BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD

MUNCIE TEACHERS ASSOCIATION,	)	
	)	
v.	)	CASE NUMBERS: I-15-006-1970
	)	I-16-022-1970
MUNCIE COMMUNITY SCHOOL CORPORATION,	)	
	)	

ORDER ADOPTING REPORT OF FINDINGS AND RECOMMENDATIONS OF THE FACTFINDER

The above-entitled case came before the Indiana Education Employment Relations Board ("the Board" or "IEERB") at the Board's meeting on June 13, 2017, for oral argument. Having considered the arguments of counsel, the briefs, the record, and being otherwise duly advised, the Board now affirms and adopts the Factfinder's recommendation to choose the Muncie Teachers Association's Last, Best Offer as the parties' collective bargaining agreement for the 2015-2016 and 2016-2017 school years.

I. Summary

In 2015 and 2016, Muncie Community Schools and Muncie Teachers Association were at a bargaining impasse. The parties exchanged proposed contracts covering teacher salary, wages, and benefits for the 2015-2016 and 2016-2017 school years (known as Last Best Offers, or LBOs). MTA's LBO maintains the teachers' 2014-2015 salaries, reduces MCS's contributions to insurance, and eliminates ancillary duty payments and professional development stipends. MCS's LBO also reduces MCS's contributions to insurance and eliminates ancillary duty payments and professional development stipends. In addition, MCS's LBO eliminates contributions to the sick leave bank and raises base pay. MCS's LBO also implements salary cuts of up to 28%, which, if selected, would require teachers to repay MCS portions of their salaries already paid to date.

IEERB's task in impasse cases is to select an LBO that best resolves the instant impasse. IEERB must consider four factors in choosing an LBO. First, IEERB must examine the financial impact to the school corporation, including whether the LBOs place the school corporation in deficit financing. Indiana Code defines deficit financing in this context narrowly, as expenditures exceeding revenues in the general fund during the LBO term. The Factfinder determined that neither party was in deficit financing. For the second factor, the Factfinder found that the public interest factor is in MTA's favor as MCS's LBO would "present a potentially catastrophic situation for some teachers." For the third factor, the Factfinder found that MTA's LBO provides competitive teacher salaries, while MCS's proposal would result in MCS's teacher salaries being the lowest among comparable schools. Finally, MTA's LBO was more consistent with prior CBAs than MCS's LBO. Ultimately, the Factfinder chose the MTA's LBO.

MCS appealed the Factfinder's decision. MCS claims first that MTA's LBO puts MCS in deficit financing because MTA's LBO did not include a $10.2 million-dollar transfer from the General Fund to various other MCS funds. The Board finds that expenditures are payments for goods and services. As the services in question were paid for outside of the contract term, the transfer is a reimbursement, not an expenditure, and therefore should not be considered in calculating deficit financing. MCS next claims that the Factfinder did not consider the true cost of MTA's health insurance. However, the Factfinder considered, but did not adopt, MCS's argument on MTA's health care based on evidence presented. Finally, MCS claims that retirement benefits may not be part of a collective bargaining agreement. However, retirement benefits are listed in the statute as an example of the mandatory bargaining subject of fringe benefits.

For the reasons provided above, and discussed in detail below, we dismiss MCS's appeal and affirm and adopt the Factfinder's findings and recommended order choosing MTA's LBO as the collective bargaining agreement for the 2015-2016 and 2016-2017 school years.

The Board acknowledges the difficult circumstances of this case. MCS is in financial trouble. The $10.2 million payment described in detail below is one indication of this. It appears that both sides understand and appreciate the difficulty of the situation and the need to provide some relief to MCS moving forward. The Board encourages the parties to work together to solve these problems.

II. Procedural History

1. In 2015 and 2016, MCS and MTA were at impasse.

2. IEERB appointed Sandra Jensen as the Factfinder. A consolidated public factfinding hearing was held on March 9, 2017, at MCS. On March 31, 2017, the Factfinder issued her Report of Findings and Recommendations of the Factfinder, in which she selected the MTA's LBO as the best resolution to the impasse.

3. On April 28, 2017, MCS filed its Appeal of the Factfinder's Findings and Recommendations.

4. On May 11, 2017, the Board directed the parties to submit supplemental briefing addressing the following questions:

1) Was the $10.2 million payment budgeted by MCS in CY 2016 and, if not, why not?
2) Can/should a fund transfer be considered an expenditure for purposes of deficit financing and why/why not?
3) Can/should the Board analyze expenditures by the school in evaluating deficit financing?
4) Did MCS have to make the $10.2 million payment in CY 2016 and why/why not?

