**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,	)	

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

I. Procedural Summary

1. On March 3, 2017, following the declaration of impasse in the collective bargaining between the Muncie Community School Corporation *(MCS)* and the exclusive representative, the Muncie Teachers Association *(MTA)*, the Indiana Education Employment Relations Board *(IEERB)* appointed Sandra L. Jensen as the Factfinder.
2. Wylie Sirk was appointed by IEERB to serve as the Financial Consultant.
3. At issue is the establishment of collective bargaining agreements for the period from July 1, 2015 through June 30, 2016 *(FY 16)* and for the period from July 1, 2016 through June 30, 2017 *(FY 17)*.
4. Counsellors, Mark Scudder and Taylor Hunter, appeared on behalf of MCS.
5. Eric M. Hylton, counsel, appeared on behalf of MTA.
6. MCS and MTA submitted their respective Last Best Offers *(LBO)* to IEERB. Following review, on March 1, 2017 IEERB notified MCS that its LBO was substantially, but not fully, compliant with IEERB requirements.
7. IEERB provided MCS a 24 hour opportunity to correct specifically identified deficiencies in its LBO submission. *See IEERB Review of LBOs – I-15-006-1970; I-16-022-1970, dated March 1, 2017*. MCS submitted revisions and supplemental exhibits to its LBO on March 2, 2017.
8. Consistent with IEERB's directives contained in the Fact Finder Appointment, the parties filed and exchanged witness lists on March 6, 2017.

9. Along with its witness and exhibit list, MTA, by counsel, filed "Muncie Teachers Association's Motion to Reject Muncie Community Schools' Last Best Offer" *(LBO)* on March 6, 2017, which the Fact Finder denied in an order issued March 7, 2017.
10. Also on March 6, 2017, MTA filed "Muncie Teachers Association's Motion to Strike", seeking to have MCS's March 2, 2017 LBO revisions and supplementations stricken from the record. In order to fully consider MTA's motion to strike, the Fact Finder requested MCS to provide a "redline" version of the revisions and supplementations. Thereafter, the Fact Finder granted, in part, and denied, in part, MTA's motion to strike in an order issued on March 7, 2017.
11. On March 8, 2017, the Fact Finder identified additional supplementations to MCS's LBO that were not identified by MCS in its "redline" version provided on March 7, 2017 that were, therefore, not addressed by the Fact Finder's March 7, 2017 order. With respect to these additional supplementations, the Fact Finder issued an order by email on March 8, 2017 striking additional documents provided by MCS on March 2, 2017 to supplement its LBO.
12. Overall, it was determined that revisions and supplementations provided by MCS on March 2, 2017 that were not responsive to IEERB's request to correct deficiencies and that did not constitute corrections of data otherwise contained within MCS's initial LBO submission would be stricken. The portions of MCS's March 2, 2017 revisions and supplementations of its LBO that were stricken from the record are identified as follows:
    a. MCS Exhibits 13B, 14B, and 14C;
    b. All revisions made by MCS on March 2, 2017 to the document entitled "Muncie Community School Corporation LBO Overview Part IV: Budget History of General Fund"[1] at:
        i. Line "Teacher Budget" FY 2017 (est.), FY 2016, and FY 2015; and
        ii. Line "Teacher Expenses" FY 2015.
13. A teleconference was conducted as scheduled on March 7, 2017 to consider matters preliminary to commencement of the Fact Finding Hearing that was previously scheduled for March 9, 2017. *See "Report of Teleconference" issued March 11, 2017*.

[1] A copy of the document revised by the Fact Finder to reflect the stricken and non-stricken revisions was attached to the Fact Finder's March 8, 2017 email order.

14. During the teleconference, Mr. Hylton orally objected to MCS's attempt to supplement its LBO through the introduction of exhibits identified on its witness and exhibit list. Upon inquiry by the Fact Finder, Mr. Scudder confirmed that the majority of the documents identified on MCS's exhibit list were not documents included in MCS's LBO and were not compilations of data otherwise contained within MCS's LBO. The Fact Finder orally sustained MTA's objection and notified MCS that the documents identified on its exhibit list that were not included within its LBO, or the non-stricken portions of its LBO revisions and supplementations, would not be permitted for presentation in support of MCS's LBO during the Fact Finding Hearing.
15. During the teleconference, the Fact Finder observed that MCS's exhibits or other additional material might be presented by a party as evidence in opposition to the adverse party's LBO. She notified the parties that any determination in this regard would be deferred until the Fact Finding Hearing. *In the Matter of Impasse between the: Carmel Clay Education Association and Carmel Clay Schools, 2013 WL 8360460 (IN EERB), IEERB No. F-13-04-3060, 2013*.
16. On March 5, 2017, the Fact Finder presented both MCS and MTA a number of inquiries to which they each provided responses on March 8, 2017.
17. On March 9, 2017, a Fact Finding Hearing was conducted as scheduled. MCS appeared by counsel, Mark Scudder, Taylor Hunter and William T. Hopkins, with Steven Baule, Michael Reuter, Tiffany Markwell and Bob Coddington providing testimony. MTA appeared by counsel, Eric Hylton, with Chris Campbell and Pat Kennedy providing testimony. Also present on behalf of MTA was Chad Hunter.
18. At the Fact Finding Hearing, the parties stipulated to the admission of IEERB's February 17, 2017 "Non-Binding/Advisory Opinion on 2015-2017 LBO Preparation".
19. The record of this proceeding consists of the following:
    a. MTA's LBO as originally submitted.
    b. MCS's LBO with supplementation provided by MCS on March 2, 2017 except stricken items identified in Finding 12.
    c. MCS's and MTA's responses to the Fact Finder's inquiries provided on March 8, 2017.
    d. MCS's Fact Finding Hearing Power Point presentations entitled:
        i. "Muncie Community Schools Support for MCS' Last Best Offer", and

ii. "Muncie Community Schools Response to the MTA's LBO."

e. MTA's Fact Finding Hearing Power Point presentations entitled:

i. "Muncie Teachers Association Last Best Offer", and

ii. "Muncie Teachers Association Why MCS's LBO Should Not be Chosen."

f. IEERB's February 17, 2017 "Non-Binding/Advisory Opinion on 2015-2017 LBO Preparation".

g. The parties' witness testimony provided during the Fact Finding Hearing.

II. <u>Standard of Review</u>

20. "The purpose of Factfinding is to provide a final solution on the items permitted to be bargained under IC 20-29-6-4 whenever the parties are unable by themselves, or through a mediator, to resolve a dispute." *Indiana Code § 20-29-8-5*.

21. It is the responsibility of each party to "present fully its last, best offer, including the fiscal rationale for the offer." *Indiana Code § 20-29-8-7(f)*.

22. Indiana Code § 20-29-6-4 specifies that:

> (a) A school employer shall bargain collectively with the exclusive representative on the following:
> (1) Salary.
> (2) Wages.
> (3) 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
>
> (b) Salary and wages include the amounts of pay increases available to employees under the compensation plan adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, any components of the teacher evaluation plan, rubric, or tool, or any performance stipend or addition to base salary based on a performance stipend to an individual teacher under IC 20-43-10-3.

Indiana Code § 20-29-6-4.

23. In accordance with Indiana Code § 20-29-8-7:

> …
> (b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.
>
> (c) The factfinder:

(1) may restrict the factfinder's findings to those issues that the factfinder determines significant;
(2) must restrict the findings to the items listed in IC 20-29-6-4; and
(3) may not impose terms beyond those proposed by the parties last, best offers.
…
(f)… Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

24. Indiana Code § 20-29-8-8 specifies as follows:

> In conducting hearings and investigations, the factfinder is not bound by IC 4-21.5. The factfinder shall, however, consider the following factors:
> (1) Past memoranda of agreements and contracts between the parties.
> (2) Comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation.
> (3) The public interest.
> (4) The financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing as described in IC 20-29-6-3.

