

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

In the Matter of Special Magistrate)

Proceedings)

between)

School District of Manatee County)

Case No. SM-2011-091

and)

Manatee Education Association)

Before: Robert B. Hoffman, Special Magistrate

Appearances:

For MEA: Bruce D. Proud, Business Agent

For SDMC: Scott A. Martin

Place of Hearing: Bradenton, Florida

Date of Hearing: December 7, 2012

Briefs Received/Hearing Closed: January 9, 2012

Date of Decision: January 12, 2012

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, and the declaration of an impasse by the School District of Manatee County (“District” or “SDMC”), the District and the Manatee Education Association (“the Union” or “MEA”), submitted their unresolved issues to this Special Magistrate. The District’s School Board (“the Board”) is the legislative body for the District. The parties waived

the 20-day limit for the hearing. Both parties were afforded a full opportunity to present evidence at the Special Magistrate hearing convened at the District's headquarters in Bradenton, Florida. Prior to the hearing the parties were at impasse regarding ten articles or issues. One of them relates to a non-financial issue was resolved at the hearing: Involuntary and Voluntary Transfers per Article IX – Transfers and Promotions, Section 2, wherein the Union accepted the proposal of the District to retain the current language.

The remaining nine issues for impasse include the following:

- 1) What shall be the 2011-12 salary for teachers and paraprofessionals?? (Article XII – Compensation and Benefits, Section 1 (Teachers); Article XI– Compensation and Benefits (Paraprofessionals) and Appendix A (Salary Schedules).
- 2) Should the paraprofessional unit's work calendar as described in the paraprofessional's CBA be amended to reflect three (3) furlough days? Article XI– Compensation and Benefits (Paraprofessionals) and Appendix A (Salary Schedules)
- 3) Should teachers and paraprofessionals advance on the salary schedule effective the beginning of the fourth (4th) quarter of the 2011-12 school year based on experience at the beginning of 2011-12 school year and for each year as prescribed by the salary schedules? (Article XII - Compensation and Insurance, Section 6)
- 4) What shall be the Self-Insured Health Insurance Plan's premiums for the 2012 plan year effective January 1, 2012? (Article XII – Compensation and Insurance, Section 5)
- 5) Should the teacher and paraprofessional unit CBAs be modified to reflect the addition of a second HMO health plan? (Article XII)
- 6) What shall be the CBA language related to the changes in life insurance coverage effective April 1, 2012? (Article XII – Compensation and Insurance, Section 6 for Teachers and Paraprofessionals)
- 7) What shall be the Terminal Pay benefits for eligible employees that have unused accumulated sick leave upon retirement? (Terminal Pay - Article XIII – for both Teachers and Paraprofessionals)
- 8) Shall Virtual Educators be provided with computer hardware, software, peripherals, printers and internet access as all other classroom teachers paid for by the District? (Article V – Working Conditions (New Section))
- 9) Shall Appendix B of the teachers' CBA define the number of Elementary Team Leaders that are eligible for the contractual Team Leader Supplement? (Team Leader Supplement Article XII – Compensation and Benefits, Section 2 and Appendix B (Elementary Team Leaders))

The parties bargaining history started in 1969; they have negotiated some 12 agreements since then. Two bargaining units are at issue here, teachers and paraprofessionals, with both units having a separate CBA. The current CBAs expired on June 30, 2100. The District declared impasse on October 6, 2011 after ten negotiating sessions. They continued bargaining after the declaration of impasse. The teachers unit consists of 2575 employees and 641 employees comprise the paraprofessional unit. Manatee County also has a CBA with AFSCME covering 1076 employees.

At the hearing the District asserted that during bargaining it took the position that certain financial issues could only be accepted by the Department in a “package,” inasmuch as each of these issues “represent a single variable in the financial analysis and strategies employed by the parties at bargaining. Addressing these issues individually would compromise the parties’ overall positions as the issues are necessarily interdependent. . . or interrelated in that they share significant financial aspects.” The issues identified by the District include: teacher salary; paraprofessional furlough days; health insurance premiums; life insurance benefits.

The District further requests that “if the Special Magistrate deems it appropriate to make a separate recommendation as to each issue, the District requests that the Special Magistrate make an additional recommendation that addresses all of these issues together as a singular concept.” The Union takes no position in its brief.

The Special Magistrate is well aware of the economic plight of school districts throughout the state. See his most recent decision in *Miami-Dade County Public Schools and Miami-Dade County Public Schools*, SM-2010-100 (May 2011). He is thus cognizant of the need to balance the serious financial concerns of school districts operating with deficits and teachers who are experiencing cutbacks in their wages and benefits. Thus, grouping all of these financial

issues into one package is understandable. However, doing so because of their relationship to each other requires more than just saying so. Wages and benefits are significantly interrelated, but their costs vary and attempting to make a recommendation on an entire package when one or more of the financial issues may cause the whole package to be recommended is of concern. The Special Magistrate will thus be addressing each of these issues individually and noting whether they are tied in to other financial issues; the recommendation will so reflect that tie-in.

II. Resolution of the Issues at Impasse

Any recommendation made from this Special Magistrate process comes from a consideration of the factors deemed relevant by the Florida legislature. Section 447.405 sets the standard for rendering the recommended decision as a “just settlement.” This Special Magistrate wrote about what is “just” in *Okeechobee County Board of County Commissioners and International Union of Operating Engineers Local 487, SM-2006-0049 (2006)*:

What then achieves a settlement of this dispute that is just? This is the standard proscribed by the Florida legislature to resolve impasse disputes. It is not something that is imposed by the Special Magistrate as a standard. And the word "just" in its plain, ordinary meaning cannot be clearer: "In accordance with or adhering to the principles of justice; fair." *The Random House College Dictionary (1980)*

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 five statutory factors in 447.405 include:

- (1) Comparison of annual income with same or similar work of public employees showing like or similar skills under the same or similar working conditions in the *local area*;
- (2) Comparison of annual income with similar public employees in similar public employee governmental bodies of comparable size within the *state*;
- (3) The interests and welfare of the public;
- (4) Comparison of peculiarities of employment in regard to other trades or professions, such as intellectual qualifications and others listed;
- (5) Availability of funds.

Moreover, Section 447.405 contemplates that the Special Magistrate is not solely bound by these factors: “. . . the factors, *among others*, to be given weight by the Special Magistrate in arriving at a recommended decision shall include “

Examination of factors relating to comparisons (factors 1, 2 and 4) will be discussed with respect to those applicable issues below. Factor 3 is of concern anytime a large group of employees trained to educate the children of a district may receive less pay and benefits. That issue will be discussed throughout the financial issues. Factor 5, availability of funds,” is most relevant in today’s economy as the effects of a deep rescission have adversely affected many public entities that rely on their tax base for revenue. The State of Florida cut billions from its budget during the last five years, with school districts experiencing drastic cuts. MCSD cut its operating budget by \$60 million over the past four years.

