# FACT-FINDING REPORT AND RECOMMENDATIONS

**In the Matter of**

**Cleveland Teachers Union, AFT Local 279, AFL-CIO**

**-and-**

**Cleveland Metropolitan School District**

**SERB Case No. 2016-MED-03-0197**

Mollie H. Bowers
Fact-Finder

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## INTRODUCTION

This Fact-Finding was convened under the auspices of the Ohio Revised Code, Section 4117.74. The Fact-Finder was independently and mutually selected by the parties. They are the Cleveland Teachers Union, AFT Local 279, AFL-CIO (the Union, the CTU) and the Cleveland Metropolitan School District (the District/the CMSD). The bargaining unit is comprised of approximately 3,500 employees who are Teachers, Paraprofessionals (e.g., educational aides, instructional aides, instructional assistants, instructional technicians, administrative aides), School Nurses, Tutors, Social Workers, Psychologists, Driver Training Roadwork Instructors, Work-Study Teacher Consultants, Adult Education Teachers, Hearing Officers, and other Federal and State funded personnel. At the time of her selection, the parties and the

Fact-Finder schedules the dates for the proceeding to begin on April 18 and to end on April 22, 2016. The parties filed their pre-hearing briefs both electronically and in hard copy. There were received by the Fact-Finder on April 16, 2016.

## BACKGROUND

The District experienced some very difficult economic times, with all the attendant consequences, in the years prior to the 2013 contract negotiations. Nevertheless, the parties were still able to work out three-year contracts despite the economic challenges that the District faced. In 2012, the Union and its bargaining unit members worked hard, with the District, to pass a levy that helped to alleviate some of the District's distress. Nevertheless, in 2013, the parties ended up in fact-finding, conducted by this Fact-Finder, over what should be included in the next contract. The parties worked hard under her auspices and produced a contract that would remain in effect from 2013-2016. This history created an expectation on the part of the Union and its members that, if they worked with the District to help solve its economic problems, then a three-year contract was a viable option in the negotiations for the next contract.

When it was time for these negotiations to commence, once again, the District found itself in difficult economic straits and seeking a levy on the

November, 2016 ballot. The Union and its bargaining unit members are again ready to support the District's effort, **if** a three-year contract is forthcoming -- one in which the Union has already said that it will agree to a wage reopener in the second and third years of said contract. This time, however, the District is adamant that its financial condition can only allow it to offer a one-year contract given the restrictions placed upon it by the Ohio Revised Code (ORC) 5705.412, Certificate of revenue required for School District Expenditures. That language states, in pertinent part:

> . . .
>
> (B)
>
> (1) Notwithstanding section 5705.41 of the Revised Code, no school district shall adopt any appropriation measure, many any qualifying contract, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year. . . .
>
> . . .

Also during the time preceding the 2013 negotiations, the Mayor brought together District CEO, Eric Gordon, and CTU President, David Ouolke,

and tasked them to develop a plan, which would become law, specific to the Cleveland School District making it unique among school districts in the state of Ohio. The results became known as "The Cleveland Plan". It deals with various aspects of District administration and management. A goal of the District in the current negotiations has been to bring contract language into line with the statutory provisions in the ORC and with The Cleveland Plan.

By the time that the 2013 negotiations began, the District had turned the financial corner to the extent that some teachers and programs had been restored, but the way forward was by no means either clear or uncomplicated. The Federal Mediation and Conciliation Service (FMCS) worked extensively with the parties to transform negotiations that were floundering into an interest-based, rather than an adversarial, conversation so that progress could be made in reaching new contract terms. Some things were accomplished, but the parties were still unable to bring their negotiations to a mutually acceptable conclusion. In accordance with O.R.C 4114.14, this Fact-Finder was appointed by the State Employment Relations Board (SERB) to conduct proceedings with the District and the CTU. As a result of very hard work by both parties during this Fact-Finding, they were able to craft an agreement that was ratified subsequently.

The 2013-2016 collective bargaining agreement contained a new and very innovative approach to compensation known as the Cleveland Differentiated Compensation System (CDCS). Advancement in the compensation scheme was no longer based primarily on seniority, but rather

was based upon the accumulation of academic credits (ACs) that reflect a combination of teacher performance evaluation, student growth scores, and other performance factors. To be sure, this is a grossly over-simplified explanation of a complex and sophisticated compensation system. Recognizing this, the parties included the following language in Appendix T of that agreement:

> CMSD and CTU agree to commit the necessary time and resources to ensure the successful design and implementation of the differentiated compensation system. CMSD and CTU with the support of the American Federation of Teachers (AFT), and other external experts and researchers will continue to develop the implementation of the model for differentiated compensation set forth in O.R.C. 3311.78 to be continuously improved to meet the needs of the students and all stakeholders (2013 cba, p. 222)

There is no dispute that, in the intervening years, CDCS has floundered at best and in other aspects the District has failed altogether to implement the system. Neither time nor resources have been expended to build out the system. As a consequence, the District lost the opportunity to lead the country with respect to innovation where compensation systems are concerned; an opportunity that has now been picked up elsewhere. Additionally, somewhere between approximately 730 and 830 employees (about a quarter of the bargaining unit members) still have not been placed on the salary schedule (including the Union President) with the result that they have not

received **any** pay increases in the last three years. However, the Fact-Finder does not to mislead anyone to believe that money is either the only or the chief reason why the parties have found themselves, again, at impasse over the content of the next collective bargaining agreement.

Trust and collaboration between the parties, so essential for a healthy labor-management relationship, has been on a downward spiral and has now reached a new low. The destructive effects have spread throughout the relationship, hamstringing teams and other bodies intended to enhance the learning, growth, and welfare of students and otherwise. This distrust also has worked to destroy confidence that bargaining unit members had in the evaluation system before The Cleveland Plan was devised. Grievances have skyrocketed. As a result of administrative actions, bargaining unit members feel, among other things, disrespected as professionals, tyrannized by an unfair and inequitable evaluation system, and subjected to administrative decisions which sometimes have little, if anything, to do with improving their practice, much less the learning, growth, and welfare of students. This is why addressing these concerns is a major priority of the Union and of its bargaining unit members as a result of the current contract negotiations.

As in 2013, FMCS mediators worked with the parties for a considerable period of time to try to transform the negotiations conversations into something productive. Unfortunately, history repeated itself and not much progress was made. Thereafter the parties met on their own and were able to sign tentative agreements (TSs) on some issues. However, the District

walked out of the negotiations in February of 2016, and no further progress was made. This is the back drop for what the Fact-Finder encountered when she began proceedings on April 18th.

There were still a lot of issues on the table; some very controversial. She is grateful to both parties for the very hard work that they did to reach TAs on a number of issue, ; even if, in every case, a TA did not result. These efforts also provided a basis for the Fact-Finder to better understand the needs and the interests of both parties and, hopefully, for her to fashion recommendations that they can both accept as a result of this Report.

The Fact-Finder has a caution in this regard. The current collective bargaining agreement expires on June 30, 2016. The District believes that it has until this deadline to reach an agreement with the Union. The Fact-Finder is concerned that the District's believe, and expectations based upon same, may be erroneous. The Union will present the Fact-Finder's Report to its membership on May 6, 2016. At that time, too, a strike vote will be taken. This does not mean that the Union is going to strike immediately. Bargaining unit members are going to be absent for the summer, so the effect of any strike vote will likely only be known when students and bargaining unit members return in the Fall **if** exercise of this option is deemed to be the last resort by the Union and its members. She cautions the Union and its members not to romanticize the strike option. For both parties, a strike will demonstrate a catastrophic failure on the part of **both** parties to come to terms, with devastating, long-term effects on the community, the students,

the District, the Union, the bargaining unit members, and upon the relationship between the parties. Thus, the Fact-Finder cannot state strongly enough that she encourages both parties to put aside Russian roulette, and to use this Report as a means to reach agreement on contract terms and to begin to put their relationship back on track for the sake of all stakeholders concerned.

## STATUS AS OF THE CONCLUSION OF FACT-FINDING

The following is a status account as of the conclusion of the Fact-Finding proceedings on the evening of April 22, 2016:

### ITEMS NEVER OPENED FOR NEGOTIATION

| | |
|---|---|
| Article 1 | Appendix B |
| Article 4 | Appendix D |
| Article 7 | Appendix E |
| Article 17 | Appendix H |
| Article 27 | Appendix I |
| | Appendix S |
| | Appendix V |

### SIGNED TENTATIVE AGREEMENTS

| | |
|---|---|
| Article 2 (current language) | Article 3 |
| Article 5 | Article 6 |
| Article 11 | Article 12 |
| Article 14 | Article 15 |
| Article 16 | Article 18 |
| Article 19 (current language) | Article 22 (current language) |
| Article 24 | Article 25 |
| Article 29 (current language) | Appendix C |
| | Appendix F (housekeeping) |
| MOU Transition Coord. | Appendix M (housekeeping) |
| MOU Library Media | |

MOU ART Pelt

## OPEN ITEMS

| | |
|---|---|
| Article 8 | Appendix G |
| Article 9 | Appendix L |
| Article 10 | Appendix T |
| Article 13 | Appendix U |
| Article 20 | |
| Article 21 | |
| Article 23 | |
| Article 30 | |
| Article 31 | |

## FACT-FINDER CRITERIA IN FASHIONING RECOMMENDATIONS

The following criteria are set forth in the O.R.C., 4117.905 as the basis for recommendations made by a Fact-Finder:

Past collectively bargaining agreements, if any;

Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors particular to the area and classification involved;

The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service;

The lawful authority of the public employer;

Any stipulations of the parties; and

Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment

## DISPUTED ISSUES AND RECOMMENDATIONS

### ARTICLE 8 - TEACHER CONTRACTS, RE-EMPLOYMENT, NON-REMPLOYMENT[1]

**Union Position:**

The CTU asserted that changes needed to be made in Article 8, identified areas where it sought change, and explained why it believed that change was necessary. It submitted these interests to the District, but none were accepted. Similarly, the Union did

not accept any proposals made by the District with respect to this article. Therefore, the Union made, as its last proposal, that the current contract language remain the same.

**District Proposal:**

The District's last proposal to the Union contained two changes. The first was in Section 1. Teacher Contracts, to add the following as item F.:

> In accordance with O.C.R. 3319,15, no teacher may leave their employment with the board after the tenth day of July of any school year without the consent of the board of education. A teacher who leaves their employment after July 10 may have their license suspended by the Ohio Department of Education for not more than one year.

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1 Within the week after the Fact-Finding proceedings concluded, the Fact-Finder received email from both parties regarding an outcome in a recent court case and the Union's intention to appeal same. Since this was not known to either party when the Fact-Finding proceedings concluded, and the results are still uncertain, the Fact-Finder is not considering any of this information in fashioning her recommendations with respect to Article 8.

According to the District, adoption of this proposal is important because it both incorporates state law into the contract and advises teacher, who may not know, about the requirements of law.