III. <u>Revenue and Expenses</u>

25. Deficit financing must be determined based upon revenue and expenses from a single fiscal year. Despite the fact that in this instance two fiscal years are at issue, the analysis associated with a determination regarding deficit financing requires consideration of each fiscal year separately.

A. Fiscal Year 2016[2]

26. The Department of Education's *(DOE)* Certification of Estimated General Fund Revenue, provided in accordance with Indiana Code § 20-29-6-12.5(b) on September 25, 2015, identifies estimated MCS's general fund revenue to be $41,972,636. *MCS Ex. 4A, MTA Ex. 4A*.

27. MTA and MCS agree that MCS's actual total general fund revenue for FY 2016 equaled $43,295,626. *MTA Ex. 10B, MCS Ex. 14A and MCS LBO Requirements[3], pg. 4*.

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[2] FY 2016 concluded on June 30, 2016 making actual revenue and actual expense totals available for use.
[3] Reference to MCS's "LBO Requirements" is a reference to the revised document submitted by MCS on March 2, 2017, as revised by the striking of certain revisions and supplementation as noted in Finding 12.

28. MCS reduced the total FY 2016 general fund revenue of $43,295,626 by a total of $237,744 that MCS attributes to real property disposal of $174,813 and personal property disposal of $62,931. *MCS Ex. 14A and LBO Requirements, pg. 4*. MCS did not explain the rationale for this reduction in its LBO or during the Fact Finding Hearing. In its LBO, MCS supports this reduction only through a reference to "Form 9 Revenue" without identifying any particular exhibit within its LBO that might prove insightful to the Fact Finder. *MCS LBO Requirements, pg. 4, Footnote 3*. In an attempt to understand MCS's deduction, the Fact Finder was required to review all potentially relevant documents identified in MCS's list of Exhibits. *MCS LBO Requirements, pgs. 10 & 11*. A document entitled "Descriptive Listing by Fund and Account" included in MCS's LBO identifies the two amounts, $174,813 and $62,931, totaling $237,744, under the description "5000 Other Funding Sources". *MCS Ex. 5B*.
29. Revenue derived from all sources within a school's general fund is available for consideration with respect to deficit financing. *In the Matter of Impasse between the: Carmel Clay Schools v. Carmel Clay Education Association, F-12-01-3060, Board Order, pg. 2, 2013*. There is nothing in MCS's Exhibit 5B or any other document identified by the Fact Finder upon which to base a conclusion that a total of $237,744, relating to the disposed of items, should be deducted from the FY 2016 general fund revenue.
30. From the evidence provided by MCS and MTA the Fact Finder concludes that the FY 2016 general fund revenue was $43,295,626.
31. MTA provides that the "total budgeted FY 2016 GF non-LBO expenses", or non-teacher expenses, is $10,760,548. *MTA Exhibit 11A*.
32. MCS identified non-teacher expense as $16,742,276, which represents a difference of $5,981,728 from the MTA amount of $10,760,548. *Compare MCS Ex. 14A and MTA Ex. 11A*. The difference is comprised of $166,468 and $5,815,260, identified as "Payments to Other Governmental Units", that MCS included in non-teacher expenses. *MCS Ex. 14A*. MCS explained that the additional $166,468 represented FY 2016 expenses to the Joint Services Cooperative, while the $5,815,260 represented Joint Services Cooperative expenses carried over from FY 2015. *See MCS Response to Fact Finder Inquiry, filed March 8, 2017*.
33. It is accepted by the Fact Finder that the expenses identified as "Payments to Other Governmental Units" are expenses associated with tuition and other payments to the Joint

Services Cooperative involving Vocational Education Tuition, the Youth Opportunity Center, and the Priority School. *Id*.

34. MCS provided no documentary evidence by which the Fact Finder can determine what portion of the $166,468 FY 2016 expense or the $5,815,260 FY 2015 expense is appropriately apportioned as teacher expense or non-teacher expense.
35. The documents provided by MCS as well as the testimony of Steven Baule *(Baule)*, indicates that the categorization of these expenses, in full, as a non-teacher expense is not appropriate.
36. When questioned about MCS's categorization of these expenditures entirely as non-teacher expenses, Baule acknowledged that as much as $4,000,000 or more of that amount did, in fact, contribute to the payment of teacher salaries and benefits. Baule's testimony is bolstered by documents within MCS's LBO, which references "14/15 Voc. Ed. Bus/Salary/Benefits" in the amount of $178,762, and an Invoice dated October 9, 2015, which states "JoAnn McCowan's Salary – (1/2) – (2014/2015)" and "JoAnn McCowan's Benefits – (1/2) – (2014/2015), in the amounts of $50,030.50 and $13,007.93, respectively. *MCS Ex. 10B, pg.5*.
37. During the Fact Finding Hearing the testimony confirmed that MCS is the lead school for the Joint Services Cooperative and witnesses for both MCS and MTA agreed that teachers staffing the Joint Services Cooperative are certificated teachers included within the collective bargaining unit represented by MTA.
38. The record confirms that MCS, itself, has previously identified the expense category "Payments to Other Governmental Units" as teacher expenses; not as non-teacher expenses. This is evidenced by a review of exhibits within MCS's LBO along with the line labeled "Teacher Budget" contained in the "Muncie Community School Corporation LBO Overview Part IV: Budget History of General Fund." *MCS LBO Requirements, pg. 8, MCS Exs. 2F, 4G and 7D*. Further evidence of MCS's previous identification of this category of expense as a teacher expense is found in a document provided to MTA by MCS, which identifies the $166,468 "Payment to Other Governmental Units" as a teacher expense. *Testimony of Chris Campbell and MTA Ex. 11A*.
39. Overall, a determination as to deficit financing requires only that the total of all teacher and non-teacher expenses equal less than the total general fund revenue. For this purpose it is of

little regard whether expenses from the category "Payments to Other Governmental Units" are identified as teacher expenses or non-teacher expenses.

40. However, if MCS wished to alter its historic perspective of this category expense as fully teacher expenses the only fair means by which to do this would involve apportioning the expense into the actual amounts attributable to non-teacher expenses and to teacher expenses. That burden was upon MCS.
41. It appears to the Fact Finder that MCS's intent was to create an artificial appearance of a decreased percentage of revenue available to fund the LBO in an effort to retain a larger portion of available revenue for application to its significant debt. The Fact Finder is not persuaded.
42. For the foregoing reasons the Fact Finder concludes that the non-teacher expenses or "FY 2016 GF non-LBO expenses", is $10,760,548.
43. For all of the foregoing reasons it is the Fact Finder's determination that the teacher expenses, otherwise described as the revenue available to fund the FY 2016 LBO is $32,535,078.
44. MCS indicates that the actual teacher expenses incurred during FY 2016 is $28,274,029 while MTA identifies actual FY 2016 teacher expenses as $28,440,497. *MCS Ex. 14A and MTA Ex. 11A*. The difference between the parties' respective reports is the amount of $166,468 in "Payments to Other Governmental Units" that MTA includes and MCS excludes from teacher expenses.
45. For the same reasons explained in the preceding findings the sum of $166,468 is properly included in teacher expenses. The Fact Finder determines that the actual teacher expenses for FY 2016 is $28,440,497.

B. Fiscal Year 2017

46. Both MCS and MTA agree that the DOE Certification of Estimated General Fund Revenue estimates MCS's FY 2017 general fund revenue to be $43,442,992.
47. MTA identifies MCS's actual general fund revenue as $42,481,968. *Exhibit 3D*.
48. MCS states that its actual general fund revenue is $42,478,128, which represents a difference of only $3,840. Neither MTA, nor MCS offered explanation for the difference and the discrepancy is not sufficiently significant to warrant a search for the underlying cause.