Property values in this County have dropped substantially causing less revenue from real estate taxes. The District pointed out that certain State legislation has made it more difficult to make cuts. For example, the Class Size Amendment required hiring additional teachers to conform to the class size restrictions. In 2010 and 2011, the District spent some \$7.5 million, to hire additional teachers, offset by less than one-half of this amount from the State. In spite of these costs and less revenue flowing from the State, electives and extracurricular programs have been maintained by the District and there has been no reduction in force.

It is abundantly clear that this District is in financial straits. The Union does not disagree. “The Union is well aware that these are difficult economic times and that school District employees are better off than some individuals within the community in terms of salary and benefits,” the Union concludes in its brief. And the Union points out that its proposals have been “crafted with the current conditions in mind.” While being “sensitive to the community

concerns” the Union notes that teachers are also part of the community and they, too, have household and family expenses. The Union further asserts that for the school District, as the largest employer in the county, to further reduce take home pay while the cost of living increases “will neither help the employees nor allow for employees to positively impact the financial climate of the community.”

It’s a dilemma that pits the “availability of funds” factor with the “interest and welfare of the public” factor. This Special Magistrate recognized it in *Miami-Dade County Public Schools, supra*.

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.¹

The dilemma is even greater some 40 years later. School Districts are dependent not only on those tax dollars from the state, 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. And with the State of Florida through its new governor proposing a drastic cut in school funding of some \$700 million (that passed just prior to the issuance of this decision), the already strapped District now must face the potential of even less revenue.

While not “overriding” the critical “availability of funds” factor, the “interest and welfare of the public” statutory factor cannot be ignored. As seen, arbitrator Block well stated years ago that support for teachers is vital if the public expects them to produce quality education. It’s an obligation that Florida citizens even placed in their constitution in Article IX, Section 1:

¹ *Osoda, Mich. Area School Board*, 55 LA 568 (Block, 1970)

[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....

In other words it is incumbent for all in this process to not lose sight of these competing factors and to assure that when each issue is examined, it is done so with full consideration of the enormity of these concerns. This Decision is unusually long so it can reflect mostly in their entirety the sometimes lengthy positions of the District and the Union. Having these positions so articulated is important to better understand the impasse.

The nine issues at impasse for this proceeding are the following:

1) What shall be the 2011-12 salary for teachers? (Article XII – Compensation and Benefits, Section 1 (Teachers); Article XI– Compensation and Benefits (Paraprofessionals) and Appendix A (Salary Schedules)

A. District Position

The District proposes a 2.75% salary reduction at each level in light of reduced District funding and consistent with salary reductions already applied to non-bargaining and AFSCME unit employees. Despite cuts and legal constraints, the District has remained strong in its commitment to provide a high level of service to students. The District has demonstrated a strong commitment to improving the salaries. In July 2003, the District had the worst teacher salary schedule in the region. Each year since then, as part of a purposeful plan to attract the best teachers, the District has dramatically increased teacher salaries. In 2003, starting teachers received a minimum of \$28,284. Today, that amount is \$38,517 – an increase of 36% to the teacher’s benefit. The result of the District’s efforts: in 2003 the District was 26th out of 67 counties as to starting teacher salaries (Tab 1, p. 118); it now ranks 4th in the state. And the District’s average teacher salary is now in the top 10 in the state. Despite mediocre funding, the District decided to put its money into teachers.

Other districts have taken a different approach. Their funds have been kept out of teachers' hands and out of the classroom and instead put in "rainy day" funds required by Florida Statutes, also known as the "Unreserved Fund Balance." Rather than hoarding its budget away in an Unreserved Fund Balance, the District has been putting its money into the classroom. Since 2003, the District has contributed more of its Dollars to the Classroom than any like-sized district. The District's Unreserved Fund Balance continues to drop significantly below the 3% minimum required by section 1011.051, Florida Statutes (2010).

While great progress has been to better compensating teachers, additional increases in teachers' salaries are not sustainable in a time of extreme budget cuts. MEA proposed a "step" award in the last quarter of this year (a cost of \$458,000) and one furlough day for teachers; its position is that these concessions will result in a net savings to the District. While we appreciate this concession, the single-year net savings that would be realized is woefully inadequate to address this year's current budget situation. Also, award of the step for this year – even if for only one-quarter of the year – will result in the full step being realized next year. That full step equates to a significant \$1.8 million ongoing cost to the District that we cannot absorb.

On July 11, 2011, the Board approved a 5% pay cut for administrative staff, a 3.0% pay cut for managerial staff, and three furlough days for non-bargaining personnel. In addition, AFSCME agreed to three furlough days that applies to all but the lowest-paid employees (food service and bus drivers). MEA unit members are the *only* employees who have not seen any pay cuts as a result of the budget crisis. After multiple rounds of budget recommendations, the School Board directed the Superintendent to make \$14 million of cuts in this year's budget. Employee salaries and benefits make up 80% of the District's operating budget, and teachers' salaries account for 62% of all salaries. Such a drastic drop in funding simply cannot be absorbed

without affecting teacher salaries. The 2.75% teacher salary reduction proposal across the schedule was absolutely necessary to get to the \$14 million budget cut goal.

B. Union Position

In light of the reduced funding through the FEFP from the state to the District, the Union proposes that the salary amounts on the salary schedule remain the same and that teachers be furloughed one day during the 2011-12 contract year. The Union recommends February 20, 2012 as the date for the furlough day to be served. This is currently in the calendar as a paid holiday and therefore will not impact student instruction. In the event that the negotiations process is not completed by that date, The Union recommends that it be on a date mutually agreed to by the Union and MCSD. Paraprofessionals will receive only the step advancement at the beginning of the fourth quarter as proposed in the previous pages.

One furlough day for teachers results in a reduction of \$630,357. After the \$373,634 additional cost of the implementation of the 4th quarter step increase for teachers and the \$120,306 additional cost of the 4th quarter implementation of the experience step for paraprofessionals, the overall financial impact of this proposal is a reduction from the status quo of \$136,417. The impact on the average teacher is a decrease of approximately \$100 (-\$99.90) for the year. The impact of the experience step advancement proposal for paraprofessionals is an average step advancement of \$167.56 per eligible paraprofessional.

Based on new legislation that became effective July 1, 2011, public school employees are required to contribute three percent of salary to the Florida Retirement System (FRS). This results in \$3,994,706 in bargaining unit employee pay that is not available for employees to spend in the community, effectively reducing employee take home pay. On average a teacher's annual take home pay is reduced by about \$1,421 and the average paraprofessional take home

pay is reduced by more than \$572 annually due to this FRS contribution. In addition, the legislation reduced the District's contribution rate for FRS from 10.77 % of salaries for the 2010-11 year to the current rate of 4.9% of each employee's salary. The District is saving \$7,802,991 in contributions for bargaining unit employees for the 2011-12 year.

