

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

In the Matter of Special Magistrate)
 Proceedings)
 between)
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 School District of Manatee County)
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 Manatee Education Association,)
FEA, AFT, Local 3821, AFL-CIO)

Case No. SM 2016-027

Before: Robert B. Hoffman, Special Magistrate

Appearances:

For MEA: Bruce D. Proud

For the District: William Ogle and Mitchell Teitelbaum, General Counsel

Place of Hearing: Bradenton, Florida

Date of Hearing: January 25, 2017

Briefs Received/Hearing Closed: February 14, 2017

Date of Decision: February 22, 2017 at Estero, Florida

RECOMMENDED DECISION

I. Introduction and Background

This is an impasse proceeding pursuant to Sec. 447.403 of the Florida Statutes and Florida Administrative Code Rule 38D-19.005. Following efforts to resolve their differences through collective bargaining between the School District of Manatee County (“the District” or “the Board”), and the Manatee Education Association, FEA, AFT, Local 3821, AFL-CIO (“MEA,” “the Union” or “the Association”), a declaration of impasse was declared by the District and was ultimately a submission of the unresolved issues was presented to this Special Magistrate. The

hearing was scheduled in accordance with PERC Chair Poole’s instruction “as expeditiously as possible.” Both parties were afforded a full opportunity to present evidence at the Special Magistrate hearing convened at the District’s Boardroom in Manatee and to file post-hearing briefs. A transcript of the proceedings was taken. The parties are at impasse concerning four compensation and health insurance issues under Article XII, as will be set forth more fully below.

The appropriate bargaining unit as certified by PERC includes, “all regular certificated full-time teachers of said School Board in any of the following identified positions regardless of source of funding” The description then goes on to name various position classifications of teachers and exclusions of supervisors, managerial employees, administrative employees and others.

The parties have negotiated some 15 three year CBAs since 1969, with annual wage and other item re-openers, during this span. The last CBA expired June 30, 2016. Negotiations started for a new contract on June 20, 2016. The parties had nine bargaining sessions. They reached a Tentative Agreement (TA) on October 3, 2016 that failed to be ratified by the bargaining unit employees. The parties returned to negotiations on November 8, 2016, which then resulted in an impasse. The District notified PERC and the Association of the impasse on November 14, 2016. The Special Magistrate was then selected by the parties.¹

The Teacher bargaining unit included 2851 employees at the time of impasse. The District also has CBAs with the Association covering 745 employees in a paraprofessional bargaining unit and with AFSCME in a unit of 1029 employees. The District’s total number employees is approximately 5800. The population of Manatee County is 363,369. The population of adjacent counties or surrounding municipalities with full-time students² in parentheses is as follows:

¹ The parties have been in a number of SM impasse proceedings during these years, including one before this Magistrate in 2012. Case No. SM-2011-091 decided January 12, 2013.

²Unweighted Full Time Equivalent (UFTE) students.

Sarasota County 405,549 (42,440); Pinellas County 949,847 (100,977); Hardee County 27,502 (5,273); Hillsborough County 1,349,050 (211,031); Polk County 650,092 (99,873); DeSoto County 35,458 (4,925).

Comparable sized Counties in Florida include: Sarasota County 405,549 (42,440); Lake County 328,875 (41,709); Marion County 343,204 42,640.23; Collier County 357,305 (45,881); Escambia County 311,003 (39,893); St. Lucie County 298,563 (39,400).

As seen, on October 3, 2016, the parties reached a TA for the 2016-2017 school year. This TA included salary and healthcare for both the teachers unit and a unit of para-professionals. The latter ratified the TA and the teachers did not. A similar agreement was ratified by the AFSCME unit and ultimately approved by the School Board.³ The TA included:

1. Performance Pay Schedule Progression: Three (3) levels for those teachers rated highly effective; Two (2) levels for those teachers rated as effective; No increase for those rated less than effective, in order to remain statutorily compliant. (Florida Statute Sections 1012.22(c)(4) and 1012.34)
2. Modification to the Performance Pay Schedule adding an additional two (2) dollars to each level in order to remain statutorily compliant. (Florida Statute Sections 1012.22(c)(4) and 1012.34)
3. Grandfathered Pay Schedule Progression: Three (3) level increases, except for those rated as unsatisfactory.
4. Modification to Health Insurance Plan - Changing from a three-tier system to a four-tier system that yields a cost decrease or no increase in costs for individuals covering just themselves or themselves with children, and increases for those employees covering themselves with a spouse and/or spouse with children.
5. Teacher pay increases averaging 1.5%.
6. Retroactive Pay to July 1, 2016.
7. Longevity Pay.

After the ratification rejection, the parties met on November 8, 2016. The Association proposed a new COLA provision that District rejected. The District stated there was no further

³ The Board also approved similar salary and benefits packages for Supervisory, Administrative and Professional Employees and non-bargaining unit hourly employees.

room for negotiation based upon the need to maintain the 3% statutory assigned and unassigned fund balance. Any delay would jeopardize retroactive and longevity pay for the teachers; those monies would be necessary to fund the proportionate share of healthcare for teachers. A new vote was requested by the District that MEA denied. Based upon the inability to reach an agreement, retro pay and longevity pay, was taken off the table by the District, according to the District. In effect, according to the District, the Association demanded an additional \$1,883,676 for compensation and \$971,000 for health care contributions by the Board. Impasse was then declared by the District.

II. Resolution of the Issues at Impasse

Any recommendation made from the Special Magistrate process comes from a consideration of the factors deemed relevant by the Florida legislature. Section 447.405, Florida Statutes sets the standard for rendering the recommended decision as a "just settlement." In *School District of Manatee County and Manatee Education Association*, SM-2011-091, this Special Magistrate stated: "The overall SM scheme provides latitude within this statutory framework for the Special Magistrate to weigh the significance of statutory factors and then reach a conclusion that reflects a fair and reasonable recommendation of the impasse issues. It is not a gathering of points for winning each factor. Rather it is a consideration of which factor or factors should be decisive when examining the overall issue for these parties."