49. MCS acknowledged in its response to the Fact Finder's March 5, 2017 inquiry that the $19,390,504 amount reflected in its LBO as "Total budgeted FY 2017 GF non-LBO expenses" includes the full $19,236,000 CY 2017 (CY = calendar year) non-teacher expenses. *See MCS LBO Requirements, pg. 5, MCS Ex. 14A*.
50. MCS also used CY 2017 figures to reflect its FY 2017 "Total amount to fund LBO", or total teacher expenses. *Id*.
51. Upon inquiry by the Fact Finder regarding MCS's use of calendar year figures in situations calling for fiscal year figures, MCS stated that its "FY 2017 LBO is a crosswalk figure from the CY 2017 Advertised and Adopted Budget. Whether FY or CY, 12 months of expenses are included." *IEERB's Review of Last, Best Offer Requirements*.
52. Calendar year expenses and fiscal year expenses are not interchangeable. Expenses, for purposes of Fact Finding, are required to be based upon the applicable fiscal year. *See Carmel Clay, F-12-01-3060*.
53. Also, as it did for FY 2016, MCS also included "Payments to Other Governmental Units" in its non-teacher expenses, which as discussed previously, the Fact Finder concludes is inaccurate. For the same reasons as were stated with respect to the FY 2016 expenses, the Fact Finder concludes that expenses from this fund category are most appropriately attributable to teacher expenses instead of non-teacher expenses.
54. MTA made the effort to divide the CY 2016 and CY 2017 teacher and non-teacher expenses in half, applying one half of each year to the FY 2017 expense budget. *MTA Ex. 9B, Ex. 9C, Ex. 4D & Ex. 2F*.
55. The Fact Finder concludes that the FY 2017 non-teacher expense is $11,453,500 and the FY 2017 teacher expense, or amount available to fund the FY 2017 LBO, is $31,028,468. *Id*.

IV. <u>Bargaining Unit Membership</u>

56. The parties' LBOs reflect significantly different numbers of collective bargaining unit members represented by MTA.

57. While MTA identifies only 330 teachers in the unit for FY 2016 and 310 for FY 2017, it acknowledged that these numbers were known to be low estimations.[4] *Testimony of Chris Campbell*.

58. MTA recognized MCS's report of 445 unit members for FY 2016 and 408 unit members for FY 2017 as accurate. *Id*.

59. Because MTA's estimation of savings resulting from reductions in MCS's contribution to insurance premiums is based upon the number of teachers carrying insurance coverage instead of the total number of teachers who are members of the collective bargaining unit, the Fact Finder concludes that MTA's acknowledged underestimation of the number of teachers in the collective bargaining unit creates no discrepancy in MTA's savings calculations.

V. <u>Evaluation of FY 2016 and FY 2017 LBOs[5]</u>

60. MCS's and MTA's LBOs are significantly different with respect to the terms impacting teachers' salaries, wages and wage related benefits. However, the LBOs do share a few common characteristics.

A. Elimination of Professional Development Stipend

61. Both MTA and MCS propose the elimination of the professional development stipend.

62. MCS estimates the savings associated with the elimination of the professional development stipend to be $61,200. *MCS Narrative Summary, pg. 2*. MTA provides a document entitled "Projected costs of CBA Proposals" created January 31, 2017 that identifies the stipend as $150.00 with an estimated fiscal impact of $60,000. *MTA Ex. 3J*. The record contains no data regarding the number of times the stipend has been or is expected to be paid and the data is not clear whether the $60,000 fiscal impact is for both FY 2016 and FY 2017 or for only one of the two years. MCS's LBO contains no data regarding the estimate.

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[4] Chris Campbell testified that MTA sought scattergram reports from MCS for the purpose of preparing its LBO but the request was denied. MCS offered no testimony or other evidence to rebut MTA's contention and for this reason it is the conclusion of the Fact Finder that MCS failed to share with MTA information critical to the Collective Bargaining and Fact Finding processes. The Fact Finder recognizes that school employers possess and maintain the largest amount of data necessary to the Collective Bargaining, Mediation and Fact Finding processes occurring under the scrutiny of IEERB. The Fact Finder would encourage any party in a similar situation to seek the assistance of IEERB at its earliest possible opportunity.

[5] Because MTA proposed one contract covering both FY 2016 and FY 2017 while MCS proposed two individual contracts covering FY 2016 and FY 2017 separately, the Fact Finder has attempted to consider the MCS's proposed contracts collectively.

63. Despite the stated $60,000 and $61,200 estimates, an email authored by Taylor Hunter, counsel for MCS, on a date between January 31, 2017 and February 7, 2017, indicates the expense associated with this item for FY 2016 is actually $90,012.03. *MTS Ex. 3F*. No data is provided for FY 2017. *Id*.

64. From the available evidence in the record, the Fact Finder concludes that the FY 2016 savings associated with the elimination of the professional development stipend is between $60,000 and $90,012.03[6].

65. Neither MTA, nor MCS identified the term of the FY 2015 CBA or of their proposed FY 2016 and FY 2017 CBAs related to this item. Upon review, the Fact Finder concludes that professional development stipends are addressed in Article XI, Section M of the FY 2015 CBA. *MCS Ex. 1A, MTA Ex. 1A*. The Fact Finder observes that despite expressly stating the intent to eliminate the stipend neither MTA, nor MCS, struck the provision from their proposed FY 2016 nor FY 2017 proposed CBAs. *MCS Ex. 1C, MTA Ex. 1C*.

B. Extra Compensation for Additional Assignments

66. MTA and MCS also agree to the elimination of extra compensation for additional assignments. Evidence in the record indicating the fiscal impact of this reduction is also inconsistent.

67. Within its narrative, MCS states that the savings associated with the elimination of additional assignments pay is $462,619. A similar estimate, $469,667, is provided within the document entitled “Projected costs of CBA Proposals”, identified previously, that was provided to MTA by MCS. *MTA Ex. 3J.* The raw data upon which these estimates are based is not identified.

68. MTA contends that the savings associated with the elimination of extra compensation for additional assignments is much greater than the savings estimates of $469,667 or $462,619 provided by MCS. *MTA Ex. 3F*. These increased estimations were also provided in Hunter’s email along with supporting raw data. *Id. and MTA Ex. 3G and Ex. 3H*. The Hunter email states;

? 6th period stipend:

[6] Because MTA and MCS are in agreement to eliminate this stipend, the Fact Finder speculates that although the stipend is available pursuant to the controlling CBA, payment of the stipend was suspended effective for FY 2017. The suspension of this item despite the continued efficacy of the FY 2015 CBA appears to be authorized by Indiana Code § 20-29-6-16 and may explain the lack of estimates associated with this item for FY 2017.

2014-15	$75,259.05;
2015-16	$204,407;
2016-17	estimate $878,309.28.

MTA Ex. 3F. Along with Hunter's email summary, MTA also provides supporting data, which purports to identify each teacher to whom the 10% extra compensation attributable to a 6th period additional assignment was (or would have been) paid in FY 2016 and an estimate of those figures for FY 2017. *Id*.

69. The Fact Finder concludes that the estimations provided by MTA, which are supported by actual data that was provided by MCS's counsel and was not refuted by MCS are due greater weight than the estimations provided by MCS the basis of which are unknown. For this reason it is determined that the savings attributable to the elimination of extra compensation for additional assignments for FY 2016 is $204,407 and the estimated savings for FY 2017 is $878,309.