The second proposal that the District made falls under Section 7. Non Re-Employment Procedures of Teachers on Limited or Extended Limited Contracts. To item B.7., the District sought to add the following language:

> The Administration may be represented at the hearing by the teacher's evaluator, the Network Leader who presided over the first administrative hearings, and/or the Chief Executive Officer's designee who presided over the second administrative hearing ("Administration Representatives");
>
> Each teacher may have a CTU representative at the hearing;
>
> At least 48 hours prior to the scheduled hearing, the Administration shall provide the Board and the teacher a copy of all information and documents that will be used at the hearing to support the non-renewal recommendation of the teacher (here in after, "Hearing Materials"). No later than 24 hours before the hearing, the teacher or their representative may supplement the Hearing Materials with additional documentation, provided however such supplemental material must be less than 15-pages long (hereinafter "Supplemental Materials"). The Supplemental Materials must be provided to the Board and Administration;
>
> The Administration will make its presentation first to the Board, followed by the teacher's presentation. The Administration may have up to five (5) minutes for its presentation. At the close of the

Administration's presentation, the teacher and/or teacher's representative will have a rebuttal opportunity. The teacher or their representative may have up to ten (10) minutes for their rebuttal. The Board may choose to question the Administration and/ or the teacher or teacher's representative;

The non-renewal hearing is the teacher's opportunity to be heard in response to the non-renewal recommendation. It is not an evidentiary proceeding as the evidentiary record is developed at the two prior administrative proceedings conducted pursuant to O.R.C. 3311.81. Neither the Administration nor the teacher will have the ability to:

(1) subpoena witnesses or documents;

(2) offer witnesses or conduct cross-examination or;

(3) offer documentary evidence or submissions during the non-representative renewal hearing. The teacher, the teacher's representative and the Administration Representative may, however, rely on and reference the Hearing Materials and Supplemental Materials submitted in accordance with paragraph 3 above during the hearing.

(4) The teacher, the teacher's representative, and Administration Representatives will be permitted to remain in the Executive Session during the hearing until it is time for the Board to deliberate. After the presentation and rebuttal, the teacher, teacher's representative and Administration

Representatives will be asked to leave the Executive Session.

The Board will deliberate in Executive Session on the non-renewal recommendation. The CEO and legal counsel for the Board and CMSD may remain with the Board in Executive Session at the discretion of the Board.

(5) At the conclusion of the Executive Session, the Board will return to the Regular Session and will conduct a separate vote on each teacher to determine whether to non-renew the teacher's contract. The results of the vote for each teacher will be set forth in a separate Board Resolution.

In addition to these prescriptions, the District modified current contract language to state that:

> Following the hearing, or if no hearing is requested, after the Board acts on the question of the teacher's re-employment, the decision of the Board shall be final and shall not be subject to further appeal.

**Recommendations:**

The Fact-Finder agrees with the District that it is important for teachers to know and to recognize the implications of the language contained in O.C.R. 3319.15. It is her recommendation, therefore, that this language be incorporated, verbatim, into the contract. O.R.C. 3319.15 states the following:

> No teacher shall terminate the teacher's contract after the tenth day of July of any school year or during the school year, prior to the termination of the annual session, without consent of the board

> of education; and such teacher may terminate the teacher's contract at any other time by giving five days written notice to the employing board. Upon complaint by the employing board to the state board of education and after investigation by it, the license of a teacher terminating the teacher's contract in any other manner than provided in this section may be suspended for not more than one year.

The Fact-Finder cannot recommend in favor of the District's second proposal. She agrees with the District's intent to provide a structure for the hearing before the Board. This can be beneficial to both parties. However, the proposal advanced by the District lacks fundamental fairness and may even infringe on due process in certain of its provisions. The Fact-Finder declines to recommend an alternative process. This is something that the parties need to work out themselves, collaboratively, to best suit their needs while also protecting the due process rights of all concerned. Unless and until this is done, the Fact-Finder therefore recommends that Article 8, Section 7., and that the remainder of Article 8 shall remain in effect per the current contract.

**ARTICLE 9 - SCHOOL SCHEDULES, MEETINGS & CALENDAR**

This article is very important to teachers. As part of the deal-making process for the 2013 contract, the teachers gave up 200 minutes per week outside of the student school day. They retained control over only 50 minutes of this time per week for school-related activities like planning and parent contact. In the current negotiations the Union initially sought to recapture control over all of these 200 minutes. Eventually, as a result of

hard work by a small group of CTU and District representatives, the last proposal made by **both** parties reflects that 100 of these minutes shall be restored to the teachers and 100 minutes shall be retained by administrators. The Fact-Finder endorses this resolution.

The first rub came in defining how the 100 minutes allotted to teachers and the 100 minutes allotted to administrators shall be defined. The Union proposed that the language state that 100 of these minutes will be "self-directed teacher time" and 100 minutes will be "administrator directed time". The District countered with the language that 100 minutes will be "administrator designed time (as defined below)" and 100 minutes will be "teacher self-defined time (as defined below)". Neither party provided a clear rationale for the difference in terminology that each chose. The Fact-Finder therefore recommends that "self-defined" time should be the language adopted because it provides for **accountability** on the part of both teachers **and** administrators for the choices that they make when utilizing the 100 minutes per week allotted to each of them.

The Union also sought protection against encroachment by administrators on the Teacher [self-defined] time, by adding the language that, "The 100 minutes of Teacher [self-defined] time shall be reserved for professional activities as outlined below and shall not be assigned by the administration. The District's last proposal agreed with this language and, thus, the Fact-Finder affirms this agreement in her recommendation.

To make it clear, the 100 minutes per with which are designed by the administrator include:

Team Time (which can include grade level teams, committee meetings,
vertical planning, and must include state mandated programs or initiatives such as Teacher Based Teams);

General Collaboration;

Professional Development;

Student Support Team (SST);

New Program;

Professional Learning Community; and

Faculty Meeting (The Union shall have input into the agenda of the meeting. The last ten (10) minutes of the meeting shall be devoted to Union business).

In its last proposal, the District wanted to remove 'committee meetings' from administrator designed time to teacher self-designed time. The rationale provided was that committee meetings generally involve things like planning a roller skating party and, thus, should not be counted against administrator designed time. While that may be true in some instances, the Fact-Finder was not convinced that all committee meetings are for teacher designed purposes, but rather that there are committees like 'beautification' to which teachers are assigned by administrators and from which results are expected. The location of 'committee meetings' should by no means be a deal breaker and, thus, the Fact-Finder recommends that these remain in the administrators' designed time.

The 100 minutes of teacher designed time shall be used for, and shall not be designed or directed by administrators for:

Office Hours;

Record Keeping;

Parent Conferences;

IEP/ETR/504 Plans;

General Collaboration; and

Planning.

The Fact-Finder recommends that this allotment be adopted.

The last proposal submitted by both parties also showed agreement on the language that:

> Participation in additional professional time is mandatory and members are expected to fully participate in the professional experiences that are relevant to their position. This professional time will be scheduled immediately before or after the student school day, Monday through Thursday in fifty (50) minute increments unless a different time frame is approved via the Academic Achievement Plan (AAP). The AAP will outline which days are reserved for teacher [self-designed] professional activities.

The Fact-Finder recommends this agreement.

The parties also agreed on the language that:

> The Principal, Chapter Chairperson, and Academic Progress Team (APT) (Appendix Q) are responsible for seeking input from staff to align administrator designed professional activities to meet the needs of the building staff.

The reason for this, and other related language is a wide-spread complaint by teachers that, too often, they have been directed by administrators to attend professional development which is totally unrelated to their teaching

responsibilities,  For example, an English teacher might be sent to a professional development session that applies to math teachers.  The District should be concerned about this waste of  teacher time and about the inefficient use of resources devoted to professional development.  Therefore, the Fact-Finder endorses the agreement reached by the parties.

Related to resolution of this problem is the agreement of both parties on language that states:

> This input will be considered by the administration when scheduling the 100 minutes of administrator [designed] time for professional activities as outlined below.  The parties recognize that reasonable modifications to the scheduled professional activities may be required

To this, the Union added language stating that, "The parties recognize that reasonable modification to the scheduled professional activities may be required and are allowable with the agreement of the APT".  The District said that it could not agree to this language and proposed, instead, that it state, "The parties recognize that reasonable modifications to the scheduled professional activities may be required.  As a means of resolving the differences between the parties, the Fact-Finder recommends language stating that:

> The parties recognize that reasonable modifications to the scheduled professional activities may be required.  These are allowable after consultation with the APT.

This language is recommended because it include the flexibility that both parties recognize may be necessary, but makes the administrator

accountable for consulting with the APT and for the consequences of his/her decision to modify the schedule of professional activities.

At the conclusion of fact-finding, there were differences between the parties with respect to Section 2. School Start Time. The Union proposed the following:

> A. School Start Time.
> 1. Beginning with the 2016-2017 school year, all teachers except as noted in paragraph 2 below will have a 440 minute school day.
>
> Each day shall include:
>
> 10 minutes of unassigned time before the start of the instructional day;
>
> 40 minute uninterrupted duty free lunch;
>
> 1 planning period (at K-8, fifty (50) minutes during each student instructional day; and
>
> 200 minutes per week of which 100 minutes will be administrator" [designed] time and 100 minutes will be [self-designed "teacher time"

The District's final proposal states as follows:

> If a School's calendar exceeds the standard workday or work year,
> appropriate compensation will be determined consistent with Article 30 and the Cleveland Differentiated Compensation System
> ("CDCS") MOU, Appendix r.
>
> No teacher's current salary will be reduced as a result of this standard workday if the teacher's assignment remains unchanged.
> Upon ratification of the new contract, teachers accepting assign-ments to schools that operate outside the standard workday will be compensated as described above.
>
> *The ten (10) minute report time does not include the following

bargaining unit members as their work day is 7 hours and 45 minutes: paraprofessionals, sign language/educational interpreters, and other classified employees.

The District's proposal also included, under Section 3. Lunch Periods/Travel Time, the current language which states that:

> Each teacher is to have a duty-free lunch period of a minimum of forty (40) minutes. The forty (40) minute lunch period for teachers shall be scheduled during the regularly scheduled student lunch periods of the regular day, unless with written consent by the affected teacher. No one teacher or teachers will exceed the lunch time allocated for the majority of the faculty. Teachers assigned to more than one building in a school day shall not have to travel during their lunch prior nor during their unassigned periods.

The differences in the final proposals made by both parties are significant. Especially since the District insists that it can only agree to a one-year contract, the Fact-Finder recommends that the current contract language be maintained.

Also under Section 2. is a provision that pertains to the Louisa May Alcott school -- the only K-5 school currently in the District. The Union wanted the current contract language to remain intact. The District disagreed. Its rational was that this one school should follow the same procedures as everyone else in the District. It did acknowledge that there has been some discussion about increasing the number of K-5 schools, but the District would not commit to anything based upon those discussions. Since it is within the realm of possibility that additional K-5 schools could be added sometime during the duration of any contract achieved by the parties,

the Fact-Finder must recommend that the current contract language be maintained, in its entirety, with respect to the Louisa May Alcott school.

With respect to Section 4. School Schedule, the parties agreed that the language should remain as written in the current contract until item F. School Day Scheduling, item 1. can be resolved by them. However, the District's final proposal during fact-finding is, it said, worth considering. That proposal retained the first two sentences and then added the language that:

> All teachers and paraprofessional will be notified of their tentative assignment for the following year prior to the start of OPI I, as per Article 12, Section 1 (B).

According to the District, it was trying to address the Union's interest in improving notice to Teachers and Paraprofessionals of their schedules for the upcoming school year. The Union's response was that this does not correct the problem that it was trying to address not only with respect to teachers and paraprofessionals, but also in terms of notification to parents and students. Therefore, the Fact-Finder agrees that current contract language should be retained, unless and until the parties can agree to change it.

