on a one-on-one basis at the school level, the Principal, or their designee, shall at the UNION'S request, allow the Union Steward or Union designated member at the school to meet privately with the member for up to twenty (20) minutes for the purposes of this Section. If the new employee orientation occurs in a group setting, then the Union shall be provided with as much advance notice as practicable and be allowed, on a space-available basis, to set up an information or sign-up table as well as meet with new employees for up to twenty (20) minutes prior to the last hour of the orientation. The Union shall provide the Board with as much notice as practicable whether it will attend and the identity of the person attending.*

Union Presence at Professional Development Days

The Union shall be granted twenty (20) minutes during the course of the day, but prior to the last hour of the schedule, at Professional Development Days or School Improvement Days to meet with bargaining unit employees present. The Union agrees that nothing in its presentation shall be defamatory toward the BOARD or its agents and the Union is responsible for the content of the presentation. The Union shall be provided, on a space-available basis, a table for employee membership sign ups and other Union information at the training. The Board shall provide the Union with as much advance notice as is practicable regarding the date, time, location and what group of employees shall be in attendance. The Union shall provide the Board with as much notice as practicable whether it will attend and the identity of the person attending.

I recognize that the phrase "as much notice as practicable" is imprecise and that the

parties would be better served by a more precise definition of the amount of notice required. However, I lack the knowledge to recommend specific notice intervals. I remand to the parties to agree on what those intervals shall be.

Custodians

The Union proposes that the Board remove SodexoMAGIC and Aramark as the management team and bring the custodians back under direct Board supervision. The Board objects that this proposal is outside the jurisdiction of the factfinding panel.

I agree with the Board. Section 4.5 makes "decisions to contract with a third party for one or more services otherwise performed by employees in a bargaining unit" a permissive subject of bargaining with disputes over its impact subject to a different impasse process. But even without section 4.5, the instant issue would be outside the factfinding panel's jurisdiction as it involves the employer's selection of its supervisors and managers and that has never been a mandatory subject of bargaining under the IERLA or any other labor relations act of which I am aware.

Bus Aides

Under the expired contract, Bus Aides were assigned schedules based on seniority within their performance evaluation scores. In other words, aides with a score of 4.0 were assigned schedules ahead of aides with a score of 3.9 and so on. The Union proposes that bus aides be assigned schedules based on seniority within their evaluation ratings with those rated excellent (4.0 to 3.5) assigned first in seniority order, followed by those rated proficient (3.4 to 2.7), followed by those rated developing (2.6 to 2.0) followed by those rated unsatisfactory. The Board has offered a compromise whereby schedules will be assigned based on five categories, splitting the proficient category between the top half of scores (3.4 to 3.1) and the bottom half (3.0 to 2.7). Approximately two-thirds of bus aides rated proficient are in the top half.

The Union asserts that the difference between the top half and the bottom half is meaningless for purposes of assigning schedules and is not used for any other purpose under the contract. The Board asserts that the difference is significant for scheduling purposes.

The objective evidence in the record before me is sketchy at best. Ms. Wonuigine testified that one point of the rating is based on a quiz and the remainder is based on attendance and job performance, including complaints and compliments received about a particular aide. Bus aides who are absent seven or fewer days receive 1.2 points for attendance, those who are absent between eight and 14 days receive 1.0 point and those who are absent more than 14 days receive 0.8 point. Beyond this, the record contains no other objective evidence that would enable me to determine which view of the significance of being in the top or bottom half of proficient is accurate. Because the evidence in the record does not enable that determination, I shall award the Board's compromise offer.

The parties have reached agreement in principle that the Board will give consideration to bus aide preferences when assigning routes. I am confident that the parties will be able to work out specific language and thus I will remand this issue for further negotiation.

The remaining bus aide issues concern benefit time – restoring sick days, allowing carryover of unused benefit days and eliminating blackout days. I shall consider these when I consider all benefit time issues below.

SECAs

Two issues related to SECAs remain to be discussed. The first is a Union proposal for language defining SECA job duties and restricting the diversion of SECAs to other duties consistent with a Board memo of February 1, 2019. There appears to be agreement in principle with respect to most of this issue but the parties have not yet agreed on the exact language. I find it appropriate to remand this issue to the parties for continued negotiation rather than have me write the language for them.

The second issue is the Union's proposal that SECAs be afforded one preparation period per week to include meeting with special education or primary classroom teachers. Relying on Ms. Campbell's testimony concerning SECA duties, the Union maintains that the preparation period proposal is justified. The Board opposes the proposal on the ground that it is not necessary, that it could infringe on teacher preparation time that the teacher believes is better spent on other matters and that it lacks the staff to cover for the SECA during the SECA's preparation period.

