

Special Magistrate Report and Recommendations

Impasse Proceedings Between

PERC SM Case 2015-043

CLAY COUNTY EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF CLAY COUNTY, FLORIDA

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For the Union: Tracy Butler, FEA Director

For the Public Employer: Eric J. Holshouser, Buchanan Ingersol & Rooney PC,
Attorneys for Clay County School Board

Date of Hearing December 11, 2015

Location of Hearing - Clay County District Offices, 900 Walnut Street, Green Cove Springs, Florida.

Date of Post Hearing Briefs January 19, 2016

Date of Recommendations February 2, 2016

Leonard T. Helfand, Special Magistrate
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Background – The School District of Clay County (hereinafter “District”) and the Clay County Education Association, FEA & NEA/AFT/AFL-CIO (hereinafter “Union”), representing approximately 2700 teachers, are parties to a collective bargaining agreement for the term February 19, 2015 through June 30, 2017. For each school year after the initial one, the contract was reopened for all compensation and benefit items and each party had the opportunity to reopen two additional articles.

The parties reopened negotiations for the July 1, 2015 through June 20, 2016 school year, an intermittent year, with respect to Article XI (General Employment Practices), Article XX (In-Service), Article XXII (Insurance), Article XXVIII (Compensation) and Appendix 5 (Supplements).

The parties held three collective bargaining sessions with the Union declaring impasse at the third meeting.

Issues at Impasse:

1. General Employment Practice - Annual Contract Instructional Personnel/Reappointment – Union proposal to guarantee continued employment after three years of employment.
2. In-service:
 - A. Scheduling: District’s proposal to schedule in-service training during the teacher’s current work week without adding an additional paid $\frac{1}{2}$ hour to the work week.
 - B. In-service Points: At issue is the District’s policy which requires submission of in-service follow-up forms before the teacher receives points for inservice training. Union proposes to bifurcate receipt of inservice points so the teacher receives points for attending class and receives additional points upon providing proof of follow up/implementation.
3. Health Insurance – Union objects to District’s proposal for noto increase the Board’s contribution to the health insurance premium.
4. Compensation –
 - A. Compensation for newly hired teachers: Union proposes to deduct three years from years of experience for newly hired teachers in determining compensation.

B. Salary increase – The Union proposes a \$1,000 gross salary increase to be paid retroactively to July 2, 2015. The District proposes a \$500 gross salary increase to be distributed equally in the remaining checks.

5. Supplements – Union proposes basing supplements on a base pay of \$38,000 while the District proposes a base pay of \$35,000.

STATUTORY MANDATES:

1. Fla. Stat. Sec. 447.405 (2015) - Guidance for Special Magistrate: “ ... special magistrate shall .. render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes ...”

2. Fla. Stat. Sec. 447.405 (2015) – Factors to be given weight by Special Magistrate:

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

(2) Comparison of the annual income of public employees in question with annual income of public employees in similar 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 ...

(5) Availability of funds.

DISCUSSION OF ISSUES AND POSITIONS OF THE PARTIES:

Issue 1. Annual Contract Article XI (General Employment Practices)

Union proposal to guarantee continued employment after three years of employment.

DISTRICT: The District’s position is to continue Annual Contracts subject to renewal each year, based on the perceived wisdom of the legislature in eliminating statutorily mandated continuing contracts. While the legislature decided to do away

with mandated continuing contracts for teachers, no legislative intent, history or rationale for so doing is offered by the District. A majority of school districts have not overridden the legislature's elimination of mandatory continuing contracts, however, many have.

The District points out that annual contract teachers who are not renewed are placed in a pool of available teachers who are given priority over outside hires. Therefore, the District does give preference to current teaching staff, providing a right of first hiring opportunity for existing annual contract teachers.

The District also contests the Union's position that a lack of continuing contracts results in a higher turnover rate for teachers as compared with other school districts. The District cites a survey taken by exiting teachers which does not indicate teachers leave primarily due to a lack of continuing contract.

