

SPECIAL MAGISTRATE PROCEEDINGS

BEFORE

ROBERT B. MOBERLY, SPECIAL MAGISTRATE

IN THE MATTER BETWEEN

POLK COUNTY SCHOOL DISTRICT
Public Employer

And

SPECIAL MAGISTRATE
CASE NO. SM-2017-02

POLK COUNTY EDUCATION ASSOCIATION
Labor Organization

REPRESENTATIVES

For the Public Employer: Michael Mattimore, Esq., & Jason E. Vail, Esq., Allen, Norton & Blue

For the Labor Organization: Richard P. Siwica, Esq., Egan, Lev & Siwica, P.A.

Pursuant to the procedures of the Florida Public Employees Relations Commission, the undersigned was designated as Special Magistrate in the above dispute. An impasse hearing was conducted in Bartow, Florida, on May 11, 2017, at which time the parties were given full opportunity to present evidence and arguments. Both parties submitted post-hearing briefs.

I. STATEMENT OF THE CASE

The Polk County School District (“Employer” or “District” or “Board”) employs about 13,000 employees serving over 100,000 students at 160 sites. By student population it is the eighth largest school district in Florida and twenty-eighth largest school district in the United States. The District is governed by a seven-member elected board.

The Polk Education Association (“PEA” or “Union”) represents three bargaining units including 1) teachers (about 6,700 employees) 2) paraeducators (about 1,700 employees), and 3) educational support personnel (about 550 employees). Each of the PEA bargaining unit's most recent collective bargaining agreements had a duration term from July 1, 2015 through June 30, 2016.

Since collective bargaining negotiations for school year 2016-2017 began on May 25, 2016, the Parties reached agreement on several tentative agreements and memoranda of understanding (MOUs) on certain issues. On January 6, 2017, the District declared impasse pursuant to Section 447.403, Florida Statutes, with the Public Employees Relations Commission (“PERC”) for all three bargaining units.

II. STATUTORY CRITERIA

Chapter 447, Florida Statutes, sets forth the following factors to be considered by special magistrates:

“447.405 Factors to be considered by the special magistrate.—The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

- (a) Hazards of employment.
- (b) Physical qualifications.
- (c) Educational qualifications.
- (d) Intellectual qualifications.
- (e) Job training and skills.
- (f) Retirement plans.
- (g) Sick leave.
- (h) Job security.

(5) Availability of funds.”

III. ISSUES

- A. 2016 – 2017 salaries (all units).
- B. Advance Degrees (teacher unit).
- C. Health insurance (all units).
- D. Teacher evaluation (teacher unit).
- E. Transfers (teacher unit).

A. SALARIES

1. District and PEA Proposals. The District proposes a Districtwide pay freeze. The PEA’s salary proposal was originally a \$750 increase to existing levels (steps) and step movement (3.4%). At the Special Magistrate hearing, the PEA reduced its proposal to \$600 and step movement (2.87%) calculated at approximately \$8.9 million.

2. District Arguments. The District argues that a pay freeze is necessary to maintain a fund balance above 5%, and that the District has a long history of providing competitive wage increases when funding is available, including 8 out of the last 10 years. The District further argues that salaries are highly competitive compared with other districts; that despite being one

of the lowest funded districts in Florida, in 2016 the District offered the 2nd highest starting teacher salary, the 25th highest average teacher salary, and 27th highest salary for paraeducators in the state; and that the comparative salary data factor weighs heavily in favor of its position.

With respect to the “availability of funds” factor in Section 447.405(5), the District contends that there are insufficient funds for wage increases in 2016 – 2017; and that Polk is the 4th lowest-funded district in the state, caused in part by the State funding model, depressed property values, and decreased property tax collections.

The District also states that its general fund (operating fund) is funded by the legislature; that most of state funding is distributed through the Florida Educational Financing Program (FEFP), known as “dollars per student;” that under this formula, the gap between average state funding and Polk’s funding per student has widened significantly since 2006; that under the FEFP, the District must meet the “required local effort” based on taxes levied and property tax valuation; that FEFP funding is calculated by multiplying the weight full time equivalent (WFTE) of total students by the State Base Student Allocation (BSA) and the District Cost Differential (DCD); that the WFTE and the BSA are determined by the state and are uniform for all 67 districts; that the DCD is calculated annually using each district’s price level index as published in the Florida price level; that Polk’s DCD has decreased for several years, meaning that Polk is not funded equally and its .9754 DCD is lower than the comparative districts of Hillsborough, Orange, Osceola, and Pinellas counties; that the difference between Polk this year from the state average is \$11 million; and that the funding per unweighted FTE (UFTE) at Polk in 2016-2017 was \$6911.12 per student, the 64th lowest funded district in Florida.

