

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF IMPASSE BETWEEN)
)
CARMEL CLAY SCHOOLS)
)
And)
)
CARMEL CLAY EDUCATION ASSOCIATION)
)

IEERB Case No. F-12-01-3060

ORDER

The above-entitled case came before the Indiana Education Employment Relations Board¹ (“the Board” or “IEERB”) at the Board’s meeting on November 18, 2013, for oral argument. Having considered the arguments of counsel, the briefs, the record, and being otherwise duly advised, the Board now affirms and adopts the Fact Finder’s Report except that we delete Findings of Fact and Conclusions of Law ¶¶ 8-30. We add the following discussion for additional guidance.

Board Discussion

The Carmel Clay Schools (School) and the Carmel Clay Education Association (Association) were at impasse for the 2012 bargaining season. On November 30, 2012, IEERB appointed Sandra Jensen as the Fact Finder. The Fact Finding was stayed by IEERB on December 4, 2012.² Fact Finding was reinstated effective September 17, 2013. A public hearing was held on September 20, 2013. After investigation and a hearing, the Fact Finder recommended that the School’s Last, Best Offer (“LBO”) be accepted as the parties’ Collective Bargaining Agreement (“CBA” or “contract”) for July 1, 2012, through June 30, 2013.

The Association timely appealed, arguing that the Association’s LBO should have been accepted because (1) the Fact Finder did not correctly analyze deficit financing, and the Association’s LBO does not place the School in deficit financing; (2) compensation for additional hours worked is bargainable; (3) compensation for additional work is bargainable; (4) the School’s compensation model is not compliant; (5) there should be a determination on the days from the parties’ Catastrophic Leave Bank; and (6) Daily Paid Leave is bargainable.

For the reasons given in more detail below, we uphold the Fact Finder’s choice of the School’s LBO and affirm and adopt the Fact Finder’s Report except that we delete Findings of Fact and Conclusions of Law ¶¶ 8-30.

¹ Chairman Patrick Mapes recused himself from this matter. Board member John Krauss is serving as Chairman Pro Tempore.

² For more information on stays of impasse procedures, see *Carmel Clay Schools*, U-12-04-3060, at 4 (IEERB Bd. 2013).

I. Deficit Financing

The teacher collective bargaining statute prohibits a contract that would place a school in deficit financing. *See* Ind. Code §§ 20-29-6-3; 20-29-6-15.1(b); 20-29-6-18(b). Deficit financing for a budget year is defined as actual expenditures exceeding the employer's current year actual general fund revenue. Ind. Code § 20-29-2-6. Although the concept is clear – expenditures in excess of revenues – the time frame is not. For the relevant time period, distributions for state tuition support – the majority of a school's general fund revenue – were made on a calendar year basis, and the School's budget was based on a calendar year. Therefore, we find it was reasonable that the Fact Finder analyzed the budget year as 2013. In the future, as the General Assembly is on a fiscal budget year and changed distributions for state tuition support beginning July 1, 2013, to a fiscal year basis, deficit financing should be analyzed using the fiscal year. *See* Ind. Code §§ 20-43-2-8; 20-43-21; Public Law 205-2013 (HEA 1001-2013).³ Viewing deficit financing in this time frame also is consistent with a contract term, which cannot extend past the state budget biennium.⁴ *See* Ind. Code § 20-29-6-4.7(b).

Another issue raised by this case is the revenue used to determine deficit financing. For revenue to be considered in fact finding, it must be part of the general fund. The question is whether the available revenue is limited to the certification from the Department of Education (DOE) of estimated general fund revenue from the school funding formula and any referendum certification from the Department of Local Government Finance (DLGF), or whether miscellaneous revenue as projected in a school's general fund budget can be included. *Compare* Ind. Code § 20-29-6-12.5(b) *with* Ind. Code § 20-29-2-6 *and* Ind. Code § 20-29-8-7(f). Both parties used miscellaneous revenue in their LBOs.