Both parties proposed change to item 6. under Section 4.F. The Union offered the language that:

> All students in K-8 buildings shall be scheduled for each of the following (electives): art, music, physical education, technology, and media at least once per week for the School year. Students in grades 9-12 shall have at least one semester of dedicated technology instruction each year. This technology instruction is to prepare students for online high stakes assessments and college or career readiness. If no computer lab is available in the school, then

computers on wheels will be provided to each technology teacher.

During technology instruction, the student:computer ratio shall be 1:

1.

If this language is adopted, other sections of the contract shall be updated accordingly. The Union's rational for this proposal is that all students should have the same opportunities for full special subject participation as their suburban peers. Additionally, the demands of online testing and of college and career readiness necessitate dedicated technology instruction for all students.

The District's final counterproposal states that:

> All K-8 buildings shall be scheduled for each of the following: art, music, physical education, and media, except where there is not a licensed professional in the position. In that case, schools may select an alternative elective course.

The District acknowledges that technology is an important inclusion in the rubric provided by the Union. However, it asserted that if other electives are added to the current mix, then the likelihood is that the District will have to bring someone in to provide this instruction which, under current economic conditions, the cost is prohibitive to the District. It further asserted that if the scheme suggested by the Union is adopted, then students will have to be out of more of their core content instruction when taking an elective that is appropriate for them.

The Fact-Finder agrees with the Union's rationale for including technology among the elective offerings. Its reasons are very persuasive not only in terms of testing expectations of students imposed upon them ever

more frequently in the classroom, but also, and even more importantly, to try to level the playing field when the District's students compete with their counterparts in the suburbs in terms of both college eligibility and careers. Given these realities, the District's opposition to the inclusion of 'technology' among the electives cannot be credited. All the more especially because, absent this prescription, electives can be introduced by administrators that may have little or nothing to do with the success of students on classroom testing, much less otherwise. This is a result that the Fact-Finder cannot endorse and that, she believes, that the District would not want either. After all, the survival of the District depends upon attraction and maintenance of students. To do so, the District must show that is providing the best education than it can to prepare students for college and/or for career opportunities. To make this possible, the Fact-Finder recommends that the current language, including "media", be replaced with "technology".

Yet another area where the parties disagreed pertains to Section 4.G. K-8 scheduling. The Union's final proposal is to retain the current contract language. In contract, the District's final proposal eliminated the language in item G.1. entirely, claiming that it is redundant because literacy is incorporated throughout the curriculum, so not all buildings need this block to meet the needs of students. As we are reminded daily, in our personal and professional lives, literacy, even among American born students, is not something that can be taken for granted; much less as a result of the influx of young people from other countries. A heavy burden falls on K-12 schools

to make sure that the students it graduates are literate. This is an on-going challenge to those schools, including the District. Therefore, the Fact-Finder recommends that the current contract language with respect to G.1. remain unchanged.

The language in Article 9. Section H., Section 2. Instructional Time and Substitute Duties at the Secondary Schools was not agreed to by the parties at the conclusion of Fact-Finding. The Union's final proposal was to maintain current contract language. The District sought to eliminate the language "based on six assignments" at the conclusion of Section 2.a., and to modify the first sentence in Section 2.b. by eliminating the language "not to exceed fifteen (15) total minutes". Give the circumstances in which the parties now find themselves, the Fact-Finder recommends that the current contract language remain in effect, unless and until the parties determine otherwise to their mutual satisfaction.

With respect to Article 9, Section 7. Meetings/Events/Conferences on school days, the Union's final proposal was to maintain the current contract language. The District's final proposal contained a change to Section 7.A.3. to eliminate the second sentence in the existing provision. Once again, the Fact-Finder recommends that the current contract language be retained, unless and until the parties have the time and opportunity to determine otherwise.

The next area where the parties have disparate proposals is in Section 9. This time, the District maintains that the current contract language should

be maintained. The Union has made proposals which refer back to its earlier inclusion of 'technology' and now add the word "elementary". Given the Fact-Finder's recommendations heretofore, she recommends that the language in Section 9. be maintains as written in the current contract.

At the conclusion of fact-finding, there was still disagreement between the parties with respect to Section 10. Secondary Department School. The District's final proposal was that the current contract language be maintained. The Union proposed a chance to item D. The first sentence would remain unchanged, but language would be added to state that, "Additionally, no secondary teacher shall have more than one preparation per class period". The ration that the Union gave for this change was that the example that the District gave of a teacher teaching both French 1 and French 3 during the same period to two separate groups of students deprives both groups of students proper instruction and attention on courses they need to graduate and/or will otherwise prepare them for college and career readiness. The Fact-Finder agrees with the Union's concerns. While this dual teaching may work for certain subjects, the Fact-Finder was not convinced that 'one size fits for all' subjects. Therefore, she recommends that the current contract language be maintained.

The Union added a new Section E. to the current contract language which states as follows:

> In secondary schools, each art, music, technology, and physical education teacher shall have the option to schedule one (1) day after the official close of school to prepare supplies and equipment

for storage and be paid at his/her daily rate. However, in secondary schools, the day immediately preceding the first day of instruction shall be a room readiness day for all teachers. In addition, any secondary teacher split between two or more schools will have the option of an additional day prior to the start of the official school year to be paid at his/her daily rate. These funds will be paid from central administration and not incurred on any school-level budget.

The rationale that the Union gave for this proposal is that it mirrors the elementary/Pre-K-8 language and will allow teachers in secondary schools the time necessary to be prepared for Students on day 1 of the school year.

The District opposed this proposal for both financial and practical reasons, including mention of "technology" per earlier representations and expression of doubt that teachers who are split between two schools really need the time that the Union is proposing because they usually do not have a room to prepare because their room is shared space. The Union disagreed, asserting that it is not just about time to blow up basketballs, but rather about the time that teachers need to find where they are going to be located, where things have been stored, to take inventory and to order supplies, if necessary, and to prepare welcome packets. The Fact-Finder recognizes that this is an issue tied to the results in resolving other areas in Article 9. She found the Union's presentation worthwhile, but also lacking in terms of the pervasiveness of the problem that it is seeking to address. Therefore, the Fact-Finder recommends that the current contract language be maintained.

At the conclusion of Fact-Finding, the Union proposed that the current contract language with respect to Section 11. Compensation for Additional Class Assignments, Meetings, and Conferences be maintained. The District did not disagree. However, it made another proposal that all of the language contained in A. be deleted and that the language contained now in B. be revised to states as follows:

> Teachers who volunteer to accept assigned time beyond the school day (early arrival/late dismissal) as part of their normal work load may also have an adjusted start/end time. However, if the assigned time is in excess of the normal scheduled teacher load, the teacher shall report at the regular starting time for teachers, shall assume a full schedule of duties, and shall receive additional compensation for the additional assigned time. Compensation in such instances shall be at the rate of one-sixth (1/6) if the teacher's annual base contract salary, prorated based upon the teacher's 300 minutes of assigned time.

The District said that this proposal is important because of concerns that the Administration has about teachers who are currently teaching three or fewer preparations and working less than 300 minutes of instructional time (inclusive of passing) and who, under the current contract language, are entitled to receive additional pay for an "assignment" that otherwise is within their work and number of preparations.

The Fact-Finder acknowledged the interests of both parties with respect to their proposals. However, once again, acknowledging that the District is

adamant that only a one-year contract can result, regardless of any recommendation that the Fact-Finder can make, she recommends that the current contract language be maintained.

Finally, with respect to Article 9., come proposals with respect to Section 14. Trades & Industry Program Assignments. The Union's final proposal is that the current contract language be maintained. The District proposes that this language be eliminated completely from the contract because it is vestigial since the courses in question are no longer a part of the curriculum provided by the District. Absent any information to the contrary from the Union, the Fact-Finder recommends that the District's proposal be adopted.

## ARTICLE 10 - SCHOOL ORGANIZATION AND TEACHING ASSIGNMENTS

The parties have reached TAs on all but a few areas of the language to be contained in this article.

**Union Position:**

The Union has proposed that additional language be included in Section 3. Special Education Assignments. That language states that:

> In order to ensure that each School Psychologist completes an equitable number of Evaluation Team Reports (ETRs) in one school year, the District may establish a "cluster" approach in which two or more School Psychologists have a combined responsibility for ETRS and other job duties for a set number of schools, keeping in mind the caseload maximums established in the Ohio Operating Standards. For changes in student enrollment that impact service provider ratios after October 1, number 3 above

> will apply. School Psychologists, who are required to complete more than 55 ETRs shall be paid as follows: $250. for each Evaluation Team Report (ETR) completed in one school year from 56 to 60 cases, $500. for each Evaluation Team Report (ETR) completed in one school year over 60 cases.

According to the Union, this proposal affords the District the greater flexibility it has sought to equalize the number of ETRs per Psychologist and, thus, to reduce expenditures for overages. It further stated that this language permits the District to reassign Psychologists based upon changes in student enrollment throughout the District. The District agreed to this language.

Another area where the parties have been unable to reach resolution is in Section 3.D. The proposal made by the Union provides minor modification to the current contract language and states that:

> Every intervention specialist will be given one day per month, without students, September through May, for the purpose of IEP development and caseload management. Schools will determine the process for providing this day through written mutual agreement between the UCC and building principal. Absent a written mutual agreement at the building level, a process will be determined by the appropriate 3rd Vice President of the CTU and appropriate Academic Superintendent of the District.

The Union justified this expansion of time allotted to Interventions Specialists by claiming that they do not now how enough time to complete all the legally required documents **and** to meet with parents. This proposal, the Union said, remedies this problem by ensuring one full day a month for the data collection, document compliances, parent contact, and IEP meetings necessary for that these Specialists to complete their required tasks.

The third proposal made by the Union pertains to Section 9. Classroom Integrity. That proposal is:

> CMSD and CTU recognize that any outside visitation has the potential to cause a disruption to the educational process. Therefore, any district employee not housed at the school will introduce themselves to the educators and students in the room and acknowledge the purpose of the visit. In addition, in order to avoid further disruption of the educational process, all visitors shall refrain from talking to students, going through the Bargaining Unit Member's desk, walking around the classroom, videotaping, taking pictures, etc. If the classroom professional requests no visitors for that day, this request shall be honored. The principal will provide a copy of all documentation generated by classroom visitors to the bargaining unit member at the bargaining unit member's request.

Inclusion of this proposal in the Union's final offer was made because the CEO had not finished his commitment, during Fact-Finding, to provide both policy and protocol that would address Classroom Integrity and be acceptable to the Union.

**District Position:**

With respect to Section 3., the District proposed additional language as follows:

> In order to ensure that each School Psychologist completes an equitable number of Evaluation Team Reports (ETRs) in one school year, the District may assign additional cases to School Psychologists who are projected to have a smaller workload of ETRs in their current assignment for the school year. In order to ensure equitable ETR distribution, the District may establish a "cluster" approach in which two or more School Psychologists have a combined responsibility for ETRs and other job duties for

a set number of schools, keeping in mind the caseload maximums established in the Ohio Operating Standards. School Psychologists who are required to complete more than 55 ETRs shall be paid as follows: $250 for each Evaluation Team Report (ETR) completed in one school year from 56 to 60 cases. $500 for each Evaluation Team Report (ETR) completed in one school year over 60 cases.