The impact on each teacher from the District proposals is a reduction in spendable income of \$3,410 on average or a reduction of \$8,586,433 for all teachers. The annual spending power of paraprofessionals would be reduced by \$1,256 under the District's proposals or a reduction of \$782,275 for all paraprofessionals. The Union's proposal for paraprofessionals results in an annual impact of a reduction in spending power of more than a half a million dollars (\$510,642) or \$566 less in earnings per individual paraprofessional.

The difference between the Union's salary proposal and the District's proposals is approximately \$3 million. In September, the Board approved budget reductions of \$3 million more than Superintendent recommended in June to balance the budget. The Superintendent stated here that this additional \$3 million was needed to fund further Board contributions to the Health Insurance fund to reduce the deficit. The Union contends that there is no need at this time for an infusion into the health fund, the Union's proposed health premium increases sufficiently fund the plan and therefore, the excess is available to be used for employees.

The impact of increased health insurance premiums for employees for the 2011-12 year can be devastating for the lowest paid employees, including paraprofessionals with an average annual salary of less than \$18,000. To reduce their salary any further would result in the loss of benefits for dependents and perhaps even employees themselves. The District has agreed to no reductions in salary for other low paid ten month District employees, bus operators and food service employees covered under another collective bargaining agreement.

Although one furlough day and the loss of pay for teachers are undesirable, the Union recognizes the financial plight of the District. The Union contends that there are sufficient funds within the current budget to support this proposal without further cuts in pay. With this proposal, this will be the fourth consecutive year with a reduction in the average teacher salary.

Even if the state did not pass through the \$7.8 million dollars in FRS contributions savings to the District, the Union identified more than \$4.8 million within the current budget that can be made available for employee salaries and benefits. The District has chosen to make cuts in budgeted expenditures of \$3 million more than required to balance the budget. Additionally, the District revealed in negotiations a number of errors within the budget document as well as areas that show revenues being under reported compared to prior years. The Union estimates that these budget issues equate to an additional \$1.8 million available within the budget (Union Exhibit #4F) that could be used to fund the Union proposals.

No other comparable district has a higher Administrator Expenditure per unweighted student population (UFTE) than Manatee. It is significant to note that no other district has proposed or implemented a pay reduction for employees. This will be the second time in four years that the District proposes to cut employee salary. The Union proposals will not change the status of employees related to comparable employee salaries in other districts. However, the District proposal will drop average teacher salaries to a level below several additional comparable districts making it even more difficult to attract and retain employees. The Union believes that the one furlough day for teachers and no increase other than the 4th quarter experience step advancement for teachers and paraprofessionals is fair, reasonable and can be accomplished within available funds of the current budget.

C. Recommendation – Issue One (Teachers Salaries)

The District's dilemma is one shared by many other school districts, as pointed out above. And like most Districts, its salaries and benefits to employees make up the greater share (here some 80%, with salaries accounting for 62%). It is evident that if savings are needed the bulk must come from salaries and benefits. And the savings needed, after many rounds of budget negotiations with the District, \$3.6 million in savings is needed.

1. Is this \$3.6 million a valid number? Budget estimations of course are at best a gamble as to what will be revenue and expenses. And given the state of the economy much uncertainty can and has existed. After a number of sessions in which the Superintendent presented differing budgets, the Board ultimately settled on one that showed this \$3.6 million in savings was needed.

2. While recognizing that the teachers are the only group of District employees not to receive a pay cut, and that they have substantially raised their salaries in recent years, with step increases the last two years, they are also the core group of employees that must ultimately be on the firing line to teach the quality demanded constitutionally for the students in this District. As such a close examination of whether or not money exists in this budget is needed to determine the recommendation for this issue.

3. It must be assumed that the District has already taken into account that its pension payments are now considerably less under a new Florida law, and by the same token its teachers are taking home less as a result of legislation that they now pay 3% of their salary to FRS for their pensions. The Special Magistrate concludes that the final budget figure includes this FRS savings, assuming it was passed on to the district.

4. The Union raises issues with the accuracy of the budget and pointed out some savings amounting to \$1.8 million. The Special Magistrate noted that the District answered all 29

inquiries made by the Union and that in most instances the answers are satisfying enough to substantially whittle down that \$1.8 million. For example, explanations about the seven figure revenue involving the technical school as part of another budget. The Union response that it be placed in the K-12 budget does not account for expenses also being moved there.² There is insufficient evidence that these 29 objections would provide enough revenue to offset any sizable or other portion of the \$3.6 million needed in savings.

5. One earlier budget recommended by the Superintendent called for \$11 million. When the budget was increased to \$14 million to pay down the health insurance benefit, the 2.75% salary reduction for teachers was added, for a savings of \$3.7 million. The Union points out that the difference between the Union's salary proposal and the District's proposals is approximately \$3 million. However, that difference, as seen above, includes the on-going increased obligation for the increased step that is not recommended.

6. The Superintendent testified that this additional \$3 million was needed to fund further Board contributions to the Health Insurance fund to reduce the deficit. The Union contends that there is no need at this time for an infusion into the health fund; the Union's proposed health premium increases sufficiently fund the plan and therefore, the excess is available to be used for employees. The Union maintains that its proposed health premium increases sufficiently fund the plan and therefore, the excess is available to be used for employees. The District has been following a plan developed by an outside consultant and approved by actuaries to increase premiums and revenue the self-funded deficit. As will be discussed, the plan has worked, but is still in need of \$3 million even with increased premiums. And the Union's proposal, which is

2. Some other examples from the hearing include: The Union asks why expenses for the Construction Dept. over \$1 million were in shown in previous budgets but are missing for the current budget. The District response is that the money is not spent from this general fund. The Union inquired about a department that had two fewer staff but an increase in personnel costs. The District agreed it was an error and corrected this \$40,000 mistake.

actually a joint Union-management one, may suggest that the \$3.7 million and the 2.75% decrease in salaries generating it may not be needed if this joint committee plan is valid.

To summarize, the District's proposal for the reduction would clearly make up the deficit needed to balance the budget. The Union's proposal does not and would serve to increase costs going into the next fiscal year as a result of increased steps granted in the fourth quarter. *The District's proposal is recommended to the extent that the Union's proposed \$3 million savings for the very item that caused the Superintendent to propose the 2.75% reduction, health care premiums, can be reduced per the Union's proposal.* The latter needs to be closely examined by the District as will be recommended, *infra*.

The Special Magistrate notes that in making the above recommendation, he will also make the parties cognizant that in the Miami-Dade school district, to avoid the continuing obligation of a step increase, the District proposed a one-time percentage bonus that would afford the teachers at least some recognition that their contributions are taken into account.