The Fact Finder found that as the law requires a fact finder to ensure the general fund revenue – not just the certifications – is not exceeded, miscellaneous revenue should be used to determine deficit financing. *See* Ind. Code § 20-29-2-6. This finding is consistent with Indiana code section 20-29-8-7(f), which provides that sources of funding for items include general operating funds in addition to the certifications.⁵ As provided in *Nettle Creek*, a fact finder should evaluate deficit financing by comparing the certifications “to the total cost of each proposal in relation to the overall general fund budget.” *Nettle Creek Sch. Corp.*, F-11-02-8305, at 14 (IEERB Bd. 2012).

³ The Department of Education's certification of estimated general fund revenue available for bargaining from the school funding formula was certified for calendar year 2013 in this case, but is now certified for the fiscal year.

⁴ Indeed, current year can be defined as current school year, which Indiana Code section 20-18-2-17 defines in relevant part as beginning after June 30 of each year and ending before July 1 of the following year.

⁵ Although this term is not defined in the collective bargaining statute, it generally refers to a governmental entity's general fund. *See* Black's Law Dictionary 682 (7th ed. 1999) (defining general fund as a government's primary operating fund); *see also* Ind. Code § 21-9-2-15 (defining general operating fund as the fund “from which general operating, administrative, and capital expenses ... may be paid”).

The Association argues that its LBO does not provide for deficit financing.⁶ However, it has not shown how. Based on the information presented, the Fact Finder found the Association's LBO placed the School in deficit financing by over \$1 million. The Association only challenged two of the School's figures: utility expenses and rental income. The Fact Finder found that the Association's LBO caused deficit financing even if those challenges were accepted. The Association also failed to account both for undisputed increases in medical, vision, and dental costs, and for its overtime mandate, which the School conservatively estimated to cost over \$30 million. As the Association's LBO places the School in deficit financing, it cannot be accepted. *See Ind. Code § 20-29-6-18(b)*.

II. Compensation for Additional Hours

The Association's LBO contains "wages for additional time" which provides a time and one-half rate for any minutes worked over a teacher's 7.5 hour instructional day or 185 day school year. Based upon the Board's decision in *Nettle Creek*, the Fact Finder found that demanding extra pay for required hours outside the contracted work day and work year is prohibited. The Association has requested that the Board reconsider *Nettle Creek*. We decline to do so.

Even if this provision were allowed, the financial implications would require us to choose the School's LBO. The School's conservative estimate of this provision is over \$30 million – a number not disputed by the Association. Although the Association claims that the School could regulate the overtime, the provision contains no such authority. In any case, the Association's LBO did not budget any cost for this provision. As this provision is prohibited and contributes to deficit financing, it provides another basis for rejecting the Association's LBO.

III. Additional Compensation

Both LBOs contain provisions for payment of identified projects. The School's LBO contains a provision paying teachers selected by the School for additional approved paid assignments, such as summer school, while the Association's LBO provides stipends for certain types of work the Administration "deems necessary," such as curriculum writing and 6th period teaching. The Fact Finder upheld the School's provision because the School's selection of teachers implies that the work is voluntary, not a required assignment. The Fact Finder held the Association's provision impermissible because the term "deemed necessary" implies a required teaching assignment.

The Association argues that the two provisions are functionally the same and should both be allowed. However, the provisions are different. The Fact Finder distinguished work performed within a teacher's duties with additional work. In other words, as summer school is outside a teacher's duties it is voluntary and can be bargained. We agree with the Fact Finder. While teachers cannot bargain for additional pay (above their salaries) for performing their

⁶ The Association is not appealing the Fact Finder's decision that the School's LBO does not place the School in deficit financing. (Association Br., p. 23) (requesting "that the Board find that neither parties' Last Best Offer results in deficit financing").

teaching duties, teachers and schools can and must bargain pay for work outside a teacher's duties.⁷ The Association's impermissible provision is an additional basis for rejecting its LBO.

IV. Compensation Model

The Association argues that the School's LBO cannot be picked because its compensation model is not compliant. The Association first argues that the School's LBO does not contain a required salary schedule. Indiana code section 20-28-9-1.5 governs teacher salary increases, and uses the terms scale and schedule.⁸ Previously, salary increases were placed in a chart – known as a salary schedule – based on the two factors of education and experience. No such chart was included in the School's LBO. However, a salary schedule does not have to be in chart form.⁹ "Schedule" means program, especially a procedural plan that indicates the time and sequence of each operation. *See* Merriam-Webster's Collegiate Dictionary 1110 (11th ed. 2005). The School's compensation model fits that definition by providing a plan for salary increases for the length of the contract.