C. Proposal to Reduce MCA's Contribution to Dental Insurance Premiums

70. MCS, in its Narrative Summary, and MTA proposed that MCS would contribute only $291.68 towards dental insurance premiums regardless of the plan in which the teacher enrolled. *MTA Ex. 3C and Ex. 3E, MCS Narrative Summary, pg. 2*.
71. With respect to this item, the Fact Finder observes that MCS's commitment to pay $291.68 towards dental insurance premiums as stated in its Narrative Summary, at page 2, is potentially inconsistent with MCS's proposed FY 2017 CBA, which states only that "the Board shall contribute up to $50,000 toward dental insurance for staff members." *Compare MCS Ex. 1C, FY 2017 Proposed CBA, pg. 18*.
72. MTA is the only party providing actual data upon which to evaluate the fiscal impact of this proposal. *MTA Ex. 3C and Ex. 3E*.
73. Under MTA's calculations the total amount of MCS's contributions toward dental insurance premiums at $291.68 each for 431 teachers currently on the dental plan is $144,847. This amount is significantly greater than $50,000. *Id*. MCS fails to explain how a contribution of $50,000 for "staff members" as stated in its proposed FY 2017 CBA is the equivalent of a $291.68 benefit toward each teacher's dental insurance benefit.
74. Under the proposal for MCS to provide a flat $291.68 toward dental insurance premiums for 431 teachers the cost to MCS will be $125,714.08. At present MCS's liability for teachers'

dental insurance premiums is $144,847. *Id*. The Fact Finder concludes that the savings to MCS associated with this proposal is $19,133. *Id*.

D. Vision Insurance Proposals

75. MTA proposes that MCS's contribution to teachers' vision insurance premiums be limited to $110.48 per teacher regardless of plan. *Id*. Therefore, instead of MCS contributing $110.48 toward 214 teachers' single plan premiums, $119.96 toward 93 teachers' employee +1 plan premiums, and $134.84 toward 118 teachers' family plan premiums for a total of $50,710.12, MCS would contribute a total of $46,954.00 for 425 teachers.
76. MCS's proposal regarding vision insurance is substantially similar to the proposal of MTA except that the amount of its contribution is only $98.00 per teacher. MCS provided no data to identify the fiscal impact of its proposal.
77. MTA's proposal to limit MCS's liability to vision insurance premiums results in savings to MCS of $3,756.12[7]. As calculated by the Fact Finder using data provided by MTA it is determined that MCS's vision insurance proposal will result in savings of $9,060.

E. Health Insurance Proposals

78. MTA proposes that the teachers' share of premiums for health care insurance would increase from:
    a. $425.10 to $956.48 for 219 teachers carrying single coverage;
    b. $3,934.53 to $5,027.45 for 81 teachers carrying employee +1 coverage; and
    c. $4,951.15 to $6,326.47 for 146 teachers carrying a family health insurance plan.

    Presently MCS's contribution to teachers' health insurance premiums is $9,671.13 for single plans, $16,831.03 for employee +1 plans, and $21,179.91 for family plans. *MTA Ex. 3E*.
79. The reduction in MCS's contribution to teacher health insurance premiums under MTA's proposal is $405,695.75. *MTA Ex. 3E*.
80. In MTA's proposal, the teacher responsibility to health insurance premiums is calculated using 9% of the total cost of a single plan and 23% of the cost for employee + 1 and for family plans. Under this percentage based model, the teachers' and MCS's responsibility to pay health insurance premiums will fluctuate based upon health care costs with MCS bearing responsibility for 91% for single plans and 77% for employee +1 and family plans. *Id*.

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[7] Calculation errors were identified in MTA's Ex. 3E making this total savings different than the $4,330.12 in savings, presented by MTA.

81. Under MCS's proposal, its contribution to health insurance premiums is based on flat sums that differ depending upon the health insurance plan. Under MCS's proposal a teacher's share of the health insurance premium would increase from:
    a. $425.10 to $4,780 for single plan coverage;
    b. $3,934.53 to $11,000 for employee + 1 plan coverage; and
    c. $4,951.15 to $14,000 for family plan coverage.

    Id. and MCS Ex. 1A, FY 2017 CBA, pg. 12.
82. Using the same number of teachers for each plan as is provided in MTA's Exhibit 3E, the Fact Finder calculated MCS's liability for health insurance premium contributions under its proposal would be $3,981,820, which is $2,997,433 less than MCS's current contribution of $6,979,253.
83. During the Fact Finding Hearing, Steven Baule *(Baule)* testified that MTA's calculation of savings relating to the health insurance coverage is erroneous. Baule explained that MCS is self-insured and the actual cost of health insurance coverage under MTA's plan would amount to additional teacher expenses of $1,386,617.51 instead of a the $405,695 savings anticipated by MTA. *See MCS Rebuttal Presentation*.
84. 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.
85. Refuting Baule's testimony, Chris Campbell *(Campbell)* testified that the document presented by MTA at Exhibit 3E was prepared by and provided to MTA by MCS. Campbell's testimony as to the origin of MTA's Exhibit 3E was not refuted by MCS and Campbell's testimony is believed by the Fact Finder. The data contained within MTA's Exhibit 3E is also viewed by the Fact Finder as accurate.
86. Notwithstanding the Fact Finder's belief in MTA's savings calculations relating to health insurance premiums, as stated in MTA's Exhibit 3E, the Fact Finder also considers Baule's testimony to be believable. However, the Fact Finder believes the estimate and Baule's testimony to be based upon the cost of health insurance claims and not based strictly upon costs associated with health insurance premiums.
87. The insurance plan provided to the teachers has been essentially unchanged with respect to coverages since 2007. *MCS Ex. 1D and MTA Ex. 1D*. Therefore, aside from annual

increases in health care costs, MCS's costs associated with health insurance claims is unchanged in FY 2016 and FY 2017 from previous years.

88. It is improper to consider the cost of claims associated with a health insurance plan that has been virtually unchanged for 10 years as a wholly added cost.
89. It is recognized by the Fact Finder that MCS's proposal includes changes to the teachers' health insurance plan that would increase teacher liability thus creating incentives for teachers to wisely consider health care costs, which would likely decrease MCS's liability associated with health care claims. *Testimony of Baule*. It is the Fact Finder's conclusion that considering the difference in MCS's claims costs under its preferred health insurance plan and the teachers' current plan as a wholly added cost is, likewise, inaccurate.
90. The Fact Finder acknowledges the trend for employers providing health insurance coverage to encourage wise and cost-effective decision making by all employees relating to health care through the use of high-deductible insurance plans combined with health insurance savings plans. The current teacher health insurance plan, as described in the FY 2007 – 2014 CBA does not appear to be consistent with this trend.
91. While the present health insurance plan provided to teachers may be in need of adjustment to improve the stability of MCS's financial health, the Fact Finder is cognizant that significant increases in health care costs combined with significant reductions in income compounds the potential hardship faced by teachers.
92. The potentially catastrophic financial situation created for some teachers was amplified in the Fact Finder's mind by evidence that MCS is attempting to secure beneficial terms from local lenders to provide low or no cost loans to provide transitional funds for teachers' families. *Testimony of Baule*.

F. MTA's Proposed Wage Payment Agreement

93. The parties agree that the teachers are paid on the 5th and the 20th of each month. Due to a discrepancy between the actual school year start date and the contract start date MTA contends that compliance with Indiana wage and payment laws requires MCS to pay the teachers "a lump sum payoff equal to two pay periods" for both FY 2016 and FY 2017. *MTA Narrative, pg. 3*. The total of this lump sum payment claimed by MTA is $2,037,395.40, with $1,451,380.21 of that total attributed to general fund dollars. *Id*.

94. MTA observes its willingness to enter into a Wage Payment Agreement allowing MCS to continue on the current payment schedule, without having to accelerate any salary payments and contends that the agreement would save MCS $1,451,380.

95. Contrary to MTA's contention, MCS maintains that this is not an actual expense to MCS because MCS is not currently liable to pay the $1,451,380 to the teachers. *Testimony of Baule*. MCS maintains that because this is a disputed expense subject to future determination, MTA cannot claim the amount as actual savings.