The District further contends that the general fund’s balance cannot support wage increases. It states that under Board policy, it “shall strive to maintain a fund balance, consisting

of assigned and unassigned balances, ... in the operating funds of not less than five percent (5%) of the annual resources;” that fund balances are monitored by the Florida Department of Education; that the District is required to maintain a minimum of 3% unrestricted fund balance or the District must notify the DOE of non-compliance and submit to management intervention to attain the 3% minimum; that as stated in the Board's approved budget “the District will not allow the fund balance to decline to levels requiring state intervention;” and that “The PEA's position to ignore the State's minimum of 3% would mean financial disaster for the District;” and that the 5% policy is already close to the State's minimum, and below auditing principles in government accounting, as well as the State average for regular districts of 8.69%.

Further, the District argues that the it will have a fund balance of 5.11% in 2016-2017 without pay raises; that this is 1.6% lower than the 2015–2016 fund balance; and that even without wage increases, the District projects next year’s fund balance to be below 5%.

The District also states that fund balance discussions must focus on the general fund, where salaries are funded; that other fund balances are irrelevant because they cannot be used for wages; and that all calculations by the District were based on the general fund where salaries may be funded.

The District also contends that typographical errors in the budget book we’re not accounting errors and had no impact on budgeted monies for salaries; that unlike in previous years, the “lapse” was budgeted this fiscal year in the fund balance; and that there is no windfall money to fund PEA’s wage increase.

With respect to future trends in Polk’s financial outlook, the District argues that any recurring wage increase further reduces projected fund balances in 2017-2018; that although the

final 2017-2018 State budget increases student funding for 2017-2018, it does not provide additional revenue for recurring wage increases for 2016-2017; that the impact of pay raises in 2016-2017 to the 2017-2018 fund balance still reduces the balance below Board Policy and the 3% State policy unless the Board makes budget cuts.

The District further contends that the “interest and welfare of the public” factor weighs more heavily for the District's position; that the additional cost for PEA's proposed salary increase would require the layoff of roughly 200 teachers to maintain current goals; that layoffs are not in the best interests and welfare of the public; and that a salary recommendation must consider the impact on the other 4,000 employees now part of the wage freeze.

3. PEA Arguments. The Union proposes a \$600 increase to existing levels (steps) and a step movement. It contends that the District has ample funds for this proposal; that the “local operating area” (LOA) factor in the statute includes the school districts in Orange, Hillsboro, Osceola, and Lake counties; that the seven contracts in the LOA all provided an increase in base pay; that in six of the seven contracts that have step plans, five of the six had step movement; that the local operating area factor thus supports the PEA’s wage proposal; and that the employer presented no Section 447.405 comparables.

The Union further argues that the District has waived a Section 447.405(5) (“Availability of funds”) defense; that even if considered, the availability of funds factor favors the PEA; and that the District can easily afford the PEA proposal. The Union states that its \$600 proposed increase was a revision of its \$750 proposal at impasse, done to bring its position into compliance with the District’s September 6, 2016 budget; that said budget shows that the base salary for 2016–2017 is \$600 higher than 2015–2016; and so the Union’s proposed \$600 increase is based on the numbers used by the Board to build the actual budget for the year at issue in this

proceeding. The Union also contends that the Board can fund its wage proposal in other ways; that the Expenditures of Instructional Services in the General Fund on page 60 are primarily spent on employees in the Polk Education Association bargaining unit; that, however, the line item for this expenditure shows an incorrect difference in the *Increase (Decrease)* column; that Budget Director Jason Pitts confirmed there was an error in the formula for this line item only, and the corrected amount should be \$22,817,270 not the \$9,999,801 showing on the page; that the error was discussed in an email exchange with Angela Dawson, PEA Service Unit Director, on November 11, 2016; that Pitts verified this information from the email during the hearing on May 11, 2017; and that this \$22,817,270 is more than sufficient to fund the Union's \$8.9 million dollar proposal.

The Union also claims that there are other sources of funding; that the 2016-2017 budget information for instructional services compared to the actual amount spent in 2015–2016 shows that amounts labeled for salaries and benefits total \$8.41 million available to fund the Union's salary proposal; that the District habitually overestimates purchased services, including charter school enrollment; that last year, the District predicted more students than they budgeted for, creating another pool of excess in the amount of \$311,000; and that the District has a habit of budgeting more moneys than needed for everything except wages.

The Union also states that last year, approximately \$3.2 million in salaries "lapsed," and the District also had approximately 125 positions which were never filled, so the District saved or "lapsed" \$7,568,606.25 in salaries and benefits. The Union states that its proposal is only recapturing the dollars that will be lost to lapse, rather than having the District simply return the funds to the fund balance. It also states that the lapse will cover at least an experience/performance step as well as an additional 1% in salary.