The parties' bargaining over SECA preparation time has been positional and rigid, with the Union demanding one preparation period per week and the Board rejecting the proposal. The record reveals that SECAs have significant interests in having some paid preparation time and the Board has significant interests in not obligating one period per week for SECA preparation. There is no indication that the parties have explored creative compromises that may accommodate both parties' interests, such as providing SECAs some planning time but not as frequently as the Union proposes. For example, one or two planning periods per month, or two or three planning periods per semester might be considered. I have neither the factual evidence in the record before me nor the knowledge to recommend such a compromise. Therefore, I shall remand this issue to the parties for further negotiation.

Benefit Days

The Union has made several proposals with respect to benefit days. It proposes that Bus Aides be restored the sick days they once had and proposes that 52-week employees be restored the vacation days they once had. It proposes replacing blackout days with a preferred vacation scheduling process for these periods, with a set number of slots available filled in accordance with performance ratings and seniority within rating categories. It notes that most blackout days

occur at the beginning and end of the school year and preclude employees from attending their own children's graduation ceremonies. It proposes adding Christmas and New Year's Day as paid holidays, observing that employees are not paid for the entire winter break and are not eligible for unemployment compensation. It proposes adding additional sick days for workers with more than ten years of service comparable to what exists in the CTU contract. It proposes that workers be allowed to carry over unused sick days up to a total of 40 as is provided for in the CTU contract.

The Board has indicated it is amenable to allowing for the carry over of unused sick days comparable to the CTU contract. Accordingly, I shall recommend that. Because bus aides do not get sick days, I will recommend that they be allowed to carry over general use days.

The Board opposes adding additional benefit days stating that doing so is too costly. It also opposes eliminating blackout periods on the ground that these are critical times, primarily the beginning and end of the school year when personnel cannot be spared.

With respect to blackout days, the Union's proposal to establish a preferred vacation scheduling process during blackout periods does not meet the Union's justification for making inroads on the blackout periods, i.e. that employees are precluded from attending important family events such as their children's graduation ceremonies. Under the Union's proposal, ratings and seniority would determine whether an employee may be off during a blackout period, not the reason for the employee's absence.

Ms. Woungine testified, "We will never deny a bus aide from attending a prom or a graduation or a family event." If the event falls during a blackout period the bus aide is not allowed to use a general use day but may take the day off without pay. This substantially undermines the Board's position that workers cannot be spared during blackout periods. Apparently they are spared but they are not allowed to use benefit time so that they can be paid. There is no reason to disallow the use of benefit time if the employee has such a compelling reason for being off that the employer will allow the absence, but only without pay.

After the factfinding hearing concluded, in further mediation, I shared my thoughts about blackout days with the parties. They agreed that employees should be able to use personal days or, for bus aides, general use days, for compelling reasons during blackout periods. They agreed that attending a child's graduation from a CPS school was one such compelling reason. They also agreed that additional compelling reasons should be defined with specific objective standards (such as to cover days taken under the Family Medical Leave Act) such that they can be applied easily and will prevent abuse. Unfortunately, there was insufficient time to work out the details so I will remand this matter to the parties for further negotiation.

With respect to Union proposals for additional paid benefit time, the parties' bargaining has been positional and rigid. The Union has insisted that all of its proposals be granted and the Board has insisted that they are too expensive. There is no indication that the parties have

explored potential compromises, such as granting some, but not all, of the Union's proposals, and I am not in a position to recommend a compromise. Therefore, I shall remand this issue to the parties for further negotiation.

Summary and Conclusion

To recap, I recommend the following:

Across-the-board pay increases equal to the increases provided for in the Board - CTU contract, except for custodians hired after January 18, 2005.

For custodians hired after January 18, 2005, the Board's proposed pay increases.

Increase longevity pay for custodians by \$.25 per hour and provide longevity pay to bus aides.

Provide bus aides with a stipend of \$5.00 whenever they are dropped off outside the limits of the City of Chicago.

Establish a committee to explore opportunities for bus aides to provide compensated services in the schools between runs. The committee is to consist of two bargaining unit bus aides, one union staff representative and three Board representatives with the bargaining unit members paid for their time. The committee will meet at least once before January 31, 2020, the committee will provide an interim report by end of the 2019-20 school year, and a final report by February 1, 2021.

Increase the differential between SECA I and SECA II compensation by \$1,000 per year.

Create a SECA III lane for SECAs who have Bachelor's Degrees with compensation \$2,000 above SECA II compensation, effective July 1, 2021. The parties will discuss and agree on implementation of this recommendation so that they can define the criteria for a qualifying Bachelor's Degree.

Eliminate section 4-3.1 from the contract, thus no longer permitting the Board to freeze agreed-on general wage increases.

Maintain current health insurance except that employee contributions will increase by 0.25% in the fourth year of the contract and by another 0.25% in the fifth year, provided however, that if a more favorable agreement on health insurance is reached between the Board and the CTU, the CTU terms shall govern.