The impasse issues were set forth at the start of the hearing in this way by the Special Magistrate: ". . . there is an agreement that there are four issues that are at impasse Issue number one is Article XII, compensation . . . the cost of living adjustment. Second issue also under Article XII, section 1, appendix A, salary schedule adjustments [on the Performance Salary Schedule and the Grandfathered Salary Schedule]. Issue number 3 is longevity under Article XII.

Issue number 4 is the health insurance premiums under Article XII.” And “retroactivity is a part of all four issues.”

III. Recommendations

A. Introduction

Before embarking into a discussion of the recommendations a word needs to be said about the uniqueness of public school teacher bargaining in this state and how it may affect a “just settlement” recommendation under 447.405. For example, in *Miami-Dade County Public Schools/United Teachers Dade*, PERC, SM-10-100 (2011), 2011 WL 7112644 (Hoffman):

The Special Magistrate agrees with the District that the two most relevant 447.405 factors are the —availability of funds and —the interest and welfare of the public. Clearly, the first factor is most crucial. If funds are not available then it is difficult to have the public interest override this money factor. It’s a dilemma that in these times is not uncommon. Quoting from an interest arbitration involving teachers in another state, where the dilemma was much the same as here:

The Board of Education is placed squarely in the middle of these financing problems. On one hand, they must provide for the citizenry the best possible education for the children of the area. On the other hand, they must answer to those same citizens for the use of the tax dollars. Unfortunately, millage issues seem to be the area where already-overtaxed voters get their revenge. Unless the Oscoda area constituents soon realize the importance of their support, their children will have no classrooms in which to learn. The burden of supporting the capital expenditures of a school system should not fall totally upon the teachers, although some restraint in wage demands is advisable.⁴

I noted in the *Miami-Dade School* case that 40 years later “the dilemma is even greater,” with School Districts not only dependent on state tax dollars, “but an array of subsidies and grants from the federal government, state programs and complex formulas for distributing all of these monies. Obviously with the devaluing of property the revenue is less from property taxes, the main source of revenue.” In 2010, at the time of that case, the large cuts in school funding began to further hurt “the already strapped District. . . .”

⁴ *Osoda, Mich. Area School Board*, 55 LA 568 (Block, 1970).

The uniqueness of teachers in public schools as it relates to their financial well-being is also reflected in the Florida Constitution. Again quoting this Magistrate’s decision in *Miami-Dade*

Schools:

The interest and welfare of the public statutory factor cannot be ignored, even in the face of the above financial concerns. As seen, arbitrator Block well stated years ago that support for teachers is vital if the public expects them to produce quality education, let alone the buildings to make it happen. It’s an obligation that Florida citizens even placed in their constitution in Article IX, Section 1:

[T]he education of children is a fundamental value of the people of the State of Florida. . . . Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain high quality education. . . .

Thus finding this constitutional “adequate provision” for a “high quality system” must be paramount, even in the face of difficult economic times. And doing so, as again stated in *Miami-Dade Schools* is “for the welfare of the citizens of Miami-Dade County [and is the] ongoing responsibility of the District.” And that responsibility of course also means not bankrupting the system or leaving it vulnerable to sanctions by the state. Many times it simply comes down to finding room in the budget as to whether this unique obligation can be made into a “just settlement.

B. The Four Impasse Issues

1. ARTICLE XII - Compensation and Health Insurance, Section 1 — Salary and APPENDIX A, Salary Schedule Adjustments - What, if any, salary schedule adjustments shall be made to provide additional salary for bargaining unit members on the Performance Salary Schedule and the Grandfathered Salary Schedule?

a. MEA Position

The Union proposed the following related to Salary for the 2016-17 year:

- a. Eligible Bargaining Unit members on the Grandfathered Schedule shall advance four (4) levels on the schedule for the 2016-17 work year retroactive to July 1, 2016. Additional levels will be added to the top of the Grandfathered Schedule to allow for level movement of bargaining unit members at the top of the Grandfathered Schedule for the 2016-17 work year. Otherwise, the Grandfathered Schedule amounts remain the same as the ratified 2015-16 Grandfathered Schedule, unless a COLA is provided.
- b. The amounts at each level of the Performance Schedule shall be increased by \$2 to ensure that the adjustments provided to Bargaining Unit members on the Performance Schedule rated

Highly Effective receive more of an adjustment than any bargaining unit members on any other schedule to comply with Florida Statutes.

c. Eligible Bargaining Unit members on the Performance Schedule who received a Highly Effective Final Summative Evaluation for the 2015-16 work year (prior year evaluation) shall advance four (4) levels on the Performance Schedule retroactive to July 1, 2016.

d. Eligible Bargaining Unit members on the Performance Schedule who received an Effective Final Summative Evaluation for the 2015-16 work year shall advance three (3) levels on the Performance Schedule retroactive to July 1, 2016.

e. Bargaining Unit members on the Performance Schedule who received a less than Effective (Developing, Needs Improvement or Unsatisfactory) Final Summative Evaluation for the 2015-16 work year are not eligible for level advancement pursuant to Florida Statutes. Therefore, the base rate of pay for these Bargaining Unit members will increase only by the COLA and the \$2 modification to the Performance Schedule.

The MEA position is consistent with the requirements of Florida Statutes 1012.22 pertaining to Performance and Grandfathered Salary Schedules. The TA included three (3) level adjustments for the Grandfathered Schedule, three (3) level adjustments for bargaining unit members rated Highly Effective Teachers on the Performance Schedule and two (2) level adjustments for bargaining unit members rated Effective on the Performance Schedule. The Union proposal adds one level of approximately \$302.00 above the District's position related to salary level adjustments on the salary schedules.

Many Bargaining Unit Members were concerned that the salary increases in the TA were less than the increased cost to employees with dependents in health insurance premiums resulting in a loss of income. Some Bargaining Unit Members with Spouse or Family coverage would be faced with \$1,000 to \$2,000 loss in buying power over the work year with additional losses as the next work begins as part of the 2017 health plan year premiums. Although it remains possible for employees still to be faced with a loss in income with the MEA proposal, it provides for far fewer bargaining unit members facing a loss in income over the work year. Based on the review of comparable Districts, both neighboring and similar size Counties that have reached settlements for the 2016-17 work year, the District's proposal loses pace with all comparable Districts.

