STATE OF FLORIDA
PUBLIC EMPLOYEE RELATIONS COMMISSION

SCHOOL DISTRICT OF MANATEE COUNTY,

AND

MANATEE EDUCATION ASSOCIATION 3821

PERC Case #SM 006-2011

Before Special Magistrate Marsha Murphy

Appearances

For the District:	
Scott Martin	Attorney
Darcy Hopko	Assistant Superintendent
Tim McGonegal	Superintendent
Forest Branscomb	Director of Risk Management
Jim Drake	Assistant Superintendent
For the Association:	
Bruce Proud	Attorney
Pat Barber	MEA Representative
Steve Fischer	Florida Education Association

INTRODUCTION

The parties in this case who have come to impasse while collectively bargaining for an Agreement are Manatee County School District (hereinafter "District") which serves 42,000 students in a central west coast Florida County, and the Manatee Education Association 3821 (hereinafter "Association") which is the certified collective bargaining representative for a unit of teachers (2,800) and a unit of paraprofessionals (700). The parties began bargaining for a new Agreement in June of 2010 and the District declared impasse on January 12, 2011. There are fourteen issues that require resolution.

By letter dated February 1, 2011, the Florida Public Employee Relations Commission notified the Special Magistrate of her appointment to this case. A pre-hearing conference was held on March 21, 2011, and a hearing was held in Bradenton, Florida on March 24 and 25. Each party was allowed to present their respective positions regarding the issues at impasse. Each party was allowed to cross-exam the other regarding the issues at impasse. After presenting evidence and making legal argument the parties decided to file briefs. The Special Magistrate received the last brief on April 11, and the hearing was closed.

ISSUE ONE

Should the teachers in the bargaining unit receive a 1% increase in pay or should the salary schedule of 2009-2010 be preserved for the 2010-2011 school year?

The District's Position

Because of the recession, the District has had to cut its operating budget by $46 million in the last three years and projects that another $15 million will have to be cut next year.[1] In spite of these cuts, the District has not reduced force or eliminated extracurricular programs.

The District has a history of improving teacher salaries. In spite of declining and mediocre funding, the District (always in the lower 50% of Districts receiving state funding) has made a purposeful shift to improve teachers' salaries. In 2003 District teachers' salaries ranked 26th out of the 67 counties in Florida. Today it ranks 4th in the State.

The Association's pay increase proposal would cost the District $2.2 million.[2] If that proposal were approved, the District could not provide funding from its general operating budget. It would oblige the District to withdraw money from its Unreserved Fund Balance which is required by State statute to be 3% of the total budget. Such a withdrawal would place the District well below the 3% requirement. If the District did not take money from the Unreserved Fund Balance to give a raise, it would have to cut programs and services—something the District is unwilling to do.

The Association's Position

The Association maintains that the cost of living has increased by 2.5% in the past year. In 2008 salaries were reduced by 1%. The Board has proposed increases in health insurance that will require every employee to pay $1,200 more than they already contribute. The Association's modest 1% salary proposal merely helps teachers avoid another pay cut.

---

[1] If Governor Rick Scott's budget proposal is adopted, the District would have to absorb a $29 million cut in State funding.

[2] The Association maintains that the cost of funding its proposal of a 1% pay increase is $1,592,176.

The Association also argues that the District received $8.9 million in appropriations from the Federal Education Jobs Fund. The funds can only be used for compensation of existing employees; therefore the District's financial condition allows it to give teachers and paraprofessionals a 1% raise.

Special Magistrate's Recommendation

It is no secret that the recession hit the State of Florida hard. With property values declining and foreclosures unusually high, this state with no income tax, has seen a major reduction in revenues to our state and local political subdivisions. The Manatee County School District is no exception. All parties agree that cuts have been severe, but the Association maintains that in spite of these cuts there is money that could be used to fund this modest proposal. After reviewing the evidence I find that if the District gave a 1% salary increase to teachers it would have to fund the increase from its Unreserved Fund Balance or it would have to cut programs and services. The responsibility to pay 1% more to all teachers is a recurring one in that the raise is built into the salary schedule. Violating state law and spending down the Unreserved Fund Balance while the District is looking at $15 million of future cuts in state funding, would be irresponsible.

