

Notes from the 3/9/17 BOR meeting

At the March 9, 2017 Board of Regents meeting, Regent Berglee asked a series of questions about budget amendments, more particularly, about the costs associated with the replacement of the 25+ year-old chiller in Lappin Hall and supplemental pay for employees.

Executive Director of Budgets and Financial Planning, Teresa Lindgren, the person who had been tasked with presenting the budget amendments to the Board, responded by stating that initial estimate for the chiller replacement (the \$1.1 million listed in a 9/23/16 email the President sent to the campus community) was significantly higher than the specific costs recorded in the BOR agenda book. CFO Patrick followed this response with a contention that the chiller replacement was a “project” that had other, associated costs that did not meet the price threshold to be listed in the BOR agenda book. In the midst of further questioning, CFO Patrick claimed that she could supply the project description and costs at a later date; she just did not have that information with her now, as only the costs listed in the agenda book apply this quarter.

When Regent Berglee noted that he was raising questions about the cost of the chiller because a 9/23/16 email from the President clearly stated that the money recouped from faculty and staff furloughs (which had originally been designated to meet Governor Bevin’s proposed 2.5% cuts) would pay for this equipment replacement, CFO Patrick contended that the furlough funds could not be legally returned because 60% of MSU employees (i.e., those who were actually furloughed, and hence did not work during designated days) did not “earn” that money. The conversation then tended toward the fund balance, with Regent Berglee, CFO Patrick, and President Andrews all agreeing that the institution needs a viable fund balance in order to “cushion” us from economic shocks. Shortly before Director Lindgren was asked to move on to other topics, President Andrews directly asked Regent Berglee if Regent Berglee did not wish the institution to purchase a chiller replacement (a replacement which was now categorically being referred to as a “project”—a term first introduced on the BOR floor). Regent Berglee said no.

When Regent Berglee asked about the supplemental pay/bonuses also listed in the budget amendments, CFO Patrick told him that such pay was listed in the BOR agenda as well as in other places (not specified). She further clarified that one particular supplement/bonus, the reward for meeting “overall APR,” had not yet been processed via PAR, and she intimated that this supplement/bonus may actually be realized (or paid?) in another quarter.

Concerns we need to address RE: the “chiller project”

The following is the relevant portion of the 9/23/16 email from the President that Regent Berglee mentioned (in passing) on the BOR floor:

Yesterday (Thursday, September 22), the Supreme Court of the Commonwealth of Kentucky announced their ruling that will return \$886,000 in state appropriated funds to MSU. As you know, the mid-year reductions we were faced with complicated an already difficult budget situation given the current economic climate, rising fixed costs, and changing demographics of our region. The announcement could not have come at a better time for our institution. After several months of trying to address the issue, we recently learned that the existing cooling system in the Lappin Hall Science Building could not be repaired. There are not sufficient capital renewal funds budgeted in the current year to cover the estimated \$1.1 million expense.

I am sure there is speculation and discussion about how these funds could or should be allocated. The fact remains that we continue to deal with the budget deficit in the current fiscal year in addition to unexpected costs that we must address in the near term, including the Lappin Hall cooling system. Therefore, we will be unable to restore funds to our employees that were part of furlough and salary reduction strategies. However, I want to reiterate that there are no current discussions that involve additional furloughs or staff layoffs. Please be assured that we remain thoughtful and strategic in how we approach our needs in this challenging fiscal environment. We will keep you informed as we move forward.

The statements in this campus-wide communication are at some variance with the particulars discussed during the 3/9/17 BOR meeting. To make sense of this variation, and right the record, we need to determine:

How we are defining the scope of the replacement of the cooling system in Lappin Hall and where we will articulate its full cost in official records.

According to the 9/23/16 email, the 25+ year-old Lappin Hall cooling system had to be replaced because it could not be repaired, and we expected to pay \$1.1 million (or \$214,000 more than the \$886,000 of furlough funds returned to MSU) for a replacement. According to the 3/9/17 BOR Agenda book, the actual cost for a chiller for Lappin Hall is \$368,286, the estimated engineering costs associated with this new unit are \$74,000, and we paid \$47,207 to rent a temporary chiller for 4 months. Grand total, as shown in the BOR budget book: \$489,493.

- If the replacement of the Lappin Hall cooling system is “one piece” of a project that involves more than (a) the rental price a temporary, replacement chiller, (b) the purchase of a new chiller, and (c) the funds needed to engineer the new cooling system, why does the BOR agenda book list three related expenses as a whole and not make reference to other pieces that will follow in this ongoing project? Other projects in multiple pieces (that may also span budget quarters or cycles), such as the parking garage or the IT upgrade, are listed as “on going” or “in progress.” Why would the chiller project not be listed in the same fashion? What is the accounting logic here?

- What are the other costs (or perhaps budget pieces) associated with the replacement of the Lappin Hall cooling system and what is the scope/duration of these costs? During the BOR meeting, CFO Patrick claimed that the specific costs listed on the 3/9/17 agenda are significant enough to warrant inclusion (note: we are mandated to account for budget amendments/purchases above \$200,000 to the BOR), and she mentioned that there are other costs that would not meet this threshold. What are these costs/pieces?
- Are the associated costs (or other pieces) referred to by CFO Patrick well under the \$200,000 purchase price that mandates inclusion in the BOR agenda?
 - If the affiliated costs are less than \$200,000, the full price of the chiller project will be below \$689,493, so markedly less than the funds recovered from the furlough and a far cry from the initial \$1.1 million estimate. If this is the case, what explains the variation between this lower figure and CFO Patrick's assertion that the final project will be close to the estimated \$1.1 million?
 - If there are a number of affiliated costs that are individually below \$200,000 but collectively above \$200,00 (and perhaps even close to the \$520,000 that would get the final project figure to reach the initial estimate), why are we treating these figures differently than the \$74,000 engineering cost and the \$47,207 rent costs already listed in the 3/9/17 BOR agenda, which are included in a group cost despite being individually below the \$200,000 threshold?
- Are the associated costs (or other pieces) above the \$200,00 purchase price that mandates inclusion in the BOR agenda?
 - If so, wouldn't we have already had to plan for those significant outlays of funds and hence be able to briefly describe, at the 3/9/16 BOR meeting, the types of purchases we would be making in the future? (Note: Regent Berglee was not the only Regent to ask about these budget pieces.)