The District shared with the Fact-Finder that dispute over this language would go away **if** the CTU agreed to its proposal regarding the 200 minutes in Article 9.

Under this same article, the District agreed, in its final presentation to the Fact-Finder that, under B. Paraprofessionals and Sign Language/Educational Interpreters that it would accept the language in 2. "defined in Article 10, Section 6 (and Appendix M). Also in its final presentation to the Fact-Finder, the District advised that **if** the Union accepted its proposal with respect to the 200 minutes, then its counter proposal on Section 3.D. would be removed.

**Recommendations:**

It was apparent during fact-finding that both parties have a strong, mutual interest in resolving their differences with respect to this article and have proposed means to do so. It was evident to the Fact-Finder that sufficient mutual interests existed that, with some additional, timely work by the small group of the negotiations teams from both parties, any differences over this language could be resolved.

Also apparent was that any disagreement over the proposed contract language, from the District's standpoint, does not hinge primarily on content

here, but rather on leverage that the District seeks regarding the Article 9. The Fact-Finder well understands the uses of trade-offs in negotiations. However, in this instance, the one suggested by the District is not only likely to fail, but also in the course of its insistence, to sacrifice agreements in both articles that can move the parties forward toward achieving a new collective bargaining agreement. Therefore, the Fact-Finder cannot recommend in favor of the District's proposals.

With respect to Classroom Integrity, the CEO was given ample opportunity, during Fact-Finding, to learn what legitimate problems the Union complained of as reasons for seeking the changes that it identified. The CEO did not disagree. The Fact-Finder knows that, during this process, the CEO only had an opportunity to draft a policy to address the concerns that the Union raised. In the interim between the fact-finding proceedings and this Report, the CEO should have had both time and opportunity to discuss the draft policy with the Union, and also to present a draft protocol to its representatives. If this has not yet been accomplished, then the Fact-Finder recommends that the CEO accomplish both of these tasks within five (5) working days of the date of this Report. No reasonable explanation exists why the parties should not be able to reach agreement on these items.

## ARTICLE 13 - TEACHER EVALUATION

Evaluation and compensation are inextricably connected in the relationship between the District and the Union. This is a reason, but perhaps not the major reason(s)

why evaluation is a high stakes issue for both parties.

They agreed to retain the current language in **Section 1. Teacher Development & Evaluation System (TDES)**, however, the District added the phrase "and enhance student learning" to paragraph A. The Union objected to this inclusion because bargaining unit members do not think that the current evaluation system contributes much, if anything, to student learning. Nevertheless, the Fact-Finder recommends this language because it makes **both** parties own and be accountable for ensuring that student learning is enhanced by the evaluation system.

No changes were made to paragraphs B. and C., thus, the Fact-Finder endorses the decision of both parties to maintain current contract language.

The parties reached a TA on new language that would now be Section 1.D. That language states, "For the purposes of this Article, "day" refers to work day.

The District proposed to retain the current contract language in most of what has now become paragraph E. This is where differences between the parties on the language contained in this article begin to emerge. The Union proposed that this language be changed to read as follows:

> According to ORC 3311.80 and 3319.12, all teachers will receive an Effectiveness Rating each year. No more than 50% of the Effective-ness Rating shall be comprised of multiple measures of student achievement as described in D(1) below and no less than 50% shall reflect the performance as in the observation/evaluation process (i.e., the Teacher Performance Calculation, as outlined below). The

Effectiveness Rating will be determined at the end of the school year and will be reported to the Ohio Department of Education.

1. Pursuant to ORC 3319.112 or other related statutes, student growth data (which may include teacher-level value-added data, state approved vendor assessment data, and district developed measures which may include student learning objectives) may inform the teacher measure of student achievement. Determining the teacher's 50% measure of student achievement for evaluation purposes shall be calculated in the following manner:

a. Where teacher-level value-added data is available and mandated under state law, the teacher's measure of student growth will be no more than half value-added and no less than half a student learning objective (SLOs).

b. Where teacher-level, value- added data is unavailable or not mandated, the teacher's measure of student growth shall be no more than half vendor assessment data, where available and approved and no less than half student learning objectives (SLOs).

c. Where no teacher-level value-added data is available and mandated or where no vendor assessment data is available, the teacher's measure of student growth shall be evenly distributed among two (2) student learning objectives (SLOs).

Rational was provided by the Union for these proposed changes. Under the current law, Student Growth Measures account for 50% of a teacher's Effectiveness Rating. No Child Left Behind was amended to allow states to reduce the number and effect of mandated standardized tests on students. According to the Union, there is a growing body of research to support the idea that students are over tested **and** that the amount of testing not only adversely affects students, *per se*, but also their educational

opportunities in the classroom. The proposals that the Union has offered, it said, maintains the 50% required by current state law. The "no more than" and "no less than" language provides flexibility so that adjustments can easily be made if state legislation is amended to reduce the mandatory percentages. The proposals also equalize the percentages of the two required student growth measures to ensure that both of the required measures actually count in a teacher's evaluation. When one student growth measure is worth 35% and one is worth only 15%, the Union contended that the latter measure is overshadows the former measure and the statutory requirement for "multiple measures" is not honored".

The District was not adverse to changes that the Union proposed to tie the contract language into the law. The Fact-Finder therefore recommends that these changes be adopted. She also agrees with the flexibility that the Union's proposed language provides if the law changes and, thus, recommends that this language be incorporated into contract language forthcoming from this proceeding.

Both parties amended the language currently contained in paragraph c. The District retained the current contract language and added that student growth shall be "two (2)" student learning objectives, "each valued at 25%". In its final proposal, the Union offered language with respect to paragraph c. which states that:

> Where no teacher-level value-added data is available and mandated,
> or where no vendor assessment data is available, then the teacher's

measure of student growth shall be evenly distributed among two (2) student learning objectives (SLOs).

The Union justified this change by asserting that it equalizes the percentages of the two required student growth measures to ensure that both of the required student growth measures actually count in a teacher's evaluation. When one student growth measure is worth 35% and one is worth only 15%, then the 15% measure is overshadowed by the 35% growth measure and the statutory requirement for "multiple measures" is not met.

At the conclusion of these proceedings, the District was not adverse to equalization of the measures and, thus, the Fact-Finder recommends that equalization be included in any language that the parties adopt in the next contract language.

The Union modified the language currently contained in paragraph d. because this is one of the two places in the article that references what happens to the growth measures for Related Service Providers (RSPs) and other certified/licensed bargaining unit members who do not teach students in traditional classrooms. This group includes physical therapists, occupational therapists, speech language pathologists, school nurses, and others. Under the current contract language, the Union said that it is not possible for RSPs and others similarly situated to ever receive a rating of "Accomplished" or "Ineffective". According to the Union, its proposal reflects a fair practice for the RSPs and others who do not teach students in traditional classrooms to default to their growth measure rating from their

TDES Observation rating. The Union firmly rejects any District proposal to apply "shared attribution" to these bargaining unit members because this is neither a valid nor a reliable measure of the work these members do every day.

The District, in its proposal, deleted paragraph d. entirely because, as will be discussed subsequently, it addressed the content elsewhere in its proposals. Regardless, the Fact-Finder rejects any District proposal to use "shared attribution" because it does not recognize accomplishments of those affected, while subjecting them to the vagaries of what others, over whom they have no control, do or fail to do. The Fact-Finder further recognizes that RSPs and related personnel should not, under any creditable evaluation system, be subjected to the same measures that apply to teachers because their circumstances are different with distinction and should be evaluated accordingly.

Both parties altered the language contained in the concluding paragraph of what is now Section 1.E. They are in substantial agreement about the content but for critical language which now mandates that "percentages attributed to measures of student growth will be revisited annually and may be jointly revisited to reflect the lessons learned. . ." Consistent with its endeavor to retreat from provisions in the current contract that require administrators to do certain things, much less work "jointly" with the Union/bargaining unit members, the District proposed that this language be revised to state that, "The percentages attributed to measures of student

growth may be revised to reflect the lessons learned . . . " Although retreat/retrenchment may seem appealing to the District as a short-term solution, the Fact-Finder cannot recommend the language that it proposed not only because it helps to further destroy any semblance of collaboration between the parties, but also because if this language is included in the contract, the rationale for this destruction will be memorialized; something that the Fact-Finder is unwilling to recommend.

The parties are in agreement regarding the introductory language to what is now Section 1.F, except that the word "ratings" is capitalized in the District's proposal. The Fact-Finder recommends that this change be adopted. Thereafter, the proposals made by the parties begin to diverge in major proportions. The change that the Union would make to this item would state that:

> A teacher receiving an effectiveness rating of "Accomplished" will be evaluated every two years. A limited or extended limited contract teacher receiving an effectiveness rating of "Accomplished" will be given a multi-year limited or extended limited contract to coincide with the two year evaluation cycle. A teacher with an effectiveness rating of "Accomplished" choosing to take the exemption for the next year will not have the ability to earn the $5,000 stipend for the year of the exemption. However, if the teacher rated "Accomplished" chooses to undergo the full evaluation cycle for the subsequent year, then he/she is eligible to earn the $5,000 stipend should he/she be rated "Accomplished" for that year. The biennial evaluation will be

completed in accordance with the above timelines during the evaluation year.

The justification that the Union provided for this language is that, for limited or extended limited contract teachers, its proposal reflects an agreement reached by the parties last year and reflects current practice. The remainder of the paragraph is tied to the Union's Article 30 proposal to give a choice to a teacher receiving a rating of "Accomplished" to have a one year exemption from observation and student growth measures.

The District added two other sections to what is now Section 1.F. The Fact-Finder cannot recommend any of this language because, to do so, would incorporate significant new language into the collective bargaining agreement that will undoubtedly remain there even though the District insists that it can only agree to a one-year deal for economic reasons.

The Union sought to incorporate language from a grievance settlement stating that:

> Administrators may provide informal feedback to teachers or other educators, outside of the TDES system, without using a "feedback form". However, any administrator who wishes to create a form to provide informal feedback to teachers or other CTU educators, outside of the TDES system, shall include on the form the statement that, 'This feedback form is not part of the TDES system and is not to be used for evaluative purposes'. Any 'feedback' form 'created for this purpose must be aligned to the strategy(ies) in the school's Academic Achievement

Plan. The visual impact of any 'feedback form' created should reflect its purpose (i.e., to provide informal feedback and not to replaces a TDES event). If any issues arise with informal feedback or a 'feedback form' that is used by an administrator, the teacher or other educator will first address concerns at the building level, and may then bring those concerns to the TDES Steering Committee for resolution.

The Fact-Finder understands the origin of this language, however, absent a lot more background and negotiations between the parties on same, she is loath to even begin to recommend this language, much less to suggest that it be incorporated into the contract.

The District proposed a change to what will now be Section 1. H. According to the proposal, the language will state that:

> Pursuant to ORC 3311.80 and Board Resolution 2013-3030(B), all evaluators must be credentialed A list of credentialed evaluators and will electronically forward to the CTU President and TDES co-chairs as made available.

The Fact-Finder recommends that this language be adopted. It makes appropriate use of the Workday technology that the District has purchased by expediting the transmission of information and includes TDES co-chairs in the loop.