While the State of Florida has cut $7 billion in funding to education, the people of Florida approved an Amendment to the Florida Constitution that requires that School Districts limit core curriculum class room size to 18, 22 or 25 students depending on the grade level. No longer can school administrators solve their budget problems by increasing class size. This District used the funds it received from the Federal Education Jobs Fund to hire more teachers so that it could comply with the Class Size Amendment.

While it is the opinion of the Special Magistrate that teachers throughout the State of Florida are under-paid, the issue becomes whether or not the School Districts they work for have the tax revenues needed to pay them more. In this recessionary economy the dollars are not there. A teacher in the Manatee County School District deserves to be paid more, but fortunately she does better than the average Florida teacher. The average teacher pay in Florida is $46,696. In Manatee County the average pay for teachers is $49,463—ranking them as 10th in Florida's 67 counties. See District's Ex. 1, tab A. In the 2002-2003 school year an entry-level teacher with a Bachelor's Degree made $28,284 ranking her salary at 26th amongst

Florida's 67 counties. By 2009-2010 an entry level teacher made $38,517, ranking her 4th. See Page 13-14 of the District's presentation notebook. Since 2002 the District has demonstrated its priority to increase teacher salaries.

For all of the reasons stated above I recommend that the 2009-2010 salary schedule be preserved.

ISSUE TWO

Should the CBA's salary schedule, providing for automatic step increases for each year of service, be maintained for teachers and paraprofessionals, or should the parties negotiate whether the step increase is appropriate in any given year? Additionally, should the District be required to give those step increases even if negotiations are ongoing at the beginning of the school year?

The District's Position

The District maintains that automatic "step" increases in the salary schedule should be abandoned. While not advocating the abolition of these step increases, the District maintains that in these hard economic times, the ability to pay the increases should be negotiated annually, and the language of the Collective Bargaining Agreement should so state. The District argues that this approach is consistent with the traditional concept that wages be negotiated not be automatically received.

The District also argues that there should be no presumption of status quo advancement through the salary schedule until negotiations are finalized. The automatic nature of the step increase has caused employees to view their advancement on the salary schedule as an entitlement and not a raise.

The Association's Position

The Association states that the salary schedule is designed to differentiate pay for employees based upon experience and education. For years employees have been hired understanding that with each year of experience they advance a step on the salary schedule. This structure has

been the basis for long term professional and financial planning. Abandoning this would effect employee morale and have an adverse impact on the labor relations climate.

The Association also maintains that if the step increase was not automatic, but only implemented after negotiations, the District would have no incentive to end negotiations before the school year—always knowing that the longer they prolong negotiations the more money they save. Automatic implementation of the salary step encourages focused negotiations.

Special Magistrate's Recommendation

The District has budgeted the step increase for the 2010-2011 school year. Employees are being paid their step increases even though this negotiation process has come to impasse and is awaiting a Special Magistrate Recommendation. The District is seeking a recommendation that, if implemented, would not require them to give automatic step increases for the 2011-2012 school year. Rather, they would negotiate with the Association about the ability to fund those increases and no step increase would be given until the negotiation process ended and any disputes were resolved.

Step increases are almost universally given in the world of education—providing a slight increase for each year of teaching experience earned. I agree with the Association that the salary step structure is the basis for a teacher's professional and financial planning.

> When a step plan is in place for as long as it has in the instant case it becomes part of the culture of the organization upon which employees depend. They can predict with a high degree of certainty how much money they will be making in the course of their careers and make financial plans accordingly. . . .A step plan cannot be abandoned without consequences to the labor relations climate and employee morale, ...See *Gilchrist County School Board and Gilchrist Employees/United,* Florida PERC case SM-2010-019 (Whelan, p.13).