There are funds available, such as the additional \$2.6 million more in State funds received by the District. And budgeted finds can be reallocated, as seen by the practice of the District doing so throughout the year. Therefore, the district is able to make budget adjustments to ensure that the funds needed for any contractual agreements can be accomplished through a similar budget adjustment during the year, such as the lower actual salary expenditures compared to what was included in the approved budget, as well as a current lower roster of teachers that will save a considerable amount of money in salaries.

The cost for implementing the MEA position is as follows:

- a. The estimated cost of the four (4) level movement advancement on the Grandfathered Schedule retroactive to July 1, 2016 of approximately \$1211 for each eligible bargaining unit member (1970 teachers) is \$2,380,620.
- b. The estimated cost of modifying the Performance Schedule by increasing the amount at each level by \$2 to assist in complying with Florida Statutes is incorporated into the next two items for the 653 bargaining unit members on the Performance Schedule.
- c. The estimated cost of the four (4) level salary adjustment on the Performance Schedule retroactive to July 1, 2016 of approximately \$1214 for each of the approximately 194.69 eligible bargaining unit members rated Highly Effective is \$236,354.
- d. The estimated cost of the three (3) level adjustment in salary on the Performance Schedule retroactive to July 1, 2016 of approximately \$911 for each of the approximately 350.45 eligible bargaining unit members rated Effective is \$319,260.
- e. The estimated cost of the \$2 adjustment to the Performance Schedule for the 128 bargaining unit members on the Performance Schedule rated less than Effective is approximately \$256.

The total estimated cost of the MEA Salary adjustment proposal is \$2,936,234. With the salary attached expenses of 16.91% of salary this amount is increases by \$465,517. The District's proposal of one less level movement for each eligible bargaining unit employee costs \$2,335,826 with an additional \$101,529 in salary attached costs. District CFO Roberts testified that there are budgeted reserves in the Central Services line of the budget for negotiated employee salaries and benefits sufficient to fund the District proposal. The difference between the two proposals for salary level adjustment is approximately \$964,396. Based on the testimony of the CFO, and the review of annual budgets and financial reports, the Union contends that the funds exist within the budget in sufficient amounts to fund the Union proposal without reducing the budgeted end of year

reserve. We urge the Special Magistrate to recommend the Union's proposal for an additional level adjustment of approximately \$302 for the 2016-17 work year retroactive to July 1, 2016 for all eligible bargaining unit members.

b. District's Position

It is the goal of the District to provide the maximum salary increase to all employees knowing that salary increases will best serve employees in their retirement. At the time of negotiations, the District was aware that in fiscal year 2017 State funding increased by less than 1% over FY 2016, or approximately \$1M. Discretionary funding (unrestricted funds) increased by less than 1%. In FY 2016, the District received a 5% increase in FEFP funding over FY 2015.

Unfortunately, economic forecasts show that increased Legislative Funding for 2017-2018 is unlikely and state funding for education is expected to remain flat or decrease for fiscal year 2018. A recent proposal reduced the Base Student Allocation by \$300. Even with the current Board proposal, the budget will have to be reduced in order to maintain a 3% fund balance. The District also relies upon non-voted mileage to fund its operations. However, Manatee County does not have additional voted operating mileage. For example, Sarasota County receives \$53 million per year in voter approved mileage, more than 10% of their budget and about \$1,000 per student.

Despite limited funding and depressing economic forecasts, the District allocated its resources to prioritized programs, activities and services, including a reserve for salary enhancements of approximately 3% (\$8.5 million for all staff). To achieve these objectives, the Board approved a budget that decreased the District's general fund balance by \$2 million.

As will be seen, the District resources are very limited with rising health care costs and the need to maintain health care reserves for the self-insured plan.

Teacher pay is competitive for like districts. The District's salary schedule is competitive at the entry level and is greater than the mid-point at both the middle and top of the schedule. Additionally, the District's average salary is within the market range. At the Impasse Hearing, there was no examination by the MEA regarding this analysis. Accordingly, the District's salary schedule has been established as competitive at the entry level and is greater than the median at the middle and top of the schedules. The District's average salary is also within the market range.

Further, the District must maintain its statutorily required minimum fund balance of 3% assigned and unassigned as required by Florida Statute, Sec. 1011.051: "The district school board shall maintain a general fund ending fund balance that is sufficient to address normal contingencies." At the hearing, there was no dispute regarding the financial statutory obligations, or the consequences for the District's failure to meet their minimum statutory 3% fund balance.

The following points are the reasons why the arguments set forth by the MEA are devoid and without merit:

1. As testified to at the hearing, increased funding to the District after reaching the tentative agreement of approximately \$2.6 million dollars was primarily "pass through" funding that was earmarked for McKay Scholarships (\$1.8 million).
2. Terminal pay was higher this year. That number cannot be forecasted. Those that enter the DROP program can retire at any time after entering.
3. Longevity pay is not mandated contractually. It is something addressed annually with the MEA. In addition it was withdrawn by both parties as per Exhibit D-4 on October 3, 2016.
4. As indicated above, the Districts' salary schedule has been established as competitive at the entry level and is greater than the median at both the mid and top of the schedules. Additionally, The District's average salary is within the market range.
4. The District cannot create funds simply by transferring them. There is accountability and budgets that must be adjusted and Board approved. Funds cannot simply be redistributed from categorical (restricted) to salary. This would lead to a detrimental "butterfly" effect causing a fund imbalance.
5. Approving the MEA proposal would cause the District to violate statute. The District would fall below the statutory 3% fund balance if the District were to accept the MEA proposal. In addition, the District would fall below the minimum state required Fund Balance if the Association Proposal is approved or if retro pay is awarded.

c. Recommendation

The District makes a good case for not paying any more than it allocated in the TA. But a “just” settlement more so favors MEA’s proposal and is so recommended, including retroactivity, as being favorable for the interest and welfare of the County’s citizens, for the following reasons:

1. The Union proposal would cost the District about \$964,396 more than the District’s proposal for salary level adjustments, retroactive to the beginning of the work year. Most notable is that the District’s CFO, Rebecca Roberts, testified that the actual total cost of the teacher bargaining unit is currently seven million dollars less than what was discussed during negotiations.