What the relationship between “fund balance” and “furlough” is.

According to the BOR agenda, a majority of funds for the chiller replacement came from the fund balance. When Regent Berglee asserted that the campus community was told that the furlough funds would be used to pay for the problems in Lappin Hall (see the 9/23/16 email for confirmation of this assertion), he was reminded of the importance of the fund balance and informed that we need to plan and build up a “cushion” for unforeseen expenses in these trying times.

- Based on this exchange, and the 9/23/16 email, it is reasonable to infer that the returned furlough funds were placed in the fund balance. If the fund balance, though, is defined as a “cushion” we purposefully set aside to meet unexpected financial issues, how can money returned to us by the KY Supreme Court be rightfully designated in that category?
 - When asked what he would do should the Governor's cuts be deemed unconstitutional, President Andrews repeatedly averred, in a number of venues, that the cuts would stand. Given this, we cannot say that the

- institution or its leadership planned for a return of furlough money.
 - Further, the furlough was a direct response to a clear and present danger—Governor Bevin’s mid-year 2.5% cuts. Given the well-documented purpose of the furlough, we cannot now retroactively claim that the funds garnered were “set aside” for “unforeseen” expenses.
 - The very lack of a “cushion” is why we had a furlough in the first place. We were the only institution in the Commonwealth unable to absorb the 2.5% cuts (that were later reversed).
- According to CFO Patrick, the institution cannot legally return furlough money to 60% of its employees because those employees did not “earn” the money (being furloughed, and hence sent home from work, for 5 days [and given another 5 as compensatory “bonus” over Spring Break], they were unable to do what was necessary earn their daily wages). This legal reasoning **does not** apply to the 40% of employees who have had a salary reduction the equivalent of 5-days’ pay without 5 days exempt from work. **These 9-month employees (who are invariably faculty) have had a greater percentage of their pay docked (2.6% vs. the 1.9% for 12-month employees) despite rightfully earning their daily wages by working their “pay reduction equivalent” days.** As the stated legal argument does not apply here, what argument is being proffered for not returning the wages 9-month employees have earned?
- If there is indeed a strong legal argument against the return of furlough funds for the 60% of employees who did not “earn” this money, why was this argument not mentioned in the 9/23/16 email, which endeavored to show the campus why the money would not be returned to faculty and staff at all?

What other “unexpected costs. . .we must address in the near term.”

In the 9/23/16 email, President Andrews cites the Lappin Hall cooling system as the one specific economic issue we need to address (others are the recurring “budget deficit” and unnamed “unexpected costs”).

- As we are well into the “near term” outlined in September, what are the other “unexpected costs” with which we are dealing?
- Might these costs be the additional expenses noted in regards to the “chiller project”?
 - If so, is it possible that we are collapsing other “unexpected costs” into an already identified problem/issue?

Concerns we need to address RE: the supplemental pay and compliance in Athletics.

In response to Regent Berglee’s question regarding supplemental pay, CFO Patrick specifically singled out the pay awarded to an Athletic employee for “meeting overall APR” and asserted that the PAR for such a bonus has not yet been processed.

It is still not clear why such a bonus should be approved and why a PAR should be

processed. As already noted on the Senate floor, this same employee was given a bonus for “meeting overall APR” in 2015 **after an NCAA Audit definitively determined that MSU had NOT meet overall APR.**

- While it is possible (although not documented) that MSU is currently meeting APR, why are we, as an institution, putting forward the same supplement that we know was erroneously awarded a previous year?
- Who approves such bonuses, and why has that person not been subject to oversight and review?

This seemingly minor issue actually has profound implications for compliance outside of NCAA guidelines. It may adversely affect our SACS accreditation. Under Section 3: “Comprehensive Standards,” is a specific standard related to athletics: “The institution’s chief executive officer has ultimate responsibility for, and exercises appropriate administrative and fiscal control over, the institution’s intercollegiate athletics program. (Control of intercollegiate athletics).” (3.2.11, p. 26)

The awarding of a bonus for an NCAA metric that was not objectively met suggests, in miniature, that there is neither “appropriate administrative” nor “fiscal control over” our intercollegiate athletics program. Appropriate administrative control, in this instance, would have recognized that we were not NCAA compliant, just as appropriate fiscal control would have kept us from diverting limited funds into an unearned bonus. Were this merely one oversight, it would not merit discussion, but unfortunately, these seemingly small errors are writ large in more substantive ways:

- Two recent (and major) NCAA violations do little to demonstrate “appropriate administrative control” over athletics, and that is even before we factor in the Donnie Tyndall scandal and the pending criminal case against our most recent basketball coach.
- MSU’s own budgets and audited reports show that athletics has not followed the “Fiscal Operating Guidelines” outlined in UAR 305.02, which stipulate that units cannot exceed their budgeted amount, and, if they do, the deficit “will be recovered from the unit’s opening budget the following year.” For a number of years now, Athletics has gone over its budgeted amount without requisite budget transfers (or without any budget transfers recorded in BOR books) and still had its opening budget *increased* the following year.