Miami-Dade County Public Schools, supra at 21:

. . . Even in these dire economic times, providing teachers with at the least some signal of recognition through an increase of any value, sends an important message to them that the District is looking out for them. It also sends an important message to the County's citizens, and in particular the parents of children in this District that within its means M-DCPS can provide "some" support, however, minor for the teachers of their children. Even more so, it can do it without burdening the public.³

2) Should the paraprofessional unit's work calendar as described in the paraprofessional's CBA be amended to reflect three (3) furlough days? Article XI- Compensation and Benefits (Paraprofessionals) and Appendix A (Salary Schedules)

³ As to the bonus: "The 1% District offer, or some variation, is the best way to provide teachers with that recognition. It meets the criteria expressed by the District of not being recurring. It's a onetime payment that does not burden the District beyond this year. And it can be done in ways that are less burdensome for the one year, such as making the amount .5% or even .75% as first offered. It can be paid in two stages, with the first payment upon ratification and the second after six months. And that payment can be conditioned on the financial ability to make the payment at that time. Section 407. 4095 could be invoked then for the 14 day impact bargaining period regarding any change that is a financial urgency. Or, the payment would be spread out over a number of pay periods. There is no limit to the variations that can be utilized." *Miami-Dade County Public Schools, supra at 21*

A. District Position

Employees at every level of the District have had salary reductions imposed, and paraprofessionals must share in that reduction. However, the Superintendent has chosen to propose three furlough days for our paraprofessionals rather than reduce this group's hourly rate.

Instituting furlough days, as opposed to reducing the paraprofessional hourly rate schedule, recognizes that our paraprofessionals should be insulated from budget cuts to the extent practicable since they are paid less than our teachers. Going the route of furlough days would ensure that any extra work performed by paraprofessionals would be paid at their normal hourly rate under current contract language. Furlough days would also be more palatable than hourly-rate reductions because with a furlough day the employee at least gets the benefit of a day without work. Also, as pointed out by MEA at the impasse hearing, furlough days also have the benefit of being a temporary, single-year reduction in salary. Thus, to the extent practicable, the District is attempting to shield our paraprofessional unit from the effects of lower pay that has been necessitated by severe budget cuts.

B. Union Position

Paraprofessionals will receive only the step advancement at the beginning of the fourth quarter as proposed in the previous pages. The Union's proposal for paraprofessionals results in an annual impact of a reduction in spending power of more than a half a million dollars (\$510,642) or \$566 less in earnings per individual paraprofessional.

C. Recommendation – Issue Two (Paraprofessional Step Advancement)

As with the proposal by the Union regarding teachers, this increased step would create a recurring obligation extending into the next fiscal year and beyond. The District's proposal retains the current rates for this group, unlike the teachers. It is reasonable and fair, but as with

the teachers' salary recommendation, it, too, is interrelated to the health insurance premium proposal of the Union. The recommendation is thus the same as issue 1.

3) Should teachers and paraprofessionals advance on the salary schedule effective the beginning of the fourth (4th) quarter of the 2011-12 school year based on experience at the beginning of 2011-12 school year and for each year as prescribed by the salary schedules? (Article XII - Compensation and Insurance, Section 6)

A. District Position

Under current contract language, step increases are to be negotiated each year. “The method of advancement to succeeding levels after the 2010-2011 school year shall be determined through negotiations.” MEA advocates returning to prior language in which step increase raises were awarded automatically for nothing more than continued employment from year to year. This current contract language does not abolish step increases. It recognizes that all matters regarding salary – a mandatory subject of bargaining – should be negotiated during each negotiation cycle. The District’s approach is consistent with the general tenets of collective bargaining; items touching on salary are traditionally negotiated each year at the table. The step increase as a benefit has been devalued in the eyes of our teachers. The “automatic” nature of the step increase has caused it to be viewed as an entitlement rather than what it is: a raise. The decision to shift step increases to the negotiating table gave this benefit the greater weight it deserves and provides an opportunity for both parties to address the appropriateness of step increases in light of prevailing economic conditions from year to year.

B. Union Position

The current structure of the salary schedules for teachers and paraprofessionals is based on advancement through the schedule based on experience and, although any cost of current employees moving through the schedule has been part of annual negotiations, the annual movement through the salary experience steps should be maintained and paid even if

negotiations have not concluded prior to the beginning of the new school year. In light of the current economy, the Union seeks the implementation of the experience step advancement for teachers and paraprofessionals at the beginning of the 4th quarter of the current work year. Thirty-six paraprofessionals and 324 teachers are already at the highest step of the schedule and will not receive the salary step advancement. The salary amounts on each step of the schedule remain as they were in 2009-10 and 2010-11. The net effect of this proposal in conjunction with the proposed one day furlough for teachers is a reduction of \$136,000 compared to the status quo

The School Board acting as the Legislative Body imposed the current language supported by the District. Based on years of past work experience, within the District or comparable pre-employment work elsewhere, each employee is eligible to advance through the schedule to higher pay levels based on successful and continued employment from one year to the next.

Newly hired employees without past experience are currently being paid at lowest pay level, step 0, on the schedule. Employees that have a year of successful experience in the District are currently being paid at the same level as employees without experience, at the lowest pay level, step 0, on the schedule. In each prior negotiation, the cost of advancement on the schedule for experience has been reported as part of the negotiated economic package.

Each year the District hires employees that are new to teaching as a paraprofessional and have no past experience. In the event that negotiations continue beyond the beginning of the work year, as has occurred in this, and prior years, withholding the advancement on the salary schedule at the beginning of the work year will create additional issues within the system. Teachers and paraprofessionals that have worked the prior year would remain at the same level as newly hired employees without the year of experience creating an inequity in salary. For each year that the experience step advancement is not implemented the inequities expand and the

impact on future negotiations doubles. The design of the schedule is based on the notion of career earnings with an annual salary that increases as an employee remains successfully employed. If employees that have worked for many years with an expectation of some day attaining the top of the salary schedule, with the salary that comes with that experience step, are unable to advance to the top experience step, the price of not advancing is more than \$5800 for some and nearly \$7,800 for other PSC teachers. This would not only impact current salary but future income and the impact on employees' retirement income.

This inequity and not advancing in pay after providing the expected service diminishes the morale of employees and creates confusion about the link between experience and pay. The other structural variables that drive the salary of employees are implemented as the events occur or as the year begins. When college credit or a degree is earned the employee's salary is impacted as the structure dictates. If the structural variables of the salary schedule are withheld until negotiations are complete, what incentive is there for the Board to complete negotiations?

The Board always has the right to negotiate over a change in any variable related to the salary schedule. Although some may question the validity of connecting salary to experience, the Board has not provided an alternative to the current structure; it just does not want to implement the structure. Experience is one of several criteria in which the salary structure differentiates pay, and employees have relied upon that structure to provide guidance as they establish their long-term professional and financial plans.