In response to District arguments, the Union states that the 5% fund balance policy is only a goal, not law, and is in excess of the 3% and 2% referenced in state requirements; that the District routinely returns 1-2% points of funding to the fund balance at the close of the fiscal year; and that the Governor recently increased the FEFP amount for Polk County by \$9.7 million;

The Union also contends that the District's use of the State's "District Cost Differential" (DCD) excerpts was misleading; that a more accurate and complete explanation of the factors that make up the General Fund appears on pages 56 and 57 of the District Budget; and that the District's DCD excerpts show only one factor of the funding formula. The Union agrees that the DCD for Polk County has been declining, but points to another mechanism that causes Polk to make those dollars back two-fold, the Discretionary Compression/Equalization. The Union states that because the total property value in Polk would not be able to raise the Required Local Effort (RLE) to the millage rate set by the state, additional dollars are provided to the District; that in the 2016-2017 budget, \$23,370,673 in additional funding was allocated to Polk County to raise revenues to the appropriate level; and that reliance on the DCD is both incomplete and misleading.

The Union compared the DCD and Compression factors for the surrounding counties of Lake, Osceola and Polk. It states that they all lost funding through the DCD, yet regained all they lost plus more through compression and equalization; that they all have a DCD less than 1.000 and lose money, but it is more than recouped by the compression due to the total cost of property values in these counties; and that Lake and Osceola counties had a similar financial forecast as Polk, yet they settled their contracts with salary increases for the 2016-2017 school year.

In summary, the Union argues that steps are a promise that employees will move through them over time; that the PEA asks that steps be increased by \$600; that the District declared impasse, but failed to meet its burden of persuasion; that the District ignored the mandatory statutory factors; and that If the District wants to retain employees and hire more, a “wage freeze” is the wrong way to do it.

4. Special Magistrate Considerations on Salaries. As stated above, Section 447.405, Florida Statutes, sets forth five factors to be considered by special magistrates. Factor (1) is the comparison of annual income for the same or similar work of employees, in this case teachers, paraeducators, and educator support personnel, “exhibiting like or similar skills under the same or similar working conditions,” in the “local operating area,” which includes school districts in Polk County’s LOA. Factor (2) is the comparison of annual income of such employees in similar school districts of comparable size in Florida. Factor (3) is the interest and welfare of the public. Factor (4) is the comparison of peculiarities of employment in regard to other trades or professions, including eight specific items. Factor (5) is the availability of funds. The Special Magistrate has carefully reviewed the evidence and arguments with regard to the application of the above factors to salaries.

Factors 1 and 2: Comparisons/Comparators.

With regard to comparisons under Factor 1, the District did not attempt to designate school districts in the local operating area (LOA), or to compare their salaries with Polk. The Union argues that the LOA includes the school districts in Orange, Hillsborough, Osceola, and Lake counties; that the seven contracts in the LOA all provided an increase in base pay; and that in six of the seven contracts that have step plans, five of the six had step movement.

The District did not dispute that the above four counties are in Polk’s local operating area, or that their contracts are as described by the Union. Accordingly, the Special Magistrate accepts those counties as in Polk’s LOA; that all seven contracts in the LOA provided an

increase in base pay; and that in six of the seven contracts that have step plans, five of the six had step movement. Accordingly, it seems that if the LOA factor alone were applied, an increase in base pay as well as step movement would be warranted.

There is no evidence in the record as to the size or extent of such increases in the LOA districts. However, based on news releases, it appears that the Orange County increase was an average 2.2% increase,¹ and the Osceola increase was an average 2.5% raise.² The percentage increase in Lake and Hillsborough counties could not be determined from news or other public reports, although certainly the parties could obtain such information from their respective sources.

The Union also submitted, from the Florida Department of Education, the state “Average Teacher Salaries By District,” 2015-16, as of 4/18/2016. The averages for Polk and others in its LOA, as well as the Florida average, from high to low, were as follows:

- \$50,402, Hillsborough
- \$48,179, Florida average
- \$47,067, Orange
- \$46,689, Polk
- \$46,103, Osceola
- \$44,053, Lake

The Union also submitted, from the same source, “Teachers Average Years of Experience,” by District, 2015-16, as of 4/18/2016. The averages for Polk and others in its LOA, as well as the Florida average, again from high to low, were as follows:

- 12.5, Polk
- 11.45, Florida average
- 9.66, Osceola

¹ <http://theapopkavoice.com/district-teachers-reach-agreement/>

² <http://www.aroundosceola.com/osceola-school-board-union-agree-on-salary-and-benefits-package/>

- 9.4, Lake
- 9.17, Hillsborough
- 8.57, Orange

With regard to statewide Florida comparisons under Factor 2, The District argues that despite being one of the lowest funded districts in Florida, in 2016 the District offered the 2nd highest starting teacher salary, the 25th highest average teacher salary (\$46,388), and 27th highest salary for paraeducators in the state. The Union did not present evidence on this factor, stating that using comparable Florida counties in terms of population would bring South Florida into the universe of comparables; that neither the PEA nor the District presented similar size jurisdictions, by this or any other criteria; and that therefore the only comparables in the record are the local operating area presented by the Union.