Amend section 1-1.1 as follows:

The BOARD shall grant the UNION an opportunity during the orientation of new employees to present the benefits of UNION membership, at which time the Union may give such employees a copy of this Agreement. *If new employee orientation occurs informally or on a one-on-one basis at the school level, the Principal, or their designee, shall at the UNION'S request, allow the Union Steward or Union designated member at the school to meet privately with the member for up to twenty (20) minutes for the purposes of this Section. If the new employee orientation occurs in a group setting, then the Union shall be provided with as much advance notice as practicable and be allowed, on a space-available basis, to set up an information or sign-up table as well as meet with new employees for up to twenty (20) minutes prior to the last hour of the orientation. The Union shall provide the Board with as much notice as practicable whether it will attend and the identity of the person attending.*

Union Presence at Professional Development Days

The Union shall be granted twenty (20) minutes during the course of the day, but prior to the last hour of the schedule, at Professional Development Days or School Improvement Days to meet with bargaining unit employees present. The Union agrees that nothing in its presentation shall be defamatory toward the BOARD or its agents and the Union is responsible for the content of the presentation. The Union shall be provided, on a space-available basis, a table for employee membership sign ups and other Union information at the training. The Board shall provide the Union with as much advance notice as is practicable regarding the date, time, location and what group of employees shall be in attendance. The Union shall provide the Board with as much notice as practicable whether it will attend and the identity of the person attending.

The parties will discuss and agree on notice requirements that are more precise than "as much notice as practicable."

Provide that bus aides will be scheduled by performance evaluation ranking and within rankings seniority in the following manner: 3.5 to 4.0 first, 3.1 to 3.4 second, 2.7 to 3.1 third, 2.6-2.0 fourth, below 2.0 fifth.

Allow employees to carry over unused sick days and for bus aides unused general use days to a maximum of 40 and to use them for purposes provided for under the CTU contract.

Allow employees to use personal days or general use days for compelling reasons during blackout periods. Compelling reasons will include attending a child's graduation from a CPS school and such other reasons as the parties agree to in further negotiations.

I remand the following matters to the parties for further negotiations:

Criteria for a Bachelor's Degree to qualify for SECA III.

Notice requirements in Section 1-1.1 that are more precise than "as much notice as

practicable.”

Language concerning Board consideration of bus aide preferences when assigning routes.

Language defining SECA duties and restricting the diversion of SECAs from those duties.

SECA preparation time.

Language defining compelling reasons for which employees will be allowed to use personal days or general use days during blackout periods.

Union proposals for additional paid benefit time.

Any other proposal still outstanding not covered in this Report.

I find I have no jurisdiction to consider the Union’s proposal to replace the private contractors who supervise Board-employed custodians.

CPS has come a long way since 1987 when Secretary of Education William Bennett said, inaccurately and unfairly, that Chicago public schools were the worst in the nation. The percentage of elementary school students’ reading and math scores at or above the national average has increased every year since 2013. In 2011, only 69% of high school freshmen were on track to graduate. That increased remarkably to 89.5% in 2018. Drop out rates have been reduced by more than half in six years and the five-year graduation rate in 2017-18 was nearly 79%, the highest recorded by CPS students. A Stanford University study found that Chicago students are improving faster than students at any other major school district in the country.

These amazing improvements are a testament to the dedicated and competent CPS workforce. They have occurred despite major sacrifices employees made during CPS’s period of financial crisis. With CPS’s financial stability, the bargaining unit employees deserve to be recognized and rewarded.

The results of this factfinding process do just that. Through the mediation phase of this process, the Union has achieved major breakthroughs that greatly enhance the working environment for bargaining unit employees. These include limiting suspensions to no more than ten days; making suspensions of five or fewer days grievable and arbitrable, thus curbing the incentive for abusive or arbitrary discipline; providing improvements in the layoff procedure and recall rights; improvement in custodian transfer rights; service on committees to occur during paid time; improvements in the process of assigning security officers and restrictions on assigning security officers duties outside their regular responsibilities; improvements in awarding summer assignments; preferred consideration for substitutes for regular positions; and more. This Report recommends additional significant improvements including significant increases in

real wages, improvements in longevity pay and the extension of longevity pay to bus aides, improvements in scheduling bus aides, improvements in compensation of SECA IIs and establishing a new SECA III lane for which a majority of SECAs appear to be eligible, the ability to carry over unused sick and general use days and the ability to use personal and general use days for compelling reasons during blackout periods. Under this Report's recommendation, the Board will no longer have the ability to freeze wage increases.

I expect that the parties will regard these achievements and my recommendations as the end result after more than a year of collective bargaining, rather than a new plane from which bargaining should continue. I wish the parties the best of luck as they proceed toward agreement on their new contract.

Chicago, Illinois
September 16, 2019

A handwritten signature in black ink, appearing to read "Martin H. Malin", written over a horizontal line.

Martin H. Malin, Neutral Factfinder