This year the District reports that the cost of experience step advancement as \$1.9 million. The District contends that it accounts for attrition, employees leaving the District at a higher rate of pay than those being hired, in the budget process, and that this savings has already been considered within the budget process. It appears that the District only considers the salary

schedule structural impacts that it chooses and ignores others while claiming those items to be a burden on the budget. The structure can only cost the District if the employees, on average, gain experience, gain in number of degrees earned, become Highly Qualified or move from Annual Contract status to a Professional Services Contract.

Reports provided by the Board demonstrate that the cost for all teachers decreased from the 2010-11 year to the 2011-12 year by \$10,413,544 due to attrition. There are more teachers on the Annual Contract schedule, fewer teachers on the Professional Services Contract schedule and a reduction in the number of teachers overall. However, the Board has not budgeted for the experience step advancement structure. If the Board does not budget for the salary structure prior to the beginning of the school year, what is the likelihood of the advancement ever being negotiated prior to the work year? The Board can simply ignore the experience factor of the schedule in its budgeting process, negotiate beyond the beginning of the year and then declare it has no funds available for experience advancement. In addition, as was the case in the 2008 negotiations, the Board has the authority to declare that there is a financial urgency and enter into expedited negotiations if an identified condition exists.

The Union believes that the experience step advancement on the salary schedule when the work year begins is fair, reasonable and maintains the integrity of the salary schedule structure. Implementing the experience step advancement structure encourages prompt and focused negotiations.

C. Recommendation – Issue Three (Experience Steps)

To be clear the Union seeks implementation of the experience step advancement for teachers and paraprofessionals at the beginning of the fourth quarter of the current work year. Its impact, even if less than the \$1.8 million cost attributed to it by the District is still a substantial

recurring one, unless the District's proposal to keep bargaining language in the contract applies. The Union points out that the budget did not account for attrition, i.e., employees leaving the District at a higher rate of pay than those being hired. The District asserts that this attrition has been considered in the budget. However, in examining the July 11, 2011 recommendations approved by the Board, only "lower salaries through retirements (75 employees) at a savings of \$1.5 million are accounted for. Attrition involving higher paid employees who leave is not shown. That number would be reflected by past experience. *It is first recommended for this issue that the District needs to clarify that concern for the entire financial package to be meaningful.*

The Special Magistrate agrees that experience is a crucial element in a step progression pay schedule and without it, the progression carries less meaning. The Special Magistrate also agrees with SM Murphy that to not allow the status quo to exist during negotiations could be unjust and serve as a hurdle in negotiations. But it cannot be overlooked that important concerns exist with the recurring nature of this cost should the budget still need cutting in future years.

In attempting to balance these conflicting interests it becomes necessary that these equity concerns take into account the financial reality and its burden on the District. There is no evidence that the District could afford to implement experience steps in the fourth quarter, given the high cost of doing so and its impact on the following fiscal year. Even if the recommendation for health insurance premiums, *infra*, includes the Union proposal, this tie-in does not appear to lessen the impact of the recurring increases generated by the 4th quarter experience movement offered by the Union.

As such, the District's proposal is recommended. However, consideration must be given to the first recommendation for this issue regarding attrition. If such investigation determines that sufficient room in the budget exists for such experience step increase, and the impact in the

future is substantially less as a result of the attrition numbers, the Union's proposal is recommended.

4) What shall be the Self-Insured Health Insurance Plan's premiums for the 2012 plan year effective January 1, 2012? (Article XII – Compensation and Insurance, Section 5)

A. District Position

The District operates a self-funded health insurance program. Starting in 2007, this fund has run a deficit, resulting from employee claims exceeding the amount of premiums collected from employees. The deficit has grown considerably, from \$700,000 in June of 2007 to a \$9.4 million deficit as of December 2010. The District employed multiple strategies to address the deficit. Absent a small increase in 2007, the District avoided the solution of increasing employee health insurance premiums. Instead, the District applied plan design changes, renegotiated its pharmacy contract, and audited its list of eligible dependents. Unfortunately, none of these strategies remedied the deficit, and the deficit continued to grow.

The District employed Mercer Health and Benefits, LLC, an outside benefits consultant, to gain new perspective on addressing the deficit. Mercer's study indicated that the District's health insurance premiums needed to be increased and the plan premiums restructured to achieve an actuarially sound plan. Based upon their findings, Mercer proposed a revamped premium schedule that would get the District's self-insured fund back in the black in three years. This plan was reviewed and approved by two independent actuaries. The Mercer plan was submitted to Florida's Office of Insurance Regulation ("OIR") and was approved as actuarially sound.

Implementation of the Mercer plan yielded immediate positive results. The District's health insurance fund deficit was reduced by \$1.79 million by September 30, 2011. Actuarial estimates show that another \$2.2 million of progress will be made by year-end 2011. Thus, the Mercer plan has to date made \$4 million in progress toward rectifying the health insurance fund

deficit. The District's proposed contract language simply reflects the health insurance premiums from the second year of the three-year Mercer plan. The District is not blind to the fact that these premium increases come at an inopportune time given the financial crisis that affects us all. However, employees have long received the financial benefits from comparatively low employee-share premiums, and the District is not seeking to recoup that substantial benefit. The District is seeking only to equalize, not penalize.

The reasonableness of the District's efforts is supported by comparison to peer and contiguous school districts. Whether for HMO or PPO coverage, the District's proposed premiums fall within a reasonable range of the premiums charged by the other districts. More striking is the fact that the employee share (i.e., the employee-paid portion of the total premium) is lower than the employee share in the majority of peer or contiguous districts, irrespective of plan. The reasonableness of the District's proposed rates is further supported by an analysis of teacher take-home pay. Even with the increased employee-share premiums proposed by the District, the District's teachers on the mid-level PPO plan would still take home pay in excess of, or at least comparable to, teachers in the surrounding districts who are on the lowest-cost plan available to them. The District requests a recommendation that would modify the CBA to provide for health insurance premiums as set out in Year Two of the Mercer report.

B. Union Position

The Union proposes to increase the employee share and the Board share of Health Insurance premiums based on the contractual joint Health Insurance Committee's recommendations of August 30, 2011 effective at the beginning of the plan year, January 1, 2012. The Union's proposal will yield health premiums sufficient to fully fund the plan and

provide sufficient funds to continue to reduce the fund deficit. This is demonstrated on the materials provided by the actuary in evidence as Union Exhibit #6A.

This actuarial document does not include the \$3 million that the Superintendent reported to be set aside within the budget to further pay down the deficit. This exhibit demonstrates that this additional \$3 million is unnecessary for the 2012 plan year. The overall difference between the Union proposal and the District's proposal in total premiums for bargaining unit members in all plans is \$200,000 for the fiscal year. This is less than \$10 per month per bargaining unit member. The Board suggests that employees pay a larger share of the Health Insurance fund costs and therefore, a disproportionate share of the cost of reducing the deficit based on the past structure of premiums. The Union proposal maintains the structure of premiums and, therefore, the proportionate share of the overall cost for health benefits remains as the current structure. Since a portion of the proposed increased premiums will be used to reduce the deficit as well as pay for plan year expenses, shifting a larger percentage of premiums to the employees also shifts the burden of reducing the deficit to the employees over time.