Factor 3: The Interest and Welfare of the Public

The District contends that the “interest and welfare of the public” factor weighs more heavily for the District's position; that the additional cost for PEA's proposed salary increase would require the layoff of roughly 200 teachers to maintain current goals; that layoffs are not in the best interests and welfare of the public; and that a salary recommendation must consider the impact on the other 4,000 employees now part of the wage freeze.

The Union argues that it is in the interest and welfare of the public for the District to retain experienced, competent teachers and support personnel, to lead as a progressive, local employer, and to inject money into the local economy. It points to a decline in the teacher retention rate when compared with the Board’s benchmark districts, and argues that a wage freeze is not consistent with Board teacher retention goals, or providing paraeducators with salaries above “survival budgets” as analyzed by the United Way.

Factor 4: Comparative Peculiarities of Employment

Of the eight peculiarities listed, the Union focuses on (c) educational qualifications, (d) intellectual qualifications, and (e) job training and skills. It argues that few, if any, other areas of employment require the educational qualifications, intellectual qualifications, and job training and skills of education professionals; that in addition, many, if not all, unit support personnel have qualifications and skills in these areas that distinguish them from other employees; and that this factor has been ignored by the Board in crafting its proposals. The District did not discuss this factor.

Factor 5: Availability of Funds

Both parties discussed this factor in considerable detail. Their arguments are stated above, but a summary of arguments will be attempted here.

The District argues that Polk is the 4th lowest-funded district in the state, caused in part by the State funding model, depressed property values, and decreased property tax collections; that under the Florida Educational Financing Program (FEFP), the gap between average state funding and Polk's funding per student has widened significantly since 2006; that Polk's District Cost Differential (DCD) has decreased for several years, and its .9754 DCD is lower than the comparative districts of Hillsborough, Orange, Osceola, and Pinellas counties; that the difference between Polk this year from the state average is \$11 million; and that the funding per unweighted FTE (UFTE) at Polk in 2016-2017 was \$6911.12 per student, the 64th lowest funded district in Florida.

The District further contends that the general fund's balance cannot support wage increases; that the Board policy strives to maintain a fund balance of not less than 5%; that Board policy "will not allow the fund balance to decline to levels requiring state

intervention [3%];" and that even without wage increases, the District projects next year's fund balance to be below 5%.

The District also contends that typographical errors in the budget book were not accounting errors and had no impact on budgeted monies for salaries; that unlike in previous years, the "lapse" was budgeted this fiscal year in the fund balance; and that there is no windfall money to fund PEA's wage increase.

With respect to future trends in Polk's financial outlook, the District argues that any recurring wage increase further reduces projected fund balances in 2017-2018; and that the impact of pay raises in 2016-2017 to the 2017-2018 fund balance reduces the balance below Board Policy and the 3% State policy unless the Board makes budget cuts.

The Union states that its \$600 proposed increase was done to bring its position into compliance with the district's September 6, 2016 budget, which shows that the base salary for 2016–2017 is \$600 higher than 2015–2016; The Union also states that the line item for Expenditures of Instructional Services shows an incorrect difference in the *Increase (Decrease)* column; that the corrected amount should be \$22,817,270 not \$9,999,801; and that this \$22,817,270 is more than sufficient to fund the Union's \$8.9 million dollar proposal.

The Union claims that the 2016-2017 budget information for instructional services compared to the amount spent in 2015–2016 shows that amounts labeled for salaries and benefits total \$8.41 million available to fund the Union's salary proposal; that the District habitually overestimates purchased services, including charter school enrollment; that last year, the District predicted more students than they budgeted for, creating another pool of \$311,000; and that the District has a habit of budgeting more moneys than needed for everything except wages.

The Union also states that last year, approximately \$3.2 million in salaries “lapsed,” and the District also had approximately 125 positions which were never filled, so the District saved or “lapsed” \$7,568,606.25 in salaries and benefits; that the 5% fund balance policy is only a goal, not law, and is in excess of the 3% and 2% referenced in state requirements; that the District routinely returns 1-2% points of funding to the fund balance at the close of the fiscal year; and that the Governor recently increased the FEFP amount for Polk County by \$9.7 million.

The Union agrees that the DCD for Polk County has been declining, but points to Discretionary Compression/Equalization that causes Polk to make those dollars back two-fold; that because the total property value in Polk would not be able to raise the Required Local Effort (RLE) to the millage rate set by the state, in the 2016-2017 budget, \$23,370,673 in additional funding was allocated to Polk County to raise revenues to the appropriate level.

The Union states that Lake, Osceola and Polk all lost funding through the DCD, yet regained all they lost plus more through compression and equalization; that they have a DCD less than 1.000 and lose money, but it is more than recouped by the compression due to the total cost of property values; and that Lake and Osceola counties had a similar financial forecast as Polk, yet they settled their contracts with salary increases for the 2016-2017 school year.