UNION: The Union proposes that providing a continuing contract guarantees security and without it the District can decline to reappoint a teacher for any reason regardless of evaluation, performance or quality. Further, if there is just cause to dismiss a teacher, the District has that right. The Union also cites continuity of services to the families of Clay County, presumably implying that families will have the same "effective" or "highly effective" teachers for successive siblings or even perhaps for successive generations. A Clay County Teacher of the Year testified at a School Board meeting that in starting a family and buying a home he needed the protection of a continuing contract, which he found in Alachua County.

Finally, the Union points out the misrepresentation that the label of "automatic renewal" used by the District entails, because only effective and highly effective teachers are retained after their third year of proving themselves.

Issue 2. INSERVICE Article XX

A. In-service Scheduling: District's proposal to schedule in-service training during the teacher's current work week without adding an additional paid ½ hour to the work week.

UNION: The Union explains that teachers perform in-service, also known as professional development, to secure points for recertification. One way the teachers can be recertified is by using points earned from the District's in-service offering. Teachers can currently participate in one hour of site based in-service by utilizing 30 minutes during their contracted day and an additional 30 minutes

beyond the contracted day for which they will be paid their hourly rate. The Union further proposes a cap of 25 in-service trainings per year.

DISTRICT: The District points out that the flexibility in scheduling in-service training for teachers during the work week without having to add a paid one-half hour to the teacher's work week allows the District to save money, which it used to fund, in large part, the proposed \$500 increase in salaries to all teachers whether they participate in in-service training or not. The District calls a Union proposed cap of 25 in-service trainings per year contrary to furthering teacher skills, unjustified, arbitrary and unsupported by any evidence at the impasse hearing. Further, the District regards as a management right the determination of what teacher skills and training are needed.

The Union describes the District Proposal as moving the start time each day from 7:00 a.m. to 7:15 four days per week, just five minutes before classes start, and then adding that total hour to the end of the fifth day of the week where the teachers would attend in-service as part of the work week. The objection cited by the Union is that teachers would have 15 minutes less each day for duties such as planning, tutoring, writing lesson plans and create problems with students who arrive by 7:00 a.m., particularly those who eat breakfast at school. The Union also claims the District proposal violates the provision in the Collective Bargaining Agreement defining the work week as seven (7) hours and thirty minutes per day for five days, and may further disrupt there after school commitments for such things as child care and second jobs.

B. Method for Awarding In-service Points: At issue is the District's policy which requires submission of in-service follow-up forms before the teacher receives points for in-service training. Union proposes to bifurcate receipt of inservice points so the teacher receives points for attending class and receives additional points upon providing proof of follow up implementation.

The question is how in-service points should be granted for in-service classes that are required in addition to the weekly classes. These additional in-service classes are generally held on teacher planning days or other in-service days.

UNION: The Union's compromise is to bifurcate the receipt of points so that the teacher receives points for attending class and then if proof of follow-up/implementation is required, additional points would be awarded. The Union argues that if a teacher does not think the training will work well in their class and

chooses not to implement what they learned they should still receive partial credit for their time. The in-service could still improve their skill set or be utilized at a later time.

DISTRICT: The District proposes that for training that requires implementation by use of a skill or concept, follow-up documentation must be completed before any inservice points can be awarded. This is because implementation must precede the evaluation or follow-up for use of the skill. The District believes receiving partial credit for completing the seat time portion of training does not comply with DOE protocols and also reduces the teachers' incentive to undertake implementation.

Issue 3. INSURANCE Article XXII

The Union objects to District's proposal for no increase the Board's contribution to the health insurance premium.

UNION: The Union objects to the District's position to leave the Board Contribution for single employees at \$516.98 per month, thereby increasing the Employee Contribution to \$116 up from \$65 last year. The Union points out that the lack of a salary increase coupled with an increase in insurance contribution results in an effective cut in annual salary. The Union primarily faults the District for failing to provide a no-cost plan and/or seek cost containment solutions.