Also see *School Board of Levy County and Levy County Education Association,* Florida PERC case SM-2010-018 (Brady). Abandoning the

salary structure entails not paying teachers more for each year of experience, or not paying them more as they get more advanced degrees. This could discourage teacher improvement. The District did not demonstrate that its potential money savings would be worth the turmoil produced with such a culture change.

I agree with the Association that the step salary structure should be implemented even if negotiations are ongoing. Failure to move employees to the next step while other issues are being negotiated punishes the employee. The employee is not responsible for the negotiation process. Furthermore, this would reduce the District's incentive to come to an agreement before the school year begins. The unintended consequence of negotiating to impasse could actually be financially helpful to the District.

For all of the reasons stated above there should be no change in the automatic step increase each employee receives and the employee should receive that increase at the beginning of each school year, even if negotiations have not been completed.

ISSUE THREE

What should be the composition of the Health Insurance Committee and should the Committee be responsible for negotiating the health insurance plan?

The District's Position

The parties agree that the Health Insurance Committee should be increased to sixteen members with eight of those members appointed by the Superintendent and eight members appointed by the Association. The District maintains that the restructured committee's eight union positions should be filled by at least two members of the certified bargaining units with whom it negotiates.

Significantly, the District argues that the Health Insurance Committee should not just play an advisory role to the Negotiation Teams, but rather it should be responsible for negotiating the full scope of the District's health insurance plan. In other words, the negotiations regarding health insurance would not be included in regular negotiations regarding all other wage and

conditions of employment issues. The District maintains that the hotly contested and complex issues surrounding health insurance should not be commingled with the ordinary cycle of labor negotiations. This would be beneficial because the renewal date and open enrollment periods of the District's health insurance plan do not always coincide with the timetable for negotiations and impasse resolution. The Association would not be waiving its right to bargain on health insurance issues, this would merely shift bargaining on this issue to a dedicated forum.

The Association's Position

The Association maintains that there does not need to be a designation in the CBA about what bargaining unit positions should constitute the Unions' eight members of the Health Insurance Committee. The Association maintains that AFSCME already participates and that the Association and AFSCME can make decisions about who is appointed to the Committee.

The Association states that health benefits are a mandatory subject of bargaining, and the legal appropriateness of a Special Magistrate recommending that this issue be removed from the regular negotiating process is questionable. The Association goes further and argues that health benefits are but one of the many economic issues that are subjects of bargaining and that it is difficult to conclude negotiations in isolation from other economic issues. The Association has no intention of waiving its right to negotiate over this mandatory subject of bargaining.

The Special Magistrate's Recommendation

Health benefits are a mandatory subject of bargaining. Florida Statues provide:

> F.S. 447.309 (1) After an employee organization has been certified pursuant to the provisions of this part, the bargaining agent for the organization and the chief executive office of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.

Health benefits are in the category of "terms and conditions of employment." Delegating issues of employment to separate committees would be very disruptive to the collective bargaining process. The Association is correct when it argues that the wage and benefit package agreed to through collective bargaining often requires a balancing of the economic issues. Isolating one economic issue from the bargaining procedure would do damage to the process. The parties have wisely appointed a Committee to research the complex issue of insurance and that research should be part of the discussion at the negotiations for a CBA.

The Employer's request that the CBA specify that each bargaining unit in the District have representation on the Health Insurance Committee is not unreasonable. The Association maintains that is already being done; consequently, I recommend the practice be codified in the CBA.

For all of the reasons stated above I recommend that the Health Insurance Committee of sixteen members should have eight members appointed by the Superintendent and eight members appointed by the District's Unions. This committee should research and make recommendations to the District and the Association. Negotiation of the health benefit should continue to be a part of the total collective bargaining process.

ISSUE FOUR

What revisions should be made to the self-insured health plan premiums?