Special Magistrate Salary Discussion and Recommendations

The Special Magistrate is obligated to consider the totality of the evidence on all five statutory factors in arriving at recommendations. As described above, the seven contracts in Polk’s local operating area (Factor 1) all provided an increase in base pay, and in six of the seven contracts that had step plans, five of the six had step movement. Further, in districts where the amount of increase could be determined, the raises were more than 2%, although not as high as the 2.87% increase requested by the Union.

Neither party compared Polk employees' annual incomes with those of similar school districts of comparable size in Florida (Factor 2). Nonetheless, it is pertinent that in 2016 the District had Florida's 2nd highest starting teacher salary, the 25th highest average teacher salary (\$46,388), and the 27th highest salary for paraeducators in the state, although this in itself would not preclude a finding that a raise is warranted for 2016-2017.

With respect to Factor 3, the Special Magistrate finds that the parties are equally concerned about the interest and welfare of the public, although for different reasons as set forth above.

With regard to Factor 4, both parties seem fully aware of, and have considered, the comparative peculiarities of employment in public schools.

This brings us to Factor 5, availability of funds. The Special Magistrate has carefully considered the arguments of the parties, and concludes that the District has funds for a salary increase for the 2016-2017 year. It is noteworthy that the published budget included a salary increase. Further, there was an error in the formula for Expenditures of Instructional Services, which, when corrected, showed an available amount of about \$22 million, rather than about \$10 million.

The Union argues that "lapse" salaries are available, but the Employer states that unlike previous years, the "lapse" was budgeted this fiscal year in the fund balance. However, it appears not unusual that budget information for one year (in this case, 2016-17) includes monies not spent in various categories for the previous year (in this case, 2015-16), such as salaries and benefits, positions not filled, purchased services, charter school enrollment, etc.

It is true, as the Employer states, that the District Cost Differential (DCD) has decreased in recent years. However, it is also true, as the Union states, that Polk receives substantial sums

from discretionary compression/equalization that more than makes up for this loss. Further, it appears that comparable districts like Lake and Osceola had similar forecasts as Polk, but nonetheless were able to provide salary increases for 2016-2017.

Given the recommendation for a salary increase, the question is what should be the recommended amount. The record does not show that any district has implemented a wage freeze. Nor does it show that any District has granted the 2.87% proposed by the Union, or more.

However, the known salary increases granted by LOA districts exceeded 2%. The District has demonstrated that it has certain financial constraints, such as relatively low state funding compared to other Florida districts. But in the opinion of the Special Magistrate, these are not sufficient to impose a wage freeze. Rather, upon a full consideration of the entire record, the Special Magistrate recommends a salary increase of 2%, the distribution of which should be negotiated by the parties. This is lower than any increases granted to other school districts in the record, and also lower than the 2.4% national compensation increase for the year ending in June 2017.³ However, in the opinion of the Special Magistrate, it is a fair increase for employees, without unduly burdening the District.

B. ADVANCED DEGREES

1. Background. In 2011, The Florida legislature enacted Section 1012.22, Florida Statutes, as part of the Student Success Act. The law provides as follows:

“Public school personnel; powers and duties of the district school board.-

...

(c) Compensation and salary schedules.-

³ <https://www.bls.gov/>

3. advanced degrees.-A district school board may not use advanced degrees in setting a salary schedule for instructional personnel or school administrators hired on or after July 1, 2011, unless the advanced degree is held in the individual's area of certification and is only a salary supplement.”

Subsequently, the parties negotiated a 2012 collective bargaining agreement (CBA) which stated that “additional pay for advanced degrees will be paid as a supplement” for teachers hired on or after July 1, 2011. During the collective bargaining process, the Board withdrew proposed language requiring that advanced degree supplements for newly hired teachers “shall only be paid to those employees whose advanced degree is held in the employee’s area certification.” However, the Board later adopted a policy containing the “area of certification” language. The Union filed a class action grievance and the matter proceeded to arbitration before Arbitrator Martin A. Soll, on the issue of “Denial of Advanced Degree Pay.” In 2013, Arbitrator Soll held that the Board’s policy violated the CBA, stating that the CBA language “unequivocally commands that ‘Additional pay for advance degrees **will** be paid as a supplement’ by Board for teachers hired on or after July 1, 2011 [emphasis in original].” He also stated additional reasons for his award, which are further discussed below. The award was confirmed by a Florida Circuit Judge, whose decision then was affirmed by the Florida Second District Court of Appeal.

2. District Position. The District proposes the following contract language:

"In order to qualify for an advanced educational degree supplement, the degree major must appear on the employee’s Florida Teaching Certificate and be held in an area of certification listed on their Florida Teaching Certificate."

The District states that its purpose is to comply with the law; that the Arbitrator held that the statutory language was not in the CBA and therefore could not be implemented; that to address that rationale, the District proposal reflects what the law clearly requires; and that the

District should not be forced to violate law and await intervention from the Department of Education or legislature to comply with the law.