The Association also argues that allowing the School sole authority to set newly hired teacher salaries is unlawful because it removes these salaries from being bargainable. Tellingly, the Association does not argue that this provision cannot be bargained by the parties. We recognize that this provision gives the School power over teacher salaries that the Association may not have agreed to. However, the Association's LBO also provided a salary for new teachers that the School may not have agreed to. Therefore, the School's compensation model does not require us to reject its LBO.

V. Catastrophic Leave Bank

The parties' prior contracts included a Catastrophic Leave Bank, to which teachers voluntarily donated personal illness days in exchange for the opportunity to use days for extended absences. The Fact Finder chose the School's LBO, which replaced the Bank with a short term disability plan. The Association argues that days from the Bank should be available for use under the new short term disability plan. The Fact Finder did not make a determination, stating that Fact Finding was not the appropriate forum for this question. We agree. The fact finding process is fast-paced and limited to the selection of one party's LBO. It is not an appropriate forum for a decision on whether Bank days accrued under another contract survive the new contract and, if so, the appropriate remedy.

VI. Daily Paid Leave

The Association's LBO provides for "daily paid leave" whereby each teacher receives a specific amount of duty-free time during the school day, in addition to the duty-free time required by law. The Fact Finder found this provision unlawful. As this provision is only in the

⁷ This pay can be bargained in different forms, including, but not limited to, stipends or hourly wages.

⁸ At the time relevant to this case, the provision was found at Indiana Code section 20-28-9-1.

⁹ Indeed, the traditional salary schedule is not compliant as the new law combines education and experience into one factor, caps that factor's impact on an increase, and requires at least one additional factor.

Association's LBO, we do not need to decide whether this provision is allowed in a contract. We decline to decide this matter.¹⁰

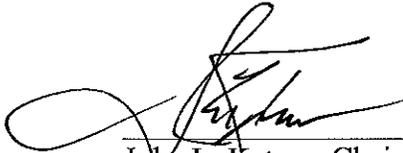
VII. Reduced Paid Leave

The Association's LBO provides for leave paid at a rate of one dollar per day. The Fact Finder found such leave permissible. As this provision is only in the Association's LBO, we do not need to decide whether this provision is allowed in a contract. We decline to decide this matter.¹¹

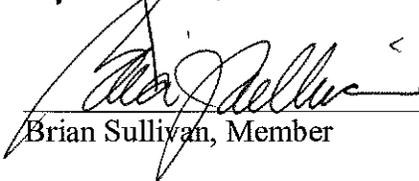
Board Order

The Board hereby adopts the Carmel Clay Schools' Last Best Offer as the Collective Bargaining Agreement between Carmel Clay Schools and Carmel Clay Education Association for July 1, 2012, through June 30, 2013, with the modification that the title to Article 6: Compensation, Section F, be amended to "Compensation for Additional Approved Hours of Work" and that the reference to "other assignments" be stricken.

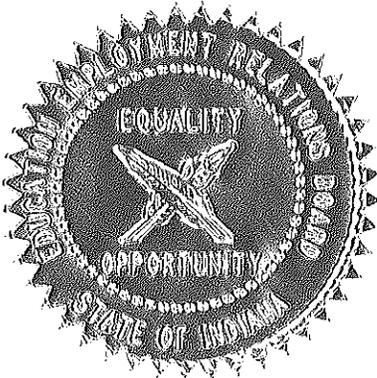
Dated this 25th of November, 2013.



John L. Krauss, Chairman Pro Tempore



Brian Sullivan, Member



¹⁰ As such, the Fact Finder's findings on this issue have been deleted.

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DISTRIBUTION

CARMEL CLAY EDUCATION ASSOCIATION, Exclusive Representative,
and
CARMEL CLAY SCHOOLS, School Employer.
IEERB Case No. F-12-01-3060

ORDER

DATE November 25, 2013
VIA E-mail

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