Another of the District's proposals endeavored to substantially revise the Appeals Process set forth in what will now be Section 1. paragraph I. The Fact-Finder rejected the District's proposals because changes of this magnitude should not be made without at least significant discussion with

the Union which, as far as the Fact-Finder could tell, have not occurred. She therefore recommends that the current contract language be maintained.

The District also made proposals for adding a lot of language to what will now be Section 1.J. Much of this language relates to coupling evaluation to the Workday system. Since the District has not even rolled out this system, much less determined whether or not it works. The Fact-Finder therefore has determined that these proposals are premature and are far too extensive to be incorporated into the contract now, especially absent serious negotiations with the Union.

With respect to what will now be Section 1., paragraph L, both parties made proposals for change, however, the Fact-Finder was not convinced that that either should be adopted. She therefore recommends that the current contract language be maintained.

The most controversial part of this article concerns proposals made to modify the language contained in Section 2. TDES Timelines/Procedures. To support the changes that the District proposed, it provided its evaluation consultant, Dr. Paula Bevan's expert testimony and that of another District employee. The Fact-Finder was interested in this testimony having taught compensation, evaluation, and motivation at the university level for several years. From this testimony and representations made by both parties separately, the Fact-Finder drew the following conclusions and recommends accordingly:

1. In order for an evaluation system to work for the interests of both

parties, **and** the students that they serve, it should be designed collaboratively. While some progress has been made, distrust between the parties has forestalled much that needs to be accomplished to complete this effort. It is critical, now, for the parties decide how much holding to adversarial postures means to them and to their constituents, **and** to enhancement of student learning.

2. To pave the way forward, the Fact-Finder strongly recommends that both parties concentrate on evaluation and motivation, as opposed to evaluation and regression as seems to be the goal of the District's proposals.

3. The Fact-Finder noted Dr. Bevan's presentation about the subjectivity of information acquired through observation, as opposed to what she (and others) claimed to be the valid and reliable information collected through assessments based upon statistical models. However, the Fact-Finder knows, and there is supporting research, that assessments based upon these models is flawed. Statistical management should not be a large basis upon which teacher evaluations are based.

3. The Fact-Finder recommends that both observation and assessments be given equal weight in determining what a teacher's evaluation shall be. Despite Dr. Bevan's presentation about the subjectivity of information acquired through observation, the Fact-Finder also knows that assessments based upon statistical models are not as valid and reliable as she indicated. Indeed, there is credible research that affirms this.

4. The Fact-Finder also understands that there are problems with the

administration of observations; some of which arise because of the time that a teacher enters employment with the District. She agrees with Dr. Bevan's prescriptions about how observational evaluation **should** be conducted to obtain good results. However, the Union provided evidence, including an example that occurred during the Fact-Finding proceedings, that these prescriptions are not always followed by administrators, but still affect a teacher's evaluation. An important interest that the District has had during negotiations and in the fact-finding proceedings is to assert and/or to re-establish administrative control. Where this matter is concerned, the Fact-Finder therefore recommends that the CEO exercise the authority that he already has to quickly remedy situations where administrators abuse the *bona fide* process of observational evaluation and to make sure that when such abuses occur, that the results of flawed observations are not counted against the teacher in question.

The Fact-Finder also recognizes that some teachers may enter the District's employ at various times after the commencement of the school year. In some cases, this may not pose a problem because sufficient time can still exist to utilize Dr. Bevan's prescriptions for conducting observations. In others, this poses a problem which has tended to result in administrators collapsing the observational time, which can be detrimental to both the teacher involved and to student learning. Given the interest that both parties in having a valid and reliable evaluation system, and in student learning, the Fact-

Finder strongly recommends that they return to the negotiations table to collaboratively work out this problem.

5. The Fact-Finder was not impressed by the way that Dr. Bevan explained how the District's proposed evaluation system would work when a teacher was on the border line between being advanced to another level or not. It was clear from this presentation that Dr. Beven was advocating for the District to make the tipping point always work toward placing the teacher in the lower level. Judicious note also was made that Dr. Bevan is the person who will break a tie when a question arises of which way the tipping point shall go. She has already made it clear what her decision would be and, thus, should be disqualified from being the tie-breaker in such instances. Therefore, in the interest of fairness, it is incumbent upon the parties to find another person to take this role.

6. The parties were close, if not in agreement, that the mania for student testing that has been worshiped by some educators (and some members of the public) for over a decade has not only encroached seriously on a teacher's opportunity to educate students, raised student anxiety levels and can be off-putting in terms of attendance, and may not be as depositive as once thought as an evaluation measure of whether or not a teacher's performance is enhancing student learning.

7. The Fact-Finder noted Dr. Bevan's comments about how teachers could manipulate targets to lower expectations in order to receive more credit when these expectations were exceeded. The District

proposed that this could be remedied by putting administrators in control of target setting. The Fact-Finder believes that this would be trading one alleged problem for another because administrators are well aware that the District seeks, as Dr. Bevan has recommended, to made it harder for teachers to reach "Accomplished", maybe even "Skilled" so that costs can be controlled.

Despite the Fact-Finders knowledge about compensation and evaluation, given the complexities of the prescriptions contained in this article, it would be presumptuous of her to make other recommendations about changes in this language and in other language related thereto. The only recommendation that is left to the Fact-Finder to make is that the parties continue the collaborative work that they began during this process to resolve their differences regarding the content of this article in the best interests of both **and** to "enhance student learning.

## ARTICLE 20 - ATTENDANCE POLICY

**Union Position**

The CTU stated that it remains committed to working with the District on implementation of the Workday system. It believes that the proposal it has offered honors this commitment. According to the Union, the District's proposal changes long-standing contract language for an unknown and untested system not currently in existence which will fundamentally change the way that members report to work, interact with payroll, and in other

significant respects.  That system will, indeed, shift a lot of burdens from District administration to bargaining unit members.  The Union is  a transition that cannot agree to, at a minimum without safeguards, and certainly within the time frame envisioned by the District.

To wit, the Union said that the District's proposal does not reflect the commitments made by the District and by Workday representatives in meetings held with CTU representatives on Workday.  According to the Union, its representatives were led to believe that bargaining unit members would not have a lot of interaction with the system.  It would not be used for clock in and clock out -- that would be unprofessional.  Also, the system would not be used for discipline.  The Union's understand was that bargaining unit members could view their personnel and human resources records, but would not be tracking their payroll.  The Union said that this whole picture changed when the parties entered negotiations.

The District has been planning the implementation of Workday for over a year.  During that time, the Union maintained that the District has not been collaborating on the implementation and, thus far, reiterated its concern that only vague answers to specific questions were provided during the few meetings that were held.  According to the Union, the District has a history of purchasing and implementing wide-scale software applications without any input from the CTU.  This has resulted, the Union said, in numerous on-going problems.

The Union also is very opposed to what it characterizes as the incorporation of punitive measures which easily allow the District to withhold pay from members and to unilaterally change reporting procedures.

As a result of these concerns, the Union's last proposal is to maintain the current contract language.

**District Position:**

The District is adamant that there must be contract language, not an MOU, to address the critical issue of attendance policy. It asserted that the CTU has been invited to participate in collaborative discussions, but has not responded to this invitation. The District also stressed that the language it is proposing must be adopted to keep pace with innovations it is making in systems, payroll, and human resources management. These changes are necessary for both efficiency and timely communication of information. In the District's words, "There simply will not be paper anymore" in the very near future. Consequently, failure to utilize the system properly will be the only evidence that the District has to establish, for example, teacher misbehavior.

Accordingly, the District proposed the following language be incorporated into the contract:

> The District and CTU agree as follows:
>
> **Implementation of a New Human Capital Management and Payroll (HCMP) System.**
>
> During the 2016-2017 school year, the District will implement a new

electronic Human Capital Management and Payroll (HCMP) system which will require changes in attendance policies as outlined below. In the event of a delay in the transition to the new HCMP, the District will communicate such delay to all bargaining unit member by email and will provide an updated implementation timeline, including the scheduling of training and support, to the Union. It is anticipated HCMP will be effective December 17, 2016. The attendance regulations under the HCMP, which will take effect on December 17, 2016, are set forth below.

Workday is designed to increase the efficiency of districtwide operations. The District shall not utilize Workday data without due process, to withhold, deduct, or otherwise delay or refuse to pay the wages of an employee if the member has submitted time and attendance data in accordance using District processes, and unless the bargaining unit member is on authorized unpaid absence or has been provided due process as otherwise required by Article 20 of the CBA.

A. <u>Attendance Reporting Practices Under the HCMP</u>

1. Employees will begin using the District's standardized electronic Human Capital Management and Payroll (HCMP) system. Employees will check-in and check-out on a daily basis using the HCMP. Employees will also record special pay events, such as class coverages in the HCMP.

2. Employees may check-in prior to their regular starting time; however, non-certified employees who check-in early will not be expected to, and will not, start work earlier than their regular starting time and will not be eligible for overtime pay unless pre-authorized by the supervisor/ principal and document as a special pay even in the HCMP.

3. On a bi-weekly basis, all employees must validate all of the entries on their HCMP time sheet for that two week period and submit their HCMP time sheets electronically. Those time sheets will be routed to a time-keeper (typically the school secretary) for validation and to correct errors. Any corrections will be reflected on the employee's time sheet prior to submission to payroll. If the time sheet is rejected, the employee will be notified and will address the concern and resubmit the timesheet. Once the time sheet is validated by the timekeeper, it will be routed to the employee's principal/supervisor for approval. An employee will not be docked pay without the opportunity to correct any concerns on the time sheet.

4. Any employee who failed to timely submit the time sheet to the time-keeper for the applicable pay period will receive notifications to submit and/or correct his/her time sheet prior [to] the deadline for submission. If the employee fails to submit or [to] correct the time sheet, then the employee will not be paid until the week following proper submission of the time sheet.

5. Multiple training sessions will be provided for all bargaining unit members during the two months prior to the December 17 implementation. As part of the training session, members will be provided with information as to how to obtain support for use of the HCMP and what the employee is supposed to do in the event that the HCMP is not working.

6. From December 17, 2015 to January 17, 2017, during the initial

transition to the HCMP, employee errors will be viewed as training opportunities. Employees will receive assistance in correcting these errors from the HCMP Help Desk.

B. Absence Reporting Practices Under the HCMP

1. Bargaining unit members who require a substitute during their absence will report their absence in the District's electronic substitute system. The substitute system will automatically report that bargaining unit member's absence to the member's HCMP time sheet.

2. Bargaining unit members who do not require a substitute during their absence will report their absence directly in the HCMP. Training and implementation support for this absence reporting process will be provided as indicated in A(3) and A(4) above.

3. Annually, the Principal and UCC shall, by written mutual agreement, agree to any additional absence reporting process necessary to ensure the effective management of the school/department (e.g., call/text the principal to notify of absence).

4. Employees must report all absences prior to the start of their work time, or as soon thereafter as possible. If an employee fails to report his/her absence, the employee will be considered absent without leave until a reasonable explanation is subsequently provided.

C. Attendance Recordkeeping Under HCMP

1. Sick Leave - Employees will electronically provide the information required by the Ohio Revised Code Section 3319.141 upon returning to

work as currently provided in Appendix F., the Employee Statement to Justify the Use of Sick Leave Form. Training and implementation support for this attendance reporting process will be provided as indicated in A(3) and A(4) above.

