

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

SCHOOL DISTRICT OF MANATEE COUNTY,

Petitioner,

v.

Case No. SM-2011-091

**MANATEE EDUCATION ASSOCIATION,
FEA, AFT, LOCAL 3821, AFL-CIO,
(Teachers and Paraprofessionals)**

Respondent.

_____ /

**PETITIONER'S POST-HEARING BRIEF IN SUPPORT OF
SCHOOL DISTRICT'S POSITION**

COMES NOW the Petitioner, School District of Manatee County (the "District"), who, pursuant to the directive of the Special Magistrate, submits the following Post-Hearing Brief in Support of the School District's Position:

PROCEDURAL HISTORY

The parties agreed to forego interest-based bargaining, and entered into positional bargaining June 28, 2011. After making good faith efforts at resolution, the District declared impasse on October 6, 2011. On November 4, 2011, the Honorable Robert Hoffman, Esq., was appointed as Special Magistrate to hear the issues at impasse and render a recommended decision. The District presented the Special Magistrate with ten issues to be heard. The impasse hearing was held on December 7, 2011. At the hearing, the District withdrew Issue 8 (regarding Involuntary Transfers) leaving nine total issues for recommendation by the Special Magistrate.

CONSOLIDATED RECOMMENDATION REQUESTED

At bargaining, the parties asserted “package deals” as to financial issues. Specifically, Issue One (regarding teacher salary), Issue Two (regarding paraprofessional furlough days), Issue Three (regarding health insurance premiums), and Issue Five (regarding life insurance benefits) are interrelated in that they share significant financial aspects. Each of these issues represents 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.

At hearing, the District requested that the Special Magistrate consolidate these issues and make a recommendation as to the District’s “package deal.” MEA made no argument in opposition. The Special Magistrate directed the District to address this matter in the post-hearing brief. Accordingly, the District specifically requests that the Special Magistrate make a single, unified recommendation as to Issues One, Two, Three, and Five. Alternatively, 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.

ISSUE ONE

Should the teacher unit salary schedule be amended to reflect 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?

Statement of Facts as to Issue One

Our nation is undergoing an economic crisis not encountered since the Great Depression. This crisis, now called the “Great Recession,” has manifested itself in the form of unprecedented state budget cuts. Over the last five years, the State of Florida has had to cut billions from its budget. (Tab 1, pp. 60-84)¹. School districts have been hit particularly hard by these cuts. (Tab 1; pp. 52-59). The Manatee County School District is no exception. The District has been required to cut its operating budget by \$60 million over the past four years. (Tab 1, pp. 1-51).

The Class Size Amendment (Tab 1, p. 104-105) has also deprived the District of an effective means to cushion the blow of budget cuts. Prior to the Amendment, the District could tweak classroom sizes in core curriculum classes to ensure adequate student education without resorting to the budgetary burden of hiring additional teachers. In 2010, the District incurred costs of \$4 million to hire additional teachers, offset by only \$1.5 million in state funding. This year, the District took a similar hit, with only \$1.2 million in funding to offset \$3.2 million in increased class-size costs. (Testimony of Tim McGonegal).

Despite these cuts and legal constraints, the District has remained strong in its commitment to providing a high level of service to our students. Administration has operated

¹ References to Petitioner’s Exhibit Book submitted at hearing will be expressed as tab and page numbers according to the following format: “(Tab ___, p. ___).” References to Petitioner’s PowerPoint presentation slides will be expressed as follows: “PowerPoint Slide ___.” References are not intended to be exhaustive. Other documents in Petitioner’s Exhibit Book may support the stated proposition.

under the School Board's direction that electives and extracurricular programs not be eliminated. The District has also not resorted to a reduction in force; the District's belief being that it is better for everyone to sacrifice a little rather than require a few to sacrifice everything.

The District has equally demonstrated a strong commitment to improving the salaries of District teachers. In July of 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 and the brightest teachers to serve the needs of Manatee County students, the District has dramatically increased teacher salaries.