Based on the employee roster at the time, the MEA teachers accounted for approximately 127 million. I would like to mention that as of yesterday, I ran the employee roster, the teacher -- the teachers who are eligible for salary enhancements this year, that roster is now down to 120 million.

This is a significant change from what led to the District’s position on salary adjustment. It alone suggests that the numbers used by the District now need to be modified; in so doing the concerns with the 3% statutory level for the budget are conceivably less. There is no evidence in this record that the District actually considered this significant roster change and its savings when the parties met on November 8, 2016 to discuss this MEA proposal.

2. The most recent calculation of the Florida Education Funding Plan (third calculation) shows that the District received an additional \$2.6M more in state funds than the earlier calculation. The District position that these funds have been allocated elsewhere lacks any detail as to how much, and whether any of the 2.6 is either unallocated or allocated in a manner that would allow it to be reallocated for this significant cost item. The only specificity in this record is the earmarked \$1.8M for McKay Scholarships. It is unknown what was budgeted for the remaining \$800,000 and whether or not it could have been more strategically allocated to this MEA proposal, and/or health insurance premiums.

3. There is sufficient evidence that the District allows reallocation within the budget. CFO Roberts testified: “We modify the budget on a regular basis. Monthly we make budget adjustments, minor budget adjustments. When necessary, we make budget adjustments.” That such “adjustments” could not be made here, but are permissible otherwise, is concerning. Although in light of #1 and #2 above, such adjustment may not even be needed to fund the full cost through reallocation, there is no evidence that the District considered this approach when presented with the MEA proposal on November 8.

4. There is more evidence in the record showing that salary adjustments for teachers are made in the budget. The CFO gave this testimony about the budget line item of “instruction,” where most of the teacher unit resides.

Instruction: We budget in the instruction line for teacher salaries and other things, but teacher salaries we budget as if we were fully staffed, and then we move those budget lines out when we cannot place a full-time, permanent teacher in a position and we have to fill positions with long-term subs.

This record reflects that the actual expenditures for this item are lower compared to what was included in the District’s approved budgeted. Thus, if an excess funds exists during the course of the year that the CFO admittedly redistributes it to other budget categories. Documentation in evidence, for example, shows that the Instructional budget category has been underspent during each of the last three years. In 2015-16, Instruction was budgeted for \$253,326,537, whereas the actual expense was \$242,500,001, a variance of some \$10,826,536 less than the budgeted item. Likewise the actual instruction expense was lower than the original budget projection in the two preceding years - \$11,322,482.40 in 2014-15 and \$8,034,324.99 in 2013-14.

Moreover, teachers are also covered in the budget under Pupil Personnel Services and Instructional Media Services categories. They also reveal an underspending from the original budget. For 2015-16 IMS was budgeted for 2,016,561 with an actual cost of \$1,532,319; PPS was

projected for \$17,409,127 with an actual expenditure of \$16,556,273. The difference just in these two categories was an additional \$1.3M by the end of the budget year. Even total salaries for all employees covered in the Board's budget show that the actual expenditures were \$3,916,795 less than the original projection for the 2015-16 fiscal year. And a similar underspending exists for the two previous years.

As such, the notion of budget flexibility cannot be ignored. The CFO confirms its usage. And doing so here for the teachers, especially given this history of spending less on salaries than budgeted, suggests a pattern, not an exception that provides the District the means to adjust salaries in accord with the MEA proposal. Such flexibility would not necessitate impacting the reserves.

5. But is a salary adjustment greater than the TA even justified? Based on comparables, the District says "no." It points to data showing that the Districts' salary schedule is competitive at the entry level and is greater than the median at both the mid and top of the schedules. And, the District's average salary is within the market range. The MEA, on the other hand, based on both neighboring and similar size Counties, finds that for settlements regarding the 2016-17 work year, the District's proposal is less than eight of the nine comparable settlements. For teachers on the Performance Salary Schedule with Effective evaluations the District's proposal is less than all comparable counties that have attained a settlement for the current year. The direction of this settlement suggests that it will lose pace quickly with most if not all of the comparable Districts.

Thus, having a settlement that fails to keep pace with virtually all of the comparable county school districts, many of whom in adjacent counties would compete with the District for teachers, does not bode well for either retention or recruitment of teachers. But more significantly, is the pressing need for the teachers' ability to afford health insurance, given the much larger burden now on employees in two major insurance levels to contribute to the premium payments, as will,

be discussed next. In all, the MEA proposal provides for a comparable increase to the other districts and will help to at least lessen the concerns for those teachers who will be hit hard with paying substantially greater insurance premiums, under the TA and to a somewhat lesser extent under the MEA proposal.

6. The average salary trend has seen the District's salary steadily decline from 2007-08 to 2012-13 when it dropped below the contiguous counties of Sarasota and Pinellas; it then began a slow climb and a leveling off by 2015-16. In 2007-08 Manatee County teachers received on average \$2,500 more than the State average teacher salary. But for 2015-16, the average Florida teacher salary exceeded the average Manatee County teacher salary by \$610. Manatee County teachers lost ground of more than \$3,000 when compared with the average Florida teacher salary. Both Hillsborough County and Pinellas County average teacher salaries now exceed the average teacher salary in Manatee County. All three of the contiguous county average teacher salaries have increased since 2007-08, while Manatee County teachers have seen a large decrease in average salary over the same time frame from \$49,500 to \$47,500, according to a "comparable average teacher salary" chart in evidence, based on data from the Florida Department of Education also in evidence. In all the comparables more so suggest that the MEA salary proposal would be fair.

2. ARTICLE XII - Compensation and Insurance, Section 5 and APPENDIX E. What shall be the Self-insured Health Plan premiums for 2017 plan year effective January 1, 2017?

a. MEA's Position

The issue of the impact of ever increasing health insurance costs was addressed in the 2015-2016 CBA by forming a Health Insurance Committee (HIC). "Both parties agree to work through the Insurance Committee to evaluate all options for containing insurance costs including, but not limited to, converting to a fully insured plan, changing to a defined contribution, adding a wellness

program, plan design changes and conducted a dependent audit to remove ineligible dependents from the plan” The HIC is made up of representatives from the MEA, other employee groups, and the District.