2. Special Privilege Leave/Unpaid Leave - Bargaining unit members will request Special Privilege Leave and Unpaid Leave electronically in the HCMP. Training and implementation support for this process will be provided as indicated in A(3) and A(4) above.

3. Extended Leaves of Absence - Bargaining unit members will request Leaves of Absence, as defined in Article 21, electronically in the HCMP. Required Return to Work Authorizations will also be submitted electronically. Training and implementation support for this process will be provided as indicated in A(3) and A(4).

D. Tardiness/Early Departure Record Keeping Under HCMP

Bargaining unit members will report tardiness and early departures using the HCMP system. Bi-weekly, employees will verify the accuracy of this reporting as outlined in A(2) above. Training and implementation support for this tardiness/early departure process will be provided as indicated in A(3) and A (4) above. Supervisors must have a written procedure informing employees where, when and whom to call to report tardiness. Each employee who anticipates being tardy must inform his/her supervisor by telephone as early as possible. Annually, the Principal and the UCC shall by written mutual agreement agree to any additional tardiness/early departure reporting practices necessary to ensure the effective management of the school/ department.

The CTU will be invited to meetings and training concerning the development and implementation of Workday. The Intervention Team identified in Article 25, Section 3 (Tentative Agreement) will be utilized to intervene and resolve building level concerns regarding Workday implementation.

Otherwise, the District proposed that, "All provisions of the CBA shall be in full force and effect except those mutually agreed to be modified".

**Recommendation:**

The Fact-Finder understands the District's legitimate interest in capitalizing on technology to enable more efficient management of its system, payroll, and human resources program. She cannot, however, recommend in favor of adopting the language that the District has proposed. The District must recognize that the HCMP is a radical departure from what **both** bargaining unit members and its administrators/staff have been accustomed to. Furthermore, although the District "anticipates" that roll out of the HCMP will be ready by December 17, 2106, and requires compliance by bargaining unit members one month thereafter, there is no assurance that the District can deliver, much less providing the training it describes and having support for bargaining unit members in place.

Furthermore, the roll out of the District's proposal would occur in mid-year, thus distracting **both** administrators and bargaining unit members from the already challenging work that they have to perform on a daily basis to ensure that students in the District are well served. Note was made, too, that the District's proposal only allows one month for bargaining unit members to be fully compliant with the HCMP; this assuming that the support that the District alleges will be available. Given the scope and magnitude of the changes that the District proposes and its failure to demonstrate that the assistance indicated **shall** be available to bargaining

unit members, again, the Fact-Finder declines to recommend the District's proposals.

There are more reasons why the Fact-Finder cannot recommend to adopt the District's proposal. For example, one provision depends on the administrator doing certain things. The District believes that all administrators will comply. However, if an administrator delays or fails to comply with the District's prescriptions, its proposal does not contain provision for what relief shall be available for affected bargaining unit members.

It was interesting to the Fact-Finder that the new system that the District proposes uses the language "human capital". This language would suggest that the District has given even more recognition to the people in the bargaining unit than the heretofore commonly used "human resources". However, when the Fact-Finder examined the District's proposals, she did not see it this way, nor did the terms and conditions set forth in the District's proposal dissuade her from this impression. The elimination of paperwork is justifiable, but dehumanizing **human** resources management is not. To paraphrase a long recognized concept, 'people are the most important resource that an organization has". This certainly is true where the District is concerned given its mission and its need for those human resources in the bargaining unit to do their very best to educate students so that students can be retained and more recruited to ensure both student education **and** the District's survival.

To wit, the Fact-Finder's impression is that some of the prescriptions that the District seeks to place on bargaining unit members, through the HCMP system, are reminiscent of those used in industrial settings. For example, clocking in and out is an anathema to professionals.

For decades, research and practice have both shown that one of the tasks that managers dislike most, and therefore may try to avoid, is disciplining employees. Hence the origin of doing so on a Friday afternoon. When an employee's income, even his/her job can be in jeopardy, notification of this electronically can be both terrifying, insulting, or both, even when the employee knows that he/she is culpable of the offense claimed. Despite amazing changes in parts of the workforce in terms of competence in using technology, this has not transformed how **people** feel and how well they are able to respond, much less electronically, when confronted with the prospect of disciplinary action. The Fact-Finder endorses the District's effort to maintain disciplinary records in the HCMP. However, she strongly recommends that the parties revisit, in their negotiations subsequent to issuance of this Report, whether the remainder of this application can be adapted to humanize the application now envisioned by the HCMP.

Neither acceptance of change nor change management are easy. From what the Fact-Finder could discern, the Union and its bargaining unit members perceive the introduction of the HCMP as another 'top down' move by the District based upon its decision to purchase this expensive system

and then to impose it on the bargaining unit. That perception may or not be true, but perception is reality for those concerned. This perception needs to be changed if the HCMP system is going to work without creating havoc in the relationship between the parties. The Fact-Finder has suggested areas where accommodation needs to be made. Given the limited amount of time that the Fact-Finder

had with the parties, she does not, and cannot, claim that the observation and recommendation that she has made are, nor can they be, all inclusive of what may need to be done to manage the transition to the HCMP. She therefore recommends that the parties rejoin their collaborative efforts after issuance of this Report and, if necessary, to retain the services of a change management expert, to aid them in reaching agreement on this article.

## ARTICLE 21 - LEAVES OF ABSENCE

The parties have reached tentative agreement on changes to this article. The District proposed one change that was not agreed to. At the conclusion of the fact-finding proceedings, this was the only thing that remained on the table with respect to this article. The sentence that the District proposed involves leaves of absence, including intermittent leave, being subjected to FMLA limitation. The Fact-Finder understands that the District is concerned about leave abuse. This is a legitimate and important concern. The Fact-Finder believes that if administrators effectively utilized methods that are already at hand, that the concern expressed in the District's proposal would largely be addressed.

Nevertheless, the Fact-Finder credited the problem that administrators said motivated the change proposed. That is, especially where intermittent leave is concerned, bargaining unit members do not always notify administrators when their physician makes a change in such leave, either up or down, or to end it completely. The result is, the District's administrators said, that they do not know whether when additional leave is taken that a physician has authorized it and, similarly, they do not know when a physician has either reduced the leave previously authorized or eliminated it entirely. These are legitimate concerns.

The Fact-Finder can recommend a remedy for this problem by incorporating language into this article as follows (or some version thereof):

> When a bargaining unit member's physician makes any change in authorization for intermittent leave, including, but not limited to elimination of the need for such leave, then the member shall provide written document of the change and the reason for it (without divulging medical information protected by HIPPA), signed by his/her physician, to his/her administrator/supervisor within two working days of the date on which the member receives notice of the change from his/her physician. Failure to timely provide this information may result in disciplinary action, up to and including discharge.

Otherwise, the Fact-Finder has no intention of disturbing the positive accomplishments that the parties made jointly during this proceeding or the agreements that they share where the current contract language is concerned.

## ARTICLE 23 - WORKING CONDITIONS FOR SPECIAL GROUPS - CERTIFIED PERSONNEL

The parties worked hard and collaborated during fact-finding to reach agreement on changes to this article save for language contained in Section 3. School Nurses. This work is therefore recommended by the Fact-Finder.

**Union Position:**

The Union sought to change the current contract language in Section 3,P. to state that:

> The supervisor of the Nurses shall post all extra assignments outside of the school day at CMSD events electronically to all eligible Nurses. The assignments will be given based on system seniority and compensated at the prorated daily rate.

The justification that the Union gave for this proposal is that selection by seniority follows the practice currently used by the District. Also, the District is, and has been, paying nurses $50. for each even regardless of the length of time the event entails. This is not a negotiated rate and is not consistent with any negotiated rate for any other licensed/certificated bargaining unit member. Indeed, the Union purported that this is the same rate that the District pays o ticket takers at events.

Furthermore, the Union said that these events can last anywhere from one hour to all day. A nurse's responsibility during athletic events includes providing medical care not only to student athletes, but also to any other individual in attendance at the event. According to the Union, its proposal clarifies the selection process **and** provides for an appropriate rate of compensation for the expert service and time that nurses expend, and is comparable to the rate currently being paid to other CTU bargaining unit members.

**District Proposal:**

The District rejected the Union's proposal and offered the following language instead:

> Consistent with past practice, nurses accepting extra assignments to cover athletic events shall be paid $50.00 per event (e.g., JV football games, High School Basketball games) and nurses accepting extra assignments to provide training (e.g., CPR) shall be compensated at their prorated daily rate.

In support of this proposal, the District contended that the remuneration provided to nurses by its proposal is consistent with prevailing practice in the community.

**Recommendation:**

The Fact-Finder recognizes that one of the only opportunities that the Union has to codify or to change past practice is during contract negotiation. It has put the District on notice that it want to do both as a result of these negotiations. The Fact-Finder noted that the District did not oppose the Union's proposals to incorporate assignment by seniority and electronic notification into the contract. She therefore recommends that these Union proposals be adopted.

The Fact-Finder knows that the District made an effort to find out the prevailing rate. Based upon the inquiries that the District made, it determined that $50. for engaging in any even outside of the CMSD school

day is still adequate. The Fact-Finder was not privy to what was asked in the District's inquiries.

Based upon the presentations of both parties, the Fact-Finder is at a loss to understand why a nurse would agree to the assignments in question? These events are of uncertain duration and their professional expertise is required for the protection of all concerned, including the District. Therefore, the Fact-Finder determined that paying a flat fee for this time is antiquated and does not recognize that events where nurses serve may vary considerably in duration. If the District wants to be able to recruit and retain qualified nurses, much less have them accept extra assignments, then it must realize that changes need to be made in their compensation for this work. The Fact-Finder therefore recommends that the Union's proposal be adopted that nurses agreeing to provide this service be selected on the basis of seniority and be compensated at a prorated daily rate for the time that they actually spend at events outside of the CMSD school day.

## ARTICLE 30 - WAGES

### Section 1. Mutual Agreement for Various Compensations in CTU Bargaining Unit

The parties have maintained the first sentence. The Union added language stating that, "Prior to placing any new hire on the Differentiated Compensation System, the District will review and confirm the proposed placement with the CTU President or his/her designee". Although the District

did not agree, the Fact-Finder recommends adoption of this language as good practice.

**Section 2. Wages and Other Compensation**

A. Effective with the 2016-2017 school year, all bargaining unit members will
receive. . . This language is unchanged from the current contract.

The Union proposed a 2% increase in base salary after all movements on the CDCS salary schedule have occurred at the conclusion of the 2015-2016 school year. It also removed most of the remaining language in this section, save for the final sentence which the Union crafted to state that, "All salary schedules in this Agreement, including differentials shall likewise be increased by two percent (2%). The Union rationalized these adjustments by stating that the 2% raise reflects what other bargaining units have received from the District for the 2016-2017 school year **and** what the District has budgeted for the 2016-2017 school year as reflected in its Five-Year Forecast.

The District's final offer was very different. One and twenty-two one hundreth of a percent (1.22%) increase in base salary for bargaining unit members. There would be no increase in differential costs. These would remain at the 2012-2013 level. The District explained that the Union did not accept a 2% increase when it was offered, but rather chose to engage in extended negotiations. There is a cost to the time that both administrators and bargaining unit members spent there. And now, as a result of impasse and the costs associated with the fact-finding proceeding, the District no

longer has the money available in the budget to offer a 2% base salary increase, much less any increase in differentials.