96. The Fact Finder agrees with MCS.

G. MCS's Proposed Salary and Salary Related Fringe Benefit Reductions

97. MCS's FY 2016 and FY 2017 LBOs include significant cuts in teacher salaries and benefits applicable retroactively to July 1, 2015. *MCS Narrative Index, pg. 2*.

98. For FY 2016 MCS proposes to reduce by ten percent (10%) the salary of all teachers earning between $36,005 and $61,006 and by twelve and one-half percent (12.5%) the salary of teachers earning over $61,006. MCS's LBO provides no FY 2016 salary or salary related fringe benefits data for teachers following the imposition of these salary reductions. For this reason the Fact Finder is unable to ascertain the actual fiscal impact of this MCS proposal upon either the teachers or upon MCS.

99. The terms of the FY 2015 collective bargaining agreement has remained in effect throughout the entirety of FY 2016 and to date for FY 2017. The Fact Finder, therefore, recognizes that any salary reductions imposed in a retroactive manner will result in the need for teachers to "reimburse" overpayments of salaries and salary related fringe benefits to MCS.

100. Based upon evidence of record, it is reasonable for the Fact Finder to conclude that MCS intends to make withholdings from future teacher earnings throughout the remainder of FY 2017 in order to recover the overpayments.

101. MCS has offered no description of the withholding plan to be implemented to recover overpayments of salaries and salary related fringe benefits from the teachers. Upon questioning by the Fact Finder, Baule testified that the repayment plan would not result in a teacher working without receiving any compensation, however, Baule provided no elaboration. The Fact Finder observed Baule's demeanor and the content of his testimony regarding this issue to be tentative and unconvincing.

102. MCS's plan to recoup salary and salary related fringe benefit overpayments resulting from its proposed FY 2016 salary reductions also does not consider MCS's inability to recoup overpayment amounts from future earnings of teachers who are no longer employed by MCS or who terminate employment with MCS before the overpaid sums are fully recovered. This factor certainly would impact the financial benefit MCS would realize from its proposed salary reductions.

103. In addition to the 10% and 12.5% salary and salary related fringe benefit reductions applied retroactively to the beginning of FY 2016, MCS also proposes an additional twenty percent (20%) reduction to salary and salary related fringe benefits applied retroactively to the beginning of FY 2017 for any teacher earning more than the minimum salary set forth in MCS's newly established salary schedule, except for those teachers who were subjected to a 10% or 12.5% salary reduction in FY 2016. *MCS Ex. 1C, Proposed FY 2016-17 CBA, pg. 28*.

104. Under MCS's LBO, the 10% and 12.5% salary reduction effective for FY 2016 would be applicable to all teachers except those earning salaries less than $36,005, who are teachers in categories BS-0, BS+15-0, Leadership-0 and BS-1, who earn between $34,659 and $35,380 in FY 2015. *MCS Ex. 1C, Proposed FY 2015-16 CBA, pgs. 12 and 30*. Therefore, under MCS's LBO a 20% salary reduction might be imposed upon teachers in categories BS-0, BS+15-0, Leadership-0 and BS-1. However, MCS also proposes granting a gratuitous increase in salary to the newly established base salary of $37,000 in FY 2017. By increasing the salaries of teachers in these categories to the minimum of that salary range, these teachers are suddenly placed squarely at the minimum salary of their range, which would make them ineligible for application of the 20% salary and salary related fringe benefit reduction. This situation created by MCS is perplexing.

105. Additionally, MCS's proposed CBA is not consistent with its stated intent to increase the salaries of its lowest paid teachers to $37,000. The CBA establishes a revised salary schedule that indicates base pay as $37,000 but the CBA contains no affirmative provision whereby currently employed teachers earning less than $37,000 would have their salary increased to that newly established $37,000 base pay. *MCS Ex. 1C, FY 2017 CBA pg. 12*.

106. The Fact Finder is only able to determine that MCS may have intended the 20% reduction in salary and salary related fringe benefits to be imposed upon teachers hired in FY

2017 before implementation of MCS's proposed FY 2017 CBA. These are the only teachers who would certainly not have been subject to either the 10% or 12.5% FY 2016 reductions.

107. The Fact Finder is unable to determine from the evidence in the record how MCS's 20% salary reduction may apply to teachers in a newly created salary category "less than a BS" who earn only between $32,500 and $42,008, although the Fact Finder recognizes that the 20% salary reduction might apply to a teacher in this category. *Id*.

108. The Fact Finder is at a loss to understand MCS's intention to reduce the salary of its lowest paid teachers by 20% in FY 2017, a percentage greater than the 10% or 12.5% salary reduction applied to its higher paid teachers in FY 2016.

109. The Fact Finder observes with distress that MCS's LBO also does not provide a cap on the salary reductions that might be imposed to a maximum amount necessary to return a teacher to the minimum salary of the teacher's applicable salary range. For example, without such a cap the imposition of a 20% salary reduction upon a teacher with 11 years of experience earning $41,000, only $744 above the minimum salary of $40,256 for teachers with 11 to 20 years of experience, would cause the teacher's salary to be decreased by $8,200 to only $32,000, which is an amount less than the minimum salary in the range for teachers with zero to 10 years of experience. This result is simply unreasonable.

110. The only fiscal data set forth in MCS's LBO identifies savings associated with the 20% salary and salary related fringe benefit reduction upon what the Fact Finder believes to be all teachers. *Testimony of Campbell, MCS Ex. 3C and Ex. 8A*. However, the teachers identified within that data include those who were employed by MCS in FY 2016 who would have been subjected to a 10% or 12.5% salary reduction in FY 2016 and to whom the 20% salary reduction in FY 2017 is inapplicable. *Id*. The Fact Finder concludes that MCS's data is wholly inaccurate and of no weight. *MCS Ex. 1A, Proposed FY 2017 CBA, pg. 9 and Ex. 3C*.

111. Within the entirety of its LBO MCS does not identify the actual savings to MCS, or reveal the actual financial impact upon the teachers, of its proposed reduction in salaries and salary related fringe benefits.

112. MTA's LBO provides for teacher salaries to remain static for the period including both FY 2016 and FY 2017. *MTA Ex. 1C, pg. 32*.

H. MCS's Proposal to Eliminate Sick Bank Contributions

113. MCS's contribution to the sick bank is presently calculated as "2.5 x B.S. 0". B.S. 0 is $34,659 and the calculation equals $86,647.50. *MCS Ex. 1C, pgs. 11 and 30*.

114. The Fact Finder understands the sick bank concept to operate on the basis of teachers donating sick days to a bank to be used by other teachers who find themselves with an insufficient number of sick days.

115. Because the sick bank operates on the basis of sick days donated by teachers who have already accrued those sick days, MCS would experience no savings by withdrawing from participation in the sick bank concept unless it is MCS's intent that all the previously accrued sick days that have been donated to the sick bank would be extinguished instead of being returned to the donor.

116. Extinguishing previously accrued sick days would deprive a teacher of a previously accrued benefit.

117. The only appropriate action would be for MCS to return the donated sick days to the donor who could then, in due course, use the accrued sick day himself or herself. *In the Matter of Impasse between the: Carmel Clay Education Association and Carmel Clay Schools, pg. 12, 2013 WL 8360460 (IN EERB), IEERB No. F-13-04-3060, 2013*. Upon use by the teacher who accrued the sick day MCS would be liable to fund the sick day and thereby can claim no savings associated with its withdrawal from participation in the sick bank.

I. Limitation of New Staff to Five Years of Experience

118. An added effort to conserve financial resources is found in MCS's intent to limit newly hired teachers to those having five years of experience or less.