3. PEA Position. The Union proposes to maintain the status quo. It argues that the District is trying to obtain something that it failed on three occasions to achieve in litigation; that an arbitrator and four judges unanimously agreed that the law permitted districts to pay an advanced degree supplement to teachers hired on or after July 1, 2011, whose advanced degree does not match and/or is not held in the teacher's area of certification; that the District claim that the language is unlawful is without merit; and that the current language/practice should continue.

4. Special Magistrate Discussion and Recommendation on Advanced Degrees. The Special Magistrate has carefully reviewed the evidence and arguments of the parties, as well as Arbitrator Soll's Award and the court decisions upholding the award. Although Arbitrator Soll partially relied on the bargaining history of the parties, he also stated additional reasons for his Award, including:

- No opinion from a court or Florida's Attorney General has defined a teacher's "area of certification," or held that it is unlawful to pay an advanced degree supplement to a newly hired teacher whose advanced degree does not match with the teacher's area of certification;
- Florida's Department of Education has not defined a teacher's "area of certification" as stated in Section (c)(3), nor has it ruled that it is unlawful to pay an advanced degree supplement to a newly hired teacher whose advanced degree does not match with the teacher's area of certification;
- The Student Success Act does not define a teacher's "area of certification" as stated in its Section (c)(3).

There is nothing in the instant record to indicate that any opinion by the Florida Department of Education, the Florida Attorney General, or a court, states that the current CBA language on this issue is unlawful. In fact, Arbitrator Soll's Award cites a statement from DOE's Chief, Bureau of Educator Certification, that "Final decisions on setting a salary schedule, including the advanced degree supplement, ultimately rest with the district school board."

The Special Magistrate notes that the District does not rely on financial reasons for its proposal, but rather relies on the legalities of the current language. However, considering the above discussion, it does not appear with any degree of certainty that the current language regarding advanced degrees is unlawful. Accordingly, there seems to be no reason to modify the existing language.

C. INSURANCE

1. Positions of the Parties. The District proposes language for each of the PEA units that provide status quo on benefits and premiums, provides a date certain for future insurance negotiations, disbands a defunct Superintendent's insurance committee, and removes each Health Plan Summary Appendix from the collective bargaining agreements. The PEA proposes continuation of present contract language.

2. Benefits and Premiums. Neither party proposes changes with respect to benefits and premiums, a position which accordingly is recommended by the Special Magistrate.

3. Date Certain to Commence Negotiations. The District proposes that the parties begin negotiations on health insurance in January, no later than five work days following the return from Winter Break. The current contract states that "changes shall be negotiated in a timely manner. The parties may propose any changes to employee benefits or costs for the January to December plan year by April of the preceding year, and conclude negotiations by

June 1 of the preceding year.” The District states that since open enrollment begins in October for the January 1- December 31 plan year, all changes, if any must be settled prior to September 1 to realize the next plan year's changes for participants; that the District was compelled to revert to status quo for insurance on September 30, 2016 because of PEA's refusal on September 7, 2016 to agree to necessary adjustments in time for open enrollment on October 15, 2016; that the District’s proposed language mandates when insurance will be negotiated to provide a clear path to the conclusion of negotiations by September 1 to allow for an October open enrollment; and that this proposal is a not a waiver, but rather a deadline to start negotiating insurance to realize Fall enrollment periods.

In the opinion of the Special Magistrate, past experience shows that the current bargaining schedule is likely to be insufficient to reach agreement on insurance in time for open enrollment on October 15 of each year. The Union has not shown that any harm would result by starting negotiations in January, when all parties are on site, as opposed to the two-month period in April and May, near the end of the school year. Accordingly, the Special Magistrate recommends that the parties accept the District proposal that the parties begin negotiations on health insurance in January, no later than five work days following the return from Winter Break.

4. Superintendent’s Insurance Committee. The District proposes that to achieve timely resolution, the insurance committee should be eliminated; that “the committee's recommendations based on PEA's posture makes the committee irrelevant;” that the committee serves no purpose; and that “as demanded by the PEA, negotiations are required for all insurance albeit on an earlier timetable.”

The Union states that the charter for the Insurance Committee shows that the committee serves many useful purposes, including making recommendations, operating as a forum for discussion, and sharing information relative to this very important issue; and that as shown in the Charter, the Committee is broad in scope, providing employees both inside and outside the bargaining units, as well as retirees, a voice regarding this issue. The Union also points to a PERC decision, affirmed by the District Court of Appeal for the Second District, which held that the School Board violated its duty to bargain by unilaterally changing the terms and options for employee health insurance coverage; and that the current language was negotiated by the parties after this litigation. The Union argues that there is no reason to change the status quo, and that the District failed to meet its burden of showing there are any deficiencies in the existing language.