Pay for supplemental employees, like the band director, football coach, etc. was addressed by the District in Appendix T. The language specific to the District's wage proposal states that:

> Assignment to and retention in these Supplemental Stipend positions is based upon performance, District needs and resources. The Leader would have partial release time and receive a $2,500 stipend. The Expert will have full release time and receive a $5,000 stipend.

The Fact-Finder cannot recommend in favor of the District's proposal. Punishing bargaining unit members because the Union engaged in robust negotiations can only have a chilling effect on future contract negotiations and on the already damaged relationship between the parties in the meantime. Furthermore, the Fact-Finder reminds the District that it was the party that walked out of the negotiations in February of 2016. This standoff between the parties is counterproductive. The District must recognize that, even if its proposals were accepted, not just morale, but also its ability to attract and retain qualified personnel cannot help but be affected. How would this move the District forward and enhance student learning?

The District complained because the Union's somewhat complex wage proposal was presented when the time allotted for fact-finding was diminished. It can blame the Fact-Finder for this. She had to make a judgment call. Small groups comprised of members for the District and the Union bargaining teams were making progress which resulted in a number of

TAs and narrowing of differences on other issues. Thus, maintaining this momentum proved to be worthwhile.

To remedy this complaint and the other concerns that the Fact-Finder has expressed about the current status of the parties' positions on wages, she strongly recommends that appropriate personnel for the District and the Union bargaining teams meet in small group session to carefully explore whether possibilities exist for agreement within the modified CDCS proposed by the Union and the District's budgetary constraints. The Fact-Finder is not willing to be party to further dismantling, either by neglect or by design, or both, of the CDCS.

B. The language in this section dealt with compensation for paraprofessionals. The Union has removed this language entirely from this article.. This does not mean, however, that the Union ignored their legitimate needs for much improved compensation. These were addressed in both Section A. and in Appendix A. Although the District has not done so, both parties agree that paraprofessionals shall be compensated in accordance with the classified salary schedule compensation and address this in Appendix A. They also agree that there is an urgent need to provide a long overdue, substantial increase in paraprofessional compensation and that it should not take an occupant of this classification thirty years to achieve a mere $6,000 more pay. The District is having a lot of difficulty attracting and retaining quality paraprofessional personnel.

The Union said that the proposals it makes provide a living wage and mirrors the licensed/certificated substitute pay structure. Accordingly:

| Inexperienced Substitute | 2016-2017 |
|---|---|
| A. Per Hour-Day-to-Day | $15.00 |
| B. Per Hour on the 6th day & each succeeding day in the same assignment | $15,75 |

| *Experienced Substitutes | 2016-2017 |
|---|---|
| A. Per hour - Day-to-Day | $16.00 |
| B. Per hour on the 6th day & each succeeding day in the same assignment | $16.75 |

*Those who have had two or more years of regular substitute experience, have had 120 or more days of substitute service during each of the two school years immediately prior to reappointment or appointment.

The District's proposal is more complex:

> For each event when the paraprofessional acts as a substitute for an absent paraprofessional, as directed by their building principal, which increases their responsibilities beyond their regular assignment (i.e., paraprofessional covering two classes simultaneously or serving the needs of another paraprofessional's students while simultaneously completing their regular assignment), the paraprofessional will be paid the maximum hourly rate for a substitute instructional aide. The paraprofessional accepting this substitute event will be paid in thirty (30) minute increments in which an assignment for less than thirty (30) minutes would be paid one half of the hourly rate for that substitute event (e.g., a 20 minute substitute event = 1/2 hour payment; 80 minute substitute event = 1/2 hour payment). This would not apply to a situation in which a paraprofessional is able to cover an

> assignment where the paraprofessional is available due to the lack of students (i.e., PCIA who has no students during a period and is serving as a substitute will not be eligible for additional pay). Paraprofessionals cannot be paid for coverages of relief time breaks of other paraprofessionals as defined in Article 24 Section 2(M).

The Fact-Finder understands what both parties are attempting to accomplish through these proposals. The Union has provided an entirely separate wage scale to address paraprofessional compensation which also is reflective of changes in the minimum wage that have been occurring all over the country. It is also much easier to administer than the District's proposal. However, the Fact-Finder also recognizes that there is merit to the specifications that the District has in terms of when additional payments shall be made. The Fact-Finder therefore recommends that representatives of the District's and of the Union's negotiating teams meet in small group session to work out a prorated means of applying the scheme proposed by the Union **without** destroying the intent to substantially improve paraprofessional compensation or creating the appearance that they are being nickel and dimed into improved pay. Regardless of what the final numbers are, this is an expense that the District must find a way to afford in its budget.

This having been said, the Fact-Finder recognizes that both parties have provided extensive information (District Exhibit A and Union Appendix A) about how they want the CDCS and evaluation to work with respect to paraprofessionals and sign language interpreters, as well as others in the bargaining unit. Clearly, there are areas where adjustments need to be

made, for example testing coordinator. These are, however, matters for the parties to work out and not for a Fact-Finder who has spent one week with the parties discussing a myriad of complex issues.

C. The current language states that, "Any teacher hired on or after July 1, [2016] will be placed on the CDCS Schedule based on procedures as outlined by the CDCS Joint Oversight Committee. The District's final proposal eliminated the language, "Any teacher hired on or after July 1, [2016]". The Union's final proposal retained this language, but eliminated the phrase "by the CDCS". The Union further proposed that, "The CTU President or his/her designee and the Chief Talent Officer or his/her designee will meet annually to review placement procedures". The Union then listed seven procedures for incorporation into the collective bargaining agreement. The Fact-Finder recommends that the Union's second proposal, re: the annual meeting to review placement procedures, be adopted. It does not encroach on administrative authority, which the District rejects, but it does provide is an opportunity for collaboration to help ensure that placement procedures are up to date and relevant vis-a-vis what is occurring in the market place. According to the Union, its list of seven procedure reflects current policy for new hire salary placement with the addition of military service credit and advanced degree attainment. This policy was not presented to the Fact-Finder. She also knows that the District does not now provide additional compensation for advanced degree attainment. While it is likely that this puts the District at a disadvantage in relation to suburban school districts

and perhaps other metropolitan districts as well, it is clear from the position that the District has taken with respect to its financial circumstances, that this language will not be accepted for inclusion in the contract and, thus, is not recommended.

D. The Union has proposed new language stating that:

> Effective with the 2016-2017 school year, any bargaining unit member currently working at or hired/assigned to a Corrective Action School will receive a $2,500 stipend each year for working in these hard-to-staff school(s). This amount shall be prorated for members who are assigned less than one FTE. Payments will be made in four (4) equal installments on a quarterly basis to coincide with differential payments.

The rationale that the Union provided is that, in 2014, the CTU and the District jointly agreed to provide supplemental, differentiated stipends for hard-to-staff schools and subjects as identified by the Board of Education. To date, the Board of Education has not identified any hard-to-staff schools or subjects despite difficulty in filling vacant positions in Corrective Action Schools. The Board also authorized bonuses to principals in Corrective Action Schools in the amount of $5,000 per year and bonuses to assistant principals in the amount of $2,500 per year. This proposal seeks to utilize hard-to-staff language, bring parity among bargaining unit members and administration, and provide an incentive for bargaining unit members to seek positions at Corrective Action Schools.

The District did not respond to this proposal. The Board's failure to act is regrettable, especially since what it has done is to enhance destructive "them" versus "us" perceptions, while accomplishing little/nothing toward

alleviating staffing vacancies in Corrective Action Schools, much less encouraging good teachers to take on these difficult responsibilities. The District has claimed numerous times in these proceedings that "the cupboard" is bare, yet it was able to find monies to reward administrators in Corrective Action Schools. Enhancement of student learning in these schools is heavily dependent upon the teachers and, thus, the Fact-Finder recommends that the Union's proposal be adopted.

As is evident from the foregoing analysis, resolution of the differences between the parties on

E. The Union proposed new language that would afford a stipend of $5,000 to teachers receiving an "Accomplished" Teacher Effectiveness Rating. Since this proposed stipend ties into the Union's earlier proposals regarding a modified CDCS, the Fact-Finder defers consideration of this proposal to the small group she recommended meet subsequent to fact-finding to further explore the implications of the CDCS proposal, including the $5,000 stipend.

F. **Extended Day/Extended Year.** This language currently appears in Article 30, Section E. Both parties have proposed modifications to this language which may have merit, however, the Fact-Finder simply was not given sufficient information to make an informed recommendation on this subject matter.

**Section 3. Advancement on Differentiated Salary Schedule.**

The District eliminated this language entirely and referred the Fact-Finder to proposals it made in Appendix T. The Union proposed language describing how teachers who are not currently placed on the CDCS schedule will be placed moving forward and outlines the process for advancing on that schedule.

The District should be embarrassed that, in three years, it has been unable to place approximately one quarter of bargaining unit members on the CDCS schedule with the result that these members have not received any pay increase during this time. The savings that the District achieved certainly should have had a positive effect on its bottom line. Correcting this significant problem is not a monumental task. The Union stands ready to offer the assistance of its expert to help the District get these members on the schedule now. With or without this assistance, the Fact-Finder strongly recommends that this task be accomplished within thirty working days after the date of this Report. She further recommends that the small group she has suggested previously address the other matters in the Union's proposal while they work on how the CDCS is now going to work.

Neither party made changes to the current contract language contained in Section 4. or in Section 5.A. They both proposed changes in B. Compensation Distribution. Under paragraph 1. which involved transition to an electronic compensation payment system. The Fact-Finder agrees with the District that utilization of the EFT is a positive outcome. Also, for years, many financial institutions have been offering incentives if customers have

their pay checks automatically deposited. She therefore recommends adoption of the District's language stating that, "All compensation for all employees will either be automatically deposited to the employee's banking account through EFT or posted to a Pay Card, or a combination of both". Since the EFT has not yet been implemented and vetted, the Fact-Finder also recommends that the current contract language, but with a modification as follows:

> Until the new system is activated and vetting is completed, checks and check vouchers are to be mailed to the employee's home address or made available electronically. All employees must provide Human Resources with a current home address and phone number.

The only other change that the Fact-Finder recommends in the current contract language here is to amend paragraph 4 to state as follows:

> When the paycheck of an employee is lost, stolen, incorrect, or not received from the District, upon timely notification by the employee, a duplicate and/or corrected check shall be issued within one (1) working day . . . . ]

The Fact-Finder did not ignore the Union's proposal for new language which would become paragraph 7. She simply did not recommend adoption because it is very clear from the current state of the relationship between the parties that the District is not, at this time, going to agree to negotiate job descriptions and compensation for new positions or classifications covering employees currently represented by the CTU prior to posting said position or classification.

The parties agree that the current contract language in **C. <u>Payment for Differential Assignments</u>** should remain unchanged, except the District has proposed that:

> . . . Differentials will continue to be paid per the schedule in Appendix A for the duration of this contract at the 2012-2013 rate.

The Union's counterproposal is that, "Differentials will be paid per the schedule in Appendix A.". Both parties eliminated the remaining language in this paragraph. The District then added substantial new language concerning stipends, contingency upon available funds, assignment annually, and building creation of a new differential. None of this language has been recommended because it was not evident during the fact-finding proceedings that the parties had discussed these matters nor did the District provide justification/documentation upon which the Fact-Finder could base an informed response.