The Health Insurance Committee has begun the process to explore alternative plans and carriers by a formal Request for Proposals for implementation in a 2013 plan. The Committee has studied up to date plan data, alternative plan designs and alternative premium structures over several months prior to making its recommendation. The District is basing its proposal on the Mercer Study conducted more than a year ago using plan data that is nearly two years old.

The claims data does not suggest that the Blue Options and the Blue Care HMO plan premiums should be nearly the same. In fact, the data suggests that premiums should be the highest in the Blue Choice plan and higher for the Blue Options PPO than the Blue Care HMO plan. The Board's proposal ignores this data. The Board's proposal is based on a consultant,

Mercer, hired to review the plans using specific parameters provided by the Superintendent. Those parameters did not include the dollars expended by employees as co-pays, coinsurance or deductibles and did not include differences among plan claims discounts. The parameters did require Mercer to include a shift in the share of premiums and used data skewed by the drastic migration of employees from the Blue Choice PPO plan to the Blue Options PPO plan and Blue Care HMO plan as part of the transition from two health plans to three imposed in 2009. A larger proportion of lower paid employees, including paraprofessionals, migrated to the lower employee cost Blue Care HMO plan. Only 12 current paraprofessionals are enrolled in the Blue Choice plan. The Board proposed increase in the employee share of premiums in the Blue Care HMO results in having the highest percentage and dollar increases to the lowest paid employees, those that can least afford the increase.

The Committee's determined to increase the deductible and out of pocket maximum for the Blue Choice plan based on the ratio of claims to premiums in excess of 150%. This change was recommended along with a premium increase for employees. The Board's proposal decreases premiums for the Blue Choice plan while increasing employee premiums for the Blue Care HMO plan to a level near or above the Blue Options PPO. For the reasons stated above, the Union believes that the Union proposal to accept the Health Insurance Committee recommendations for Health Insurance Plan design modifications and premium increases is sufficient to fund the current plan year expenses and continue to reduce the fund deficit.

C. Recommendation – Issue 4 (Health Insurance Premiums)

The parties are at odds over the District accepting the report of its outside consultant and a newly originated report from a joint committee composed of representatives of the Superintendent and members of the bargaining unit. The latter has its genesis in Art. XII, Sec. 4,

“Health Insurance Committee.” In that provision the parties agreed to such a committee from representatives of the bargaining agents and those designated by the Superintendent “for the purpose of continuing to explore ways of containing the cost of health insurance.” The CBA empowers this committee to “recommend changes in the health plan” and to make requests for proposals to permit a change in carriers “if such change is beneficial to the employee.”

The evidence shows that this committee spent several months reviewing data relating to the three plan option benefits, and administrative costs, claims and plan cost projection with savings options over a period of three years. It used an actuary to evaluate premium requirements for the identified options and then designed a plan “to ensure the plan financial viability.” In so doing it recommended increasing premiums for employees. “More than \$6 million in premiums will be used to reduce the prior year’s deficit.”

Given that this contractual committee composed jointly of union and management representatives spent considerable time and appear to have thoroughly analyzed the most current data, as opposed to Mercer, which ended its analysis in mid-2010, and which an independent actuary pointed out that deficiency in its data, it is incumbent on the District to closely analyze the data and results obtained by this joint contractually based committee. And it is so recommended. Again, this is not a one-sided recommendation from the Union. It represents an effort by both parties. And if, as the committee recommends, the deficit will be wiped clean by its proposal, then the rationale for needing the 2.5% salary decrease for teachers and the furlough days for paraprofessional no longer exists. Instead the Union’s proposals regarding salary, albeit the SM’s concern about recurring step costs, would be recommended.

5) Should the teacher and paraprofessional unit CBAs be modified to reflect the addition of a second HMO health plan? (Article XII)

A. District Position

AFSCME unit represents approximately 1,000 of the District's blue collar employees. In this year's AFSCME negotiations, the District proposed furlough days to be applied to all but the lowest paid employees of the unit. In response, AFSCME demanded a low-cost "catastrophe" health plan to offset the proposed salary reduction. AFSCME leadership indicated that the unit was even willing to give up basic coverage – coverage for doctor visits and pharmaceuticals – in order drive premiums down.

In response, the District consulted with Blue Cross and Blue Shield of Florida and proposed the Blue Care 52 HMO plan. This plan not only affords District employees an extremely low monthly premium for individual (\$20/month), employee + spouse (\$100/month), and family (\$150/month) coverage, it also provides coverage for doctor visits and generic prescription drugs. Thus, this plan not only met the monetary requirements set by AFSCME, it also provided significantly greater benefits than expected. AFSCME readily accepted the plan, and the proposed AFSCME contract was ratified by AFSCME membership.

MEA's primary argument against addition of this plan is that the will of individual MEA members might be overborne by the attraction of low premiums, and that their members would migrate to the Blue Care 52 plan when it may not truly be in their best interests. However, adding this plan option would in no way prejudice MEA members. Each member would retain the ability to choose the plan that best meets their needs. The District concedes that the Blue Care 52 plan is not for everyone, and that, as with any new plan, education as to plan parameters will be required. MEA's unrealized fear is not a substantial basis on which to deny MEA members the option to choose health insurance coverage on the same level as AFSCME.

B. Union Position

The Board's proposal will create an unnecessary and disruptive migration away from the Blue Care HMO plan for the remainder of this year with a likely additional migration away from the Blue Options plan. The Board's proposal will have a negative impact on the claims to premium ratio in the Blue Choice plan and will further impact the out of pocket expenses of employees. The Superintendent's consultant maintains; the Blue Care HMO design has better benefits than the Options PPO plan, but the BCBS claims data for 2009 and 2010 is contrary. Blue Care HMO average claims per member per month for 2010 are twenty-two percent (22%) less than the Blue Options PPO average claims per member per month. The disruption created by this premium driven migration is unnecessary and unwarranted.

C. Recommendation – Issue 5 (Second HMO Plan)

The Union concern that migration to this lower premium benefit seems to be that reduced premiums will undermine the joint committee efforts to reduce the deficit in this fund. There is little evidence to support the Union claim of a sufficient enough mitigation that would hurt the fund and the Committee's objectives. An educational program designed to point out benefit and out-of-pocket differences in the proposed HMO and current plans would help to lessen any migration based solely on lower premiums.