119. Under MCS's proposed FY 2017 CBA, new salary ranges are established based on zero to ten years of experience. *MCS Ex. 1A, FY 2017 CBA, pg. 9*.

120. The Fact Finder recognizes that this term of MCS's LBO was based upon the continued validity of the "Compensation Model for Teachers" included in the FY 2015 CBA, which provided for salaries based upon each year of experience. *MCS Ex. 1C, FY 2017 Proposed CBA, pg. 31*. Using the Compensation Model, MCS would be readily able to identify a salary range for zero to five years of experience, however, with MCS's proposed replacement of the Compensation Model, the Fact Finder is unable to determine how MCS will identify a

salary range by which to compensate new teachers or to calculate savings associated with this item.

121. The Fact Finder is unable to identify supporting data within MCS's LBO attributed to this item.

J. Elimination of Longevity Pay

122. MCS proposes also to eliminate longevity pay, which, in part, provides $300 annually to each teacher being employed with MCS for 10 years or more. *MCS Narrative Summary, pgs. 2-3, MCS Ex. 1C, FY 2016 CBA, pg. 20*. A portion of the longevity pay requiring teachers having 10 years of service to be paid $65 for each accumulated sick day is not impacted by this MCS proposal. *MCS Ex. 1C, FY 2016 CBA, pg. 20.*

123. MCS contends that its savings related to this revision will be $109,000; however MCS's LBO provides no data supporting the calculation of these savings.

124. By reviewing, MTA's Exhibit 3B the Fact Finder is able to identify approximately 155 teachers having 10 or more years of service with MCS. By multiplying that number of teacher by an annual $300 benefit, the Fact Finder calculates annual savings in the amount of $46,500 for a total two year savings to MCS of approximately $93,000.[8]

125. The Fact Finder observes that MCS struck this provision from both its proposed FY 2016 and FY 2017 CBAs. For this reason, although the record does not explicitly confirm this to be the case, the Fact Finder reasonably concludes that MCS intends this revision to be applied retroactively.

126. Retroactive application would require teachers to reimburse any sums paid as longevity pay in FY 2016 and FY 2017. [9]

K. Elimination of Retiree Benefits

127. The retiree benefit provided in past CBAs offered teachers having a minimum of 15 years of service with MCS and who possess sufficient creditable service to retire with unreduced benefits under the Indiana public employee retirement system to retain their health insurance

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[8] A party should not expect a Fact Finder to perform such calculations in support of its contentions. It is the burden of the party to fully explain the fiscal rationale for its LBO. *Indiana Code § 20-29-8-7(f)*.

[9] The Fact Finder also recognizes the possibility that MCS has not paid sums otherwise due as longevity pay during FY 2016 and FY 2017. Indiana Code § 20-29-6-16 appears to allow for this provision to be suspended when a previous year CBA is carried over to subsequent years.

benefits upon prepayment of the employee portion of the health insurance premium. *MCS Ex. 1C, FY 2016 CBA, pg. 22*.

128. MCS's LBO proposes to eliminate this retiree benefit.

129. MCS offers no information as to the number of retirees presently taking advantage of this benefit and made no effort to identify the savings attributable to the elimination of this benefit.

VI. Expense of Proposed LBOs

130. MCS maintains that with the imposition of the reductions provided for in its FY 2016 LBO the teacher expense will approximate $25,292,729. *MCS Narrative Summary, pg. 1*. MTA maintains that its FY 2016 LBO is based upon actual teacher expenses for FY 2016 of $28,440,497. *MTA Fact Finding Hearing Presentation, Slide #9*.

131. Adoption of MCS's LBO would require teachers to reimburse $3,147,768 to MCS.

132. MCS maintains that its FY 2017 LBO, including the additional reduction in teacher salaries and salary related fringe benefits, will cost approximately $22,087,624. *MCS Narrative Summary, pg. 1*. Conversely, MTA's FY 2017 LBO will result in $27,669,912 in teacher expenses. *MTA Fact Finding Hearing Presentation, Slide #9*.

133. The Fact Finder and Financial Consultant are able to reasonably attribute savings in the amount of between $2,291,301 and $2,321,313 to MTA's LBO, comprised of between $60,000 and $90,012 related to professional development stipends, $1,802,716 for FY 2016 and FY 2017 pay for additional assignments, $19,133 related to dental insurance premiums, $3,756 associated with vision insurance premiums, and $405,696 from health insurance premiums).

134. The record is insufficient to allow the Fact Finder and Financial Consultant to determine the exact dollar amount of the reductions proposed by MCS's LBO. There exists a lack of data within MCS's LBO upon which to affix a dollar amount to the eliminated retiree benefits, to imposed limitations on the salaries of newly hired teachers and, most importantly, the reduced salaries and salary related benefits.

135. The best efforts of the Fact Finder and the Financial Consultant result in the identification of calculable savings associated with MCS's LBO of between $4,981,352 and $5,011,364, which includes between $60,000 and $90,012 from the elimination of

professional development stipends, $1,802,716 for FY 2016 and FY 2017 additional assignments pay, $19,133 relating to dental insurance premiums, $9,060 for reductions in vision insurance premium contributions, $2,997,443 from reduced contributions to health insurance premiums and $93,000 from the elimination of longevity pay. These savings do not include MCS's proposal to reduce salary and salary related benefits, to eliminate retiree benefits, to withdraw from participation in the sick bank or to cap the salaries of newly hired teachers, which from the evidence in the record the Fact Finder and Financial Consultant were unable to affix savings figures.

136. Even without the inclusion of MCS's proposed salary reductions it is clear that MCS's LBO results in at least $2,690,051 more in savings than does MTA's LBO.

137. The actual teacher expense for FY 2016 was $28,440,497, which is the teacher expense identified by MTA in its LBO. The Fact Finder and Financial Consultant understand that MTA's LBO does not call for a retroactive reduction in teacher salaries or any retroactive changes to the health, dental or vision benefits. However, MTA's LBO does propose the retroactive elimination of extra compensation for additional assignments and professional development stipends. In FY 2016 these expenses were $204,407 and between $60,000 and $90,012, respectively, for a total of between $264,407 and $294,419. It is not clear to either the Fact Finder or the Financial Consultant whether those expenses were paid by MCS during FY 2016 such that MCS will recoup those amounts or whether the teachers agreed, in advance, to forego payment under those terms of the FY 2015 CBA, which has continued in effect. The Fact Finder recognizes that if MCS actually paid teachers a total of between $264,407 and $294,419, those sums are included in the actual FY 2016 teacher expenses. If that is the situation, upon reimbursement of those amounts by the teachers through withdrawals from future earnings, the actual teacher expenses attributable to FY 2016 will actually be reduced to approximately $28,176,090 to $28,146,078.

138. MTA's LBO identifies the FY 2017 teacher expenses to be $27,669,912, which is only $770,585 less than its FY 2016 expenses. The Fact Finder recognized that MTA's FY 2017 teacher expense was calculated based upon current FY 2017 teacher expenses, which has the effect of taking into account general increases in costs that occur annually. Notwithstanding usual and customary cost increases, MTA's LBO maintains a modest decrease in expenses overall.

139. For FY 2016, MCS identifies the total teacher expense under its LBO as $25,292,729, which is $3,147,768 less than the actual FY 2016 teacher expense of $28,440,497. The largest portion of the difference between the actual FY 2016 teacher expenses of $28,440,497 and MCS's estimated teacher expense under its LBO most assuredly relates to MCS's proposed retroactive salary and salary related benefits. For the reasons discussed previously, the Fact Finder and Financial Consultant are simply unable from the evidence in the record to affix a monetary figure to those retroactive salary reductions. It seems reasonable that a 10% or 12.5% salary reduction for nearly all teachers could easily result in accumulated savings of $3,147,768. The remainder of MCS's proposed reductions, predominantly relating to health, vision and dental insurance, are not readily amenable to retroactive application and for this reason the Fact Finder concludes that these reductions are intended to apply almost exclusively to FY 2017.