DISTRICT: The District is legally mandated to maintain a 3% reserve fund balance and primarily cites the lack of availability of funds in the form of the low level of reserves. As applicable to salary increase and insurance contribution, the District presented a letter from DOE warning the District that the DOE considers the District's reserve fund balance of less than 3% of revenue "to be a sign of an unhealthy financial condition" and warning that reserves falling below 2% could result in a "financial emergency." The District acknowledges that it expects increased funding from higher than budgeted enrollment but contends most of it must be spent on mandatory items such as Charter Schools, McKay scholarships, workers' compensation and liability insurance. Therefore, the District anticipates getting to the 3.00% reserve level, but is not certain about it.

ISSUE 4: COMPENSATION Article XXVIII

A. Compensation for New Hires: Union proposes to deduct three years from years of experience for newly hired teachers in determining compensation.

The Union proposes that new hires have a deduction of three years in experience for purpose of placement on the salary schedule in order to prevent new hires from “leapfrogging” over existing teachers.

UNION: The Union contends that the employees of the District prior to the 2015/16 school year have fallen behind in compensation relative to years of experience due to a lack of salary increase. A teacher with ten years of experience, for example, is only being paid for seven years of experience due to lack of step movement. Thus, the Union proposes anyone newly hired should be given a decrease in years of experience for the purpose of placement on the salary schedule. This avoids what they call “leapfrogging”: when new hires, with less experience, enter the Clay County school system making more money than the experienced teachers are making.

DISTRICT: The District contends that preventing new teachers from “leapfrogging” in salary over existing teachers could prevent the District from attracting the best teachers contrary to the “interest and welfare of the public.” While other school districts in the area do not use the exact method of deducting years of experience, some do cap recognized years of experience. Duval and St. Johns County cap transferable experience at 10 and 15 years respectively. However, despite its objection to the Union proposal, the District has entered into a Memorandum of Understanding with the Union to allow the District to deduct three years of experience for new hires. The District believes that the Memorandum of Understanding vehicle gives the District more flexibility in the future to allow full credit for experience in order to attract quality teachers.

B. Salary Increase: The Union proposes a \$1,000 gross salary increase to be paid retroactively to July 2, 2015. The District proposes a \$500 gross salary increase to be distributed equally in the remaining checks.

The District also included a Memorandum of Understanding that would reopen negotiation if the reserve fund balance is at or above 3% after the fourth calculation.

UNION: The Union contends there is money which is available, or could be made available, despite the decrease in reserves. There was an additional \$8.1 million dollars in funding for Clay County in 2015-16 compared to 2014-15 funding and the October FTE count revealed about 1,300 new students, which resulted in \$7,000 per student increased funding. These things created dollars that were not budgeted. The Union concludes that the District can fund a salary increase as

requested and still improve the fund balance. The Union also decries decreases in millage levied, which lowered tax revenues and suggests a return to levying the past millage.

DISTRICT: The District addresses jointly the cost for the \$1,000 salary increase; the cost of an increased health insurance contribution and the higher base salary for calculation of supplements with a figure of \$3.3 million more than the annual cost of the District's proposal. They calculate that even if an extra \$12.2 million were budgeted (based on increased allocations from the State and expense reductions), reserves are projected to increase to only 2.35% - well below the required goal of 3.00%.

The District does admit to an extra \$6 million in state funding based on increased enrollment but contend that figure is not final until an upcoming calculation in March 2016 based on enrollment numbers received in February 2016. They do "anticipate" (without certainty) getting to the 3% reserve level with the additional funding. While not being willing to allocate additional funds over their proposal to increased health insurance contribution and salary increase, they do commit to reopen negotiations if reserves appear to be rising to or above the required 3.00%

In addition to the availability of funding factor as specified in Fla. Stat. Sec. 447.405(5) the District also cites the labor market factors in the Statute to support its proposals on compensation, claiming that throughout Northeast and North Central Florida Clay County teacher salaries are at the upper end of the salary spectrum. Clay County ranked higher in both beginning and average teacher salary than neighboring Duval County

Issue 5. SUPPLEMENTS APPENDIX 5

The District proposes that Supplements should be calculated based on \$35,000 base pay. The Union proposes that Supplements should be calculated based on \$38,000 base pay.