The MEA proposal does not change the total premiums paid into the plan. Amanda Brooke Kross, AON Actuary, testified that AON made no recommendation regarding the distribution of premiums paid by the District and premiums paid by employees. The Union proposal will have no impact on the total amount paid into the plan and will have no impact on what the end of the year reserves will be; the total dollar amount to be paid into the plan will be the same regardless of whether the District’s proposal is implemented or the Union proposal is implemented.

The parties agreed to move from a three-tier plan to a four-tier plan. The previous three tiers were Employee Only as an individual; Employee plus Child plus One, which included the Employee plus a Spouse, as the second tier; the third tier was Employee plus Family. The new four tiers did not change the employee-only category, but did change the categories related to children and spouse. The second category is Employee plus Children, and that means one or more children. The third category is Employee plus Spouse. The fourth category is Employee plus Family. There has been no disagreement about employee single as an employee and what the split should be. There is no disagreement on the Employee plus Children premiums. No increase for individuals that had a child, a single child previously and were part of the Employee plus Child as an employee premium.

According to testimony there is actually a savings. Previously in the three-tier plan anyone who had multiple children on the plan would have to choose the family coverage. Having this tier now called Employee Plus Children allows individuals that are only covering themselves and their children, one or more, for a savings to both the District and the employees; both the Board

contributions and the Employee contributions are less for that tier than they are for Employee Plus Family tier. By separating the “Employee plus Spouse” tier from the three tier “Employee plus One” tier of the prior plan structure, where spousal coverage costs more than child coverage, a savings occurs.

The issue at impasse is the split of the premium. The Union and the District agree on the split of premiums for the “Employee Only” and the Employee plus Children” tiers. The differences between the proposals are the District’s contributions and the Employee contributions for the “Employee plus Spouse” and the Employee plus Family” tiers. The specific differences are detailed in MEA Exhibit 7, #7-1. The employer contribution is greater in the Union proposal than in the TA. The overall cost of the plan increased nearly \$5M, an 11% increase, with the TA shifting the burden for much of this amount to employees primarily through spouse and family coverage. MEA's proposal on average is 30 percent increase overall that impacts 40 percent of the bargaining unit. Unfortunately, the massive increases for employees covering a spouse or family as outlined were reported by many employees as a main reason for rejecting the Tentative Agreement.

The employees believed that the TA placed too high of a premium on employees who cover a spouse under the plan, either as an employee with just a spouse or as an employee covering a family. The TA resulted in a number of employees that would complete the year with less income than the previous year. Union President Pat Barber testified: “Teachers who teach the students in Manatee County schools are continuing to lose ground and will be forced to leave our District in order to support the needs of their families.” The TA asked for too much of a shift of premiums to employees needing health insurance coverage for a spouse or family. The Union contends that this request went too far. The Union proposal reflects a sharing of this increase through both increased

Board contributions and increased employee contributions over the previous plan year for “Employee plus Spouse” and “Employee plus Family” coverage.

The Union proposal is found in MEA Exhibit #7-2, with specific references to the three levels of insurance, the four tiers. The monthly rates for each in the TA and the MEA proposal and then the difference between the TA and the MEA proposal. The MEA proposal reflects an average annual increase of \$774.16 (a 30% increase) and an overall increase of \$1,782,888 to the bargaining unit members. The TA had an average annual increase in employee contributions of \$1,163.94 (a 45% increase) for an overall annual increase of \$2,680,548 to bargaining unit members. The difference between the proposals is \$389.78 on average for teachers annually at a cost of \$897,660 over the TA.⁵ The cost of the Union proposal compared to the District’s is a shift in \$1,517,000 from employees in all bargaining units to the District in Board contributions. There is sufficient flexibility within the budget to accommodate the shift in premium contributions.

Although, the Union proposal reduces the employee contribution to premiums for both the “Employee plus Spouse” and the “Employee plus Family” tiers when compared with the TA, employees selecting these tiers will still face large increases in employee contributions to premiums, just not as large as within the TA. The Union proposal still calls for an increase in the monthly employee premium contribution for “Employee plus Spouse” coverage of between \$166 and \$195 per month depending on the plan chosen, an increase of as much as \$2,340 per year. This more than doubles the prior premium of \$160 per month for the “Employee plus One” tier of the three tier plan premiums. This is the result of moving the “Employee plus Spouse” to a separate tier of the four tier structure rather than including an employee covering a Spouse within the current “Employee plus One” tier of the three tier structure. The data shows that coverage for a Spouse is

⁵ The District maintains the cost difference is \$971,000.

more costly to the plan than coverage for a child. The TA had monthly increases for the “Employee plus Spouse” tier of between \$188 and \$228 per month depending on the plan chosen with the Bronze plan having the highest increase, as much as \$2,736 per year or a 143% increase in premium. The Union proposes a modest decrease in employee contributions from the TA and shifts the difference of between \$19 and \$32 per month to the Board contribution for the premiums.

The greatest dollar modification from the TA was for “Employee plus Family” coverage. The TA proposed to increase the monthly employee contribution for family coverage as much as \$296 per month, a \$3,552 annual increase or a 56% increase in the Gold Plan, 68% increase in the Silver Plan and a Bronze plan a staggering 106% increase. These large increases in employee contributions were the result of a \$252 decrease in the monthly Board contribution for the “Employee and Family” tier in the Bronze Plan. The Board provided no data supporting a lower Board contribution and a higher employee contribution to the premium rate for families. This shift in premium more than doubled the employee contribution for “Employee plus Family” coverage in the Bronze plan. The Union proposal reduces the amount of the shift in contribution from the Board for “Employee and Family” coverage and is the most significant modification from the TA. Although the Union proposes a reduction from the TA, the employee contribution for Family coverage still reflects a sizable increase in premiums, as much as a \$2,412 annual increase in employee contributions.