5. On May 26, 2017, MCS filed a supplemental brief. The same day, MTA filed a joint brief, responding to MCS's initial appeal and IEERB's questions.

6. On June 7, 2017, MTA filed a Motion to Strike part of MCS's supplemental briefing. MCS responded to this Motion on June 9, 2017.

7. The Board considered this matter at its June 13, 2017, public board meeting. The parties presented oral argument. Ryan Preston, State Board of Accounts Director of audit services for schools and townships, answered the Board's questions about school accounting. The parties were allowed to respond to Mr. Preston's presentation.

III. MTA's Motion to Strike

8. On May 11, 2017, the Board ordered directed briefing. On May 26, 2017, MCS filed its directed brief, including three exhibits not in the record. The exhibits included the State Board of Accounts' ("SBOA") 2013-2015 MCS audit, email correspondence between the parties, and a Fiscal Appropriation Report dated May 26, 2017. MTA filed a Motion to Strike part of the brief and all the exhibits as being outside the record.

9. The factfinding process is an investigative one, not subject to the Indiana Administrative Orders and Procedures Act or court rules. Additionally, Indiana Code Section 20-29-8-7(d) allows evidence from various sources, including a state agency, to be used in the factfinding (regardless of whether proffered by the parties). Therefore, the Board will allow the argument in the brief as it is argument, and will consider the SBOA audit as it is a public document. However, the Board requires the parties to provide notice at the time the LBO is exchanged of items the parties wish to have in the record. Therefore, the Board strikes the remaining exhibits.

IV. MCS's New Proposed Contract

10. Nowhere in MCS's appeal does MCS make a specific request for relief or ask that MCS's LBO be adopted. Rather, MCS argues that MTA's 2016-2017 LBO results in deficit financing.

11. During MCS's oral argument, its counsel proffered a new contract for the first time at the hearing that purportedly eliminates all retroactive cuts to teacher salary, wages, and benefits.

12. This proposed contract was not in the form of an LBO and did not include a deficit financing calculation or verification. *See* 560 IAC 2-4-3.1(b). It also had not been shared with MTA or the Board prior to oral argument. *See id.; Carmel Clay Schools*, F-13-04-3060, at p. 4 (FF. Rep. 2013) (factfinder did not allow party to introduce substantially modified LBO into the record).

13. As the Board is adopting the Factfinder's recommendation to choose MTA's LBO, the Board did not consider this proposed contract and finds it moot.

V. MCS's Appeal of the Factfinder's Recommended Order

14. MCS raises six issues on appeal which can be condensed into three issues as addressed by the Board.

1) Whether MTA's 2016-2017 LBO resulted in deficit financing, as the Factfinder did not consider a $10.2 million-dollar fund transfer as an expenditure.[1]
2) Whether the Factfinder failed to consider additional costs of MTA's LBO health insurance plan.
3) Whether the Factfinder failed to strike retiree benefits from MTA's LBO.

[1] MCS failed to raise in its appeal or supplemental briefing a challenge to the MTA's 2015-2016 LBO. Accordingly, any such challenge was waived by MCS.

A. Does MTA's LBO Place MCS in Deficit Financing?

15. The crux of MCS's appeal is a claim that MTA's LBO places MCS in a position of deficit financing because MTA's LBO does not include a $10.2 million-dollar payment made by MCS.

16. On December 30, 2016, MCS moved $10.2 million ("the Payment") from the General Fund to various other funds ("Payment Funds"), eliminating the negative balances of the Payment Funds. Biannual Financial Report, MCS Ex. 4C; Muncie Transfer Tuition, MCS Ex. 10B.

17. MCS claims the Payment was made because in the spring of 2016, the State Board of Accounts ("SBOA") made an audit exception for MCS for 2013-2015 regarding the negative balances of the Payment Funds.[2] *See* State Board of Accounts Audit, p. 17. The negative balances represented services performed in 2012-2015 that were not paid from the designated Payment Funds.[3] All of these services were paid for in 2012-2015. Board Appeal Transcript ("Bd. Tr.") pp. 17-18, 50.

18. MCS claims that the Factfinder's decision must be reversed because this Payment was not part of the Factfinder's calculation of deficit financing.

[2] These funds are "designated as Funds 1300, 1305, 1440, 2140, and 2145." Muncie Community School's Response to Directed Briefing, p. 2 n. 2.