In 2003, starting teachers in the District received a minimum of \$28,284. Today, that amount has swelled to \$38,517 – an increase of 36% to the teacher's benefit. (Tab 11, p.71). Similar increases were made across the spectrum of experience/education categories on the teacher salary schedule. 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. (Tab 1, p.114). Equally impressive is the fact that the District's average teacher salary, considering all levels on the salary schedule, is now in the top 10 in the state. (Tab 1, p. 113). The District's commitment to compensating its teachers is further exemplified by comparison to local charter schools. Each of their average teacher salaries falls far short of the teacher salaries paid by the District. (Tab 1, p. 119). Any school district would surely say that it values its teachers. The Manatee County School District has since 2003 "put its money where its mouth is" in that regard.

The dramatic gains in teacher salaries were realized not from a boon or subsidy, but from a purposeful shifting of funds toward our teachers. This goal was realized even at a time when the District's funding was declining. Since 2005, the District has consistently been in the bottom

50% of districts in the state as far as funding. (Tab 1, p. 85). Despite this mediocre funding, the District decided to put its money into teachers. In fact, the District has effectively given the teachers and paraprofessionals a raise by awarding the step increase in the last two years. (Testimony of Tim McGonegal).

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." (Tab 1, p. 109-111). Rather than horde 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, (PowerPoint Slide 17). Our Unreserved Fund Balance continues to drop significantly below the 3% minimum required by section 1011.051, Florida Statutes (2010), as a result. (Tab 1, p. 112A-112C).

Argument as to Issue One

While great progress has been made toward our goal of attracting and better compensating our teachers, additional increases in teachers' salaries are simply not sustainable in a time of extreme budget cuts. MEA has proposed a "step" award in the last quarter of this year (a cost of \$458,000) and one furlough day for teachers; its position being that these concessions taken together 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.

Finally, it is important to recognize that MEA unit members were not the only District employees affected by the District's budget crisis. 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. (Tab 1, p. 1-121 through 1-122). In addition, our AFSCME unit membership has agreed to a pay reduction in the form of three furlough days that applies to all but the lowest-paid employees (food service and bus drivers). (Tab 1, p. 1-125). As it now stands, MEA unit members are the *only* employees who have not seen any pay cuts as a result of the budget crisis.

MEA members' salaries can no longer be held harmless. After multiple rounds of budget recommendations, the School Board directed the Superintendent to make \$14 million of cuts in this year's budget. (Tab 1, p. 126-131). Employee salaries and benefits make up 80% of the District's operating budget, and teachers' salaries account for 62% of all salaries. (Tab 1, p. 1-120). Such a drastic drop in funding simply cannot be absorbed without affecting teacher salaries. The 2.75% teacher salary reduction proposed by the Superintendent was absolutely necessary to get to the \$14 million budget cut goal set by the School Board.

Proposed Remedy as to Issue One

The District proposes amending the teachers' salary schedule to reflect a 2.75% reduction across the schedule as represented in Tab 1, p. 132-39.

ISSUE TWO

Should the paraprofessional unit's work calendar as described in the paraprofessional's CBA be amended to reflect three (3) furlough days in light of reduced District funding and consistent with salary reductions already applied to non-bargaining and AFSCME unit employees?

Statement of Facts and Argument as to Issue Two

The facts and arguments posited above regarding the proposed reduction in teacher unit salaries apply equally to the paraprofessional unit. 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. (Tab 2, p. 1). 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.

Proposed Remedy as to Issue Two

Institute three furlough days for the paraprofessional bargaining unit for the 2011-2012 contract year. No modification to contract language is required.

ISSUE THREE

Should the teacher and paraprofessional unit CBAs be modified to reflect health insurance premiums set out in year two of the District's three-year plan, launched in 2010-11 and already approved by the Florida Office of Insurance Regulation, to rectify the District's health insurance deficit?