As for comparability, the premium structure for the 2016 plan year was a key aspect of the District’s ability to recruit and retain employees. It was more favorable for employees compared with any contiguous or comparable size district. The District proposal now goes too far, too fast and would require employees to contribute more in premiums for spouse and family coverage than in Pinellas County and other comparable size counties. The District proposal is likely to have an

adverse effect on recruitment and retention of employees particularly when they could go to neighboring districts and make more in salary and spend less on dependent health care. MEA's proposal is very close to the Pinellas structure and would be better suited to retaining a competitive advantage toward the recruitment and retention of employees.

b. The District

The District resources are very limited with rising health care costs and the need to maintain health care reserves for the self-insured plan. State insurance regulators require self-insured health plans to maintain a minimal fund balance throughout the filing year (July through June) equal to 60-days' worth of claims. Currently, at any point during the filing year, except May and June, the District's fund balance is insufficient to meet this requirement. On average, the District's fund balance is \$2.6 million below the average required balance. The Health Insurance Fund is not fiscally sound. Although the District ensures that its contributions along with those of the enrolled members are sufficient to cover plan expenses, the medical fund balance only meets the safe harbor level of 60 days of projected claims (deemed by the State) in the month following the collection of summer premiums. The failure to comply with the minimum funding requirement could result in the District losing its ability to sponsor a self-funded plan.

The District has received several cautionary notifications in June 2011, 2012 and 2013, despite a three-year plan to cure a \$9 million deficit filed with the Office of Insurance Regulation in April 2011. As late as August 8, 2014, the Florida Office of Insurance Regulation warned, based upon the initial "statutorily required actuarial certification for the Plan ending December 31, 2013, found that the Plan was not actuarially sound. . . ." They were unable to accept the Plan for continued operation in 2015. The District then contributed millions from the general fund to remediate the deficiency and to ensure the viability of the Health Insurance Fund. The fund balance

increased sufficiently (due to the timing of premium collection) and the 2015/2016 fiscal budget was approved by the State for the 2014/2015 fiscal year.

Starting in the Fall of 2014, the HIC, established by the CBA met to design a health insurance plan and determine a premium structure that would address the short falls. In October 2015, discussions began for the 2017 plan year. The District instructed its insurance consultant, Aon, which due to budget constraints, its share of health care costs had to stay in the range of \$30-\$35M for the 2017 plan year. Aon advised that the largest cost of the District's plan was the claims related to spousal coverage. Aon further advised that many districts in Florida have reduced or eliminated district subsidies for spousal coverage.

With input from members of the HIC, Aon proposed multiple plan design changes along with other cost saving measures. Recognizing the desire to keep the Employees Only and Employee + Children premium contributions intact, the only option available to meet the District's desired budget objectives was an adjustment to other dependent tier subsidies (Employee + Spouse and Family coverage). The HIC voted unanimously to recommend to their bargaining units a four-tier, defined contribution plan that substantially reduced spousal subsidies. Under this plan, the fund balance would meet the 60-day requirement on June 30, 2017.

The reduction of spousal coverage is consistent with action taken by other Florida School Districts who are Aon clients. There are four (4) Districts (Volusia, Sarasota, Clay County and Lee County) who do not contribute any dollars towards spousal coverage. A fifth (Hillsborough County) contributes a minimal three (3) percent. There are three Florida School Districts who are Aon clients that contribute a greater percentage to spousal coverage than the District, based on the 2017 proposed subsidy (Pinellas County, Escambia County and Miami-Dade County).

In July 2016, the HIC determined the increased premiums would present a hardship to certain employees. The HIC brought to negotiations another recommendation, which redistributed some of the spousal coverage premium burden to other tiers. (Employee Only and Employee + Children) The MEA, on behalf of teachers and para-professionals, tentatively agreed to a new four-tier plan, which included an increase of \$4.6 million in the Board share of premium contributions, as well as the proposed salary enhancements for both employee groups. The tentative salary and healthcare plan agreement was not ratified by the teachers. As agreed by the MEA and District, delays to both Employee and Employer Contributions combined is creating a monthly plan deficit of \$319,000, \$243,000 of which is attributable to the MEA. If continued throughout 2017, the contribution deficit will result in an annual shortfall of \$3.83M to the plan of which the teachers account for \$2.17M. The MEA now questions the very health insurance plan that their representatives selected (by majority vote), tentatively accepted, sent to all their members and was ratified by the very Para-Professionals that MEA also represents. The MEA is now hard-pressed to claim that the October 3, 2016 TA is materially insufficient, when the MEA was the actual proponent of the agreement which was approved by one of their unions.

c. Recommendation

Critical to this impasse is finding a solution that would end the impasse and yet still be a just settlement for both parties, one that fulfills the District's obligation to make sure its generated resources are not over spent and at the same time is one that remains "adequate" and fair for the teachers. This one issue appears to be the stumbling block to ratification and thus needs to be looked at closely. There is little doubt that more money for premiums would be needed for this fiscal year. It's the same story virtually every year for the District (and most employers) who self-fund and as such there is always a need for additional funds to keep the plan qualified and viable.

Tapping the general fund, reserves and employees' income is the only way to keep these plans afloat. And there is no question that the District has subsidized a large percentage of the premiums over the years to lessen the impact on the teachers, who now must by law also contribute to their State pension plan.⁶

With increasing pressure to keep this self-funding insurance plan alive and well, the HIC proposed a substantial increase in the employee contribution for employees in the tiers most claimed and the most expensive to pay out – family and spousal. The District maintains that inasmuch as the HIC, which includes teachers as members, formulated these employee contributions, it should be so recommended here without any additional cost to the District.

At the outset it should be recognized that there is no issue on the amount of premiums to keep this fund viable through the year. The parties are in agreement on that amount. The Union seeks, however, to allocate the payment of those premiums in a manner that is not so overly burdensome on the employees in the spouse and family tiers.

The impact of the employee premium contribution increase for the teachers in those tiers is considerable. As an example, the Bronze Plan “Employee plus Spouse” tier in the TA has an increase of 143% over the previous year. This likely is the result of data showing that coverage for a spouse is more costly to the plan than coverage for a child. And for the TA “Employee plus Family” coverage the increase could be as much as 106% increase.

The Union proposal then attempts to keep the burden with those two tiers, some modification, and not spread it any further to the other two tiers. Union Ex. 7-2 shows in more detail the TA and the MEA proposals, with the difference between the two at \$897,660.

⁶ Teachers enrolled in the Florida Retirement System as a result of a 2011 law, confirmed by the Florida Supreme Court in 2011, pay 3 percent of their earnings to FRS.