Statement of Facts

The District has a self-funded health insurance program. Both parties agree that for the last four fiscal years the fund has been running a deficit. Last year's deficit was $9.4 million. The District has made up the shortfall each year by paying from its general operating fund. Florida statutes require that the District file an annual report with the State showing the actuarial soundness of self-insurance plans. The District has failed to comply with this requirement and has been cited by the state's Auditor General. Both parties agree that the fund deficits must be erased. They disagree on how this should be done.

The District's Position

The District hired consultants Mercer Health Benefits, LLC and the study made three key points:

- Employee-share premiums paid by the District's employees were significantly lower that those paid by other employees of other local political subdivisions.
- The amount of premiums paid for any particular plan did not adequately match the amount of claims made.
- The "employee premium to benefit ratio" of the current plans is not properly aligned.

Because of these findings Mercer proposed a revamped premium payment schedule that would get the self-insured plan out of deficit spending within three years. See District's Binder, Tab 4, p. 178. Under the Mercer plan the deficit reduction will occur by raising employee premium contributions and adjusting funding rates for the three current plan options (PPO Choice, PPO Options, and HMO). The District maintains that the funding rates it recommends more accurately reflect the differences in the value of the plans.

The District regrets that employees will have to make larger premium contributions to the fund; however, the District's employees have benefited from comparatively lower employee-share premiums for years and now some of the losses to the self-insured fund must be recouped.

The Association's Position

The Association agrees that employees must pay a larger share of premium costs. However, it disagrees with the Mercer consultant and thinks there should just be an across the board premium payment increase of 19%. The Association maintains that the Mercer analysis is faulty because there is no reason to increase the premiums of the HMO to a level higher than the Options PPO. The claims data does not support this change.

The Association also maintains that the premium structure should not be changed in isolation from consideration of plan design adjustments. The Health Insurance Committee that the parties have agreed to will be studying this issue for the next plan year and the committee will be in a better position

to make quality recommendations about any adjustments that need to be made for 2012.

The Special Magistrate's Recommendation

Everyone agrees that increased premium payments must be made to take the self-insured health fund out of deficit spending. I found the District's argument about how to do this more compelling than the Association's. The District's evidence was based upon a consultant's report and management's own experience with operation of the fund. The District's evidence proved that even when using its increased premium payments, District employees' take-home pay compared favorably with surrounding School Districts.

Also, significantly, the parties have agreed to have a Health Insurance Committee that will study these difficult issues and make a recommendation to the Association and the District. If any of the problems the Association predicts actually occurs, the Committee can make recommendations to remedy those problems.

The Association should withdraw its proposal and the District's proposal regarding revisions to the self-insured health plan should be adopted.

ISSUES FIVE & SIX

How should the terminal pay provisions within Article XIII of the collective bargaining agreement be modified?

The District's Position

Presently the CBA requires a payout of 100% of accrued sick leave when an employee retires after 25 years of service. The District is proposing a change that will only affect sick leave after July 1, 2011. That change would provide that when sick leave is paid out as a terminal benefit at retirement it be paid at a graduated rate depending on the employee's term of service, up to a maximum of 50% of the employee's accumulated sick leave. These changes have already been implemented with the District's non-union employees. Making this change will reduce the District's liability. In 2009-2010 terminal sick leave liability cost the District $14.8 million.

The Association's Position

The Association proposes that the Terminal Pay provision be modified by calling the provision "Meritorious Attendance Incentive Pay." The Association opposes the District's proposal because terminal pay eases the financial burden on an employee within the first year of retirement. The average terminal pay for a teacher is $11,167 and for a paraprofessional it is $3,458. No other districts in Florida are negotiating over this issue.