140. For FY 2017 MCS observes that teacher expenses will reduce further, to $22,087,624, which is $3,205,105 less than the teacher expense associated with MCS's FY 2016 LBO. This outcome is generally consistent with the elimination of $878,309 in extra compensation for additional assignments and $3,025,636 in reduced health, dental and vision insurance benefits. Notwithstanding the ability to generally reconcile MCS's financial claims, the evidence in the record is wholly insufficient to allow the Fact Finder and Financial Consultant to have confidence in this conclusion.

141. The Fact Finder recognizes that MCS must address its debt; nonetheless, the cuts proposed by MCS in its LBO are extremely aggressive.

142. While MTA's proposed LBO result in savings that are modest in comparison to MCS's efforts, the Fact Finder is convinced that under MTA's LBO, MCS did realize a budgetary surplus in FY 2016 in the amount of approximately $4,094,581 and will enjoy an additional surplus of approximately $1,907,176 in FY 2017.[10] Together, these surpluses, managed appropriately, constitute approximately 60% of the $11 million dollar deficit identified by MCS.

[10] The surplus actually recognized by the Fact Finder is $1,451,380 less than the surplus identified by MTA because the Fact Finder is not including the amount MTA claims as savings associated with a Wage Payment Agreement.

VII. Deficit Financing and Financial Impact upon MCS

143. Indiana Code § 20-29-6-3 describes unlawful deficit financing as involving an agreement that would result in a "reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue."

144. IEERB has further defined "deficit financing" as "actual expenditures exceeding the employer's current year actual general fund revenue." *Carmel Clay Schools v. Carmel Clay Education Association, Board Order pg. 2, F-12-01-3060, 2013.*

145. It is also the case that "deficit financing should be analyzed using the fiscal year." *Id.*

146. Pursuant to Indiana Code § 20-29-8-7(f) only general operating funds and funds certified by the Department of Education and the Department of Local Government Finance may be used in determining deficit financing. IEERB has previously interpreted this to include "all miscellaneous revenue projected in a school's general fund budget…" *Id.* The revenue to be considered includes the "primary operating fund" which are the "funds 'from which general operating, administrative and capital expenses…may be paid.'" *Id., citing Indiana Code § 21-9-2-15.*

147. As stated previously, the evidence establishes that the FY 2016 teacher expense is $28,440,497 and the total non-teacher expense is $10,760,548 for total expenses of $39,201,045.

148. MCS's revenue for FY 2016 totaled $43,295,626.

149. Even though MCS operated during FY 2016 under the terms of the FY 2015 CBA, which did not include reductions in teacher expenses that are proposed by both MTA and MCS, MCS did not engage in deficit financing during FY 2016.

150. In fact, the Fact Finder concurs with MTA's conclusion that during FY 2016, MCS actually accumulated a surplus of $4,094,581 that should have applied to MCS's considerable deficit.

151. With respect to FY 2017, MCS's revenue was determined to be approximately $42,478,128 to $42,481,968 and the estimated non-teacher expenses were calculated to be $11,453,500.

152. The remaining financial resources available to fund the FY 2017 LBO is $31,028,468.

153. The evidence available substantiates MTA's position that its FY 2017 LBO, which calls for teacher expenses of $27,669,912 consuming $5,582,288 in financial resources more than does MCS's LBO, which will reportedly cost $22,087,624, creates a budget surplus for FY 2017 of approximately $1,907,176.

154. Neither MTA's, nor MCS's LBOs results in deficit financing.

VIII. <u>Evaluation of Past Collective Bargaining Agreements</u>

155. MTA's LBO contains a proposed CBA that is remarkably similar to the CBAs in effect from 2007 to the present.

156. MTA made an effort to update statutory citations and to clarify language, which has no impact upon the primary fiscal matters at issue in this Fact Finding. These revisions do improve the ability to understand and interpret the CBA's terms.

157. Conversely, MCS's proposed CBA includes numerous and significant alterations from CBAs in effect between 2007 to present. Some of the most notable alterations to MCS's proposed CBA is the wholesale elimination of Article XII, Early Retirement and the deletion of the bulk of Article X, Fringe Benefits from the proposed FY 2017 CBA. MCS also replaces all of the existing language in Appendix A, and entirely eliminates Appendices D, E, G and H.

158. The Fact Finder observes that MCS's revisions to the proposed CBA were not carefully crafted. In some instances MCS's proposed alterations create internal conflicts and in other situations the CBA was not drafted in a manner consistent with MCS's expressly stated intentions.

159. With respect to the latter of these, MCS expressly stated its intent to increase the wages of the lowest paid teachers to $37,000. *MCS "Support for MCS' Last Best Offer, pg. 13, Testimony of Baule*. While MCS's proposed LBO does establish a salary schedule indicating a base salary of $37,000, the proposed CBA makes no express statement that teachers earning less than that amount will receive an increase in salary. *MCS Ex. 1C, FY 2017 CBA, pg. 12*. Furthermore, the Fact Finder acknowledges the accuracy of MTA's position that if MCS did, in fact, increase the salaries of teachers earning less than $37,000 who are not rated effective or highly effective, MCS's action would be in violation of Indiana Code § 20-28-9-1.5(c).

160. One example of conflict created by MCS's proposed CBA revisions is evidenced by its creation of a contract term limiting newly hired teachers' pay to five years of experience "by the 'Compensation Model for Teachers'…". The "Compensation Model for Teachers" referred to in that contract term is Appendix A to the current CBA that MCS has renamed to "Contract Salary Schedule" and, more importantly, has revised in such a manner that a salary range of zero to five years of experience can no longer be identified. *Id. at pgs. 14 and 28*.

IX. Comparison of Teacher Wages

161. MCS maintains that under its proposed CBA teachers will earn salaries between a minimum of $37,000 for teachers holding a BS degree and having zero to ten years of experience to a maximum of $64,119 for teachers holding a Doctorate Degree. *MCS "Support for MCS' Last Best Offer, pg. 13, Testimony of Baule*.

162. However, MCS's proposed FY 2017 CBA provides a salary range $32,500 to $42,008 for teachers who do not hold a BS degree. *MCS Ex. 1C, FY 2017 CBA, pg. 28*. Salaries for teachers in this category were not discussed at all by MCS. However, MCS, in its LBO identifies the actual salary range to be $32,500 to $64,119. *MCS Ex. 1C, FY 2017 proposed CBA, pg. 28*.

163. Furthermore, as was discussed previously, the terms stated in MCS's proposed FY 2017 CBA are not consistent with MCS's stated intent to raise all degreed teachers' salaries to a minimum of $37,000 and the gratuitous salary increase cannot, in some cases, occur without violating Indiana Code § 20-28-9-1.5(c). Therefore, MCS declaration that its minimum teacher salary is $37,000 is unsupported.

164. In reality, the actual current teacher contract salaries range from a maximum of $66,949 for 37 year veteran teacher to a minimum of $34,659[11], which is the salary rate for numerous teachers having less than one year of experience. *MCS Ex. 3B*.

165. As discussed previously, the implementation of MCS's proposed retroactively applied salary reductions is not clear and therefore the impact of those reductions upon teacher salaries is also very uncertain. For purposes of this discussion, the Fact Finder will assume the accuracy of MCS's statement that teachers earning over $61,006 will be faced with a

[11] The Fact Finder observes that certain teachers identified on MCS. Ex. 3B earn much less than $34,659. It is presumed that these are teachers employed at less than full time or for other reduced assignments.

12.5% salary reduction. That level reduction would cause the highest current contract salary earned by an MCS teacher to be reduced by $8,368.63 to $58,580.38. While MCS's salary schedule provides for a maximum base salary potential of $64,119, the effect of MCS's proposed salary reductions will result in MCS's highest paid teacher actually earning less than $60,000 annually.