Although the need for a second HMO appears to be the need of AFSCME only, the recommendation should not be against it simply because a lower paid group of employees finds it better suited for them. The unit employees here do not appear to have a sufficient number of lower paid employees who would veer from more costly and benefit rich plans. The need for this HMO plan may also be one limited mostly to AFSCME unit members whose pay scale is

presumably much less than the large teachers' unit. And migration may occur in any event to the current HMO when rates are increased. *This HMO option is recommended.*

6) What shall be the CBA language related to the changes in life insurance coverage effective April 1, 2012? (Article XII – Compensation and Insurance, Section 6 for Teachers and Paraprofessionals)

A. District Position

The District proposed language modifying the life insurance benefits. At hearing, MEA agreed to the language proposed by the District. However, the parties made it clear during negotiations that all items related to finances (including life insurance benefits) were part of each party's "package deal." Thus, the parties did not tentatively agree on this issue, and a recommendation from the Special Magistrate is required on this and all financial issues despite the parties' agreement as to this specific issue.

B. Union Position

The Union accepted the District's proposed reduction in life insurance benefits from two times salary to one time salary life insurance benefits effective April 1, 2012 and the District's proposed language submitted during the Special Magistrate Hearing. Therefore, the Union believes that this issue is no longer in dispute and no impasse exists.

C. Recommendation – (Life Insurance)

Inasmuch as both parties are in agreement as to this proposed benefit change, and the District has not otherwise maintained that any cost associated with this change will impact the District and the package sought, it is recommended.

7) What shall be the Terminal Pay benefits for eligible employees that have unused accumulated sick leave upon retirement? (Terminal Pay - Article XIII – for both Teachers and Paraprofessionals)

A. District Position

The CBA currently provides for a maximum payout of 50% of accrued sick leave at the time of retirement of a bargaining unit employee, and payouts at a lesser graduated rate based on term of service. This language affects only sick leave accrued after July 1, 2011. Sick leave accrued prior to that date is paid out at a maximum rate of 100%. This language was imposed by the School Board in June 2011 in recognition of the fact that the District is facing a significant terminal pay liability. Since 2001, the terminal pay liability attributable to the members of the MEA bargaining units has increased from \$8.2 million to \$12.1 million – a 48% increase. This increase is largely due to an increased number of teachers hired and increases in teacher salaries.

Nothing has changed in terms of equity or logic in the seven months since the School Board imposed this language in June 2011. The School Board saw fit, in the best interests of the public and the employees affected to reduce the terminal pay benefits to reduce a significant long-term financial liability. This liability continues through the current contract year. Reverting back to the prior language should be considered only in the face of compelling evidence, or at the very least new evidence gleaned in the last seven months, and none has been presented.

B. Union Position

The Union seeks to return the Terminal Pay benefits for payment upon retirement for unused accumulated sick leave to the language prior to the imposition of June 7, 2011. The imposed language is complicated, difficult for employees to track and significantly reduces the benefit of retaining sick leave days. The impact of the imposed language is that accumulated days will have half the value of prior years earned but unused days upon retirement. In addition, all earned and unused days after July 1, 2011 are to be paid based on the salary of the day earned rather than the salary at retirement.

For 2009-10, 135 teachers had 28.1 years of service and received Terminal Pay for 35 days for an average Terminal Pay of \$11,167.87 upon retirement. They accumulated a scant 1.25 days for each year of service in the FRS. For 2009-10, 17 paraprofessionals had 25.24 years of service and received Terminal Pay for 31 days for an average terminal Pay of \$3,458 upon retirement. They accumulated 1.22 days for each year of service in the FRS.

All comparable districts have a reported liability for accumulated unused sick leave pay in amounts comparable to Manatee County's based on the number of employees within the District. They also have Terminal Pay language similar to the current language of the Manatee County teacher and paraprofessional agreements. The Board's representatives originally raised the Terminal Pay issue to reduce long term liability. However, the proposal's real impact is reducing an employee benefit designed to assist newly retired employees to transition into their new economic reality. Upon retirement, even a thirty year employee will see the income cut in half along with an increase in expenses, i.e., paying both the employee and Board share of Health Insurance costs. The average terminal pay of \$11,167 for a teacher or \$3,458 for a paraprofessional merely eases the financial burdens within the first year of retirement.

The Board imposed prospective change takes effect at the end of the current fiscal year that began July, 1, 2011. It has little or no impact on the current budget and the added process to verify that the employee is receiving the correct amount of terminal pay in the future is expected to cost more than any savings that may occur over time.

C. Recommendation – Issue 7 (Terminal Pay)

The District's proposal has little or no effect on this current fiscal year as it does not become effective until the end of the year. It is designed to ease long term liability. Given, too, that the District does not link up this proposal with its financial package, the benefit and

contractual language are in line with comparable school districts,⁴ and the benefit is otherwise significant for retirees on a reduced income, *the Special Magistrate recommends the parties revert back to the contractual language and benefit prior to the District imposing this reduced benefit.*

8) Shall Virtual Educators be provided with computer hardware, software, peripherals, printers and internet access as all other classroom teachers paid for by the District? (Article V – Working Conditions (New Section))

A. District Position

In August 2011, the District launched its own virtual school program entitled “E-Tech.” The intent of the E-Tech program is to create a means to educate students outside the classroom on a non-traditional schedule that works best for both the teacher and the student. No language in the CBA speaks specifically to E-Tech teachers as they are a brand new group. However, E-Tech teachers are undoubtedly members of the teacher unit and are entitled to receive the rights and privileges afforded all unit members under the CBA. Apparently unsatisfied with this current contract language applicable to all teachers, MEA has proposed specific contract language to regulate the working conditions of E-Tech teachers.

The District opposes MEA’s proposed language because it is too soon to determine what specific contract provisions would best serve the interests of the E-Tech program, the E-Tech teachers, and the E-Tech students. The E-Tech program has been in existence less than one school-year. There has not been enough time and experience gained to determine which specific provisions, if any, would best work in the E-Tech program.

⁵ The Clay, Escambia, Lake, Marion, Osceola, and St. Lucie counties pay 100% of accrued sick leave after years of service. Pinellas County pays 100% of accrued sick leave after 30 years of service and 90 % after 25 years service.

MEA has failed to demonstrate the necessity of the proposed language, especially in light of the fact that current contract language adequately addresses much of what MEA proposes. MEA's proposed language serves to establish rules that may work to the detriment of the E-Tech program and its students. For example, current contract language calls for a maximum 7.5 hour workday for unit members, and that provision would apply equally to E-Tech teachers. Rather than rely on this general proposition, MEA proposes to create fixed parameters for the hours that E-Tech teachers might work, that being a start time of no earlier than 7:00 A.M. and no later than 7:00 P.M.