UNION: The Union contends that if the teacher's supplements are to be calculated on a lower salary than in the past, the administrator's supplements should be also in order so both teachers and administrators participate in saving the district money.

DISTRICT: The District objects to a comparison between teachers and administrators. The District points out that compared to other local and similarly situated school districts, Clay County ranks the highest in what it currently pays in

supplements in eight of 13 categories and is among the highest in all the other categories. The District also cites financial ability claiming that the Union's proposal would cost an additional \$237,296.

MAGISTRATE'S FINDINGS AND RECOMMENDATIONS

1. ANNUAL CONTRACT: Unlike some of the other issues where availability of funds is a major consideration, the interest and welfare of the public is front and center here and this magistrate is of the opinion that treating its teachers as valuable respected professionals with job security is in the interest and welfare of the public, of the citizens and families who utilize the school system, and of the current teachers who are also part of the public citizenry of Clay County.

While a majority of districts have not overridden the legislature's elimination of continuing contracts, it is expected that most would adhere to the status quo established by the legislature. It is more notable that many districts have taken the initiative to override the legislature's non-binding action, which may have been based more on political philosophy rather than what was in the interest and welfare of the citizenry who utilize the schools and of teaching staff of Clay County who educate its young citizens. In addition to being the right thing to do, the question of whether to keep teachers on yearly or continuing contract is a local and not state concern.

Actually, the District wisely recognizes the wisdom of retaining good teachers through continuing contract by giving existing teachers a right of first hiring opportunity, so why not go all the way by formalizing their remaining in the school system (if they have effective or highly effective rating and no cause for dismissal) through continuing contract. Why allow possible bias or favoritism, or any other illegitimate reason not related to performance, to disrupt a good teacher? While the testimony of the Clay County Teacher of the Year who left Clay County for job security in Alachua is anecdotal, it is only reasonable to expect that others who are proven excellent, experienced teachers may be motivated to do so. Further, while it cannot be said definitively that lack of continuing contract may dampen the incentive for the best teachers to apply for positions, common sense dictates that this is possible.

Therefore, the Magistrate recommends the Union Proposal.

2A. INSERVICE SCHEDULING: This issue does have a financial aspect because the District contends, and the Union seems to be in accord, that the flexibility in scheduling in-service training during the work week, without adding a

paid one-half hour to the teacher's work week, allows the District to fund the proposed \$500 increase in salaries to all teachers. Further, there was no evidence presented at the hearing to support a cap of 25 in-service trainings. The Union should gather further evidence of arbitrary use of excessive in-service training for the next negotiating period.

Therefore, the Magistrate recommends the District Proposal.

2B. INSERVICE TRAINING POINTS: The District proposes that for training requiring implementation for use of a skill or concept, follow-up documentation must be completed with implementation. To require implementation is not fully respectful of the professionalism of teachers in that they may not feel immediate implementation is feasible or beneficial but will still benefit with an increase in skill level to be used in the future. It is common knowledge that in other professions such as medicine, nursing, law, and accounting there is not a denial of professional credit for relevant training because the training is not utilized following the professional development class. The Union's compromise proposal to receive partial credit for relevant training regardless of immediate implementation is reasonable and respects teachers' professional opinions.

However, before implementing the Union proposal, the School Board should consult with DOE to ensure that partial credit without immediate implementation or use a skill for those trainings that envision implementation does not violate any DOE protocol.

Therefore, the Magistrate recommends the Union Proposal, subject to the condition as stated above.