166. Under MTA's LBO, teachers' salaries would remain static providing for a maximum base salary of $64,119 and a minimum of $34,659. *MTA Ex. 1C, pg. 32*.

167. MCS maintains that under its LBO, teachers will continue to be some of the highest salaried teachers. MCS's claim is unfounded.

168. The salary schedule creates a false minimum salary of $37,000, when that figure should appropriately be only $32,500. Furthermore, while MCS's salary schedule creates a maximum salary of $64,119, the effect of MCS salary reduction plan will bring its highest paid teacher's salary to a point below $60,000.

169. Data provided by MCS in its LBO to reflect similarity in salaries between schools offers graphs and charts that, without significant explanation that was not provided by MCS, are without value to the Fact Finder. *MCS Ex. 9A*. In its Fact Finding Hearing Presentation, MCS offered more useful comparison information. *MCS Support for MCS' Last, Best Offer, pg. 14*. However, upon closer examination the schools MCS chose for comparison are school systems such as Cowan with a student enrollment of 791, Delaware Community with a student enrollment of 2622, Liberty-Perry having 1210 students enrolled, Wes-Del with 817 students, and Yorktown with a student enrollment of 2534. *Id. and MTA Ex. 13A*. MCS provided one school, Kokomo, with minimum salaries of $34,000 and maximum salaries of $61,762 that, with a student enrollment of 6172, the Fact Finder would consider a reasonable choice for comparison.

170. MTA, on the other hand, provided a list of schools for comparison including 11 schools with student enrollments ranging from a high of 6512 students to a low of 5265 students. *MTA Ex. 13A*. From those 11 schools, with a student enrollment of 5690, MCS's salaries under the salary range provided by MTA's LBO of $34,659 to $64,119, rank eighth. *Id*. The top salary for those 11 schools is Decatur Township, MSD with a minimum salary of $40,000 and maximum salary of $85,540 and the lowest salaries for those 11 schools is Kokomo with maximum salaries of $60,762 and minimum salaries of $34,000.

171. While MCS's teacher salaries under MTA's LBO are competitive, they are not the highest. Despite the salary ranges identified in MCS's proposed CBA, the impact of MCS's LBO will cause the actual salaries of MCS's teacher to be the lowest of the 11 most comparable schools identified in the record.

X. <u>Consideration of the Public Interest</u>

172. MCS was issued a $10,708,717 General Obligation Bond in 2014 for facility renovations and upgrades in numerous buildings across the district. *MCS Ex. 10C*. Although MCS expressly states that these funds have been spent, the funds were not expended for the intended purposes. *Testimony of Baule and MCS Narrative Summary, pg. 7*. The use of General Obligation Bond funds inappropriately will cause the bonds to be void. *MCS Ex. 10C*. MCS acknowledges that "The total debt limit must be spent no later than April 2019, to avoid tax penalties." *MCS Narrative Summary, pg. 7*. MCS's use of these funds for purposes that may result in the voiding of the General Obligation Bond has created the serious financial obligations facing MCS presently and also creates questions regarding MCS's integrity and its modeling of district principles of transparency and ethical behavior with respect to financial concerns.

173. MCS's failure to meet its financial obligations will cause a decrease in its bond rating and a likely increase in taxes to pay the debt. *Testimony of Baule and Reuter*. Furthermore, this mishandling of financial resources will potentially decrease MCS's ability to obtain tax anticipation loans at favorable interest rates. *Id*.

174. The Fact Finder recognizes that these consequences to MCS will ultimately impact students and teachers because of the neglected and overdue maintenance to the school facilities. *Id*.

175. MCS represents that, at present, it is operating on an $11 million dollar deficit and "must save approximately $3,000,000 in cash reserves from February 2017 through June 2017 and continue to save approximately $600,000 to $500,000 monthly through the spring of 2018" in order to meet its obligation to the $10,708,717 general obligation bond by the deadline of April 2019. *MCS Narrative Summary, pg. 7*.

176. Under MTA's LBO, MCS will recognize a surplus of $1,907,176 in FY 2017, which ends June 2017. MTA's LBO substantially accomplishes the initial criteria set forth by MCS.

177. The purpose of this Fact Finding effort is to consider and select one party's LBO as the CBA. At issue here is a CBA for FY 2017, which is presently underway and, in fact, nearly concluded.

178. While it is important that through this Fact Finding MCS is placed on a path towards financial stability, MCS's stated need to save an additional approximate $5,000,000 by spring 2018 is a matter to be determined in FY 2018, which is beyond the scope of this Fact Finding.

179. While the Fact Finder is aware of the potential impacts associated with the extraordinarily difficult position MCS has created for itself, the Fact Finder observes that MCS's reaction to this dilemma in terms of its LBO appears haphazard and disorganized. Numerous MCS claims lack appropriate and necessary support (i.e. savings associated with eliminating extra compensation for additional assignments, lack of an implementation plan or identification of exact savings associated with salary reductions) as well as completely unsupported claims (i.e. increases in lowest teacher salaries to $37,000 when such increase is not expressed in the MCS proposed CBA and would be, in any event, in violation of applicable law).

180. MCS's LBO contains a patchwork of ideas and concepts that do not appear to have been thoroughly vetted. Alternatively, MCS has simply failed to present these concepts in a logical and understandable manner that allows the Fact Finder and Financial Consultant to appreciate the actual financial impacts and resulting savings. For example, the Fact Finder's attempts to envision an implementation plan for MCS's salary reductions has met with impossibility and unreasonable outcomes.

181. By all accounts MCS accrued a surplus of approximately $4 million dollars in FY 2016 and MTA's LBO purports to create a surplus of approximately $1.9 million dollars in FY 2017, which does not include the issue of the wage payment agreement. While the best effort has been put forth by the Fact Finder and the Financial Consultant to calculate the savings associated with MCS's LBO those efforts have been frustrated by a lack of data and explanation.

182. Without doubt MCS is facing significant consequences for past mishandling of financial resources. The Fact Finder clearly understands MCS's interest in improving its financial

situation and building a small surplus for emergencies as quickly as possible. However, it is imprudent for MCS to act in such an aggressive manner to effect its financial recovery.

183. As stated previously, MCS's plan to both reduce salaries and increase insurance costs to teachers appear to present a potentially catastrophic situation for some teachers. However, in the future, MTA should be willing to consider a reasonable restructuring of the teachers' insurance program to reduce fluctuating and unpredictable percentage based premiums, which would assist MCS's ability to anticipate and better budget for those costs.

184. The Fact Finder acknowledges that MCS's financial condition must be stabilized.

185. As part of the process involved in stabilizing and rebuilding its financial status MCS must accept the consequences of past actions, act fairly and honestly with integrity and transparency in developing a logical and carefully considered budgetary strategy.

XI. Fact Finder's Recommended Order

186. It is the conclusion of the Fact Finder for all the reasons stated herein that the MTA LBO and proposed CBA for FY 2016 and FY 2017 should be accepted as the Collective Bargaining Agreement of the parties.

187. To fully implement the stated intention of MTA to eliminate the professional development stipend the Fact Finder further recommends that Article VIII, Section M, be stricken from MTA's CBA. *MTA Ex. 1A, pg. 19*.

Date: March 31, 2017

/s/ Sandra L. Jensen
Fact Finder

The following has been served upon the following:
Eric M. Hylton – ehylton@rbelaw.com
Mark Scudder – mscudder@btlaw.com
John A. Henry – JoHenry@ieerb.in.gov
Sarah Cudahy – scudahy@ieerb.in.gov
IEERB – impasse@ieerb.in.gov
Wylie Sirk – wsirk53@gmail.com