The Special Magistrate's Recommendation

The parties have had a long standing and bargained for agreement that accrued sick leave be paid upon retirement. The parties have come to impasse over whether the present practice of paying 100% of accrued sick leave after 25 years of service should be changed so that the District only pays a maximum of 50% of accrued sick leave at retirement.[3]

The Association's evidence about comparable School Districts was most persuasive. The Association's comparables showed that the counties of Clay, Escambia, Lake, Marion, Osceola, and St. Lucie pay 100% of accrued sick leave after 13 years of service. Pinellas County pays 100% of accrued sick leave after 30 years of service and 90 % after 25 years service. Even the District's own evidence demonstrated that surrounding counties had more generous terminal pay plans that the one proposed by the District.[4]

The Association's counterproposal that employees should be entitled to an annual payout of accrued sick leave is also rejected. The District convincingly argues that if this counterproposal were recommended the result would be an immediate liability to the District.

For the reasons stated above the Special Magistrate recommends that the parties retain the present language of Article XIII of the CBA.

---

[3] The District's proposal reduces the amount of terminal pay for all other employees on a graduated scale depending on years of service.

[4] The District's evidence showed that Monroe, Sarasota, Baker, Lee, Volusha, Okeechobee, and Gulf Schools paid 100% by the time an employee had 25 years of service (most of these counties paid 100% after the 13th year of service.) After 13 years of service Duval County paid terminal pay to employees at 94%.

ISSUE SEVEN

Should full-time teachers in regular high schools be assigned to no more tha six (rather than five) teaching periods for a regular seven period day?

The District's Position

Currently high school teachers work on a block schedule. There are no high schools operating on a 7 period day. The District maintains that it would like the "option" to transition to a seven period day. Language in the CBA to provide for the possibility of a 7 period day does not require that a 7 period day actually be implemented.

The Association's Position

The Association maintains that there are no plans to start operating high schools with 7 periods. Therefore, this issue is not ripe for consideration. Any decision to convert the present block scheduling in high schools requires that the District meet with teachers, parents and students before implementing such a major change.

The Special Magistrate's Position

There is simply no reason why the collective bargaining agreement needs to address this issue at this time. When the District decides that the high schools should operate on a 7 period schedule it can discuss and plan for such a transition with the Association and parents.

The District should withdraw this proposal.

ISSUE TEN

Should the Agreements be amended to provide that teachers and paraprofessionals are notified on or before June 1 (rather than May 1) whether they will or will not be reappointed for the following year?

The District's Position

The District states that the budget is not received from the state legislature until late April. The current time constraints do not give the District enough time to make reappointment decisions because personnel allocations can only be determined upon receipt of the budget.

The Association's Position

The Association proposes changing notification of reappointment to paraprofessionals from April 15 to May 15, but does not want the teacher reappointment notification to change from the status quo of May 1.

Special Magistrate's Recommendation

The District argues that it needs more time to make reappointment decisions because the budget from the state legislature is not received until late April. This is a reasonable argument. Both the paraprofessional CBA and the teacher's CBA should be modified to state that notification of reappointment must be given by May 15.

ISSUE ELEVEN

Should the paraprofessionals' agreement be amended to provide a probationary period of 3 years that could be extended to a 4th year before obtaining permanent status?

The District's Position

The District maintains that paraprofessionals and teachers should have the same probationary period. Paraprofessionals should not receive a benefit that is not afforded to teachers.

The Association's Position

The Association argues that requirements for teacher reappointment are driven by state laws and regulations. This is not the case with paraprofessionals. The additional time required to evaluate a teacher is

reasonable given her role. The requirements that a paraprofessional must meet are far less than a teacher's and it can be more quickly determined that her probationary status can end.

The Special Magistrate's Recommendation

The Special Magistrate sees no logic to the District's argument that it is not fair to teachers if paraprofessionals have a shorter probationary period. The more important comparable is "what is the probationary period for paraprofessionals in other school districts?" The Association's evidence established that paraprofessionals in comparable districts did not have more than a three year probationary period. In fact many had a probationary period of only six months. See MEA Binder, Tab 12.

The District should withdraw this proposal.