As will be discussed below, the Special Magistrate recommends the Board adopt the MEA proposal as the fair and just settlement for this critical impasse issue, including retroactivity, as being favorable for the interest and welfare of the County's citizens, for the following reasons:

1. Raising premiums from 50% to 100% or more, gives the clear impression of too much too soon. In terms of dollars, some of the levels for the spouse and family tiers would require employees to pay well over \$3000 in additional premiums over the year. This would be on top of the existing premium. Thus, a teacher enrolled in the Gold employee plus family coverage under the TA would be paying some \$3552 more than the existing premium under the TA. He/she would pay \$822/month, which is \$296 more than the teacher previously paid at \$526.⁷

Passing cost of the increased premiums on so dramatically in one year can be devastating to teachers, whose income will not keep pace with increases in other comparable and adjacent counties, who must also have deducted 3% for pensions, and whose take home pay will be reduced from the previous year. It is thus undisputed that employees in these tiers could end the year with much less in income than the previous year. The Union's chart in U-7-1 sets forth the numbers in detail. They are not disputed by the District.

As the MEA's representative testified: "We know that over the course of the entire planned year, that a \$3600 increase in insurance premiums was pretty hard to compensate in any way, shape or form. So our proposal is trying to mitigate that in hopes that we could have two bargaining years to mitigate that sizable increase." It's a reasonable and modest request given the severity of the contributions that are passed on to these employees. That they should have to pay more for insurance and earn less to do so is hardly "just." Doing so in stages over the next two or three

⁷ Likewise Silver employees would pay \$3408 and Bronze \$3180 more under the TA. And employee plus spouse coverage would have an employee paying \$2268 for Gold; \$220 for Silver and \$2730 for Bronze. The latter with lesser coverage actually costs more than the higher Gold and Silver. The MEA proposal does not change this disparity, but does lower the employee contribution.

years, if the funding is not decreased, is a reasonable and fair proposal, especially noting that the employees in these levels would still pay large amounts for this coverage under the MEA proposal.

MEA's proposal moderately cuts back this huge increase to teachers. A Gold level family plan teacher pays \$2028 instead of \$3553 yearly as an increase. On a monthly basis, the TA for spouses is \$388/month and the MEA proposal \$355. For the family, the TA is \$515 and the MEA \$451. These may not be huge savings to the teachers, but the MEA proposal suggests a strong recognition that the employee contribution still must increase; the only question being should it do so as to make it overly burdensome on teachers. It's not a cure all, but the MEA proposal saves about one-third of the cost otherwise attributed to the TA. Spreading this employee contribution out rather than taking so much at this front end will help ease the deficit in their take-home pay.

Despite the employee ratification rejection, it should not be lost that the MEA proposal suggests that the teachers acknowledge they must share more so in the premium burden. Under the Union's proposal the total employee contributions would still be over \$13M. It's more of a modest cutback but still one that keeps in play the principle that employees may have to share the burden in greater numbers.

2. The comparables are inconclusive, and, thus, are not reliable for making this recommendation. Some have splits that are more favorable to employees than the District here; some do not pay any premium for spouse and family; some pay 100% employee but no dependent coverage; some have rates for dependent coverage likely set in CBA negotiations with the difference from the actual rate paid by the school district.

3. The parties' HIC is deserving of having tackled this difficult problem and providing recommendations that reflect the current reality of health insurance. The soaring costs and who pays for them is no easy task to resolve. Certainly pinpointing the two most costly areas is vital to

understand. Whether the HIC considered the effect on employees who would have a large portion of their income tied up in paying insurance premiums is not known in this record. But at this stage, the Special Magistrate at least has that opportunity to inject his concern, as expressed in #1 above.

4. Still there is the question of whether the District can afford to pay \$897,660 more to meet this MEA proposal, As noted, there is no doubt that the stumbling block to ratification was the TA proposal on health insurance and the huge increases passed on to employees. And now the teachers want to pass some of that increase back to the District. The financial concerns here are much the same as in the first issue above relating to the budget. There it was pointed out in #1-3 that the flexibility within the budget, as well as other avenues, are available to the District to help with meeting the salary adjustment proposed by the MEA,.

The same holds true here for the additional cost of the Unions insurance proposal. In all, sufficient evidence exists in this record to recommend that the District has the means to fund this justifiable increase of \$897,660 in its otherwise total projected cost of \$52 million, a number that does not change with this MEA proposal.

3. ARTICLE XII - Compensation and Health Insurance, Section 1 — Salary and APPENDIX A. Whether bargaining unit members shall receive a Cost of Living Adjustment (COLA) as a salary increase for the 2016-17 work year? If so, what shall be the amount of the COLA increase?

a. MEA's Position

The Association proposed a \$300 COLA for each bargaining unit as a salary increase above the base salary for the 2016-17 work year retroactive to July 1, 2016, the beginning of the work year, when the parties returned to negotiations after the rejection of the TA. The Association readily acknowledges that the “COLA was offered as an alternative for consideration to find a resolution that could be ratified by the employees” It points out that some bargaining unit members would not receive any salary increase as part of the TA. Florida Law states that an Annual Contract

teacher on the Performance Salary Schedule that receives a Final Summative Evaluation of less than Effective for the prior year is not entitled to any salary increase, with the exclusion of a COLA. This provision of the law impacts approximately 2% of the 2851 unit members, or approximately 57 teachers. However, any COLA is limited by Florida Statutes §1012.22 that states that a COLA may not exceed fifty percent of the salary adjustment provided to a teacher on the Performance schedule with an Effective Evaluation. This statute indicates that a COLA may not be provided without an increase for Effective teachers on the Performance Schedule.

The Union further notes that the COLA would serve to lessen the hit of those affected by increases in dependent health insurance premiums who enroll in coverage for a Spouse or Family; they would have a significant loss of income regardless of whether the District or MEA proposal is approved. The COLA in conjunction with the proposed salary increase would provide employees with at least some additional income for the 2016-17 year. This type of salary increase impacts all “2303” eligible bargaining unit members in the same way regardless of salary schedule or evaluation criteria.⁸

The cost of a \$300.00 COLA retroactive to July 1, 2016 for the approximately 2303 eligible unit members is \$846,000 for the year. The salary attached benefit cost of 16.91% of this proposal is an additional \$143,060.