The Special Magistrate has carefully considered the above arguments, as well as the Charter for the Committee. The Charter states that the Committee serves as a communication forum, in that it provides employees an opportunity to discuss and make recommendations regarding health insurance benefits; that Committee authority is limited to recommendations; that any recommendations are forwarded to the Superintendent for further action; and that the Committee “meets as needed, usually monthly.”

It is clear that the Committee’s authority is limited, and that it has no power to engage in collective bargaining. But that does not mean the Committee is irrelevant or has no purpose. The testimony indicates that employees value this venue as a forum for discussion and exchange of information and views, even though any recommendations are non-binding. Further, the existence of such a committee violates no law, nor should it interfere with the bargaining process, so long as participants recognize that bargaining

authority rests solely with the authorized collective bargaining representative. Of course, if the parties adopt the above recommendation that negotiations on health insurance begin in January, the committee presumably will understand that any non-binding recommendations that it would like discussed in negotiations should best be timely submitted for consideration in that process.

In light of the above discussion, the Special Magistrate recommends that the Superintendent's Insurance Committee be retained.

D. TEACHER EVALUATIONS

1. District Position. The District proposal is that "The Teacher Evaluation Manual - Appendix M. and any reference to Appendix M in Article 15 will be removed from the Teacher Collective Bargaining Agreement." The District argues that the manual is an independent document created in compliance with Florida laws and requirements of the Florida Department of Education; that the District has been challenged to meet the FDOE deadline for submittal of the District's instructional personnel evaluation system template; that due to state mandates, the manual must exist and any mandatory subjects collectively bargained; and that the District's proposal is not a waiver request. The District further argues that the manual is over 200 pages, making it impractical for bargaining unit members and the District; that its inclusion is dysfunctional; that this area is highly technical and cannot be effectively managed as an appendix; that the evaluation system must be annually approved by the State on a timetable that does not match the PEA's general approach to the bargaining cycle; that the evaluation parameters mandated by law are constantly changing; and that the evaluation documents require flexibility that has proved challenging to manage due to its inclusion in the collective bargaining agreement.

2. PEA Position. The Union argues that evaluations are crucial in determining how teachers are compensated, and should not be subject to mid-term contract changes; that PEA has a legitimate concern about the District making unilateral changes and bypassing the Union, due to an incident where there were substantial discrepancies between the negotiated evaluation scheme and the document submitted to the Florida Department of Education; and that the evaluation manual needs to be in the contract.

The Union also states that the District's complaints are belied by actual experience with PEA; that in contract negotiations for 2015-2016, the Teacher Evaluation Advisory Committee met regularly to attempt to resolve the recent change in state law that allowed for the percentage of each teacher's overall evaluation that was based on student learning gains to be reduced to no more than 33% of the total score; that after the District proposed changes in the Evaluation Manual, the parties reached tentative agreement within 30 days; and that entire sections of the manual were removed, rewritten and new sections substituted in that 30 days.

3. Special Magistrate Discussion and Recommendation on Teacher Evaluations. The Special Magistrate has carefully reviewed the evidence and arguments, as well as Appendix M and the "Teacher Evaluation Advisory Committee (TEAC) Process" contained in Article 15. The TEAC states, in brief summary, that "The Committee will meet at least twice annually between January 1 and May 31 and make recommendations to the Superintendent or as determined through collective bargaining processes;" that "TEAC may make recommendations for system changes for the upcoming year by July 1 of each year;" that every attempt will be made to meet statutory guidelines; that adjustments in the

process may need to be made for factors related to the stability and reliability of student data; and that any changes in the system processes will be submitted to the FDOE.

It appears that the Teacher Evaluation Manual contains some items that are subjects of bargaining and some that are not. The parties have contrasting views as to the effectiveness of the committee. The District states that it has been a challenge to meet the FDOE deadlines; that its inclusion of the manual in the CBA is impractical and dysfunctional; that the State's timetable does not match PEA's bargaining cycle; and that more flexibility is needed. The PEA, on the other, points to the importance of evaluations; its concern about the District's unilateral changes in the past; and the Committee's recent success in working with the District to make necessary changes.

It is undeniable that the evaluation process is critical, both to fairly address the effectiveness of a teacher and to provide fair compensation to the extent that salaries depend on evaluations. On balance, it appears that the Committee has made useful contributions in addressing necessary changes in the past. While joint consideration of necessary changes may take more time, no examples were given where the existence of the Committee actually caused untimely submission of required documentation to the FDOE. Accordingly, the Special Magistrate recommends that the CBA provisions for the TEAC process be retained, with a modification discussed below.

Some of the District's concerns involve FDOE deadlines. It seems that the existing timetables for Committee recommendations suffer flaws not unlike those that the Special Magistrate addressed above regarding negotiations for health insurance. The January, May, and July dates contained in the TEAC process apparently need a different timetable in order for the TEAC process and any bargaining to be completed in a fully deliberative manner

before FDOE deadlines. Accordingly, it is recommended that the District and PEA establish a better timetable for Committee discussions that allow completion of same, as well as any District/PEA negotiations, in time to meet FDOE deadlines.