Statement of Facts as to Issue Three

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. (Tab 3 p. 5-6).

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. (PowerPoint Slide 34).

The District employed the services of Mercer Health and Benefits, LLC, an outside benefits consultant, to gain new perspective on addressing the health insurance 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. (Tab 3, p. 7-12). 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. (Tab 3, pp. 13-21). Finally, the Mercer plan was submitted to Florida's Office of Insurance Regulation ("OIR") and was approved as actuarially sound. (Tab 3, p. 22).

Implementation of the Mercer plan yielded immediate positive results. The District's health insurance fund deficit was reduced by \$1.79 million dollars by September 30, 2011. (Tab 3, p. 23). Actuarial estimates show that another \$2.2 million of progress will be made by year-end 2011. (Tab 3, p.23). Thus, the Mercer plan – the only solution that has proven effective since 2007 – has to date made \$4 million in progress toward rectifying the health insurance fund deficit. (Tab

Argument as to Issue Three

The District's proposed contract language for Issue 3 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, our 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 our 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. (Tab 3,

p. 24-31). More striking is the fact that the employee share (i.e., the employee-paid portion of the total premium) in our District is lower than the employee share in the majority of peer or contiguous districts, irrespective of plan. The reasonableness of our proposed rates is further supported by an analysis of teacher take-home pay. (Tab 3, p. 37). Even with the increased employee-share premiums proposed by the District, the District's teachers on our mid-level PPO plan would still take home pay in excess of, or at least comparable to, teachers in our surrounding districts who are on the lowest-cost plan available to them. (Tab 3, p. 37-40).

Proposed Remedy as to Issue Three

Modify the CBA to provide for health insurance premiums as set out in Year Two of the Mercer report, reproduced at Tab 3, p. 3-10 of the Exhibit Book and also at Tab 4, p. 4-6 (in a larger, easier to read, font).

ISSUE FOUR

Should the teacher and paraprofessional unit CBAs be modified to reflect the addition of a second HMO health plan, with corresponding benefits and premiums, consistent with language recently ratified by the District's AFSCME unit?

Statement of Facts as to Issue Four

The District's American Federation of State County and Municipal Employees ("AFSCME") unit represents approximately 1,000 of the District's blue collar employees. In this year's AFSCME contract negotiations, the District proposed furlough days to be applied to

all but the lowest paid employees of the unit. In response, AFSCME membership 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. (Testimony of Scott Martin).

In response, the District consulted with Blue Cross and Blue Shield of Florida and proposed the Blue Care 52 HMO plan. (Tab 4, p. 2-5). 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. (Tab 4, p. 6). Thus, this plan not only met the monetary requirements set by AFSCME, it also provided significantly greater benefits than expected. Our AFSCME unit readily accepted the plan, and the proposed AFSCME contract was ratified by AFSCME membership. (Tab 1, p.125).

Argument as to Issue Four

The District’s position is simply that it is appropriate to add the new Blue Care 52 HMO to teachers and paraprofessionals’ collective bargaining agreements. 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 our AFSCME membership.

Proposed Remedy as to Issue Four

Add the Blue Care 52 HMO plan description (Tab 4, p. 2-5) and proposed premiums (Tab 4, p. 6) to both the teacher and paraprofessionals' collective bargaining agreements.

ISSUE FIVE

Should the teacher and paraprofessional unit CBAs be modified as to term life insurance benefits to provide for a "1x salary" benefit paid by the School Board while preserving unit members' ability to pay for increased coverage up to 2x and 3x their salaries?

The District has proposed language modifying the life insurance benefits afforded MEA members. (Tab 5, p. 2). At hearing, MEA agreed to the language proposed by the District. However, as discussed above, the parties had made 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.

Proposed Remedy as to Issue Five

Modify the CBA as reflected in Tab 5, p. 2.

ISSUE SIX

Should the status quo language in both the teacher and paraprofessional bargaining unit CBAs regarding advancement on the salary schedule (i.e., “step” increases) be preserved without amendment?