The District has budgeted funds available well in excess of what is needed to provide the cost of the COLA retroactive to the beginning of the school year. The Florida Department of Education 2016-17 Florida Education Funding Program (FEFP) Third Calculation distributed to school districts on December 5, 2016 shows that the Manatee County School District received

⁸ The size of the unit seems to vary between the 2303 number now used by the Union in its brief and the 2851 from its background information submitted to the arbitrator. The District’s number is also in the 2800’s. Whether there is a difference based on “eligible” employees for health insurance, or the lower number represents the up to date count from Robert’s testimony, is unclear in this record.

\$2,635,557 more in funds compared with the 2016-17 Second calculation. Although the District's Chief Financial Officer (CFO) claimed that the District had other needs for these funds, like previously unfunded McKay Scholarships and unbudgeted Terminal Pay costs, there was never a full accounting of this additional \$2.6 million available to the District budget that could be allocated to the COLA. The District could allocate sufficient funds for the cost of the COLA and urges the Special Magistrate to recommend that the \$300.00 COLA be granted for the 2016-17 contract year for each eligible unit member retroactive to July 1, 2016.

b. The District

The District's only position is that the COLA was not part of the TA. It maintains that only those matters made part of that agreement will be considered by the District.

c. Recommendation

This MEA proposal appears fair and reasonable to help employees who are not eligible for the salary adjustment and also have the additional insurance burden in one of the two affected tiers. It makes good sense to have them receive a \$300 COLA, paid over the course of the year or in a lump. But the problem is that under Florida law they cannot be so singled out without giving the same benefit to the other unit members. And by doing so the cost approaches some \$1M.

The COLA proposal is not recommended. The preference for funding the MEA proposals must go to the salary adjustments and the employee insurance contributions. Finding the means to pay for those two significant impasse issues should not be exacerbated by adding another \$1M.

4. ARTICLE XII - Compensation and Health Insurance, Section 1 — Salary and APPENDIX A. Shall eligible members of the bargaining unit receive a Longevity Supplement for the 2016-17 work year? If so, who shall be eligible for the Longevity Supplement? What shall be the monetary value of any Longevity Supplement paid to unit employees?

a. MEA's Position

MEA proposes new Longevity language related to implementation of the recognition of continuing loyalty and dedication of long term employees to the District. This language is set forth in MEA's # 6 and is proposed to be a salary supplement for purposes of the FRS.

Historically the salary schedule was based on experience and included incremental amounts or steps. At certain points in the schedule the incremental amounts were larger than typical at step 16 and 25. In the negotiations for 2015-16 work year, the parties modified the salary schedule from the typical step schedule to a level system that included equalized level adjustments of about \$300. To accommodate the issue of longevity that had previously been addressed by larger than typical steps within the salary schedule, the parties placed certain long term, loyal individuals on a level consistent with each eligible employee's past experience and salary step. The individuals that at that time were expected to reach the threshold of sixteen and twenty-five years in the MCSD were placed on higher levels that equated to the previous contract's anticipated large step increases of approximately \$2,100 after sixteen years and \$3,600 after twenty-five years.

There is no current language consistent with the prior structure of the salary schedule. The proposed language recognizes these dedicated employees in negotiations. The language was part of the TA not ratified by the employees. The District removed their agreement with the Longevity Supplement language after the failed ratification.

The requirements of Florida Statutes section 1022.08 pertaining to the interaction of the Performance and Grandfathered Schedules was the driver in creating more equalized levels on the schedule and removing large values on any step of the schedules. Therefore, MEA has proposed to replace the current step movement based longevity language with language for a Longevity Supplement. The MEA proposed Longevity Supplement would be applicable to bargaining unit

members after completing sixteen (16) and twenty-five (25) years of service in Manatee County. Based on the data provided by the District in negotiations, the language would impact approximately 29 bargaining unit members with sixteen plus years of service and 27 members with 25 plus years of service for this year. The amounts are comparable to the impact of the prior large steps and the level adjustments made for longevity in the previous year.

The cost of the Longevity Supplement for the 58 unit members for the 2016-17 work year retroactive to July 1, 2016 is approximately \$158,100. The salary attachments of 16.91% would be an additional \$26,717.80. The District CFO testified that the School Board frequently made budget adjustments throughout the year. Certainly, these adjustments within the District's budget of nearly \$400,000,000 have been in excess of the \$158,000 cost for longevity retroactive to the beginning of the work year. A portion of the additional FEFP allocation of \$2.6 million would be sufficient to pay for the Longevity proposal. The Union urges the Special Magistrate to recommend the Union position on Longevity retroactive to July 1, 2016.

b. The District's Position

The District maintains that as Longevity pay was “withdrawn by both parties as per Exhibit D-4 on October 3, 2016,” and as a result it should not be considered here. It further contends that “based upon the inability to reach an agreement with MEA and their members, retro pay and longevity pay, which was part of the October 3, 2016 ‘Tentative Agreement,’ was taken off the table.”

c. Recommendation

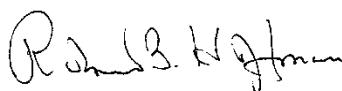
The Union's position that only the District withdrew it after ratification is questioned by D-4, which is a document showing that Union representative Proud and a representative of the District initialed its withdrawal on October 3. This action, whether withdrawn or not, is not to say

that after ratification rejection and more bargaining the Union could not resurrect it with what appears to be modified language. It has been considered by the Special Magistrate.

Still, its importance as an issue is diminished somewhat by this reliable documentary evidence that the Union joined in its withdrawal, for whatever reason. Although the cost appears relatively minor compared to the above three impasse issues, it is not recommended. The primary concern, apart from the withdrawal issue, is with finding room for the much larger impact items for salary adjustment and health insurance premiums, which are foremost. As stated in #3, any money addition to those two major issues, albeit \$185,000, may further exacerbate the process needed for funding those issues. Accordingly, longevity pay is not recommended.

CONCLUSION

These recommendations are made after fully considering all the evidence presented at this hearing, including the written submissions of the parties. The Special Magistrate makes these recommendations to reflect the objective set forth in Sec. 447.405 “of achieving a prompt, peaceful and just settlement” of the dispute between these parties.



Robert B. Hoffman
Special Magistrate