[3] MCS provides special education services for itself and other school corporations. These services should be paid from MCS's special education cooperative funds. However, in 2014-2015, a portion of the monies budgeted for these funds were used in MCS's general fund, apparently to "mask the mounting deficit in the General Fund." Muncie Community School's Response to Directed Briefing, p. 2 n. 3.

Waiver

19. As an initial matter, MTA claims that MCS waived this argument because MCS did not include the Payment in its own deficit financing calculations.[4] Muncie Teachers Association's Response to Muncie School Corporation's Factfinding Appeal and to IEERB's Briefing Request, p. 5. MCS acknowledges that it did not budget the Payment for 2016 but claims that it was included in the LBO and therefore should be included in IEERB's deficit financing calculations.[5] Muncie Community School's Response to Directed Briefing, p. 4.

20. The Payment is listed in parts of the LBO. Specifically, MCS's LBO Requirements lists $10,267,875 as an "additional appropriation amount" in the budget history of the General Fund for FY 2017 (a footnote specifies that these are "Transfer Tuition Bills"). MCS LBO Overview Part IV: Budget History of General Fund, p. 8. And MCS's General Fund from the end of 2016 shows a negative balance of $10 million. Biannual Financial Report, MCS Ex. 4C.

21. However, the Payment is not included as part of MCS's *deficit financing calculation*. Specifically, $10.2 million is not listed as an expense in MCS's calculation of FY 2017 non-teacher expenses. MCS Ex. 14A. And MCS lists non-teacher expenses in FY 2017 as only $1.5 million more than FY 2016.[6] The only expenses listed to pay other government units (which would include the Payment Funds) were budgeted as expenses for the current year (FY

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[4] It is undisputed that MTA did not include the Payment in its deficit financing calculation. Bd. Tr. p. 27.

[5] "The $10.2 million payment was not budgeted by MCS in CY 2016 because *its overall cash position would not have supported the appropriation*." (emphasis in original).

[6] Non-teacher expenses for FY 2017 are listed as $12,349,510; FY 2016 is listed as $10,760,548. *See* MCS LBO Overview Part IV: Budget History of General Fund, LBO Requirements, p. 8. Note that these numbers do not match the numbers provided by MCS in Exhibit 14A.

2017), not prior years (in this case, 2012-2015).[7] MCS Ex. 14A. Indeed, no calculation was provided even when explicitly requested by the Board.[8]

22. Therefore, although MCS discussed the Payment in the factfinding hearing, the Payment was not part of MCS's deficit financing calculation.

23. It is unclear how MCS's LBO does not place MCS in a position of deficit financing if the Payment is included in MCS's deficit financing calculation given that the parties' LBOs are not more than $10.2 million apart, and MCS's LBO only shows a $1 million reserve.[9] *Compare* MCS LBO Overview Part 1B: FY 2017 Deficit Financing, MCS LBO Requirements, p. 5 (LBO cost is $22 million) *with* MTA LBO Part 1B: FY 2017 Deficit Financing, MTA LBO Requirements, p. 5 (LBO cost is $27.6 million).

The Payment and Deficit Financing

24. Neither the Factfinder nor the Board may adopt an LBO that places the school corporation in a position of deficit financing. Ind. Code §§ 20-29-6-15.1(b), 20-29-6-18(b). Deficit financing in the context of factfinding is narrowly defined as expenditures exceeding revenues in the General Fund during the LBO term. *See* Ind. Code § 20-29-2-6; *Carmel Clay Schools*, F-13-04-3060, p.8 (2013).

25. The parties disagree over whether the Payment should be considered an expenditure for purposes of deficit financing.

[7] MCS appears to have budgeted a portion of this Payment for the 2015-2016 LBO; however, the Payment was not made during that term, and the parties are using only actual expenses for the 2015-2016 LBO. MCS Ex. 14A.

[8] Prior to oral argument, the Board directed the parties "to provide a new overview of deficit financing for FY 2017 that includes the $10.2 million payment. If the submitted LBO included this calculation, the parties shall provide a detailed explanation, including the breakdown of the non-LBO expenses." Although MCS "stipulate[d]" that the Payment was calculated in the LBO, they did not show how. *See* Muncie Community School's Response to Directed Briefing, p. 9.

[9] Indeed, it appears that MCS wants the Board to only use half of the Payment for deficit financing calculation. However, either the Payment is part of deficit financing or it is not.

26. The definition of expenditure is not defined in the law, and is a matter of first impression.

27. Mr. Preston from the SBOA stated that for Indiana schools, "an expenditure is recognized whenever the cash or check is actually issued." The movement of monies from one fund to another within the same account is not an expenditure, but a fund transfer. A fund transfer used to repay a fund is a reimbursement. Bd. Tr. pp. 72-76, 80.