The District concedes that these start and end times may be appropriate for E-Tech teachers; however, that sort of speculation goes to the heart of the District's argument. There has not been enough feedback and evaluation in the less than one school-year life of the E-Tech program to determine whether 7:00 A.M., 6:00 A.M., or 7:30 A.M. is the appropriate threshold for the start of the E-Tech workday, or whether a specific start time is even necessary given the flexibility that is inherent in virtual learning. Experience may show that E-Tech teachers and students prefer to set their own schedules one-to-one. These narrow matters can and should be addressed at a future bargaining cycle, especially since current contract language adequately covers the interests of the unit members.

Finally, MEA proposes language that would require the District to furnish E-Tech teachers with all necessary equipment, including a computer and internet connection. Computer and internet connection ownership should be prerequisites of the position of E-Tech Teacher. The District's intent is to avoid potential violation of School Board policies arising from private usage of District-owned computers. While there is always a risk of such usage, the District

believes the risk to be significantly greater for E-Tech teachers considering that the entirety of their work day is spent at home.

B. Union Position

Virtual Educators (teachers) should receive the same terms and conditions for computer related equipment and internet access capabilities as all other unit members and should not be required to purchase computer equipment and internet access. Any requirement that Virtual Educators purchase equipment and internet access would essentially be a reduction in pay for unit members assigned to these positions. The Virtual Educators work hours and other conditions that vary from regular classroom teachers and these are best addressed through the CBA.

The District met with Union representatives in a June 2011 labor/management meeting to discuss a proposed Virtual Education program called eTech and provided a written proposal for the Union to review. Computer equipment, internet access and other technology needs were originally expected to be provided by the District, not employees, as stated in the District plan. Several of the conditions within the eTech document conflict with, or are not specifically addressed in the current collective bargaining provisions and current practices for teachers.

Negotiating over the specific terms and conditions of employment is the appropriate direction when a new program is implemented that impacts bargaining unit employees. These employees are in place and working now. To delay the implementation of this language provides for a number of opportunities for misunderstanding, misapplication and misinterpretation of the collective bargaining rights of these teachers and increase the potential for future grievances and other challenges. The Union's proposal addresses the specific issues outlined in June by the District and the Union's proposals are appropriate issues to be addressed in negotiations under Section 447.309(1), Florida Statutes. Virtual Educators should receive the technology and

internet access to perform successfully as a District employee. Treating these employees differently from all other employees related to computer equipment and other technology needs is contrary to the District's original plan and an unfair burden on these employees. To require these employees to purchase computers, internet access and other technology would effectively reduce the salary of Virtual Educators.

C. Recommendation -- Issue 8 (Virtual Educators)

The Special Magistrate agrees with the Union that to delay bargaining until some future date when these unit employees have been on the job longer is a recipe for misunderstandings, complains and eventually grievances. As the District points out some of their terms and conditions of employment (e.g., holidays, duty-free lunch, report days) are already in place as members of the bargaining unit. However, their hours of work and equipment ownership are unique to teachers who work from home and need to be addressed.

The District proposal for flexibility of the 7.5 hours makes good sense for teachers who work from home. However, its proposal that that these teachers buy their own equipment to avoid privacy issues that could conflict with District policy is unconvincing. No other teacher must purchase his or her own computer equipment, let alone maintain it. Treating them differently because of a privacy rule that is more difficult to enforce, should not mean that they pay for that difficulty. The Special Magistrate is familiar with employers in the private sector faced with similar concerns that have used innovative IT technology to monitor equipment used off-site. Thus, technology appears to exist that would overcome this obstacle that concerns the District. The labor/management report supported the notion that this equipment and its maintenance should be the responsibility of the District, as it is with all other teachers.

The Special Magistrate recommends that, as with the health insurance premiums issue, the parties give serious consideration to a group that acted jointly to provide their recommendations. Inasmuch as the Union's proposal more closely follow that report, and otherwise follow the principle that newly added employees and positions added to the unit are entitled to have mandatory subjects of bargaining (that do not already cover them) timely negotiated, the Union proposal is recommended.

9) Shall Appendix B of the teachers' CBA define the number of Elementary Team Leaders that are eligible for the contractual Team Leader Supplement? (Team Leader Supplement Article XII – Compensation and Benefits, Section 2 and Appendix B (Elementary Team Leaders

A. District Position

MEA proposes adding new language to the CBA requiring team leaders at the elementary level to be paid a required contractual supplement. MEA presented no substantial argument as to why this proposed language is warranted. Its argument is that because these supplements are provided at the secondary level, they should be provided at the elementary level. Award of these supplements may be appropriate on a case-by-case basis, and, as MEA concedes, those instances have to date been dealt with effectively using the “waiver” procedures in the CBA

B. Union Position

The Union proposes that Appendix B of the teachers' CBA define the number of elementary Team Leaders that are eligible for the contractual Team Leader Supplement. It proposes a definition for the Elementary Team Leader Supplement in a similar way to secondary department chairs, based on the history of elementary school requests to waive the number of team leader supplements allocated to the elementary schools. This would define who would be eligible for the Team Leader supplement at elementary schools and would eliminate the need for waiver requests related to this issue. There is no proposal to change the amount of the Team

Leader supplement of \$1,165 for each Team Leader. Based on the 11 waivers submitted in the current year, the Union estimates that the impact of this proposal to be approximately \$28,000.

C. Recommendation – Issue 9 -- (Team Leaders for Elementary Schools)

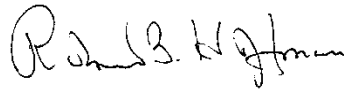
There is no question that Elementary Schools are left out of this Appendix B, where numerous supplements are paid, including the designation of Team Leaders. There is little rationale given as to what caused this omission. And certainly in those days when a relatively small expense could be well covered in the budget, such inclusion would have caused much less concern. As such, the Special Magistrate must agree with the District that to otherwise incur an additional expense, whether \$28,000 or \$45,000 (as garnered from the Union’s exhibit) for a new set of Team Leader positions each school year for Elementary Schools has little justification.

When viewed in the scheme of cuts needed, even this relatively small amount compared to the budget should be placed on hold until such time as the District is in better financial condition. Many of the items cut in the budget are small cost items. To make an exception here and create a new one, when the elementary school otherwise can utilize the waiver process for team leader supplements is unjustified. That more leaders are needed and the \$1165 payment is sometimes divvied up with others that are needed, suggests that additional waivers need to be requested and judged on their merits.

CONCLUSION

These recommendations are made after fully considering all the evidence presented at this hearing, including the arguments and 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. He recognizes that these are unusually hard economic times and thus, the emphasis on the

availability of funds factors takes on unprecedented significance. In this Decision he has attempted to square that critical factor with the needs of the District and the efforts by the Union to assure that its teachers and paraprofessionals in these two units receive fair and equitable wages and benefits during this recession period.

A handwritten signature in black ink, appearing to read "Robert B. Hoffman". The signature is written in a cursive style with a large initial "R".

Robert B. Hoffman
Special Magistrate