Statement of Facts as to Issue Six

“Step” increases are the progression of an employee to higher levels of salary based upon that employee’s increasing years of experience at the District. Under current contract language, step increases are to be negotiated each year. (Tab 6, p. 0). MEA advocates returning to prior language in which step increase raises were awarded automatically for nothing more than continued employment from year to year.

Argument as to Issue Six

It is first critical to understand that current contract language does not abolish step increases. To the contrary, the current contract language appropriately recognizes that all matters regarding salary – a mandatory subject of bargaining – should be negotiated between the District and MEA during each negotiation cycle.

The approach advocated by the District is consistent with the general tenets of collective bargaining since items touching on salary are traditionally negotiated each year at the table. The current language also serves to appropriately characterize what a step increase actually is. 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 School Board's decision to shift the matter of 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.

Proposed Remedy as to Issue Six

Preserve current contract language reflected at Tab 6, p. 0.

ISSUE SEVEN

Should the status quo language in both the teacher and paraprofessional bargaining unit CBAs regarding terminal pay benefits be preserved without amendment?

Statement of Facts as to Issue Seven

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%. (Tab 7, p. 0-2).

This contract 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.

Argument as to Issue Seven

The District's rationale for preserving current contract language as to terminal pay is a simple one: nothing has changed in terms of equity or logic in the seven months since the School Board imposed this language in June 2011. That short time ago, 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. (Tab 7, p. 3). 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.

Proposed Remedy as to Issue Seven

Retain current contract language as expressed in at Tab 7, p. 0-2.

ISSUE EIGHT

(This issue was withdrawn by the District.)

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ISSUE NINE

Should new language be added to the teacher CBA to allow for team leader supplements to be paid for each grade level at Elementary Schools in regard to ESE and Instructional Support teams?

Statement of Facts as to Issue Nine

MEA advocates for adding new language to the CBA requiring team leaders at the elementary level to be paid a required contractual supplement.

Argument as to Issue Nine

MEA has presented no substantial argument as to why this proposed language is warranted. The whole of MEA's 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. (Respondent's Exhibits, Tab 5, p. 2). No contractual change is warranted.

Proposed Remedy as to Issue Nine

Do not add the new contract language proposed by MEA.

ISSUE TEN

Should new language be added to the teacher CBA regarding E-Tech Virtual Education Program Teachers that, among other things, sets out a fixed window of work hours, limits total minutes of student contact, and requires the District to furnish a computer and internet connection that would otherwise be prerequisites of employment?

Statement of Facts as to Issue Ten

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.

Argument as to Issue Ten

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.

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. For example, MEA’s proposed language calls for E-Tech teachers to have a “duty free lunch period.” However, unit members are already entitled to a duty-free lunch period under current contract language. (Tab 11, p. 16). Similarly, the proposed language would ensure that E-Tech teachers could “not be scheduled to work on paid holidays.” Again, current contract language already addresses holidays, and that term by definition suggests a non-work day. (Tab 11, p. 68). The proposed language that would entitle E-Tech teachers to “3 record days” each school year also already appears in current contract language applicable to all teachers. (Tab 11, p. 68).

In addition to these patent redundancies, 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. (Tab 11, p. 14). 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. The District took the position at bargaining that a 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. Accordingly, the District's position seeks only to protect unit members from potential discipline.

Proposed Remedy as to Issue Ten

The District proposes rejection of MEA's proposed new language.

CONCLUSION

Petitioner respectfully requests that the Special Magistrate enter a Recommended Decision consistent with the arguments and proposed remedies presented herein.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by electronic mail to Special Magistrate Robert B. Hoffman, Esq. at arbitratorhoffman@me.com, and Pat Barber and Bruce Proud, Representatives for Respondent, at pat.barber@floridaea.org and bruce.proud1@floridaea.org, respectively on this 9th day of January, 2012.

/s/

SCOTT A. MARTIN
Representative for Petitioner