28. The Board adopts SBOA's definition of expenditure for purposes of ascertaining deficit financing.

29. The expenses in question were paid (albeit out of the wrong fund) in the following schools years: 2012-2013, 2013-2014, and 2014-2015. Muncie Community School Corporation's Appeal of the Fact Finder's Findings and Recommendations, p. 6;[10] Muncie Transfer Tuition, MCS Ex. 10B. As the expenses were paid outside of the LBO terms (which are 2015-2016 and 2016-2017) and the Payment was a fund transfer to repay the Payment Funds, the Payment is a reimbursement, not an expenditure. Therefore, it is not considered in the deficit financing calculation.[11]

30. Therefore, the Board adopts the deficit financing calculation of the Factfinder and finds that MTA's LBO does not place MCS in a position of deficit financing.

31. Although the Payment is not an expenditure, and therefore not properly included in the deficit financing calculation, the Board must still analyze the LBOs' financial impact on the school corporation, which takes into account MCS's overall financial health. MTA's LBO

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[10] "During the period when MCS carried forward the Joint Services bills, the salaries paid to the Joint Services teachers were covered by the *total cash balance* of MCS." (Emphasis in original).

[11] Mr. Reuter described the Payment as a "fund accounting change" that "didn't change one penny" of MCS's overall cash balance. Factfinding Hearing, pp. 146-147.

provides cuts to teachers' overall salary, wages, and benefits, allowing MCS to have additional funds to help diminish its debts. *See* FF Report, ¶¶ 150, 153; Bd. Tr. p. 92.

B. Did the Factfinder Fail to Consider Additional Costs of MTA's Proposed Health Insurance Plan?

32. MCS claims that the Factfinder failed to consider the true cost of MTA's proposed health insurance plan.

33. The Factfinder considered the issue of costs attributable to MTA's (the status quo) insurance plan, and disregarded MCS's claims regarding additional costs beyond those reflected in the MTA LBO calculation as lacking any reliable foundation in verifiable facts or evidence in the Record. Specifically, the Factfinder found that MTA rebutted Dr. Baule's testimony challenging MTA's actual savings estimate. FF Report, ¶¶ 83-85. The Factfinder further found that "MCS did not explain the method by which it calculated the increase in costs associated with MTA's proposal or disclose data upon which its claim is based." FF Report ¶¶ 84. MCS' cost associated with health insurance claims were found to be unchanged in FY 2016 and FY 2017 from previous years. FF Report ¶¶ 87.

34. Thus, even if claim numbers or costs might rise in the future, there is no evidence in the Record demonstrating that claims rose during the contract term.

35. Accordingly, the Board affirms the Factfinder's determination that the additional costs asserted by MCS was properly excluded from the deficit financing calculation.

C. Should the Factfinder have Stricken Retirement Benefits from MTA's LBO?

36. MCS contends that retirement benefits may not be negotiated because retirement benefits are for non-employee retirees who are not part of the bargaining unit.

37. Retiree benefits are explicitly bargainable under Indiana Code Section 20-29-6-4(a)(3) for existing employees. ("A school employer shall bargain collectively with the exclusive representative on… Salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, **retirement benefits**, and paid time off as permitted to be bargained under IC 20-28-9-11." (*Emphasis supplied*)).

38. Even assuming, *arguendo*, that retiree benefits for nonemployee retirees may not be bargained, MTA is still permitted to negotiate retirement benefits for existing teachers, who may retire during the pendency of the contract period, which it did in accordance with prior contracts.

39. Any Finding of Fact or Conclusion of Law that appeared in the Recommended Order of the Factfinder not otherwise affected by this Decision is incorporated by reference as though fully stated herein.

40. Any Finding of Fact that may be considered a Conclusion of Law shall be deemed a Conclusion of Law. Any Conclusion of Law that may be deemed a Finding of Fact may be considered a Finding of Fact.

ORDER

The Indiana Education Employment Relations Board ("IEERB") now dismisses MCS's appeal and adopts the Report of Findings and Recommendations of the Factfinder, Sandra L. Jensen, in its entirety, with the above additions.

The parties may appeal this final order within thirty (30) days after the date the order is served upon the parties, by seeking judicial review thereof. Ind. Code § 4-21.5-5-5.

DATED: June 27, 2017

/s/___*Tammy J. Meyer*______________________
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