The next proposed change that the District made was to **Section 7. Pay Option**. The District sought to streamline pay administration by simply stating that, "Bargaining unit members (not on extended year contracts) shall be paid on a twenty-six (26) biweekly pay plan. The Union did not offer any change to the current contract language. The Fact-Finder understand the reasons why the parties have adopted these positions. Since the District, it says, will soon have the ERT to expertly manage many transactions electronically, then the Fact-Finder sees no reason to modify the current

contract language, especially as it pertains to bargaining unit members not on extended year contracts.

The District maintained current contract language with respect to **Section 8. Rates of Pay**. The Union did make changes to this section and added **Section 9. College Coursework Reimbursement** and **Section 10. Flexible Professional Development/Community Engagement Time**. The Fact-Finder did not recommend in favor of adopting any of these changes nor is she willing to suggest how they might be modified for incorporation into any new collective bargaining agreement forthcoming from the Report and/or from subsequent negotiations between the parties. They simply are not realistic given the District's financial circumstances and its clearly articulated stance opposing language of this kind.

As is evident from the foregoing analysis, wages and other compensation is an extremely complex issue, in itself, as well as in relation to the CDCS and other articles, like evaluation, that were subjects in dispute during fact-finding. This is the reason why the Fact-Finder did not discuss base pay in her Report. She recommends that this issue be addressed first by the experts from both parties, in conjunction with their other efforts to resolve how the CDCS will be implemented going forward, in negotiations following the issuance of this Report.

## ARTICLE 31 - NEGOTIATION, SEVERABILITY AND DURATION

This is one of the most controversial issues in the negotiations between the parties. It is a high stakes deal-breaker with very serious consequences for both parties regardless of what the Fact-Finder recommends. The Union is adamant that neither it nor its bargaining unit members will accept the one-year contract that the District has proposed. It insists that there must be a three-year agreement. These have been negotiated successfully several times before when the District has been in difficult economic straits even more challenging than those which currently exist. The Union said that it has done what it can to ease the burden on the District by indicating its willingness to accept the 2% increase in 2015-2016 which has been offered to and accepted by other unions, and wage reopeners in the second and third years of the contract. Additionally, the Union and its bargaining unit members have committed, as they have before and delivered, to work hard with the District to see that the levy attached to the November, 2016 ballot passes.

The District is equally adamant that it cannot commit to more than a one-year contract because of the economic circumstances in which it finds itself. CEO Eric Gordon was explicit in stating that the Board will not approve a contract that exceeds one-year in duration and that he is prohibited legally by O.R.C. 5705 .412 from recommending anything else to the Board. He also said that the financial projections that the District presented during fact-finding should provide ample evidence that it simply cannot afford a three-year contract and even more especially given proposals that the Union made

which have costs attached which are prohibitive. According to CEO Gordon, even if the levy passes, this will not obviate the need for very conservative financial management by the District.

The parties having drawn this line in the sand, the Fact-Finder can only hope that what she recommends will be persuasive to them. It has been well known for decades that one-year contracts create more problems than they solve. Chief among these are the lack of stability in the labor-management relationship, the inability to predict costs based upon five-year projections, and the effects of wall-to-wall bargaining which exhaust both parties, incur significant economic costs to both, and, in the case of a school district, disrupt the educational process and forward progress toward improving it by all concerned. These are not, in any way, desirable outcomes.

The Fact-Finder does not seek to either deny or to minimize the financial constraints under which the District is currently operating. The magnitude of those constraints as represented in the District's five-year projections can be disputed, but there is no doubt that constraints are real. According to CEO Gordon, the Board and the legal requirements of .412 both make it impossible to agree to a contract of more than one year. There is some doubt, however, whether the Board and the District are permitted by the O.R.C. 5705.412, to circumvent bargaining in good faith by claiming that a proposal cannot be certified pursuant to this legislation while the parties are still negotiating and there are still proposals on the table. It was the District that walked out on negotiations in February of 2016 while this and

other proposals were still on the table. There is some evidence that the Union endeavored to get the District to return to negotiations, but it did not and, thus, fact-finding proceedings began. It was amply demonstrated during this process that the parties, given the right motivation and configuration for their discussions, were, indeed, able to negotiate and to reach TAs on a number of issues that were outstanding when the process began and to narrow their differences on some others. Although the context had changed, the facts are indisputable that the parties were negotiating and produced very commendable results. Although a settlement of the contract in its entirety did not occur, the Fact-Finder is therefore loath to affirm the District's position that only a one-year contract must be implemented.

Additionally, the Fact-Finder noted that, in seeking a three-year agreement, the Union not only did not ask for a greater percentage increase than that which the District has agreed it could afford to provide to other unions, but also agreed to wage reopeners in the second and the third years of the contract **after** the results of the levy are known. If the levy passes, then it will be up to the parties do decide what, if any, changes they want to make in wages based upon revised projections and other information about what the District can afford. If the levy does not pass, then it is very unlikely that there will be anything to discuss because, even though the District's projections are estimates, the District will be in very dire economic straits.

The Fact-Finder knows that the budget projections provided by the District are no more and no less than that. Statistical management is applied in making these projections. Such management is not without flaws and the results can be used to depict results that are advantageous to the party providing them. That having been said, the Fact-Finder is still cognizant that the District has economic problems. The Union and its bargaining unit members recognize this too. Passage of the levy on the November 2016 ballot can ameliorate this situation. It is now up to the District and to the Board of Education to decide whether they must maintain their stance on a one-year contract at all costs, or accept the Union's proposal for a three-year contract which, among other things, will commit the Union and its bargaining members to providing the robust support needed
to make sure that the levy is passed? As the parties deliberate their options, the Fact-Finder reminds them that this Report contains only recommendations and that they are free to, if **both** are willing, re-engage in negotiations to bring forth a negotiated settlement. In view of the foregoing analysis, the Fact-Finder recommends that these negotiations result in a three-year contract.

## APPENDIX G - CORRECTIVE ACTION

The parties made some progress in reaching agreement on tentative language during the course of the fact-finding proceeding. However, this was not sufficient to bring them to agreement.

**Union Position:**

The Union seeks two changes in the language contained in this appendix. First, under the initial paragraph, it sought to add that, "The Corrective Plan shall also specify any collective bargaining agreement exemptions". The justification that the Union gave for this change was that O.R.C. 3311.74 allowed the CEO to create a Corrective Action Plan that overrides conflicting provisions in the collective bargaining agreement. That provision is incorporated into the current contract language in this appendix. The Union asserted that its proposal simply requires the CEO to specify which provisions of the agreement that the CEO's decisions affect. Later, the Union added that if any provision(s) of the agreement are affected, but not specified, by implementation of the Corrective Action Plan, then the agreement shall prevail.

The Union does not dispute the what O.R.C. 3311.74 allows the CEO to do. It asserted that it is reasonable to expect that the CEO should know which provisions of the contract are affected by a Corrective Action Plan he/she is providing and to be able to articulate same. The Union gave an example to support its position. To wit, it said that, currently, Academic Achievement Plans, under Article 5 of the contract, may override provisions in the contract **if** the provisions are identified and approved (See Article 5, Section I of the current contract, which has not been modified by any tentative agreement). According to the Union, this current practice provides bargaining unit members with clarity regarding any changes to working

conditions within a building. It therefore maintained that members at, or interviewing for, Corrective Action Schools deserve to have the same clarity.

**District Position:**

The District maintained that the current contract language should be maintained because it mirrors what the statute requires.

**Recommendation:**

The Fact-Finder understands the District's interest in fidelity to the statute. She also recognizes that the contents of a Corrective Action Plan can have impacts in various parts of the collective bargaining agreement. However, the Fact-Finder agrees with the Union that the CEO should know those impacts when he/she devises the plan and/or obtain assistance from his/her staff in identifying them.

## APPENDIX L - PEER ASSISTANCE AND REVIEW (PAR)

The parties made no progress toward narrowing, much less resolving their differences regarding the content of this appendix during mediation. The same was true during fact-finding. Both parties have areas where they maintain current contract language, however, these areas do not necessarily overlap. Where they do, the Fact-Finder recommends that the current contract language be maintained. They both made extensive proposals for other revisions in this appendix.

The Fact-Finder is cognizant that full implementation of the existing language has both mandatory and voluntary components with economic consequences of which the District now says, due to constraints on its

budget, it can only implement the mandatory provisions of the current contract; at best. The District asserted that, even if the levy is passed, its economic circumstances will not change enough to fund the proposals advanced by the Union, much less the voluntary provisions contained in the current contract. The Fact-Finder knows, as the District must, that salvaging teachers with potential, but who need assistance, can be far less costly than terminating them and recruiting replacements. This is especially true since the compensation and working conditions prevailing in the District are less attractive to potential teachers than those offered in suburban districts. The parties should be clear in understanding, however, that the Fact-Finder is in no way suggesting that all teachers can or should be salvaged at any cost. The teachers and the District both have a responsibility to ensure that this does not happen. Otherwise, neither the teachers nor the District, nor the relationship between them benefits, and most especially not the students that they serve, while resources scarce resources are expended without a reasonable expectation of a return on this investment.

The Fact-Finder applauds the Union's effort to include paraprofessionals and others in Appendix L. However, even in the best case scenario, this cannot be achieved under any reasonable outcome of these negotiations, even if the levy is passed.

The Fact-Finder recognizes the merit in parts of other proposals made by both parties with respect to this appendix. She also knows that this is a shared trust and shared responsibility issue. The Fact-Finder therefore

recommends that **both** parties capitalize on the progress that they made through collaboration during fact-finding, focus realistically on problems with the language and how it has been implemented, and address these as in negotiations subsequent to issuance of this Report.

## APPENDIX T - MOU

## DEVELOPMENT AND IMPLEMENTATION OF THE CLEVELANT DIFFERENTIATED COMPENSATION SYSTEM

This appendix was mentioned only by reference during fact-finding. Since it is so inextricably tied to other recommendations that the Fact-Finder has made regarding the CDCS, these should apply to the content of this language as well.

## APPENDIX U TDES GLOSSARY OF TERMS AND FORMS

## TDES GLOSSARY OF TERMS

Based upon other recommendations made in this Report and the matters that have not yet been resolved by the parties, it would be premature and inappropriate for the Fact-Finder to presume to edit the contents of this appendix. She therefore leaves this task to the parties once they have agreed upon the language to which this glossary pertains.

## CONCLUSION

The Fact-Finder is grateful to both parties for the opportunity that they afforded her in an effort to try to resolve the content of their next collective bargaining agreement. She applauds everyone concerned for their very hard

work and forbearance during the long hours spent in the fact-finding proceedings and for all the efforts that they made, in addition to this time, to try to make things work. The TAs that the parties achieved are significant. The Fact-Finder hopes that these achievements helped to restore the belief on the part of both parties that collaboration can work, in general, and also when motivation and context encourages this .

She knows that there are still important issues that the parties have to resolve and, wherever possible, appropriate recommendations have been made to facilitate this process. Rather than walking away, the Fact-Finder hopes that both parties understand the profound consequences for them, the constituents that they represent, for the students, their parents, and for the community at large if mutually agreeable contract terms are not reached.

Respectfully submitted,

May 6, 2016 *Mollie H. Bowers*, Fact-Finder