E. TEACHER TRANSFERS

Article 17 allows qualified non-probationary teachers to transfer at any time during the school year, provided that the teacher gives twenty days prior notice to their current principal before leaving for a new school. The District's proposal prohibits mid-year transfers unless a hardship is demonstrated by the teacher seeking to transfer.

The District states that its goal is to minimize voluntary transfers by teachers throughout the school year and the ensuing disruption to schools and students; that mid-year transfers create vacancies that must be filled by substitute teachers; that since July 1, 2015, almost 1,000 transfers occurred at Polk impacting nearly 85,000 students; that data indicates student achievement suffers with disruptions to a student's stable learning environment; and that any adverse impact to student achievement is inconsistent with the Board's one goal of "increasing achievement for all students."

The Union argues that the ability to transfer between schools is an important right; that sometimes movement is necessitated by features of a given workplace, or reasons such as transportation; that the transfer procedure has been in effect for ten years; that flexibility encourages employees to remain with the District; that this benefit costs the District nothing; that the District has the burden of proof to eliminate the decade-old language; and that the District offers only speculation about potential problems.

Assuming, as the Union contends, that the District has the burden of proof, the Special Magistrate, upon a full review of the evidence and arguments, concludes that the

District has carried its burden. It is undisputed that excessive teacher transfers during the school year, often requiring the use of substitutes, has an adverse impact on student achievement, and is disruptive to a student's learning environment. The evidence further shows that the number of such transfers at Polk is excessive by any measure, amounting to almost 1,000 over two years, impacting almost 85,000 students in elementary, middle and high school levels.

The Union is correct that the ability to transfer is an important right. However, that does not mean that the right is unlimited. In the opinion of the Special Magistrate, the limit on mid-year transfers, with an exception for hardship cases, is a reasonable and common-sense measure to increase student learning and achievement.

The Union states that potential problems are only speculative. However, it has already recognized that transfers can have a negative impact on student achievement when it agreed to prohibit teachers from transferring for two years after committing to teach at a Turnaround Option Plan (TOP) school. The Union argues that the transfer benefit costs the District nothing. That may be true in dollars, but of course the cost in student achievement cannot be discounted.

The Union further argues that transfer flexibility encourages teachers to stay in the District. However, there is no evidence that restrictions of the type involved here would seriously impact retention. In fact, resignations at TOP schools, where a two-year commitment is required, are at a rate of 1 in 13 compared to 1 in 5 Districtwide.

For the above reasons, the Special Magistrate recommends that the parties accept the District proposal to prohibit mid-year transfers unless a hardship is demonstrated by the teacher seeking to transfer.

IV. SUMMARY OF SPECIAL MAGISTRATE RECOMMENDATIONS

1. Salaries

The Special Magistrate recommends as follows:

- (1) It is recommended that the District and PEA agree to a salary increase of 2% for 2016-17, the distribution of which should be negotiated by the parties.
- (2) It is recommended that the wage increases be retroactive to the beginning of the 2016-2017 year.

2. Advance Degrees

The Special Magistrate recommends that the District and PEA retain the current language contained in the collective bargaining agreement.

3. Health Insurance

The Special Magistrate recommends as follows:

- (1) Benefits and Premiums: Neither party proposes changes with respect to benefits and premiums, a position which accordingly is recommended by the Special Magistrate.
- (2) Date Certain to Commence Negotiations: It is recommended that the parties accept the District proposal to begin negotiations on health insurance in January, no later than five work days following the return from Winter Break.
- (3) Superintendent's Insurance Committee: It is recommended that the parties retain the Superintendent's Insurance Committee in the collective bargaining agreement.

4. Teacher Evaluations

The Special Magistrate recommends as follows:

- (1) It is recommended that The District and PEA retain the Teacher Evaluation Advisory Committee Process, with a modification discussed below.

(2) It is recommended that the District and PEA establish a better timetable for Committee discussions that allow completion of same, as well as any District/PEA negotiations, in time to meet FDOE deadlines.

5. Teacher Transfers

The Special Magistrate recommends that the parties accept the District proposal to prohibit mid-year transfers, unless a hardship is demonstrated by the teacher seeking to transfer.

IV. CONCLUSION

In conclusion, the Special Magistrate thanks the parties and counsel for their cooperation and professionalism throughout this proceeding. Also, it should be noted that Section 447.403 (3), Florida Statutes, states that after parties receive Special Magistrate recommendations, the recommendations “shall be discussed by the parties” prior to submission of any remaining issues to the legislative body. In such discussions between the District and PEA, it is hoped by the Special Magistrate that these recommendations will be useful in completing the collective bargaining process and achieving a final agreement.



Robert B. Moberly, Special Magistrate
August 7, 2017