3. INSURANCE: While the key statutory factor of availability of funds compels the Magistrate, as shown below, to adopt the District position on Salary Increase and Supplements, Insurance may be a little different. While it would not be prudent to grant the Union's salary increase proposal at this time, and the salary issue is tempered by the District's commitment to reopen negotiations upon reaching 3% reserves, the increased contribution by the employees for health insurance even with the \$500 salary increase (balanced by loss of extra 30 minutes pay for inservice) results in a net loss. The expected increase in higher than budgeted enrollments is not certain to result in a 3% reserve level but any uncertainty can be tempered by the District being more proactive in seeking cost containment solutions for health insurance including the provision of a no-cost plan.

Therefore, the Magistrate recommends the Union Proposal.

4A. LEAPFROGGING: This is an issue where the Union position is in accord with statutorily mandated financial and funding considerations as well as “the welfare of the public.” The benefit of giving the existing teachers an incentive to remain in the community rather than favoring new teachers should be apparent. It is nebulous anyway that the elimination of leapfrogging by deduction of three years of experience will seriously discourage teachers who seek employment in Clay County. Also the elimination of the three-year deduction in experience can be a temporary thing to be revised upon gaining greater financial stability. Allowing existing teachers, with years of experience, to fall behind in compensation due to lack of increases is not something that should occur at a time when the Board cannot grant the salary amelioration that the teachers deserve.

Further, the District has shown good faith by recognizing the negative impact of leapfrogging through entering into a Memorandum of Understanding to allow the District to deduct three years of experience for new hires. They do not want to be permanently wed to the deduction of three years. However, leapfrogging is always subject to negotiation so that there is no reason not to make this three-year deduction a part of the contract subject to renegotiation in the future

Therefore, the Magistrate recommends the Union Proposal.

4B. SALARY INCREASE: As to the statutory factors set forth in Fla. Stat. Sec. 447.405(1), other than availability of funds, the results are a mixed bag. If it were not for the financial situation, a just settlement would favor some increase above the \$500 which is substantially offset by loss of the extra half hour pay for inservice. The Magistrate is of the opinion that the \$1,000 increase would be justified and reasonable to bring the teachers close to the state average (see Fla. Stat. Sec. 447.405(2)). The Memorandum of Understanding to reopen negotiations if the fund balance is at or above 3% after the upcoming fourth calculation is helpful in this regard.

The Union also cites a return to the former millage as a source for funding appropriate salary increases. While public education should be a priority, any recommendation on millage is not within the Magistrate’s purview. Similarly, while equitable treatment between administrators and teachers should be looked at, this is not within the Magistrate’s jurisdiction.

At this time, there is uncertainty as to whether the additional funding expected due to increased enrollment for Clay County will produce enough money to raise the reserves sufficiently to justify an increase in salary above the District’s current

proposal. Even accepting the Union's assertion that an increase could be funded with improvement in the fund balance, it appears based on DOE's input that the fund must be bolstered substantially to achieve at least something close to the 3% level. Therefore, unfortunately, it would not be prudent to recommend the Union's Proposal.

The Magistrate recommends the District Proposal.

5. SUPPLEMENTS: Funding this item and returning to basing teacher supplements on \$38,000 in order to provide more equity in the treatment of teachers and administrators is not of major financial impact. However, with the District being close to a financial urgency with respect to reserves, and having already recommended the Union's proposal with respect to Insurance, the Magistrate is reluctant to endorse another item to expend budget dollars that are not available at this time pending the forthcoming "fourth calculation." Although the Union gives priority to a favorable recommendation on this item in relation to Insurance, the use of \$35,000 for calculating supplements was a temporary reprieve granted the District in 2014/15 and the Magistrate is confident that the Union will be able to negotiate a return to the \$38,000 figure as soon as the financial condition of the District is ameliorated.

However, if the School Board does not adopt the Union's Insurance proposal it should consider maintaining the \$38,000 figure to calculate supplements as a fair concession to the Union, which is in the public interest.

Respectfully submitted this 1st day of February, 2016

Leonard T. Helfand

Leonard T. Helfand, Special Magistrate

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