ISSUES TWELVE AND THIRTEEN

Shall Paraprofessionals have the right to a contractual just cause for discipline, including reprimands?

The District's Position

Currently, paraprofessionals are entitled to a "for cause" grievance hearing when they are suspended or terminated. The District opposes changing the grievance procedure to include the right to have a "for cause" hearing on written reprimands. Doing so would have the unintended consequence of dramatically increasing costs, because even minor forms of discipline would require an investigation and a hearing.

The Association's Position

The Association maintains that an employee should have the right to grieve a written reprimand that is retained in her personnel file and could be used by the District when it issues more severe disciplinary action. Currently some written reprimands are issued and the employee is not given any opportunity to converse with her supervisor or have Union representation.

The Special Magistrate's Recommendation

Good labor relations require communication. When an employee is disciplined, even for a minor infraction, that employee should be able to discuss the situation with her supervisor with a Union representative present. The parties should establish a procedure so that this becomes possible. I am not recommending that every minor grievance should be allowed to go to arbitration. Ultimately, if a minor reprimand is used in the progressive discipline procedure to be one of the things upholding a suspension or termination, there is already a right to have an arbitrator decide if the minor discipline was "for cause" at the time of the suspension.

The parties should have an understanding that when a written reprimand is issued the employee has a right to meet with her supervisor and her Union representative and discuss the situation.

ISSUES FIFTEEN, SIXTEEN AND SEVENTEEN

The Association proposes the following language for protection of teachers' rights.

> **Section 1. Nothing contained herein shall be construed to deny or restrict any teacher any rights he/she may have under the Constitution and Laws of the United States and of the State of Florida.**
>
> **Section 2. Each teacher's citizenship right to exercise or support his/her political preference on his/her own time and away from school premises shall not be impeded providing such activities do not violate any local, state, or federal ordinance or law.**
>
> **Section 3. Teachers shall not be required to advocate for or against any political issue, or be responsible to communicate through any district communications concerning an issue, referendum or amendment, including any state question that is subject to a vote of the electors.**

The District's Position

The District maintains that subjecting Constitutional or statutory claims to the grievance procedure has many problems. First, a contractual grievance procedure is not the appropriate forum for resolving these issues. Arbitrator's resolve laws of the shop not laws of the land. Second, employees already have the rights that the Association says it wants to protect. Employees can have their constitutional rights enforced in court without resorting to the grievance process. Many of these rights, such as protecting employees' rights to political activity outside of work, are already protected by District policy. Third, the District runs the risk of increased cost of having to address minor issues through the grievance process.

The Association's Position

The Association contends that the protections these contractural provisions provide for employees is that they can have their violations of rights addressed on the lowest level of the grievance procedure, which is a less expensive and time consuming process than a state or federal lawsuit. The Union maintains that other School Districts incorporate these rights in the CBA.

The Special Magistrate's Recommendation

Many collective bargaining agreements in both the private and public sector are incorporating the requirement to abide by Federal Statutes and State and Federal Constitutions. This brings these statutory claims within the four corners of the agreement and provides that they can be addressed through the grievance procedure by an arbitrator. See *How Arbitration Works*, 6th edition, (Elkouri & Elkouri, p. 38). Also see Association Exhibit, Tab 2, which shows that in Clay, Lake, Marion, Osceola, and Sarasota Counties the CBAs have incorporated the right to grieve statutory and constitutional claims. In my extensive experience as a labor and employment arbitrator I find that employers usually propose alternative dispute resolution on statutory claims so that they can avoid the cost of going to federal or state court. The Supreme Court in *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20, 55 FEP cases 1116 (1991) ruled that statutory claims can be submitted to mandatory arbitration. Regarding this issue, the Association makes the more persuasive case.

The Association's proposal should be accepted.

CONCLUSION

The Special Magistrate maintains jurisdiction to help the parties understand or implement any of the recommendations made in this decision.

Special Magistrate date